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# federal register

Thursday
September 6, 1979

## Highlights



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# Highlights

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# Presidential Documents

Title 3—

The President

## Executive Order 12154 of September 4, 1979

## Levels IV and V of the Executive Schedule

By the authority vested in me as President by Section 5317 of Title 5 of the United States Code it is hereby ordered as follows:

1–1. *Executive Schedule Positions.*

1–101. The following positions are placed in level IV of the Executive Schedule:

(a) Senior Adviser to the Secretary, Department of State.

(b) Deputy Under Secretary for International Labor Affairs, Department of Labor.

(c) Administrator, Alcohol, Drug Abuse and Mental Health Administration, Department of Health, Education, and Welfare.

(d) Special Assistant to the Special Representative for Trade Negotiations, Office of the Special Representative for Trade Negotiations.

(e) Deputy Adviser for Labor-Management, Council on Wage and Price Stability.

(f) Deputy Adviser for Congressional Affairs, Council on Wage and Price Stability.

(g) Deputy Adviser for Government Operations, Council on Wage and Price Stability.

(h) Deputy Adviser for Regulatory Policies, Council on Wage and Price Stability.

1–102. The following positions are placed in level V of the Executive Schedule:

(a) Deputy Assistant Secretary of Defense for Reserve Affairs, Department of Defense.

(b) Executive Director, Pension Benefit Guaranty Corporation, Department of Labor.

(c) Executive Assistant and Counselor to the Secretary of Labor, Department of Labor.

(d) Commissioner on Aging, Department of Health, Education, and Welfare.

1–2. *General Provisions.*

1–201. Nothing in this Order shall be deemed to terminate or otherwise affect the appointment, or to require the reappointment, of any occupant of any position listed in Section 1–1 of this Order who was the occupant of that position immediately prior to the issuance of this Order.

1–202. Executive Order No. 12076, as amended, is hereby revoked.

THE WHITE HOUSE,
*September 4, 1979.*

Jimmy Carter

[FR Doc. 79–27999
Filed 9–4–79; 5:08 pm]
Billing code 3195–01–M

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### 7 CFR Part 2

### Delegation of Authority by the Secretary of Agriculture and General Officers of the Department; Emergency Conservation Program

**AGENCY:** Department of Agriculture.

**ACTION:** Final rule.

**SUMMARY:** This rule delegates the authority of the Secretary of Agriculture for carrying out Section 403 of Pub. L. 95–334, 16 U.S.C. 2201, the Emergency Conservation Program, to the Assistant Secretary of Agriculture for Natural Resources and Environment. This rule also contains a redelegation to the Administrator, Soil Conservation Service, to administer the program.

**EFFECTIVE DATE:** September 6, 1979.

**FOR FURTHER INFORMATION CONTACT:** Victor H. Barry, Jr., Deputy Administrator for Programs, Soil Conservation Service, USDA, P.O. Box 2890, Washington, D.C. 20013 (202–447–7245).

**SUPPLEMENTARY INFORMATION:** Section 403, Pub. L. 95–334, 16 U.S.C. 2201, authorizes the Secretary of Agriculture to undertake emergency measures for runoff retardation and soil erosion prevention, in cooperation with landowners, and land users, as he deems necessary to safeguard lives and property from floods, drought, and products of erosion on any watershed wherever fire, flood, or any other natural occurrence is causing or has caused a sudden impairment of that watershed.

Accordingly, Part 2, Subtitle A, Title 7, Code of Federal Regulations is amended as follows:

### Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, Assistant Secretaries, the Director of Economics, Policy Analysis and Budget, and the Director, Office of Governmental and Public Affairs

1. Section 2.19 is amended by revising the heading and preamble and by adding a new paragraph (f)(4)(vii) to read as follows:

**§ 2.19 Delegations of authority to the Assistant Secretary for Natural Resources and Environment.**

The following delegations of authority are made by the Secretary of Agriculture to the Assistant Secretary for Natural Resources and Environment:

* * * * *

(f) * * *

(4) * * *

(vii) The Emergency Conservation Program under Section 403 of Pub. L. 95–334, 16 U.S.C. 2201.

* * * * *

2. The heading for Subpart G is amended to read as follows:

### Subpart G—Delegations of Authority by the Assistant Secretary for Natural Resources and Environment

3. Section 2.62 is amended by deleting the term "Assistant Secretary for Conservation, Research, and Education" in paragraphs (a) and (b) and substituting in lieu thereof the term "Assistant Secretary for Natural Resources and Environment" and by adding a new paragraph (a)(4)(vii) to read as follows:

**§ 2.62 Administrator, Soil Conservation Service.**

(a) * * *

(4) * * *

(vii) The Emergency Conservation Program under Section 403 of Pub. L. 95–334, 16 U.S.C. 2201.

* * * * *

(5 U.S.C. 301 and Reorganization Plan No. 2 of 1953).

For subpart C.

Dated: August 30, 1979.

**Bob Bergland,**

*Secretary of Agriculture.*

For subpart G.

Dated: August 30, 1979.

**M. Rupert Cutler,**

*Assistant Secretary of Agriculture for Natural Resources and Environment.*

[FR Doc. 79–27820 Filed 9–5–79; 8:45 am]
BILLING CODE 3410–01–M

## Agricultural Marketing Service

### 7 CFR Part 908

**[Valencia Orange Reg. 628]**

### Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period September 7–13, 1979. Such action is needed to provide for orderly marketing of fresh Valencia oranges for this period due to the marketing situation confronting the orange industry.

**EFFECTIVE DATE:** September 7, 1979.

**FOR FURTHER INFORMATION CONTACT:** Malvin E. McGaha, 202–447–5975.

**SUPLEMENTARY INFORMATION:** *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Valencia Orange Administrative Committee and upon other available information. It is hereby found that the action will tend to effectuate the declared policy of the act by tending to establish and maintain, in the interests of producers and consumers, an orderly flow of oranges to market and avoid unreasonable fluctuations in supplies and prices. The action is not for the purpose of maintaining prices to farmers above the level which is declared to be the policy of Congress under the act.

The committee met on September 4, 1979, to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of Valencia oranges deemed advisable to be handled during the specified week. The committee reports the demand for Valencia Oranges is steady.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of 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. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

Further, the emergency nature of this regulation warrants publication without opportunity for further public comment, in accord with emergency procedures in Executive Order 12044. The regulation has not been classified significant under USDA criteria for implementing the Executive Order. An impact analysis is available from Malvin E. McGaha, (202) 447–5975.

**§ 908.928 Valencia Orange Regulation 628.**

*Order.* (a) The quantities of Valencia oranges grown in Arizona and Califorina which may be handled during the period September 7, 1979, through September 13, 1979, are established as follows:

(1) District 1: 331,000 cartons;

(2) District 2: 294,000 cartons;

(3) District 3: Unlimited;

(b) As used in this section, "handled", "District 1", "District 2", "District 3", and "carton" mean the same as defined in the marketing order.

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

Dated: September 5, 1979.

**D. S. Kuryloski,**

*Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 79–28028 Filed 9–5–79 11:41 am]

**BILLING CODE 3410–02–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 79–EA–34; Amdt. 39–3551]**

### Airworthiness Directives; Bellanca Aircraft

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

**ACTION:** Final rule.

**SUMMARY:** This amendment issues a new airworthiness directive applicable to Bellanca 14–13 type airplanes which requires an inspection of the aileron controls for reversal of the rigging. It appears that some aircraft have reported misrigging of such controls and the Bellanca 14–13 Handbook improperly shows the rigging. This type of misrigging could result in an accident.

**EFFECTIVE DATE:** September 10, 1979.

**FOR FURTHER INFORMATION CONTACT:** A. Maila, Airframe Section, AEA–212, Engineering and Manufacturing Branch, Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Tel. 212–995–2875.

**SUPPLEMENTARY INFORMATION:** In view of the air safety problem, notice and public procedure hereon are impractical and the amendment may be made effective in less than 30 days.

Adoption of the Amendment

Accordingly, and pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by issuing a new airworthiness directive, as follows:

Bellanca: Applies to all Bellanca Model 14–13 aircraft, certificated in all categories.

Compliance required within the next 10 hours in service after the effective date of this AD, unless already accomplished.

Inspect the aileron control system for correct rigging and proper operation. If reversal of control system is detected, rerig the system correctly.

Note.—Do not use the Bellanca 14–13 Handbook for guidance in rigging procedure as the aileron system depicted on page 14, Figure 11, is shown in reverse.

Effective Date: This amendment is effective September 10, 1979.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, 49 U.S.C. 1354(a), 1421, and 1423; Sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c); and 14 CFR 11.89.)

Issued in Jamaica, New York, on August 27, 1979.

**Murray E. Smith,**

*Director, Eastern Region.*

[FR Doc. 79–27490 Filed 9–5–79; 8:45 am]

**BILLING CODE 4910–13–M**

### 14 CFR Parts 71 and 73

**[Airspace Docket No. 79–EA–22]**

### Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Special Use Airspace; Temproary Restricted Areas

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

**ACTION:** Final rule.

**SUMMARY:** These amendments designate temporary restricted areas identified as R–5201A, R–5201B, R–5201C and R–5201D in the vicinity of Ft. Drum, N.Y., to contain a military joint readiness exercise called "EMPIRE GLACIER 80." These actions provide for the safe and efficient use of the navigable airspace by prohibiting unauthorized flight operations of nonparticipating aircraft within the areas during their time of designation.

**EFFECTIVE DATE:** November 2, 1979.

**FOR FURTHER INFORMATION CONTACT:** Mr. Everett L. McKisson, Airspace Regulations Branch (AAT–230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–3715.

**SUPPLEMENTARY INFORMATION:**

History

On June 28, 1979, the FAA proposed to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to designate temporary restricted areas in the vicinity of Ft. Drum, N.Y., to contain a military exercise (44 FR 37630). Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposals to the FAA. The comments received expressed no objection. Section 71.151 of Part 71 and § 73.52 of Part 73 were republished in the **Federal Register** on January 2, 1979, (44 FR 344 and 705). These amendments are the same as proposed in the notice.

The Rule

These amendments to Parts 71 and 73 of the Federal Aviation Regulations designate temporary restricted areas identified as R–5201A, R–5201B, R–5201C and R–5201D in the vicinity of Ft. Drum, N.Y., to contain a military joint

readiness exercise called "EMPIRE GLACIER 80." These areas are included in the continental control area for the duration of their time of designation and are designated joint use for IFR/VFR operations that may be authorized by the controling ATC facility when they are not being utilized by the using agency. The controlling agency for R-5201A/B/C and D is the FAA Boston ARTCC and the using agency is the 9th Air Force/DOX, Shaw AFB, Sumter, S.C. The United States Air Force has stated that the requirements of the National Environmental Policy Act have been met.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as republished (44 FR 344 and 705) are amended, effective 0901 GMT, November 2, 1979, as follows:

In § 71.151 the following temporary restricted areas are added for the duration of their times of designation from 0001 January 16, 1980, through 2400 hours, local time, January 24, 1980:

R-5201A Fort Drum, N.Y.
R-5201B Fort Drum, N.Y.
R-5201C Fort Drum, N.Y.
R-5201D Fort Drum, N.Y.

In § 73.52 the following temporary restricted areas are added:

R-5201A Fort Drum, N.Y.
Boundaries. Beginning at Lat. 44°10'00" N., Long. 75°39'30" W.; to Lat. 44°28'00" N., Long. 75°21'00" W.; to Lat. 44°28'00" N., Long. 75°13'00" W.; to Lat. 44°26'00" N., Long. 75°09'00" W.; to Lat. 44°20'00" N., Long. 75°15'00" W.; to Lat. 44°11'00" N., Long. 75°17'00" W.; to Lat. 44°03'00" N., Long. 75°33'30" W.; to Lat. 44°11'15" N., Long. 75°25'00" W.; to Lat. 44°15'15" N., Long. 75°31'00" W.; to point of beginning.
Designated altitudes. 100 feet AGL up to but not including FL 180.
Time of designation. Continuous 0001 January 16, 1980, through 2400 hours, local time, January 24, 1980.
Controlling agency. Federal Aviation Administration, Boston ARTCC.
Using agency. 9th Air Force/DOX, Shaw AFB, Sumter, S.C.

R-5201B Fort Drum, N.Y.
Boundaries. Beginning at Lat. 44°03'00" N., Long. 75°33'30" W.; to Lat. 43°51'15" N., Long. 75°33'30" W.; to Lat. 43°51'15" N., Long. 75°47'07" W.; to Lat. 44°05'47" N., Long. 75°44'30" W.; to Lat. 44°03'25" N., Long. 75°39'30" W.; to Lat. 44°00'45" N., Long. 75°37'25" W.; to point of beginning.
Designated altitudes. 6,000 feet MSL up to but not including FL 180.
Time of designation. Continuous 0001 January 16, 1980, through 2400 hours, local time, January 24, 1980.
Controlling agency. Federal Aviation Administration, Boston ARTCC.
Using agency. 9th Air Force/DOX, Shaw AFB, Sumter, S.C.

R-5201C Fort Drum, N.Y.
Boundaries. Beginning at Lat. 44°33'00" N., Long. 75°21'00" W.; to Lat. 44°36'00" N., Long. 74°40'00" W.; to Lat. 43°53'30" N., Long. 74°41'00" W.; to Lat. 43°45'00" N., Long. 74°46'50" W.; to Lat. 43°45'00" N., Long. 75°48'00" W.; to Lat. 43°51'15" N., Long. 75°47'07" W.; to Lat. 43°51'15" N., Long. 75°33'30" W.; to Lat. 44°03'00" N., Long. 75°33'30" W.; to Lat. 44°11'00" N., Long. 75°17'00" W.; to Lat. 44°20'00" N., Long. 75°15'00" W.; to Lat. 44°26'00" N., Long. 75°09'00" W.; to Lat. 44°28'00" N., Long. 75°13'00" W.; to Lat. 44°28'00" N., Long. 75°21'00" W.; to Lat. 44°10'00" N., Long. 75°39'30" W.; to Lat. 44°05'47" N., Long. 75°44'30" W.; to point of beginning.
Designated altitudes. 3,000 feet MSL up to but not including FL 180.
Time of designation. Continuous 0001 January 16, 1980, through 2400 hours, local time, January 24, 1980.
Controlling agency. Federal Aviation Administration, Boston ARTCC.
Using agency. 9th Air Force/DOX, Shaw AFB, Sumter, S.C.

R-5201D Fort Drum, N.Y.
Boundaries. Beginning at Lat. 44°36'00" N., Long. 74°40'00" W.; to Lat. 44°36'00" N., Long. 74°34'00" W.; to Lat. 44°21'30" N., Long. 74°30'00" W.; to Lat. 44°08'00" N., Long. 74°30'00" W.; to Lat. 43°53'30" N., Long. 74°41'00" W.; to point of beginning.
Designated altitudes. 13,000 feet MSL up to but not including FL 180.
Time of designation. Continuous, 0001 January 16, 1980, through 2400 hours, local time, January 24, 1980.
Controlling agency. Federal Aviation Administration, Boston ARTCC.
Using agency. 9th Air Force/DOX, Shaw AFB, Sumter, S.C.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.)

**Note.**—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on August 29, 1979.

**B. Keith Potts,**

*Acting Chief, Airspace and Air Traffic Rules Division.*

[FR Doc. 79-27491 Filed 9-5-79; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 95**

**[Docket No. 19482; Amdt. No. 95-287]**

## IFR Altitudes; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts miscellaneous amendments to the required IFR (instrument flight rule) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

**EFFECTIVE DATE:** October 4, 1979.

**FOR FURTHER INFORMATION CONTACT:** Lewis O. Ola, Flight Procedures and Airspace Branch (AFS-730), Aircraft Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8277.

**SUPPLEMENTARY INFORMATION:**

This amendment to Part 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference.

The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provides for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these

regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, or contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

**Adoption of the Amendment**

Accordingly and pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective at 0901 G.m.t.

**Note.**—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

(Secs. 307 and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348 and 1510); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.49(b)(3))

Issued in Washington, D.C., on August 29, 1979.

**John S. Kern,**

*Acting Chief, Aircraft Programs Division.*

BILLING CODE 4910-13-M

## REVISION TO IFR ALTITUDES & CHANGEOVER POINTS TO PART 95

### §95.48 GREEN FEDERAL AIRWAY 8
is amended to read in part:

| FROM | TO | MEA |
|---|---|---|
| Dutch Harbor, Alas. NDB | Elfee, Alas. NDB | 9000 |
| (HF Communication required) | | |

### §95.1001 DIRECT ROUTES—U.S.
is amended to delete:

| FROM | TO | MEA |
|---|---|---|
| Avenal, Calif. VOR | San Jose, Calif. VOR | *18000 |
| *6700-MOCA | | MAA-39000 |
| Gaviota, Calif. VORTAC | San Luis Obispo, Calif. VORTAC | 18000 MAA-41000 |
| Avenal, Calif. VOR | Salinas, Calif. VOR COO 43 AVE | 18000 MAA-39000 |
| Bakersfield, Calif. VOR | Pelican INT, Calif. | *3000 |
| *2500-MOCA | | MAA-35000 |
| Colli INT, Calif. | Travis, Calif. VOR | 4000 |
| Fortuna, Calif. VORTAC | North Bend, Ore. VORTAC | 18000 |
| Fortuna, Calif. VORTAC | Rome, Ore. VORTAC | #31000 MAA-45000 |
| #MEA is established with a gap in navigation signal coverage. | | |
| Fresno, Calif. VORTAC | Lake Tahoe, Calif. VORTAC | 28000 MAA-45000 |
| Kwang INT, Calif. | Camarillo, Calif. VOR | 3600 |
| Julian, Calif. VOR | Int. 242 M rad Julian VOR & 106 M rad Oceanside VOR | 8000 |
| Julian, Calif. VOR | U.S. Mexican Border | *11000 |
| *8400-MOCA | | MAA-41000 |
| *Camarillo, Calif. VOR | Santa Monica, Calif. VOR | 5000 |
| *3600-MCA Camarillo VOR, E-bound | | |
| Int. 242 M rad Julian VOR & 106 M rad Oceanside VOR | Int. 242 M rad Julian VOR & 162 M rad Oceanside VOR | |
| | W-bound | 3500 |
| | E-bound | 5000 |
| Linden, Calif. VOR | Coaldale, Nev. VOR | *18000 |
| *14400-MOCA | | MAA-39000 |
| Mission Bay, Calif. VOR Via SAN 110 rad | U.S. Mexican Border | 5600 |
| Mission Bay, Calif. VOR Via SAN 120 rad | U.S. Mexican Border | 4600 |
| Mission Bay, Calif. VOR Via SAN R-360 & ONT R-130 | *Ontario, Calif. VOR | **7000 |
| *5100-MCA Ontario VOR, SE-bound | | |
| **6700-MOCA | | |
| Mission Bay, Calif. VOR | *Ontario, Calif. VOR | 7700 |
| 6300-MOCA Ontario VOR, SE-bound | | COP 47 SAN |
| Mission Bay, Calif. VOR | U.S. Mexican Border Via SAN 125 rad | 2400 |
| Oakland, Calif. VORTAC | Ukiah, Calif. VORTAC | 18000 MAA-45000 |
| Oceanside, Calif. VOR | U.S. Mexican Border Via OCN 122 rad | *6000 |
| Oceanside, Calif. VOR | Int. 106 M rad Oceanside VOR & 242 M rad Julian VOR | |
| | NW-bound | 4000 |
| | SE-bound | 5000 |
| Ontario, Calif. VORTAC | Peach Springs, Ariz. VORTAC | *#23000 |
| *12900-MOCA | | |
| #MEA is established with a gap in navigation signal coverage | | |
| Peach Springs, Ariz. VORTAC | Cortez, Colo. VOR | #18000 |
| COP 115 PGS | | MAA-45000 |
| #MEA is established with a gap in navigation signal coverage | | |
| Pelican INT, Calif. | Panoche, Calif. VOR (Gulf Route 26) | 5500 |
| *5000-MRA | | |
| Richmond INT, Calif. | Oakland, Calif. VOR | 5000 |
| Salinas, Calif. VORTAC | Woodside, Calif. VOR | 5000 COP 33 SNS |
| San Luis Obispo, Calif. VORTAC | Big Sur, Calif. VORTAC | 18000 MAA-41000 |
| Santa Catalina, Calif. VORTAC | Santa Barbara, Calif. VORTAC | 6000 |
| Stinson Beach INT, Calif. | Napa, Calif. VORTAC | 4600 |
| Travis, Calif. VOR | Sablo INT, Calif. | 3500 |
| Ukiah, Calif. VORTAC | Fortuna, Calif. VORTAC | 18000 MAA-45000 |
| Int. 310 M rad Ventura VOR & 153 M rad Panoche, VOR | Panoche, Calif. VOR | 18000 MAA-29000 |
| Woodside, Calif. VORTAC | San Luis Obispo, Calif. VORTAC | 18000 MAA-31000 |
| Cape Sarichef, Alas. LF RBN | Fort Randall, Alas. LF/RBN | 11000 |

### §95.1001 DIRECT ROUTES—U.S.
is amended by adding:

| FROM | TO | MEA |
|---|---|---|
| DeLancey, N.Y. VOR | Int. 051 M rad DeLancy VOR & 269 M rad Albany VOR | 5000 |
| Hyannis, Mass. VOR | Tonni INT, Mass. | *2500 |
| *1500-MOCA | | |

### §95.1001 DIRECT ROUTES—U.S.
is amended to read in part:

| FROM | TO | MEA |
|---|---|---|
| Bangor, Me. VOR | Patta INT, Me. | *8000 |
| *5000-MOCA | | |
| Allegheny, Pa. VOR | Homee INT, Pa. | 4000 |
| Homee INT, Pa. | Revloc, Pa. VOR | 4000 |
| Homee INT, Pa. | Johnstown, Pa. VOR | 4200 |

### §95.6002 VOR FEDERAL AIRWAY 2
is amended to read in part:

| FROM | TO | MEA |
|---|---|---|
| Bismarck, N.D. VOR | *Reggy INT, N.D. | |
| Via N alter. | Via N alter. | 3900 |
| *4100-MRA | | |
| Reggy INT, N.D. | *Tovar INT, N.D. | |
| Via N alter. | Via N alter. | 3900 |
| *4500-MRA | | |

### §95.6008 VOR FEDERAL AIRWAY 8
is amended to delete:

| FROM | TO | MEA |
|---|---|---|
| Seal Beach, Calif. VOR | Olive INT, Calif. | 3000 |
| *Olive INT, Calif. | Ontario, Calif. VOR | 5000 |
| *4100-MCA Olive INT, NE-bound | | |
| Ontario, Calif. VOR | Rialto INT, Calif. | 4500 |
| *Rialto INT, Calif. | Lucer INT, Calif. | 10500 |
| *8800-MCA Rialto INT, NE-bound | | |
| #9300-Lucer INT, SW-bound | | |

### §95.6008 VOR FEDERAL AIRWAY 8
is amended by adding:

| FROM | TO | MEA |
|---|---|---|
| Seal Beach, Calif. VOR | Ollie INT, Calif. | 3000 |
| *Ollie INT, Calif. | Paradise, Calif. VOR | 5000 |
| *4100-MCA Ollie INT, NE-bound | | |
| Paradise, Calif. VOR | *Rialto INT, Calif. | 4500 |
| *8800-MCA Rialto INT, NE-bound | | |
| Rialto INT, Calif. | *Lucer INT, Calif. | 10500 |
| *9300-MCA Lucer INT, SW-bound | | |

§95.6012 VOR FEDERAL AIRWAY 12
is amended to read in part:

| FROM | TO | MEA |
|---|---|---|
| Allegheny, Pa. VOR | Milwo INT, Pa. | 4000 |
| Milwo INT, Pa. | Johnstown, Pa. VOR | 4900 |

§95.6015 VOR FEDERAL AIRWAY 15
is amended to delete:

| FROM | TO | MEA |
|---|---|---|
| Scurry, Tex. VOR | Blue Ridge, Tex. VOR | |
| Via E alter. | Via E alter. | 2600 |

§95.6016 VOR FEDERAL AIRWAY 16
is amended to delete:

| FROM | TO | MEA |
|---|---|---|
| Prado INT, Calif. | Ontario, Calif. VOR | 4000 |
| Ontario, Calif. VOR | Seter INT, Calif. | *5500 |
| *5200-MOCA | | |
| Acton, Tex. VOR | Scurry, Tex. VOR | |
| Via S alter. | Via S alter. | *2800 |
| *2200-MOCA | | |

§95.6016 VOR FEDERAL AIRWAY 16
is amended by adding:

| FROM | TO | MEA |
|---|---|---|
| Prado INT, Calif. | Paradise, Calif. VOR | 4000 |
| Paradise, Calif. VOR | Seter INT, Calif. | *5500 |
| *5200-MOCA | | |

§95.6016 VOR FEDERAL AIRWAY 16
is amended to read in part:

| FROM | TO | MEA |
|---|---|---|
| Seal Beach, Calif. VOR | *March, Calif. VOR | |
| Via S alter. | Via S alter. | 8000 |
| *11200-MCA March VOR, NE-bound | | |
| Millsap, Tex. VOR | Acton, Tex. VOR | *2800 |
| *2300-MOCA | | |

§95.6017 VOR FEDERAL AIRWAY 17
is amended to read in part:

| FROM | TO | MEA |
|---|---|---|
| McAllen, Tex. VOR | Eliza INT, Tex. | 2500 |
| Eliza INT, Tex. | *Lee INT, Tex. | **4000 |
| *5500-MRA | | |
| **1800-MOCA | | |
| Lee INT, Tex. | Laredo, Tex. VOR | 2500 |
| McAllen, Tex. VOR | Laredo, Tex. VOR | |
| Via W alter. | Via W alter. | *5000 |
| *1900-MOCA | | |

§95.6021 VOR FEDERAL AIRWAY 21
is amended to delete:

| FROM | TO | MEA |
|---|---|---|
| Seal Beach, Calif. VOR | Olive INT, Calif. | 3000 |
| *Olive INT, Calif. | Ontario, Calif. VOR | 5000 |
| *4100-MCA Olive INT, NE-bound | | |
| Ontario, Calif. VOR | Rialto INT, Calif. | 4500 |
| *Rialto INT, Calif. | #Lucer INT, Calif. | 10500 |
| *8800-MCA Rialto INT, NE-bound | | |
| #9300-MCA Lucer INT, SW-bound | | |

§95.6021 VOR FEDERAL AIRWAY 21
is amended by adding:

| FROM | TO | MEA |
|---|---|---|
| Seal Beach, Calif. VOR | Ollie INT, Calif. | 3000 |
| *Ollie INT, Calif. | Paradise, Calif. VOR | 5000 |
| *4100-MCA Ollie INT, NE-bound | | |
| Paradise, Calif. VOR | *Rialo INT, Calif. | 4500 |
| *8800-MCA Rialo INT, NE-bound | | |
| Rialo INT, Calif. | *Lucer INT, Calif. | 10500 |
| *9300-MCA Lucer INT, SW-bound | | |

§95.6044 VOR FEDERAL AIRWAY 44
is amended to delete:

| FROM | TO | MEA |
|---|---|---|
| Atlantic City, N.J. VOR | Murth INT, N.J. | |
| Via S alter. | Via S alter. | 1800 |
| *2000-MOCA | | |
| Murth INT, N.J. | Gamby INT, N.J. | |
| Via S alter. | Via S alter. | *8000 |
| *2000-MOCA | | |
| Gamby INT, N.J. | Sates INT, N.J. | |
| Via S alter. | Via S alter. | *6000 |
| *2000-MOCA | | |
| Sates INT, N.J. | Deer Park, N.Y. VOR | |
| Via S alter. | Via S alter. | *4000 |
| *2000-MOCA | | |

§95.6044 VOR FEDERAL AIRWAY 44
is amended by adding:

| FROM | TO | MEA |
|---|---|---|
| Atlantic City, N.J. VOR | Murth INT, N.J. | |
| Via E alter. | Via E alter. | 1800 |
| Murth INT, N.J. | Beams INT, N.J. | |
| Via E alter. | Via E alter. | *8000 |
| *2000-MOCA | | |

§95.6055 VOR FEDERAL AIRWAY 55
is amended by adding:

| FROM | TO | MEA |
|---|---|---|
| Grand Forks, N.D. VOR | *Reggy INT, N.D. | **8000 |
| *4100-MRA | | |
| **3400-MOCA | | |
| Reggy INT, N.D. | Bismarck, N.D. VOR | 3900 |

§95.6066 VOR FEDERAL AIRWAY 66
is amended to delete:

| FROM | TO | MEA |
|---|---|---|
| Bridgeport, Tex. VOR | Lake Kiowa INT, Tex. | |
| Via N alter. | Via N alter. | *2900 |
| *2300-MOCA | | |
| Lake Kiowa INT, Tex. | Blue Ridge, Tex. VOR | |
| Via N alter. | Via N alter. | *2500 |
| *2100-MOCA | | |

§95.6069 VOR FEDERAL AIRWAY 69
is amended to read in part:

| FROM | TO | MEA |
|---|---|---|
| *Hille INT, Ark. | Walnut Ridge, Ark. VOR | **3500 |
| *4000-MRA | | |
| **3000-MOCA | | |

§95.6076 VOR FEDERAL AIRWAY 76
is amended to read in part:

| FROM | TO | MEA |
|---|---|---|
| Austin, Tex. VOR | Elate INT, Tex. | |
| Via N alter. | Via N alter. | *2500 |
| *2000-MOCA | | |
| Elate INT, Tex. | Podds INT, Tex. | |
| Via N alter. | Via N alter. | *2500 |
| *1800-MOCA | | |
| Podds INT, Tex. | Industry, Tex. VOR | |
| Via N alter. | Via N alter. | *2500 |
| *1900-MOCA | | |

§95.6081 VOR FEDERAL AIRWAY 81
is amended by adding:

| FROM | TO | MEA |
|---|---|---|
| U.S. Mexican Border | Marfa, Tex. VOR | 10000 |

| | | |
|---|---|---|
| Marfa, Tex. VOR | Fort Stockton, Tex. VOR | 9000 |
| Fort Stockton, Tex. VOR | Midland, Tex. VOR | 4500 |

§95.6095 VOR FEDERAL AIRWAY 95
is amended to read in part:

| FROM | TO | MEA |
|---|---|---|
| Trees INT, Colo. | *Chilt INT, Colo. | |
| | SW-bound | 16000 |
| | NE-bound | 13600 |
| *12600-MCA Chilt INT, SW-bound | | |
| Derma INT, N.M. | Farmington, N.M. VOR | |
| | NE-bound | 8000 |
| | SW-bound | *7000 |

§95.6129 VOR FEDERAL AIRWAY 129
is amended to read in part:

| FROM | TO | MEA |
|---|---|---|
| Dubuque, Iowa VOR | Waukon, Iowa VOR | |
| Via W alter. | Via W alter. | 3000 |

§95.6186 VOR FEDERAL AIRWAY 186
is amended to delete:

| FROM | TO | MEA |
|---|---|---|
| Van Nuys, Calif. VOR | Ontario, Calif. VOR | 5000 |

§95.6186 VOR FEDERAL AIRWAY 186
is amended by adding:

| FROM | TO | MEA |
|---|---|---|
| Van Nuys, Calif. VOR | Paradise, Calif. VOR | 5000 |

§95.6187 VOR FEDERAL AIRWAY 187
is amended to read in part:

| FROM | TO | MEA |
|---|---|---|
| Pedra INT, N.M. | Otins INT, N.M. | |
| Via E alter. | Via E alter. | *13000 |
| *10000-MOCA | | |
| Otins INT, N.M. | Farmington, N.M. VOR | |
| Via E alter. | Via E alter. | 9000 |

§95.6197 VOR FEDERAL AIRWAY 197
is amended to delete:

| FROM | TO | MEA |
|---|---|---|
| Ontario, Calif. VOR | Pomona, Calif. VOR | 4500 |

§95.6197 VOR FEDERAL AIRWAY 197
is amended by adding:

| FROM | TO | MEA |
|---|---|---|
| Paradise, Calif. VOR | Pomona, Calif. VOR | 4500 |

§95.6229 VOR FEDERAL AIRWAY 229
is amended to read in part:

| FROM | TO | MEA |
|---|---|---|
| Atlantic City, N.J. VOR | Murth INT, N.J. | 1800 |
| Murth INT, N.J. | Kennedy, N.Y. VOR | *4500 |
| *2000-MOCA | | MAA-7000 |

§95.6264 VOR FEDERAL AIRWAY 264
is amended to delete:

| FROM | TO | MEA |
|---|---|---|
| Prado INT, Calif. | Ontario, Calif. VOR | |
| Via S alter. | Via S alter. | 4000 |
| Ontario, Calif. VOR | Moreno INT, Calif. | |
| Via S alter. | Via S alter. | *5500 |
| *5200-MOCA | | |
| *Moreno INT, Calif. | Banning INT, Calif. | |
| Via S alter. | Via S alter. | |
| | E-bound | 13000 |
| | W-bound | 9000 |
| *12000-MCA Moreno INT, E-bound | | |

§95.6264 VOR FEDERAL AIRWAY 264
is amended by adding:

| FROM | TO | MEA |
|---|---|---|
| Prado INT, Calif. | Paradise, Calif. VOR | |
| Via S alter. | Via S alter. | 4000 |
| Paradise, Calif. VOR | Seter INT, Calif. | |
| Via S alter. | Via S alter. | *5500 |
| *5200-MOCA | | |
| *Seter INT, Calif. | Bands INT, Calif. | |
| Via S alter. | Via S alter. | |
| | E-bound | 13000 |
| | W-bound | 9000 |
| *12000-MCA Seter INT, E-bound | | |

§95.6297 VOR FEDERAL AIRWAY 297
is amended to read in part:

| FROM | TO | MEA |
|---|---|---|
| Johnstown, Pa. VOR | Talls INT, Pa. | 4200 |
| Talls INT, Pa. | Akron, Ohio VOR | 3600 |

§95.6362 VOR FEDERAL AIRWAY 362
is amended to read in part:

| FROM | TO | MEA |
|---|---|---|
| Alma, Ga. VOR | Vienna, Ga. VOR | 3000 |

§95.6367 VOR FEDERAL AIRWAY 367
is amended to read in part:

| FROM | TO | MEA |
|---|---|---|
| International Falls, Minn. VOR | U.S. Canadian Border | *9000 |
| *2400-MOCA | | |

§95.421 VOR FEDERAL AIRWAY 421
is amended by adding:

| FROM | TO | MEA |
|---|---|---|
| Gallup, N.M. VOR | Derma INT, N.M. | |
| Via W alter. | Via W alter. | *13000 |
| *11300-MOCA | | |
| Derma INT, N.M. | Farmington, N.M. VOR | |
| Via W alter. | Via W alter. | |
| | NE-bound | 8000 |
| | SW-bound | 13000 |

§95.6429 VOR FEDERAL AIRWAY 429
is amended to read in part:

| FROM | TO | MEA |
|---|---|---|
| Cape Girardeau, Mo. VOR | Marion, Ill. VOR | *3000 |
| *2200-MOCA | | |

§95.6442 VOR FEDERAL AIRWAY 442
is amended to delete:

| FROM | TO | MEA |
|---|---|---|
| Ontario, Calif. VOR | Aples INT, Calif. | 7700 |

95.6442 VOR FEDERAL AIRWAY 442
is amended by adding:

| FROM | TO | MEA |
|---|---|---|
| Paradise, Calif. VOR | Aples INT, Calif. | 7700 |

§95.6484 VOR FEDERAL AIRWAY 484
is amended to read in part:

| FROM | TO | MEA |
|---|---|---|
| Woden INT, Ida. | Switz INT, Utah | *16000 |
| *11900-MOCA | | |

§95.6491 VOR FEDERAL AIRWAY 491
is added to read:

| FROM | TO | MEA |
|---|---|---|
| Big Lake, Alas. VOR | Talkeetna, Alas. VOR | 3000 |

§95.7010 JET ROUTE NO. 10 is amended to delete:

| FROM | TO | MEA | MAA |
|---|---|---|---|
| Gunnison, Colo. VORTAC | Acree INT, Colo. | 18000 | 45000 |
| Acree INT, Colo. | Shrew INT, Colo. | 18000 | 45000 |
| Shrew INT, Colo. | Denver, Colo. VORTAC | 18000 | 45000 |

§95.7010 JET ROUTE NO. 10 is amended by adding:

| FROM | TO | MEA | MAA |
|---|---|---|---|
| Gunnison, Colo. VORTAC | Denver, Colo. VORTAC | 19000 | 45000 |

§95.7025 JET ROUTE NO. 25 is amended to delete:

| FROM | TO | MEA | MAA |
|---|---|---|---|
| Tulsa, Okla. VORTAC | Butler, Mo. VORTAC | 18000 | 45000 |
| Butler, Mo. VORTAC | Des Moines, Iowa VORTAC | 18000 | 45000 |

§95.7025 JET ROUTE NO. 25 is amended by adding:

| FROM | TO | MEA | MEA |
|---|---|---|---|
| Tulsa, Okla. VORTAC | Kansas City, Mo. VORTAC | 18000 | 45000 |
| Kansas City, Mo. VORTAC | Des Moines, Iowa VORTAC | 18000 | 45000 |

§95.7042 JET ROUTE NO. 42 is amended by adding:

| FROM | TO | MEA | MAA |
|---|---|---|---|
| U.S. Mexican Border | Fort Stockton, Tex. VORTAC | 18000 | 45000 |
| Fort Stockton, Tex. VORTAC | Abilene, Tex. VORTAC | 18000 | 45000 |
| Abilene, Tex. VORTAC | Dallas-Fort Worth, Tex. VORTAC | 18000 | 45000 |

§95.7050 JET ROUTE NO. 50 is amended to delete:

| FROM | TO | MEA | MAA |
|---|---|---|---|
| Bakersfield, Calif. VORTAC | Ontario, Calif. VORTAC | 18000 | 45000 |

§95.7050 JET ROUTE NO. 50 is amended by adding:

| FROM | TO | MEA | MAA |
|---|---|---|---|
| Bakersfield, Calif. VORTAC | Paradise, Calif. VORTAC | 18000 | 45000 |

§95.7060 JET ROUTE NO. 60 is amended to delete:

| FROM | TO | MEA | MAA |
|---|---|---|---|
| Los Angeles, Calif. VORTAC | Ontario, Calif. VORTAC | 18000 | 45000 |

§95.7060 JET ROUTE NO. 60 is amended by adding:

| FROM | TO | MEA | MAA |
|---|---|---|---|
| Los Angeles, Calif. VORTAC | Paradise, Calif. VORTAC | 18000 | 45000 |

§95.7064 JET ROUTE NO. 64 is amended to delete:

| FROM | TO | MEA | MAA |
|---|---|---|---|
| Los Angeles, Calif. VORTAC | Ontario, Calif. VORTAC | 18000 | 45000 |

§95.7064 JET ROUTE NO. 64 is amended by adding:

| FROM | TO | MEA | MAA |
|---|---|---|---|
| Los Angeles, Calif. VORTAC | Paradise, Calif. VORTAC | 18000 | 45000 |

§95.7074 JET ROUTE NO. 74 is amended to delete:

| FROM | TO | MEA | MAA |
|---|---|---|---|
| Los Angeles, Calif. VORTAC | Ontario, Calif. VORTAC | 18000 | 45000 |
| Ontario, Calif. VORTAC | Parker, Calif. VORTAC | 18000 | 45000 |

§95.7074 JET ROUTE NO. 74 is amended by adding:

| FROM | TO | MEA | MAA |
|---|---|---|---|
| Los Angeles, Calif. VORTAC | Paradise, Calif. VORTAC | 18000 | 45000 |
| Paradise, Calif. VORTAC | Parker, Calif. VORTAC | 18000 | 45000 |

§95.7078 JET ROUTE NO. 78 is amended to delete:

| FROM | TO | MEA | MAA |
|---|---|---|---|
| Los Angeles, Calif. VORTAC | Ontario, Calif. VORTAC | 18000 | 45000 |
| Ontario, Calif. VORTAC | Parker, Calif. VORTAC | 18000 | 45000 |

§95.7078 JET ROUTE NO. 78 is amend ' by adding:

| FROM | TO | MEA | MAA |
|---|---|---|---|
| Los Angeles, Calif. VORTAC | Paradise, Calif. VORTAC | 18000 | 45000 |
| Paradise, Calif. VORTAC | Parker, Calif. VORTAC | 18000 | 45000 |

§95.7093 JET ROUTE NO. 93 is amended to delete:

| FROM | TO | MEA | MAA |
|---|---|---|---|
| Ontario, Calif. VORTAC | Stockton, Calif. VORTAC | 18000 | 45000 |

§95.7093 JET ROUTE NO. 93 is amended by adding:

| FROM | TO | MEA | MAA |
|---|---|---|---|
| Paradise, Calif. VORTAC | Julian, Calif. VORTAC | 18000 | 45000 |

§95.7107 JET ROUTE NO. 107 is amended to delete:

| FROM | TO | MEA | MAA |
|---|---|---|---|
| Los Angeles, Calif. VORTAC | Ontario, Calif. VORTAC | 18000 | 45000 |
| Ontario, Calif. VORTAC | Hector, Calif. VORTAC | 18000 | 45000 |

§95.7107 JET ROUTE NO. 107 is amended by adding:

| FROM | TO | MEA | MAA |
|---|---|---|---|
| Los Angeles, Calif. VORTAC | Paradise, Calif. VORTAC | 18000 | 45000 |
| Paradise, Calif. VORTAC | Hector, Calif. VORTAC | 18000 | 45000 |

§95.7128 JET ROUTE NO. 128 is amended to delete:

| FROM | TO | MEA | MAA |
|---|---|---|---|
| Los Angeles, Calif. VORTAC | Ontario, Calif. VORTAC | 18000 | 45000 |
| Ontario, Calif. VORTAC | Peach Springs, Calif. VORTAC | 25000 | 45000 |

§95.7128 JET ROUTE NO. 128 is amended by adding:

| FROM | TO | MEA | MAA |
|---|---|---|---|
| Los Angeles, Calif. VORTAC | Paradise, Calif. VORTAC | 18000 | 45000 |
| Paradise, Calif. VORTAC | Peach Springs, Calif. VORTAC | 25000 | 45000 |

2. By amending Sub-part D as follows:

§95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

| AIRWAY SEGMENT FROM | TO | CHANGEOVER POINTS DISTANCE FROM | |
|---|---|---|---|
| V-8 is amended to delete: | | | |
| Seal Beach, Calif. VOR | Ontario, Calit. VOR | 12 | Seal Beach |
| Ontario, Calif. VOR | Hector, Calif. VOR | 44 | Ontario |
| V-8 is amended by adding: | | | |
| Seal Beach, Calif. VOR | Paradise, Calif. VOR | 12 | Seal Beach |
| Paradise, Calif. VOR | Hector, Calif. VOR | 44 | Paradise |

| | | | |
|---|---|---|---|
| V-12 is amended by adding: | | | |
| Allegheny, Pa. VOR | Johnstown, Pa. VOR | 30 | Allegheny |
| V-16 is amended to delete: | | | |
| Los Angeles, Calif. VOR | Ontario, Calif. VOR | 25 | Los Angeles |
| Ontario, Calif. VOR | Palm Springs, Calif. VOR | 34 | Ontario |
| V-16 is amended by adding: | | | |
| Los Angeles, Calif. VOR | Paradise, Calif. VOR | 25 | Los Angeles |
| Paradise, Calif. VOR | Palm Springs, Calif. VOR | 34 | Paradise |
| V-21 is amended to delete: | | | |
| Seal Beach, Calif. VOR | Ontario, Calif. VOR | 12 | Seal Beach |
| Ontario, Calif. VOR | Hector, Calif. VOR | 44 | Ontario |
| V-21 is amended by adding: | | | |
| Seal Beach, Calif. VOR | Paradise, Calif. VOR | 25 | Los Angeles |
| Paradise, Calif. VOR | Hector, Calif. VOR | 44 | Paradise |
| V-186 is amended to delete: | | | |
| Van Nuys, Calif. VOR | Ontario, Calif. VOR | 33 | Ontario |
| V-186 is amended by adding: | | | |
| Van Nuys, Calif. VOR | Paradise, Calif. VOR | 18 | Van Nuys |
| V-264 is amended to delete: | | | |
| Los Angeles, Calif. VOR | Ontario, Calif. VOR | | |
| Via S alter. | Via S alter. | 25 | Los Angeles |
| Ontario, Calif. VOR | Palm Springs, Calif. VOR | | |
| Via S alter. | Via S alter. | 34 | Ontario |
| V-264 is amended by adding: | | | |
| Los Angeles, Calif. VOR | Paradise, Calif. VOR | | |
| Via S alter. | Via S alter. | 25 | Los Angeles |
| Paradise, Calif. VOR | Palm Springs, Calif. VOR | | |
| Via S alter. | Via S alter. | 34 | Paradise |

## §95.8005 JET ROUTES CHANGEOVER POINTS

| AIRWAY SEGMENT FROM | TO | CHANGEOVER POINTS DISTANCE FROM | |
|---|---|---|---|
| J-128 is amended to delete: | | | |
| Ontario, Calif. VORTAC | Peach Springs, Ariz. VORTAC | 103 | Ontario |
| J-128 is amended by adding: | | | |
| Paradise, Calif. VORTAC | Peach Springs, Ariz. VORTAC | 103 | Paradise |

[FR Doc. 79-27761 Filed 9-5-79; 8:45 am]
BILLING CODE 4910-13-C

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[FRL 1313-5]

### Approval and Promulgation of State Implementation Plans; Montana

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

**ACTION:** Final rule.

**SUMMARY:** This action approves revisions to the Montana State Implementation Plan (SIP) submitted by the Governor of Montana on January 26, 1978, and published as a proposed rulemaking on May 9, 1979. No comments were received and no new issues have been raised subsequent to the notice of proposed rulemaking.

The revisions include a stipulation between the Montana Department of Health and Environmental Sciences (DHES) and the Farmers Union Central Exchange (CENEX), relating to reductions in ambient concentrations of sulfur dioxide in the vicinity of the CENEX refinery. The EPA analysis of the sulfur dioxide control measures proposed by CENEX in the stipulations indicates that the National Ambient Air Quality Standards for sulfur dioxide will be met in the existing nonattainment area, when the control measures proposed by CENEX are implemented.

**EFFECTIVE DATE:** September 6, 1979.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Harris, Air Quality Control Specialist, United States Environmental Protection Agency, Montana Office, 301 South Park, Drawer 10096, Helena Montana 59601, (406) 449-3454.

**SUPPLEMENTARY INFORMATION:** The stipulation between DHES and CENEX requires CENEX to install the following facilities:

| Project | Scheduled completion date | Status |
|---|---|---|
| FCC Heat Exchanger | December 1978. | Complete |
| Asphalt Loading Heater | August 1978 | Complete |
| Continuous $O_2$ Analyzers | May 1978 | Complete |
| Insulation of Asphalt Tanks | December 1978. | Complete |
| FCC Gas Compressor Electrification. | December 1980. | To be completed approximately May 1979 |
| Crude Main Air Preheat System. | December 1979. | To be completed approximately May 1979 |
| Spare Sulfur Reactor System and Stack. | December 1979. | Complete |

In addition, CENEX agreed to raise the existing sulfur plant reaction system stack from its existing height of approximately 100 feet to a new height of 199 feet, said stack to service both the existing sulfur plant and the new sulfur plant. CENEX further agreed to eliminate the two 50 foot high stacks on part of the crude main heater preheat system and install a single stack of 199 feet in their stead.

The increase in the height of these stacks required an evaluation of the compatibility of the emission limitations for the CENEX facilities with section 123 of the Clean Air Act. This statute places a limit on the creditable stack height based on Good Engineering Practices (GEP) that can be used to demonstrate attainment with National Ambient Standards. Since EPA's analysis of attainment was based on existing facility stack heights which are less than GEP as defined by Section 123, it is conservative. The same emissions from a GEP stack height (greater than the existing stack) have less ambient impact.

Other companies named in the stipulation are as follows:

Exxon Company U.S.A., a division of Exxon Corporation; the Continental Oil Company, Billings Refinery; the Montana Power Company, Billings Montana; the Great Western Sugar Company, Billings, Montana; and the Montana Sulfur and Chemical Company, Billings, Montana. These companies have agreed to undertake certain activities which are much less extensive but which will complement the action taken by CENEX.

It should be noted that the area surrounding the CENEX facility was designated as a nonattainment area pursuant to section 107 of the Clean Air Act. The plan submitted on January 26, 1978, was not intended to meet the requirements of Part D of the Act for a nonattainment SIP and was not reviewed by EPA with respect to those requirements. Therefore, today's approval does not include Part D and the Part D review will be treated in a separate notice.

This rulemaking, pursuant to section 110 of the Clean Air Act and 40 CFR Part 51, revises the Montana SIP.

Dated: August 30, 1979.

**Douglas Costle,**

*Administrator.*

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

1. In § 52.1370 paragraph (c)(6) is added as follows:

**§ 52.1370 Identification of plan.**

* * * * *

(c) * * *

(6) Sulfur oxides control strategy for the Billings and Laurel areas and schedule of Compliance for the Farmers Union Central Exchange (CENEX) refinery in Laurel submitted by the Governor on January 26, 1978.

[FR Doc. 79-27826 Filed 9-5-79; 8:45 am]

BILLING CODE 6560-01-M

### 40 CFR Part 52

[FRL 1313-4]

### Approval and Promulgation of State Implementation Plans; Approval of PSD Plan for Wyoming

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rulemaking.

**SUMMARY:** The purpose of this notice is to approve the State Implementation Plan (SIP) revision for Wyoming which was received by EPA on January 26, 1979. This plan revision was prepared by the State to meet the requirements of Part C (Prevention of Significant Deterioration (PSD) of air quality), Part D (Plan requirements for nonattainment areas) and various sections of the Clean Air Act, as amended in 1977. On April 13, 1979 (44 FR 22127), EPA published a notice of proposed rulemaking which described the nature of the SIP revision, discussed certain provisions which in EPA's judgment did not comply with the requirements of the Act, and requested public comment. No public comments were received. However, on May 16, 1979, EPA received clarification from the State on the issues raised in the April 13, 1979, notice. On July 2, 1979 (44 FR 38473), EPA published a final action which approved the SIP revision with respect to all of the requirements of the Clean Air Act that were addressed by the State, except Part C. This notice addresses the issues involved in approving the PSD program adopted by the State of Wyoming.

**EFFECTIVE DATE:** September 6, 1979.

**ADDRESSES:** Copies of the SIP revision, EPA's evaluation report, and the supplemental submission received on May 16, 1979, are available at the following addresses for inspection:

Environmental Protection Agency, Region VIII, Air Programs Branch, 1860 Lincoln Street, Denver, Colorado 80295.

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert R. DeSpain, Chief, Air Programs Branch, Region VIII, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295, (303) 837-3471.

**SUPPLEMENTARY INFORMATION:** On January 26, 1979, EPA received the revised SIP for the State of Wyoming. That revision addressed both the Clean Air Act requirements for a nonattainment SIP (Part D) and some of the general requirements for a statewide SIP, including the Part C requirements for prevention of significant deterioration.

On March 16, 1979 (44 FR 16024), EPA published an advance notice of availability of the Wyoming SIP revision and invited the public to comment on its approvability. In addition, on April 13, 1979 (44 FR 22127), EPA published a notice of proposed rulemaking which described the nature of the SIP and the results of EPA's review with respect to the requirements of the Clean Air Act, and requested public comment. No comments were received.

The April 13, 1979, notice raised several issues which in EPA's judgment, required either clarification by the State or additional revisions to the SIP. On May 16, 1979, EPA received supplementary information from the State which addressed each of these issues.

On July 2, 1979 (44 FR 38473), EPA published a final rulemaking action which approved the Wyoming SIP revision with respect to the requirements of the Part D and various other sections of the Clean Air Act. However, that action did not include the portion of the SIP which addressed PSD.

The following discussion describes the Part C requirements for PSD, the issues raised in EPA's notice of proposed rulemaking of April 13, 1979 (44 FR 22127), the State's response to those issues, and several additional issues that surfaced since the April notice.

Section 110(a)(2)(D) and Part C of the Clean Air Act establish specific requirements for the prevention of significant deterioration of air quality in areas where ambient levels are lower than the national standards. The Act defines the amount of deterioration that can be tolerated in an area in terms of maximum allowable increases in ambient air quality concentrations (increments). These increments vary and are a function of the classification of an area. There are three applicable classifications under this program; (a) Class I where the increments are very stringent and practically no deterioration is allowed, (b) Class II where moderate, well controlled growth is allowed, and (c) Class III where a considerable amount of growth is allowed. While the Act established several mandatory Class I areas, most of the nation is now Class II, and the Act gives redesignation authority to state Governors and Indian governing bodies.

The principal means of protecting the increments are the review and regulation of major new stationary sources and modifications, the tracking of minor source growth, and the periodic review of increment consumption. At present, EPA is implementing the program by a federal permit system designed to meet the requirements of Part C. In that program, operators of major new sources and major modifications must obtain a permit before commencing construction and the permit will be granted if, among other things; (a) the increments for the area are protected, and (b) best available control technology will be employed.

As indicated above, this program is presently implemented by EPA through regulations promulgated in 40 CFR 52.21 on June 19, 1978 (43 FR 26388). On that same date EPA promulgated requirements for state PSD programs at 40 CFR 51.24.[1]

The regulations submitted by the State of Wyoming were designed to meet those requirements through the review of major stationary source growth throughout the State.[2] When combined with existing permit requirements (section 21), a new section 24 of the Wyoming Air Quality Standards and Regulations will prohibit new source construction in clean areas unless best available control technology is employed and a demonstration is made that the increments are being protected.

With two exceptions, the provisions of new section 24 (when combined with existing section 21) are, in all major respects, identical to the Agency regulations and are approved herein. The two exceptions which were raised in EPA's April 13, 1979, notice are:

(1) The Wyoming program does not meet the requirements of 40 CFR 51.24(r) in that it fails to provide that public comments on a proposed permit application and the State's notification of its final determination are to be made available for public inspection. The State's response included a commitment to fill this gap by making the necessary amendment to its regulation at the next public hearing and to comply with the requirement in the interim. In any event, EPA regards the relevant provisions of 40 CFR 52.21(r) as filling the gap during that period.

(2) The Wyoming PSD regulations are somewhat ambiguous in their treatment of temporary emissions, raising a question of whether temporary emissions of sulfur dioxide were improperly excluded from increment consumption. While EPA's regulation for State PSD programs (40 CFR 51.24(k)(1)(iii)) allows an exemption from impact analysis for *all* temporary emissions if they would not have an impact upon Class I area or an area of known increment violation, section 163(c) of the Act and 40 CFR 51.24(f)(1)(iii) allow only temporary *particulate* emissions to be excluded from increment consumption. Wyoming's response included assurances that temporary sulfur dioxide emissions will, henceforth, be considered to consume the increment and a commitment to revise the State regulation to clarify this at the next public hearing.

With the commitments and clarifications offered by the State, EPA is satisfied that the requirements of Part C of the Act and 40 CFR Part 51 are met and approves the Wyoming PSD program with the conditions discussed below.

### Delegation of Enforcement Authority

EPA has issued approximately 20 permits under 40 CFR 52.21 to major stationary sources in Wyoming. The State has requested delegation of authority to enforce the conditions placed in those permits. EPA intends to delegate that authority and the delegation will be handled in a separate **Federal Register** notice.

### Existing Permit Applications

The Wyoming PSD program set forth in section 24 of the Wyoming Regulations became effective on January 25, 1979, and is applicable to proposed

[1] On June 18, 1979, the United States Court of Appeals for the District of Columbia Circuit issued a decision that upheld some portions of 40 CFR 52.21 and 51.24 and overturned others. See *Alabama Power Company v. Costle*, 13 ERC 1225. The court's opinion gave only a summary of its conclusions, invited petitions for reconsideration, and promised supplemental opinions explaining the conclusions and disposing of any petitions. An order issued with the summary opinion stayed the effect of the decision until the issuance of the supplemental opinions. EPA has moved for a further stay to obtain adequate time to replace the overturned provisions. A notice specifying proposed replacement provisions will appear in the **Federal Register** in the near future. Until EPA promulgates replacement provisions or the court's decision comes into effect, it is continuing to operate under the existing regulations.

[2] By a letter dated August 1, 1979, Wyoming has confirmed that (1) it is aware of *Alabama Power Company* v. *Costle*, (2) it nevertheless wants EPA to continue to consider its PSD SIP revision as previously submitted, and (3) it recognizes that *Alabama Power* may require revisions in the future.

major stationary sources and modifications that had not received an air quality permit from the State under section 21 of the Regulations by that date. However, there are several proposed operations which are subject to the requirements of 40 CFR 52.21 which were permitted by the State prior to this approval of the Wyoming program. Therefore, such major stationary sources and modifications that received permits from the State prior to the date of this approval must apply for and receive a permit from EPA in accordance with the requirements of 40 CFR 52.21(b).

**Indian Reservations**

The Wyoming SIP does not specifically address whether its PSD regulations apply to Indian Reservations within the State. EPA interprets this to mean that the State does not intend to exercise any permitting authority over sources proposing to locate on Indian Reservations. Therefore, the EPA is retaining the federal PSD permitting program (40 CFR 52.21) on Indian Reservations in Wyoming.

**Class I Designations**

Section 162 of the Clean Air Act established as mandatory Class I areas all wilderness areas which exceed 5,000 acres in size and were in existence on the date of enactment (August 7, 1977). Section 24c of the Wyoming regulations contains a similar provision but includes all wilderness areas in existence on the effective date of the regulations (January 25, 1979). In the interim (February 24, 1978), the Wilderness Omnibus Act (Pub. L. 95-237) was enacted and designated a new wilderness area in the Medicine Bow Mountains called the Savage Run Wilderness Area (14,000 acres). As a result, the Wyoming regulation has effectively redesignated that area from the Class II designation, given in the Clean Air Act, to Class I. However, the procedural requirements set forth in section 164 for area redesignations were not followed. Consequently, EPA cannot approve the Class I designation of the Savage Run Wilderness Area. It should be noted that section 116 of the Clean Air Act provides that the State retains the authority to enforce any air pollution abatement requirement which is more stringent than necessary under the Act. Therefore, even though the Class I designation is not part of the federally enforceable SIP, the State retains the authority to enforce the designation and the associated limitations for that area. Although this issue was not raised in the notice of proposed rulemaking of April 13, 1979, it is EPA's judgment that no further comment is required on this action because the procedural requirements of section 164 of the Clean Air Act are quite specific.

Under Executive Order 12044 EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This rulemaking action is issued under the authority of section 110 of the Clean Air Act, as amended.

Dated: August 30, 1979.

**Douglas M. Costle,**
*Administrator.*

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

1. In § 52.2620, paragraph (c)(10) is amended to read as follows:

**§ 52.2620 Identification of plan.**

* * * * *

(c) * * *

(10) Provisions to meet the requirements of Parts C and D and sections 110, 126, and 127 of the Clean Air Act, as amended in 1977 were submitted on January 26, 1979.

2. Section 52.2630 is revised to read as follows:

**§ 52.2630 Prevention of significant deterioration of air quality.**

(a) The Wyoming plan, as submitted, is approved as meeting the requirements of Part C of the Clean Air Act except that designation of the Savage Run Wilderness Area, as established in Pub. L. 95-237, from Class II to Class I is disapproved.

(b) *Regulation for preventing significant deterioration of air quality.* The Wyoming plan, as submitted does not apply to certain sources in the State. Therefore, the provisions of § 52.21(b) through (v) are hereby incorporated by reference and made a part of the State Implementation Plan for the State of Wyoming and are applicable to the following proposed major stationary sources or major modifications:

(1) Sources proposing to construct on Indian Reservations in Wyoming; and

(2) Sources that received an air quality permit from the Wyoming State Department of Environmental Quality prior to September 6, 1979.

[FR Doc. 79-27827 Filed 9-5-79; 8:45 am]

BILLING CODE 6560-01-M

**40 CFR Part 65**

**[FRL 1310-6]**

## Approval of a Delayed Compliance Order Issued by the State of Louisiana, Air Control Commission, to Tenneco Oil Co.

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Administrator of EPA hereby approves a Delayed Compliance Order issued by the State of Louisiana to Tenneco Oil Company, Chalmette, Louisiana. The Order requires the company to bring air emissions from its refinery in Chalmette, Louisiana, into compliance with certain regulations contained in the federally-approved Louisiana State Implementation Plan (SIP). Because of the Administrator's approval, Tenneco Oil Company's compliance with the Order will preclude suits under the federal enforcement and citizen suit provision of the Clean Air Act for violation(s) of the SIP regulation covered by the Order during the period the Order is in effect.

**EFFECTIVE DATE:** September 6, 1979.

**ADDRESS:** A copy of the Delayed Compliance Order, any supporting material, and any comments received in response to a prior **Federal Register** notice proposing approval of the Order are available for public inspection and copying during normal business hours at: U.S. Environmental Protection Agency, Region 6, Air Compliance Branch, Enforcement Division, First International Building, 1201 Elm Street, Dallas, Texas 75270.

**FOR FURTHER INFORMATION CONTACT:** James Veach, Legal Branch, Enforcement Division, U.S. Environmental Protection Agency, Region 6, First International Building, 1201 Elm Steet, Dallas, Texas 75270, telephone number: (214) 767-2760.

**SUPPLEMENTARY INFORMATION:** On January 4, 1979, the Regional Administrator of EPA's Region 6 office published in the **Federal Register**, 44 FR 1193 (1979), a notice proposing approval of a delayed compliance order issued by the State of Louisiana to Tenneco Oil Company. The notice asked for public comments by February 5, 1979, on EPA's proposed approval of the Order. No public comments were received in response to the proposal notice. Therefore, the delayed compliance order issued to Tenneco Oil Company is approved by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places Tenneco

Oil Company on a schedule to bring its refinery in Chalmette, Louisiana, into compliance as expeditiously as practicable with Section 24 of the Louisiana Air Control Commission Regulations, a part of the federally-approved Louisiana State Implementation Plan. The Order also imposes interim requirements which meet sections 113(d)(1)(c) and 113(d)(7) of the Act. The Louisiana Air Control Commission decided not to impose emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit Tenneco Oil Company to delay compliance with the SIP regulations covered by the Order until June 30, 1979. The facility was unable to immediately comply with these regulations.

EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the need to immediately place Tenneco Oil Company on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) of the Louisiana State Implementation Plan.

(42 U.S.C. 7413(d), 7601.)

Dated: August 30, 1979.

**Douglas M. Costle,**

*Administrator.*

In the consideration of the foregoing, Chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

## PART 65—DELAYED COMPLIANCE ORDERS

1. By adding the following entry to the table in § 65.231 to read as follows:

**§ 65.231 EPA approval of state delayed compliance orders issued to major stationary sources.**

* * * * *

| Source | Location | Order No. | SIP regulation(s) involved | Date of FR proposed | Final compliance date |
|---|---|---|---|---|---|
| * | * | * | * | * | * |
| Tenneco Oil Co | Chalmette, La | DCO-79-1 | § 24 LACCR | Jan. 4, 1979 | June 30, 1979. |
| * | * | * | * | * | * |

[FR Doc. 79-27825 Filed 9-5-79; 8:45 am]

BILLING CODE 6560-01-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

### Changes to the Special Rule Concerning the American Alligator

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The special rule concerning the American alligator, *Alligator mississippiensis*, found at § 17.42(a) is amended to authorize the taking of American alligators in the State of Louisiana in those twelve parishes in which the American alligator is listed under § 17.11 as threatened-similarity of appearance (Cameron, Vermilion, Calcasieu, Iberia, St. Mary, St. Charles, Terrebonne, Lafourche, St. Bernard, Jefferson, St. Tammany, and Plaquemines), provided that the hides of such alligators are only sold or offered for sale to persons holding a valid Federal permit to buy hides issued under the special rule and the meat or other parts, except hides, of such alligators are sold only in the State of Louisiana in accordance with the laws and regulations of that State.

**DATES:** This rule is effective on September 6, 1979.

**FOR FURTHER INFORMATION CONTACT:** Marshall L. Stinnett, Special Agent in Charge, Regulations and Penalties, Division of Law Enforcement, P.O. Box 19183, Washington, D.C. 20036, (202) 343-9242, or Mr. Harold J. O'Connor, Acting Associate Director—Federal Assistance, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, (202) 343-4646.

**SUPPLEMENTARY INFORMATION**

### Background

On October 2, 1978 (43 FR 45513-45517), the Service published a proposed reclassification of the American alligator under § 17.11 from threatened to threatened-similarity of appearance in nine additional parishes in Louisiana (Iberia, St. Mary, Terrebonne, Lafourche, St. Charles, St. Bernard, Jefferson, Plaquemines, and St. Tammany) and proposed changes to the special rule concerning the American alligator, § 17.42(a), which included authorization to conduct a controlled harvest of American alligators in those twelve parishes in Louisiana where the alligator is classified as threatened-similarity of appearance. On June 25, 1979 (44 FR 37130; correction made in 44 FR 42911, July 20, 1979), the Service published a final rule reclassifying the American alligator in those nine additional parishes. On July 18, 1979 (44 FR 41894-41899), the Service proposed changes to the special rule concerning the American alligator which again included authorization to conduct a controlled harvest in Louisiana. Final rules will be published and become effective in mid-September, at least sixty days after publication of the proposed rules in the **Federal Register**, as required by the Endangered Species Act of 1973. The Service's consistent intent throughout these rulemakings has been to classify the American alligator in twelve Louisiana parishes as threatened-similarity of appearance and to authorize a controlled harvest in these areas subject to state and federal law. *See* 43 FR 45516 (October 2, 1978) and 44 FR 37131 (June 25, 1979). However, the special rule in its present form specifically authorizes a controlled harvest in three parishes only, despite the fact that the American alligator has been listed as threatened-similarity of appearance in nine additional parishes. *See* 50 CFR § 17.42(a)(1)(i)(E). This final rule would clarify that a controlled harvest is authorized under federal law in all twelve parishes where the American alligator is listed threatened-similarity of appearance.

This rule also amends the existing special rule by authorizing the sale of meat and other parts, except hides, within Louisiana subject to the laws and regulations of that state. This amendment was proposed in the October 2, 1978 rulemaking. *See* 43 FR 45515-45516.

### Summary of Comments

In the October 2, 1978 **Federal Register** proposal (43 FR 45513-45517) and the accompanying September 29, 1978 press release, the general public, State, Federal and other interested parties were asked to submit comments on any aspect of the proposal. The Service also requested comments during a reopened public comment period (May 10-June 5, 1979) and received comments on the proposal at public hearings held on May 25, 1979 at Morgan City, Louisiana and May 29, 1979 at Tallahassee, Florida. The Service has carefully considered these comments. Those comments relating to the reclassification of the

American alligator in the nine additional Louisiana parishes as threatened-similarity of appearance and authorization for a controlled harvest in these areas were summarized in the June 25, 1979 rulemaking and will not be repeated. *See* 44 FR 37130–37131. The Service has determined that a controlled harvest of the American alligator listed as threatened-similarity of appearance is consistent with their conservation.

The Service received six written comments concerning the question of the sale of American alligator meat and parts other than hides. Five written comments generally supported the Service's proposal and one opposed it. These comments are summarized below.

The State of Louisiana (Governor Edwin Edwards) and the Florida Game and Freshwater Fish Commission (Colonel Robert Brantly) supported the sale of meat and other parts, but urged the Service to allow interstate commerce in these items as well. This position was based on the rationale that meat would be wasted if it could be legally sold only in the state of taking and that the Service's proposal would unnecessarily restrict the sale of educational materials by biological supply houses.

Little Pecan Wildlife Management Area (Robert A. Koll) favored the proposal on the ground that it would prevent the waste of American alligator meat and would stimulate the local economy.

The Southwest Florida Regional Alligator Association (SFRAA) opposed the sale of meat without explanation.

At the Morgan City, Louisiana public meeting, a number of oral comments were presented. Only three statements were made addressing the sale of meat and other parts. All three were from governmental representatives.

Mr. Richard Yancey (Assistant Secretary, Louisiana Department of Wildlife and Fisheries) urged the Service to allow the sale to occur outside the State of Louisiana. Reasons given to support his position paralleled those raised by the Governor of Louisiana, which have been discussed above.

State Senator Jesse Knowles, Vice Chairman of the Resources Committee of the Senate for the State of Louisiana, suggested alligator meat be available as a food source for the entire country, noting that such a program would provide additional economic benefit for trappers in Louisiana.

Mr. Doyle C. Berry (Chairman, Louisiana Wildlife and Fisheries Commission) supported the export of meat so profits could be used to further substantiate the state program.

At the Tallahassee, Florida public meeting, two participants discussed the sale of meat.

Mr. Alan Egbert (Florida Game and Freshwater Fish Commission) supported the sale of meat within the state of origin and argued that workable regulations could be promulgated to allow both interstate and foreign commerce in legally taken alligator meat.

Mr. J. Don Ashley (Director, Southeastern Alligator Association) supported the sale of meat under regulation and with the imposition of licensing and record-keeping requirements.

The Service has reviewed all the applicable comments and the Director has determined that the sale of meat or other parts, except hides, from American alligators taken lawfully in the State of Louisiana would prevent the wasting of a valuable resource. However, the meat and other parts, except hides, may be sold only in the State of Louisiana in accordance with state laws and regulations. Licensing and record-keeping requirements imposed by the State of Louisiana have facilitated effective enforcement with respect to the sale of American alligator meat and other parts within Louisiana. However, no regulatory scheme exists which would provide effective enforcement outside of states with such licensing and record-keeping systems.

**Effect of the Rulemaking**

The effect of this final rulemaking is to amend § 17.42(a)(1)(i)(E) to immediately authorize, subject to two conditions (see below), the taking of American alligators in accordance with the laws and regulations of the State of Louisiana in those twelve parishes in which the American alligator is listed under § 17.11 as threatened-similarity of appearance (Cameron, Vermilion, Calcasieu, Iberia, St. Mary, St. Charles, Terrebonne, Lafourche, St. Bernard, Jeffferson, St. Tammany, and Plaquemines). As a result, the State of Louisiana now has clear authority to conduct a controlled harvest starting on September 7, 1979, as scheduled, in each of the twelve parishes where the American alligator is listed as threatened-similarity of appearance and which are enumerated in the special rule.

This rule also authorizes the sale of meat and other parts, except hides, only within the State of Louisiana subject to the laws and regulations of that State. Although commerce in these items is not generally allowed outside the State of Louisiana, permits available under § 17.32 may authorize otherwise prohibited activities with these items outside the State if undertaken for one of the following purposes: scientific purposes, or the enhancement of propogation or survival; economic hardship; zoological exhibition; educational purposes; or special purposes consistent with the purposes of the Act.

**Effective Date of This Rule**

The Service has found good cause, as required by 5 U.S.C. 553(d)(3), for making this rulemaking effective immediately. The State of Louisiana has scheduled a controlled harvest of the American alligator to begin on September 7, 1979, in those twelve parishes in which the alligator is listed under § 17.11 as threatened-similarity of appearance and delay in the effective date of this rule could result in the postponement of such a season.

**National Environmental Policy Act**

An environmental assessment has been prepared in conjunction with this rulemaking. It is on file in the Service's Division of Law Enforcement, 1375 K Street, N.W., Washington, D.C. 20005, and may be examined during regular business hours. This assessment forms the basis for the decision that this is not a major Federal action which would significantly affect the quality of the human environment within the remaining of section 102(2)(C) of the National Environmental Policy Act of 1969.

The primary author of this rulemaking is Mr. John T. Webb, Paralegal Specialist, Division of Law Enforcement, (202) 343–9242.

**Regulations Promulgation**

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations is hereby amended as set forth below:

**§ 17.42 (Amended)**

1. Paragraph (a)(1)(i)(E) of § 17.42 is revised to read as follows:

(a) * * *
(1) * * *
(i) * * *

(E) Any person may take American alligators in Cameron, Vermilion, Calcasieu, Iberia, St. Mary, Terrebonne, St. Bernard, St. Tammany, Lafourche, St. Charles, Plaquemines, and Jefferson Parishes in accordance with the laws and regulations of the State of Louisiana provided the following requirements are met:

(1) That hides of such alligators are only sold or offered for sale to a person holding a valid Federal license to buy

hides, issued under this subsection, as a buyer of hides;

(2) The meat and other parts are sold only in the State of Louisiana, and only in accordance with the laws and regulations of that State.

2. Paragraph (a)(2)(iv) is amended by adding the following words after the words "occurring in the wild in * * *":

(a) * * *

(2) * * *

(iv) * * * Iberia, St. Mary, St. Charles, Terrebonne, Lafourche, St. Bernard, Jefferson, St. Tammany, Plaquemines * * *

The Department has determined that this rule is not a significant rule and does not require preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Dated: August 31, 1979.

**Lynn A. Greenwalt,**

*Director, Fish and Wildlife Service.*

[FR Doc. 79-27785 Filed 9-5-79; 8:45 am]

BILLING CODE 4310-55-M

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**50 CFR Part 32**

## Opening of the Parker River National Wildlife Refuge, Massachusetts, to Hunting

**AGENCY:** United States Fish and Wildlife Service, Department of the Interior.

**ACTION:** Special regulation.

**SUMMARY:** The Director has determined that the opening to hunting of Parker River National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

**DATES:** October 1, 1979, through January 31, 1980.

**FOR FURTHER INFORMATION CONTACT:** George Gavutis, Parker River National Wildlife Refuge, Northern Blvd., Plum Island, Newburyport, Massachusetts 01950, Telephone No. 617-465-5753.

**SUPPLEMENTARY INFORMATION:** The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires (1) that any recreational use permitted will not interfere with the primary purpose for which the area was established: and (2) that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

The recreational use authorized by these regulations will not interfere with the primary purposes for which Parker River National Wildlife Refuge was established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

**§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.**

Public hunting of waterfowl and coots on the Parker River National Wildlife Refuge, Massachusetts, is permitted only on the areas designated by signs as open to hunting. These open areas, comprising 1,900 acres, and known as the Pine Island Hunting Area (Area A), Parker River Hunting Area (Area B), Nelson's Island Hunting Area (Area C), and the Youth Hunting Area (Area D), are delineated on maps available at refuge headquarters, or from the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158. Hunting shall be in accordance with all applicable State and Federal regulations covering the hunting of waterfowl and coots, subject to the following special conditions:

1. Hunters will be required to have taken and passed the refuge open book Waterfowl Hunters Qualification Examination prior to hunting on the refuge. These hunters must have a valid Certification Card with them while hunting on the refuge and must display it upon request. Hunters who are convicted of a violation of refuge regulations are subject to having their exam certification card revoked.

2. The number of hunters on the Pine Island Area will be limited to 75 each day, Parker River Area to 25 each day, and the Nelson's Island Area to 50 each day. Participation will be on a first-come, first-served basis. Hunters using Area B must each bring and set out at least two (2) waterfowl decoys and waterfowl only may be hunted within 50 yards of these set decoys.

3. Hunters on all three areas may not fire or possess more than 15 shotshells per day. Steel shot is required for all 12-gauge shotguns. Persons using 12-gauge shotguns may not have in their possession lead shotshells. Lead shotshells may be used in shotguns other than 12-gauge.

4. Hunters when requested by federal or state enforcement officers, must display for inspection all game, hunting equipment, and ammunition.

5. The Youth Hunting Area will be open during the regular State waterfowl season for Young Waterfowl trainees on selected days except Sundays under the provisions of this special program. Literature describing this program is available at the refuge headquarters.

6. Boat access is prohibited on Area C and required on Area A. Boats may be landed only during the open season on waterfowl and by persons authorized to participate in refuge hunting programs. Access to Area B is permitted by foot from the refuge parking lot off of Marsh Avenue or via boat from the refuge launching ramp on Plum Island, or from off-refuge sites. Access to Area C must be from the refuge parking lot on Stackyard Road.

The provisions of this special regulation supplement the regulations governing hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through January 31, 1980. The public is invited to offer suggestions and comments at any time.

**Note.**—The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR, Part 14.

**William C. Ashe,**

*Acting Regional Director, Fish and Wildlife Service.*

August 27, 1979.

[FR Doc. 79-27779 Filed 9-5-79; 8:45 am]

BILLING CODE 4310-55-M

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**50 CFR Part 32**

## Hunting; Opening of Certain National Wildlife Refuges in Arizona, California and New Mexico.

**AGENCY:** U.S. Fish and Wildlife Service, Department of the Interior.

**ACTION:** Special Regulations.

**SUMMARY:** The Director has determine that the opening to hunting of upland game on certain National Wildlife Refuges is compatible with the objectives for which the areas were established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public. These special regulations describe the conditions under which hunting will be permitted on portions of certain National Wildlife Refuges in Arizona, California and New Mexico.

**DATES:** Effective from September 1, 1979 through February 28, 1980.

**FOR FURTHER INFORMATION CONTACT:** The Area Manager or appropriate Refuge Manager at the address or telephone number listed below:

Albert W. Jackson, Area Office Manager, U.S. Fish and Wildlife Service, 2953 West Indian School Road, Phoenix AZ 85017. Telephone: 602–261–6833.

Wesley V. Martin, Refuge Manager, Cibola National Wildlife Refuge, P.O. Box AP, Blythe, CA 92225. Telephone: 714–922–2129.

Tyrus W. Berry, Refuge Manager, Havasu National Wildlife Refuge, P.O. Box A, Needles, CA 92363. Telephone: 714–326–2853.

Gerald E. Duncan, Refuge Manager, Imperial National Wildlife Refuge, P.O. Box 2217, Martinez Lake, AZ 85364. Telephone: 602–783–3400.

LeMoyne B. Marlatt, Refuge Manager, Bitter Lake National Wildlife Refuge, P.O. Box 7, Roswell, N. Mex. 88201. Telephone: 505–622–6755.

Ronald L. Perry, Refuge Manager, Bosque del Apache National Wildlife Refuge, P.O. Box 1246, Socorro, N. Mex. 87801.

**SUPPLEMENTARY INFORMATION:**

**General**

Hunting of upland game and/or predators on portions of the following refuges shall be in accordance with applicable State and Federal regulations, subject to additional special regulations and conditions as indicated. Portions of refuges which are open to hunting are designated by signs and/or delineated on maps. Vehicular travel is restricted to designated roads and trails on maps. Special conditions applying to individual refuges and maps are available at refuge headquarters or from the Office of the Area Manager (addresses listed above).

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires that before any area of the refuge system is used for forms of recreation not directly related to the primary purposes and functions of the area, the Secretary must find that: (1) Such recreational use will not interfere with the primary purposes for which the area was established; and (2) funds are available for the development, operation, and maintenance of the permitted forms of recreation.

The recreational use authorized by these regulations will not interfere with the primary purposes for which these refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

**§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.**

Listed upland game and predator species may be hunted on the following refuges:

**Arizona**

*Kofa National Wildlife Refuge.*

Quail, cottontail rabbits, coyotes, gray fox and bobcat.

Special conditions: (1) The open season for hunting quail and cottontail rabbits on the refuge extends from October 1, 1979 to January 31, 1980. Hunting of quail and cottontail rabbits permitted by shotguns only. (2) The open season for hunting coyotes, gray fox and bobcat on the refuge extends from October 1, 1979 through February 28, 1980. The refuge is closed to the taking of predators during the deer season, except that a hunter with a valid deer permit in the units of the Kofa Refuge may take predators until a deer is taken.

Note.—Kit (swift) fox may not be taken on the Kofa Refuge.

(3) Possession of any loaded or uncased firearm on or within any vehicle is prohibited. A loaded firearm shall mean any firearm containing a cartridge in its chamber or magazine. An uncased firearm shall mean any firearm not encased in a holster, scabbard, or gun case (soft or hard). (4) Possession of all rimfire firearms on the Kofa Refuge is prohibited. (5) Hunting is not permitted in the area known as the Crystal Hill Campground.

**Arizona and California**

*Cibola National Wildlife Refuge.*

Quail and Cottontail rabbits.

Special conditions: (1) Arizona—quail and cottontail rabbits, from October 1, 1979 through January 31, 1980. California—quail, from October 20, 1979 through January 27, 1980; cottontail rabbits, from October 1, 1979 through January 27, 1980. (2) Hunting is prohibited within one-fourth mile of any occupied dwelling, 250 yards of any farm worker, or within 50 yards of any road or levee. (3) Pits or permanent blinds may not be built. (4) Only shotgun firearms may be used to take quail and cottontail rabbits. (5) Possession of all handguns and all .22 caliber rimfire firearms is prohibited. (6) No more than two (2) dogs per hunter is permitted for the purpose of legal bird hunting.

*Havasu National Wildlife Refuge.*

Quail, cottontail rabbits and jackrabbits.

Special conditions: (1) Arizona—quail and cottontail rabbits and jackrabbits, from October 1, 1979 through January 31, 1980. California—quail, from October 20, 1979 through January 27, 1980; cottontail rabbits and jackrabbits, from September 1, 1979 through January 27, 1980. (2) Hunting is prohibited within one-fourth mile of any occupied dwelling or concession operation. (3) Shotguns only are permitted, not larger than 10 gauge and incapable of holding more than three shells. (4) Shooting hours will be from one-half hour before sunrise to sunset. (5) Two dogs per hunter are allowed for quail hunting only, and neither hunters nor dogs may enter closed areas to retrieve game. (6) Hunters must enter the Topock Marsh hunting areas by way of parking lots only. (7) The portion of Topock Marsh known as Pintail Slough Management Unit will be open to hunting only on Fridays, Saturdays and Sundays. This unit comprises all refuge land north of the north dike. (8) The open portion of the Bill Williams Unit is all refuge land south of the Planet Ranch Road.

*Imperial National Wildlife Refuge.*

Quail and cottontail rabbits.

Special conditions: (1) Arizona—quail and cottontail rabbits, from October 1, 1979 through January 31, 1980. California—cottontail rabbits, from October 1, 1979 through January 27, 1980; quail, from October 20, 1979 through January 27, 1980. (2) quail and rabbits may be taken with shotguns only. (3) Possession of .22 caliber rimfire firearms is prohibited. (4) Up to two (2) dogs per hunter may be used for the purpose of hunting and retrieving.

**New Mexico**

*Bitter Lake National Wildlife Refuge.*

Quail, ring-necked and white-winged pheasants and cottontail rabbits.

Special conditions: (1) Steel (iron) shot shotgun ammunition only may be used for the taking of pheasants, quail and rabbits on the South Refuge Unit (area C) during any waterfowl season. Possession of shotgun ammunition other than that loaded with steel (iron) shot is prohibited in this unit during waterfowl seasons.

*Bosque del Apache National Wildlife Refuge.*

Quail and rabbits.

Special conditions: (1) Rabbits may be taken on the refuge only on those areas

designated by sign and delineated on maps from September 1, 1979 through January 31, 1980. (2) The refuge is open to public access from one-half hour before sunrise to one-hour after sunset only. (3) Shotguns, bows and arrows, and .22 caliber weapons may be used for rabbits, except .22 caliber weapons may not be used from the railroad tracks west to the power lines and from the low-flow channel east to the pipeline.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32.

**Note.**—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11949 and OMB Circular A–107.

**Albert W. Jackson,**

*Area Manager, U.S. Fish and Wildlife Service, Phoenix, AZ.*

August 28, 1979.

[FR Doc. 79–27594 Filed 9–5–79; 8:45 am]

BILLING CODE 4310–55–M

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**50 CFR Part 32**

## Hunting; Opening of Certain National Wildlife Refuges in Arizona, California and New Mexico

**AGENCY:** U.S. Fish and Wildlife Service, Department of the Interior.

**ACTION:** Special regulations.

**SUMMARY:** The Director has determined that the opening to hunting of migratory game birds on certain National Wildlife Refuges is compatible with the objectives for which the areas were established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public. These special regulations describe the conditions under which hunting will be permitted on portions of certain National Wildlife Refuges in Arizona, California and New Mexico.

**DATES:** Effective from September 1, 1979 through January 31, 1980.

**FOR FURTHER INFORMATION CONTACT:** The Area Manager or appropriate Refuge Manager at the address or telephone number listed below:

Albert W. Jackson, Area Office Manager, U.S. Fish and Wildlife Service, 2953 West Indian School Road, Phoenix, AZ 85017. Telephone: 602–261–6833.

Wesley V. Martin, Refuge Manager, Cibola National Wildlife Refuge, P.O. Box AP, Blythe, CA 92225. Telephone: 714–922–2129.

Tyrus W. Berry, Refuge Manager, Havasu National Wildlife Refuge, P.O. Box A, Needles, CA 92363. Telephone: 714–326–3853.

Gerald E. Duncan, Refuge Manager, Imperial National Wildlife Refuge, P.O. Box 2217, Martinez Lake, AZ 85364. Telephone: 602–783–3400.

LeMoyne B. Marlatt, Refuge Manager, Bitter Lake National Wildlife Refuge, P.O. Box 7, Roswell, N. Mex. 88201. Telephone: 505–622–6755.

Ronald L. Perry, Refuge Manager, Bosque del Apache National Wildlife Refuge, P.O. Box 1246, Socorro, N. Mex. 87801. Telephone: 505–835–1828.

Ronald L. Perry, Refuge Manager, San Andres National Wildlife Refuge, P.O. Box 1246, Socorro, N. Mex. 87801. Telephone: 505–835–1828.

Ronald L. Perry, Refuge Manager, Sevilleta National Wildlife Refuge, P.O. Box 1246, Socorro, N. Mex. 87801. Telephone: 505–835–1828.

**SUPPLEMENTARY INFORMATION:**

### General

Hunting of migratory game birds on portions of the following refuges shall be in accordance with applicable State and Federal regulations, subject to additional special regulations and conditions as indicated. Portions of refuges which are open to hunting are designated by signs and/or delineated on maps available at the above addresses. Vehicular travel is restricted to designated roads and trails.

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires that before any area of the refuge system is used for forms of recreation not directly related to the primary purposes and functions of the area, the Secretary must find that: (1) Such recreational use will not interfere with the primary purposes for which the area was established; and (2) funds are available for the development, operation, and maintenance of the permitted forms of recreation.

The recreational use authorized by these regulations will not interfere with the primary purposes for which these refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

### § 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

Listed migratory game bird species may be hunted on the following refuges:

#### Arizona and California

*Cibola National Wildlife Refuge*

Mourning and white-winged doves.

Special conditions: (1) Up to two (2) dogs per hunter may be used for the purpose of hunting and retrieving. (2) Hunting is prohibited within one-fourth mile of any occupied dwelling or 250 yards from any farm worker. Hunting is also prohibited within 50 yards of any road or levee. (3) Vehicles are prohibited from driving across farm fields or through any undefined trail or road. All off-road vehicles are prohibited. (4) In Arizona, both Zone I and Zone III are closed to hunting. (5) Construction of pits or permanent blinds is prohibited. (6) Camping overnight on the refuge is prohibited. (7) Possession of all handguns and all .22 caliber rimfire firearms is prohibited.

*Havasu National Wildlife Refuge.*

Mourning and white-winged doves.

Special conditions: (1) Hunting is prohibited within one-fourth mile of any occupied dwelling or concession operation. (2) Hunting at Pintail Slough will be permitted only on Fridays, Saturdays, and Sundays. Pintail Slough is comprised of all refuge lands north of the north dike. (3) Hunting at the Bill Williams Unit is only permitted on refuge land which lies south of the Planet Ranch Road. (4) Up to two (2) dogs per hunter are permitted for the purpose of hunting and retrieving game. (5) Neither hunters nor dogs may enter areas closed to hunting to retrieve game. (6) Pits may not be dug, and permanent blinds may not be constructed. Hunters may not have possessory rights to any blind. Temporary blinds may be made of native dead vegetation. Any materials brought on the refuge for blind construction must be removed at the end of each hunt.

*Imperial National Wildlife Refuge.*

Mourning and white-winged doves.

Special conditions: (1) In both Arizona and California, hunting will be only during the second (last) segment of the hunting season. (2) Up to two (2) dogs per hunter may be used for the purpose of hunting and retrieving. (3) Pits and/or permanent blinds are prohibited.

#### New Mexico

*Bitter Lake National Wildlife Refuge.*

Mourning and white-winged doves and teal ducks.

Special conditions: (1) Steel (iron) shot shotgun ammunition only may be used for the taking of doves on the South Refuge Unit (area C) during any period when a duck or waterfowl season runs concurrently with a dove season. (2) Steel (iron) shot shotgun ammunition only may be used for the taking of teal ducks on the South Refuge Unit (area C) and it will not be permissible to possess shotgun ammunition containing other than steel (iron) shot in this unit during any waterfowl season. (3) Up to two (2) dogs per hunter may be used for the purpose of hunting and retrieving. (4) Pits and/or permanent blinds are prohibited. (5) Entrance into closed areas by hunters or dogs for retrieving of game or for any other reason is prohibited.

*Bosque del Apache National Wildlife Refuge.*

Mourning and white-winged doves.

Special conditions: (1) The refuge is open to public access from one-hour before sunrise to one-half hour after sunset only.

*Sevilleta National Wildlife Refuge.*

Mourning and white-winged doves and teal ducks.

Special conditions: (1) No camping is permitted. (2) Parking will be limited to areas as posted and designated on hunt map. (3) There will be no entry to the hunt area earlier than 2 hours before sunrise. (4) Pits and/or permanent blinds are prohibited. (5) All hunters must be out of the hunt area by 2 hours after shooting hours. (6) Fires of any type are prohibited. (7) Unloaded firearms that are dismantled or cased may be transported through the closed area over posted routes of travel.

The provisions of these special regulations supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33. The public is invited to offer suggestions and comments at any time.

Note.—The Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11949 and OMB Circular A-107.

**Albert W. Jackson,**

*Area Manager, U.S. Fish and Wildlife Service, Phoenix, AZ.*

August 28, 1979.

[FR Doc. 79-27595 Filed 9-5-79; 8:45 am]

BILLING CODE 4310-55-M

**50 CFR Part 32**

## Hunting; National Wildlife Refuges in Alabama, Arkansas, Louisiana, and Mississippi

**AGENCY:** Fish and Wildlife Service.

**ACTION:** Special regulations.

**SUMMARY:** The Director has determined that the opening to hunting of certain national wildlife refuges in Alabama, Arkansas, Louisiana, and Mississippi is compatible with the objectives for which the areas were established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public. In addition, managed big game hunts are designed to keep population levels compatible with habitat capabilities. This document establishes special regulations effective for the upcoming hunting seasons for certain migratory birds, upland game, and big game species.

**DATES:** Period covered—September 1, 1979 to May 30, 1980. See State regulations for waterfowl seasons.

**FOR FURTHER INFORMATION CONTACT:** The Area Manager or appropriate refuge manager at the address or telephone number listed below:

Area Manager, U.S. Fish and Wildlife Service, 200 East Pascagoula Street, Suite 300, Jackson, Mississippi 39201, Telephone (601) 969-4900.

Refuge Manager, Eufaula National Wildlife Refuge, Route 2, Box 97-B, Eufaula, Alabama 36027, Telephone (205) 687-4065.

Refuge Manager, Wheeler National Wildlife Refuge, Box 1643, Decatur, Alabama 35602, Telephone (205) 353-7243.

Refuge Manager, Big Lake National Wildlife Refuge, Box 67, Manila, Arkansas 72442, Telephone (501) 564-2429.

Refuge Manager, Holla Bend National Wildlife Refuge, Box 1043, Russellville, Arkansas 72801, Telephone (501) 968-2800.

Refuge Manager, Wapanocca National Wildlife Refuge, P.O. Box 279, Turrell, Arkansas 72384, Telephone (501) 343-2595.

Refuge Manager, White River National Wildlife Refuge, Box 308, DeWitt, Arkansas 72042, Telephone (501) 946-1468.

Refuge Manager, Catahoula National Wildlife Refuge, P.O. Drawer LL, Jena, Louisiana 71342, Telephone (318) 992-5261.

Refuge Manager, Lacassine National Wildlife Refuge, Route 1, Box 186, Lake Arthur, Louisiana 70549, Telephone (318) 774-2750.

Refuge Manager, Sabine National Wildlife Refuge, MRH Box 107, Hackberry, Louisiana 70645, Telephone (318) 762-5135.

Refuge Manager, Hillside National Wildlife Refuge, P.O. Box 107, Yazoo City, Mississippi 39194, Telephone (601) 746-8511.

Refuge Manager, Noxubee National Wildlife Refuge, Route 1, Box 84, Brooksville, Mississippi 39739, Telephone (601) 323-5548.

Refuge Manager, Yazoo National Wildlife Refuge, Route 1, Box 286, Hollandale, Mississippi 38748, Telephone (601) 839-2638.

**Supplementary Information:**

*General Conditions*

1. Hunting is permitted on national wildlife refuges indicated below in accordance with 50 CFR Part 32, all applicable state regulations, the general conditions, and the following special regulations:

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires: (a) That any recreational use permitted will not interfere with the primary purpose for which the area was established; and (b) That funds are available for the development, operation, and maintenance of the permitted forms of recreation.

The recreational use authorized by these regulations will not interfere with the primary purposes for which these refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November, 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

2. A list of special conditions applying to individual refuge hunts and a map of the hunt area(s) are available at refuge headquarters. Portions of refuges which are closed to hunting are designated by signs and/or delineated on maps.

3. Access points on certain refuges are limited to designated roads or other specified areas. Vehicle use on all refuge areas is restricted to designated roads and lanes.

4. Only steel shot ammunition may be used during refuge migratory waterfowl hunts. Possession of lead or other toxic shot in any gauge is prohibited during such hunts.

5. Persons under age 16 must be under the close supervision of an adult. For safety reasons, the ratio should be one adult to one juvenile, but in no case should one adult have more than two juveniles under his supervision.

6. Retriever dogs are allowed during waterfowl hunts but they must be under the control of the handler at all times. Unless otherwise specified, dogs are not permitted on refuge areas during hunts.

**§ 32.12 Special Regulations; Migratory game bird hunting for individual wildlife refuge areas.**

**Alabama**

*Eufaula National Wildlife Refuge; Migratory Waterfowl Hunting*

(1) Hunting will be permitted on areas comprising approximately 450 acres (Alabama unit), and 770 acres (Georgia unit), which have been designated as being open to public waterfowl hunting.

(2) Hunts will be held from 30 minutes prior to sunrise until 11:30 A.M., Central Standard Time for Alabama unit and Eastern Standard Time for Georgia unit, on alternating Saturday and Wednesday mornings of the respective State waterfowl seasons.

(3) Hunters must hunt only from designated blind areas located by refuge personnel. Shooting is not permitted outside designated blind zone.

(4) Hunters are required to check in and out of the hunt area and must present all bagged game for inspection.

(5) Applications for refuge permits must be received by the Refuge Manager, Eufaula Refuge, Eufaula, Alabama, prior to 12 noon, Friday, October 26, 1979. Successful applicants will be determined by an impartial drawing on Monday, October 29, 1979. Permits are nontransferable.

*Mourning Dove Hunting*

(1) Dove hunting will be permitted on areas comprising approximately 300 acres which have been designated as being open to public dove hunting from 12 noon until sunset (Central Standard Time) on September 29, 1979, October 27, 1979, and January 5, 1980.

(2) Hunters must check in and out of the refuge at the designated checking stations and are not permitted within hunting areas before 11:45 A.M. on hunt days.

(3) Each hunter who successfully takes a limit of mourning doves must leave the hunting area immediately.

**Arkansas**

*Holla Bend National Wildlife Refuge*

(1) Dove hunting will be permitted only in the approximately 500 acre area which has been designated as being open to public dove hunting from 12 noon until sunset on September 1, 1979, and September 8, 1979.

(2) A permit is required.

(3) Persons may enter the refuge when the entrance gate opens each morning (daylight), and must leave the refuge by the time posted at the entrance gate.

(4) Firearms must be cased or unloaded when outside the designated hunt area.

(5) Alcoholic beverages are not permitted in the hunt area.

**Louisiana**

*Lacassine National Wildlife Refuge*

(1) Public hunting for ducks, geese, and coots will be permitted on designated areas comprising approximately 6,400 acres. Waterfowl hunting will be allowed from one-half hour before sunrise until 11:00 a.m., Wednesday through Sundays, during the Louisiana western zone season, excluding the special teal season. Hunters may enter the hunting area no earlier than two hours before legal shooting time and must depart the refuge by 12:00 noon.

(2) Upon request hunters are required to exhibit a valid State hunting license, duck stamp, and all shells in possession to a designated refuge official prior to hunting and permit authorized Service personnel to inspect his person, equipment, and/or vehicle.

(3) Hunting parties may not hunt closer than 100 yards apart or closer than 50 yards from canals or waterways.

(4) Temporary blinds made of native vegetation are required. Blinds may not contain wire, lumber, netting, or poles. Portable blinds are permitted but must be removed from the refuge after each day's hunt.

(5) Firearms must be encased or dismantled when carried in transit through refuge waters.

(6) Airboats and all-terrain vehicles will not be allowed in the hunting area.

(7) Furbearing animals or trapping equipment present in the hunting area shall not be molested or disturbed by hunters.

*Sabine National Wildlife Refuge*

(1) Public hunting for ducks, geese, and coots will be permitted on designated areas comprising approximately 10,000 acres. Waterfowl hunting will be allowed from one-half hour before sunrise until 11:00 a.m., Wednesday through Sunday, during the regular Louisiana western zone duck season. Hunters may enter the hunting area no earlier than two hours before legal shooting time and must depart the refuge by 12:00 noon.

(2) Upon request hunters are required to exhibit a valid State hunting license, duck stamp, and all shells in possession to a designated refuge official prior to hunting and permit authorized Service personnel to inspect his person, equipment, and/or vehicle.

(3) Hunting parties may not hunt closer than 100 yards apart and must station themselves a minimum of 50 yards inland from refuge canals. The first hunter(s) at a pond or blind site are the holders of that site until they complete their hunt.

(4) Temporary blinds made of native vegetation may be constructed or portable blinds may be carried in for each hunt.

(5) Firearms must be encased or dismantled when carried in transit through refuge canals.

(6) Furbearing animals or trapping equipment in the hunting area shall not be molested or disturbed by hunters.

(7) Hunters are required to check in at the hunt check station before entering the hunt area and must check out; this includes hunters who did not bag game. All waterfowl bagged must be checked through the check station after each hunt.

**Mississippi**

*Noxubee National Wildlife Refuge*

(1) Public hunting of ducks and coots will be permitted only on the areas designated as green-tree reservoirs numbers one and two.

(2) Hunting will be permitted only on Mondays, Wednesdays, and Saturdays from one-half hour before sunrise until 12 noon during the State waterfowl season.

(3) The use of boats with electric motors is permitted within the hunting area.

(4) The construction of blinds is not permitted.

(5) Hunters will not be permitted to enter the hunting area sooner than 45 minutes before legal shooting hours.

(6) No hunter may take more than 16 shotgun shells into the hunting area.

(7) No shooting will be permitted from the levee or the open water area immediately adjacent to the levee.

(8) All hunters are required to check in and out at the designated check station.

(9) Permit is required.

**§ 32.22 Special Regulation: upland game hunting for individual wildlife refuge areas.**

**Alabama**

*Wheeler National Wildlife Refuge*

(1) Upland game hunting is permitted on approximately 19,000 acres for squirrel, rabbit, fox, raccoon, and opossum.

(2) Seasons: squirrel and rabbit October 15, 1979, through October 27, 1979; fox mounted hunting only, no firearms October 1, 1979, through April 1, 1980; raccoon and opossum—February 4, 1980, through February 16, 1980, night hours only. Special rabbit hunt—February 16, 1980, through February 29, 1980, with shotguns and bows and arrows except in southwest portion of

refuge where bows and arrows only are allowed; the use of beagles is permitted.

(3) Permits are required

**Arkansas**

*Big Lake National Wildlife Refuge*

(1) Species permitted: squirrel, rabbit, and beaver—October 1, 1979, through October 31, 1979; raccoon—November 9, 1979, through November 15, 1979, 4 P.M. until 12 midnight. Raccoon hunters must depart refuge by 1 A.M.

(2) One dog per hunter is required (only one permitted) for raccoon hunts; no dogs permitted during other species hunts.

(3) Firearms must remain unloaded during transportation to hunting sites.

(4) A permit is required for raccoon hunting.

(5) Hunters are required to check in and out at designated check stations.

*Wapanocca National Wildlife Refuge*

(1) Species permitted: squirrel and rabbit—October 1, 1979, through October 31, 1979; beaver may be taken as an incidental species. Raccoon—October 15, 1979, through October 31, 1979, from 4 P.M. to 7 A.M.

(2) One dog per hunter is required (2 per hunter maximum) for raccoon hunts; no dogs allowed during other species hunts.

(3) Permit is required for raccoon hunting.

*White River National Wildlife Refuge*

(1) Species permitted: squirrel, rabbit, beaver—October 1, 1979, through October 20, 1979; north of Highway 1 season—October 1, 1979, through November 10, 1979. Raccoon—November 29, 1979, through December 1, 1979, and December 5, 1979, through December 8, 1979, 5 P.M. until 12 midnight. Raccoon hunters must depart refuge by 1 A.M.

(2) A permit is required for raccoon hunts.

(3) Horses are allowed for raccoon hunts only.

(4) Weapons: shotguns and .22 caliber rimfire rifles are permitted.

(5) Boats and off-road vehicles are not allowed during the raccoon hunts.

(6) Dogs are required for raccoon hunts; one dog per hunter maximum.

**Louisiana**

*Catahoula National Wildlife Refuge*

(1) Species permitted: squirrel and rabbit—October 6, 1979, through November 2, 1979, on approximately 3,000 acres.

(2) Hours: one-half hour before to one-half hour after legal State shooting hours.

(3) No dogs permitted.

**Mississippi**

*Hillside National Wildlife Refuge*

(1) Upland game hunting is permitted on approximately 15,400 acres for quail, rabbit, squirrel, raccoon, and opossum. Beaver may be taken as an incidental species.

(2) Seasons: quail—December 17, 1979, through February 19, 1980; rabbit—October 6, 1979, through February 28, 1980; squirrel—September 29, 1979, through December 23, 1979; raccoon and opossum—January 21, 1980, through February 15, 1980.

(3) Hours for raccoon and opossum hunting are 4 P.M. until 7 A.M.

(4) Sunday hunting is prohibited.

(5) Dogs are permitted during the quail, raccoon, and opossum hunts. Only beagles are permitted during the February 16, 1980, through February 28, 1980, rabbit hunt.

(6) The use of citizens band radio devices to aid in the pursuit or taking of game animals is prohibited.

*Noxubee National Wildlife Refuge*

(1) Species permitted: squirrel and rabbit—October 13, 1979, through November 16, 1979, and December 17, 1979, through December 31, 1979; beaver may be hunted as an incidental species during the squirrel and rabbit hunts. Quail—December 17, 1979, through January 4, 1980 (closed December 25, 1979), and January 14, 1980, through February 19, 1980; rabbit may be hunted as an incidental species during the quail hunt. Raccoon and opossum—November 3, 1979, through November 15, 1979, and January 19, 1980, through February 28, 1980, only with .22 caliber rimfire weapons from 4 P.M. to 7 A.M.

(2) Refuge permits will be required for the raccoon and opossum hunts. No refuge permit will be required for squirrel, rabbit, or quail hunts. Permits can be obtained at refuge headquarters.

(3) Sunday hunting is prohibited.

(4) Dogs are permitted during the quail, raccoon, and opossum hunts only.

(5) The use of any citizens band radio device to aid in the pursuit or taking of game animals is prohibited.

*Yazoo National Wildlife Refuge*

(1) Species permitted: squirrel—September 29, 1979, through October 29, 1979; rabbit—October 6, 1979, through October 27, 1979; raccoon and opossum—December 1, 1979, through December 8, 1979, from 5 P.M. until midnight.

(2) Permits are required.

(3) No Sunday hunting is permitted.

(4) Upland game hunting of designated species is permitted on approximately 7,800 acres.

**§ 32.32 Special regulations: big game hunting for individual wildlife refuges.**

**Alabama**

*Wheeler National Wildlife Refuge*

(1) *Archery deer hunt:* October 29, 1979, through November 15, 1979; either sex.

(2) *Primitive weapons deer hunt* (archery and flintlock only): November 16, 1979, through November 24, 1979; either sex.

(3) *Redstone Arsenal deer hunt:* Contact Post Warden's Office for dates and regulations.

(4) Permits are required.

(5) Hunting is permitted on approximately 19,000 acres.

**Arkansas**

*Holla Bend National Wildlife Refuge*

(1) *Archery deer hunt:* October 1, 1979, through November 30, 1979, on approximately 6,367 acres.

(2) Persons may enter the refuge when the entrance gate opens each morning (daylight), and must leave the refuge by the time posted at the entrance gate.

(3) All hunters must register upon entering the refuge each day.

(4) A special permit is required to hunt on October 1, 1979.

(5) All deer bagged must be checked at the refuge check station before leaving the refuge.

(6) No hunting is permitted from any vehicle.

(7) Only portable tree stands bearing the hunter's name and address may be used. Stands must be removed from the refuge no later than December 5, 1979.

(8) Alcoholic beverages are not permitted in hunting areas.

*White River National Wildlife Refuge*

(1) *Archery hunt* (deer and turkey): October 11, 1979, through October 30, 1979, and January 22, 1980, through January 31, 1980. Season north of Highway 1—October 1, 1979, through October 30, 1979. Limit and sex: State regulations. Squirrel, rabbit, and beaver may be taken as incidental species.

(2) *Primitive weapons deer hunt:* October 25, 1979, through October 27, 1979. Limit: one deer of either sex (bonus deer).

(3) *Gun deer hunt:* November 12, 1979, through November 14, 1979. Limit: one legal buck (not a bonus deer).

(4) *Youth gun deer hunt:* November 1, 1979, through November 3, 1979. Limit: one deer of either sex (not a bonus deer).

(5) *Turkey hunt:* Spring hunt dates to be announced.

(6) Permits are required for primitive weapons hunt, gun deer hunt, youth deer hunt, and turkey hunt.

(7) No loaded firearms allowed in boats, vehicles, on campgrounds, or in roadways used by vehicles.

(8) All deer taken in the gun deer hunt and the youth gun deer hunt must be checked at a designated check station.

(9) Horses are prohibited.

**Louisiana**

*Catahoula National Wildlife Refuge*

(1) *Archery deer hunt:* October 1, 1979, through November 2, 1979, and December 22, 1979, through December 30, 1979, on approximately 3,000 acres; either sex. Rabbit and squirrel may be taken as incidental species.

(2) *Gun deer hunt:* December 6, 1979, through December 8, 1979; bucks only.

(3) *Youth deer hunt:* November 3, 1979; either sex.

(4) A refuge permit will be required for all gun hunters.

(5) Hunting hours: one-half hour before sunrise until one-half hour after sunset. Hunters may enter area 30 minutes prior to legal shooting hours and must exit 30 minutes after legal hours.

(6) No permanent tree stands may be constructed.

(7) A minimum of 400 square inches of daylight fluorescent orange must be visibly worn above the waist during deer gun hunts.

(8) All bagged deer must be checked out at refuge headquarters.

**Mississippi**

*Noxubee National Wildlife Refuge*

(1) *Archery deer hunt:* October 6, 1979, through October 30, 1979, and November 1, 1979, through November 16, 1979; either sex.

(2) *Primitive weapons deer hunt:* December 4, 1979, through December 15, 1979; either sex.

(3) *Gun deer hunt:* November 17, 1979, through November 24, 1979, and January 5, 1980, through January 10, 1980; bucks only.

(4) *Turkey hunt:* March 22, 1980, through April 2, 1980, and April 4, 1980, through April 26, 1980, with shotguns only. Limit: two gobblers per year.

(5) All deer and turkey harvested must be checked at the refuge headquarters or designated check station.

(6) Weapons allowed for deer gun hunts are: centerfire rifles and 20 gauge or larger shotguns.

(7) Sunday hunting is prohibited.

(8) Horses are prohibited.

(9) Permits are required for all deer and turkey hunts.

(10) Man-drive deer hunting is prohibited.

(11) The use of any citizens band radio device to aid in the pursuit or taking of game animals is prohibited.

*Yazoo National Wildlife Refuge*

(1) *Archery deer hunt:* November 1, 1979, through November 16, 1979, and January 19, 1980, through January 26, 1980, on approximately 7,800 acres; either sex.

(2) *Primitive weapons deer hunt:* December 10, 1979, through December 15, 1979; either sex.

(3) *Gun deer hunt:* December 27, 1979, through December 29, 1979, and January 3, 1980, through January 5, 1980, and January 11 and 12, 1980; bucks only.

(4) Permits are required.

(5) Loaded firearms in vehicles are prohibited.

(6) Man-drive deer hunting is prohibited.

(7) All deer must be checked at refuge headquarters.

(8) No Sunday hunting permitted.

(9) A minimum of 500 square inches of fluorescent hunter orange must be visibly worn above the waist during deer gun hunts.

The provisions of these special regulations supplement the regulations which generally govern hunting on wildlife refuge areas and which are set forth in Title 50, *Code of Federal Regulations*, Part 32. The public is invited to offer suggestions and comments at any time.

Dated: August 28, 1979.

**Jim L. Killer,**

*Acting Area Manager.*

[FR Doc. 79-27816 Filed 9-5-79; 8:45 am]

BILLING CODE 4310-55-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 674

### Alaska Salmon Fishery; Final Regulations

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA)/ Commerce.

**ACTION:** Final regulations.

**SUMMARY:** The Assistant Administrator for Fisheries on May 15, 1979, approved, with the exception of one provision, the fishery management (FMP) for the "High Seas Salmon Fishery off the Coast of Alaska East of 175° East Longitude" prepared by the North Pacific Fishery Management Council, pursuant to the Fishery Conservation and Management Act of 1976 (the Act), as amended. The FMP was published on June 8, 1979 (44 FR 33250). Proposed regulations implementing the approved portion of the FMP were published on May 18, 1979 (44 FR 29080), with a public comment period ending on July 18, 1979. In accordance with section 305(e) of the Act, the proposed regulations were made effective immediately on an emergency basis for 45 days. On July 11, the regulations were repromulgated to be effective for an additional 45-day period (44 FR 40519). Final regulations, which take into account comments received during the comment period, are now issued.

**EFFECTIVE DATE:** 0001 hours Alaska Standard Time (AST), August 31, 1979, and shall remain in effect until 2400 hours AST, April 14, 1980.

**FOR FURTHER INFORMATION CONTACT:** Mr. Harry L. Rietze, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1660, Juneau, Alaska, 99802. Telephone: 907–586–7221.

**SUPPLEMENTARY INFORMATION:** Regulations implementing the FMP on an emergency basis were first published in the **Federal Register** on May 18, 1979 (44 FR 29080). The preamble to those regulations discussed several aspects of the FMP, and those explanatory statements are not repeated here. With the exception of incorporating a change to the regulations that was published on July 17, 1979 (44 FR 41467) and making certain changes to the moratorium provisions in section 674.4, these final regulations are identical to the emergency regulations first published.

The changes to section 674.4 are intended to clarify the operation of the one-year moratorium on issuance of commercial power troll permits to fish in the fishery conservation zone (FCZ). This moratorium was intended to complement the Alaska limited entry system, but several inconsistencies between the State system and section 674.4 have been identified. Most of the problems are resolved but some differences remain, primarily due to the involvement of two separate jurisdictions, State and Federal.

Briefly the changes to § 674.4 are as follows:

1. Correction of typographical errors in 674.4(b)(1)(i);

2. Rewording for clarity in § 674.4(b)(1)(ii);

3. Addition of three determinations the Regional Director must make prior to approving transfer of the FCZ authorization in § 674.4(c)(1)(ii), which

are that the transferee has access to gear, that the State is not seeking to revoke the permit because it was fraudulently obtained, and that the proposed transfer is not a lease;

4. Expansion of information available to the Regional Director in making his decision on requested transfers in § 674.4(c)(1)(ii)(A);

5. Elimination of confusion that might arise from the placement of § 674.4(c)(2) in the regulations;

6. Clarification of § 674.4(d)(4) that Alaska power troll permit holders may only come to the Regional Director for an emergency transfer after an emergency transfer has been denied by the State; and

7. Addition of a new paragraph (g) which limits the definition of "person" to human beings for purposes of § 674.4.

**Response to Comments**

The Alaska Commercial Fisheries Entry Commission (CFEC), which administers Alaska's limited entry system, submitted lengthy comments relating to § 674.4 of the regulations. These were the only comments received. Most of CFEC's arguments, some legal and some practical, relate to the possibility of an FCZ-only permit being "severed" from a State entry permit through a transfer approved by the Regional Director after the State has denied transfer of the State permit. CFEC's comments are summarized by topic below, together with agency responses.

1. *Arguments against § 674.4(c) allowing severance.*—a. *Corporate "persons".* Comment: The definition of "person" in § 674.2 is much broader than the State definition which is limited to natural persons (humans) only. This raises the possibility that when the State automatically denies a transfer to a corporation or other entity because it is not a natural person, the Regional Director would have to allow the transfer of the FCZ portion of the permit if the corporation could demonstrate the ability to actively participate in the fishery. Transfers of this type could result in numerous severances, with an undesired increase in the total number of units of gear operating in the salmon fishery.

Response: The FMP clearly did not intend to allow such increases in effort. Addition of the new paragraph (g) restricting the definition of "person" for purposes of § 674.4 will resolve this problem.

b. *Limited Entry Findings and Goals.* Comment: It is possible that, even after redefining "persons" to exclude corporations, severance of the State and Federal permits could occur if the State denies transfer of a State permit and the Regional Director grants transfer of the Federal permit. Allowing any severance is contrary to the findings and goals of the FMP that limited access is necessary to maintain the fishery without increasing present levels of effort.

Response: The agency anticipates that few, if any, severances would actually occur since very few transfers are denied by the CFEC, which means few applications for transfer will be submitted to the Regional Director. Moreover, the Regional Director will be making any such decisions on the basis of the same criteria as CFEC, and the results may often, though not always, be the same. Finally, the moratorium clearly is of limited duration and should not cause long-term problems that cannot be resolved by the limited entry system still to be developed in subsequent FMP's.

c. *Costly Enforcement.* Comment: Severance would lead to difficult and costly enforcement problems because of different kinds of permits.

Response: The regulations already provide for separate FCZ-only permits to be issued by the Regional Director in 674.4(b). The creation of a few more FCZ-only permits through severance will not significantly add to enforcement problems already existing.

d. *Administrative Difficulties.* Comment: Section 674.4(c)(1) would be difficult to monitor with regard to State permits which still have FCZ authorization and permits which have transferred that authorization.

Response: This raises valid administrative concerns, but the agency is confident they can be resolved through cooperation between CFEC and the Alaska Region, National Marine Fisheries Service.

e. *Uninformed Transferees.* Comment: Severance would create problems for persons purchasing Alaska permanent entry permits not knowing of a split of authorization that would preclude access to the FCZ.

Response: The agency believes that methods can be developed to warn innocent purchasers—notation of State permits, lists of severed permits—but also is confident that the courts can easily handle the few cases of misrepresentation, fraud or breach of contract that might arise in this regard.

f. *Diminished State Jurisdiction.* Comment: Contrary to section 306(a) of the Act, allowing severance to occur diminishes State jurisdiction by carving out of the "single use privilege" represented by a State entry permit, a "new" authorization to fish in the FCZ only. This reduces Alaska's control over the fishery by half, from 99 percent to 50 percent.

Response: The agency does not fully understand the thrust of this comment. The FCMA clearly establishes Federal jurisdiction over the FCZ, and to the extent that an FCZ-only permit is created through a severance, the State has not suffered any diminution within its boundaries of its jurisdiction over the remaining State permit. Although the State may have suffered reduced authority over the 15 percent of the fishery in the FCZ, this situation was an intentional consequence of the Act and not § 674.4(c). Furthermore, that a few FCZ-only permits might be issued does not cause Alaska to lose half of its control over the fishery; the approximately 950 units of gear are still under State control in State waters.

g. *No contravention of 306(a).* Comment: Section 306(a) of the Act does not require Federal overview of State denials of transfers because such decisions do not constitute "direct or indirect" regulation, or if they do, it is permitted because all the vessels concerned are "registered with the State."

Response: The agency simply disagrees with CFEC's argument that the State is not "directly or indirectly" regulating in the FCZ when it denies transfer of a permit. the FMP provides that for Federal purposes, the State permit suffices as a Federal permit. Therefore, a State decision to deny a transfer of the State permit effectively would deny transfer of the Federal permit, a decision the agency believes must be made a federal official, in this instance, the Regional Director. As far as the "vessels registered with the State" exception, the agency at this time is not prepared to conclude that 306(a) legally would permit the State to make decisions on transfer of Federal permits.

h. *Transferor's prerogative.* Comment: Section 674.4(c)(1)(ii) requires that the Regional Director shall approve a transfer of the FCZ portion of permit upon satisfaction of certain criteria. This derogates from the right of the transferor who may have no notice of the potential transferee's action under § 674.4(c), and may in fact object to it.

Response: Transfer of the FCZ authorization represented by the State permit would require a willing transferor. The regulations in no way force a State permit holder to sell his FCZ authorization if transfer of the State permit is denied. The rights of the parties in such cases would be determined by the provisions of any private agreement they have effected regarding the transfer.

2. *Emergency Transfer under § 674.4(d).*—a. *Prerequisite of State denial.* Comment: If the intention is to allow the Regional Director to approve an emergency transfer only after the State denies one, the regulations do not so provide.

Response: Having had an emergency transfer denied by the State was intended to be a prerequisite to the authority of the Regional Director to approve an emergency transfer under § 674.4(d). The change to § 674.4(d)(4) will achieve this result.

b. *Notice.* Comment: CFEC regulations allow a potential emergency transferee to begin fishing under authority of a carbon copy of the transfer application as soon as the original is mailed. Can this be accommodated under the regulations?

Response: Section 674.4(d)(4) requires that the Regional Director be notified when the State approves an emergency transfer prior to the transfer becoming effective in the FCZ. Since mailing the application seems to constitute State approval, all the transferee would need to do is mail a copy to the Regional Director in order to satisfy the notice requirements. Language is added to paragraph (d)(4) to confirm this possibility.

CFEC also made comments regarding the clarity of two provisions, § 674.4(b)(1)(ii)(B) and § 674.4(c)(2). Both suggestions were incorporated as changes to the regulations.

A notice of availability of the final environmental impact statement for the FMP was published on January 29, 1979 (44 FR 5707).

**Exemption from Executive Order 12044**

Executive Order 12044 required that a regulatory analysis be prepared for regulations which may have major economic consequences for the general economy, individual industries, geographical regions, or levels of government. The NOAA Directive on Procedures for Development of Regulations (NDPR) requires a regulatory analysis for every new FMP and its implementing regulations. The NDPR, however, contains a provision (section 101(d)) that regulations issued in response to an emergency are exempt from the requirement that a regulatory analysis be prepared.

A draft regulatory analysis for the high seas salmon FMP has been prepared, but the final one is not yet completed. Delay in implementing the final regulations until a final regulatory analysis has been approved would be contrary to the public interest. Therefore, the Assistant Administrator for Fisheries, NOAA, recognizing the need to continue the management regime established by the interim emergency regulations, finds an emergency within the meaning of section 101(d) of the NDPR continues to exist. A failure to implement final regulations could lead to overfishing of the salmon stocks that the FMP was designed to protect. In addition, the depressed coho salmon runs protected by the field order closure of August 7, 1979, would be in danger of overfishing.

Dated this 31st day of August, 1979, at Washington, D.C.

**Winfred H. Meibohm,**

*Executive Director, National Marine Fisheries Service.*

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

50 CFR Part 674 is amended as follows:

**§ 674.4 [Amended]**

1. Section 674.4(b)(1)(i) is corrected by changing the citation from (b)(i)(ii) to (b)(1)(ii), and by adding "area" after "management" in (B).

2. Section 674.4(b)(1)(ii) is amended by deleting the phrase "persons who have ever held a State of Alaska power troll permit under this paragraph (b) as a result of having fished that Alaska has not instituted proceedings to revoke the State permit because it was fraudulently obtained, and that the proposed transfer is not a lease."

4. Section 674.4(c)(1)(ii)(A) is amended by adding a second sentence: "The Regional Director may request additional information from the individual requesting transfer or from the State to aid in his consideration of the request."

5. Section 674.4(c)(2) is amended by changing the period to a comma and adding the phrase "except for emergency transfers under paragraph (d) of this section."

6. Section 674.4(d)(4) is amended to read: "Paragraphs (d) (2) and (3) of this section apply to a holder of an Alaska power troll permit only if the State has denied an emergency transfer of that State permit. If the State has authorized an emergency transfer of a State permit, the transferee must notify the Regional Director in writing before the emergency transfer is effective for purposes of paragraph (a)(1) of this section. Such notification may be accomplished by mailing to the Regional Director a copy of the Alaska emergency transfer request form."

7. Section 674.4 is amended by adding the following as a new subsection (g):

"(g) For purposes of this § 674.4, the definition of 'person' excludes corporations, partnerships, associations or other nonhuman entities."

[FR Doc. 79-27829 Filed 9-5-79; 8:45 am]

BILLING CODE 3510-22-M

## OFFICE FOR MICRONESIAN STATUS NEGOTIATIONS

### 32 CFR Part 2700

### Security Information Regulations; Implementation of Executive Order 12065

*Correction*

In FR Doc. 79-27435 published at page 51573 on Tuesday, September 4, 1979, the following corrections should be made:

1. In the first column on page 51574, the amendatory language appearing before the part heading is corrected to read as follows: "Title 32 of the Code of Federal Regulations is amended by establishing Chapter XXVII—Office for Micronesian Status Negotiations, and by adding a new Part 2700 to read as follows:".

2. Sections 2400.1–2400.52 are renumbered as 2700.1–2700.52, respectively. All internal references to sections in Part 2400 are changed to the appropriate sections in Part 2700.

BILLING CODE 6820-27-M

# Proposed Rules

Federal Register
Vol. 44, No. 174
Thursday, September 6, 1979

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 1030]

### Milk in the Chicago Regional Marketing Area; Proposed Temporary Revision of Shipping Percentage

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed temporary revision of rule.

**SUMMARY:** This notice invites written comments on a proposal that the supply plant shipping requirements under the Chicago Regional milk order be decreased temporarily by 5 percentage points for the months of October and November 1979. The action was requested by a cooperative association representing a portion of the producers supplying the market to prevent uneconomic shipments of milk.

**DATE:** Comments are due on or before September 17, 1979.

**ADDRESS:** Comments (two copies) should be filed with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250.

**FOR FURTHER INFORMATION CONTACT:** Martin J. Dunn, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202–447–7311.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the provisions of § 1030.7(b)(5) of the order, the temporary revision of certain provisions of the order regulating the handling of milk in the Chicago Regional marketing area is being considered for the months of October and November 1979.

All persons who desire to submit written data, views or arguments in connection with the proposed revision should file the same with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250, not later than September 17, 1979. All documents filed should be in duplicate. The period for filing views is being somewhat limited to enable the timely consideration of this matter since the proposed action would be applicable to milk shipments made during October. Further, the proposed change provides some relaxation of pooling standards and thus will not require extensive preparation or substantial alteration in method of operation for handlers.

All written submissions made pursuant to the notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The provision proposed to be revised is the supply plant shipping percentages of 35 percent set forth in § 1030.7(b) that is applicable during the months of October and November.

Pursuant to the provisions of § 1030.7(b)(5), the supply plant shipping percentages set forth in § 1030.7(b) may be increased or decreased by up to 10 percentage points during the months of September through March to encourage additional milk shipments to pool distributing plants or to remove the need for milk shipments to such plants merely for purposes of qualifying a supply plant.

The National Farmers Organization, representing a portion of the producers supplying the Chicago Regional market, has requested that during October and November 1979 the supply plant shipping percentages be reduced 5 percentage points. The cooperative stated that the 35 percent shipping requirements for October and November would cause uneconomic shipments of milk.

There is a reduced demand for Class I milk and an increase in the milk supply for the market. Thus, there is a reduced demand for supply plant milk in Class I use and a reduction in required shipments may be appropriate. A reduction in the required shipments of supply plant milk during October and November would allow greater flexibility in obtaining milk from among the supply plants associated with the market. Also, the proposed reduction in shipping percentages may prevent uneconomic movements of milk merely for purposes of pool plant qualification.

Accordingly, it may be appropriate to reduce the pool supply plant shipping percentages for the months of October and November 1979.

Signed at Washington, D.C., on August 31, 1979.

H. L. Forest,
*Director, Dairy Division.*

[FR Doc. 79-27821 Filed 9-5-79; 8:45 am]

BILLING CODE 3410-02-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### [14 CFR Part 71]

### [Airspace Docket No. 79-CE-26]

### Transition Area—Fulton, Missouri; Proposed Designation

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

**ACTION:** Notice of Proposed Rule Making (NPRM).

**SUMMARY:** This Notice proposes to designate a 700-foot transition area at Fulton, Missouri, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Fulton, Missouri Municipal Airport which is based on the Non-Directional Radio Beacon (NDB) which the City of Fulton is installing on the airport.

**DATES:** Comments must be received on or before October 10, 1979.

**ADDRESSES:** Send comments on the proposal to: Federal Aviation Administration, Chief, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE–530, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the office of the Chief, Operations, Procedures and Airspace Branch, Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Dwaine E. Hiland, Airspace Specialist, Operations, Procedures, and Airspace Branch, Air Traffic Division, ACE–537, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before October 10, 1979 will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

**Availability of NPRM**

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedures and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106 or by calling (816) 374–3408. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMs should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to Subpart G, Section 71.181 of the Federal Aviation Regulations (14 CFR 71.181) by designating a 700-foot transition area at Fulton, Missouri. To enhance airport usage by providing instrument approach capability to the Fulton Municipal Airport, the City of Fulton, Missouri is installing an NDB on the airport. This radio facility provides new navigational guidance for aircraft utilizing the airport. The establishment of a new instrument approach procedure based on this navigational aid entails designation of a transitional area at Fulton, Missouri at and above 700 feet above ground level (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules. (VFR).

Accordingly, Federal Aviation Administration proposes to amend Subpart G, Section 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1979, (44 FR 442) by altering the following transition area:

**Fulton, Missouri**

That airspace extending upwards from 700 feet above the surface within a 5 mile radius of the Fulton Municipal Airport (latitude 38°50'22"N; logitude 92°00'17"W), and within 2 miles each side of the Hallsville, Missouri VORTAC 154°R; extending from the 5 mile radius area to 6 miles northwest of the Fulton Municipal Airport, and within 3 miles each side of the NDB 229° bearing; extending from the 5 mile radius area to 8.5 miles southwest of the NDB, excluding that portion which overlies the Columbia, Missouri 700-foot transition area.

(Sec. 307(a) Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); Sec 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.65 of the Federal Aviation Regulations (14 CFR 11.65).)

**Note.**—the FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Kansas City, Missouri, on August 24, 1979.

**Charles A. Whitefield,**

*Acting Director, Central Region.*

[FR Doc. 79-27493 Filed 9-5-79; 8:45 am]

**BILLING CODE 4910-13-M**

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## FEDERAL TRADE COMMISSION

**[16 CFR Part 440]**

## Hearing Aid Industry Trade Regulation Rule

**AGENCY:** Federal Trade Commission.

**ACTION:** Scheduling of oral presentation before Commission.

**SUMMARY:** Pursuant to § 1.13(i) of its rules of practice, the Federal Trade Commission is reviewing the rulemaking record in the proposed Trade Regulation Rule for the Hearing Aid Industry to determine what form of rule, if any, it should promulgate. As part of this review process, the Commission will allow certain persons who have previously participated in the proceeding to make oral presentations at an open meeting of the Commission on September 27, 1979, at 1:00 p.m. in Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580. These presentations will be confined to information already in the rulemaking record.

**DATE:** Oral presentations will begin at 1:00 p.m., September 27, 1979.

**ADDRESS:** The presentations will take place at an open Commission meeting in Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Patterson, Attorney, 202–724–1497, or Donald Clark, Attorney, 202–724–3093, Division of Food and Drug Advertising, Federal Trade Commission, Washington, D.C. 20580.

**SUPPLEMENTARY INFORMATION:**

Invitations to participate in this oral presentation have been extended to the following participants in this rulemaking: the American Speech-Language-Hearing Association; the Hearing Industries Associations; the National Retired Teachers Associaton/American Association of Retired Persons; the National Hearing Aid Society; the National Council of Senior Citizens; and the Organization for the Use of the Telephone. The Commission is offering these parties the opportunity to make oral presentations as to various issues in the rulemaking because it believes that, based on their previous participation and the variety of their interests, they may assist the Commission in its deliberations. Each of the invitees has been notified of the issues to be addressed, the time (thirty minutes) being allowed for each presentation, and that the Commission may utilize any or all of this time for questioning. Each of them has also been provided with copies of the staff's Summary of Post Record Comments on the Proposed Trade Regulation Rule for the Hearing Aid Industry, the memorandum to the Commission setting forth the staff recommendation for modifications of the proposed Trade Regulation Rule for the Hearing Aid Industry, and a memorandum from the Director of the Commission's Bureau of Consumer Protection concerning the staff recommendation. These documents have been placed on the rulemaking record. Copies are available on request from the Public Reference Branch, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

Approved: August 23, 1979.

By the direction of the Commission.

**James A. Tobin,**

*Acting Secretary.*

[FR Doc. 79-27817 Filed 9-5-79; 8:45 am]

**BILLING CODE 6750-01-M**

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[18 CFR Part 281]

[Docket No. RM79-40]

## Determination of Alternative Fuels for Essential Agricultural Users

Issued August 29, 1979.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Section 401(b) of the Natural Gas Policy Act provides that the Commission determine, in consultation with the Secretary of Agriculture whether alternative fuels are economically practicable or reasonably available for essential agricultural users to use in lieu of natural gas. This rule proposes to find that residual fuel oil and coal are economically available for those who have used such fuel at any time since 1973. If this rule is adopted, essential agricultural users who have alternate fuel available will be taken out of the Priority 2 curtailment category; they will be treated as they have been under the interstate pipeline's curtailment plan.

DATE: Written comments by September 28, 1979. Public Hearing on September 24, 1979.

ADDRESS: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Washington, D. C. 20426.

FOR FURTHER INFORMATION CONTACT: MaryJane Reynolds, Office of the General Counsel, Room 8000, 825 North Capitol St., N.E., Washington, D. C. 20426, (202) 357-8455.

### I. Background

On May 2, 1979, the Commission issued a notice of proposed rulemaking in the above referenced proceeding (44 FR 27894, May 9, 1979). The proposed rule would have established procedures for evaluating, on a facility-by-facility basis, the reasonable availability and economic practicability of alternative fuel for essential agricultural uses, as called for by section 401(b) of the Natural Gas Policy Act of 1978 (NGPA).

The proposed rule was opposed by most who submitted written comments. The position most strongly and convincingly argued was that the Commission should adopt a generic approach to determine the availability and practicability of various fuels as alternatives to natural gas by essential agricultural users. The Commission is persuaded by the comments and therefore proposes a rule different than the rule proposed in the Notice of May 2, 1979. Unlike the rule proposed in the earlier notice, the rule proposed herein is not limited to establishing procedures, but makes a substantive determination concerning the reasonable availability and economic practicability of certain alternative fuels to natural gas, for the immediate future.

*A. Statutory Provisions*

Under section 401(b) of the NGPA, the protection from curtailment required by section 401(a) does not apply to essential agricultural uses "[i]f the Commission, in consultation with the Secretary of Agriculture, determines, by rule or order, that use of a fuel (other than natural gas) is economically practicable and that the fuel is reasonably available as an alternative for any agricultural use of natural gas. . . ." The rule proposed in this notice provides for that determination for certain fuels.

Section 401 of the NGPA seeks to assure that natural gas required for essential agricultural uses will not be curtailed unless curtailment is required to protect the needs of certain enumerated high priority users. Section 401 of the NGPA establishes a curtailment scheme under which the Secretary of Agriculture determines the volumetric amounts required for essential agricultural uses, the Secretary of Energy establishes curtailment priorities, and the Federal Energy Regulatory Commission (Commission) establishes procedures under which the curtailment plans of interstate pipelines carry out the Congressional policy to provide agricultural users certain protections from curtailment.

Pursuant to section 403(b) of the NGPA and section 402(a)(1)(E) of the Department of Energy Organization Act, the Commission is charged with implementing the rules mandated by section 401 under its authority to establish, review, and enforce curtailments under the Natural Gas Act. On May 2, 1979, the Commission issued a rule carrying out its responsibilities under section 401(a) of the NGPA.[1] Under that rule, most customers of interstate pipelines are required to re-examine data used to determine base period volumes for curtailment plans in order to identify which volumes qualify for the newly defined Priority 1. In addition, pipelines are required to include in their curtailment plans a new Priority 2, which will contain requirements necessary to serve essential agricultural uses as defined by the Secretary of Agriculture.

As indicated above, however, the provisions of section 401(a), which protect deliveries of natural gas for essential agricultural uses, do not apply if the Commission determines, in consultation with the Secretary of Agriculture, that an alternative fuel is economically practicable and reasonably available. In order to give effect to this section, the Commission issued a notice of proposed rulemaking in this proceeding on May 2, 1979 and is reassessing this proposed rulemaking.

*B. The First Proposed Rule*

The rule proposed in the notice of May 2, 1979 would have established a procedure of case-by-case rulemaking applicable to certain essential agricultural establishments that use large amounts of natural gas as boiler fuel. To determine if alternative fuel is reasonably available and economically practicable for such uses, the proposed rule required an essential agricultural use establishment to file a petition for rulemaking and accompanying data if the establishment (1) requested to have natural gas used as boiler fuel classified as a Priority 2 entitlement by an interstate pipeline, (2) had the capacity to burn over 300 Mcf of gas on a peak day, and (3) had used a fuel other than natural gas for 60 consecutive days during 1976 through 1978. A rulemaking proceeding would then have been conducted to determine whether the alternative fuel was reasonably available and economically practicable for that essential agricultural use establishment.

*C. Comments on the First Proposed Rule*

The deadline for filing comments on the proposed rule was May 30, 1979. A public hearing was held on May 23, 1979. At the hearing, interested persons were given the opportunity to present their views to a panel consisting of three representatives of the Commission, a representative of the Economic Regulatory Administration, and a representative of the Department of Agriculture.

The overwhelming majority of those filing comments opposed the proposal for individual rulemakings. Some emphasized the administrative problems that would be created by such a plethora of individual rulemakings. Others maintained that the filing requirements were unduly burdensome. Many of the commentators suggested

[1] Order No. 29, Docket No. RM79-15. In a separate rulemaking the Commission promulgated an interim rule giving effect to Section 401 for the period of April 1, 1979, to October 31, 1979. (Docket No. RM79-13, March 6, 1979). The permanent rule of Order No. 29 affects deliveries of natural gas for the winter heating season of 1979-1980 and thereafter.

that a generic determination of the reasonable availability and economic practicability of specific fuels would be preferable. Commentators urged that DOE has sufficient data available to make this determination with reference to certain fuels.

## II. Basis of the New Proposal

Upon consideration of the comments addressing this issue, the Commission has decided to propose a different rule, providing for a generic determination rather than the case-by-case approach orginially suggested. Specifically, the rule proposed herein makes the substantive determination that, at present and over the next heating season, residual fuel oil and coal are generally economically practicable and reasonably available alternative fuels for any essential agricultural use establishment that has used either of those fuels in the past six years and retains the physical capability to use them now. In addition, the rule presumes that new boilers [2] capable of using more than 300 Mcf of gas per day have an economically practicable alternative fuel reasonably available.

The Commission recognizes that particular circumstances may warrant exception to the general rule. In cases where application of the rule would result in the situations sought to be avoided by Congress when it enacted section 401, agricultural users should file for an adjustment under section 502(c) of the NGPA and § 1.41 of the Commission's Rules of Practice and Procedure. The Commission's section 502(c) procedures will be discussed in more detail below.

The rule we are now proposing would affect only agricultural users that have demonstrated an ability to use certain alternative fuels in the past and that have retained the necessary physical capability to use those fuels in view of natural gas. The rule would also apply to new boilers installed after August 29, 1979 which are capable of using more than 300 Mcf of natural gas per day. The ability to use an alternative fuel does not, by itself, disqualify a particular agricultural establishment from Priority 2 classification. The particular alternative fuel that the establishment is capable of using must meet the two-pronged test of being economically practicable and reasonably available. The proposed rule makes the determination that at this time and at least for the forthcoming winter heating season, the data available establish that residual fuel oil and coal are economically practicable and reasonably available to all essential agricultural users capable of using these fuels.[3] The Commission believes it is not in a position at this time to make such a finding with respect to middle distillates.

In making the findings concerning relative availability of residual fuel oil and middle distillates, the Commission reaffirms the general position it took with respect to the Fuel Oil Displacement Rule, Order No. 30 and Rehearing, Order No. 30–A.[4] That rule allows the burning of excess natural gas that is surplus to a pipeline or distributor's current needs in boilers to displace the use of middle distillates and residual fuel oil. When that aspect of Order 30 that might result in displacement of residual fuel oil was challenged, the Commission on rehearing stated that Order 30 was not based upon a shortage of residual fuel oil *per se*.

"First, there does appear to be excess deliverability of natural gas which may be utilized to displace fuel oil. According to Department of Energy estimates, even if all essential agricultural users are given 100% of their needs, 341 additional Mcf of natural gas deliverability remains.[9] Second, Order No. 30 is prompted by a shortage of middle distillate fuel oil.[10] The distillate shortage has been documented in the record established in Docket No. RM79–34.[11]

However, BUG's suggestion that Order No. 30 authorization be conditioned only upon middle distillate displacement must be rejected. While the objective of Order No. 30 centers upon displacing middle distillate fuel oil, this Commission is unable to determine that this objective would be best advanced by limiting authorization solely to transactions involving the direct displacement of middle distillate fuel oil with natural gas. The refinery and distribution of petroleum products is a vast and complex area with which the Commission has imperfect knowledge. Nonetheless, it is clear to us that transactions involving the displacement of residual fuel oil could in some instances have the same ultimate beneficial impact on middle distillate consumers as would a transaction involving the direct displacement of middle distillates. For example, displacing residual oil with natural gas will increase availability of residual fuel oil to other users. If such other users have the capability to burn either residual or middle distillates, the increased supply and/or lower price of residual fuel oil to these users may result in the displacement of middle distillate fuel oil with residual fuel oil.

In addition, residual oil can often be further refined to produce additional distillate fuel oil. Some refiners may find it profitable to reduce yields of residual fuel oil and maximize yields of middle distillate fuel oil, if Order No. 30 reduces demand for residual fuel oil.

These illustrations suggest that there is not a sharp division between residual fuel oil and middle distillate oil, either as to how such products are refined or how they are ultimately consumed. Transactions involving the displacement of residual fuel oil may, ultimately, have the same beneficial impact on distillate supplies as transactions involving the direct displacement of middle distillate fuel oil.

Further, the objective of Order No. 30 is not only to displace middle distillate fuel oil, but also to reduce our dependence on imported oil. This dependence has created the need for the President to declare the previously mentioned National Energy Supply Shortage. Because roughly one million barrels per day of residual fuel oil is imported, the Order No. 30 program accordingly will directly reduce the petroleum imports. Accordingly, the Commission, concludes that any decision to narrow the scope of Order No. 30 to permit only direct displacement of middle distillates could inhibit rather than enhance the purposes of the program."

The Commission believes that this view of relative fuel availability remains pertinent. However, the purpose of Order 30 (oil displacement) is substantially different than the purpose of this proposed rule which is to establish gas curtailment priorities. Order 30 provides for the displacement of fuel oils by *excess volumes of natural gas*. In contrast, the purpose of this proposed rule is to determine which users can most readily and economically switch to some other fuel should there be a *shortage of natural gas*. The Commission believes that residual fuel oil is reasonably available as a substitute should users need to use it in the face of a shortage; middle distillates, on the other hand, are not available for such purposes at this time.

[2] New boilers are those boilers installed after August 29, 1979.

[3] The Commission hopes to make an alternative fuel rule effective for this winter heating season. The Commission has requested staff to do an environmental assessment of the proposed rule. Technical Staff has concluded on the basis of its environmental assessment that an environmental impact statement is not necessary. However, should the Commission determine an environmental impact statement is necessary it shall issue one for public comment before acting on a permanent curtailment rule. Nonetheless, it is possible that an interim rule on alternative fuel could be issued before completion of the environmental impact statement, should one be found necessary.

[4] Draft Order 30, approved in principle, August, 1979. Order 30–A, issued May 25, 1979, *Fed. Reg.* 30323.

[9] Further Comments of the Department of Energy submitted May 7, 1979, page 11.

[10] "[M] any residential, commercial and small industrial fuel oil customers will be particularly affected by high-priced and possibly inadequate distillate fuel oil. It is this Commission's responsibility to afford these users, who would be considered 'high-priority' if served by natural gas, relief within our discretion so long as this relief within our discretion so long as this relief does not come at the expense of other high-priority users." Order No. 30 at page 7.

[11] Further Comments of the Department of Energy, submitted May 7, 1979, at page 2.

*A. Reasonable Availability of Fuels.* Official statistics indicate there are reasonably adequate supplies of coal and residual fuel oil. DOE's *Monthly Energy Review* for July 1979 indicates that residual fuel oil is in relatively plentiful supply. Stocks for December 1978 exceeded 90 million barrels,[5] well above the 67 million considered the munimum acceptable level for that time of year.[6] So far this year, stocks have continuously exceeded the minimum acceptable level.[7] As of the end of May this year, residual fuel oil stocks were 13.5 percent greater than for the same month a year ago.[8] Approximately 48 percent of all the residual fuel oil (domestic refinery production plus imports) consumed in the U.S. during 1978 was high sulfur residual fuel oil.[9] High sulfur oil, in general, sells for less than low sulfur oil. The following table shows domestic production and imports of high sulfur residual fuel oil plus end-of-month stocks for February 1979.

| Source | Residual fuel oil (February 1979)[10] | | |
|---|---|---|---|
| | High sulfur | Total | High sulfur |
| | (In millions of barrels) | | (Percent) |
| U.S. refinery production | 27,473 | 50,188 | 54.7 |
| Imports | 15,120 | 36,590 | 41.3 |
| Subtotals | 42,593 | 86,778 | 49.1 |
| Stocks (end-of-month) | 36,334 | 68,229 | 53.3 |
| Grand total | 78,927 | 155,007 | 50.9 |

[10] Energy Data Reports, Availability of Heavy Fuels Oils by Sulfur Levels, February 1979.

Compared to the same month a year ago, total residual stocks in February 1979 were 5.2 percent higher while high sulfur stocks were greater by 13.4 percent.[11]

Coal is also readily available to customers capable of using it. On an annual basis, production, not including imports, has historically exceeded domestic consumption. Additionally, stocks of bituminous and lignite coal at the end of April this year were 4.2 percent higher than they were twelve months earlier.[12]

The Commission has no information that would lead it to believe that supply situation of either residual fuel oil or coal is likely to change substantially in the forseeable future.

As discussed, the Commission has evaluated middle distillate availability in connection with Order No. 30 and has found that distillate fuel oil, including No. 4 fuel oil, is in short supply.[13] The nation's middle distillate supply as of the the end of July 1979, was about 165 million barrels. Although slightly above the minimum acceptable level for this time of year, it is 9% lower than one year ago.[14] (The Department of Energy estimates that distillate stocks must reach 240 million barrels to meet this coming winter heating season demand. Order No. 30–A at 4). Therefore the proposed rule does not contain a Commission determination that distillate fuel oil is reasonably available for essential argicultural uses at this time. It follows, therefore, that if an essential agricultural user can use only natural gas or middle distillates, the Commission would not consider such user to have a reasonably available alternative fuel.

As changes in the supply and demand of fuels occur, the Commission will have to consider from time to time the availability of various fuels and particularly the availability of middle distillates. However, the Commission does not intend to make such a reexamination until after the coming heating season. Also, any change in such determination would be made effective prospectively with a reasonable period for adjustment.

In sum, on the basis of the information available to it, the Commission proposes to find that residual fuel oil and coal are now, and will be during the coming winter heating season, reasonably available to essential agricultural use establishments capable of using either fuels. The Commission welcomes comment on the empirical support for its judgment that residual fuel oil and coal are readily available but middle distillates are not.

*B. Economic Practicability*

The Commission notes that the NGPA Conference Report provides some guidance on the meaning of "economic practicability". One of the reasons for the requirement is to avoid unnecessary increases in the cost of food.[15] Moreover, a fuel is not economically practicable if it would require a "switch to high-cost alternatives."[16]

The term "economically practicable" is also used as part of the alternative fuel test of section 402(b) (industrial process and feedstock uses). In discussing that section, the Conference Report says that "the term economically practicable" is intended to have the same meaning as the Commission's standard of economic feasibility under "extraordinary relief in curtailment cases."[17]

The Commission specifically requests comment on the "extraordinary relief" standard mentioned above. Is it an appropriate standard for determining economic practicability of alternative fuels under section 401(b) of the NGPA? If so, is it the only standard? How can it be applied? Does the phrase "economic feasibility" as used in the Conference Report apply only to the cost of converting a plant to the use of alternative fuel? Or does it apply to the cost of the fuel itself?[18] In other words, under the test of economic feasibility as used for extraordinary relief in curtailment cases, is a fuel other than

[5] *DOE Monthly Energy Review*, July, 1979 at 42.

[6] *DOE Weekly Petroleum Status Report*, August 3, 1979, at 9. Estimated minimum acceptable level is defined as the level to which stocks may fall without disruption of customer deliveries or the creation of spot shortages.

[7] *Id.* at 20.

[8] *DOE Monthly Energy Review*, July 1979, at 42.

[9] *See* Energy Data Reports, Availability of Heavy Fuel Oils by Sulfur Levels, December 1978. High sulfur residual fuel oil is that residual fuel oil which contains greater than 1 percent sulfur content by weight.

[11] *See* Energy Data Reports, Availability of Heavy Fuel Oils by Sulfur Levels, February 1978 at 2 and February 1979 at 3.

[12] *DOE Monthly Energy Review*, July 1979, at 58.

[13] Order No. 30, Docket No. RM79–34, Final Rule, May 17, 1979, at 7. See also, Order No. 30–A, Order on Rehearing.

[14] *DOE Weekly Petroleum Status Report*, August 3, 1979, at 17.

[15] The Conference Report does indicate that one of the reasons for the requirement is to avoid unnecessary increases in the cost of food. H.R. Report No. 95–1752, 95th Cong., 2d Sess., 114 (October 10, 1978) (hereinafter cited as Conference Report). Nevertheless, the rule proposed herein applies only to those establishments (other than new boilers) that have demonstrated some reliance on alternative fuel. It seems unlikely that continued reliance on such fuel would significantly increase food costs. If it would, the relevant information is in the hands of individual users, who can apply for adjustments under Section 502(c).

[16] *Id.*

[17] *Id.*

[18] *See, e.g.*, Texas Eastern Transmission Corporation (North Alabama Gas District) Docket No. RP74–39–8, order of February 26, 1975.

natural gas economically practicable if its cost is disproportionately high compared to the cost of natural gas?

Because we are of the opinion that middle distillates may not be readily available, it is unnecessary to address the economic practicability of these fuels.

Whatever standard is used, it would appear that coal should be deemed an economically practicable alternative fuel. On a Btu basis, it appears to be the least expensive fuel available. The average price of coal delivered to an electric utility plant was $1.17 per MMBtu ($25.15 per ton) in March, 1979.[19] This is less than half the average price of oil $2.61 per MMBtu delivered to electric utilities at that time, and 28 percent less than the comparable price for gas ($1.63 per MMBtu).[20] Thus, on an absolute basis coal is, in general, less expensive than natural gas. Although the cost of fueling industrial coal fired boilers may well differ from the average cost incurred by electric utilities, it seems reasonable to assume that the relative cost of fuels to the electric utility industry will be similar for all users in general.

It also appears that residual fuel oil should be considered economically practicable. The table below shows the average nationwide prices paid for residual fuel oil and interstate natural gas by industrial customers from 1976 through April 1979.

**Prices Paid by Industrial Customers for Residual Fuel Oil and Interstate and Natural Gas**

| | Residual fuel oil price [21] | | Interstate P/L gas price to industrials [23] | Differential—residual versus gas [24] | |
|---|---|---|---|---|---|
| | High sulfur [22] | Total | | High sulfur | Total |
| | (Dollars per million Btu) | | (Dollars per 1,000 ft³) | (Dollars per 1,000 ft³) | |
| Year and month: | | | | | |
| 1976 | 1.66 | 1.83 | 0.97 | 0.69 | 0.86 |
| 1977 | 1.95 | 2.10 | 1.32 | .63 | .78 |
| 1978 | 1.86 | 2.03 | 1.54 | .32 | .49 |
| 1979: | | | | | |
| January | 1.90 | 2.25 | 1.92 | (.02) | .33 |
| February | 1.95 | 2.33 | 1.95 | | .38 |
| March | 2.23 | 2.54 | 1.97 | .36 | .67 |
| April | 2.32 | 2.64 | 1.91 | .41 | .73 |

[21] *DOE Monthly Energy Review*, July 1979, at 88. The prices shown for residual fuel oil are retail prices converted from dollars per barrel to dollars per MMBtu. The conversion is based on a factor of 6,287,000 Btu/barrel. *Id.* at 108.

[22] Greater than one percent sulfur content.

[23] *Energy Data Report*, Financial Statistics of Electric Utilities and Interstate Natural Gas Pipeline Companies, December 1977, December 1978 and the months indicated for 1979. One Mcf of gas is the approximate equivalent of one MMBtu.

[24] Residual fuel oil prices less interstate gas prices.

While the price data indicate that residual fuel oil is more expensive than natural gas on an absolute basis, on a *relative* basis, residual fuel oil has become *less* expensive as an alternative fuel in recent years. Thus, it appears that for customers with the installed physical capability, residual fuel oil, especially high sulfur oil, is economically practicable as an alternative fuel for natural gas. Admittedly the above fuel oil prices do not reflect the recent hike in OPEC crude oil prices set in June of this year. However, we will continue to monitor residual fuel oil prices as well as the prices of other fuels during and after this initial rulemaking proceeding. On the average low sulfur residual fuel oil was about 31 cents per MMBtu (16.5 percent) more expensive than high sulfure residual fuel oil during 1978. The difference between low sulfur and high sulfur residual fuel oil prices increased to 59 cents per MMBtu in April of this year.[25]

The proposed rule does not assume the conversion of any facilities not presently equipped to use alternative fuels. Nevertheless, it is a common knowledge that new boilers can be constructed with dual fuel capability relatively inexpensively. Consequently, the proposed rule presumes that boilers capable of using over 300 Mcf per day and installed after 1979, are able to use an alternative fuel that is reasonably available and economically practicable.[26]

The proposed rule would measure a boiler's capacity on its manufacturer's nameplate rating, expressed in MMBtu's per hour for a 16 hour period. Although some boilers could be operated at a rate above or below the nameplate rating, the Commission believes that nameplate rating is the most objective, verifiable, administratively feasible standard to use in determining a boiler's capability. Generally, it is not considered efficient to limit a boiler's operation to an 8 hour day, but neither do all boilers operate 24 hours a day. The 16 hour period was selected, therefore, as a reasonable middle ground.

Some commentators on the rule first proposed in this docket argued that no fuel may be deemed economically practicable if it costs more than natural gas. These arguments were usually supported by a reference to the statement in the Conference Report that the "determination that an alternative fuel is 'economically practicable' shall not include a requirement to *switch* to *high* cost alternatives" (Emphasis added). The proposed rule applies only to new boilers with capacity in excess of 300 Mcf per day and to establishments already capable of using alternative fuels. Under this proposed rule, no agricultural use establishment will be required to switch fuels. Furthermore, the Commission does not believe that "higher cost" is the same as "high" cost.

Natural gas has long been and remains a relatively inexpensive fuel. Even so, may consumers have also used other fuels as a supplement to or in lieu of natural gas. We do not think that enactment of the NGPA suddenly made all higher cost fuels "economically impracticable". Nationwide the prices of alternative fuels relative to the price of natural gas have actually declined since 1974. See Appendix A.

As previously mentioned, the Commission is aware that the relative cost as well as availability of fuels is subject to change. The Commission will necessarily and of its own motion make new determinations on the basis of changes in circumstances. Nonetheless, any interested person may petition the Commission to initiate a rulemaking proceeding to make new determinations based upon changes in circumstances.

The Commission is aware that a generic rule on reasonable availability

[19] *Energy Data Report*, monthly report, Cost and Quality of Fuels for Electric Utility Plants, FPC Form No 423, March, 1979, at pages iii and v.

[20] *Id.* at iii.

[25] See *DOE Monthly Energy Review*, July 1979, at 88.

Note.—Low sulfur prices were estimated based on the simple average of retail prices shown for residual fuel oil with less than 1 percent sulfur content.

[26] In the proposed rule the term "boilers" does not include combustion turbines and diesels, since the alternative fuel for those facilities is usually No. 2 fuel oil, which in the Commission's present view is not reasonably available at present and for which we lack the basis to project reasonable availability for the forthcoming heating season.

and economic practicability will not be fitted to the particular and unique circumstances of every person. Accordingly, any person may file for an adjustment to this rule. Under Section 502(c) of the NGPA the Commission grants adjustments to prevent hardship, inequity and unfair distribution of burden. The Commission does not wish to make the seeking of an adjustment burdensome. Therefore, the Commission seeks comment on what types of data are readily available to essential agricultural users and which would be useful in seeking an adjustment. It also seeks comment on what standards should be used in making determinations concerning adjustments.

## III. Discussion of the Proposed Rule

Section 281.301. This section describes the purpose of this new subpart M —— to determine the economic practicability and reasonable availability of alternative fuels as prescribed in section 401(b) of the NGPA.

Section 281.302. This section sets forth the essential agricultural users which are subject to this alternative fuel determination. To be subject to this alternative fuel rule, an essential agricultural user must (1) have requested that natural gas be classified as priority 2 and (2) have the ability to use an alternative fuel.

Section 281.303. Sets forth definitions used in the subpart. "Ability to use" a particular alternative fuel means that essential agricultural user has installed the physical capability to use the alternative fuel and that he has actually used the altenative fuel at some time beginning in 1974. "Alternative fuel" means coal or residual fuel oil. "Residual fuel oil" is defined as Nos. 5 and 6 fuel oil. "Coal" means lignite or any other rank of bituminous or anthracite coal. Other definitions include "boiler", "capacity", "combustion turbine", "diesel engine", "essential agricultural requirements", "essential agricultural use", and "Priority 2 entitlements".

Section 281.304. This section sets forth the general rule that the essential agricultural requirements of an essential agricultural user shall exclude volumes of natural gas for which it has the abaility to use alternative fuel. The rule also provides that a new boiler with the capacity in excess of 300 Mcf of natural gas per day and that is put into use for the first time after August 29, 1979, is deemed to have the ability to use alternative fuel. For purposes of this rule, a boiler excludes combustion turbine engine or a diesel engine. The rule further requires that any essential agricultural user which has already requested Priority 2 classification for requirements for which under this rule he would have alternative fuel must amend its request for Priority 2 treatment and reduce the volume from which it request Priority 2 treatment to exclude volumes for which he has alternative fuel.

A sample calculation of reduction in Priority 2 entitlements may be helpful. Assume an essential agricultural user has requested 1000 Mcf per day priority 2 entitlements. Of that amount, 500 is used as feedstock for which no alternative fuel has ever been used. The remaining 500 is used in a boiler which has installed capability to use residual fuel oil and which has at some time since 1974 used an alternative fuel. The boiler has the capacity to use 700 Mcf per day of natural gas. Section 281.304(b) would require the essential agricultural user to reduce its priority 2 requirements by 500 Mcf per day—the volume for which it has alternative fuel and for which it has requested priority 2 entitlements. The rule further requires that each distribution company and interstate pipeline which receives amended request for Priority 2 treatment because of alternative fuel availability forward these in accordance with the provisions of subpart B.

Section 281.305. This section requires that each essential agricultural user that has requested Priority 2 treatment for natural gas in excess of 300 Mcf on a peak day for boilers, diesel engines and internal combustion engines submit a statement to its direct supplier indicating the uses of the natural gas for which it has sought Priority 2 entitlements. The local distribution companies and interstate pipelines that receive these statements in accordance with subpart B.

## IV. Comment Procedures

### *A. Written Comments*

Interested persons are invited to submit written comments, data, views, or arguments with respect to this proposal. Comments should be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, and should reference Docket No. RM79–40. An original and 14 copies should be filed. All comments received prior to 4:30 p.m. EDT, September 28, 1979, will be considered by the Commission prior to promulgation of final regulations. All written submissions will be placed in the public file which has been established in this docket and which is available for public inspection in the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426, during regular business hours. The Commission will consider all timely comments before acting on matters proposed in this notice.

### *B. Public Hearings*

A public hearing concerning this proposal will be held in Washington, D.C. on September 24, 1979. Any person interested in this proceeding or representing a group or class of persons interested in this proceeding may make a presentation at the hearing provided that a written request to participate is submitted to the Secretary of the Commission at the address given above at least seven days before the date the hearing is to be convened. Requests to participate should include a reference to Docket No. RM79–40, should indicate the hearing in which the person making the request wished to participate, should indicate the amount of time desired, and should include a telephone number where the person making the request may be reached. The presiding officer is authorized to limit oral presentations at the public hearings both as to length and as to substance. Persons participating in the public hearings should, if possible, bring 100 copies of their testimony to the hearing.

The hearing will not be a judicial or evidentiary-type hearing. There will be no cross-examination of persons presenting statements. However, the panel may question such persons and any interested person may submit questions to the presiding officer to be asked of persons making statements. The presiding officer will determine whether the question is relevant and whether the time limitations permit it to be presented. Any further procedural rules will be announced by the presiding officer at the hearings. Transcripts of the hearings will be available in the public file for this proceeding, Docket No. RM79–40, in the Commission's Office of Public Information.

(Natural Gas Act as amended, 15 U.S.C. 717–717w; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 42 FR 46267)

In consideration of the foregoing, it is proposed to amend Part 281, Chapter I of Title 18, Code of Federal Regulations, by adding a new Subpart C to Part 281 to read as set forth below.

By direction of the Commission.

**Kenneth F. Plumb,**

*Secretary.*

**Appendix A.**—*Prices Paid by Electric Utilities for Selected Fuels*

[1973–April 1979]

| Type of fuel | 1973 | 1974 | 1975 | 1976 | 1977 | 1978 | 1979 | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | Jan. | Feb. | Mar. | Apr. |
| | Cents per million Btu | | | | | | | | | |
| FUEL OIL [1] | | | | | | | | | | |
| No. 2 | 114.9 | 217.3 | 215.5 | 235.1 | 264.3 | 271.9 | 293.8 | 309.0 | 320.9 | 369.1 |
| All No. 6 | 79.2 | 190.6 | 201.1 | 195.3 | 219.8 | 211.8 | 227.8 | 240.3 | 259.0 | 263.8 |
| High sulfur No. 6 [2] | 61.7 | 164.5 | 170.5 | 168.7 | 199.9 | 186.7 | 189.8 | 199.4 | 227.5 | 232.3 |
| Low sulfur No. 6 [2] | 85.1 | 203.2 | 213.4 | 207.1 | 229.1 | 225.1 | 246.9 | 260.2 | 278.7 | 288.7 |
| GAS [3] | | | | | | | | | | |
| Firm | 29.9 | 44.3 | 70.2 | 93.6 | 112.8 | 129.3 | 139.1 | 143.3 | 140.3 | 145.1 |
| Interruptible | 39.0 | 54.0 | 84.8 | 124.1 | 163.8 | 179.9 | 197.9 | 202.9 | 202.0 | 198.0 |
| Weighted average | 33.8 | 48.1 | 75.4 | 103.4 | 130.0 | 143.8 | 150.2 | 159.1 | 163.0 | 164.7 |
| COAL [4] | | | | | | | | | | |
| All grades | 40.5 | 71.0 | 81.4 | 84.8 | 94.7 | 111.6 | 115.8 | 114.6 | 116.8 | 120.1 |
| | Price Differentials—Fuel Oil and Coal v. Gas | | | | | | | | | |
| FUEL OIL V. GAS [5] | | | | | | | | | | |
| No. 2 | 81.1 | 169.2 | 140.1 | 131.7 | 134.3 | 128.1 | 143.6 | 149.9 | 157.9 | 204.4 |
| All No. 6 | 45.4 | 142.5 | 125.7 | 91.9 | 89.8 | 68.0 | 77.6 | 81.2 | 96.0 | 99.1 |
| High sulfur No. 6 | 27.9 | 116.4 | 95.1 | 65.3 | 69.9 | 42.9 | 39.6 | 40.3 | 64.5 | 67.6 |
| Low sulfur No. 6 | 51.3 | 155.1 | 138.0 | 103.7 | 99.1 | 81.3 | 96.7 | 101.1 | 115.7 | 124.0 |
| COAL V. GAS [6] | | | | | | | | | | |
| All types | 6.7 | 22.9 | 6.0 | (18.6) | (35.3) | (32.2) | (34.4) | (44.5) | (46.2) | (44.6) |

[1] Weighted average prices of fuel oil delivered to steam electric plants. Excludes peaking fuel prices.

[2] Includes insignificant amounts of No. 4, and No. 5 oil, crude and topped crude. High sulfur oil has greater than 1 percent sulfur. Low sulfur oil less than 1 percent sulfur.

[3] Weighted average prices of gas delivered to steam electric plants. Excludes peaking prices. Includes small amounts of coke oven gas, refinery gas, and blast furnace gas.

[4] Weighted average price of all grades of coal delivered to electric utilities.

[5] Fuel oil prices less weighted average gas price.

[6] Coal price less weighted average gas price.

Source: FPC Form 423, *Annual Summary of Cost and Quality of Electric Utility Plant Fuels* (1973–1977). Data for 1978 and 1979 from FPC Form 423, Energy Data Reports, *Monthly Reports, Costs and Quality of Fuels for Electric Utility Plants.* Note: April 1979 data are preliminary.

1. Part 281 is amended in the Table of Contents by adding a new subpart C to read as follows:

## PART 281—NATURAL GAS CURTAILMENT

* * * * *

### Subpart C—Alternative Fuel Determination

Sec.
281.301 Purpose.
281.302 Applicability.
281.303 Definitions.
281.304 General Rule.
281.305 Filing Requirements.

2. Part 281 is amended by adding a new Subpart C to read as follows:

### Subpart C—Alternative Fuel Determination

#### § 281.301 Purpose.

The purpose of this subpart is to determine the economic practicability and reasonable availability of alternative fuels, as prescribed in Section 401(b) of the NGPA, for essential agricultural users that seek Priority 2 entitlements for natural gas.

#### § 281.302 Applicability.

This subpart applies to each essential agricultural user that:

(a) Requests that natural gas be classified as Priority 2 entitlements by an interstate pipeline under § 281.207; and

(b) Has the ability to use alternative fuel.

#### § 281.303 Definitions.

For purposes of this subpart:

(a) "Ability to use" a particular alternative fuel means that an essential agricultural user has installed the physical capability to use the alternative fuel and has used that alternative fuel (in any amount) at any time after 1973, for an essential agricultural use.

(b) "Alternative fuel" means coal or residual fuel oil.

(c) "Boiler" means a fuel burning device, other than a combustion turbine or diesel engine, used for generating steam or used for generating high temperature hot water that is used for space heating, manufacturing processess, or generating electricity.

(d) "Capacity" means the volumes of natural gas used if the boiler is operated at nameplate rated capacity for a continuous 16 hour period.

(e) "Coal" means lignite or any other rank of bituminous coal or anthracite coal.

(f) "Combustion turbine" means an external combustion engine that uses gaseous or liquid fuel other than residual fuel oil for generating shaft horsepower.

(g) "Diesel engine" means an internal combustion engine that uses gaseous or liquid fuels other than residual fuel oil for generating shaft horsepower.

(h) "Essential agricultural requirements" means volumes of natural gas certified by the Secretary of Agriculture and calculated in accordance with 7 CFR § 2900.4.

(i) "Essential agricultural use" means essential agricultural use as defined in § 281.203(a)(2).

(j) "Priority 2 entitlements" means essential agricultural requirements of an essential agricultural use establishment that an interstate pipeline classifies as Priority 2 in its curtailment plan in accordance with Subpart B.

(k) "Residual fuel oil" means Nos. 5 and 6 oil, Bunker C, and Navy Special as defined in the standard specification for fuel oils published by the American Society for Testing and Materials, ASTM, D396 [Nos. 5 and 6 oils].

#### § 281.305 General rule.

(a)(1) The essential agricultural requirements of an essential agricultural user shall exclude volumes of natural gas for which it has the ability to use alternative fuel.

(2) Any boiler that has a capacity in excess of 300 Mcf of natural gas per day and that is put into service for the first time after August 29, 1979, shall be deemed to have alternative fuel.

(b) Any essential agricultural user which has requested Priority 2 classification for natural gas for which it has the ability to use alternative fuel shall reduce its essential agricultural requirements calculated under § 281.207 to reflect the exclusion of volumes of natural gas for which it has the ability to use alternate fuel as determined in § 281.304(a) and file an amended request for Priority 2 classification in accord with Subpart B.

(c) Each local distribution company and interstate pipeline which received amended requests for Priority 2 classification shall make filings and adjustments necessary under Subpart B.

#### § 281.305 Additional filing requirements.

(a) *Essential agricultural users.* (1) No later than November 1, 1979, an

essential agricultural user that has made, in accordance with § 281.211(b)(1) of subpart B, a request for classification of essential agricultural use entitlements in excess of 300 Mcf on a peak day as Priority 2 entitlements shall submit to the local distribution company supplier or the direct interstate pipeline supplier, as appropriate, a statement setting forth:

(i) The requirements of each boiler, (B) combustion turbine and (C) diesel engine that has a capacity in excess of 300 Mcf per day and for which Priority 2 entitlements have been requested.

(ii) Any fuel other than natural gas which has been used in the boiler, combustion turbine or diesel engine.

(2) The statement under this paragraph shall be signed by a responsible official of the essential agricultural user. The official shall swear or affirm that the statements are true to the best of his information, knowledge, and belief.

(b) *Local distribution companies.* Local distribution companies and interstate pipelines that receive statements under § 281.305(a) shall forward copies of all such statements to the interstate pipelines to whom requests for classification of Priority 2 entitlements were made under § 281.211(b)(a).

[FR Doc. 79-27547 Filed 9-5-79; 8:45 am]

BILLING CODE 6450-01-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

### [24 CFR Part 290]

### [Docket No. R-79-707]

### Management and Disposition of HUD-Owned Multifamily Housing Projects

**AGENCY:** Department of Housing and Urban Development.

**ACTION:** Notice of Transmittal of interim rule to Congress under Section 7(o) of the Department of HUD Act.

**SUMMARY:** Recently enacted legislation authorizes Congress to review certain HUD rules for fifteen (15) calendar days of continuous session of Congress prior to each such rule's publication in the Federal Register. This Notice lists and summarizes for public information an interim rule which the Secretary is submitting to Congress for such review.

**FOR FURTHER INFORMATION CONTACT:** Burton Bloomberg, Director, Office of Regulations, Office of General Counsel, 451 7th Street, S.W., Washington, D.C. 20410 (202) 755-6207.

**SUPPLEMENTARY INFORMATION:** Concurrently with issuance of this Notice, the Secretary is forwarding to the Chairmen and Ranking Minority Members of both the Senate Banking, Housing and Urban Affairs Committee and the House Banking, Finance and Urban Affairs Committee the following rulemaking document:

**24 CFR Part 290—Management and Disposition of HUD-Owned Multifamily Housing Projects**

This interim rule would amend the present interim rule on the disposition program published January 27, 1977. The interim rule represents significant changes in policy and procedure in the management and disposition of HUD-owned multifamily housing projects. The rule reflects HUD's commitment to maintain the stock of decent, safe and sanitary housing affordable by lower income tenants. The rule also reflects HUD's desire to administer the disposition program efficiently and to protect the financial integrity of the insurance funds.

(Section 7(o) of the Department of HUD Act, 42 U.S.C. 3535(o), Section 324 of the Housing and Community Development Amendments of 1978)

Issued at Washington, D.C. August 28, 1979.

**Jay Janis,**

*Acting Secretary, Department of Housing and Urban Development.*

[FR Doc. 79-27743 Filed 9-5-79; 8:45 am]

BILLING CODE 4210-01-M

### Office of Assistant Secretary for Community Planning and Development

### [24 CFR Part 510]

### [Docket No. R-79-706]

### Property Rehabilitation Loans

**AGENCY:** Department of Housing and Urban Development, Assistant Secretary for Community Planning and Development.

**ACTION:** Advance Notice of Proposed Rulemaking.

**SUMMARY:** Section 312 of the Housing Act of 1964 authorizes the provision of direct Federal loans for the rehabilitation of properties in urban renewal, community development block grant, and other eligible areas. The handbook and other guidelines employed to administer the loan program have not been published as formal regulations. The promulgation of Executive Order 12044, Improving Government Regulations and 24 CFR Part 10, the Department's Rulemaking Policies, require that formal regulations be issued for the Section 312 Rehabilitation Loan Program. By this document, HUD (1) gives advance notice of its intent to issue regulations for the program and (2) solicits advice and information from interested parties prior to issuing more specific proposed rulemaking.

**DATE:** Comments must be received on or before November 5, 1979.

**ADDRESS:** Comment should be mailed or delivered to the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410.

**FOR FURTHER INFORMATION CONTACT:** Craig Nickerson, Director, Division of Rehabilitation Management, Office of Urban Rehabilitation and Community Reinvestment, CPD, Telephone—(202) 755-6973, Room 7162.

**SUPPLEMENTARY INFORMATION:** Section 312 of the Housing Act of 1964 (Pub. L. 88-560, Section 312; 42 U.S.C. 1452 (b)) authorizes the provision of direct Federal loans at up to 3 percent interest or more, depending on income, for terms up to 20 years for properties located in urban renewal, Federally-assisted code enforcement, community development block grant, urban homestead and other eligible areas. Contacts with property owners, assuring loan applications comply with Federal, State and local law, and general oversight of rehabilitation construction are the responsibility of the administering local public agency. The program provides funds for loans, but the administrative costs of local public agencies are not included, and they generally are drawn from local project or community development sources. Loans may be for residential (single and multifamily) or nonresidential properties. Priority is given to applications from low- and moderate-income (below 95 percent of median income) owner-occupants. Loans are limited to $27,000 per dwelling unit and $100,000 per nonresidential loan. The loans may be combined with grants or with funds borrowed from other sources to achieve more extensive rehabilitation.

As the initial thrust of the loan program was to support urban renewal projects, guidelines for Section 312 loans were first added to the handbooks that governed urban renewal. These were later consolidated into a single Rehabilitation Financing Handbook (7375.1) which has been amended and augmented by notices and memoranda. It is essential, therefore, to issue regulations to bring the loan program in line with administrative practices for other HUD programs.

HUD encourages comments and information from interested parties about how the loan program should be administered. The Department is especially interested in comments from local governments, housing officials, community development officials, contractors, private lenders (whose loans may be combined with section 312 funds to reach a larger number of borrowers), neighborhood organizations, borrowers and other individuals and groups with knowledge of the section 312 loan program.

Commenters may wish to address the following issues, among others, which are of special interest to the Department:

1. What roles should Federal and local agencies play in the administration of the loan program? Under what circumstances should local agencies be given authority to approve loans and under what circumstances should that authority be withdrawn?

2. To what extent should loans be targeted to areas of concentrated neighborhood revitalization?

3. How should the priority for low- and moderate-income borrowers be established?

4. Under what circumstances should nonresidential rehabilitation be funded?

5. What terms and conditions should be applied to each loan?

6. What costs should be includable in loans? Under what circumstances should refinancing of an existing mortgage be allowed?

7. What rules should be applied to the range of interest rate authorization added by the Housing and Community Development Amendments of 1978?

8. What requirements should be imposed to avoid or minimize displacement?

Comments should be submitted in writing to the Rules Docket Clerk. Communications should identify the regulatory docket number.

(Section 7(d) of the Department of HUD Act (42 U.S.C. 3543(d) and Section 312 of the Housing Act of 1964 (42 U.S.C. 1452(b))).

Issued at Washington, D.C., August 29, 1979.

**Robert C. Embry, Jr.,**

*Assistant Secretary for Community Planning and Development.*

[FR Doc. 79-27744 Filed 9-5-79; 8:45 am]

BILLING CODE 4210-01-M

## Office of the Secretary

## [24 CFR Part 510]

[Docket No. R-79-708]

## Section 312 Rehabilitation Loan Program (Corporate Liability)

**AGENCY:** Department of Housing and Urban Development.

**ACTION:** Notice of Transmittal of Interim Rule to Congress under section 7(o) of the Department of HUD Act.

**SUMMARY:** Recently enacted legislation authorizes Congress to review certain HUD rules for fifteen (15) calendar days of continuous session of Congress prior to each such rule's publication in the **Federal Register**. This Notice lists and summarizes for public information an interim rule which the Secretary is submitting to Congress for such review.

**FOR FURTHER INFORMATION CONTACT:** Burton Bloomberg, Director, Office of Regulations, Office of General Counsel, 451 7th Street, S.W., Washington, D.C. 20410 (202) 755-6207.

**SUPPLEMENTARY INFORMATION:** Concurrently with issuance of this Notice, the Secretary is forwarding to the Chairmen and Ranking Minority Members of both the Senate Banking, Housing and Urban Affairs Committee and the House Banking, Finance and Urban Affairs Committee the following rulemaking document:

### 24 CFR Part 510—Section 312 Rehabilitation Loan Program (Corporate Liability)

This interim rule will amend the Section 312 Rehabilitation Loan Program regulations to redefine when personal liability is required in the case of corporate or partnership borrowers in connection with a Section 312 loan.

(Section 7(o) of the Department of HUD Act, 42 U.S.C. 3535(o), section 324 of the Housing and Community Development Amendments of 1978).

Issued at Washington, D.C. August 30, 1979.

**Jay Janis,**

*Acting Secretary, Department of Housing and Urban Development.*

[FR Doc. 79-27788 Filed 9-5-79; 8:45 am]

BILLING CODE 4210-01-M

## ENVIRONMENTAL PROTECTION AGENCY

## [40 CFR Part 52]

(FRL 1312-7)

## Approval and Promulgation of Implementation Plans; Request for 18-month Extension: Florida, North Carolina, and Tennessee

**AGENCY:** U.S. Environmental Protection Agency, Region IV.

**ACTION:** Proposed rule.

**SUMMARY:** It is proposed to grant an 18-month extension of the January 1, 1979, statutory deadline for the submittal of implementation plan revisions providing for the attainment of the secondary national ambient air quality standard for particulate matter, as required under Part D of Title I of the Clean Air Act, in the following areas: Jacksonville and Tampa, Florida; Spruce Pine, North Carolina; Columbia, Kingsport, Memphis, Nashville and Chattanooga, Tennessee. The States have submitted information showing that none of these areas can attain the secondary standard through the application of reasonably available control technology (RACT). The public is invited to submit written comment on the proposed extensions

**DATE:** To be considered, comments must be received on or before October 9, 1979.

**ADDRESSES:** Comments should be addressed to Winston A. Smith, Chief, Air Programs Branch, EPA Region IV (see address just below). Copies of the materials submitted by the states in support of the 18-month extension requests may be examined during normal business hours at the following locations:

Air Programs Branch, EPA Region IV, 345 Courtland Street, N.E., Atlanta, Georgia, 30308.

Public Information Reference Unit, Library Systems Branch, EPA, 401 M Street, SW., Washington, D.C., 20460.

In addition, the materials relating to each request may be examined in the offices of the respective State air pollution control agency.

**FOR FURTHER INFORMATION CONTACT:** Mr. Walter Bishop, Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland St., NE, Atlanta, GA 30308, (404) 881-3286, or FTS 257-3286.

**SUPPLEMENTARY INFORMATION:** The Florida Department of Environmental Regulation, in its April 30, 1979, submittal of 1979 implementation plan revisions for non-attainment areas in the State, requested an extension of the

deadline for submitting a secondary standard TSP plan for Jacksonville and Tampa and supplied supporting documentation. (The extension request had been the subject of a letter from the agency to EPA on January 16, 1979.) For both areas, the State provided a schedule for developing controls on nontraditional sources of particulate emissions, and showed that RACT alone was inadequate to assure attainment of the standard. In the case of Jacksonville, the State has notified the air pollution control agency of the adjoining State (Georgia) of the extension request since the nonattainment area is in an interstate Air Quality Control Region. Thus, all the requirements of 40 CFR 51.31 governing 18-month extensions have been met.

In the downtown Jacksonville nonattainment area, RACT is in effect for traditional sources of particulate emissions, and all major sources are in compliance with the embodying emission limits. To meet the secondary standard, fugitive dust controls must be devised on a case-by-case basis. Significant nontraditional sources in the area are motor vehicle traffic and sandblasting of ships.

In the downtown Tampa nonattainment area, RACT is in effect for traditional sources of particulates; all major sources are in compliance except the municipal incinerator, which will shut down in 1980. In addition, fugitive emissions from General Portland Cement and Florida Steel are now being controlled—in the latter case, under a Section 120 Delayed Compliance Order. To meet the secondary standard, controls on other nontraditional sources are needed, and an inventory of such sources must be developed. It is already known from microscopic filter analyses that traffice generated particulates contribute significantly to the problem.

On February 1, 1979, the North Carolina Division of Environmental Management submitted a request for an 18-month extension of the deadline for submittal of a plan to attain the secondary TSP standard in the Spruce Pine nonattainment area. The State had previously shown, in a draft plan revision for the area, that the nonattainment was largely due to fugitive emissions from unpaved roads. EPA concurs that RACT is in effect for all traditional sources in the area. Accordingly, it is proposed to grant the State's request for an extension.

On May 4, 9, and 17 and June 21, and 22, 1979, the Tennessee Division of Air Pollution Control requested an 18-month extension of the deadline for submitting plan revisions to assure attainment of the secondary TSP standard in Columbia, Kingsport, Nashville, Memphis and Chattanooga. In each case, it has been shown that RACT alone will not suffice to assure the attainment of the standard. In Columbia (Maury County) and Kingsport (Sullivan County), there are many mineral handling operations which contribute significantly to the particulate problem. In Nashville, Memphis and Chattanooga, reentrained particulate matter from traffic is contributing to the nonattainment problem. The air pollution control agencies of the adjoining states (Virginia, Mississippi, Arkansas and Georgia) have been notified of the extension request since the nonattainment areas are in interstate Air Quality Control Regions. The requirements of 40 CFR 51.31 having been satisfied, the Agency proposes to grant Tennessee's requests for extensions.

The public is invited to participate in this rulemaking by submitting written comments on the proposed extensions. After reviewing all pertinent comments received together with other information available to him, the Administrator will take final action on the extension requests.

(Section 110(b) of the Clean Air Act (42 U.S.C. 7410(b)))

Dated: August 8, 1979.

**John C. White,**

*Regional Administrator.*

[FR Doc. 79-27830 Filed 9-5-79; 8:45 am]

BILLING CODE 6560-01-M

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**[40 CFR Part 52]**

**[FRL 1312-8]**

## Missouri; Proposed Revision to Air Quality Implementation Plan

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to approve several revised state air pollution control regulations as part of the Missouri State Implementation Plan (SIP). Approval means that the regulations will be enforceable against individual sources of air pollution by the federal government as well as by the state government. The EPA is also proposing not to take any formal approval or disapproval action on two additional regulation revisions. This proposal is published to advise the public of the receipt of these proposed revisions and to request comment on the proposal.

**DATES:** Comments must be received before November 5, 1979.

**ADDRESS:** Comments should be sent to William A. Spratlin, Jr., Chief, Air Support Branch, Air and Hazardous Materials Division, Environmental Protection Agency, Region VII, 324 East 11th Street, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:** Charles W. Whitmore, 816-374-3791.

**SUPPLEMENTARY INFORMATION:** On August 28, 1978, the Missouri Department of Natural Resources (DNR) submitted proposed revisions to the Missouri SIP. These revisions were presented at public hearings March 26, 1975, in Jefferson City, Missouri; August 27, 1975, at the Lake of the Ozarks, Missouri; July 28, 1976, in St. Louis, Missouri; March 16, 1977, in St. Louis, Missouri; October 19, 1977, in Jeffereson City, Missouri; and December 8, 1977, in St. Louis, Missouri. The revisions were formally adopted by the Missouri Air Conservation Commission (MACC) and became effective state regulations as of July 10, 1975; December 29, 1975; October 11, 1976; July 11, 1977; February 11, 1978; and March 11, 1978.

Effective July 1, 1976, the State of Missouri revised the numbering system for all air pollution control regulations throughout the state. The state air regulations are now contained in Title 10, Division 10 of the Code of State Regulations, designated as 10 CSR 10. Neither title nor content of the regulations were changed by this renumbering.

A new chapter, "Chapter 6—Air Quality Standards, Definitions, and Reference Methods for the State of Missouri," has been added. This chapter contains the state ambient air quality standards, all definitions, and both source testing methods and ambient monitoring methods. With the exceptions discussed below, the contents of this chapter were transferred from other portions of the existing regulations. The ambient air quality standard for sulfur dioxide ($SO_2$) was revised to be consistent with the National Ambient Air Quality Standards (NAAQS). Regulation 10 CSR 10-6.030 is a new rule which defines the methods for emission testing of air pollution sources and adopts the EPA Reference Methods (40 CFR Part 60, Appendix A) for Methods 1 through 11. Regulation 10 CSR 10-6.040 is a new rule which provides reference methods for determining ambient air quality and contains the EPA Reference Methods (40 CFR Part 50, Appendices A through F), and methods for the determination of concentrations of hydrogen sulfide, sulfuric acid mist, and sulfur trioxide. The techniques for determining the heating value and sulfur content of fuels were also clarified.

Regulations 10 CSR 10–2.030; 10 CSR 10–3.050; 10 CSR 10–4.030; and 10 CSR 10–5.050 which are process weight regulations for sources of particulates, have been revised to exclude cotton gins, quarries, and grain handling operations. Application of process weight regulations to cotton gins and grain handling operations is extremely difficult because of the multiple ducting, transfer points and control systems. Quarries do not have a stack which can be tested. The MACC determined these sources were being stringently controlled by the existing opacity regulations and that no increase in emissions would occur as a result of this exemption.

Regulations 10 CSR 10–2.190; 10 CSR 10–3.140; 10 CSR 10–4.180; and 10 CSR 10–5.280 adopt by reference the federal "Standards of Performance for New Stationary Sources," 40 CFR Part 60, as in effect on January 18, 1975.

Regulations 10 CSR 10–2.060; 10 CSR 10–3.080; 10 CSR 10–4.060; and 10 CSR 10–5.090 were revised to require the installation of continuous opacity monitors on certain coal-fired power plants, cement kilns and fluid bed catalytic cracking unit catalyst regenerators at petroleum refineries. These regulations appear to fulfil the requirements for continuous opacity monitoring and reporting of data from fossil fuel-fired steam generators and from fluid bed catalytic cracking unit catalyst regenerators as required by 40 CFR 51.19(e). There are no federal requirements for continuous opacity monitoring of Portland cement plants.

Regulation 10 CSR 10–5.140 has been rescinded. This regulation provided a method for the determination of settleable acid and alkaline mist. The intent was to identify sources of such mists. Attempts to use this technique proved unsatisfactory. Since no ambient air quality standard exists for these pollutants, the rescission would have no effect on allowable emissions of criteria pollutants.

Regulations 10 CSR 10–2.160; 10 CSR 10–3.100; and 10 CSR 10–4.150 were revised to remove that portion which provides for control of $SO_2$ emissions from indirect heating sources, and Regulations 10 CSR 10–2.200; 10 CSR 10–3.150; and 10 CSR 10–4.190 were adopted to control $SO_2$ emissions from indirect heating sources and include specific individual allowable emission rates for coal-fired power plants. The specified emission rates are based on the coal supplies currently used by the individual sources; thus, there is no relaxation of emission rates and no consumption of prevention of significant air quality deterioration increment. Available ambient air quality data demonstrate attainment of the NAAQS for $SO_2$ in all areas of the state which are impacted by these sources. Diffusion modeling does not predict any violations of the NAAQS. These regulations were developed because the existing regulations were of the "fenceline" type which allow consideration of atmospheric dispersion and are not consistent with the requirements of the Clean Air Act.

The decision to approve or disapprove these revisions will be based on whether or not they meet the applicable requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, "Requirements for Preparation, Adoption, and Submittal of State Implementation Plans."

For reasons stated in the discussion below, the EPA has determined that it would not be appropriate to take action on the following two regulation changes at this time. Regulation 10 CSR 10–5.220 provides for the control of gasoline vapors in the St. Louis Air Quality Control Region (AQCR). This regulation is consistent with the EPA guidelines for the control of gasoline vapors during transfer from refineries or pipelines to service stations (Stage I Vapor Recovery). This regulation is one of many which must be developed to attain the NAAQS for ozone. As such, the degree of air quality improvement to be expected will be discussed in a control strategy demonstration to be developed, and submitted with SIP revisions required by the Clean Air Act Amendments of 1977 for areas where the ambient air quality standards are not being attained.

Regulations 10 CSR 10–2.050; 10 CSR 10–3.070 and 10 CSR 10–5.100 limit particulate emissions from the handling, transporting and storage of materials. Visible emissions beyond the property line where the emissions originate are prohibited if the visible emissions beyond the property line contain particles of greater than 40 microns in size. These regulations have been amended to make them effective only when at least one complaint is filed with the executive secretary of the MACC.

No control strategy demonstration has been developed to support these regulation changes. The DNR stated that no control strategy was necessary because the method used to verify compliance only monitors particles of less than 40 microns and therefore, the regulation has no impact on ambient concentrations of a criteria pollutant.

The EPA believes that a control stategy demonstration is required. When the presence of at least one particle of greater than 40 microns is verified, the regulations prohibit all visible emissions beyond the property line, regardless of particle size. The regulations state that the size of the particulate matter "shall be determined by microscopy." Certainly, microscopy is not limited to a size of 40 microns or greater.

The reference method for determination of suspended particulates (40 CFR 50, Appendix B) collect particles in the range of 0.01 to 100 microns. The NAAQS for particulate matter are based on the determination of air quality using this reference method. Thus, particles of greater than 40 microns do impact on concentrations of a criteria pollutant. In addition, the regulations provide for control of all visible emissions, regardless of size. Therefore, these regulations do impact the attainment and maintenance of the NAAQS for particulate matter, and any change of such regulations requires an adequate control strategy demonstration, which must be subjected to appropriate public participation, prior to any EPA action on the proposed revision.

Copies of the proposal and supporting documents are available for public inspection at the office of EPA, Region VII, 324 East 11th Street, Kansas City, Missouri 64106; Public Information Reference Unit, Library Systems Branch (PM–213), 401 M Street, SW., Washington, D.C. 20460; and the Missouri Department of Natural Resources, 2010 Missouri Boulevard, Jefferson City, Missouri 65101.

(42 U.S.C. 1857c–5)

Dated: August 24, 1979.

**Kathleen Q. Camin,**

*Regional Administrator.*

[FR Doc. 79–27831 Filed 9–5–79; 8:45 am]

BILLING CODE 6560–01–M

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## DEPARTMENT OF COMMERCE

## Maritime Administration

## [46 CFR Part 254]

## Operating-Differential Subsidy for Dry Bulk Cargo Vessels; Proposed Rulemaking

**AGENCY:** Maritime Administration, Department of Commerce.

**ACTION:** Proposed regulations.

**SUMMARY:** The proposed Part 254 sets forth regulations governing the payment of operating-differential subsidy to operators of dry bulk cargo vessels pursuant to Title VI of the Merchant Marine Act of 1936, as amended (the Act) (46 U.S.C. 1171–1180). Regulations promulgated by the Maritime Administration concerning the operation

of bulk cargo vessels on the Great Lakes (46 CFR Part 279), the carriage of grain from the United States to the Union of Soviet Socialist Republics (46 CFR Part 294), and operating-differential subsidy for bulk cargo vessels engaged in worldwide services (46 CFR Part 252) remain in effect. Any specific provision of this Part relating to dry bulk vessels shall govern where inconsistent with any general provision in 46 CFR Part 252.

**DATES:** All comments received on or before October 29, 1979, will be considered in the formulation of final regulations.

**ADDRESS:** Office of Ship Operating Costs, Maritime Administration, Washington, D.C. 20230.

**FOR FURTHER INFORMATION CONTACT:** Frederick R. Larson, Office of Ship Operating Costs, Maritime Administration, Washington, D.C. 20230.

**SUPPLEMENTARY INFORMATION:** The proposed regulations provide for contracting and payment of subsidy to United States citizens who operate dry bulk cargo vessels, that are registered in the United States, in the essential services of the United States. Generally, a vessel is deemed to be in an essential service if it is probable that the vessel will be employed in the carriage of a significant volume of cargo in the U.S. foreign commerce during a substantial part of its economic life (§ 254.20). In making this determination, a vessel charter exceeding 5 years, that may be extended beyond 5 years, must be submitted to the Assistant Secretary for Maritime Affairs for approval. A charter of five years or less will not need approval.

The amount of subsidy payable shall be the excess of U.S. costs over the estimated foreign costs of the items of expense found by the Board to be eligible for subsidy pursuant to § 254.12. The amount of subsidy shall be determined at the beginning of the charter, but not more often than once a year, and shall remain in effect for the duration of the charter. Sections 254.50 and 254.51 describe the operational and financial reporting requirements. Forms and procedures for the billing of subsidy are provided in §§ 254.60 and 254.61. Finally, § 254.62 provides the operator with appeal procedures for audits and administrative determinations.

A determination has been made that the new proposed Part 254 does not meet any of the criteria for requiring a regulatory analysis that have been established pursuant to EO 12044 (43 FR 12661), Department of Commerce Administrative Order 218-7 and Maritime Administration procedures (44 FR 2082). Comments may be addressed, and data, views, and arguments concerning the proposed regulation may be submitted in duplicate to the Secretary, Maritime Administration, Washington, D.C. 20230. All material received on or before October 29, 1979, will be considered. All comments in response to this proposal will be available for public inspection during normal business hours at the foregoing address.

Accordingly, adoption of Part 254 Title 46 of the Code of Federal Regulations is proposed, to read as follows:

## PART 254—REGULATIONS GOVERNING THE AWARD AND ADMINISTRATION OF OPERATING-DIFFERENTIAL SUBSIDY FOR DRY BULK CARGO VESSELS

### Subpart A—Introduction

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254.50 Operational.
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### Subpart F—Subsidy Payment and Billing Procedures

254.60 Payment of subsidy.
254.61 Subsidy billing procedures.
254.62 Appeal procedures.

**Authority.**—Sec. 204(b) Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)); Reorganization Plan 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 840) as amended by Pub. L. 91-469 (84 Stat. 1036); Department of Commerce Organization Order 10-8 (38 FR 19707, July 23, 1973).

### Subpart A—Introduction

#### § 254.1 Purpose.

This part prescribes regulations implementing Title VI of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1171-1176 and 1178-1181) with respect to the award and administration of operating-differential subsidy for dry bulk cargo vessels engaged in carrying dry bulk cargo in essential services in the foreign commerce of the United States.

#### § 254.2 Definitions.

When used in this part:

(a) *Act* means the Merchant Marine Act, 1936, as amended (46 U.S.C. 1101-1294).

(b) *Board* means the Maritime Subsidy Board of the Maritime Administration, Department of Commerce.

(c) *Vessel* means a dry bulk cargo vessel built to carry solid commodities that in normal shipment are contained only by the vessel's structure.

(d) *Charter* means any agreement between two or more parties which governs the employment of the vessel.

(e) *Citizen of the United States* means a corporation, partnership, association or other legal entity that is deemed a citizen of the United States under section 2 of the Shipping Act, 1916, as amended (46 U.S.C. 802) and section 905(c) of the Act.

(f) *Essential Service* means the dry bulk cargo services that qualify for payment to the operator of the amount of subsidy under the operating differential subsidy agreement as described in § 254.20.

(g) *Foreign-Flag Competition* means those foreign-flag vessels deemed by the Board to be competitive with the subsidized vessel in an essential dry bulk cargo-carrying service.

(h) *Operator* means any individual, partnership, corporation or association or other entity entitled to receive subsidy under an ODSA.

(i) *ODS* means operating-differential subsidy in accordance with Section 603(b) of the Act.

(j) *ODSA* means the operating-differential subsidy agreement entered into by an operator and the United States Government for the payment of ODS.

(k) *Normal Crew Complement* means the basic number of crew members of a U.S. flag vessel as established by collective bargaining with the unions involved. In cases where collective bargaining agreements provide that the crew may vary in number, the lower number will be the normal crew complement.

(l) *Subsidizable Crew Complement* for any existing vessel or proposed vessel construction or reconstruction means the crew complement approved by the Maritime Subsidy Board and incorporated in the ODSA.

(m) *Reduced Crew Period* means any period when a vessel under an ODSA is in port and the Operator reduces the crew to save wage costs. The Reduced Crew Period shall begin the day that the vessel's normal crew complement is reduced by 4 or more and division of wages is not paid for the missing crew members. Such period shall end the day prior to the day that the vessel's crew complement is restored to a number not more than 3 less than the normal crew complement, or division of wages is paid for the missing crew members, or the vessel is temporarily or permanently withdrawn from subsidized service, whichever occurs first.

(n) *Region Director* means the Region Director of the Maritime Administration within whose region the principal office of the operator is located.

(o) *Assistant Secretary* means the Assistant Secretary of Commerce for Maritime Affairs.

**§ 254.3 Mailing Address.**

Reports required by these regulations, application forms, and requests for information shall be submitted to the appropriate office at the Maritime Administration, Department of Commerce, Washington, D.C. 20230.

## Subpart B—Contract Grants

**§ 254.10 Eligibility.**

Any Citizen of the United States may apply to the Board for the payment of ODS for the operation of a Dry Bulk Cargo Vessel in an Essential Service.

**§ 254.11 Application forms.**

Application forms for the award of ODS may be obtained from the Secretary, Maritime Administration/ Maritime Subsidy Board, or from regional offices of the Maritime Administration.

**§ 254.12 Subsidizable items of expense.**

An applicant may receive ODS for the following expenses upon providing justification satisfactory to the Board that payment of subsidy for such items is necessary to make the applicant's vessel competitive with foreign flag vessels.

(a) *Wages of officers and crews.* This consists of the total employment cost of all items of expense required of the operator through collective bargaining or other agreements covering the employment of the subsidizable crew complement of the vessel, including payments required by law to assure old age pensions, unemployment benefits, or similar benefits and taxes or goverment assessments on crew payrolls. 46 CFR Part 282, Accounts 701, 703 and 708 include a partial listing of eligible costs. Expenses referred to in Account 704 are also eligible for subsidy if they are specifically approved by the Board.

(b) *Subsistence of officers and crews.* This shall include the cost of all edibles purchased in the United States and its Territories and possessions except the Virgin Islands, American Somoa, Wake Island, Midway Island, Kingman Reef, and the Island of Guam for passengers, officers, and crews of vessels.

(c) *Hull and machinery insurance premiums.* This consists of the net cost of hull and machinery, port risk, increased value and excess general average, salvage and collision liability insurance, including stamp taxes.

(d) *Protection and indemnity insurance premiums.* This consists of the net cost of protection and indemnity excess insurance, second seamen's insurance and cargo and pollution liability if excluded from the primary policy, including stamp taxes.

(e) *Protection and indemnity deductible absorptions.* This consists of the net cost of deductible absorptions for crew claims.

(f) *Stores, supplies and expendable equipment.* This consists of the cost of all consumable stores, supplies, and expendable equipment purchased in the United States as described in paragraph (b) of this section.

(g) *Maintenance and repair not compensated by insurance.* This is defined in 46 CFR Part 272, except for costs identified in § 272.11(c); a description of items included is contained in Part 282, Accounts 725 and 740.

(h) *Depreciation.* This consists of the actual construction cost, reconstruction cost or purchase cost depreciated on a straight-line basis over the economic life of the vessel after taking into account a residual value for the vessel of 2½ percent. This aid is available only to vessels built without the benefit of construction-differential subsidy.

(i) *Interest.* This consists of the actual interest expense for indebtedness incurred in connection with the construction, reconstruction or purchase of the vessel. This aid is available only to vessels built without the benefit of construction-differential subsidy.

**§ 254.13 Approval.**

The Board will approve an application for the payment of ODS only after it has determined that:

(a) The proposed service is an essential service as described in § 254.20;

(b) The operation of such vessel is required to meet foreign flag competition. For this purpose United States falg service will be deemed inadequate if the foreign flag competition carries more than 50% of the dry cargo tonnage in the U.S. foreign commerce on an annual basis;

(c) The vessel was built in the United States and is documented under the laws of the United States;

(d) The applicant owns or leases, or will build, purchase or lease a vessel or vessels of the size, type, speed and number, and with the proper equipment required to enable it to operate in an essential service in such manner as may be necessary to meet competitive conditions and to promote United States foreign commerce;

(e) The applicant possesses the ability, experience, financial resources and other qualifications necessary to enable it to conduct the proposed operation of the vessel to meet competitive conditions and promote United States foreign commerce;

(f) The granting of the aid applied for is necessary to make the proposed operations of the vessel competitive with the vessels of foreign competitors, and is reasonably calculated to carry out effectively the purposes and policy of the Act;

(g) The vessel is of steel or other acceptable metal, is propelled by steam or motor, and is as nearly fireproof as practicable; and

(h) The vessel is constructed in accordance with plans and specification approved by the Board and Secretary of the Navy, with particular reference to enconomical conversion into an auxiliary naval vessel, or approved by the Board and Navy Department as otherwise useful to the United States in time of national emergency.

**§ 254.14 Contract.**

Upon approval of an application for ODS, the Board and the applicant will enter into an ODSA providing for the operation of a vessel(s) in the Essential Service and for the payment of ODS.

## Subpart C.—Operation

**§ 254.20 Essential service requirement.**

(a) *General.* During any period of subsidized service a dry bulk cargo vessel operating without a charter shall be deemed to be operating in an essential service, within the meaning of sections 601(a), 603(a) and 211(b) of the Act, and the vessel operator shall be entitled to the full amount of subsidy payable under the operating differential subsidy agreement for such period, after any reduction due to the carriage of cargo in the coast wise, or intercostal trade, pursuant to section 605(a) of the Act.

(b) *Approval of charters.* Charters of dry bulk cargo vessels that exceed 5 years duration or that may be extended beyond 5 years duration by exercise of an option, either by terms of the charter or by provision contained in a separte agreement, shall be submitted to the Assistant Secretary for review and approval at least 30 days prior to execution of such charter. Charters exceeding 5 years shall be approved if the Assistant Secretary determines that the vessel will probably be employed during a substantial portion of its economic life in carrying a significant volume of cargo in the U.S. foreign commerce. When the Assistant Secretary has made this determination with respect to a vessel, its operation during any period of subsidized service while subject to that charter shall be deemed to be operation in an essential service, and the payment for such period shall not be reduced because of any amendment to this section made prior to expiration of the charter. Charters that do not exceed 5 years and do not provide for extensions beyond 5 years do not require approval by the Assistant Secretary, unless otherwise required by the operating differntial subsidy agreement. Charters previously approved under procedures of the Maritime Administration are deemed approved for purposes of this § 252.20.

(c) *Modification of requirement.* The Board shall have the authority to modify prospectively the provisions of this § 254.20 as future circumstances may dictate. However, any modification made by the Board shall apply only to prospective charters, regardless of duration, that are executed on or after the effective date of the Board's action. Such modification shall not be applicable to charters existing on the date of the Board's action which—

(1) Do not exceed 5 years duration and which contain no provisions for extension beyond five years, including sub-charters, during the period of such existing charter; or

(2) Do exceed 5 years duration, including sub-charters during the period of the approved charter, for which prior approval has been obtained.

**§ 254.21 Carriage of Preference Cargoes. [Reserved]**

**§ 254.22 Period of reduced crew, idleness, delay or lay-up.**

(a) *Report by operator.* The operator shall report to the Region Director all periods of reduced crew, idleness, lay-up or delay of the vessel providing the dates, facts and circumstances relating to such period. Such reports must be submitted monthly with the subsidy vouchers.

(b) *Approval.* The Region Director will review the operator's report and will make a finding whether the operator employed sound commercial practice in reducing the crew size to meet the existing circumstances. The Region Director shall approve the actual reduction or determine a reasonable reduction and shall notify the operator of his determination.

**§ 254.23 Determination of foreign flag competition.**

(a) *Tonnage groupings.* Foreign flag competition shall be determined as of January 1 each year by surveying a file known as "Merchant Fleets of the World" that is maintained by the Maritime Administration. Dry bulk vessels shall be sorted by tonnage ranges and flag of registry. The vessels shall be sorted into the following tonnage ranges:

(1) Range A—vessels of less than 25,000 tons;
(2) Range B—vessels of 25,000 but less than 40,000 tons;
(3) Range C—vessels of 40,000 but less than 55,000 tons;
(4) Range D—vessels of 55,000 but less than 75,000 tons;
(5) Range E—vessels of 75,000 but less than 100,000 tons.

(b) *Competitive foreign-flag.* The foreign flag having the most tonnage in the same tonnage range as the subsidized vessel shall be deemed to be the competitive foreign flag.

## Subpart D.—Calculation of Operating-Differential Subsidy

**§ 254.30 Authority. Section 603(b) of the Act sets forth the authority for determining the amount of ODS as follows:**

"that the Secretary of Commerce (Board) may, with respect to any vessel in an essential bulk cargo carrying service as described in section 211(b), pay * * * such sums as he shall determine to be necessary to make the cost of operating such vessel competitive with the cost of operating similar vessels under the registry of a foreign county."

**§ 254.31 Provisions of general application.**

(a) *Basis of Subsidy.* (1) Unless the operator and the Board shall agree to a lesser amount, the amount of operating-differential subsidy shall be the excess of United States costs over the estimated foreign costs of the items of expense found by the Board to be eligible for subsidy pursuant to § 254.12. Such items may include wages of officers and crew; subsistence of officers and crew; U.S. maintenance and repairs not compensated by insurance; vessel insurance; stores, supplies and expendable equipment; depreciation and interest.

(2) *Per Diem Subsidy.* The per diem subsidy is the daily amount of the excess of United States costs over the estimated foreign costs for the same items of expense.

(3) *Application of Per Diem Subsidy.* The per diem subsidy shall be payable for each approved day of subsidized service except for days of reduced crew periods.

(4) *Subsidy payable for reduced crew periods*—(i) *Periods of 30 days or less.* A man-day reduction amount will be used for determining subsidy payable for reduced crew periods. The man-day reduction amount is a per diem amount of subsidy for wages and subsistence. It is determined by dividing the per diem wage and subsistence subsidy by the subsidizable crew complement. For each day of a reduced crew period the man-day amount shall be multiplied by the number of crew members missing for that day; the resulting product shall be deducted from the per diem subsidy amount and the difference shall be the subsidy payable for such day.

(ii) *Periods in excess of 30 days.* For vessels having a reduced crew period in excess of 30 consecutive days, operating-differential subsidy shall not be payable for such entire period.

(b) *Frequency of determining per diem subsidy*—(1) *Voyage or time charters of one year or less.* For vessels operated on voyage or time charters not exceeeding one year, the per diem subsidy shall be determined every year and the U.S. costs which are used to determine the wage portion of the per diem subsidy shall be subject to the index system described in § 254.32(b)(2).

(2) *Time or period charters of more than one year*—(i) *Frequency.* For vessels operated on time or period charters of more than one year, the per diem subsidy shall be determined at the written request of the operator, or upon notice from the Director, Office of Ship Operating Costs prior to fixing the vessel on charter and it shall not be redetermined during the life of the charter. A minimum of 15 days from the receipt of such request shall be allowed for determining the per diem subsidy.

(ii) *Responsibility of operator.* The operator shall notify the Director, Office of Ship Operating Costs, of intentions to charter the vessel, providing the particulars of the proposed charter.

(c) *Foreign-flag competition.* The foreign-flag competition in effect as of January 1 of the year for which the subsidy is determined shall be used to calculate the per diem subsidy. For time or period charters of more than one year the foreign flag competition will not be

redetermined during the duration of the charter.

(d) *Operator review of per diem subsidy.* The operator shall have an opportunity to review the calculation of the per diem subsidy before it is presented to the Board for approval. If the operator disagrees with the amount of subsidy and the disagreement cannot be resolved, the Operator shall have 15 days in which to submit written comments to the Director, Office of Ship Operating Costs, for presentation to the Board with the per diem subsidy recommendation.

**§ 254.32 Estimating United States cost.**

(a) *Source of data.* The operator at the time of requesting a determination of the per diem subsidy amount, or upon request from the Director, Office of Ship Operating Costs, shall submit data described in § 254.32(k).

(b) *Wages of officers and crew.* When the per diem subsidy is redetermined annually, the United States wage cost used to determine the excess over foreign cost shall be the Subsidizable Wage Cost as defined in paragraph (b)(2) of this section. When the per diem subsidy is redetermined less often than annually, the United States wage cost used to determine the excess over foreign cost will be Collective Bargaining Cost as described in paragraph (b)(1) of this section.

(1) *Collective bargaining cost.* The collective bargaining cost shall be determined by pricing out for the subsidizable crew complement all fixed costs that are in effect as of January 1 and by adding to the per diem aggregate of such fixed costs a per diem aggregate of variable costs. The per diem aggregate of variable costs is determined by multiplying the per diem aggregate of base wage costs as of January 1 by a fraction, the numerator of which shall be the total variable costs for the preceding calendar year and the denominator of which shall be the total base wage costs for the preceding calendar year.

(i) *Fixed Costs.* Fixed costs are all costs that are stated in specific or determinable amounts per time period and do not vary based on operating experience. If a monthly amount is specified in the collective bargaining agreement, the daily amount shall be determined by multiplying the monthly amount by 12 and dividing the total by the number of days in the calendar year. Fixed costs include but are not limited to:

Base wages (including non-watch pay)
Vacation pay
Clothing and uniform allowances
Contributions to pension and welfare plans
Radio Operators allowances

(ii) *Variable Costs.* Variable costs are all regularly incurred employment costs which are not stated in specific or determinable amounts per time period since they vary with ship operating experience. Variable costs include but are not limited to:

Payroll taxes
Lodging allowances
Overtime and penalty pay
Transportation expenses and travel allowances
Payments to port relief officers and crews

(iii) *Example.* The following is an example calculation of collective bargaining cost.

**ABC Steamship Company.**—*Worldwide Dry Bulk Service*

[January 1, 1979, wages of officers and crew]

| | |
|---|---|
| Subsidizable crew complement | 25 |
| Fixed costs as of January 1, 1979: | |
| Base wages | $1,179.88 |
| Allowances (radio telephone, clothing, etc.) | $3.49 |
| Vacation pay | $530.95 |
| Pension, welfare, training, etc. | $590.95 |
| Total fixed costs | $2,305.27 |
| Variable costs as of January 1, 1979: | |
| Variable cost factor (based on calendar year 1978 cost experience | 83.56% |
| Total variable costs (January 1, 1979 base wages X variable cost factor). | $985.91 |
| Collective bargaining cost as of January 1, 1979 | $3,291.18 |

(2) *Subsidizable wage cost.* In any fiscal year other than a base period the subsidizable wage cost is the most recent base period cost indexed from January 1 of such base period to January 1 of such fiscal year by the index described in paragraph (b)(2)(iv) of this section; in a base period the subsidizable wage cost is the base period cost. The subsidizable wage cost in any fiscal year other than a base period shall not be less than 90 percent of the Collective Bargaining Cost as of January 1, of such fiscal year nor greater than 110 percent of such Collective Bargaining Cost.

(i) *Base period* means any fiscal year with respect to which a base period cost is established by the Board. The Board shall establish a new base period at intervals of not less than 2 years nor more than 4 years, and shall announce new base periods prior to the December 31 that would be included in the new base period.

(ii) *Base period cost.* In the initial base period of subsidized service, the base period cost is the per diem amount of collective bargaining cost as of January 1 of the most recent base period established by the Board.

(iii) *Subsequent base period cost.* In any subsequent base period, the base period cost is the average of the per diem amount of the collective bargaining cost as of January 1 of such base period, and the base period cost computed for the preceding base period indexed to January 1 of such base period by the index described in paragraph (b)(2)(iv) of this section. However, in no event shall the base period cost be less than a minimum nor more than a maximum percentage of the Collective Bargaining Cost computed for January 1 of such base period as follows:

| | Minimum percent | Maximum percent |
|---|---|---|
| Years elapsed since most recent base period: | | |
| 2 | 97⅛ | 102⅛ |
| 3 | 96¼ | 103¾ |
| 4 | 95 | 105 |

(iv) *Index* means the index prepared by the Bureau of Labor Statistics (prescribed by 46 U.S.C. 1173) of the average annual change in wages and benefits placed into effect for employees covered by collective bargaining agreements with equal weight given to changes affecting employees in the transportation industry (excluding the offshore maritime industry) and the changes affecting employees in private non-agricultural industries other than transportation.

(c) *Subsistence.* The U.S. per diem cost for subsistence shall be based on the cost of food consumed by officers and crew of the subsidizable crew complement.

(d) *Hull and Machinery Insurance Premiums.* The per diem amount for hull and machinery insurance shall be the premium costs in effect for the vessel at the time the per diem subsidy is determined.

(e) *Protection and Indemnity Insurance.*—(1) *Premiums.* The per diem amount for protection and indemnity insurance premiums shall be the premium costs in effect for the vessel at the time per diem subsidy is determined.

(2) *Deductible absorptions.* The per diem amount for deductible absorptions shall be based on a fair and reasonable estimate of crew claims absorptions attributable to the crew claims deductible included in the operator's policy.

(f) *Stores, Supplies and Expendable Equipment.* The U.S. per diem cost for stores, supplies and expendable equipment shall be based on a fair and reasonable estimate of the cost of stores, supplies and expandable equipment.

(g) *Maintenance and repair not compensated by insurance.* The per diem amount for maintenance and repair will be based on the fair and

reasonable estimate for the current special survey cycle.

(h) *Depreciation for owned vessel.* The per diem amount of depreciation shall be based on the actual construction cost, reconstruction cost or purchase cost of the vessel depreciated on a straight-line basis. The economic life of the vessel will be based on 25 years from the date of construction or 15 years from the date of major reconstruction. The residual value will be assumed to be 2½% of the original construction cost.

(i) *Interest for owned vessel.* The per diem amount of interest shall be based on the actual interest expense attributable to indebtedness incurred for the construction, reconstruction or purchase cost of the vessel. The daily average interest for the term of the per diem subsidy amount shall be used.

(j) *Depreciation and interest for leased vessel*—(1) *Primary method.* The per diem amounts of depreciation and interest for a leased vessel will be computed on the same basis as for owned vessels, provided the owner of such vessel makes the necessary data avaiable to the Maritime Administration.

(2) *Alternative method.* If the primary method cannot be used, the per diem amounts of depreciation and interest for a leased vessel shall be determined under the provisions governing financial accounting and reporting of capital and operating leases as prescribed in the *Statement of Financial Accounting Standards No. 13—Accounting for Leases,* issued by the Financial Accounting Standards Board. For leases not subject to the provisions of Standard No. 13, fair and reasonable estimates of depreciation and interest shall be determined.

(3) *Limitation.* Under either the primary or alternative method, the total of the per diem amounts of depreciation and interest shall not exceed the bareboat charter hire paid by the operator.

(k) *Data submission requirement.* The operator is required to submit the cost data applicable to the vessel. If a vessel has no operating experience, the operator may submit either cost data of a similar vessel in his employ or estimates of the costs for the vessel.

(1) Wages: Form MA–790, schedules A and B.

(2) Subsistence: The cost of food consumed per man per day during the previous calendar year.

(3) Hull and Machinery Insurance: Form MA–421 and the percentage of underwriter's absorptions for particular average portion claims.

(4) Protection and Indemnity Insurance; Forms MA–344 and MA–422 and a schedule showing the crew claims absorptions for the 3 preceding years.

(5) Stores, Supplies and Expendable Equipment: A schedule of expenses for stores, supplies and expendable equipment for the 3 preceding years.

(6) Maintenance and Repair: A schedule of the expenses for maintenance and repair not compensated by insurance for the 5 preceding years, identifying all items of costs in excess of $100,000.

Sample forms and reporting instructions can be obtained from the Office of Ship Operating Costs.

(l) *Verification of data*—(1) *Audit.* Vessel operating cost data submitted pursuant to this Part shall be subject to audit by the Maritime Administration.

(2) *Information necessary for audit.* If requested the operator shall make available at its place of business all information, records, papers and documentation in support of data submitted in accordance with paragraph (k) of this section. The supporting documentation shall include, but is not limited to:

(i) Voyage and port payrolls including overtime supports, individual pay vouchers, computation of payroll taxes and the various payroll contributions paid under terms of collective bargaining agreements with seafaring personnel.

(ii) Invoices showing costs of subsistence stores; stores, supplies and expendable equipment; maintenance and repair and other vessel expenses.

(iii) Insurance premium invoices; crew injury, illness and death claims records and files compiled in connection with costs absorbed under the deductible provisions of insurance policies; and general and particular average claim files.

(iv) Construction and purchase contracts and other supports of capitalized vessel costs.

(v) Loan and mortgage documents fixing the cost of interest on indebtedness incurred in the construction, reconstruction or purchase of the vessel.

**§ 254.33 Foreign cost estimates.**

(a) *Sources of data.* The Board will determine comparable operating costs of competitive foreign-flag vessels from data obtained from the operators of such vessels, unions, governmental agencies, insurance associations and other sources. The operator is required to submit all pertinent foreign cost data that it can obtain.

(b) *Wages of officers and crew*—(1) *Crew complement.* A foreign crew complement, in number and nationality, shall be constructed for the subsidized vessel, in the following manner:

(i) *Determination of normal foreign crew complement.* A normal foreign crew complement will be determined for a foreign vessel substantially similar to the subsidized vessel in age and size, using as sources of data the crewing scales and practices of the competitive foreign flag developed through an examination of: Crew manifests of such foreign flag vessels; payrolls; data obtained by the United States foreign Maritime Attaches; data submitted by or on behalf of operators; and other information that the Board determines, in its reasonable discretion, to be reliable.

(ii) *Adjustments to normal foreign crew complement.* Adjustments to the normal foreign crew complement shall be made for significant differences between the physical characteristics of the foreign flag vessel and the subsidized vessel, taking into account the physical characteristics of physically comparable departments on other vessels under the same foreign flag. The adjusted crew complement shall only include crew members required by reason of foreign law, collective bargaining agreement, or normal practice. In the event of conflict between foreign law and normal practice, normal practice shall take precedence. The adjustments shall be made department by department, taking due account of the effect of changes in one department on the other departments.

(iii) *Adjustments not feasible.* Where the foreign crew complement for a particular department of vessels under the registry of the competitive foreign country cannot be estimated or determined with reasonable substantiation, as provided above, so that the Board may exercise its reasonable discretion, the foreign manning complement for that department shall be deemed to be identical in number and rating with that of the subsidized vessel.

(2) *Method.* The wage costs of the competitive foreign-flag shall be estimated by the method provided in § 254.32(b) unless it is not possible to use the same method for a particular cost item because of the nature of the foreign data available. In those circumstances the United States cost for such items shall be determined by the same method which is used for the foreign cost and the ratio of the foreign cost to the United States cost shall be applied to the United States cost estimate determined in accordance with § 254.32(b) for purposes of constructing

a comparable foreign cost. This procedure shall apply also to foreign cost items which are known to exist but which are not obtained.

(3) *Foreign currency exchange rates.* Foreign currencies shall be converted into United States currency equivalents at the average of the end-month foreign exchange rates as recommended by the United States Department of the Treasury, except when by contract or otherwise, an item of wage cost is paid to foreign seamen at a specified rate of exchange of United States dollars, the specified rate shall be used. The average of the exchange rates for the period commencing six months prior to and ending six months after the January 1 date used for comparing United States and foreign fixed wage costs shall be used.

(c) *Depreciation.* The per diem amount of depreciation shall be based on the cost of constructing or reconstructing the vessel in a representative foreign shipbuilding center or purchasing the vessel at world market price by assuming the same circumstances that actually apply to the vessel. The costs shall be depreciated on a straight-line basis over the same economic life actually used in the calculation of depreciation expense for the vessel and taking into account the same residual value used for the vessel.

(d) *Interest.* The per diem amount of interest shall be determined by assuming the same interest rate, repayment period and method of principal amortization as that which actually applied to the vessel. The interest payable for the foreign competitive vessel will be determined by assuming that the original amount of debt would be the same percentage of the foreign construction, reconstruction or purchase cost as the actual debt of the vessel was of its construction, reconstruction or purchase cost.

(e) *Other categories of expense.* Fair and reasonable estimates of foreign costs for subsistence of officers and crews; hull and machinery insurance premiums; protection and indemnity insurance premiums and deductible stores, supplies and expendable equipment; and maintenance and repairs not compensated by insurance will be based on the physical characteristics of the vessel as though such vessel were operated under the competitive foreign flag. For constructing the comparable foreign cost the Maritime Administration will use the operating practices and cost data of the same foreign flag vessels which are reviewed for the determination foreign wage costs under paragraph (b) of this section.

## Subpart E—Operational and Financial Reporting Requirements

### § 254.50 Operational.

(a) *Vessel activity report.* The operator shall submit a monthly report to the Director, Office of Trade Studies and Statistics, which shall contain the following:

(1) Name of vessel.

(2) Voyage number, if applicable.

(3) Subsidy contract number.

(4) Vessel activity, such as:

(i) Ports of voyage commencement and termination, including dates.

(ii) Loading ports, including dates of arrival and departure and long tons of cargo loaded (specify commodities).

(iii) Discharge ports, including dates of arrival and departure and long tons of cargo discharged.

(iv) Ports of bunkering, emergency calls, etc., including dates of arrival and departure (specify reason for call).

(5) Reduced crew periods, periods of idleness, lay-up and delay.

(b) *Condition of vessels, inspection and repairs.* The operator shall comply with the requirements of 46 CFR Part 272, concerning the inspection of subsidized vessels.

(c) *Vessel insurance*—(1) *Cover notes.* Upon the binding of an insurance policy with respect to the vessel, the operator shall submit promptly for approval of the Director, Office of Marine Insurance, a signed copy of each cover note issued by the operator's brokers. To the extent applicable, the cover note shall set forth as to such vessel the amount covered by hull, increased value and other forms of total loss protection, as well as protection and indemnity insurance. Such cover notes shall include the rates, the amounts placed in the different markets, the participating underwriters, the amount underwritten by each underwriter, and the amounts of the deductibles. Upon request, copies of the policy shall be submitted to the Maritime Administration for examination.

(2) *Cancellation and policy changes.* The operator shall advise the Office of Marine Insurance promptly of the cancellation of any policy of insurance, any changes in the terms or underwriters of any policy of insurance, any period of lay-up that permits the collection of return premiums, and the occurrence of any major casualty or total loss covered by a policy of insurance.

### § 254.51 Financial.

The operator shall prepare the following financial statements and shall submit one copy to the Regional Director and two copies to the Director, Office of Financial Management.

(a) Copies of such portions of its monthly or periodic management reports that provide an estimate of its current operating results.

(b) Not later than 45 days after the close of the first, second and third quarters of the operator's fiscal year, a balance sheet and statement of income for the quarter, certified by a company official, and prepared in conformance with the Uniform System of Accounts, 46 CFR Part 282. The balance sheet shall be prepared as of the end of the fiscal quarter and the statement of income shall reflect net earnings from operations for the quarter and cumulative net earnings for the fiscal year.

(c) Not later than 105 days after the close of the operator's fiscal year, Form MA–172.

(d) Not later than 105 days after the close of the operator's fiscal year, a balance sheet and statement of income and retained earnings certified by an independent certified public accountant or by an independent licensed public accountant who was licensed prior to December 31, 1970 by a state, territory or insular possession of the United States or the District of Columbia.

## Subpart F—Subsidy Payment and Billing Procedures

### § 254.60 Payment of Subsidy.

(a) *General.* ODS shall be payable monthly.

(b) *Submission of voucher.* At the close of each calendar month, the operator may submit a voucher, and include for payment in such voucher the amount of ODS accrued for the month.

### § 254.61 Subsidy billing procedures.

(a) *Subsidy voucher*—(1) *Form.* Requests for payment of ODS shall be submitted on a public voucher, Standard Forms 1034 and 1034A, which can be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) *Copies.* The original and 3 copies of the voucher are to be submitted for payment to the Regional Director. The original and 2 copies must be supported by a schedule and affidavit. The third copy is the payee's copy and need not be supported. The payee's copy will be returned with the payment of ODS by the United States Department of the Treasury.

(b) *Schedule and Affidavit.* (1) The following schedule shall be used for calculating the amount of ODS payable each month:

[Operator]

Determination of ODS Payable for the Month of ———————, 19——

| Vessel | Per diem amount[1] | Days this month | Accrued ODS | Total |
|---|---|---|---|---|
| ..... | ..... | × ..... | = ..... | |
| ..... | ..... | × ..... | = ..... | |
| ..... | ..... | × ..... | = ..... | |
| ..... | ..... | × ..... | = ..... | |
| Total accrued ODS..... | ..... | ..... | ..... | $——— |

| Vessel | Reduced crew dates From | Reduced crew dates To | No. of reduced crew days | No. of crew reduced | Man-days | Man-day amount[1] | Man-day production | Total |
|---|---|---|---|---|---|---|---|---|
| ..... | ..... | ..... | × ..... | = ..... | × ..... | = ..... | | |
| ..... | ..... | ..... | × ..... | = ..... | × ..... | = ..... | | |
| ..... | ..... | ..... | × ..... | = ..... | × ..... | = ..... | | |
| ..... | ..... | ..... | × ..... | = ..... | × ..... | = ..... | | |
| Total man-day deduction..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | $(———) |
| Net ODS payable..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | $——— |

[1] Per diem/man-day amounts

| (P.D.) | (M.D.) |
|---|---|
| $...../ | $..... |
| $...../ | $..... |
| $...../ | $..... |

Effective dates

| From | To |
|---|---|
| ..... | ..... |
| ..... | ..... |
| ..... | ..... |

(2) A notorized affidavit as shown below shall be signed by an official of the operator who is familiar with the ODSA, these regulations, the operation of the vessel and the accounts, books, records, and disbursements of the operator relating to such operation:

Affidavit

State of ———————
City of ———————
County/Parish of———————

I, ——————— being duly sworn, depose and say, that I am (title) ——————— of the (operator) ——————— (herein referred to as the "Operator"), and as such am familiar with (a) provisions of the Operating-Differential Subsidy Agreement, Contract No. ———————, dated as of ———————, as amended, to which the Operator is a party; and (b) the regulations governing the payment of operating-differential subsidy for bulk cargo vessels, Part 254, Title 46, CFR; and (c) the operation of the vessels covered by said Agreement and regulations; and (d) the accounts, books, records, and disbursement of the Operator relating to such operation.

Referring to the public voucher dated ———————, covering voyages terminated during the periods commencing ——————— and ending ———————, and attached submitted by said Operator concurrent herewith for a payment on account in the sum of ———, under said Agreement, I further depose and say that, to the best of my knowledge and belief, the Operator has fully complied with the terms and conditions of said Agreement and regulations, applicable orders, rulings and provisions of the Merchant Marine Act, 1936, as amended, and is entitled, under the provisions of said Agreement and regulations, orders and rulings applicable thereto, to the amount of the payment on account requested; and further depose and say that the vessels named in the attached schedules were in authorized service for the voyages on which the payment on account is requested and has not included in the calculation of the amount of subsidy claimed in the attached voucher any costs of a character that the Maritime Administration, or Secretary of Commerce, acting by and through the Maritime Subsidy Board, or any predecessor or successor, had advised the Operator to be ineligible to be so included, or any costs collectible from insurance, or from any other source.

Payment by the Maritime Administration of all or part of the amount claimed herein shall not be construed as approval of the correctness of the amount stated to have been due, nor a waiver of any right of remedy the Maritime Administration, or Secretary of Commerce, acting by and through the Maritime Subsidy Board, or any predecessor or successor, may have under the terms of said Agreement, or otherwise.

I further depose and say that this affidavit is made for and on behalf and at the direction of the Operator for the purpose of inducing the Maritime Administration to make a payment on account pursuant to the provisions of the aforesaid Operating-Differential Subsidy Agreement, as amended.

Subscribed and sworn to before me, a Notary Public, in and for the aforesaid County and State, this ——— day of ———————, 19——.

My commission expires ———————.
Notary Public ———————

(3) The operator shall furnish its own supply of the schedule and affidavit.

**§ 254.62 Appeal procedures.**

(a) *Appeals of audits.*—(1) *Policy.* An operator who disagrees with the findings, interpretation or decisions in connection with audit reports of the Maritime Administration and who cannot settle said differences by negotiation with the appropriate Region Director's office may submit an appeal from such findings, interpretations or decisions as follows:

(i) Appeals shall be made in writing to the Assistant Secretary within 6 months following the date of the document notifying the contractor of the audit findings, interpretations, or decisions of the appropriate Region Director's office. However, the Assistant Secretary may, at his discretion, extend this limitation in the case of extenuating circumstances.

(ii) The appellant will be notified, in writing, if a hearing is to be held or if additional facts are to be submitted in connection with the appeal.

(iii) After a decision has been rendered by the Assistant Secretary the appellant will be notified accordingly, in writing.

(2) *Finality of decisions.* A decision of the Assistant Secretary shall be final on all questions of fact involved in the appeal, unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence.

(b) *Appeals of administrative determinations—(1) Policy.* An operator who disagrees with the findings, interpretations or decisions of the Maritime Administration with respect to the administration of this part may submit an appeal from such findings, interpretations or decisions as follows:

(i) Appeals shall be made in writing to the Secretary, maritime Subsidy Board and Maritime Administration, within 60 days following the date of the document notifying the operator of the administrative determination. In the appeal to the Secretary the operator shall indicate whether or not it desires a hearing.

(ii) The appellant will be notified in writing if in the discretion of the Board or Assistant Secretary a hearing is to be held and whether the operator is required to submit additional facts for consideration in connection with the appeal.

(iii) When a decision has been rendered by the Board or Assistant Secretary, the appellant will be notified in writing.

(2) *Review by the Secretary of Commerce.* An operator who disagrees with the findings and determinations of the Board may seek review of such findings and determinations by filing with the Secretary of Commerce, or delegatee, a written petition for review of the Board's action. The petition must be filed in accordance with Section 7, Department of Commerce Organization Order 10–8 (38 FR 19707).

(3) *Hearings.* The Rules of Practice and Procedure, Part 201, Subchapter A, will be followed for all hearings granted under this part.

(Sec. 204(b) Merchant Marine Act, 1936, as amended (46 U.S.C. 114(b)); Reorganization Plan 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 840) as amended by Pub. L. 91–469 (84 Stat. 1036); Department of Commerce Organization Order 10–8 (38 FR 19707, July 23, 1973).)

Dated: August 29, 1979.

**Robert J. Patton, Jr.,**

*Acting Secretary.*

[FR Doc. 79-27778 Filed 9-5-79; 8:45 am]

BILLING CODE 3510-03-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### [46 CFR Parts 401 and 402]

### [CGD 78-144b]

## Great Lakes Pilotage Regulations

**AGENCY:** Coast Guard, DOT.

**ACTION:** Supplemental Notice of Proposed Rulemaking.

**SUMMARY:** The Coast Guard is proposing further changes in the training and experience requirements for the registration of pilots. A review of the proposal published under this docket number in the Monday, April 2, 1979 **Federal Register** indicated that the original proposal was inadequate in some respects. The Coast Guard is thus proposing an additional experience requirement to insure that United States registered pilots have the necessary experience for safe operations on the Great Lakes. This supplemental notice is being published in order to provide an opportunity for public comment.

**DATES:** Comments must be received on or before: October 5, 1979.

**ADDRESSES:** Comments should be submitted to Commandant (G–CMC/TP24) (CGD 78–144b), U.S. Coast Guard, Washington, D.C. 20590. Comments will be available for examination at the Marine Safety Council (G–CMC/TP24), Room 2418, Department of Transportation, Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20590.

**FOR FURTHER INFORMATION CONTACT:** Mr. John J. Hartke (G–MVP–4/TP13), Room 1314, Department of Transportation, Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20590. (202) 755–8683.

**SUPPLEMENTARY INFORMATION:** The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Each person submitting a comment should include the name and address of the person submitting the comment, identify this notice (CGD 78–144b) and the specific section of the proposal to which the comment applies, and give the reasons for the comment. Persons desiring acknowledgment that their comment has been received should enclose a stamped self-addressed postcard or envelope.

The proposal may be changed in view of the comments received. All comments received will be considered before final action is taken on this proposal. Copies of all written comments received will be available for examination by interested persons at the Marine Safety Council address noted above. No public hearing is planned, but one may be held at a time and place to be set in a later notice in the **Federal Register** if requested in writing by anyone raising a genuine issue and desiring to comment orally at a public hearing.

### Drafting Information

The principal persons involved in drafting this proposal are: John J. Hartke, Project Manager, Office of Merchant Marine Safety, and LT Jack Orchard, Project Attorney, Office of the Chief Counsel.

### Discussion of the Proposed Regulations

On Monday, April 2, 1979 the Coast Guard published in the **Federal Register** a Notice of Proposed Rulemaking (44 FR 19364). This document proposed changes in the Great Lakes Pilotage Regulations in Title 46 Code of Federal Regulations Parts 401 and 402.

This original proposal was prompted by the amendments to the Great Lakes Pilotage Act of 1960 (46 U.S.C. 216–216i) which were enacted on October 13, 1978 (Pub. L. 95–455). The amendments removed the prerequisite for an unlimited master's license for U.S. registered pilots on the Great Lakes. Congress substituted different minimum requirements for registration. The Coast Guard amended the regulations to conform to the statute in another document published in the same issue of the **Federal Register** (44 FR 19362).

The amendments to the statute also permitted the Secretary to require additional experience and training, beyond the statutory minimum, as he considered necessary. This was the purpose of the original Notice of Proposed Rulemaking. No comments were received on this Notice. However, further review by the Coast Guard has indicated that the proposal was inadequate in one respect. This Supplemental Notice proposes a change to correct this situation and solicits public input on the additional requirement.

The proposal follows the statutory requirements that applicants must have 24 months licensed service or "comparable experience". The Coast Guard proposed to define comparable experience as "experience that is similar to the experience obtained by serving as an officer on a vessel." This was amplified by noting that one month in a pilot training program of an authorized pilot organization would be considered equivalent to one month of officer service if the training included regularly scheduled trips on vessels over 4,000 gross tons in the company of a registered pilot.

In reviewing the proposal as originally written, it was noted that a person could qualify for registration without any licensed officer service at all (and without ever having served in a watch-standing capacity on board a vessel). The Coast Guard feels that licensed service is very important experience for individuals who will be entrusted with the navigation of vessels on the Great Lakes. This type of experience gives the individual the opportunity to understand and appreciate shipboard operations and watchstanding procedures under actual operating conditions. Of further importance is the fact that the individual must assume responsibility in a licensed capacity, he must exercise judgment and make decisions in the everyday course

of standing his watch. The Coast Guard believes that this experience is vital to preparing an individual to exercise the responsibility entailed in being a United States Registered Pilot.

Section 4(a) of the Great Lakes Pilotage Act was amended to include the following authority. "The Secretary may require such experience and training, in addition to the minimum required by this subsection, as he considers necessary." Under this authority the Coast Guard proposes to add the further requirement that an applicant for registration as a U.S. pilot must have at least 12 months experience in a licensed officer capacity. Accordingly, §§ 401.210 and 401.211 would be amended by adding the requirement that an individual must have a minimum of twelve months licensed service in order to qualify for registration as a U.S. registered pilot.

The Coast Guard does not intend this additional requirement to be overly burdensome. Thus, licensed service which fulfills the requirements for "Applicant Pilots" would be applied toward fulfilling the registration requirement as well. For example; an individual with 12 months licensed service and 12 months experience in a pilot training program would meet the required minimum for application and registration.

This proposal has been evaluated under the Department of Transportation Regulatory Policies and Procedures published on February 26, 1979 (44 FR 11034). No significant adverse environmental or economic consequences are anticipated.

This proposal is being implemented in order to reflect a statutory relaxation of pilot requirements contained in Pub. L. 95–455, (92 Stat. 1228). It is estimated that only 25 persons will be directly affected by the changes contained in this proposal. A final evaluation has been prepared and is contained in the public docket.

In consideration of the foregoing, it is proposed to amend Part 401 of Title 46 of the Code of Federal Regulations as follows:

1. By revising § 401.210(a)(1) to read as follows:

**§ 401.210 Requirements and qualifications for registration.**

(a) * * *

(1) The individual holds a license as a master, mate, or pilot, issued under the authority of the provisions of Title 52 of the Revised Statutes, and has acquired at least twenty-four months licensed service or comparable experience on vessels or integrated tugs and tows, of 4,000 gross tons, or over, operating on the Great Lakes or oceans. Those applicants qualifying with ocean service must have obtained at least six months of licensed service or comparable experience on the Great Lakes. Those applicants qualifying with comparable experience must have served a minimum of twelve months as a licensed deck officer.

* * * * *

2. By revising § 401.211(b) to read as follows:

**§ 401.211 Requirements for training of Applicant Pilots.**

(a) * * *

(b) For purposes of determining whether an applicant meets the experience requirements contained in § 401.210(a)(1), not more than twelve months of "comparable experience" may be used in fulfilling the twelve-four month experience requirement.

* * * * *

(Sec. 4, sec. 5, 74 Stat. 260 (46 U.S.C. 216(b), 216(c)) as amended by Pub. L. 95–455; sec. 6(a)(4), 80 Stat. 937, as amended (49 U.S.C. 1655(a)(4)); 49 CFR 1.46(a))

Dated: August 28, 1979.

R.H. Scarborough,

*Vice Admiral, U.S. Coast Guard, Acting Commandant.*

[FR Doc. 79-27780 Filed 9-5-79; 8:45 am]

BILLING CODE 4910-14-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### [50 CFR Parts 32 and 33]

### Hunting/Sport Fishing; Opening of Certain National Wildlife Refuges to Hunting and Sport Fishing.

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Fish and Wildlife Service proposes to add Upper Ouachita National Wildlife Refuge, Louisiana, Panther Swamp National Wildlife Refuge, Mississippi, Swan River National Wildlife Refuge, Montana, and Sea Rim National Wildlife Refuge, Texas, to the refuge areas open for hunting. It also is proposed to add Aransas National Wildlife Refuge, Texas, to the refuge areas open for sport fishing. The Director has received information that this action would be in accordance with the provisions of all laws applicable to the areas, would be compatible with the principles of sound wildlife management, would otherwise be in the public interest, and that such use is compatible with the major purpose for which the refuges were established. Hunting and sport fishing, subject to annual special regulations, will provide additional public recreational opportunity.

**DATES:** Comments must be received on or before October 9, 1979.

**ADDRESS:** Comments may be addressed to the Director, (FWS/RF), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

**FOR FURTHER INFORMATION CONTACT:** Ronald L. Fowler, Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, D.C. 20240. Telephone 202–343–4305.

**SUPPLEMENTARY INFORMATION:** Ronald L. Fowler is the primary author of this proposed rulemaking. Areas within the National Wildlife Refuge System are closed to hunting or sport fishing until officially opened by regulation. The Director may open refuge areas to hunting or sport upon a determination that such use is compatible with the major purposes for which such areas were established and that funds are available for the development, operation and maintenance of the permitted forms of recreation. This action will be in accordance with provisions of all laws applicable to the area, will be compatible with the principles of sound wildlife management and will otherwise be in the public interest. It is the purpose of this proposed rulemaking to seek public input regarding the opening of the above cited refuges to hunting of migratory game birds, upland game, big game, and sport fishing. Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), environmental assessments have been prepared on each of these proposals and are available for public inspection and copying at Room 2341, Department of the Interior, 18th and C Streets, NW, Washington, D.C. 20240, or by mail, addressing the Director at the address above. The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed amendment. All relevant comments will be considered by the Department prior to the issuance of a final rulemaking.

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Accordingly, it is proposed to change 50 CFR Parts 32 and 33 by the addition of Upper Ouachita, Panther Swamp, Swan River, Sea Rim, and Aransas

National Wildlife Refuges by amending §§ 32.11, 32.21, 32.31 and 33.4 as follows:

**§ 32.11 List of open areas, migratory game birds.**

* * * * *

LOUISIANA

* * * * *

*Upper Ouachita National Wildlife Refuge*

* * * * *

MISSISSIPPI

* * * * *

*Panther Swamp National Wildlife Refuge*

* * * * *

MONTANA

* * * * *

*Swan River National Wildlife Refuge*

* * * * *

TEXAS

* * * * *

*Sea Rim National Wildlife Refuge*

* * * * *

**§ 32.21 List of open areas; upland game.**

* * * * *

LOUISIANA

* * * * *

*Upper Ouachita National Wildlife Refuge*

* * * * *

MISSISSIPPI

* * * * *

*Panther Swamp National Wildlife Refuge*

* * * * *

**§ 32.31 List of open areas; big game.**

* * * * *

LOUISIANA

* * * * *

*Upper Ouachita National Wildlife Refuge*

* * * * *

MISSISSIPPI

* * * * *

*Panther Swamp National Wildlife Refuge*

* * * * *

**§ 33.4 List of open areas, sport fishing.**

* * * * *

TEXAS

* * * * *

*Aransas National Wildlife Refuge*

* * * * *

Dated: August 28, 1979.

**Lynn A. Greenwalt,**

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. 79-27815 Filed 9-5-79; 8:45 am]

BILLING CODE 4310-55-M

# Notices

Federal Register
Vol. 44, No. 174
Thursday, September 6, 1979

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.

## ADVISORY COUNCIL ON HISTORIC PRESERVATION

### Public Information Meeting

Notice is hereby given pursuant to Section 800.6(b)(3) of the Council's regulation, "Protection of Historic and Cultural Properties" (36 CFR Part 800), that on September 20, 1979, at 7:30 pm, a public information meeting will be held at the Kirkman School Auditorium, 215 Chestnut Street, Chattanooga, Tennessee. The meeting is being called by the Executive Director of the Council in accordance with Section 800.6(b)(3) of the Council's regulations. The purpose of the meeting is to provide an opportunity for representatives of national, State, and local units of government, representatives of public and private organizations, and interested citizens to receive information and express their views concerning the proposed replacement of the Walnut Street Bridge, Chattanooga, Tennessee, an undertaking assisted by the Federal Highway Administration that will adversely affect that property eligible for the National Register of Historic Places. Consideration will be given to the undertaking, its effects on National Register or eligible properties, and alternate courses of action that could avoid, mitigate, or minimize any adverse effects on such properties.

The following is a summary of the agenda of the meeting:

I. An explanation of the procedures and purpose of the meeting by a representative of the Executive Director of the Council.
II. A description of the undertaking and an evaluation of its effects on the property by the Federal Highway Administration.
III. A statement by the Tennessee State Historic Preservation Officer.
IV. Statement from local officials, private organizations, and the public on the effects of the undertaking on the property.
V. A general question period.

Speakers should limit their statement to 5 minutes. Written statements in furtherance of oral remarks will be accepted by the Council at the time of the meeting. Additional information regarding the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1522 K Street, NW., Washington, D.C. 20005, (202) 254–3967.

**Robert M. Utley,**
*Deputy Executive Director.*

[FR Doc. 79-28001 Filed 9-5-79; 9:46 am]
BILLING CODE 4310-10-M

### Public Information Meeting

Notice is hereby given pursuant to Section 800.6(b)(3) of the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), that on September 17, 1979, at 7:30 pm, a public information meeting will be held at the Louisville City Hall, Aldermanic Chambers, 601 West Jefferson Street, Louisville, Kentucky. The meeting is being called by the Executive Director of the Council in accordance with Section 800.6(b)(3) of the Council's regulations. The purpose of the meeting is to provide an opportunity for representatives of national, State, and local units of government, representatives of public, and private organizations, and interested citizens to receive information and express their views concerning the proposed Galleria Project. This is an undertaking assisted by the Department of Housing and Urban Development that will adversely affect the Will Sales Building, the Atherton Building, and the Republic Building, properties eligible for the National Register of Historic Places. Consideration will be given to the undertaking, its effects on National Register or eligible properties, and alternate courses of action that could avoid, mitigate, or minimize any adverse effects on such properties.

The following is a summary of the agenda of the meeting:

I. An explanation of the procedures and purpose of the meeting by a representative of the Executive Director of the Council.
II. A description of the undertaking and an evaluation of its effects on the properties by the City of Louisville.
III. A statement by the Kentucky State Historic Preservation Officer.
IV. Statements from local officials, private organizations and the public on the effects of the undertaking on the properties.
V. A general question period.

Speakers should limit their statement to 5 minutes. Written statements in furtherance of oral remarks will be accepted by the Council at the time of the meeting. Additional information regarding the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1522 K Street, N.W., Washington, D.C. 20005/ (202) 254–3967.

**Robert M. Utley,**
*Deputy Executive Director.*

[FR Doc. 79-28001 Filed 9-5-79; 9:46 am]
BILLING CODE 4310-10-M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Coconino National Forest Grazing Advisory Board; Meeting

The Coconino National Forest Grazing Advisory Board will meet at 1:30 p.m., October 1, 1979, at the Coconino National Forest Supervisor's Office, 2323 E. Greenlaw Lane, Flagstaff, Arizona.

The purpose of the meeting is to:

(1) Review minutes of May 15, 1979 meeting.

(2) Prepare written recommendations regarding:

(a) F.Y. 1982 Range Betterment Program

(b) Policy regarding grazing fee refunds

(c) Sedona Land Use Plan—Draft

(d) Review adjusted Allotment Management Plans to emphasize Verde River riparian recovery

The meeting is open to the public.

Dated: August 24, 1979.

**Michael A. Kerrick,**
*Forest Supervisor.*

[FR Doc. 79-27596 Filed 9-5-79; 8:45 am]
BILLING CODE 3410-11-M

### Rapid Wild and Scenic River; Classification, Interim Management Plan and Boundaries; Correction

In FR Doc. 79–23280 appearing at page 44199 in the Federal Register of July 27, 1979, 3rd column, paragraph 7 appearing on page 44200 is corrected in the first line of that paragraph by adding, "The Administration of the river involves

coordination with various," immediately preceding the word, "Agencies."

August 29, 1979.

**Douglas R. Leisz,**

*Associate Chief.*

[FR Doc. 79-27805 Filed 9-5-79; 8:45 am]

BILLING CODE 3410-11-M

## Office of the Secretary

### Section 22 Import Fees; Adjustment of Import Fees On Sugar

**AGENCY:** Office of the Secretary.

**ACTION:** Notice.

**SUMMARY:** Headnote 4(c) of Part 3 of the Appendix to the Tariff Schedules of the United States (TSUS) requires the Secretary of Agriculture to decrease by one cent the amount of the fees which shall be imposed on imports of raw and refined sugar (TSUS items 956.05, 956.15, and 957.15) under the authority of section 22 of the Agricultural Adjustment Act of 1933, as amended, whenever the average of the daily spot price quotations for raw sugar for 10 consecutive market days within any calendar quarter, adjusted to a United States delivered basis, plus the fee then in effect, exceeds 16.0 cents. This notice announces such adjustment.

**EFFECTIVE DATE:** 12:01 AM (local time at point of entry), September 1, 1979. (See supplementary information.)

**FOR FURTHER INFORMATION CONTACT:** William F. Doering, Foreign Agricultural Service, Department of Agriculture, Washington, D.C. 20250 (202-447-6723).

**SUPPLEMENTARY INFORMATION:** By Presidential Proclamation No. 4631, dated December 28, 1978, headnote 4 of Part 3 of the Appendix to the TSUS was amended to provide for quarterly adjusted fees on imports of raw and refined sugar (TSUS Item 956.05, 956.15, and 957.15). Paragraph (c)(ii) of headnote 4 provides that the quarterly adjusted fee for items 956.15 shall be the amount by which the average of the daily spot (world) price quotations for raw sugar for the 20 consecutive market days immediately preceding the 20th day of the month preceding the calendar quarter during which the fee shall be applicable (as reported by the New York Coffee and Sugar Exchange or, if such quotations are not being reported, by the International Sugar Organization), expressed in United States cents per pound, Caribbean ports, in bulk, adjusted to a United States delivered basis by adding the applicable duty and 0.90 cents per pound to cover attributed costs for freight, insurance, stevedoring, financing, weighing and sampling, is less than 15.0 cents per pound. However, whenever the average of the daily spot price quotations for 10 consecutive market days within any calendar quarter, adjusted to a United States delivered basis, plus the fee then in effect, (1) exceeds 16.0 cents, the fee then in effect shall be decreased by one cent, or (2) is less than 14.0 cents, the fee then in effect shall be increased by one cent. However, the fee may not be greater than 50 per centum of the average of such daily spot price quotations. Paragraph (c)(i) further provides that the quarterly adjusted fee for items 956.05 and 957.15 shall be the amount of the fee for item 956.15 plus .52 cents per pound.

The average of the daily spot price quotations for raw sugar (item 956.15) for the 10 consecutive market day period August 16–August 29, inclusive, within the third calendar quarter of 1979, adjusted as provided in headnote 4(c) to a United States delivered basis, plus the fee of 3.36 cents per pound now in effect for item 956.15 [12.68 + 3.36 = 16.04] exceeds 16 cents per pound. Accordingly, the fee of 3.36 cents per pound for item 956.15 is required to be decreased by one cent, resulting in a fee for item 956.15 of 2.36 cents per pound and a fee for items 956.05 and 957.15 of 2.88 cents per pound.

Headnote 4(c) requires the Secretary of Agriculture to determine and announce any adjustment in the fees made within a calendar quarter, certify such adjusted fees to the Secretary of the Treasury and file notice thereof with the Federal Register within 3 market days of such determination. This notice is therefore being issued in order to comply with the requirements of headnote 4(c).

#### Effective Date

In accordance with headnote 4(c)(v) of part 3 of the Appendix to the Tariff Schedules of the United States, the adjustment in fee made herein shall not apply to the entry or withdrawal from warehouse for consumption of sugar exported (as defined in § 152.1 of the Customs Regulations) on a through bill of lading to the United States from the country of origin before the effective date of the adjustment.

#### Notice

Notice is hereby given that, in accordance with the requirements of headnote 4(c) of Part 3 of the Appendix to the Tariff Schedules of the United States, it is determined that the fees for raw and refined sugar (TSUS items 956.05, 956.15, and 957.15) for the remainder of the third calendar quarter of 1979, unless subsequently adjusted pursuant to headnote 4(c), shall be as follows:

| Item | Fee |
|---|---|
| 956.05 | 2.88 cents per lb. |
| 956.15 | 2.36 cents per lb. |
| 957.15 | 2.88 cents per lb. |

The amounts of such fees have been certified to the Secretary of the Treasury in accordance with paragraph (c)(iii) of headnote 4.

**Bob Bergland,**

*Secretary of Agriculture.*

[FR Doc. 79-27806 Filed 8-31-79; 4:00 pm]

BILLING CODE 3410-10-M

## CIVIL AERONAUTICS BOARD

**[Order 79-8-167; Docket 36424]**

### U.S.-Canada "Seat Sale" Fares Air Canada; Order of Suspension and Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 21st day of August 1979.

By tariff revisions filed August 1, 1979, for effectiveness September 1, 1979, Air Canada has proposed new low "Seat Sale" excursion fares for U.S.-Canada markets of 1,000 miles or more. The "Seat Sale" fares, priced 46 to 66 percent below the comparable normal economy levels, would be available for travel originating between October 5 and November 23 and returning on or before December 14, 1979. The fares would require reservations at least 30 days before departure, payment and ticketing within seven days after reservations, and a minimum stay of seven days (maximum, 30 days); no stopovers would be permitted en route. The fares would also be subject to capacity restrictions, at the carrier's discretion, and a cancellation penalty of $20.

In Order 79-3-162, March 15, 1979, we reviewed similar "Seat Sale" fares proposed by Air Canada last spring, for travel between March 27 and May 7, 1979. We noted at the time that we had no objection to the "Seat Sale" concept *per se*—indeed, despite its restrictions and short duration, it offered the public significant new low-fare benefits in markets where such opportunities have been rather limited, compared to U.S. domestic service. The Canadian Government, however, had repeatedly blocked U.S. carriers' efforts to introduce similar innovative low fares in U.S.-Canada markets. We concluded that the public stood to gain much more over the long run from our firm defense of carriers' right to compete with a variety of fare options in response to market conditions, than from our unqualified approval of the short-lived spring "Seat Sale" fares. To safeguard

the public's right to low, competitive fares in these markets, we considered it imperative to preserve our option to respond immediately with a suspension of Air Canada's "Seat Sale" fares if the Canadian authorities again rejected a reasonable low-fare proposal by a U.S. carrier. Accordingly, in Order 79–3–162 we issued a conditional suspension of the spring "Seat Sale" fares, stipulating that our suspension would not take effect unless the Canadian Government unreasonably took action to suspend or otherwise deny a *bona fide* competitive fare proposal by any U.S. air carrier.

We were not, in fact, forced to invoke that suspension authority last spring; the "Seat Sale" fares ran their course as proposed, and expired on May 7, 1979.

Air Canada has now filed a new "Seat Sale" proposal for the fall season, with fares and conditions similar to those in its previous filing.[1] In the interim, however, the Canadian authorities have once again rejected a number of low-fare proposals by U.S. carriers. Among the applications denied are: (1) Super Saver fares proposed by American Airlines, Inc. (American); (2) Super Saver fares proposed by United Air Lines, Inc. (United); (3) Tariff revisions to permit use of half-fare discount coupons for Canada-originating travel, proposed by American; [2] (4) Commuter Class fares proposed by Hughes Airwest (Airwest); and (5) APEX fares between Honolulu and Toronto, proposed by United. Of six recent low-fare applications by U.S. carriers, only one—Airwest's Leisure Class filing—has been permitted by the Canadian authorities.

On August 3 and 10, 1979, American and United filed complaints against Air Canada's proposed "Seat Sale" fares in Dockets 36290 and 36348, respectively.[3] Both carriers contend that the Canadian Government's actions directly contravene the Board's findings in Order 79–3–162 regarding the need for the Canadian authorities to be more receptive to U.S. carriers' competitive fare proposals. American maintains that, in keepting with Order 79–3–162, the Board must suspend Air Canada's "Seat Sale" fares until the Government of Canada demonstrates its willingness to permit reciprocal, competitive filings by withdrawing its rejection of American's Super Saver and discount coupon tariffs. United argues that under section 1002(j)(3) of the Federal Aviation Act of 1958, the Board has the authority and the duty to suspend a foreign carrier's tariff when the government of that carrier's country has suspended a properly filed and lawful tariff of a U.S. carrier; United's Super Saver fares have been thoroughly considered by the Board and are clearly advantageous to consumers; the fares have been suspended by the Canadian Transport Commission (C.T.C.) only because they do not incorporate an onerous cancellation penalty and restrictive reservations provision, neither of which is required by U.S. aviation policy; and the C.T.C.'s failure to reciprocate with the Board on fare policy "renders this a classic case for the use of section 1002(j)(3) retaliatory authority." Both carriers support the Board's conditional suspension of Air Canada's "Seat Sale" fares and both urge the Board to maintain its policies for the benefit of U.S.-Canada passengers with an immediate suspension of the present "Seat Sale" proposal.

In reply to American's complaint, Air Canada contends that the Board recognized last spring that the "Seat Sale" provided significant public benefits, and by allowing that filing to become effective in March, apparently deemed the "Seat Sale" to be in the public interest; the current proposal is substantially the same as the spring filing, will again provide significant public benefits, and continues to be in the public interest; to Air Canada's knowledge, the Canadian authoritits have expressed dissatisfaction not with the level of the proposed discount fares, but with their lack of adequate "fences" to preserve the distincition between scheduled and charter services;[4] given the Canadian Government's clearly stated position on discount fare conditions, the Canadian aeronautical authorities' adverse action against U.S. carriers' Super Saver fare proposal does not constitute unreasonable action to suspend or otherwise deny a *bona fide*, competitive fare proposal by any U.S. carrier; with respect to American's discount coupon filing, it would be premature to consider the proposal either approved or disapproved, pending the outcome of the C.T.C.'s appellate review; and it would indeed be unfortunate for both U.S. and Canadian air travelers if low-fare filings were to be rejected by either government on grounds other than the specific shortcomings of the proposed fares themselves. Air Canada therefore requests the Board to dismiss the complaint.

In keeping with our statutory responsibilities and our findings in Order 79–3–162, we will suspend the proposed fall-season "Seat Sale" fares unconditionally. Again, we have no objection to the "Seat Sale" on its merits; while the current filing is somewhat more restrictive than the American and United Super Savers and Air Canada's own spring "Seat Sale" in terms of advance-purchase provisions and other requirements, we believe that competitive carriers must be free to exercise their marketing judgment as they see fit. We insist, however, that such freedom apply equally to both Canadian and U.S. carriers.

Like the spring proposal, the current "Seat Sale" filing is designed to stimulate traffic during a period of traditionally low traffic demand for Air Canada. As we pointed out in Order 79–3–162, traffic cycles often vary with directional flows by route and by carrier; U.S. carriers' slack periods do not necessarily correspond to Canadian carriers', even on the same routes. Both, of course, should be free to respond to such cyclical demand patterns with innovative fare options in accordance with their own best marketing judgment, with a minimum of government interference. As long as the Canadian authorites continue to reject most low-fare initiatives by U.S. carriers, however, Canadian carriers are in a position to dictate fares in these markets in accordance with their own marketing needs, and U.S. carriers with different marketing needs and policies are not in a position to pursue them. The cost of the Canadian Government's failure to allow reciprocity is substantial, in terms of both consumer benefits and the efficient operation of air carriers serving these markets.

In these circumstances, we can only conclude with reluctance that suspension of the proposed "Seat Sale" fares is essential if we are to preserve U.S. carriers' right to compete and consumers' right to low, competitive fares in U.S.-Canada markets. The American and United Super Saver fares, in paraticular, would offer major consumer benefits; they would apply in

[1] The current proposal does include more restrictive advance-reservation and advance-purchase requirements, however: 30 and 23 days, respectively, compared to the seven-day advance-reservation and three-day advance-purchase provisions of the spring "Seat Sale".

[2] American has appealed the Canadian Air Transport Committee's rejection of its tariffs on the use of half-fare coupons; the Review Committee of the Canadian Transport Commission has not yet issued its decision.

[3] American and Eastern Air Lines, Inc., have also filed defensive tariffs to match Air Canada's "Seat Sale" filing.

[4] On May 31, 1979, the Canadian Department of External Affairs sent a diplomatic note to the U.S. Department of State, expressing support for low fare filings by both countries' carriers bue emphasizing that Canadian Government aviation policy requires adequate "fences" for discount fares. These "fences" were defined at a 30-day advance-booking period, a seven-day minimum stay reqwuirement, and publication of a cancellation compensation fee. Air Canada notes that its fall "Seat Sale" fare conditions meet these requirements.

a wide range of markets, without the rigid restrictions and limited duration of the "Seat Sale" fares. We believe that the public interest will be far better served by our firm support of competitive carriers' right to offer a variety of attractive fare choices which make air travel available to more consumers and expand the total market, then by our approval of the temporary and restrictive "Seat Sale" proposal.

We had hoped that our restraint in issuing only a conditional suspension of the earlier "Seat Sale" filing would convey to our Canadian friends an open-minded attitude toward permissive filings by all carriers. We continue to hope that discussions between out two governments will produce an open, competitive aviation environment, free of pervasive and arbitrary government intervention—an environment which allows any carrier on either side to offer market-responsive fares and provides the traveling public with the low fares they deserve. But in the absence of such an environment, we cannot allow consumer benefits and carrier pricing strategies to be dictated unilaterally by Canadian carriers and the Canadian Government.

Accordingly, under the Federal Aviation Act of 1958, as amended, and particularly sections 102, 204(a), 403, 801 and 1002(j) thereof,

1. We shall institute an investigation to determine whether the fares and provisions set forth the Appendix A hereof, and rules and regulations or practices affecting such fares and provisions, are or will be discriminatory, unduly preferential, unduly prejudicial or otherwise unlawful, and if we find them to be unlawful, to act appropriately to prevent the use of such fares, provisions, or rules, regulations, or practices;

2. Pending hearing and decision by the Board, we hereby suspend the tariff provisions specified in Appendix A [5] and defer their use from September 1, 1979, to and including August 31, 1980, unless otherwise ordered by the Board, and shall permit no changes to be made therein during the period of suspension except by order or special permission of the Board;

3. Except to the extent granted herein, we dismiss the complaint of American Airlines, Inc., in Docket 36290 and the complaint of United Air Lines, Inc., in Docket 36348;

4. We shall submit this order to the President,[6] and it shall become effective on September 1, 1979; and

5. We shall file copies of this order in the aforesaid tariffs and serve them upon Air Canada, American Airlines, Inc., Eastern Air Lines, Inc., United Air Lines, Inc., and the Canadian Ambassador in Washington, D.C.

We shall publish this order in the **Federal Register.**

By the Civil Aeronautics Board.

**Phillis T. Kaylor,**

*Secretary.*

[FR Doc. 79-27783 Filed 9-5-79; 8:45 am]

BILLING CODE 6320-01-M

[5] Appendix A filed as part of the original document.

[6] This order was submitted to the President on August 21, 1979.

## DEPARTMENT OF COMMERCE

### Bureau of the Census

### Census Advisory Committee on the Spanish Origin Population for the 1980 Census; Public Meeting

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C., app. (1976), notice is hereby given that the Census Advisory Committee on the spanish Origin Population for the 1980 Census will convene on Setember 28, 1979, at 9:15 a.m. The Committee will meet in Room 2424, Federal Building 3, at the Bureau of the Census in Suitland, Maryland.

The Committee is composed of 21 members appointed by the Secretary of Commerce. It was established in February 1975 to advise the Director, Bureau of the Census, on such 1980 census planning elements as improving the accuracy of the population count, developing definitions for classification of the Spanish-origin population, recommending subject content and tabulations of especial use to the Spanish-origin population, and expanding the dissemination of census results among present and potential users of census data in the Spanish-origin population.

The agenda for the meeting, which is scheduled to adjourn at 4:30 p.m., is: (1) Introductory remarks by the Director of the Census Bureau, (2) current status of 1980 census planning, (3) testing and selection aids, (4) plans for the November 1979 Current Population Survey, (5) processing instructions for item 7 (Spanish/Hispanic Origin) on the 1980 questionnaire, (6) Affirmative Action Program report, (7) promotional plans for the 1980 census, (8) Committee discussion, and (9) Committee recommendations and plans for the next meeting.

The meeting will be open to the public and a brief period will be set aside for public comment and questions. Extensive questions or statements must be submitted in writing to the Committee Control Officer at least 3 days prior to the meeting.

Persons wishing further information concerning this meeting or who wish to submit written statements may contact Clifton S. Jordan, Deputy Chief, Decennial Census Division, Bureau of the Census, Room 3779, Federal Building 3, Suitland, Maryland, Mailing address: Washington, D.C. 20233, Telephone (301) 763-5169.

Dated: August 31, 1979.

**Vincent P. Barabba,**

*Director, Bureau of the Census.*

[FR Doc. 79-27760 Filed 9-5-79; 8:45 am]

BILLING CODE 3510-07-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board; Advisory Committee Meeting

The Defense Science Board will meet in closed session October 4–5, 1979 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

A meeting of the Board has been scheduled for October 4–5, 1979 to discuss interim findings and tentative recommendations resulting from ongoing Task Force activities associated with Strategic, Tactical, Intelligence/ Command, Control and Communication, and Technology issues. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture.

In accordance with 5 U.S.C. App. I sec. 10(d) (1976), it has been determined that this Defense Science Board meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly this meeting will be closed to the public.

**H.E. Lofdahl,**

*Director, Correspondence and Directives, Washington Headquarters Service, Department of Defense.*

[FR Doc. 79-27758 Filed 9-5-79; 8:45 am]

BILLING CODE 3810-70-M

## U.S. Court of Military Appeals Nominating Commission; Meetings

The U.S. Court of Military Appeals Nominating Commission will meet in closed session at 10:00 a.m. on September 19, 1979, and October 3, 1979 in room 3E869, the Pentagon.

The duty of the Commission is to recommend to the President by October 16, 1979, the names of not more than five persons qualified to sit on the Court of Military Appeals. The Commission will consider any applicants for the seat presently held by the Honorable Matthew Perry. Applications may be requested from the Office of the General Counsel, Department of Defense, Washington, D.C. 20301. All applications must be received by September 17, 1979.

In accordance with section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this meeting concerns matters listed in section 552b(c)(6) of title 5, United States Code, and therefore the meeting will be closed to the public.

**H. E. Lofdahl,**

*Deputy Director, Correspondence and Directives, Washington Headquarters Service, Department of Defense.*

August 31, 1979.

[FR Doc. 79-27757 Filed 9-5-79; 8:45 am]

BILLING CODE 3810-70-M

## Privacy Act of 1974; Deletion of System of Records

**AGENCY:** Office of the Secretary of Defense (OSD).

**ACTION:** Notice of system of records deletion.

**SUMMARY:** The Office of the Secretary of Defense is deleting a system of records from its inventory of record systems subject to the Privacy Act of 1974 which requires the publication of agency systems of records.

**FOR FURTHER INFORMATION CONTACT:** Mr. James S. Nash, Chief, Records Management Division, ODASD(A), Room 5C-315, Pentagon, Washington, DC 20301. Telephone: 202-695-0970.

**SUPPLEMENTARY INFORMATION:** The Office of Secretary of Defense systems of records subject to the Privacy Act of 1974 (5 USC 552a), Pub. L. 93-579, have been published in the **Federal Register** as follows:

FR Doc. 77-28255 (42 FR 50731) September 28, 1977.
FR Doc. 78-25819 (43 FR 42374) September 20, 1978.
FR Doc. 78-34821 (43 FR 58405) December 14, 1978.
FR Doc. 78-35943 (43 FR 60331) December 27, 1978.
FR Doc. 79-8786 (44 FR 17780) March 23, 1979.
FR Doc. 79-11351 (44 FR 22143) April 13, 1979.
FR Doc. 79-15267 (44 FR 28706) May 16, 1979.
FR Doc. 79-17755 (44 FR 32724) June 7, 1979.
FR Doc. 79-20389 (44 FR 38967) July 3, 1979.
FR Doc. 79-22906 (44 FR 43505) July 25, 1979.

**H. E. Lofdahl,**

*Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.*

August 30, 1979.

**Deletion**

**DCOMP SP01**

*System name:*

Office of the DASD (Security Policy) Personnel Files (ODASD (SP)) (42 FR 50752, September 28, 1977).

*Reason:*

The files in this system are no longer maintained. The Deputy Secretary of Defense approved the disestablishment of the Deputy Assistant Secretary of Defense (Security Policy), DASD(SP), Office of the Assistant Secretary of Defense (Comptroller), OASD(C), and the reassignment of the functions of the DASD(SP) and its subordinate Directorate for Industrial Security Clearance Review (DISCR), to the Assistant General Counsel for Fiscal Matters, AGC(FM), Office of the General Counsel (OGC) DoD.

[FR Doc. 79-27756 Filed 9-5-79; 8:45 am]

BILLNG CODE 3810-70-M

## DEPARTMENT OF ENERGY

## Issuance of Proposed Decisions and Orders by the Office of Hearings and Appeals; June 11 through June 15, 1979

Notice is hereby given that during the period June 11 through June 15, 1979, the Proposed Decisions and Orders which are summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to Applications for Exception which had been filed with that Office.

Under the procedures which govern the filing and consideration of exception applications (10 CFR, Part 205, Subpart D), any person who will be aggrieved by the issuance of the Proposed Decision and Order in final form may file a written Notice of Objection within ten days of service. For purposes of those regulations, the date of service of notice shall be deemed to be date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. The applicable procedures also specify that if a Notice of Objection is not received from any aggrieved party within the time period specified in the regulations, the party will be deemed to consent to the issuance of the Proposed Decision and order in final form. Any aggrieved party that wishes to contest any finding or conclusion contained in a Proposed Decision and Order must also file a detailed Statement of Objections within 30 days of the date of service of the Proposed Decision and Order. In that Statement of Objections an aggrieved party must specify each issue of fact or law contained in the Proposed Decision and Order which it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these Proposed Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., e.d.t., except federal holidays.

**Melvin Goldstein,**

*Director, Office of Hearings and Appeals.*

August 29, 1979.

Aminoil USA, Inc., Houston, Texas, Crude Oil, DEE-4213. Aminoil USA, Inc. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit the firm to sell a certain portion of the crude oil produced for the benefit of the working interest owners from the California State Lease #425, Jones Zone, located in Orange County, California, at upper tier ceiling prices. On June 15, 1979, the DOE issued a Proposed Decision and Order and tentatively determined that exception relief should be granted, in part, with respect to the applicant's California State Lease #425, Jones Zone.

Cities Service Company, Seminole County, Oklahoma, Crude Oil, DEE-2086. Cities Service Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit the firm to sell a certain portion of the crude oil produced for the benefit of the working interest owners from the Walker A Lease located in Seminole County, Oklahoma, at upper tier ceiling prices. On June 14, 1979, the DOE issued a Proposed Decision and Order and tentatively determined that exception relief should be granted, in part, with respect to the applicant's Walker A Lease.

Continental Oil Company, Houston, Texas, Crude Oil, DEE-3710. Continental Oil Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit the firm to sell a certain portion of the crude oil produced for the benefit of the working interest owners from the Southeast Eureka Unit located in Alfalfa County, Oklahoma, at upper tier ceiling prices. On June 15, 1979, the DOE issued a Proposed Decision and Order and tentatively determined that exception relief should be granted, in part,

with respect to the applicant's Southeast Eureka Unit.

*Craft Petroleum Company, Inc., Jackson, Mississippi, Crude Oil, DXE–5526.* Craft Petroleum Company, Inc. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in an extension of exception releif previously granted and would permit the firm to sell a certain portion of the crude oil which it produces from the Bedford 33–11 Lease for the benefit of the working interest owners at upper tier ceiling prices. On June 14, 1979, the DOE issued a Proposed Decision and Order and tentatively determined that an extension of exception relief should be granted with respect to the applicant's Bedford 33–11 Lease.

*Energy Consumers and Producers Association, Seminole, Oklahoma, Crude Oil, DEE–1856.* Energy Consumers and Producers Association filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit the firm to sell the crude oil produced for the benefit of the working interest owners from the Austin Chalk/Buda Trend formations located in the State of Texas at market prices. On June 13, 1979, the DOE issued a Proposed Decision and Order and tentatively determined that exception application should be dismissed.

*Rex Monahan, Sterling, Colorado, Crude Oil, DXE–2804.* Rex Monahan filed an Application for Exception from the provisions of 10 CFR, Subpart D. The exception request, if granted, would permit Monahan to sell the Crude oil produced from the Springen Ranch Unit at prices in excess of those permitted by the provisions of 10 CFR, Part 212. On June 13, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

**List of Cases Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline**

The following firms filed Applications for Exception from the provisions of Standby Regulation Activation Order No. 1 and the Interim Final Rule Which superseded it. The exception requests, if grantd, would result in an increase in the firms' base period allocation of motor gasoline. The DOE issued Proposed Decisions and Orders which determined that the exception requests be granted.

*Company name, case number and location*

Auto Row Texaco, DEE–4290, San Jose, California.
Bassett's 66 Service DEE–4510, Bartonville, Illinois.
J&B Automotive DEE–3783, Patchoque, New York.
John and Sharon Volk's Arco DEE–3760, Santa Ynez, California.
Peck's Arco Mini Mart DEE–5911, Livermore, California.
Publix Oil Co. DEE–5462, Washington, D.C.
Ray W. Reeves, DEE–3550, McDonough, Georgia
Gottlieb Corp. DEE–2269, Kansas City, Missouri.
Kelly's Exxon, DEE–3231, Tyler, Texas.
Rocket Oil Co., DEE–5056, Benton, Arkansas.

[FR Doc. 79–27592 Filed 9–5–79; 8:45 am]

BILLING CODE 6450–01–M

## Objection to Proposed Remedial Orders Filed with the Office of Hearings and Appeals; Week of July 30 through August 3, 1979

Notice is hereby given that during the week of July 30 through August 3, 1979, the Notices of Objection to Proposed Remedial Orders listed below were filed with the Office of Hearings and Appeals of the Department of Energy.

On or before September 26, 1979, any person who wishes to participate in the proceeding which the Department of Energy will conduct concerning the Proposed Remedial Orders described below must file a request to participate pursuant to 10 CFR 205.194 (44 FR 7926, February 7, 1979). On or before October 9, 1979, the Office of Hearings and Appeals will determine those persons who may participate on an active basis in this proceeding, and will prepare an official service list which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown. All requests regarding this proceeding shall be filed with the office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

Issued in Washington, D.C.

**Melvin Goldstein,**

*Director, Office of Hearings and Appeals.*

August 29, 1979.

*Harvey J. Bean, Erie, Pennsylvania, DRO–0274; Motor Gasoline.* On August 2, 1979, Harvey J. Bean, 471 West Arlington, Erie, Pennsylvania, 16509 filed a Notice of Objection to an Interim Remedial Order for Immediate Compliance (IROIC) which the DOE Northeast District Office of Enforcement issued to him on July 2, 1979. In the IROIC the Northeast District found that Bean was charging prices for motor gasoline that exceeded lawful prices. The IROIC therefore directed Bean to reduce his selling prices immediately.

*T & J Auto Laundry, Jersey City, New Jersey, DRO–0254, Motor Gasoline.* On August 3, 1979, T & J Auto Laundry, 1 West Side Avenue, Jersey City, New Jersey, 07305 filed a Notice of Objection to (an Interim Remedial Order for Immediate Compliance) which the DOE New Jersey State Office of Enforcement issued to the firm on July 25, 1979. In the IROIC the State found that on July 6, 1979, T & J Laundry overcharged its customers for motor gasoline.

According to the IROIC the T & J Laundry's violation resulted in $6,760 of fines.

[FR Doc. 79–27591 Filed 9–5–79; 8:45 am]

BILLING CODE 6450–01–M

## Economic Regulatory Administration

## Alta Loma Oil Co. (Formerly Aikman Oil Co.); Action Taken on Consent Order

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of action taken and opportunity for comment on Consent Order.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

**EFFECTIVE DATE:** August 2, 1979.

**COMMENTS BY:** October 9, 1979.

**ADDRESS:** Send comments to: Wayne I. Tucker, District Manager of Enforcement, Southwest District of Enforcement, Department of Energy, Economic Regulatory Administration, 2626 W. Mockingbird Lane, P.O. Box 35228, Dallas, Texas 75235.

**FOR FURTHER INFORMATION CONTACT:** Wayne I. Tucker, District Manager, Southwest District of Enforcement, Department of Energy, Economic Regulatory Administration, 2626 W. Mockingbird Lane, P.O. Box 35228, Dallas, Texas, phone (214) 767–7745.

**SUPPLEMENTARY INFORMATION:** On August 2, 1979, the Office of Enforcement of the ERA executed a Consent Order with Energy Resources Oil and Gas Corporation (Energy Resources) of Dallas, Texas. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

Because the DOE and Energy Resources wish to expeditiously resolve this matter as agreed and to avoid delay in the payment of refunds, the DOE has determined that it is in the public interest to make the Consent Order with Energy Resources effective as of the date of its execution by the DOE and Energy Resources.

### I. The Consent Order

Energy Resources, with its home office located in Dallas, Texas, is a firm engaged in the production and sale of crude oil, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 C.F.R., Parts 210, 211, 212. To resolve certain civil actions which could be brought by the Office of Enforcement, ERA, and Energy Resources entered into a

Consent Order, the significant terms of which are as follows:

1. The period covered by the audit was September 1, 1973 through October 31, 1977, and it included all sales of crude oil to the Permian Corporation, General Energy Company, Inc., Mobil Oil Corporation, Skelly Oil Company, and Derby Refining Company.

2. Energy Resources improperly applied the provisions of 10 CFR Part 212, Subpart D when determining the prices to be charged for its crude oil; and as a consequence, some of the above firms were overcharged on some of their purchases.

3. Energy Resources agrees to refund to the DOE $294,617.21 plus interest within 36 months of the effective date of the Consent Order.

4. The provisions of 10 CFR 205.199J, including the publication of this Notice, are applicable to the Consent Order.

**II. Disposition of Refunded Overcharges**

In this Consent Order, Energy Resources agrees to refund in full settlement of any civil liability with respect to actions which might be brough by the Office of Enforcement, ERA, arising out of the transactions specified in I. 1. above, the sum of $294,617.21 within 36 months of the effective date of the Consent Order. The Refund shall be by certified check in thirty-six monthly installments, each monthly installment to equal at least 1/36th of the full amount of overcharges, plus interest, made payable to the Department of Energy and will be delivered to the Assistant Administrator for Enforcement ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amount in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

**III. Submission of Written Comments**

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily to the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of the potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Wayne I. Tucker, District Manager, Southwest District of Enforcement, Department of Energy, Economic Regulatory Administration, 2626 West Mockingbird Lane, P.O. Box 35228, Dallas, Texas 75235. You may obtain a free copy of this Consent Order by writing to the same address or by calling (214) 767-7745.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Alta Loma Oil Company Consent Order." We will consider all comments we receive by 4:30 p.m., local time, thirty days after publication. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Dallas, Texas on the 24th day of August, 1979.

**Herbert F. Buchanan,**

*Deputy District Manager Southwest District of Enforcement.*

[FR Doc. 79-27583 Filed 9-5-79; 8:45 am]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

### Montana Dakota Utilities, et al.; Notice of Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

August 27, 1979

The Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

**Montana Board of Oil and Gas Conservation**

1. Control number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 79-16506/6-79-215
2. 25-071-21670
3. 103
4. Southland Royalty Company
5. Bowdoin Federal 1-18-25NE
6. Bowdoin Dome
7. Phillips MT
8. 60.0 million cubic feet
9. August 15, 1979
10. Montana Dakota Utilities

1. 79-16507/6-79-214
2. 25-071-21664
3. 103
4. Southland Royalty Company
5. Bowdoin 1-16-12NE
6. Bowdoin Dome
7. Phillips MT
8. 61.0 million cubic feet
9. August 15, 1979
10. Kansas Nebraska Gas Company

1. 79-16508/6-79-202
2. 25-083-21298
3. 103
4. Phoenix Resources Company
5. McGinnis 2R-34
6. Middle Sioux Pass
7. Richland, MT
8. 53.0 million cubic feet
9. August 15, 1979
10. True Oil Company

1. 79-16509/4-79-193
2. 25-095-21101
3. 108
4. Pacer Resources Inc
5. Dannenberg 2-27
6. North Lake Basin
7. Stillwater MT
8. 15.3 million cubic feet
9. August 15, 1979
10. Montana-Dakota Utilities Co

**New Mexico Department of Energy and Minerals, Oil Conservation Division**

1. Control number (FERC/State)
2. API well Number
3. Section of NGPA

4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 79–16492
2. 30–015–00000
3. 103
4. Black River Corporation
5. Cerro Com #1
6. South Carlsbad Morrow
7. Eddy NM
8. 54.0 million cubic feet
9. August 15, 1979
10. El Paso Natural Gas Company

1. 79–16493
2. 30–045–09046
3. 108
4. Texaco Inc
5. New Mexico Com B No 1
6. Blanco-Pictured Cliffs
7. San Juan NM
8. 14.0 million cubic feet
9. August 15, 1979
10. El Paso Natural Gas Company

1. 79–16494
2. 30–045–08929
3. 108
4. Texaco Inc
5. New Mexico Com F No 1
6. Blanco Pictured Cliffs
7. San Juan NM
8. 15.0 million cubic feet
9. August 15, 1979
10. El Paso Natural Gas Company

1. 79–16495
2. 30–045–20483–0000–1
3. 108
4. Southland Royalty Company
5. Decker #4
6. Basin Dakota
7. San Juan NM
8. 4.0 million cubic feet
9. August 15, 1979
10. Southern Union Gathering Company

1. 79–16496
2. 30–045–20483–0000–2
3. 108
4. Southland Royalty Company
5. Decker #4
6. Blanco Mesaverde
7. San Juan NM
8. .0 million cubic feet
9. August 15, 1979
10. Southern Union Gathering

1. 79–16497
2. 30–045–22975
3. 103
4. El Paso Natural Gas Company
5. Atlantic B #8A
6. Blanco Mesaverde
7. San Juan NM
8. 250.0 million cubic feet
9. August 15, 1979
10. El Paso Natural Gas Company

1. 79–16498
2. 30–015–22611
3. 103
4. Gulf Oil Corporation
5. Eddy Gr State Well No 1
6. Undesignated Morrow
7. Eddy NM
8. 240.0 million cubic feet
9. August 15, 1979
10. El Paso Natural Gas

1. 79–16499
2. 30–045–10776
3. 108
4. Dugan Production Corp
5. Cuccia #1
6. Basin-Dakota
7. San Juan NM
8. 12.5 million cubic feet
9. August 15, 1979
10. El Paso Natural Gas Company

1. 79–16500
2. 30–003–20644
3. 103
4. Moranco
5. Western Reserves 32 State #1
6. Tom-Tom (San Andres)
7. Chaves NM
8. 7.0 million cubic feet
9. August 15, 1979
10. Transwestern Pipeline Company

1. 79–16501
2. 30–025–26278
3. 103
4. Gulf Oil Corporation
5. Arnott-Ramsay (NCT–B) Well No 6
6. Langlie Mattix Queen
7. Lea NM
8. .0 million cubic feet
9. August 15, 1979
10. El Paso Natural Gas Co

1. 79–16502
2. 30–025–26105
3. 103
4. Gulf Oil Corporation
5. Arnott-Ramsay (NCT–B) No 5
6. Langlie Mattix Queen
7. Lea NM
8. .0 million cubic feet
9. August 15, 1979
10. El Paso Natural Gas Co

1. 79–16503
2. 30–041–20479
3. 103
4. Enserch Exploration Inc
5. Lambirth No 6
6. South Peterson (Fusselman)
7. Roosevelt NM
8. 58.0 million cubic feet
9. August 15, 1979
10. Natural Gas Pipeline Co of America

1. 79–16504
2. 30–025–00000
3. 103
4. Sabine Production Company
5. DeSoto State No 2
6. Tulk Penn
7. Lea NM
8. 18.3 million cubic feet
9. August 15, 1979
10. Warren Petroleum Company

1. 79–16505
2. 30–015–00000
3. 108
4. Great Western Drilling Company
5. Burton State Com #1
6. Burton Flat Morrow
7. Eddy NM
8. 1.0 million cubic feet
9. August 15, 1979
10. El Paso Natural Gas Company

**Oklahoma Corporation Commission**

1. Control Number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 79–16409/00034
2. 35–017–20968
3. 103
4. Phillips Petroleum Co
5. Schroeder A#1
6. S. Okarchie
7. Canadian OK
8. 75.0 million cubic feet
9. August 14, 1979
10.

1. 79–16410/00031
2. 35–009–20252
3. 103
4. The GHK Company
5. Watkins 2–21
6. Carpenter
7. Beckham OK
8. 550.0 million cubic feet
9. August 14, 1979
10. Arkansas Louisiana Gas Company
Michigan-Wisconsin Pipeline Co

1. 79–16411/00118
2. 35–087–20365
3. 103
4. John A Taylor
5. Crawford #1–11
6. N Flint Creek
7. McClain OK
8. 223.0 million cubic feet
9. August 14, 1979
10. Oklahoma Gas & Electric Co

1. 79–16412/00025
2. 35–015–00000
3. 103
4. Amarex Inc
5. Slemp #1
6. Spring Creek
7. Caddo OK
8. 720.0 million cubic feet
9. August 14, 1979
10.

1. 79–16413/00026
2. 35–017–00000
3. 103
4. Amarex Inc
5. Petree #1–7
6. SW El Reno
7. Canadian OK
8. 900.0 million cubic feet
9. August 14, 1979
10. Michigan Wisconsin Pipe Line Co

1. 79–16414/00071
2. 35–121–20250
3. 108
4. James C Meade
5. Great Basins #3 Lalman
6. C NW NE Section 7–6N–16E
7. Pittsburgh OK
8. 7.5 million cubic feet
9. August 14, 1979
10. Arkansas Louisiana Gas Company

1. 79–16415/00095
2. 35–013–00000
3. 108
4. Okmar Oil Company
5. Anderson-Mayhue Unit 1–34

6. (East) Durant
7. Bryan OK
8. 20.0 million cubic feet
9. August 14, 1979
10. Lone Star Gas Co

1. 79–16416/00093
2. 35–013–00000
3. 108
4. Okmar Oil Company
5. Crawford Unit 1–35
6. (East) Durant
7. Bryan OK
8. 17.0 million cubic feet
9. August 14, 1979
10. Lone Star Gas Co

1. 79–16417/00089
2. 35–003–00000
3. 108
4. Okmar Oil Company
5. Davis #1–33
6. Goltry
7. Alfalfa OK
8. 10.0 million cubic feet
9. August 14, 1979
10. Union Texas Petroleum

1. 79–16418/00137
2. 35–025–00000
3. 103
4. Gulf Energy Producing Company
5. State of Oklahoma #1–14
6. Keyes
7. Cimarron, OK
8. 2.0 million cubic feet
9. August 14, 1979
10. Phillips Petroleum Co

1. 79–16419/00108
2. 35–139–00000
3. 108
4. Donald W. Jackson
5. Stonebraker O No 1
6. Guymon-Hugoton
7. Texas, OK
8. 9.0 million cubic feet
9. August 14, 1979
10. Northern Natural Gas Company

1. 79–16420/00109
2. 35–139–00000
3. 108
4. Donald W. Jackson
5. Huddleston B No 1
6. Guymon-Hugoton
7. Texas, OK
8. 5.5 million cubic feet
9. August 14, 1979
10. Northern Natural Gas Company

1. 79–16421/00110
2. 35–139–00000
3. 108
4. Donald W. Jackson
5. Stonebraker AD No 1
6. Guymon-Hugoton
7. Texas, OK
8. 18.0 million cubic feet
9. August 14, 1979
10. Northern Natural Gas Company

1. 79–16422/00111
2. 35–139–00000
3. 108
4. Donald W. Jackson
5. Gambill A No 1
6. Guymon-Hugoton
7. Texas, OK
8. 8.0 million cubic feet
9. August 14, 1979
10. Northern Natural Gas Company

1. 79–16423/00112
2. 35–139–00000
3. 108
4. Donald W. Jackson
5. Buzzard G No 1
6. Guymon-Hugoton
7. Texas, OK
8. 5.0 million cubic feet
9. August 14, 1979
10. Northern Natural Gas Company

1. 79–16424/00113
2. 35–139–00000
3. 108
4. Donald W. Jackson
5. Langston B No 1
6. Guymon-Hugoton
7. Texas, OK
8. 18.0 million cubic feet
9. August 14, 1979
10. Northern Natural Gas Company

1. 79–16425/00106
2. 35–093–21286
3. 103
4. Grace Petroleum Corporation
5. Gammon #2–33
6. North East Ames
7. Major, OK
8. 52.5 million cubic feet
9. August 14, 1979
10. Arkansas-Louisiana Gas Company

1. 79–16426/00128
2. 35–129–00000
3. 102
4. Hoover & Bracken Energies Inc
5. Mathers #1–27
6. North West Hamburg
7. Roger Mills, OK
8. 1.8 million cubic feet
9. August 14, 1979
10. Northern Natural Gas Company, Laclede Gas Co

1. 79–16427/00125
2. 35–039–00000
3. 102
4. Hoover & Bracken Energies Inc
5. McClelland #1–1
6. North Weatherford
7. Custer, OK
8. 73.0 million cubic feet
9. August 14, 1979
10. Arkansas Louisiana Gas Company

1. 79–16428/00124
2. 35–039–20168
3. 102
4. Hoover & Bracken Energies Inc
5. Fortner #1–7
6. North Weatherford
7. Custer, OK
8. 730.0 million cubic feet
9. August 14, 1979
10. Arkansas Louisiana Gas Company

1. 79–16429/00176
2. 35–017–21091
3. 102
4. Key Operating Company Inc
5. Carl #1
6. SW El Reno
7. Canadian, OK
8. 548.0 million cubic feet
9. August 14, 1979
10. Michigan Wisconsin Pipe Line Co

1. 79–16430/00175
2. 35–105–20955
3. 102
4. A Wesley Karns
5. Welsh #1
6. Welsh SW NW NE NE 15–29–14
7. Nowata, OK
8. 18.3 million cubic feet
9. August 14, 1979
10. Union Gas System

1. 79–16431/00167
2. 35–151–20754
3. 102
4. Creslenn Oil Company
5. Baird Unit No 1
6. East Campbell
7. Woods, OK
8. .0 million cubic feet
9. August 14, 1979
10. Michigan Wisconsin Pipeline Company

1. 79–16432/00127
2. 35–039–20137
3. 102
4. Ferguson Oil & Gas Company Inc
5. Hoelker #1
6. Anthon
7. Custer, OK
8. 1302.0 million cubic feet
9. August 14, 1979
10. Michigan-Wisconsin Pipe Line Co, Arkansas-Louisiana Gas Co

1. 79–16433/00119
2. 35–087–00000
3. 102
4. John A. Taylor
5. John A. Taylor #1 Bingaman #1–10
6. North Dibble
7. McClain, OK
8. 110.0 million cubic feet
9. August 14, 1979
10.

1. 79–16434/00117
2. 35–063–20798
3. 102
4. John A. Taylor
5. Pool #1–13
6. West Calvin
7. Hughes, OK
8. 360.0 million cubic feet
9. August 14, 1979
10.

1. 79–16435/00028
2. 35–009–20240
3. 107
4. The GHK Company
5. Clark 1–33
6. Carpenter
7. Beckham, OK
8. 350.0 million cubic feet
9. August 14, 1979
10.

1. 79–16436/00036
2. 35–009–20236
3. 107
4. The GHK Company
5. Watkins 1–21
6. Carpenter
7. Beckham, OK
8. 3600.0 million cubic feet
9. August 14, 1979
10. Michigan Wisconsin Pipeline Co, Oklahoma Natural Gas

1. 79–16437/00033
2. 35–009–20250
3. 107
4. The GHK Company
5. Gregory 1–29
6. Carpenter
7. Beckham, OK

8. 3000.0 million cubic feet
9. August 14, 1979
10. Michigan-Wisconsin Pipe Line Co

1. 79-16438/00120
2. 35-009-20246
3. 107
4. Helmerich & Payne Inc
5. Copeland No 1
6. West Mayfield
7. Beckham OK
8. 2920.0 million cubic feet
9. August 14, 1979
10. Michigan Wisconsin Pipeline Company Oklahoma Natural Gas Co

1. 79-16439/00121
2. 35-109-20222
3. 107
4. Helmerich & Payne Inc
5. Cupp A No 2
6. West Mayfield
7. Beckham OK
8. 120.0 million cubic feet
9. August 14, 1979
10. Michigan Wisconsin Pipeline Company Oklahoma Natural Gas Co

1. 79-16440/00129
2. 35-043-20785
3. 107
4. Hoover & Bracken Energies Inc
5. Williams #1-10
6. Leedey
7. Dewey OK
8. 365.0 million cubic feet
9. August 14, 1979
10. Arkansas Louisiana Gas Co

1. 79-16441/00130
2. 35-043-20840
3. 107
4. Hoover & Bracken Energies Inc
5. Hazel Craig #1-5
6. Leedey
7. Dewey OK
8. 36.5 million cubic feet
9. August 14, 1979
10. Arkansas Louisiana Gas Co

1. 79-16442/00008
2. 35-043-20896
3. 103
4. OFT Exploration Inc
5. Bill Ohair #1-12
6. Section 12-19N-20W
7. Dewey OK
8. 40.0 million cubic feet
9. August 14, 1979
10. Panhandle Eastern Pipe Line Co

1. 79-16443/00099
2. 35-079-20280
3. 102
4. Copeland Energy Corp
5. Gildersleeve #1-16
6.
7. Leflore OK
8. 54.8 million cubic feet
9. August 14, 1979
10.

1. 79-16444/00011
2. 35-153-20802
3. 102
4. OFT Exploration Inc
5. Susie Dodge #1-03
6. N E Cedardale Section 3-22N-18W
7. Woodward OK
8. 350.0 million cubic feet
9. August 14, 1979
10. Northern Natural Gas Co

**Texas Railroad Commission Oil And Gas Division**

1. Control Number (FERC/State)
2. API Well Number
3. Section of NGPA
4. Operator
5. Well Name
6. Field or OCS area name
7. County, State or Block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 79-16445/03598
2. 42-237-00000
3. 108
4. Gulf Oil Corp
5. Mary Worthington No 2
6. Jack County (Regular)
7. Jack TX
8. 5.1 million cubic feet
9. August 14, 1979
10. Natural Gas Pipeline Co of America

1. 79-16446/02775
2. 42-103-00000
3. 103
4. Getty Oil Co
5. N McElroy Unit Well No 4146
6. McElroy
7. Crane TX
8. 4.0 million cubic feet
9. August 14, 1979
10. Phillips Petroleum Co

1. 79-16447/02774
2. 42-103-00000
3. 103
4. Getty Oil Co
5. N McElroy Unit No 4139
6. McElroy
7. Crane TX
8. .0 million cubic feet
9. August 14, 1979
10. Phillips Petroleum Co

1. 79-16448/02776
2. 42-103-00000
3. 103
4. Getty Oil Co
5. N McElroy Unit No 2132
6. McElroy
7. Crane TX
8. 2.0 million cubic feet
9. August 14, 1979
10. Phillips Petroleum Co

1. 79-16449/02777
2. 42-103-00000
3. 103
4. Getty Oil Co
5. N McElroy Unit No 3247
6. McElroy
7. Crane TX
8. 7.0 million cubic feet
9. August 14, 1979
10. Phillips Petroleum Co

1. 79-16450/02778
2. 42-103-00000
3. 103
4. Getty Oil Co
5. N McElroy Unit No 3254
6. McElroy
7. Crane TX
8. 3.0 million cubic feet
9. August 14, 1979
10. Phillips Petroleum Co

1. 79-16451/02779
2. 42-103-00000
3. 103
4. Getty Oil Co
5. N McElroy Unit No 3263
6. McElroy
7. Crane TX
8. 7.0 million cubic feet
9. August 14, 1979
10. Phillips Petroleum Co

1. 79-16452/02781
2. 42-103-00000
3. 103
4. Getty Oil Co
5. N McElroy Unit No 3350
6. McElroy
7. Crane TX
8. 6.0 million cubic feet
9. August 14, 1979
10. Phillips Petroleum Co

1. 79-16453/02780
2. 42-103-00000
3. 103
4. Getty Oil Co
5. N McElroy Unit No 3343
6. McElroy
7. Crane TX
8. .0 million cubic feet
9. August 14, 1979
10. Phillips Petroleum Co

1. 79-16454/02796
2. 42-421-00000
3. 108
4. American Petrofina Company of Texas
5. Bradley No 1
6. Texas Hugoton
7. Sherman TX
8. 15.0 million cubic feet
9. August 14, 1979
10. Phillips Petroleum Co

1. 79-16455/02861
2. 42-427-30880
3. 103
4. Sun Oil Company (Delaware)
5. G G Villarreal C Unit 22 #2-C
6. Garcia (Stray 3470)
7. Starr TX
8. 5.0 million cubic feet
9. August 14, 1979
10.

1. 79-16456/02886
2. 42-025-01219
3. 108
4. Energy Reserves Group Inc
5. Michael Fox #2T
6. Blanconia
7. Bee TX
8. 13.0 million cubic feet
9. August 14, 1979
10. United Gas Pipeline Company

1. 79-16457/02894
2. 42-427-04790
3. 108
4. Energy Reserves Group Inc
5. Louise Guerra #1
6. S Gregg Wood
7. Starr TX
8. 9.0 million cubic feet
9. August 14, 1979
10. South Texas Natural Gas Gathering

1. 79-16458/03041
2. 42-495-01260
3. 108
4. Gulf Oil Corporation
5. Keystone Cattle Co #106
6. Keystone (McKee)
7. Winkler TX

8. 16.0 million cubic feet
9. August 14, 1979
10. Sid Richardson Carb & Gaso

1. 79-16459/03040
2. 42-495-01283
3. 108
4. Gulf Oil Corporation
5. Keystone Cattle Co #129-C
6. Keystone (McKee)
7. Winkler TX
8. 8.0 million cubic feet
9. August 14, 1979
10. Sid Richardson Carb & Gaso

1. 79-16460/04920
2. 42-003-31697
3. 103
4. Amoco Production Company
5. Univ McFarland Queen Consol #3-8
6. McFarland/Queen
7. Andrews TX
8. .0 million cubic feet
9. August 14, 1979
10. Phillips Petroleum Company Northern Natural Gas Co

1. 79-16461/04871
2. 42-219-32478
3. 103
4. Amoco Production Company
5. Northwest Mallet Unit No 166
6. Slaughter
7. Hockley TX
8. 5.2 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79-16462/04881
2. 42-105-31587
3. 103
4. Amoco Production Company
5. J S Todd A R/A A No 11
6. Wyatt
7. Crockett TX
8. 15.0 million cubic feet
9. August 14, 1979
10. Permian Corporation El Paso Natural Gas Co

1. 79-16463/04889
2. 42-219-32592
3. 103
4. Amoco Production Company
5. East RKM Unit No 77
6. Slaughter
7. Hockley TX
8. 8.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79-16464/04890
2. 42-219-32573
3. 103
4. Amoco Production Company
5. East RKM Unit No 68
6. Slaughter
7. Hockley TX
8. 8.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79-16465/04892
2. 42-475-31002
3. 103
4. Amoco Production Company
5. J F Postelle No 6
6. Rhoda Walker (Canyon 5900)
7. Ward TX
8. 143.0 million cubic feet
9. August 14, 1979
10. Delhi Gas Pipeline Corp

1. 79-16466/04893
2. 42-475-31003
3. 103
4. Amoco Production Company
5. J F Postelle No 7
6. Rhoda Walker/Canyon 5900
7. Ward TX
8. 364.0 million cubic feet
9. August 14, 1979
10. Delhi Gas Pipeline Corp

1. 79-16467/04903
2. 42-475-31611
3. 103
4. Amoco Production Company
5. J F Postelle No 8
6. Rhoda Walker (Canyon 5900)
7. Ward TX
8. 43.0 million cubic feet
9. August 14, 1979
10. Delhi Gas Pipeline Corp

1. 79-16468/04899
2. 42-109-31370
3. 103
4. Gulf Oil Corporation
5. TXL CX (NCT-B) Well No 11
6. Geraldine (Ford)
7. Culberson TX
8. .3 million cubic feet
9. August 14, 1979
10. Continental Oil & Gas Co

1. 79-16469/03648
2. 42-371-32607
3. 102
4. Zinke & Philpy Inc
5. Dietrich State No 1
6. D S Devonian (New Onshore Reservoir)
7. Pecos TX
8. 146.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79-16470/03900
2. 42-481-31680
3. 103
4. Sue-Ann Operating Company
5. Vineyard No 1 79772
6. Arrington (Marg)
7. Wharton TX
8. 750.0 million cubic feet
9. August 14, 1979
10. United Gas Pipeline Company

1. 79-16471/03902
2. 42-227-31670
3. 103
4. Harper & Lawless
5. W S Cole No 7
6. Vincent (Clear Fork Lower)
7. Howard TX
8. 1.7 million cubic feet
9. August 14, 1979
10. Getty Oil Company

1. 79-16472/03932
2. 42-089-30965
3. 103
4. Sue-Ann Operating Company
5. Anderson Unit No 1 78223
6. Chesterville N (Wilcox 9200)
7. Colorado TX
8. 375.0 million cubic feet
9. August 14, 1979
10. Tennessee Gas Pipeline Company

1. 79-16473/03904
2. 42-227-31538
3. 103
4. Harper & Lawless
5. W S Cole #3
6. Vincent (Clear Fork Lower)
7. Howard TX
8. 1.9 million cubic feet
9. August 14, 1979
10. Getty Oil Company

1. 79-16474/03903
2. 42-227-31668
3. 103
4. Harper & Lawless
5. W S Cole #5
6. Vincent (clear fork lower)
7. Howard TX
8. 1.2 million cubic feet
9. August 14, 1979
10. Getty Oil Company

1. 79-16475/03945
2. 42-211-30698
3. 103
4. Gulf Oil Corporation
5. Forgey #4-93
6. Gem Hemphill
7. Hemphill TX
8. 11.0 million cubic feet
9. August 14, 1979
10. Cities Service Gas Company

1. 79-16476/04004
2. 42-427-31153
3. 103
4. Sun Oil Company (Delaware)
5. Saenz M—State No 21
6. Rincon North (Vicksburg 6700)
7. Starr TX
8. 112.0 million cubic feet
9. August 14, 1979
10.

1. 79-16477/04389
2. 42-323-31278
3. 103
4. Continental Oil Co
5. N J Chittim No 6550 02082
6. Sacatosa (San Miguel #1 Sand)
7. Maverick TX
8. 6.8 million cubic feet
9. August 14, 1979
10. Lovaca Gathering Company

1. 79-16478/04006
2. 42-247-30771
3. 103
4. Sun Oil Company (Delaware)
5. Ruth S Canales No 2
6. Jules Walker (Yequa 7500)
7. Jim Hogg TX
8. 2.0 million cubic feet
9. August 14, 1979
10. Texas Eastern Transmission Corp

1. 79-16479/04458
2. 42-103-31812
3. 103
4. Warren Pet Co Div/Gulf Oil Corp
5. W N Waddell et al # 1099
6. Sand Hills (Tubb)
7. Crane TX
8. .0 million cubic feet
9. August 14, 1979
10. H-T Gathering Company

1. 79-16480/04459
2. 42-323-31170
3. 103
4. Continental Oil Co
5. N J Chittim No 7016 (02082)
6. Sacatosa (San Miguel #1 Sand)
7. Maverick TX
8. 6.8 million cubic feet
9. August 14, 1979
10. Lovaca Gathering Company

1. 79-16481/04473
2. 42-323-31217
3. 103
4. Continental Oil Co
5. N J Chittim No 6924 (02082)
6. Sacatosa (San Miguel #1 Sand)
7. Maverick TX
8. 6.8 million cubic feet
9. August 14, 1979
10. Lovaca Gathering Company

1. 79-16482/03046
2. 42-505-30904
3. 103
4. Gas Producing Enterprises Inc
5. Martinez Lauro #1
6. JJ & J (Wilcox 8800)
7. Zapata TX
8. 257.0 million cubic feet
9. August 14, 1979
10. Transcontinental Gas Pipeline

1. 79-16483/04488
2. 42-323-31289
3. 103
4. Continental Oil Co
5. N J Chittim No 7120 (02082)
6. Sacatosa (San Miguel No 1 Sand)
7. Maverick TX
8. 6.8 million cubic feet
9. August 14, 1979
10. Lo Vaca Gathering Company

1. 79-16484/03056
2. 42-195-30605
3. 103
4. Yucca Petroleum Co
5. Betty #2-24 TRC #76100
6. Clementine (Morrow Upper)
7. Hansford TX
8. 75.0 million cubic feet
9. August 14, 1979
10. Northern Natural Gas Company

1. 79-16485/03057
2. 42-195-30576
3. 103
4. Yucca Petroleum Co
5. C C Beck #2-8 TRC #72322
6. Bernstein (Morrow Upper)
7. Hansford TX
8. 360.0 million cubic feet
9. August 14, 1979
10. Northern Natural Gas Company

1. 79-16486/03075
2. 42-233-00000
3. 108
4. Energy Reserves Group Inc
5. Bivens #5 RC
6. W Panhandle
7. Hutchinson TX
8. 12.0 million cubic feet
9. August 14, 1979
10. Phillips Petroleum Company

1. 79-16487/03076
2. 42-233-35050
3. 108
4. Energy Reserves Group Inc
5. Paramount #1-A
6. W Panhandle
7. Hutchinson TX
8. 23.0 million cubic feet
9. August 14, 1979
10. Panhandle Producing Company

1. 79-16488/03550
2. 42-103-31768
3. 103
4. Warren Pet Co Div/Gulf Oil Corp
5. J B Tubb A #35
6. Sand Hills (McKnight)
7. Crane TX
8. 1.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Co

1. 79-16489/03593
2. 42-237-00000
3. 108
4. Gulf Oil Corp
5. Cap Yates No 3
6. Cap Yates Conglomerate
7. Jack TX
8. 14.9 million cubic feet
9. August 14, 1979
10. Natural Gas Pipeline of America

1. 79-16490/03589
2. 42-393-30577
3. 103
4. Gulf Oil Corporation
5. B A Byrum et al 3-4
6. Red Deer Penn G
7. Roberts TX
8. 23.0 million cubic feet
9. August 14, 1979
10. Transwestern Pipeline Co

1. 79-16491/03571
2. 42-165-31380
3. 103
4. Exxon Corporation
5. Exxon-Atlantic H & J #8
6. Huat (Wolfcamp)
7. Gaines TX
8. 1.0 million cubic feet
9. August 14, 1979
10. Phillips Petroleum Company

1. 79-16546/00607
2. 42-105-00000
3. 108
4. Amarex Inc
5. J M Baggett Jr #403
6. Adams-Baggett Ranch (Canyon Sand)
7. Crockett TX
8. 16.3 million cubic feet
9. August 14, 1979
10. Lo-Vaca Gathering Company

1. 79-16547/00606
2. 42-105-00000
3. 108
4. Ammarex Inc
5. J M Baggett Jr #9-162
6. Adams-Baggett Ranch (Canyon Sand)
7. Crockett TX
8. 7.8 million cubic feet
9. August 14, 1979
10. Lo-Vaca Gathering Company

1. 79-16548/00605
2. 42-105-00000
3. 108
4. Amarex Inc
5. J M Baggett Jr #10-162
6. Adams-Baggett Ranch (Canyon Sand)
7. Crockett TX
8. 1.0 million cubic feet
9. August 14, 1979
10. Lo-Vaca Gathering Company

1. 79-16549/00604
2. 42-105-00000
3. 108
4. Amarex Inc
5. J M Baggett Jr #11-159
6. Adams-Baggett Ranch (Canyon Sand)
7. Crockett TX
8. 4.5 million cubic feet
9. August 14, 1979
10. Lo-Vaca Gathering Company

1. 79-16550/00603
2. 42-105-00000
3. 108
4. Amarex Inc
5. J M Baggett Jr #12-159
6. Adams-Baggett Ranch (Canyon Sand)
7. Crockett TX
8. 2.2 million cubic feet
9. August 14, 1979
10. Lo-Vaca Gathering Company

1. 79-16551/00554
2. 42-163-00000
3. 108
4. Suburban Propane Gas Corporation
5. R C Walden 4
6. West Big Foot Gas
7. Frio TX
8. 17.3 million cubic feet
9. August 14, 1979
10. Transcontinental Gas Pipeline Corp

1. 79-16552/00553
2. 42-163-00000
3. 108
4. Suburban Propane Gas Corporation
5. R C Walden 5
6. West Big Food Gas
7. Frio TX
8. 20.8 million cubic feet
9. August 14, 1979
10. Transcontinental Gas Pipeline Corp

1. 79-16553/00552
2. 42-163-00000
3. 108
4. Suburban Propane Gas Corporation
5. R C Walden 6
6. West Big Foot Gas
7. Frio TX
8. 15.1 million cubic feet
9. August 14, 1979
10. Transcontinental Gas Pipeline Corp

1. 79-16554/00551
2. 42-163-00000
3. 108
4. Suburban Propane Gas Corporation
5. R C Walden 8
6. West Big Foot Gas
7. Frio TX
8. 12.9 million cubic feet
9. August 14, 1979
10. Transcontinental Gas Pipeline Corp

1. 79-16555/00550
2. 42-163-00000
3. 108
4. Suburban Propane Gas Corporation
5. R C Walden 9
6. West Big Foot Gas
7. Frio TX
8. 11.4 million cubic feet
9. August 14, 1979
10. Transcontinental Gas Pipeline Corp

1. 79-16556/00548
2. 42-163-00000
3. 108
4. Suburban Propane Gas Corporation
5. George M Williams 7
6. West Big Foot Gas
7. Frio TX
8. 17.1 million cubic feet
9. August 14, 1979
10. Transcontinental Gas Pipeline Corp

1. 79-16557/00546
2. 42-163-00000
3. 108
4. Suburban Propane Gas Corporation
5. George M Williams 10

6. West Big Foot Gas
7. Frio TX
8. 9.7 million cubic feet
9. August 14, 1979
10. Transcontinental Gas Pipeline Corp

1. 79–16558/00545
2. 42–163–00000
3. 108
4. Suburban Propane Gas Corporation
5. George M Williams 11
6. West Big Foot Gas
7. Frio TX
8. 21.2 million cubic feet
9. August 14, 1979
10. Transcontinental Gas Pipeline Corp

1. 79–16559/00544
2. 42–163–00000
3. 108
4. Suburban Propane Gas Corporation
5. George M Williams 14
6. West Big Foot Gas
7. Frio TX
8. 21.7 million cubic feet
9. August 14, 1979
10. Transcontinental Gas Pipeline Corp

1. 79–16560/00543
2. 42–163–00000
3. 108
4. Suburban Propane Gas Corporation
5. George M Williams 15
6. West Big Foot Gas
7. Frio TX
8. 13.3 million cubic feet
9. August 14, 1979
10. Transcontinental Gas Pipeline Corp

1. 79–16561/00542
2. 42–163–00000
3. 108
4. Suburban Propane Gas Corporation
5. George M Williams 16
6. West Big Foot Gas
7. Frio TX
8. 5.3 million cubic feet
9. August 14, 1979
10. Transcontinental Gas Pipeline Corp

1. 79–16562/00541
2. 42–163–00000
3. 108
4. Suburban Propane Gas Corporation
5. Gordon E Tate 3
6. West Big Foot Gas
7. Frio TX
8. 15.0 million cubic feet
9. August 14, 1979
10. Transcontinental Gas Pipeline Corp

1. 79–16563/00540
2. 42–163–00000
3. 108
4. Suburban Propane Gas Corporation
5. Gordon E Tate 5
6. West Big Foot Gas
7. Frio TX
8. 14.9 million cubic feet
9. August 14, 1979
10. Transcontinental Gas Pipeline Corp

1. 79–16564/00539
2. 42–163–00000
3. 108
4. Suburban Propane Gas Corporation
5. Gordon E Tate 7
6. West Big Foot Gas
7. Frio TX
8. 16.7 million cubic feet
9. August 14, 1979
10. Transcontinental Gas Pipeline Corp

1. 79–16565/00538
2. 42–163–00000
3. 108
4. Suburban Propane Gas Corporation
5. C R Thompson Gas Unit 2
6. West Big Foot Gas
7. Frio TX
8. 20.8 million cubic feet
9. August 14, 1979
10. Transcontinental Gas Pipeline Corp

1. 79–16566/00537
2. 42–163–00000
3. 108
4. Suburban Propane Gas Corporation
5. Claude Ussery 1
6. West Big Foot Gas
7. Frio TX
8. 9.8 million cubic feet
9. August 14, 1979
10. Transcontinental Gas Pipeline Corp

1. 79–16567/00536
2. 42–163–00000
3. 108
4. Suburban Propane Gas Corporation
5. R C Walden 3
6. West Big Foot Gas
7. Frio TX
8. 14.6 million cubic feet
9. August 14, 1979
10. Transcontinental Gas Pipeline Corp

1. 79–16568/00535
2. 42–163–00000–
3. 108
4. Suburban Propane Gas Corporation
5. Eugene Sattler 1
6. West Big Foot Gas
7. Frio, TX
8. 21.4 million cubic feet
9. August 14, 1979
10. Transcontinental Gas Pipeline Corp

1. 79–16569/00534
2. 42–163–00000–
3. 108
4. Suburban Propane Gas Corporation
5. Eugene Sattler 2
6. West Big Foot Gas
7. Frio, TX
8. 17.0 million cubic feet
9. August 14, 1979
10. Transcontinental Gas Pipeline Corp

1. 79–16570/00533
2. 42–163–00000–
3. 108
4. Suburban Propane Gas Corporation
5. Mann-Biediger Gas Unit 1
6. West Big Foot Gas
7. Frio, TX
8. 20.0 million cubic feet
9. August 14, 1979
10. Transcontinental Gas Pipeline Corp

1. 79–16571/00532
2. 42–163–00000–
3. 108
4. Suburban Propane Gas Corporation
5. S H Allen 1
6. West Big Foot Gas
7. Frio, TX
8. 7.9 million cubic feet
9. August 14, 1979
10. Transcontinental Gas Pipeline Corp

1. 79–16572/00530
2. 42–163–00000–
3. 108
4. Suburban Propane Gas Corporation
5. Martha F Berry 5
6. West Big Foot Gas
7. Frio, TX
8. 19.9 million cubic feet
9. August 14, 1979
10. Transcontinental Gas Pipeline Corp

1. 79–16573/00529
2. 42–163–00000–
3. 108
4. Suburban Propane Gas Corporation
5. Martha F Berry 9,
6. West Big Foot Gas
7. Frio, TX
8. 21.7 million cubic feet
9. August 14, 1979
10. Transcontinental Gas Pipeline Corp

1. 79–16574/00528
2. 42–163–00000–
3. 108
4. Suburban Propane Gas Corporation
5. Martha F Berry 10
6. West Big Foot Gas
7. Frio, TX
8. 16.6 million cubic feet
9. August 14, 1979
10. Transcontinental Gas Pipeline Corp

1. 79–16575/00527
2. 42–163–00000–
3. 108
4. Suburban Propane Gas Corporation
5. Martha F Berry 11
6. West Big Foot Gas
7. Frio, TX
8. 10.4 million cubic feet
9. August 14, 1979
10. Transcontinental Gas Pipeline Corp

1. 79–16576/00526
2. 42–163–00000–
3. 108
4. Suburban Propane Gas Corporation
5. Ferdinand Biediger 1
6. West Big Foot Gas
7. Frio, TX
8. 16.6 million cubic feet
9. August 14, 1979
10. Transcontinental Gas Pipeline Corp

1. 79–16577/00525
2. 42–163–00000–
3. 108
4. Suburban Propane Gas Corporation
5. M R Chiles Gas Unit 1
6. West Big Foot Gas
7. Frio, TX
8. 11.9 million cubic feet
9. August 14, 1979
10. Transcontinental Gas Pipeline Corp

1. 79–16578/00524
2. 42–163–00000–
3. 108
4. Suburban Propane Gas Corporation
5. M R Chiles Gas Unit 2
6. West Big Foot Gas
7. Frio, TX
8. 14.2 million cubic feet
9. August 14, 1979
10. Transcontinental Gas Pipeline Corp

1. 79–16579/00523
2. 42–163–00000–
3. 108
4. Suburban Propane Gas Corporation
5. Sam Curtis 1
6. West Big Foot Gas
7. Frio, TX
8. 15.0 million cubic feet
9. August 14, 1979
10. Transcontinental Gas Pipeline Corp

1. 79–16580/00520
2. 42–163–00000–
3. 108
4. Suburban Propane Gas Corporation
5. Ed H Eckenroth 3
6. West Big Foot Gas
7. Frio, TX
8. 15.1 million cubic feet
9. August 14, 1979
10. Transcontinental Gas Pipeline Corp

1. 79–16581/00519
2. 42–163–00000–
3. 108
4. Suburban Propane Gas Corporation
5. A E Goering 1
6. West Big Foot Gas
7. Frio, TX
8. 14.9 million cubic feet
9. August 14, 1979
10. Transcontinental Gas Pipeline Corp

1. 79–16582/00518
2. 42–163–00000–
3. 108
4. Suburban Propane Gas Corporation
5. Hernandez-Carpenter Gas Unit 1
6. West Big Foot Gas
7. Frio, TX
8. 3.9 million cubic feet
9. August 14, 1979
10. Transcontinental Gas Pipeline Corp

1. 79–16583/00515
2. 42–163–00000–
3. 108
4. Suburban Propane Gas Corporation
5. B C Lanham 3
6. West Big Foot Gas
7. Frio, TX
8. 1.2 million cubic feet
9. August 14, 1979
10. Transcontinental Gas Pipeline Corp

1. 79–16584/00483
2. 42–365–00247–
3. 108
4. The Maurice L Brown Company
5. Furrh-Cooper Gas Unit #1
6. Bethany-Pettit
7. Panola County, TX
8. 6.0 million cubic feet
9. August 14, 1979
10. United Gas Pipe Line Company

1. 79–16585/00478
2. 42–203–01962
3. 108
4. The Maurice L Brown Company
5. Sealey-Allen Gas Unit #1
6. Carthage
7. Harrison County, TX
8. 18.0 million cubic feet
9. August 14, 1979
10. United Gas Pipeline Company

**United States Geological Survey**

**Albuquerque, New Mexico**

1. Control number (F.E.R.C./State)
2. API Well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or Block No
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 79–16510/NM 1410–79
2. 30–045–06176–0000–0
3. 108
4. El Paso Natural Gas Company
5. Bolack C–16
6. Blanco-Mesaverde Gas
7. San Juan NM
8. 14.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16511/NM 1428–79
2. 30–039–20863–0000–0
3. 108
4. El Paso Natural Gas Company
5. San Juan 28–6 Unit #202
6. Blanco South-Pictured Cliffs Gas
7. Rio Arriba NM
8. 9.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16512/NM 1429–79
2. 30–039–20145–0000–0
3. 108
4. El Paso Natural Gas Company
5. San Juan 27–4 Unit #39
6. Basin-Dakota Gas
7. Rio Arriba NM
8. 15.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16513/NM 1464–79
2. 30–039–06378–0000–0
3. 108
4. El Paso Natural Gas Company
5. Jicarilla J #1
6. Blanco South-Pictured Cliffs Gas
7. Rio Arriba NM
8. 10.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company Northwest Pipeline Corp

1. 79–16514/NM 1468–79
2. 30–039–06081–0000–0
3. 108
4. El Paso Natural Gas Company
5. Canyon Largo Unit #33
6. Blanco South-Pictured Cliffs Gas
7. Rio Arriba NM
8. 13.1 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16515/NM 1749–79
2. 30–039–05472–0000–0
3. 108
4. El Paso Natural Gas Company
5. Canyon Largo Unit #85
6. Ballard-Pictured Cliffs Gas
7. Rio Arriba NM
8. 8.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16516/NM 1750–79
2. 30–045–06409–0000–0
3. 108
4. El Paso Natural Gas Company
5. Cleveland #6
6. Fulcher Kutz-Pictured Cliffs Gas
7. San Juan NM
8. 9.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16517/NM 1751–79
2. 30–039–07298–0000–0
3. 108
4. El Paso Natural Gas Company
5. S J 28–5 Unit NP #3
6. Blanco-Mesaverde Gas
7. Rio Arriba NM
8. 8.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16518/NM 1752–79
2. 30–045–22904–0000–0
3. 103
4. El Paso Natural Gas Company
5. San Juan 32–9 Unit #91
6. Blanco
7. San Juan NM
8. 220.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16519/NM 1753–79
2. 30–045–22898–0000–0
3. 103
4. El Paso Natural Gas Company
5. San Juan 32–9 Unit #20A
6. Blanco
7. San Juan NM
8. 190.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16520/NM 1767–79
2. 30–045–22490–0000–0
3. 103
4. El Paso Natural Gas Company
5. Hudson 5A
6. Blanco
7. San Juan NM
8. 342.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16521/NM 1768–79
2. 30–045–22387–0000–0
3. 103
4. El Paso Natural Gas Company
5. Scott 4A
6. Blanco
7. San Juan NM
8. 339.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16522/NM 1769–79
2. 30–045–22491–0000–0
3. 103
4. El Paso Natural Gas Company
5. Atlantic Com 3A
6. Blanco
7. San Juan NM
8. 300.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16523/NM 1770–79
2. 30–045–22506–0000–0
3. 103
4. El Paso Natural Gas Company
5. Atlantic 4A
6. Blanco
7. San Juan NM
8. 321.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16524/NM 1795–79
2. 30–039–20866–0000–0
3. 103
4. El Paso Natural Gas Company
5. San Juan 28–7 Unit #219
6. Basin
7. Rio Arriba NM
8. 87.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16525/NM 1796–79
2. 30–039–21328–0000–0
3. 103
4. El Paso Natural Gas Company
5. San Juan 28–7 Unit #233
6. Basin
7. Rio Arriba NM
8. 111.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16526/NM 1797–79
2. 30–039–21327–0000–0
3. 103
4. El Paso Natural Gas Company
5. San Juan 28–7 Unit #235
6. Basin
7. Rio Arriba NM
8. 104.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16527/NM 1798–79
2. 30–039–20843–0000–0
3. 103
4. El Paso Natural Gas Company
5. San Juan 28–6 Unit #212
6. Basin
7. Rio Arriba NM
8. 160.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16528/NM 1799–79
2. 30–039–21394–0000–0
3. 103
4. El Paso Natural Gas Company
5. San Juan 28–6 Unit #218
6. Undesignated
7. Rio Arriba NM
8. 46.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16529/NM 1800–79
2. 30–039–20842–0000–0
3. 103
4. El Paso Natural Gas Company
5. San Juan 28–6 Unit #211
6. Basin
7. Rio Arriba NM
8. 288.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16530/NM 1801–79
2. 30–039–20971–0000–0
3. 103
4. El Paso Natural Gas Company
5. San Juan 28–5 Unit #94
6. Basin
7. Rio Arriba NM
8. 88.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16531/NM 1802–79
2. 30–039–21392–0000–0
3. 103
4. El Paso Natural Gas Company
5. Rincon Unit 220
6. Largo
7. Rio Arriba NM
8. 40.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16532/NM 1803–79
2. 30–039–21399–0000–0
3. 103
4. El Paso Natural Gas Company
5. Rincon Unit 227
6. Basin
7. Rio Arriba NM
8. 41.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16533/NM 1804–79
2. 30–039–21381–0000–0
3. 103
4. El Paso Natural Gas Company
5. San Juan 27–4 Unit #135
6. Blanco
7. Rio Arriba NM
8. 109.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16534/NM 1805–79B
2. 30–039–21385–0000–2
3. 103
4. El Paso Natural Gas Company
5. San Juan 27–4 Unit #109 (PC)
6. Tapacito
7. Rio Arriba NM
8. 52.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16535/NM 1805–79A
2. 30–039–21385–0000–1
3. 103
4. El Paso Natural Gas Company
5. San Juan 27–4 Unit #109 (MV)
6. Blanco
7. Rio Arriba NM
8. 137.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16536/NM 1806–79A
2. 30–039–21379–0000–1
3. 103
4. El Paso Natural Gas Company
5. San Juan 27–4 Unit #16A (MV)
6. Blanco
7. Rio Arriba NM
8. 213.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16537/NM 1806–79B
2. 30–039–21379–0000–2
3. 103
4. El Paso Natural Gas Company
5. San Juan 27–4 Unit #16A (PC)
6. Tapacito
7. Rio Arriba NM
8. 43.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16538/NM 1807–79A
2. 30–039–21033–0000–1
3. 103
4. El Paso Natural Gas Company
5. San Juan 27–4 Unit #123 (MV)
6. Blanco
7. Rio Arriba NM
8. 142.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16539/NM 1807–79B
2. 30–039–21033–0000–2
3. 103
4. El Paso Natural Gas Company
5. San Juan 27–4 Unit #123 (PC)
6. Tapacito
7. Rio Arriba NM
8. 21.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16540/NM 1808–79
2. 30–039–21716–0000–0
3. 103
4. El Paso Natural Gas Company
5. Rincon Unit 212
6. Otero
7. Rio Arriba NM
8. 30.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16541/NM 1339–79
2. 30–015–22076–0000–0
3. 102
4. Belco Petroleum Corporation
5. Federal RV 10–1 NM 25348
6. Revelation Morrow
7. Eddy NM
8. 180.0 million cubic feet
9. August 14, 1979
10. Llano Inc

1. 79–16542/NM 529–79–108
2. 30–015–22244–0000–0
3. 108
4. Southern Union Exploration Company
5. Exxon A Federal #1
6. West Bubbling Springs
7. Eddy NM
8. 13.0 million cubic feet
9. August 14, 1979
10. Gas Company of New Mexico

1. 79–16543/NM 370–79–103
2. 30–015–22419–0000–0
3. 103
4. Mesa Petroleum Co
5. Diamond Mound Federal #1
6. Undesignated Atoka-Morrow
7. Eddy NM
8. 300.0 million cubic feet
9. August 14, 1979
10. Northern Natural Gas Co

1. 79–16544/NM 370–79–10
2. 30–015–22419–0000–0
3. 102
4. Mesa Petroleum Co
5. Diamond Mound Federal #1
6. Undesignated
7. Eddy NM
8. 300.0 million cubic feet
9. August 14, 1979
10. Northern Natural Gas Co

1. 79–16545/NM 182–78
2. 30–015–21804–0000–0
3. 108
4. Hondo Drilling Company
5. Alscott-Fed #1 (NM–0924)
6. N Turkey Track
7. Eddy NM
8. 37.7 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16586/NM 1502–79
2. 30–039–05799–0000–0
3. 108
4. El Paso Natural Gas Company
5. Jicarillo B #9
6. Blanco South-Pictured Cliffs Gas
7. Rio Arriba NM
8. 7.7 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16587/NM 1533–79
2. 30–045–09303–0000–0
3. 108
4. El Paso Natural Gas Company
5. Morris A 1

6. Aztec-Pictured Cliffs Gas
7. San Juan NM
8. 1.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16588/NM 1705–79
2. 30–045–06364–0000–0
3. 108
4. El Paso Natural Gas Company
5. Gordon 1
6. Fulcher Kutz-Pictured Cliffs Gas
7. San Juan NM
8. 1.5 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16589/NM 1706–79
2. 30–039–05928–0000–0
3. 108
4. El Paso Natural Gas Company
5. Jicarilla C #6
6. Blanco South-Pictured Cliffs Gas
7. Rio Arriba NM
8. 6.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16590/NM 1707–79
2. 30–045–20890–0000–0
3. 108
4. El Paso Natural Gas Company
5. Fields 8
6. Blanco-Pictured Cliffs Gas
7. San Juan NM
8. 16.4 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16591/NM 1708–79
2. 30–039–20906–0000–0
3. 108
4. El Paso Natural Gas Company
5. Canyon Largo Unit NP 255
6. Basin Dakota
7. Rio Arriba NM
8. 15.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16592/NM 1709–79
2. 30–039–21164–0000–0
3. 108
4. El Paso Natural Gas Company
5. Jicarilla D #9
6. Blanco South-Pictured Cliffs Gas
7. Rio Arriba NM
8. 12.4 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16593/NM 1710–79
2. 30–043–20111–0000–0
3. 108
4. El Paso Natural Gas Company
5. Jicarilla 183 #7
6. Ballard-Pictured Cliffs Gas
7. Sandoval NM
8. 8.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16595/NM 1711–79
2. 30–039–05907–0000–0
3. 108
4. El Paso Natural Gas Company
5. Jicarilla E #7
6. Blanco South-Pictured Cliffs Gas
7. Rio Arriba NM
8. 16.8 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16595/NM 1716–79
2. 30–045–06283–0000–0
3. 108
4. El Paso Natural Gas Company
5. Huerfanito Unit 94
6. Blanco South-Pictured Cliffs Gas
7. San Juan NM
8. 4.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16590/NM 1717–79
2. 30–039–07769–0000–0
3. 108
4. El Paso Natural Gas Company
5. San Juan 30–4 Unit #4
6. Blanco East-Pictured Cliffs Gas
7. Rio Arriba NM
8. 9.5 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16597/NM 1718–79
2. 30–039–07843–0000–0
3. 108
4. El Paso Natural Gas Company
5. San Juan 30–6 Unit #80
6. Blanco-Mesaverde Gas
7. Rio Arriba NM
8. 19.7 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16598/NM 1719–79
2. 30–045–07410–0000–0
3. 108
4. El Paso Natural Gas Company
5. Michener 3
6. Basin-Dakota Gas
7. San Juan NM
8. 18.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16599/NM 1720–79
2. 30–039–05482–0000–0
3. 108
4. El Paso Natural Gas Company
5. Tonkin Federal 3
6. Blanco South-Pictured Cliffs Gas
7. Rio Arriba NM
8. 4.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16600/NM 1721–79
2. 30–039–06337–0000–0
3. 108
4. El Paso Natural Gas Company
5. Hughes 13
6. Ballard-Pictured Cliffs Gas
7. Rio Arriba NM
8. 8.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16601/NM 1722–79
2. 30–039–05253–0000–0
3. 108
4. El Paso Natural Gas Company
5. Lindrith Unit #26
6. Blanco South-Pictured Cliffs Gas
7. Rio Arriba NM
8. 15.3 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16602/NM 1723–79
2. 30–039–05364–0000–0
3. 108
4. El Paso Natural Gas Company
5. Lindrith Unit #25
6. Blanco South-Pictured Cliffs Gas
7. Rio Arriba NM
8. 11.3 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16603/NM 1724–79
2. 30–039–05492–0000–0
3. 108
4. El Paso Natural Gas Company
5. Canyon Largo Unit #76
6. Ballard-Pictured Cliffs Gas
7. Rio Arriba NM
8. 7.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16604/NM 1725–79
2. 30–039–05597–0000–0
3. 108
4. El Paso Natural Gas Company
5. Lindrith Unit #24
6. Blanco South-Pictured Cliffs Gas
7. Rio Arriba NM
8. 2.6 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16605/NM 1726–79
2. 30–045–06321–0000–0
3. 108
4. El Paso Natural Gas Company
5. Huerfano Unit #74
6. Fulcher Kutz-Pictured Cliffs Gas
7. San Juan NM
8. 13.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16606/NM 1727–79
2. 30–045–05634–0000–0
3. 108
4. El Paso Natural Gas Company
5. Ha-Sosa 1
6. Ballard-Pictured Cliffs Gas
7. San Juan NM
8. 4.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16607/NM 1728–79
2. 30–045–08782–0000–0
3. 108
4. El Paso Natural Gas Company
5. White-Cornell 5
6. Fulcher Kutz-Pictured Cliffs Gas
7. San Juan NM
8. 2.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16608/NM 1729–79
2. 30–045–05691–0000–0
3. 108
4. El Paso Natural Gas Company
5. Huerfano Unit #55
6. Ballard-Pictured Cliffs Gas
7. San Juan NM
8. 7.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16609/NM 1730–79
2. 30–039–82393–0000–0
3. 108
4. El Paso Natural Gas Company
5. SJ 32–5 Unit #3
6. Basin-Dakota Gas
7. Rio Arriba NM
8. 18.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16610/NM 1731–79
2. 30–039–05378–0000–0
3. 108
4. El Paso Natural Gas Company
5. Canyon Largo Unit #59
6. Ballard-Pictured Cliffs Gas
7. Rio Arriba NM
8. 9.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16611/NM 1732–79
2. 30–039–07059–0000–0
3. 108
4. El Paso Natural Gas Company
5. San Juan 27–4 Unit #22
6. Blanco-Mesaverde Gas
7. Rio Arriba NM
8. 13.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16612/NM 1733–79
2. 30–039–07866–0000–0
3. 108
4. El Paso Natural Gas Company
5. San Juan 30–6 Unit #34
6. Blanco-Mesaverde Gas
7. Rio Arriba NM
8. 10.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16613/NM 1734–79
2. 30–045–06168–0000–0
3. 108
4. El Paso Natural Gas Company
5. Huerfano Unit #16
6. Kutz West-Pictured Cliffs Gas
7. San Juan NM
8. 10.6 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16614/NM 1735–79
2. 30–039–05452–0000–0
3. 108
4. El Paso Natural Gas Company
5. Canyon Largo Unit #84
6. Ballard-Pictured Cliffs Gas
7. Rio Arriba NM
8. 9.1 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16615/NM 1737–79
2. 30–039–07213–0000–0
3. 108
4. El Paso Natural Gas Company
5. San Juan 27–4 Unit #15
6. Blanco-Mesaverde Gas
7. Rio Arriba NM
8. 20.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16616/NM 1736–79
2. 30–039–20270–0000–0
3. 108
4. El Paso Natural Gas Company
5. Canyon Largo Unit #144
6. Basin-Dakota Gas
7. Rio Arriba NM
8. 7.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company Southern Union Gathering

1. 79–16617/NM 1738–79
2. 30–039–07171–0000–0
3. 108
4. El Paso Natural Gas Company
5. San Juan 27–4 Unit #18
6. Blanco-Mesaverde Gas
7. Rio Arriba NM
8. 9.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16618/NM 1739–79
2. 30–039–20858–0000–0
3. 108
4. El Paso Natural Gas Company
5. San Juan 28–6 Unit #187
6. Blanco South-Pictured Cliffs Gas
7. Rio Arriba NM
8. 15.3 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16619/NM 1740–79
2. 30–039–20283–0000–0
3. 108
4. El Paso Natural Gas Company
5. Rincon Unit #189
6. Otero-Chacra Gas
7. Rio Arriba NM
8. 14.6 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16620/NM 1741–79
2. 30–039–05237–0000–0
3. 108
4. El Paso Natural Gas Company
5. Canyon Largo Unit #86
6. Ballard-Pictured Cliffs Gas
7. Rio Arriba NM
8. 3.3 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16621/NM 1742–79
2. 30–039–20827–0000–0
3. 108
4. El Paso Natural Gas Company
5. San Juan 27–4 Unit #88
6. Tapacito-Pictured Cliffs Gas
7. Rio Arriba NM
8. 19.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16622/NM 1743–79
2. 30–039–20416–0000–0
3. 108
4. El Paso Natural Gas Company
5. San Juan 27–4 Unit #56
6. Basin-Dakota Gas
7. Rio Arriba NM
8. 16.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16623/NM 1744–79
2. 30–039–05399–0000–0
3. 108
4. El Paso Natural Gas Company
5. Canyon Largo Unit #58
6. Ballard-Pictured Cliffs Gas
7. Rio Arriba NM
8. 1.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16624/NM 1745–79
2. 30–039–07142–0000–0
3. 108
4. El Paso Natural Gas Company
5. San Juan 27–5 Unit #14
6. Blanco-Mesaverde Gas
7. Rio Arriba NM
8. 21.2 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company Northwest Pipeline Corp

1. 79–16625/NM 1746–79
2. 30–039–20622–0000–0
3. 108
4. El Paso Natural Gas Company
5. San Juan 27–5 Unit #154
6. Tapacito-Pictured Cliffs Gas
7. Rio Arriba NM
8. 13.9 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company Northwest Pipeline Corp

1. 79–16626/NM 1747–79
2. 30–045–06679–0000–0
3. 108
4. El Paso Natural Gas Company
5. Rowley 1
6. Fulcher Kutz-Pictured Cliffs Gas
7. San Juan NM
8. 4.0 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Company

1. 79–16627/NM 1748–79
2. 30–039–05900
3. 108
4. El Paso Natural Gas Co
5. Canyon Largo Unit #40
6. Blanco South Pictured Cliffs
7. Rio Arriba NM
8. 4.4 million cubic feet
9. August 14, 1979
10. El Paso Natural Gas Co

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before September 21, 1979.

Please reference the FERC control number in all correspondence related to these determinations.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 27747 Filed 9–5–79; 8:45 am]

BILLING CODE 6450–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL 1313–2; OPP–30170]**

### Pesticide Programs; Receipt of Application To Register Pesticide Product Containing New Active Ingredient

Mobil Chemical Co., Plastics Division, Macedon, NY 14502, has submitted to the Environmental Protection Agency (EPA) an application to register the

pesticide product Hefty Dog/Cat Repellent (EPA File Symbol 41847–R), containing 16.48% of the active ingredient cinnamic aldehyde which has not been included in any previously registered pesticide product. The application proposes that the pesticide be classified for general use to repel dogs and cats from garbage bags and cans. Notice of this application is given pursuant to the provisions of Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA) as amended (92 Stat. 819; 7 U.S.C. 136) and the regulations thereunder (40 CFR 162). Notice of receipt of this application does not indicate a decision by the Agency on the application.

Interested persons are invited to submit written comments on this application. Comments may be submitted, and inquiries directed, to Product Manager (PM) 16, Room E–343, Registration Division (TS–767), Office of Pesticide Programs, EPA, 401 M St., SW, Washington, DC, telephone number 202/426–9458.

The comments must be received on or before October 9, 1979, and should bear a notation indicating the EPA File Symbol "41847–R." Comments received within the specified time period will be considered before a final decision is made; comments received after the specified time period will be considered only to the extent possible without delaying processing of the application. The label furnished by Mobil Chemical Co., as well as all written comments filed pursuant to this notice, will be available for public inspection in the Product Manager's office from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

Notice of approval or denial of this application to register Hefty Dog/Cat Repellent will be announced in the **Federal Register**. Except for such material protected by section 10 of FIFRA, the test data and other information submitted in support of registration as well as other scientific information deemed relevant to the registration decision may be made available after approval under the provisions of the Freedom of Information Act. The procedures for requesting such data will be given in the **Federal Register** if an application is approved.

Dated: August 30, 1979.

**Douglas D. Campt,**

*Director, Registration Division.*

[FR Doc. 79–27811 Filed 9–5–79; 8:45 am]

BILLING CODE 6560–01–M

**[FRL 1313–1 PF–150]**

## Filing of Pesticide Petition

American Cyanamid Co., P.O. Box 400, Princeton, N.J. 08540, has submitted a petition (PP 9F2246) to the Environmental Protection Agency (EPA) which proposes that 40 CFR 180.361 be amended by establishing tolerances for the combined residues of the herbicide pendimethalin [*N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine] and its metabolite [4-((ethylpropyl) amino)-2-methyl-3,5-dinitrobenzyl alcohol] in or on the raw agricultural commodities sorghum grain, fodder, and forage at 0.1 part per million (ppm). The proposed analytical method for determining residues is by gas chromatography using an electron capture detector. Notice of this submission is given pursuant to the provisions of section 408(d)(1) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on this petition. Comments may be submitted, and inquiries directed, to Product Manager (PM) 25, Room E–359, Registration Division (TS–767), Office of Pesticide Programs, EPA, 401 M St., SW, Washington, DC 20460, telephone number 202/755–2196. Written comments should bear a notation indicating the petition number "PP 9F2246". Comments may be made at any time while a petition is pending before the Agency. All written comments filed pursuant to this notice will be available for public inspection in the Product Manager's Office from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

Dated: August 30, 1979.

**Douglas D. Campt,**

*Director, Registration Division.*

[FR Doc. 79–27812 Filed 9–5–79; 8:45 am]

BILLING CODE 6560–01–M

**[FRL 1313–7]**

## Action Under Section 125 of the Clean Air Act

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

**ACTION:** Reproposed determination under subsection 125(a) of the Clean Air Act (Act).

**SUMMARY:** EPA proposes to determine under subsection 125(a) of the Clean Air Act, 42 U.S.C. 7425(a), that projected local and regional economic and unemployment impacts that would occur if certain Ohio utilities proceed with plans to switch from high sulfur coal to low sulfur coal to comply with sulfur dioxide emission limitations are not sufficiently significant to necessitate action under subsections 125(b) and (c) of the Act. This proposed determination replaces a proposed finding of significant economic disruption and unemployment published by EPA December 28, 1978 (43 Fed. Reg. 60652). Today's proposed determination is based on an analysis of the record compiled in the subsection 125(a) proceedings, the Ohio coal market impacts of recent actions taken by EPA with respect to the Ohio State Implementation Plan and announced actions by certain utilities in Ohio with respect to their sulfur dioxide compliance plans. This notice establishes a 90-day comment period and public hearing. EPA will announce a final determination following the public hearing and close of the comment period. A final determination consistent with this proposed determination would terminate the EPA Section 125 proceedings in Ohio.

**DATES:** Comments must be received on or before December 5, 1979. A public hearing will be held on the reproposed determination from 9 a.m. to 4 p.m. on Wednesday, October 10, 1979, at the Anthony J. Celebrezze Federal building, 31st Floor, 1240 East 9th Street, Cleveland, Ohio. The record established for the Section 125 proceedings initiated July 13, 1978, and continued for the proposed determination December 28, 1978, will remain open for purposes of the present reproposal. Written comments and hearings transcripts already part of this record, as well as new information received during the comment period announced today, will be considered by EPA in making a final determination.

**ADDRESSES:** Written comments and requests to make an oral presentation at the hearing should be submitted to F. J. Biros, Chief, Technical Support Branch, Office of Enforcement, division of Stationary Source Enforcement, EN–341, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. The public record for this determination is available for inspection and copying during regular business hours at the following locations:

(1) Air Programs Branch, Air and Hazardous Materials Division, EPA, Region 5, 230 South Dearborn Street, Chicago, Illinois 60604; (2) U.S. Environmental Protection Agency, Public Information Reference Unit, Room 2922, 401 M Street, S.W., Washington, D.C. 20460; (3) Cleveland Public Library, Main Branch, 325 Superior Avenue, Cleveland, Ohio 44114; (4) Columbus Public Library, Main Branch, 96 South Grant, Columbus, Ohio 43215; (5) St. Clairsville Public Library, 108 West Main Street, St. Clairsville, Ohio 43950.

**FOR FURTHER INFORMATION CONTACT:** F. J. Biros, Technical Support Branch, Office of Enforcement, EN–341, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 Telephone: (202) 755–2560.

**SUPPLEMENTARY INFORMATION:**

### Background

The purpose of section 125 of the Clean Air Act Amendments of 1977 was to grant the President the authority to minimize significant, adverse economic damage which might affect certain areas of the country if sources attempted to comply with the Act by switching from the use of local or regional coal to non-locally or non-regionally available coal. A prerequisite to remedial action under section 125 is a final determination under section 125(a) that such damage would result. Specifically, subsection 125(a) authorizes the Administrator of EPA or the President (or his designee) to determine whether action authorized under subsection 125(b) is necessary to prevent or minimize significant local or regional disruption which would otherwise result from use by any major fuel burning stationary source of fuels other than locally or regionally available coal or coal derivatives to comply with a state's implementation plan requirements.

EPA received petitions in the first half of 1978 from the United Mine Workers of America, District 6, and others seeking to initiate action under section 125. EPA published notice of these petitions and instituted proceedings on July 13, 1978 (43 Fed. Reg. 30113). The notice announced EPA's decision to evaluate under subsection 125(a) certain named Ohio utilities, solicited public comment on the issues raised in the petitions, and set several public hearing dates.

On June 12, 1978, EPA requested information from the Ohio utilities named in the July 13, 1978, notice with regard to their coal use plans for complying with the sulfur dioxide regulations. In addition, EPA initiated several consultant studies to develop background information necessary for any determination under subsection 125(a).

On December 28, 1978 (43 FR 60652), EPA proposed to determine under subsection 125(a) that action may be necessary to prevent or minimize significant local or regional economic disruption that would result from the projected use by major fuel burning stationary sources operated by the named Ohio utilities of coal or coal derivatives not locally or regionally available. Hearings were held January 30, 1979. The public comment period closed March 28, 1979 (44 FR 12103, March 5, 1979).

### Rationale

Refined analysis and the effect of recent events have dramatically reduced the projected coal curtailment and unemployment projected by EPA for the proposed determination of December 28, 1978 (43 FR 60652). Data underlying the December, 1978 proposal indicated that 15.8 million tons per year of coal and 5,270 mining jobs would be directly lost because of fuel switching by Ohio utilities. This coal curtailment would constitute a 33.7% reduction in total annual Ohio coal production. The mining job losses would be distributed in Ohio's coal producing counties in such a way as to reduce coal mining employment in several of the most severely affected counties by more than 50% based on 1977 employment data.

As explained below, revised data now indicate that 3.06 million tons per year of coal and 910 Ohio coal mining jobs would be lost due to fuel switching by Ohio utilities to comply with sulfur dioxide emission limitations. This coal curtailment would represent a 6.5% reduction in total Ohio coal production. Job losses would range from 2.9% to 14.5% of the coal mining labor force in the counties most adversely affected. The reduction in coal mining employment state-wide would be 6.0% between 1977 and 1980. Taking into account jobs lost in other employment sectors due to a "ripple effect," the overall state-wide employment impact would amount to 0.05% of Ohio's total labor force.

The overall effect of the revised data is to diminish EPA's December, 1978 projected coal curtailment, miner unemployment and related economic impact below the threshold of significance required by Section 125 of the Act. Not all economic disruption and unemployment has been avoided. Congress, however, instructed that federal intervention be triggered by "significant" not "any" economic damage. Subsection 125(a). The legislative history of Section 125 reveals that by "significant," Congress meant "serious," "severe," or "exceptional" economic stress. See 123 Cong. Rec. H5027 (daily ed., May 25, 1977); 123 Cong. Rec. S9449–S9457 (daily ed., June 10, 1977). Indeed, Section 125 was added to the Act because of the spectre of 15,000 miners losing their jobs and was designed to preserve the jobs of thousands of miners. Id. EPA's present projections of economic damage and unemployment fall far short of this level, and are, therefore, not sufficiently significant to necessitate federal action.

Tables presenting EPA's current projections of economic impact are set forth in the Appendices to this Notice and are described below. The complete technical basis for this reproposed determination may be found in two documents entitled: "Ohio Section 125 Study: Revised Regional Economic Impact Estimates," and "Updated Estimates-Potential Impacts on the Ohio Coal Markets of Power Plant Compliance with the Ohio $SO_2$ Emission Limitations." Copies of the reports are available for public inspection and copying during regular business hours at the library repository locations indicated in the Addresses section of this Notice. Copies may also be obtained by writing to the Information Contact indicated above.

### Projected Coal Curtailment

Subsection 125(a) limits a determination of significant local or regional ecomonic disruption and unemployment to changes in coal use by the fuel burning stationary source resulting from the intent to comply with the requirements of a state implementation plan. Therefore, the coal curtailment data presented in Appendix A includes only changes in high sulfur coal demand from the local or regional area resulting directly from a utility's intent to comply with Ohio's sulfur dioxide emission limitations as they are proposed or promulgated at present.

In addition, changes in coal demand resulting from agreement reached during EPA's negotiations with certain Ohio utilities during the comment period of the proposed determination are included in this analysis.

The coal curtailment data also includes the coal market effects projected to result from EPA's proposed revision to the sulfur dioxide emission limitations for Cleveland Electric Illuminating Co.'s (CEI) Avon Lake and Eastlake power plants in Ohio 44 FR 33711 (June 12, 1979). That Plan revision will be completed based on the public record established in that rulemaking. If the CEI rulemaking is changed significantly at promulgation, this proposed determination under subsection 125(a) could be affected. Nevertheless, EPA is proceeding at this time because to await the completion of the CEI rulemaking could continue unnecessarily the arguable uncertainly associated with the pending action under Section 125. A final determination consistent with today's proposal would terminate the Section 125 proceedings in Ohio, release Ohio utilities from any potential responsibility under

subsections 125 (b) and (c) of the Act, and permit them to arrange for coal supplies sufficient to achieve timely compliance with the applicable sulfur dioxide emission limitations.

Shifts in demand for high sulfur coal which were attributable to causes other than compliance with the sulfur dioxide emission limitations were not counted. These other causes included coal switches due to the unsuitability of Ohio coals for combustion at specific boilers independent of sulfur content; changes in projected plant capacity; the unusual nature of coal purchases during the base year (1977) related to strikes and weather; and the level of preparation of the coal. Also, coal curtailments resulting from changes effected prior to the July 13, 1978 Notice of Proceedings are not included in the curtailment date serving as a basis for this reproposed determination.

As presented in Appendix A, the projected loss in Ohio coal production resulting from the shift to compliance coal by certain major Ohio power plants is 3.06 million tons per year. This loss in production would result directly from switches to low sulfur coal supplies by the Ohio power plants as a result of their attempts to comply with the Ohio sulfur dioxide regulations. The replacement coal would be Central Appalachian coal predominately from eastern Kentucky and central and southern West Virginia. This coal curtailment represents a 6.5% drop in production in Ohio's coal mining industry where 1977 coal production amounted to 46.9 million tons per year. Total losses in all areas currently serving Ohio utilities including Ohio, Pennsylvania and northern West Virginia would amount to 3.57 million tons per year. Therefore, the curtailment would result in a net 1.4% drop in production in all these areas.

### Projected Employment Impacts

For purposes of this proposed determination, the Ohio coal curtailment estimate of 3.06 million tons per year was used as the principal basis for the economic and unemployment impact analysis. As indicated in Appendix B, EPA estimates that this projected curtailment in Ohio coal production due to certain major Ohio power plants switching to low sulfur coal in order to attain compliance with the Ohio sulfur dioxide regulations by the end of 1979 will result in the estimated loss of 910 mining jobs in Ohio's southeastern coal producing counties. This represents approximately 6% of Ohio's total coal miner work force of 15,200 active miners in 1977.

The miner job displacement data were estimated to the extent possible by tracing supplies of Ohio coal expected to be terminated by Ohio utilities to individual mines producing that coal. The job loss estimates are to a large extent associated with coal mine production serving principally a spot purchase market which is normally a relatively insecure element of the coal production economy.

EPA's December 28, 1978 proposal projected severe coal mining unemployment impacts in Ohio counties projected to be most affected by the fuel switching. In five contiguous southeastern Ohio counties, mine employment was estimated to decrease by 41.7% in the Belmont/Monroe county area to 63.3% in Tuscarawas county (43 FR 60652, Appendix D). Considering the net mining employment change attributable only to compliance by Ohio utilities with sulfur dioxide emission limitations, EPA now projects the county mining employment decreases would range from 2.9% for the Belmont/Monroe county area to 14.5% for Harrison county (Appendix C). Other estimated changes in county mining employment include projected losses of 9.6% for Perry county, 5.8% for Muskingum county and 4.1% for the Meigs/Vinton county area. It should be noted that since the employment effects are associated with production losses of mine facilities serving the spot purchase market, the individual county impacts represent best estimates. Another factor affecting the accuracy of these estimates is the low level of job displacement and the uncertainty associated with estimating a coal producer's ability to find alternative markets for displaced coal. State-wide, however, the coal mine employment is projected to decrease by approximately 6% in the period 1977 to 1980. Appendix C presents EPA's best estimates of projected 1980 county by county coal production curtailment and associated unemployment impacts.

As a result of the estimated Ohio mining job loss figures, jobs in other employment sectors would also be affected due to a "ripple effect" (Appendix B). Projected losses in mine supply industries corresponding to the unemployment of 910 miners would be expected to range from 550 to 610. Projected losses in industries dependent on household spending, e.g. household services, rentals, wholesale and retail sales, production, etc. are estimated to range from 820 to 1120. The total employment attributable to the projected Ohio power plant $SO_2$ compliance coal switch, therefore, would amount to 2280–2640 jobs (Appendix B). This figure represents less than 0.05% of the State's total labor force of 4,993,000 persons (Appendix D).

### Projected Local and Regional Economic Impact

The projected economic impacts are summarized in Appendix B. The loss of 910 mining jobs would result in a direct wage loss of $16 million annually for miners alone. This is based on the 1977 average income of $17,000 for coal miners. EPA estimates that a total of $35–38 million in annual household income would be lost to the state, in comparison with 1977 levels, when the ripple effects throughout all industries are included.

Unemployment benefits, payable for a maximum of 26 weeks under Ohio's unemployment compensation laws, would be available to many of those unemployed. Assuming that those who are unemployed apply for an receive the benefits for the maximum period, the State benefit payments would total between $6 and $7 million. This would represent less than 2% of the State's unemployment benefit payments in 1977.

In total, the loss of 3.06 million tons of coal annually and the resultant unemployment of 910 miners would contribute to a loss of $70–77 million in annual gross state product. This decline in business activity represents less then 0.1% of Ohio's 1977 gross state product.

### Conclusion and Action

On the basis of the findings presented here, EPA proposes to determine pursuant to subsection 125(a) of the Clean Air Act, 42 U.S.C. 7425(a), that projected local and regional economic and unemployment impacts that would occur if certain Ohio utilities proceed with plans to switch from high sulfur coal to low sulfur coal to comply with sulfur dioxide emission limitations are not sufficiently significant to necessitate action under subsections 125 (b) and (c), 42 U.S.C. 7425 (b) and (c).

This proposed determination, if finalized, would terminate section 125 proceedings in Ohio announced by EPA on July 13, 1978 (43 FR 30113) and would permit Ohio utilities to proceed with their plans to comply with the sulfur dioxide emission limitations of the Ohio State Implementation Plan by the final compliance dates specified.

It should be noted that the pendency of the Ohio section 125 proceedings does not remove the obligation of the Ohio utilities to achieve compliance with sulfur dioxide emission limitations by the applicable final compliance date specified in the SIP. For most powerplants choosing low sulfur coal as

a means of compliance, that date is October 19, 1979.

Authority: Section 125 of the Clean Air Act as amended August 7, 1977, 42 U.S.C. 7425.

Issued in Washington, D.C. on August 30, 1979.

**Douglas M. Costle,**

*Administrator.*

**Appendix A.**—*Potential Reduction of Coal Usage in Six Coal Producing Areas Due to Fuel Switching by Certain Ohio Utilities*

| Coal-producing area | 1977 coal production (millions of tons) [1] | Potential 1980 coal reduction (millions of tons) [2] | Percent change |
|---|---|---|---|
| Ohio | 46.9 | 3.06 | 6.5 |
| Indiana | 28.0 | 0.00 | 0.0 |
| Pennsylvania | 83.2 | 0.24 | 0.2 |
| Western Kentucky | 50.8 | 0.00 | 0.0 |
| Northern West Virginia | 41.0 | 0.27 | 0.7 |
| Maryland | 3.3 | 0.00 | 0.0 |
| Total | 253.2 | 3.57 | 1.4 |

[1] Coal Production data obtained from Department of Energy, Energy Data Reports, Weekly Coal Data Report No. 33, May 19, 1978.

[2] Coal curtailment data obtained from Ohio utilities through public hearing testimony, responses to letters of inquiry sent under section 114 of the Clean Air Act, Ohio implementation plan submissions, and other data submitted to EPA. Assumptions of the analysis are described in the text.

**Appendix B.**—*Projected State-Wide Employment and Economic Impacts of Fuel Switching by Certain Ohio Power Plants Due to Compliance with the Ohio $SO_2$ Plan*

| | |
|---|---|
| Number of Coal Mining Jobs (1977) [1] | 15,200 |
| Ohio Coal Mining Jobs Lost by 1980 Due to the Ohio $SO_2$ Plan [2] | 910 |
| Percent of Total | 6.0 |
| Associated Job Losses in Coal Mine Supply Industries [3] | 550–610 |
| Jobs Lost in Industries Related to Household Spending (Household Services, Rentals, Wholesale and Retail Sales, Production, Etc.) [3] | 820–1120 |
| Total Job Losses | 2,280–2,640 |
| Total Annual Wages Lost (million) [4] | $35–$38 |
| Total Unemployment Benefit Payments (million) [4] | $6–$7 |
| Total Annual Loss in Gross State Product (million) [3] | $70–$77 |

[1] Ohio coal mine employment data were obtained from the Ohio Department of Industrial Relations, Division of Mines Annual Report, 1977.

[2] This figure is based on the loss of 3.06 million tons of annual production as indicated in Appendix B. The projected coal mine unemployment data were developed by tracing individual utility coal curtailments to expected employment losses at supplying mines from information provided by the Ohio utilities and Ohio coal mine operators. Where this was not possible, employment impacts were estimated by analysis of coal mine employment and production data found in the 1977 Division of Mines Annual Report.

[3] Job losses in the non-mining sector and impacts on the Ohio gross annual product were estimated by using Department of Commerce RIMS and Department of Agriculture RIOMS economic models.

[4] Wage loss and unemployment benefit data were obtained from the Ohio Bureau of Employment Services.

**Appendix C.**—*Projected Coal Curtailment and Coal Mining Unemployment Impacts in Selected Ohio Counties Due to Fuel Switching by Ohio Power Plants as a Result of the Ohio $SO_2$ Plan* [1]

| County | 1980 curtailment (millions of tons) | Percent decrease from 1977 production | 1980 coal mining jobs lost | Percent reduction in 1977 county coal mining employment |
|---|---|---|---|---|
| Harrison | 0.95 | 15.9 | 350 | 14.5 |
| Belmont/Monroe | 0.53 | 4.0 | 160 | 2.9 |
| Meigs/Vinton | 0.20 | 5.1 | 90 | 4.1 |
| Muskingum | 0.36 | 6.2 | 80 | 5.8 |
| Perry | 0.15 | 6.5 | 70 | 9.6 |
| Remaining Ohio Coal Producing Counties | 0.87 | 5.6 | 160 | 5.5 |
| Total | 3.06 | 6.5 | 910 | 6.0 |

[1] Because of the low levels of jobs displacement and the uncertainty assoicated with estimating a coal producer's ability to find alternative markets for displaced coal, these figures represent best approximations of the county by county coal curtailment and unemployment data. These data are included as estimates of the "local" unemployment impacts of the coal curtailments.

**Appendix D.**—*Projected State-Wide Coal Curtailment and Unemployment Impacts of Fuel Switching by Ohio Power Plants*

| | |
|---|---|
| Total Ohio Labor Force [1] | 4,993,000 |
| Percent Present Ohio Unemployment Rate [1] | 4.9 |
| Coal Curtailment Due to Fuel Switching for Compliance Purposes (million tons) | 3.06 |
| Coal Mining Jobs Lost by 1980 | 910 |
| Total Jobs Lost by 1980 [2] | 2,280–2,640 |
| Percent Total Ohio Labor Force Affected | 0.05 |

[1] U.S. Department of Labor, May 1979 data.

[2] Estimated using input/output employment multipliers. Range reflects uncertainty in the extent of reduced household spending of unemployed miners.

[FR Doc. 79-27814 Filed 9-5-79; 8:45 am]

BILLING CODE 6560-01-M

## EXECUTIVE OFFICE OF THE PRESIDENT

### Advisory Committee on Information Network Structure and Functions; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the Office of Administration announces the following meeting:

Name: Advisory Committee on Information Network Structure and Functions.

Date: Thursday, September 20, 1979.

Time: 9 a.m. to 3:30 p.m.

Place: Room 3104 New Executive Office Building, 17th and Pennsylvania Avenue, NW., Washington, D.C.

Type of Meeting: Open, subject to space limitations. Those wishing to attend must call the contact person below at least 48 hours in advance of the meeting.

Contact Person: Frank Brignoli, Advisory Committee Executive Secretary, Office of Administration, Executive Office of the President, Washington, D.C. 20500; Telephone 202–395–4784.

Purpose of Advisory Committee: The Committee will advise the Director, Office of Administration (OA), on matters pertinent to OA's plans for the establishment of a communications network to serve the Executive Office of the President (EOP). The Committee will outline a structural and functional plan for the EOP network. This plan will be developed on the basis of current and expected technological developments and will strive for immediate implementation and a minimum useful life of ten years. The plan will address such issues as network hardware and protocol structure, expected structure of servers, gateways and other connections to the network, expected feasible functions, and privacy and authentication mechanisms.

A final report containing the plan is contemplated, and it should provide answers to three questions:

1. What kind of network should the EOP have?

2. What is it likely to cost?

3. How long is it likely to take to implement?

Agenda: 9–9:40 am—Two presentations: Phil Dame, OMB, "Implications of OMB Circular 79–10"; Bob Brown, OMB, "Implications of P.L. 95–220 (20 mins. ea.); 9:40 am-12:00—Discussion of issues relating to EOP communications requirements including: network definition, applicable standards, and identification of appropriate network technologies; 12:00-1:30 pm—luncheon break; 1:30 pm-3:30 pm—committee discussion.

**William Pollak,**

*General Counsel.*

[FR Doc. 79-27793 Filed 9-5-79; 8:45 am]

BILLING CODE 3115-01-M

## FEDERAL MARITIME COMMISSION

**[Docket No. 79-29]**

### Angel Alfredo Romero—Independent Ocean Freight Forwarder Application and Foreign Freight Forwarders, Inc., Possible Violations; Amended Order of Investigation

On April 3, 1979, the Commission instituted this proceeding to determine whether Angel Alfredo Romero, an applicant for an independent ocean freight forwarder license, and/or Foreign Freight Forwarders, Inc., have engaged in activities which violate the Shipping Act, 1916, and whether, in light of the evidence regarding such violations, together with other evidence relevant to freight forwarder

applications, applicant should be granted a license.[1]

On July 3, 1979, Administrative Law Judge John E. Cograve stayed the proceeding to permit applicant to negotiate a settlement of the alleged Shipping Act violations.[2]

Section 32 of the Shipping Act (46 U.S.C. 831), as recently amended by Pub. L. 96–25, 93 Stat. 73, provides in part:

(e) Notwithstanding any other provision of law, the Commission shall have authority to assess or compromise all civil penalties provided in this Act * * *.

This amendment authorizes the Commission to *assess* or compromise all civil penalties arising under the provisions of the Shipping Act, 1916. In implementation of that authority, the Commission, on July 5, 1979, issued interim rules (Docket No. 79–66, 44 FR 39176) prescribing procedures governing the assessment, settlement and collection of civil penalties. Section 505.3 of the interim rules provides that:

Assessment of civil penalties may be made only in a formal proceeding instituted by the Commission under section 22 of the Shipping Act, 1916 * * *.

Because the Bureau of Hearing Counsel has been a party to this proceeding from its inception and the proceeding is in a posture that allows for immediate consideration of civil penalties, the disposition of civil penalties can most appropriately be handled in that forum. Therefore, rather than refer the matter to the Office of General Counsel for settlement, the Commission is directing that such matters be handled within this proceeding. Accordingly, the Commission's April 3 Order of Investigation will be amended to allow the assessment of civil penalties for the conduct at issue in this proceeding and to authorize, but not require, the Commission's Bureau of Hearing Counsel to negotiate a recommended settlement of civil penalties consistent with the policies and procedures established in the interim rules.[3] The Administrative Law Judge will preside over the proceedings and render a decision on the issue of assessment or settlement of civil penalties subject to the Commission's review.

Experience has shown that settlement negotiations between parties are often unduly time consuming. In order to assure an expeditious conclusion of this proceeding, the Commission will impose a requirement that settlement negotiations be concluded 90 days from the date of this Order.

*Therefore, it is ordered,* That the second ordering paragraph of the Commission's April 3, 1979 Order of Investigation is amended by the addition of a fourth issue to read as follows:

(4) Whether civil penalties should be assessed against Angel Alfredo Romero and/or Foreign Freight Forwarders, Inc., pursuant to 46 U.S.C. 831(e), for violations of Shipping Act, 1916, and if so, the amount of such penalties, and,

*It is further ordered,* That the Commission's April 3, 1979 Order of Investigation is amended by the addition of further ordering paragraphs which read as follows:

(1) The Administrative Law Judge shall preside over the taking of evidence, review of any recommended settlement, and render an Initial Decision thereon in accordance with established procedures, including the interim regulations in Docket No. 79–66; and

(2) Settlement negotiations, if any, between the parties to this proceeding, shall be concluded on or before the close of business November 26, 1979.

By the Commission

**Francis C. Hurney,**

*Secretary.*

[FR Doc. 79-27750 Filed 9-5-79; 8:45 am]

BILLING CODE 6730-01-M

[1] The applicant has expressed a desire to withdraw his application and negotiate a settlement of civil penalties.

[2] The procedures for the settlement of civil penalties at the time of Judge Cograve's July 3rd Stay, are contained in the Commission's regulations set forth in 46 CFR 505.5(c). Section 505.5(c) allows a respondent, at any stage of a proceeding, to request permission to negotiate the settlement of civil penalties with the Commission's Office of General Counsel. This request is now before the Commission for determination.

[3] Whether the Applicant possesses the requisite fitness to be granted an independent ocean freight forwarder license is a separate issue, not subject to compromise or settlement.

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**[Docket No. 79–30; Independent Ocean Freight Forwarder License No. F.M.C. 1728]**

## I.M.S., Inc.; Amended Order of Investigation and Hearing

On April 6, 1979, the Commission instituted this proceeding to determine whether I.M.S., Inc., a licensed independent ocean freight forwarder (F.M.C. No. 1728), has engaged in activities which violate the Shipping Act, 1916, and whether such activities require a suspension or revocation of its license.

On May 17, 1979, I.M.S. voluntarily surrendered its license for revocation.[1] On June 11, 1979, I.M.S. requested permission to negotiate a settlement of civil penalty claims arising from the activities at issue in this proceeding, pursuant to the Commission's procedures set forth in 46 CFR 505.5(c).[2] This request is now before the Commission for determination.

Section 32 of the Shipping Act (46 U.S.C. 831), as recently amended by Pub. L. 96–25, 93 Stat. 73, provides, in part:

(e) Notwithstanding any other provision of law, the Commission shall have authority to assess or compromise all civil penalties provided in this Act * * *.

This amendment authorizes the Commission to *assess* or compromise all penalties arising under the provisions of the Shipping Act, 1916. In implementation of that authority, the Commission, on July 5, 1979, issued interim rules (Docket No. 79–66, 44 FR 39176), prescribing procedures governing the assessment, settlement and collection of civil penalties. Section 505.3 of the interim rules provides that:

Assessment of civil penalties may be made only in a formal proceeding instituted by the Commission under section 22 of the Shipping Act, 1916 * * *.

The Bureau of Hearing Counsel discharges a prosecutorial function under the interim rules with authority to enter into stipulations and settlements with respondents.

Because the Bureau of Hearing Counsel has been a party to this proceeding from its inception and the proceeding is in a posture that allows for immediate consideration of civil penalties, the disposition of civil penalties can most appropriately be handled in that forum. Therefore, rather than refer the matter of penalties to the Office of General Counsel for settlement, the Commission is directing that such matters be handled within this proceeding. Accordingly, the Commission's April 6 Order of Investigation and Hearing will be amended to allow the assessment of civil penalties for the conduct at issue in this proceeding and to authorize, but not require, the Commission's Bureau of Hearing Counsel to negotiate a recommended settlement of civil penalties consistent with the policies and procedures established in the interim rules.[3] The Administrative Law Judge will preside over the proceedings and render a decision on the issue of assessment or settlement of civil

[1] See Exhibit No. 1 of the prehearing conference, held May 31, 1979, in connection with this proceeding.

[2] Section 505.5(c) allows a respondent, at any stage of a proceeding, to request permission to negotiate the settlement of civil penalties with the Commission's Office of General Counsel.

[3] Whether the licensee possesses the requisite fitness to retain its license is a separate issue, not subject to compromise or settlement.

penalties subject to the Commission's review.

Experience has shown that settlement negotiations between parties are often unduly time consuming. In order to assure an expeiditious conclusion of this proceeding, the Commission will impose a requirement that settlement negotiations be concluded 90 days from the date of this Order.

*Therefore, it is ordered,* That the first ordering paragraph of the Commission's April 6, 1979 Order of Investigation and Hearing is amended by the addition of a fifth issue to read as follows:

(5) Whether civil penalties should be assessed against I.M.S., Inc. and/or Peter Kirn, President of I.M.S., Inc., pursuant to 46 U.S.C. 831(e), for violations of Shipping Act, 1916, and if so, the amount of such penalties; and

*It is further ordered,* That the Commission's April 6, 1979 Order of Investigation and Hearing is amended by the addition of further ordering paragraphs which read as follows:

(1) The Administrative Law Judge shall preside over the taking of evidence, review of any recommended settlement, and render in Initial Decision thereon in accordance with established procedures, including the interim regulations in Docket No. 79–66; and

(2) Settlement negotiations, if any, between the parties to this proceeding, shall be concluded on or before the close of business November 26, 1979.

By the Commission.

**Francis C. Hurney,**

*Secretary.*

[FR Doc. 79–27751 Filed 9–5–79; 8:45 am]

BILLING CODE 6730–01–M

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**[Agreement No. 10320–1]**

## Intent To Impose Conditions

An agreement, between Companhia de Navegacao Lloyd Brasileiro, Companhia Maritima Nacional and Delta Steamship Lines, Inc., as the national-flag lines, and Empresa Lineas Maritimas Argentinas S.A. (ELMA), A. Bottacchi S.A. de Navegacion C.F.I.I. (Bottacchi), Montemar S.A. Commercial y Maritima (Montemar), and Nopal Atlantic Lines, Ltd. (Nopal), as the non-national flag lines, has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, and has been assigned Federal Maritime Commission Number 10320–1.

Agreement No. 10320 replaced No. 10029 [1] which was a similar agreement in the same trade between the national-flag lines and three non-national flag lines: ELMA, Montemar and Nopal. The reason that Agreement No. 10320 does not have these non-national flag lines as participants as in Agreement No. 10029 is that, at the time of the filing of Agreement No. 10320, the non-national flag lines had not agreed among themselves as to their individual shares of the 20 percent quota allotted to them. On January 30, 1978, the three non-national flag lines filed a separate agreement, assigned FMC No. 10321, in which they agreed to specific percentages of the twenty percent quota. However, this agreement was withdrawn by the parties in favor of Agreement No. 10320–1.

Agreement No. 10320–1 provides for the participation of the non-national flag lines in the pool pursuant to the terms of Article 2(d) of the basic Agreement. [2]

The amendment makes the appropriate changes to include the non-national flag lines' individual shares in the revenue pools. These being as follows:

*1978, 1979, 1980*
ELMA/Bottacchi, 6.93% 7.29%, 7.88%.
Montemar, 0.99%, 1.11%, 1.12%.
Nopal, 12.08%, 11.60%, 11.00%.

The percentages under Agreement No. 10029 were as follows:

ELMA, 6.1%.
Montemar, 0.8%.
Nopal, 13.1%.

The shares of the non-national flag lines specified in Agreement No. 10320–1 include, pro rata, shares of 1.8 percent in 1978, 1.9 percent in 1979, and 2.0 percent in 1980 for the participation of Mexican-flag lines in the pool agreement, when the Mexican-flag lines agree to accept those shares.

Notice of the filing of the Agreement appeared in the **Federal Register** on April 3, 1978. In response, protests were received from Navimex S.A. de C.V. (Navimex) and Transportacion Maritima Mexicana S.A. (TMM), both Mexican-flag lines. TMM argues that the agreement is unjustly discriminatory as to it in failing to provide it a share adequate to maintain a viable service in the trade. Both argue that the agreement is detrimental to U.S. commerce and contrary to the public interest. Navimex argues that it is being unlawfully excluded from the agreement because of TMM's non-participation in the trade and that this is unlawfully discriminatory. Navimex argues that, unless it is made a party to the agreement, the agreement should be disapproved.

The Commission is considered whether to approve, disapprove or modify the agreement.

In Docket No. 78–51 *Agreement No. 10349—A Cargo Revenue Pooling and Sailing Agreement—Argentina/United States Atlantic Trade* and Docket No. 78–52, *Agreement No. 10346—A Cargo Revenue Pooling and Sailing Agreement—Argentina/United States Gulf Trade,* the Commission was faced with a situation substantially similar to that presented by Agreement No. 10320–1. In its Report and Order, served June 22, 1979, the Commission approved those agreements subject to their being modified to provide for open competition between the non-national flag lines for their (non-national flag) share of the pool.[3]

The Commission hereby gives notice of its intent to impose conditions similar to those in Dockets Nos. 78–51 and 78–52 if the agreement is otherwise approvable. The Commission wishes by this notice to obtain the comments of the parties to Agreement No. 10320–1 and of other interested persons.

*It is therefore ordered,* That comments responsive to this notice be filed with the Commission on or before September 28, 1979;

*It is further ordered,* That this notice be published in the **Federal Register,** and served upon Proponent Parties and Protestants.

By the Commission.

**Francis C. Hurney,**

*Secretary.*

[FR Doc. 79–27749 Filed 9–5–79; 8:45 am]

BILLING CODE 6730–01–M

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## Independent Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916, (75 Stat. 522 and 46 U.S.C. 841b).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

Noemi Caraballo, 511 N.W., 59th Court, Miami, FL 33126.

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[1] Agreement No. 10029 was originally approved on January 30, 1973, for 5 years. It expired on March 31, 1978, after a brief extension to that date.

[2] This article provides that when the non-national flag lines have agreed to a division among themselves of the twenty percent quota they may become a party to the basic agreement upon approval of an appropriate amendment thereto.

[3] See also Order served August 28, 1979 in Dockets Nos. 78–51 and 78–52.

Taub, Hummel & Schnall (California) Inc., 9610 South La Cienega Blvd., Bldg. D, North Inglewood, CA 90301, Officers: Roland R. Hummel, President, Morton L. Shapiro, Vice President, Robert N. Altman, Secretary/Treasurer.

Cowan-McLean International Inc., 840 Oldham Street, Baltimore, MD 21224, Officers: Joseph W. Cowan, Vice President/Director, Michael E. McLean, President/Director.

Oswald A. Falabella, 701 Garibaldi Avenue, Roseto, PA 18013.

Gate-Way Inter., Inc., 9821 Clinton Drive, Houston, TX 77029, Officers: George E. Sims, President, B. W. Beard, Secretary, C. L. Beard, Vice President.

Ace Shipping Corp. (Air Cargo Expenditers, Inc., d.b.a.), 1564 Rollins Drive, Burlingame, CA 94010, Officers: Howard Cheung, President, Rosemarie Cheung, Secretary/Treasurer, Wm. F. Worthington, Director.

By the Federal Maritime Commission.

**Francis C. Hurney,**

*Secretary.*

Dated: August 30, 1979.

[FR Doc. 79-27752 Filed 9-5-79; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL TRADE COMMISSION

### Preemptive Effect of Magnuson-Moss Act on State Law

**AGENCY:** Federal Trade Commission.

**ACTION:** Request for written comments on Commission's interpretations of section 111 of the Act; response to petitions.

**SUMMARY:** The Commission has received several petitions from members of the mobile home and recreational vehicle industry requesting consideration of its current interpretation of section 111 of the Warranty Act. In response to these petitions the Commission is requesting written comments on the interpretation of section 111 and the effect of the Warranty Act on State law.

**ADDRESSES:** Send written comments to Secretary, Federal Trade Commission, Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** Charles Taylor, (202) 523-3500, or Rachel Miller, Attorney, (202) 523-0425, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

**DATES:** Written comments must be received by November 5, 1979.

**SUPPLEMENTARY INFORMATION:** The Commission is seeking public comment on its recent opinion interpreting the preemptive effect of section 111 of the Magnuson-Moss Warranty Act on Wisconsin's mobile home warranty laws and regulations (the "Wisconsin Opinion", 43 FR 50737, October 31, 1978), and generally on the interpretation of section 111.

Section 111 describes what State requirements are rendered inapplicable ("preempted") to warrants complying with the Federal act. The section provides that State labeling and disclosure requirements which are within the scope of the requirements of the Warranty Act, sections 102, 103, or 104 or rules thereunder, and which are not identical to those requirements, are inapplicable to warranties which meet the Federal requirements. The Act further provides in section 111(c)(2) for a procedure whereby States may preserve such requirements.

The Commission first interpreted the section following a proceeding concerning California's warranty laws (published at 42 FR 54004, October 4, 1977). Briefly, the Commission's interpretation stated that:

- Section 111(b)(1) preserves all consumer rights or remedies created under State or other Federal laws. (Section 111(b)(2) contains provisions relating to consequential damages and personal injury that did not come into play.)
- Section 111(c)(1), which states what State law provisions are preempted, applies only to provisions involving disclosure or labeling; State-created consumer rights and remedies are not affected at all by section 111(c).
- The phrase "right or remedy" does not include any "right" to disclosure in a particular manner.
- Any State provision requiring disclosure in a written warranty document is within the scope of section 102 of the Act and rules under it, and thus subject to preemption by the Federal law.

On October 31, 1978, the Commission published a further interpretation of section 111, with reference to Wisconsin's mobile home warranty law (43 FR 50737). In the Wisconsin opinion, the Commission restated, in general terms, its interpretation of the scope and effect of the preemption section of the Warranty Act as expressed in the earlier California determination. In addition, the Commission examined in detail and interpreted the meaning of the language in section 111(c)(1)(C) which preempts only State laws "not identical" to Federal requirements. The Commission interpreted "identical to" to mean "having the same effect as" or "requiring the same disclosure as." The Commission stated that "it is not essential that the State provision (to be identical to a Federal provision) contain the same words as the Federal provision or incorporate the Federal provision by reference, if the item of information required to be disclosed in a written warranty would also be disclosed under a Federal disclosure provision."

The interpretation also stated that where by law a State determines a warrantor's responsibilities under a warranty and those responsibilities are among those described in the Federal disclosure regulation, they must be disclosed under Federal law. A State provision requiring disclosure of those responsibilities is "identical" to Federal law for purposes of section 111(c)(1) and not preempted.

Several members and associations of the mobile home and recreational vehicle industries have petitioned the Commission to retract and reconsider its Wisconsin opinion. In addition, petitioners requested a public comment period prior to the Commission's reconsideration of the matter. Petitioners have raised a number of issues that deserve further consideration with an opportunity for public comment. The Commission has therefore determined to solicit written comments on the Wisconsin interpretation and the following issues. Detailed discussions, cost estimates and analyses of benefits are necessary for a useful response.

(1) What state provisions currently exist (in states other than California and Wisconsin), or are under contemplation, that are preempted by section 111 under the current interpretation? What provisions are not preempted?

(2) Is it possible for a warrantor to comply with all applicable federal and state written warrantly disclosure requirements under the current interpretation of section 111? If not, what are the conflicting requirements?

(3) Is it possible for a warrantor to comply with all applicable requirements using a single warranty document? If so, what are the costs and burdens of offering a single document meeting all applicable requirements? If not, what are the requirements that prevent this? What are the costs and burdens of using more than one warranty document?

(4) Do any state provisions discourage the use of full warranties? If so, which provisions, and in what way do they do so?

(5) Please discuss the practical effects of preempting or not preempting any other state disclosure provision.

(6) What would be the results of the following interpretations which relate to issues raised by the petition? What would be the results of differing interpretations?

(a) That section 111 preempts state provisions that mandate the use of specific words not required by federal law.

(b) That by virtue of section 111 a warrantor who gives a full warranty is not subject to any additional state warranty requirements.

(c) That section 111 preempts all state disclosure requirements of state-mandated terms, even those terms which would have to be disclosed under federal regulations if voluntarily offered.

(d) That the federal disclosure rule requires disclosure of rights created by the state, even if state law does not require their disclosure?

All interested persons are invited to submit written comments on these matters. Please send two copies, if possible, labeled "State Warranty Law Comments" for identification to the above address.

Copies of the Wisconsin opinion, the California interpretation, the papers received from the petitioners and all comments received will be placed on the public record. You my examine them in Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580. If you wish copies for your own use, make arrangements with Delores Johnson, Division of Product Reliability, Federal Trade Commission, Washington, D.C. 20580, (202) 523–3657.

By direction of the Commission, dated August 29, 1979.

**James A. Tobin,**

*Acting Secretary.*

[FR Doc. 79–27794 Filed 9–5–79; 8:45 am]

BILLING CODE 6750–01–M

## GENERAL ACCOUNTING OFFICE

### Regulatory Reports Review; Receipt of Report Proposals

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Review Staff, GAO, on August 30, 1979. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the Federal Register is to inform the public of such receipt.

The notice includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed NRC requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before September 24, 1979, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202–275–3532.

**Nuclear Regulatory Commission**

The NRC requests clearance of revisions to 10 CFR Part 34, Licenses for Radiography and Radiation Safety Requirements for Radiographic Operations, specifically the recordkeeping requirements in §§ 34.11, 34.28, 34.29 and 34.31. Amended § 34.11 requires licensees to maintain records of the inspections or audits they conduct quarterly to monitor the performance of their radiographers. The NRC estimates there are 3,000 radiographers. Amended § 34.28 requires that licensees maintain records showing that they have performed a quarterly inspection and maintenance of their radiography exposure devices. New § 34.29 requires that licensees maintain records of quarterly tests on alarm interlock systems at permanent radiographic installations. Amended § 34.31 requires licensees to maintain records of the training of radiographers and radiographers' assistants. The NRC estimates that respondents will be 300 licensees and that burden will average 30 minutes quarterly per radiographer reported on for § 34.11; 5 minutes quarterly for each device monitored for § 34.28; 5 minutes quarterly per installation for § 34.29; and 5 minutes annually for each radiographer or radiographer assistant records are kept on for § 34.31.

The NRC requests clearance of a new, single-time questionnaire designed to gather information from certain NRC and Agreement State licensees concerning economic activity in the industrial and consumer areas of the radionuclide industry. Due to growing public awareness of radionuclide economic activities and the extensive NRC interface with regulated economic activities, the NRC is often required to respond to inquiries from outside the agency and to prepare special analyses of regulatory actions. To obtain a data base sufficient to allow NRC to respond adequately to the growing need for better economic data, the NRC in 1977 sponsored two studies; one study examined the economic activity associated with the nuclear power industry and the other study examined the nuclear medicine portions of the radionuclide industry. This survey is the third part of the research effort and completes the assessment of the economic activity of the nuclear industry by addressing the industrial and consumer areas of the radionuclide industry. The NRC estimates respondents will number approximately 75 and that burden will average 1½ hours per respondent.

**Norman F. Heyl,**

*Regulatory Reports Review Officer.*

[FR Doc. 79–27789 Filed 9–5–79; 8:45 am]

BILLING CODE 1610–01–M

## GENERAL SERVICES ADMINISTRATION

[E–79–4]

### Delegation of Authority to the Secretary of Defense

1. *Purpose.* This delegation authorizes the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government in proceedings before the Public Service Commission of Utah involving gas utility rates.

2. *Effective date.* This delegation is effective immediately.

3. *Delegation.* a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the Federal executive agencies before the Public Service Commission of Utah involving the application of the Mountain Fuel Supply Company for an increase in its gas rates.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

Dated: August 23, 1979.

**R. G. Freeman III,**

*Administrator of General Services.*

[FR Doc. 79–27597 Filed 9–5–79; 8:45 am]

BILLING CODE 6820–AM–M

[E–79–5]

### Delegation of Authority to the Secretary of Defense

1. *Purpose.* This delegation authorizes the Secretary of Defense to represent the consumer interests of the executive

agencies of the Federal Government in proceedings before the Colorado Public Utilities Commission involving the application of the City of Colorado Springs, Department of Public Utilities for an increase in gas rates.

2. *Effective date.* This delegation is effective immediately.

3. *Delegation.* a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the Federal executive agencies before the Colorado Public Utilities Commission involving the application of the City of Colorado Springs, Department of Public Utilities for an increase in its gas rates.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

Dated: August 23, 1979.

**R. G. Freeman III,**

*Administrator of General Services.*

[FR Doc. 79-27598 Filed 9-5-79; 8:45 am]

BILLING CODE 6820-AM-M

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[E-79-6]

### Delegation of Authority to the Secretary of Defense

1. *Purpose.* This delegation authorizes the Secretary of Defense to represent in conjunction with the Administrator of General Services, the consumer interests of the executive agencies of the Federal Government in proceedings before the Texas Public Utilities Commission involving electric utility rates.

2. *Effective date.* This delegation is effective immediately.

3. *Delegation.* a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the Federal executive agencies before the Texas Public Utilities Commission involving the application of the Texas Electric Service Company for an increase in its electric rates. The authority delegated to the Secretary of Defense shall be exercised concurrently with the Administrator of General Services.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

Dated: August 27, 1979.

**R. G. Freeman III,**

*Administrator of General Services.*

[FR Doc. 79-27599 Filed 9-5-79; 8:45 am]

BILLING CODE 6820-AM-M

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## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### National Institutes of Health

### Committees Advisory to the National Cancer Institute; Open Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of committees advisory to the National Cancer Institute.

These meetings will be entirely open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available. Meetings will be held at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205, unless otherwise stated.

Mrs. Marjorie F. Early, Committee Management Officer, NCI, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will furnish summaries of the meetings and rosters of committee members upon request.

Other information pertaining to the meeting can be obtained from the Executive Secretary indicated.

Name of Committee: President's Cancer Panel.
Dates: October 15, 1979; 2:00 p.m.-5:00 p.m.
Place: Building 31A, Conference Room 11A10, National Institutes of Health.
Times: Open for the Entire Meeting.
Agenda: To hear reports on activities of the President's Cancer Panel and the National Cancer Program.
Executive Secretary: Dr. Richard A. Tjalma.
Address: Building 31, Room 11A46, National Institutes of Health.
Phone: 301/496-5854.

Name of Committee: Board of Scientific Counselors, Division of Cancer Treatment.
Dates: October 29-30, 1979; 8:30 a.m.-adjournment.
Place: Building 31A, Conference Room 4, National Institutes of Health.
Times: Open for the Entire Meeting.
Agenda: To review program plans, contract recompetitions and budget.
Executive Secretary: Dr. Vincent T. DeVita.
Address: Building 31, Room 3A52, National Institutes of Health.
Phone: 301/496-4291.

Dated: August 24, 1979.

**Suzanne L. Fremeau,**

*Committee Management Officer, NIH.*

[FR DOC 70-27610 Filed 9-5-79; 8:45 am]

BILLING CODE 4110-08-M

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### Meeting of Pulmonary Diseases Advisory Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Pulmonary Diseases Advisory Committee, National Heart, Lung, and Blood Institute, on October 4, 1979, in Conference Room 7, Building 31, at the National Institutes of Health, Bethesda, Maryland.

The entire meeting, from 8:30 a.m. to 5:00 p.m. on October 4, will be open to the public. The Committee will discuss the current status of Division programs and Committee plans for fiscal year 1980. Attendance by the public will be limited to the space available.

Mr. York Onnen, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496-4236, will provide summaries of the meeting and rosters of the committee members.

Dr. Malvina Schweizer, Executive Secretary of the Committee, Westwood Building, Room 6A16, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496-7208, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Programs No. 13.838, National Institutes of Health)

Dated: August 24, 1979.

**Suzanne L. Fremeau,**

*Committee Management Officer, NIH.*

[FR Doc. 79-27611 Filed 9-5-79; 8:45 am]

BILLING CODE 4110-08-M

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### Workshop of the Reproductive Biology Study Section and the Human Embryology and Development Study Section

Notice is hereby given of a Workshop on Immunological Aspects of Infertility and Fertility Regulation by the Reproductive Biology Study Section and the Human Embryology and Development Study Section at the Holiday Inn, St. Louis, MO, October 22, 1979, from 8:00 a.m. to adjournment and October 23, 1979, from 8:00 a.m. to 5:00 p.m.

Further information may be obtained from Dr. Dharam Dhindsa, Executive Secretary, Reproductive Biology Study Section, Westwood Building, Room 307, telephone 301–496–7318, and Dr. Arthur Hoversland, Executive Secretary, Human Embryology and Development Study Section, Westwood Building, Room 221, telephone 301–496–7597.

This workshop will be open to the public. Attendance by the public will be limited to space available.

Dated: August 24, 1979.

**Suzanne L. Fremeau,**

*Committee Management Officer, NIH.*

[FR Doc. 79–27609 Filed 9–5–79; 8:45 am]

BILLING CODE 4110–08–M

### Workshops Being Held: Pathobiological Chemistry Study Section and Pathology A Study Section

Notice is hereby given of Workshops to be held by the following Study Sections on the dates and places listed below:

**Pathobiological Chemistry Study Section**

Workshop on Complex Carbohydrates: Structure, Function and Biosynthesis, Conference Room 10, Building 31C, Bethesda, MD, October 2, 1979, from 8:30 a.m. to 5:00 p.m.

Further information may be obtained from Dr. Ellen Archer, Executive Secretary, Pathobiological Chemistry Study Section, Westwood Building, Room A–26, telephone 301–496–7820.

**Pathology A Study Section**

Workshop on Oxygen-Derived Free Radicals in Tissue Damage, Dulles Marriott, Chantilly, VA, October 22, 1979, from 8:00 a.m. to 5:30 p.m.

Further information may be obtained from Dr. Harold Waters, Executive Secretary, Pathology A Study Section, Westwood Building, Room 337, telephone 301–496–7305.

These workshops will be open to the public. Attendance by the public will be limited to space available.

Dated: August 24, 1979.

**Suzanne L. Fremeau,**

*Committee Management Officer, NIH.*

[FR Doc. 79–27608 Filed 9–5–79; 8:45 am]

BILLING CODE 4110–08–M

## Office of Education

### National Advisory Council on Adult Education; Meeting

**AGENCY:** National Advisory Council on Adult Education.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Adult Education. This notice also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act (Pub. L. 92–463, Sec 10(a)(2).

**DATE:** September 20, 1979, 9:00 a.m. to 4:30 p.m.; September 21, 9:00 a.m. to 3:30 p.m.

**ADDRESS:** Stouffer's National Center Hotel, 2399 So. Jefferson Davis Highway, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Dr. Gary A. Eyre, Executive Director, National Advisory Council on Adult Education, 425 13th St., NW., Washington, D.C. 20004 (202/376–8892).

**SUPPLEMENTARY INFORMATION:** The National Advisory Council on Adult Education is established under Section 313 of the Adult Education Act (20 U.S.C. 1201). The Council is directed to:

Advise the Commissioner in the preparation of general regulations and with respect to policy matters arising in the administration of this title, including policies and procedures governing the approval of State plans under section 306 and policies to eliminate duplication, and to effectuate the coordination of programs under this title and other programs offering adult education activities and services.

The Council shall review the administration and effectiveness of programs under this title, make recommendations with respect thereto, and make annual reports to the President of its findings and recommendations (including recommendations for changes in this title and other Federal laws relating to adult education activities and services). The President shall transmit each such report to the Congress together with his comments and recommendations.

The meeting of the Council shall be open to the public.

The proposed agenda includes: Orientation Activities for New Members. FY–79 Budget Report.

Records shall be kept of all Council proceedings, and shall be available for public inspection at the Office of the National Advisory Council on Adult Education, 425 13th St., NW., Suite 323, Washington, D.C. 20004.

Signed at Washington, D.C., on August 31, 1979.

**Gary A. Eyre,**

*Executive Director, National Advisory Council on Adult Education.*

[FR Doc. 79–27746 Filed 9–5–79; 8:45 am]

BILLING CODE 4110–02–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### New Community Development Corporation

**[Docket No. N–79–946]**

### Shenandoah New Community; Intent to Supplement Environmental Impact Statement

The U.S. Department of Housing and Urban Development, New Community Development Corporation, Washington, D.C., intends to issue a Supplement to the Final Environmental Impact Statement for the Shenandoah New Community which is located approximately 45 miles south of Atlanta, in Coweta County, Georgia.

The Supplement will evaluate the environmental impacts of a proposed change of the source of water for the Shenandoah new community project from the distant Flint River to Line Creek and White Oak Creek, as against certain other alternative sources, and related alteration and expansion of water storage, treatment, and distribution facilities of the Newnan Water, Sewerage and Light Commission necessary in connection with such proposed change.

The new community project was originally planned to consist of 7,200 acres, about 23,000 dwelling units, and about 69,000 population after 20 years. Current development consists of about 170 residential units on 150 acres, a community center and various recreation facilities. There are approximately 345 residents.

Copies of the Supplement will be available in the near future. The comment period for the Draft Supplement will be forty-five (45) calendar days after the date of publication of notice in the **Federal Register** that such Draft Supplement has been filed.

The final EIS for Shenandoah was issued on December 4, 1972. Copies are available for review at the New Community Development Corporation, HUD, in Washington, D.C., and in Shenandoah at the Office of the Developer.

Comments concerning this Notice are invited from all affected and interested parties and should be received in writing as soon as possible, but no later than September 17, 1979.

Comments should be submitted to Mr. Edwin Baker, Environmental Control Officer, Department of Housing and Urban Development, New Community Development Corporation, Room 7137, 451 Seventh Street, S.W., Washington, D.C. 20410.

This Notice supersedes our rior Notice of Intent To Issue a Supplemental Environmental Impact Statement, which is hereby canceled.

Telephone inquiries about this Notice may be directed to Raymond G. Hay, Environmental Clearance Officer (alternate), (202) 755–5510.

Issued at Washington, D.C., August 30, 1979.

**Bryant L. Young,**

*Deputy General Manager, New Community Development Corporation.*

[FR Doc. 79-27787 Filed 9-5-79; 8:45 am]

BILLING CODE 4210-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### Arizona; Aravaipa Canyon Wilderness Study; Public Hearings

Notice is hereby given of formal public hearings pursuant to Section 603(a) of Federal Land Policy and Management Act of 1976 (Pub. L. 94–579) for the purpose of receiving comments on the Aravaipa Canyon Wilderness Suitability Report and Environmental Statement.

Three separate hearings will be held; all will begin at 7:30 p.m. at the following locations:

November 5, 1979—Superior Court Room, Graham County Courthouse, Safford, Arizona.

November 6, 1979—Pima County Board of Supervisors Hearing Room, 111 West Congress, Tucson, Arizona.

November 7, 1979—Phoenix Civic Plaza, 225 East Adams, Phoenix, Arizona.

Official transcripts will be made by a court reporter at all hearings. Persons wishing to speak will be allowed 10 minutes to present their comments. Prepared written statements will also be accepted.

Additional information may be obtained from the Bureau of Land Management Safford District Office, 425 East 4th Street, Safford, Arizona 85546. Phone (602) 428–4040.

**Robert O. Buffington,**

*State Director, Arizona.*

[FR Doc. 79-27600 Filed 9-5-79; 8:45 am]

BILLING CODE 4310-84-M

[N-24960]

### Nevada; Application

August 27, 1979.

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Southwest Gas Corporation filed an application for a right-of-way to construct a 12¾ inch O.D. pipeline for the purpose of transporting natural gas across the following described public lands:

**Mount Diablo Meridian, Nevada**

T. 20 N., R. 20 E.,
sec. 28, SE¼NE¼, S½NW¼, NE¼SE¼;
sec. 29, S½N½;
sec. 30, NW¼SW¼.

The proposed pipeline will reinforce and supplement natural gas service for northern Nevada.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the Chief, Division of Technical Services, Bureau of Land Management, 300 Booth Street, Room 3008, Federal Building, Reno, NV, 89509.

**Wm. J. Malencik,**

*Chief, Division of Technical Services.*

[FR Doc. 79-27601 Filed 9-5-79; 8:45 am]

BILLING CODE 4310-84-M

[NM 38132]

### New Mexico; Application

August 23, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Llano Inc. has applied for one 4½-inch natural gas pipeline right-of-way across the following lands:

**New Mexico Principal Meridian, New Mexico**

T. 19 S., R. 33 E.,
sec. 24, E½NE¼, SW¼NE¼, SE¼SW¼ and W½SE¼.
T. 19 S., R. 34 E.,
sec. 18, lots 3, 4, W½NE¼, SE¼NW¼ and NE¼SW¼;
sec. 19, lot 1.

This pipeline will convey natural gas across 2.186 miles of public lands in Lea County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

**Paul E. Martinez,**

*Acting Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 79-27602 Filed 9-5-79; 8:45 am]

BILLING CODE 4310-84-M

[NM 38003, 38004, 38005, 38006, 38007, 38008, 38009 and 38010]

### New Mexico; Applications

August 24, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for eight 4½-inch natural gas pipeline rights-of-way across the following lands:

**New Mexico Principal Meridian, New Mexico**

T. 26 N., R. 6 W.,
sec. 20, W½SW¼.
T. 29 N., R. 8 W.,
sec. 15, SW¼SE¼;
sec. 17, NE¼NE¼;
sec. 22, NW¼NE¼.
T. 29 N., R. 9 W.,
sec. 26, lots 10 and 15;
sec. 34, SW¼SE¼.
T. 31 N., R. 9 W.,
sec. 17, lot 8;
sec. 33, lot 4;
sec. 34, lots 11 and 12.

These pipelines will convey natural gas across 1.199 miles of public lands in Rio Arriba and San Juan Counties, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

**Paul E. Martinez,**

*Acting Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 79-27603 Filed 9-5-79; 8:45 am]

BILLING CODE 4310-84-M

[NM 38126]

### New Mexico; Application

August 24, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for one 4½-inch natural gas

pipeline right-of-way across the following land:

**New Mexico Principal Meridian, New Mexico**

T. 21 S., R. 26 E.,
sec. 20, W½NW¼ and SE¼NW¼.

This pipeline will convey natural gas across 0.852 of a mile of public land in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

**Paul E. Martinez,**

*Acting Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 79-27604 Filed 9-5-79; 8:45 am]

BILLING CODE 4310-84-M

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[C-12610]

## Colorado; Opportunity for Public Hearing and Republication of Notice of Proposed Withdrawal

August 28, 1979.

The U.S. Fish and Wildlife Service filed application Serial No. C-12610 on March 23, 1971, for a withdrawal relating to the following described lands:

**Sixth Principal Meridian**

T. 7 N., R. 79 W.,
Sec. 4, Lot 4, SE¼NW¼, and W½SW¼;
Sec. 6, Lot 1, SE¼NE¼, and E½SE¼;
Sec. 7, E½ and E½W½;
Sec. 9, SE¼NW¼, and SW¼SE¼;
Sec. 14, SW¼SW¼;
Sec. 15, SW¼NE¼;
Sec. 17, SW¼NW¼, and NE¼SW¼.
T. 8 N., R. 79 W.,
Sec. 3, SW¼SW¼;
Sec. 4, SW¼NE¼, and N½SE¼
Sec. 5, Lot 4;
Sec. 6, Lot 7;
Sec. 7, SW¼NE¼, SE¼NW¼, SE¼SW¼, NE¼SE¼, and S½SE¼;
Sec. 8, E½NW¼, and S½;
Sec. 9, S½;
Sec. 17, All;
Sec. 18, NE¼, E½NW¼, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 19, lots 2, 3, and 4, NE¼NE¼, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 20, N½NE¼, SW¼NE¼, and NW¼;
Sec. 21, W½SE¼;
Sec. 28, W½NE¼;
Sec. 30, Part E½E½ east of Highway 125;
Sec. 31, Part E½NE¼ east of Highway 125, and E½SE¼;
Sec. 33, W½W½.
T. 8 N., R. 80 W.,
Sec. 11, NE¼NE¼, SW¼NE¼, N½SW¼, and SW¼SW¼;
Sec. 12, NE¼, N½NW¼;
Sec. 15, N½NE¼, and E½NW¼.
T. 9 N., R. 79 W.,
Sec. 32, W½E½ and E½E½SW¼;
Sec. 33, SW¼SW¼.

The area described aggregates 5,372.98 acres.

A notice of the proposed withdrawal was published in the **Federal Register** on April 1, 1971, at page 6019, FR Doc. 71-4462.

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2754, notice is hereby given that an opportunity for a public hearing is afforded in connection with the pending withdrawal application. All interested persons who desire to be heard on the proposed withdrawal must file a written request for a hearing with the State Director, Bureau of Land Management, Colorado State Bank Building, 1600 Broadway, Denver, CO., on or before October 9, 1979.

Notice of the public hearing will be published in the **Federal Register**, giving the time and place of such hearing. The hearing will be scheduled and conducted in accordance with BLM Manual Sec. 2351.16 B. All previous comments submitted in connection with the withdrawal application have been included in the record and will be considered in making a final determination on the application.

In lieu of or in addition to attendance at a scheduled public hearing, written comments or objections to the pending withdrawal application may be filed with the undersigned authorized officer of the Bureau of Land Management on or before October 9, 1979.

The above described lands are temporarily segregated from the operation of the public land laws, including the mining laws, to the extent that the withdrawal applied for, if and when effected, would prevent any form of disposal or appropriation under such laws. Current administrative jurisdiction over the segregated lands will not be affected by the temporary segregation. In accordance with section 204(g) of the Federal Land Policy and Management Act of 1976, the segregative effect of the pending withdrawal application will terminate on October 20, 1991, unless sooner terminated by action of the Secretary of the Interior.

All communications in connection with the pending withdrawal application should be addressed to the undersigned, Bureau of Land Management, Department of the Interior, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80202.

**Andrew W. Heard, Jr.,**

*Leader, Craig Team, Branch of Adjudication.*

[FR Doc. 79-27763 Filed 9-5-79; 8:45 am]

BILLING CODE 4310-84-M

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## Montana; Request for Public Comment

August 28, 1979.

U.S. Department of the Interior, Bureau of Land Management, Montana State Office, Granite Tower Bldg., 222 North 32nd St., P.O. Box 30157, Billings, Montana 59107. The Bureau of Land Management requests public comment on the fair market value of certain coal resources it proposes to offer for competitive lease sale.

M 37604—Limited to the Anderson-Dietz-1 seam, to be surface mined, located approximately 4 miles northeast of Decker, Montana, 21 miles northeast of Sheridan, Wyoming, and 40 miles southwest of Ashland, Montana:

**Principal Meridian, Montana,**

*Big Horn County,*

T. 9 S., R. 40 E.,
Sec. 8: SE¼NE¼, N½SE¼, SW¼SE¼;
Sec. 9: W½NW¼;
Sec. 17: E½SW¼;
Sec. 20: N½NE¼, SE¼NE¼;
Containing 440.0 acres.

The estimated total strippable reserves are 15.2 million tons. The coal quality is as follows: Btu—9535 per pound; Sulfur—.32 percent and Ash—4.14 percent. The Anderson-Dietz-1 coal bed averages 52 feet thick over the described lands.

M 35736—Limited to the $D_1$ and $D_2$ seams, to be surface mined, located approximately 4 miles northeast of Decker, Montana:

**Principal Meridian, Montana,**

*Big Horn County,*

T. 8 S., R. 40 E.,
Sec. 34: N½SW¼NE¼, SW¼SW¼NE¼, W½.
T. 9 S., R. 40 E.,
Sec. 3: W½ Lot 2, NW¼SW¼NE¼, S½SW¼NE¼, SW¼NE¼SE¼, NW¼SE¼, S½SE¼;
Containing 530.085 acres.

The estimated total strippable reserves for both seams are 14.7 million tons. (1) The coal quality is as follows for the $D_1$ seam: Btu—9738 per pound; Sulfur—.42 percent and Ash—4.13 percent. The $D_1$ coal bed averages 21 feet thick over the described lands and contains an estimated 3.2 million tons of strippable reserves. (2) The coal quality is as follows for the $D_2$ seam: Btu—9380 per pound; Sulfur—.42 percent and Ash—5.14 percent. The $D_2$ coal bed averages 18 feet thick over the described

lands and contains an estimated 11.5 million tons of strippable reserves.

M 42381—Limited to the Rosebud seam, to be surface mined, located near Colstrip, Montana:

**Principal Meridian, Montana,**

*Rosebud County,*

T. 1 N., R. 41 E.,
Sec. 6: Lot 5, S½SE¼NW¼;
Containing 61.23 acres.

The estimated total strippable reserves are 1,890,000 million tons. The coal quality is as follows: Btu—8517 per pound; Sulfur—.94 percent and Ash—9.15 percent. The coal bed averages 22 feet thick over the described lands.

M 31053(ND)—Limited to the HT Butte seam, to be surface mined, located approximately one-half mile west of Underwood, North Dakota:

**Fifth Principal Meridian, North Dakota,**

*McLean County,*

T. 146 N., R. 82 W.,
Sec. 20: NW¼;
Containing 160.0 acres.

The estimated total strippable reserves are 2.14 million tons. The coal quality is as follows: Btu—6415 per pound; Sulfur—.61 percent and Ash—6.81 percent. The HT Butte coal bed averages 9 feet thick over the described lands.

The public is invited to submit written comments concerning the fair market value of the coal resource to the Bureau of Land Management and the U.S. Geological Survey. Public comments will be utilized in establishing fair market value for the coal resources in the described lands.

Comments should address specific factors related to fair market value including, but not limited to: The quantity and quality of the coal resource, the price that the mined coal would bring in the market place, the cost of producing the coal, the probable timing and rate of production, the interest rate at which anticipated income streams would be discounted, depreciation and other accounting factors, the expected rate of industry return, the value of the surface estate (if private surface), and the mining method or methods which would achieve maximum economic recovery of the coal. Documentation of similar market transactions, including location, terms, and conditions, may also be submitted at this time.

These comments will be considered in the final fair market value determination in accordance with 30 CFR 211.63 and 43 CFR 3422.1–2. Should any information submitted as comments be considered to be proprietary by the commentor, the information should be labeled as such and stated in the first page of the submission. Comments should be sent to both the State Director, Montana State Office, Bureau of Land Management, P.O. Box 30157, Billings, Montana 59107, and to the Regional Conservation Manager, Conservation Division, Geological Survey, Box 25046, Denver Federal Center, Denver, Colorado 80225, to arrive no later than October 9, 1979.

**Roland F. Lee,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 79-27764 Filed 9-5-79; 8:45 am]

BILLING CODE 4310-84-M

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**[U-42494]**

## Utah; Application

August 28, 1979.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), Cisco Drilling & Development, Inc. has applied for a 3½-inch natural gas pipeline right-of-way across the following lands:

**Salt Lake Meridian, Utah**

T. 20 S., R. 23 E.,
Secs. 21, 22, & 27.

The needed right-of-way is a portion of applicant's gas gathering system located in Grand County, Utah.

The purpose of this notice is to inform the public that the Bureau will be proceeding with the preparation of environmental and other analyses necessary for determining whether the application should be approved, and if so, under what terms and conditions.

Interested persons should express their interest and views to the Moab District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532.

**Dell T. Waddoups,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 27765 Filed 9-5-79; 8:45 am]

BILLING CODE 4310-84-M

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## Utah; Announcement of Accelerated Wilderness Inventory on Units in Utah's Overthrust Belt

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Due to a national emphasis on energy exploration on the public lands, the Bureau of Land Management is accelerating a special project wilderness inventory on the lands in southwestern Utah known as the "Overthrust Belt." This accelerated intensive wilderness inventory is being conducted on the following units:

| | Acres |
|---|---|
| Cougar Canyon: UT-040-123 | 10,568 |
| Doc's Pass: UT-040-124 | 21,083 |
| Vermillion Castle: UT-040-136 | 9,900 |
| Red Canyon Group:[1] UT-040-269, UT-040-270, UT-040-271, UT-040-272, UT-040-273 | 3,538 |

[1] These units are adjacent to Forest Service wilderness study areas.

This accelerated inventory is expected to be completed by mid-September 1979, at which time the BLM Utah state director will announce his proposals and initiate a 90-day public comment period. These proposals will be announced in the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** Lawrence Royer, Cedar City BLM District office, 801–586–2401

Dated: August 28, 1979.

**Gerald E. Magnuson,**

*Acting State Director.*

[FR Doc. 79-27766 Filed 9-5-79; 8:45 am]

BILLING CODE 4310-84-M

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**[W-68838]**

## Wyoming; Application

August 28, 1979.

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Company of Colorado Springs, Colorado filed an application for a right-of-way to construct a 6⅝ inch O.D. pipeline, a 4' by 6' meter house, and related metering and dehydration facilities for the purpose of transporting natural gas across the following described public lands:

**Sixth Principal Meridian, Wyoming**

T. 14 N., R. 94 W.,
Sec. 6.
T. 15 N., R. 94 W.,
Secs. 2, 10, 11, 15, 21, 22, 28, 29, 31 and 32.
T. 16 N., R. 94 W.,
Secs. 23, 26 and 35.
T. 14 N., R. 95 W.,
Secs. 1, 10, 11, 12, 15, 16, 19, 20, 21 and 30.
T. 14 N., R. 96 W.,
Secs. 25, 26, 27 and 28.

The proposed pipeline will transport natural gas from the Haystack Unit #1–28 Well located in the NE¼ of section 28, T. 14 N., R. 96 W., to a point of connection with an existing pipeline located in the SE¼ of section 23, T. 16 N., R. 94 W. The 4' by 6' meter house

and related metering and dehydration facilities are to be located entirely within the 50 foot right-of-way in the NE¼ of section 28, T. 14 N., R. 96 W., all within Sweetwater County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

**William S. Gilmer,**

*Acting Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 79-27767 Filed 9-5-79; 8:45 am]

BILLING CODE 4310-84-M

## Fish and Wildlife Service

### Pennsylvania; Application

Notice is hereby given that under section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (37 Stat. 576), National Fuel Gas Company has applied for a 4-inch natural gas pipeline right-of-way that will cross Erie National Wildlife Refuge located in Crawford County, Pennsylvania.

The pipeline will convey natural gas from a Federal Energy Regulatory Commission approved tap-in on the Tennessee Natural Gas pipeline east of Erie Refuge to the Randolph-East Mead Elementary School and the village of Guys Mills. The pipeline will cross 2,310 feet of Erie National Wildlife Refuge along the south berm of the highway right-of-way L.R. 20085.

The purpose of this notice is to inform the public that the United States Fish and Wildlife Service will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so within ten (10) days and send their name and address to the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158. Due to time constraints imposed by the upcoming heating season, it is impractical to accept public response 30 days after publication in accordance with Department of the Interior general policy.

**Gordon T. Nightengale,**

*Acting Regional Director, U.S. Fish and Wildlife Service.*

August 29, 1979.

[FR Doc. 79-27768 Filed 9-5-79; 8:45 am]

BILLING CODE 4310-55-M

## Bureau of Reclamation

### Anderson Ranch Powerplant Third Unit, Boise Project, Idaho; Intent To Prepare an Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior intends to prepare an environmental statement on the proposed Anderson Ranch Powerplant Third Unit. The proposal is to add a third electrical generating unit to the Anderson Ranch Dam Powerplant, to construct recreation facilities on Anderson Ranch Reservoir and on the South Fork Boise River below Anderson Ranch Dam, and to implement measures beneficial to the South Fork Boise River trout fishery. Anderson Ranch Dam is located approximately 40 miles southeast of Boise, Idaho.

The EIS will address the proposed hydropower operation, recreational development at Anderson Ranch Reservoir and downstream from the dam, fish and wildlife enhancement features, and alternative actions. These alternatives include the recommended proposal (described above), the National Economic Development alternative, and the environmentaly preferred plan. Among the primary elements of these alternatives to be evaluated are potential effects of hydropower operation on the trout fishery in the South Fork Boise River below the dam, acquisition of about 1,200 acres of land for recreation and fish and wildlife purposes, and the development of a boat access site across the reservoir from Lime Creek.

Environmental studies and preparation and processing of an environmental impact statement for this proposed project will be in accordance with provisions of the National Environmental Policy Act of 1969, and will be accomplished under the Council on Environmental Quality regulations published in the **Federal Register** on November 29, 1978.

No specific scoping meeting has been scheduled for this statement. However, the proposed third unit addition and hydropower operations have been the subject of a series of public meetings in the project area. Issues of concern and potential impacts have been presented and opened to discussion in these meetings. Issues and concerns have also been identified by fishery and aquatic macroinvertebrate studies performed by the University of Idaho Cooperative Fishery Research Unit and the Idaho Department of Fish and Game, in coordination with the U.S. Fish and Wildlife Service, Idaho Department of Fish and Game, U.S. Forest Service, other State and local governmental agencies, local sport-fishing interests, and Boise Project irrigation interests.

To further assure that the full range of issues related to this proposal are discussed in the statement and all significant issues are identified, comments and suggestions are invited. Interested organizations, agencies, and individuals should write to or contact the Bureau of Reclamation at the address provided below. The contact person will be: Gaye W. Lee, Environmental Protection Specialist, Pacific Northwest Region, Bureau of Reclamation, Box 043, 550 W. Fort Street, Boise, Idaho 83724, Telephone: (208) 384-1926.

Dated: August 29, 1979.

**Clifford I. Barrett,**

*Assistant Commissioner.*

[FR Doc. 79-27572 Filed 9-5-79; 8:45 am]

BILLING CODE 4310-09-M

### Contract Negotiations With Columbia Basin Irrigation Districts, Columbia Basin Project, Wash.; Intent To Begin Repayment and Water Service Contract Negotiations

The Department of the Interior, through the Bureau of Reclamation, intends to open negotiations with the East Columbia Basin Irrigation District at Othello, Washington, and the Quincy-Columbia Basin Irrigation District at Quincy, Washington, for the repayment of costs associated with the construction of facilities to serve irrigation water to deferred, bypassed, and "new" arable lands within the boundaries of those districts. The United States is also willing to initiate negotiations with the South Columbia Basin Irrigation District, Pasco, Washington. The lands being considered for irrigation development include between 136,000 and 200,000 acres, known as the First Phase Continuation Acres.

The water supply will be provided through the Second Bacon Siphon and Tunnel (SBST), now nearing completion. Repayment to the United States for costs of that facility will begin when water service is initiated pursuant to the Master Water Service Contract (MWSC). The MWSC was executed on August 27, 1976, by the Quincy and the

East Columbia Basin Irrigation Districts. The contract, which is one prerequisite to receiving water from the SBST, has also been offered to the South Columbia Basin Irrigation District.

The contracts proposed to be negotiated at this time include the following:

1. A supplement to the MWSC providing additional terms and conditions for the delivery of water from SBST. This supplement was anticipated and is required by terms of the MWSC.

2. A subcontract to the MWSC for execution by each district and its landowners who desire water from SBST, but cannot presently secure or do not desire a federally-financed or constructed distribution or drainage system.

3. A contract or contracts for the construction of those distribution or drainage systems that are to be federally constructed or financed. These are the only contracts that will require expenditure of federally appropriated funds. Under Reclamation law, specific project authorizations, and expected legislation, the districts must contract to repay an appropriate share of the Federal construction costs, commensurate with payment ability, over a 50-year period. Estimated costs of constructing distribution and drainage systems to serve the First Phase Continuation Acres range from $1,600 to $2,600 per acre, depending primarily on the areas selected for development.

The public may observe any negotiating sessions. Advance notice of any such meetings will be furnished on request. Requests must be in writing and must identify the contract in which the party is interested. They should be addressed to the Project Manager, Bureau of Reclamation, Division Avenue and C Streets, NW, P.O. Box 815, Ephrata, WA 98823.

The proposed draft contracts will be made available for public review. Thereafter, a 30-day period will be allowed for receipt of written comments from the public. All written correspondence concerning the proposed contracts will be made available to the public pursuant to the terms and conditions of the Freedom of Information Act (80 Stat. 388), as amended.

For further information on scheduling negotiating sessions and copies of the proposed forms of contract, please contact: Ms. Carol Prochaska, Public Affairs Officer, at the above address: telephone No. (509) 754–4611, extension 258.

Dated: August 29, 1979.

**Orrin Ferris,**

*Acting Commissioner of Reclamation.*

[FR Doc. 79–27573 Filed 9–5–79; 8:45 am]

BILLING CODE 4310–09–M

## Minidoka Powerplant Rehabilitation and Enlargement Minidoka Project, Idaho; Intent To Prepare an Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior intends to prepare an environmental statement on the proposed Minidoka Powerplant rehabilitation and enlargement. The basic proposal is to rehabilitate the existing power generation facilities at Minidoka Dam and to increase generation capacity through construction of a new powerhouse. Minidoka Dam, which forms Lake Walcott, is located on the Snake River 11 miles northeast of the town of Rupert in south-central Idaho.

Minidoka Dam, completed in 1906, serves as a combined diversion, storage, and power dam. Minidoka Powerplant is the oldest Federal hydro-electric powerplant in the Pacific Northwest, and presently contains seven units with a total installed capacity of 13.4 MW. Units 1 through 5 (1.2 MW each) have been in operation for nearly 70 years, and unit 6 (2.4 MW) is over 50 years old. These units are nearing the end of their useful life and maintaining them in operating condition is costly. Unit 7 (5 MW) was installed in 1942, and will remain in operation as part of any new power facilities.

The environmental statement will consider the impacts of all the project alternatives. These alternatives include (1) replacement of existing power generating units; (2) construction of a new powerplant with a 25 MW capacity; and (3) construction of a new powerplant with a 30 MW capacity. Common elements of these three alternatives are automation of the existing unit 7, modification of the existing 34.5 kV and 138 kV switchyards, and new recreation facilities.

Environmental studies and preparation and processing of an environmental impact statement for this proposed project will be in accordance with provisions of the National Environmental Policy Act 1969, and will be accomplished under the Council on Environmental Quality regulations published in the **Federal Register** on November 29, 1978.

No specific scoping meeting has been scheduled for this statement. However, the proposed project will be the subject of public planning meetings, and comments and questions concerning issues of concern and environmental impacts are invited and encouraged in those sessions.

To further assure that the full range of issues related to this proposal are discussed in the statement and all significant issues are identified, comments and suggestions are invited. Anyone with suggestions as to significant environmental issues should contact:

Gaye W. Lee, Environmental Protection Specialist, Pacific North West Region, Bureau of Reclamation, Box 043, 550 W. Fort Street, Boise, Idaho 83724, Telephone: (208) 384–1926.

Dated: August 29, 1979.

**Clifford I. Barrett,**

*Assistant Commissioner.*

[FR Doc. 79–27571 Filed 9–5–79; 8:45 am]

BILLING CODE 4310–09–M

## Fish and Wildlife Service

## Availability of Environmental Assessments for Wildlife Restoration Projects

**AGENCY:** Fish and Wildlife Service, Department of the Interior.

**ACTION:** Notice of Availability for Inspection and Public Comment.

**SUMMARY:** This notice provides a listing of Environmental Assessments available for public review to supplement those previously listed in the **Federal Register**, July 20 and August 3, 1979. The Assessments and Findings of No Significant Impact were prepared on certain projects conducted by State fish and wildlife agencies under the Federal Aid in Wildlife Restoration program. The public is invited to comment, and information is provided on the locations at which the documents may be reviewed.

**DATE:** Comments must be received at the locations indicated by October 9, 1979.

**ADDRESSES:** The assessments are available for inspection at the following locations:

FWS Federal Aid Office, 1000 N. Glebe Road, Arlington, Virginia 22201

Region 1, FWS, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, Oregon 97232

Region 2, FWS, 500 Gold Avenue, S.W., P.O. Box 1306, Albuquerque, New Mexico 87103

Region 3, FWS, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111

Region 4, FWS, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303

Region 5, FWS, 1 Gateway Center, Suite 700, Newton Corners, Massachusetts 02158

Region 6, FWS, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225
Alaska Area Office, FWS, 1011 E. Tudor Road, Anchorage, Alaska 99507
Central headquarters office of the State fish and wildlife agency.

Interested persons are invited to submit comments to the appropriate Regional Director at the above regional addresses within 30 days. Copies of the assessment may be obtained at the Regional Offices upon payment of reasonable reproduction costs pursuant to 43 CFR Part 2, Appendix A. Copies of any Finding of No Significant Impact will be provided free of cost.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles K. Phenicie, Chief, Division of Federal Aid, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone 703–235–1526.

**SUPPLEMENTARY INFORMATION:** On June 26, 1979, the U.S. District Court for the District of Columbia issued an order dismissing Civil Action No. 78–430 involving the Federal Aid in Wildlife Restoration program. The dismissal effected an agreement by plaintiffs and defendants which included a provision that the Fish and Wildlife Service would publish in the **Federal Register** a notice of availability of certain Environmental Assessments for inspection and public comment. Pursuant to the stipulated agreement, this notice lists Environmental Assessments prepared to date and will be supplemented as other assessments are prepared.

The principal author of this notice is Dr. Robert J. Sousa, U.S. Fish and Wildlife Service, Division of Federal Aid, Washington, D.C. 20240, telephone 703–235–1526.

Notice is hereby given of availability for inspection and comment of environmental assessments for the following Federal Aid projects funded in part by the U.S. Fish and Wildlife Service (FWS) under the Pittman-Robertson Federal Aid in Wildlife Restoration Act, 16 U.S.C. 669 et seq.: (Activities listed are not exclusive.)

**Region 3**

*Wisconsin W–142–L*

The purpose of this statewide wildlife land acquisition project, which is approximately 70 percent completed, is to acquire from willing sellers 50,000 acres within 158 wildlife areas in the next 10 years. Activities are concentrated in proximity to higher human population regions and where threat to loss of habitat to rural residences and other developments is greatest.

**Region 6**

*Colorado W–109–D*

This regional development project covers activities on five areas in southeastern Colorado. Work is directed toward enhancement of habitat for upland game, waterfowl and big game and provision of public use opportunities for wildlife-oriented recreation. Project activities include herbaceous seeding, tree and shrub planting, pothole blasting, placement of nesting structures, clearing of travel lanes and firebreaks. Routine maintenance of existing facilities is also included.

*Iowa FW–43–D*

The purpose of this statewide development project is to conduct wildlife management activities on 260 areas covering approximately 270,000 acres. Such diverse operations to be conducted include maintenance of buildings, roads, trails, fences and boat ramps; planting trees, shrubs and certain wildlife food crops; employing vegetation control techniques; stocking turkeys and Canada geese; and construction, maintenance, and repair of water and soil erosion control structures.

*Iowa W–115–R*

This assessment represents activities to be conducted under Study 22 only. Activities are designed to collect raccoon population data by employing nighttime surveys using spotlights along 56 25-mile roadside routes.

*North Dakota W–23–D*

The purpose of this project is habitat development and maintenance of existing conditions and improvements on 147 wildlife areas totaling 146,558 acres statewide. Activities include vegetation controls, planting of trees, food and grass cover crops, construction and maintenance of roads, fences, embankments, parking lots, dikes, waterfowl nesting structures, and public use facilities.

**Addenda**

*Iowa FW–43–D (previously cited above)*

A supplement to the environmental assessment was provided on development of an augmented water supply system at Otter Creek Marsh. Facilities include three wells, submersible pumps, motors and engine-driven generator sets to pump water to supplement natural runoff in dry years to maintain optimum water levels in existing marshes.

*Colorado W–112–D (previously cited in* **Federal Register** *July 20, 1979)*

Project involves development and maintenance of habitat and access on 16 wildlife areas in southwestern Colorado. Twelve areas are managed primarily to protect and improve critical winter range for big game. Four other areas are managed to enhance habitat conditions for waterfowl and upland game. Activities include development of small dams, dikes and levies, canals and channels, herbaceous seeding, rangeland rehabilitation (fertilization), water level management and maintenance of all existing structures and improvements.

Dated: August 31, 1979.

**Robert S. Cook,**

*Deputy Director, U.S. Fish and Wildlife Service.*

[FR Doc. 27762 Filed 9–5–79; 8:45 am]

**BILLING CODE 4310–55–M**

## National Park Service

### National Park System Advisory Board; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that meetings of the National Park System Advisory Board will be held October 2, 3, 4 and 5 at the National Park Service Denver Service Center, Lakewood, Colorado, and the Keystone Conference Center, Keystone, Colorado.

The purpose of the Advisory Board is to advise the Secretary of the Interior on matters relating to the National Park System.

The members of the Advisory Board are as follows: Mr. Carl Burke (Chairman), Boise, Idaho, Hon. Roy A. Taylor (Vice Chairman), Black Mountain, N.C., Dr. Edgar Toppin (Secretary), Petersburg, VA, Dr. Douglas D. Anderson, Providence, RI, Hon. Alan Bible, Reno, NV, Mr. Larry Erickson, Minot, ND, Mrs. Anne Jones Morton, Easton, MD, Mrs. Nancy M. Rennell, Greenwich, Conn., Dr. Asa C. Sims, Jr., New Orleans, LA, Dr. Edgar Wayburn, San Francisco, CA, Mr. Bill Wiener, Jr., Shreveport, LA.

On October 2 the meeting will begin at 9:15 a.m. at the National Park Service Denver Service Center, 755 Parfet Street, Lakewood, Colo. for an overview of the Denver Service Center and project briefings and tours.

On October 3 and 4 the Advisory Board will meet in general sessions starting at 8:45 a.m. at the Keystone Conference Center, Keystone, Colorado, to consider administrative matters pertaining to the Board and to receive and consider subcommittee reports on cultural resources management; proposed development of visitor facilities for the Manzanita Lake area of Lassen Volcanic National Park; proposed General Management Plan for Yosemite National Park; proposed development of Grant Village, Yellowstone National Park; to receive the legislative report and to review the proposed new areas study list.

October 5 the Advisory Board will reconvene at 8:30 a.m. to consider future activities and formulate its comments and recommendations.

The meetings will be open to the public. Space and facilities to accommodate members of the public at the general sessions of the meeting are

limited and persons will be accommodated on a first-come-first-served basis. Any member of the public may file with the Advisory Board a written statement concerning the matters to be considered.

Persons desiring further information concerning this meeting or who wish to file written statements may contact Shirley Luikens, Advisory Boards and Commissions, National Park Service, Washington, D.C. 20240 (202–343–2012).

Summary minutes of the meeting will be available for public inspection 10 to 12 weeks after the meeting in Room 3416, Interior Building, Washington, D.C.

Dated: August 30, 1979.

**William J. Whalen,**

*Director, National Park Service.*

[FR Doc. 79-27748 Filed 9-5-79; 8:45 am]

BILLING CODE 4310-70-M

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Olympic National Park

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Olympic National Forest; Transfer of Certain Lands

By virtue of Pub. L. 94–578, approved October 21, 1976, and with the approval of the Secretary of Agriculture and the Secretary of the Interior, the lands herein described are hereby transferred from the Olympic National Forest to the Olympic National Park and further, those additional lands described are hereby transferred from the Olympic National Park to the Olympic National Forest, effective on the date of publication; and the boundaries of the National Park System and National Forest System are hereby adjusted accordingly:

Lands transferred from the Olympic National Forest to the Olympic National Park:

**Jefferson County, Wash.—Willamette Meridian**

T. 24½N., R. 9 W. (unsurveyed),
Sec. 31 That portion of the N½ that lies northerly of the crest of Sam's Ridge;
Sec. 32 That portion of the N½ that lies northerly of the crest of Sam's Ridge;
Sec. 33 That portion of the N½ that lies northerly of the crest of Sam's Ridge;
Sec. 34 That portion of the N½ that lies northerly of the crest of Sam's Ridge.
T. 24½N., R. 10 W. (unsurveyed),
Sec. 36 That portion of the N½ that lies northerly of the crest of Sam's Ridge.
Total area approximately 695 acres.

Lands transferred from the Olympic National Park to the Olympic National Forest:

**Jefferson County, Wash.—Willamette Meridian**

T. 25 N., R. 9 W. (unsurveyed),
Sec. 31 That portion of the S½N½, S½ lying southerly of the crest of Sam's Ridge;
Sec. 32 That portion of the S½ lying southerly of the crest of Sam's Ridge;
Sec. 33 That portion of the S½S½ lying southerly of the crest of Sam's Ridge.
T. 24½ N., R. 10 W. (unsurveyed),
Sec. 34 That portion of the N½ lying easterly and southerly of a line beginning at the south one quarter corner, sec. 36 T. 25 N., R. 10 W. thence S. 1° 11'00" E. 840 feet, more or less, thence easterly along Sam's River on the existing boundary between the Olympic National Park and the Olympic National Forest.
T. 25 N., R. 10 W.,
Sec. 36 That portion of the S½ lying easterly and northerly of a line beginning at the south one quarter corner of sec. 36, thence N. 1° 11'00" W. 840 feet, more or less, thence N. 76° 56'30" E. 1,885 feet, more or less, to the terminus of the crest of Sam's Ridge, thence N. 75° 50'00" E. along the crest of Sam's Ridge to the east line of sec. 36.

Total area approximately 639 acres.

Dated this 16th day of August, 1979.

**Leo Krulitz,**

*Secretary of the Interior.*

**Bob Bergland,**

*Secretary of Agriculture.*

[FR Doc. 79-27804 Filed 9-5-79; 8:45 am]

BILLING CODE 3410-11-M

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–71]**

### Certain Anaerobic Impregnmating Compositions and Components Therefor; Order

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Aministrative Law Judge Donald K. Duvall as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register.**

Issued: August 30, 1979

**Donald K. Dovall,**

*Chief Admninistrative Law Judge.*

[FR Doc. 79-27824 Filed 9-5-79; 8:45 am]

BILLING CODE 7020-02-M

**[AA1921-Inq.-28]**

### Countertop Microwave Ovens From Japan; Inquiry and Hearing

The United States International Trade Commission (Commission) received advice from the Department of the Treasury (Treasury) on August 24, 1979, that during the course of determining, in accordance with section 201(c) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(c)) whether to institute an investigation with respect to countertop microwave ovens from Japan, Treasury had concluded from the information available to it that there is substantial doubt that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of this merchandise into the United States. For purposes of this inquiry, countertop microwave ovens are defined as "microwave ovens classifiable under TSUSA item 684.3010." Therefore, the Commission on August 30, 1979, instituted inquiry No. AA1921-Inq.-28, under section 201(c)(2) of the act, to determine whether there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

*Hearing.* A public hearing in connection with the inquiry will be held in Washington, D.C., at 10:00 a.m., e.d.t., on Wednesday, September 12, 1979, in the Hearing Room, U.S. International Trade Commission Building, 701 E Street, NW. All parties will be given an opportunity to be present, to produce information and to be heard at such hearing. Requests to appear at the public hearing should be received in writing in the office of the Secretary to the Commission not later than 5:00 p.m., Friday, September 7, 1979.

*Written statements.* Interested parties may submit statements in writing in lieu of, or in addition to, appearing at the public hearing. A signed original and nineteen true copies of such statements should be submitted. To be assured of their being given due consideration by the Commission, such statements should be received no later than Friday, September 14, 1979.

By order of the Commission.

Issued: August 31, 1979.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 79-27823 Filed 9-5-79; 8:45 am]

BILLING CODE 7020-02-M

**[AA1921–204 and AA1921–205]**

### Kraft Condenser Paper From Finland and France; Determinations of Injury

On the basis of facts developed during the course of investigations Nos. AA1921–204 and AA 1921–205, the Commission determines that an industry in the United States is being injured, or

is likely to be injured, by reason of the importation of kraft condenser paper from Finland and France, provided for in items 252.40 and 256.30 of the Tariff Schedules of the United States, which the Department of the Treasury has determined is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.).[1]

On May 30, 1979, the United States International Trade Commission received advice from the Department of the Treasury that kraft condenser paper from Finland and France is being, or is likely to be, sold in the United States at less than fair value (LTFV) within the meaning of the Antidumping Act, 1921, as amended. Accordingly, on June 5, 1979, the Commission voted to institute investigations Nos. AA1921–204 (kraft condenser paper from Finland) and AA1921–205 (kraft condenser paper from France), under section 201(a) of said act, to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

In connection with the investigations, a public hearing was held in Hartford, Conn., on July 24 and 25, 1979. Notice of the institution of the investigations and the public hearing was given by posting copies of the notice at the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and at the Commission's office in New York City, and by publishing the notice in the Federal Register of June 13, 1979 (44 FR 33983).

The Treasury Department instituted its investigations after receiving a complaint filed on June 27, 1978, from counsel acting on behalf of the Schweitzer Division of the Kimberly-Clark Corp., Lee, Mass.; the Stevens Paper Mill, Inc., Westfield, Mass.; and Crocker Technical Papers, Inc., Fitchburg, Mass. Treasury's notices of withholding of appraisement were published in the Federal Register of February 20, 1979 (44 FR 10452–53), and its determinations of sales at LTFV were published in the Federal Register of June 4, 1979 (44 FR 32063–64).

In arriving at its determinations, the Commission gave due consideration to all written submissions from interested parties and information adduced at the hearing as well as information obtained by the Commission's staff from questionnaires, personal interviews, and other sources.

### Views of Chairman Joseph O. Parker and Commissioners George M. Moore and Catherine Bedell

On June 5, 1979, the Commission instituted investigations Nos. AA1921–204 and AA1921–205 under section 201(a) of the Antidumping Act, 1921, to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established,[2] by reason of the importation of kraft condenser paper from Finland and France which the Department of the Treasury has determined is being, or is likely to be, sold in the United States at less than fair value (LTFV). For purposes of these investigations, kraft condenser paper is defined as capacitor tissue or condenser paper containing 80 percent or more by weight of chemical sulphate or soda wood pulp based on total fiber content. This paper is provided for in items 252.40 and 256.30 of the Tariff Schedules of the United States.

After considering the information developed in these investigations, we have determined that an industry in the United States is being injured or is likely to be injured, by reason of the importation of kraft condenser paper from Finland and France which the Department of the Treasury has determined is being, or is likely to be, sold at LTFV within the meaning of the Antidumping Act, 1921, as amended.

In making this determination, we have considered the relevant domestic industry to consist of the facilities in the United States used to produce kraft condenser paper. Four firms, all of which are located in Massachusetts and Connecticut, currently produce kraft condenser paper; three firms account for nearly all production of this product in the United States.

The Department of the Treasury's examination of imports of kraft condenser paper from Finland and France covered importations made during the 6-month period extending from February 1, 1978, through July 31, 1978. During the period covered by Treasury's investigation, all imports from Finland were produced by Tervakoski Osakeyhtio (TOY). Treasury examined transactions accounting for 80 percent of TOY's sales to the United States during this period and found less-than-fair-vaule margins on 80 percent of the sales examined. The LTFV margins found on such imports range from 1.6 percent to 30.5 percent, with a weighted average margin for all sales examined of 15.3 percent. During the period covered by Treasury's investigation of imports from France, all the French exports were produced by Papeteries Bollore, S.A., of France, and were sold to its U.S. subsidiary, Bollore, Inc. Treasury found LTFV margins on 99 percent of these transactions ranging from 28.9 percent ot 50.9 percent, with a weighted average margin of 42.6 percent.

It is the import of these imports sold at the indicated margins with which these investigations are concerned. As the Senate Committee on Finance stated in its report on the Trade Act of 1974:

> Conceptually, the Antidumping Act is not directed toward forcing foreign suppliers to sell in the U.S. market at the same prices that they sell at in their home markets. Rather, the Act is primarily concerned with the situation in which the margin of dumping contributes to underselling the U.S. product in the domestic market, resulting in injury or likelihood of injury to a domestic industry. Such injury may be manifested by such indicators as suppression or depression of prices, loss of customers, and penetration of the U.S. market. When clear indication of injury, or likelihood of injury, exists there would be reason for making an affirmative determination.[3]

In our judgment, the information gathered during these investigations establishes a clear indication of injury or likelihood of injury.

Since 1976, there has been a rapid and substantial increase in imports from Finland and France. These imports increased from 207,000 pounds—less than 1 percent of apparent consumption—in 1976 to 3.4 million pounds—more than 13 percent of apparent consumption—in 1978. In that year, more than twice as much kraft condenser paper was exported to the United States from Finland and France as in the 3 previous years. This rapid increase of imports at LTFV prices in 1978 had several consequences, each of which had a negative impact on the domestic industry.

Although apparent domestic consumption of kraft condenser paper

[1] Chairman Joseph O. Parker and Commissioners George M. Moore, Catherine Bedell, and Paula Stern determine that an industry in the United States is being injured, or is likely to be injured, by reason of the importation of kraft condenser paper from Finland and France, provided for in items 252.40 and 256.30 of the Tariff Schedules of the United States, which the Department of the Treasury has determined is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended. Vice Chairman Bill Alberger determines that an industry in the United States is being injured by reason of the importation of kraft condenser paper from Finland and France, provided for in items 252.40 and 256.30 of the Tariff Schedules of the United States, which the Department of the Treasury has determined is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended.

[2] Prevention of establishment of an industry is not an issue in these investigations and will not be discussed further in this opinion.

[3] *Trade Reform Act of 1974: Report of the Committee on Finance . . .* S. Rept. No. 93–1298 (93d Cong., 2d sess.), 1974, p. 179.

increased by 16 percent from 1977 to 1978, domestic shipments increased by only 5 percent. Increased imports from France and Finland captured two-thirds of the growth in the market in 1978 and occurred at a time when the domestic industry had substantial unused capacity.

Pricing information obtained by the Commission indicates that most of these increased imports were sold at prices below those of domestic producers. In the period January 1978–May 1979, during which 75 percent of all imports from Finland and France entered the United States, comparisons of prices paid by individual customers for imported and domestically produced condenser paper show that imports from Finland undersold domestic merchandise in almost 90 percent of the comparisons, and those from France undersold domestic merchandise in 86 percent of the comparisons.

The pricing information also shows that domestic producers generally reduced prices during 1978. Comparisons of the quarterly average weighted prices of U.S. producers to their principal customers on six different thicknesses of normal-density kraft condenser paper reveal that in every quarter of 1978 the prices received for nearly all of these products were lower than in any quarter in 1977.

The Commission's investigation showed that the imports of kraft condenser paper from Finland and France resulted in a substantial loss of sales to the domestic industry. In nearly all the instances in which a loss of sales was alleged, it was established that purchases of imported products were made in lieu of available domestic products. The combination of a loss of sales and reduced prices contributed to the decrease of profits in the domestic industry from 1977 to 1978.

The investigation established that the injury to the domestic industry is likely to continue if imports from France and Finland continue to enter the U.S. market at less than fair value. Although such imports from France declined after the withholding of appraisement by Treasury, imports from Finland during January–May 1979 increased sharply in comparison with those in the corresponding period of 1978. Imports from France could be expected to at least return to previous levels if a negative determination were made under which products from France could be entered at LTFV.

During January–May 1979, U.S. producers' shipments and capacity utilization declined in comparison with those in the corresponding period in the preceding year, while the ratio of inventories to shipments increased moderately.

Data which are available for January–May 1979 also indicate that, notwithstanding some increases in prices during this period, the profitability of the domestic industry has continued to deteriorate. These data also indicate that during this period the increase in prices did not keep pace with cost increases. If kraft condenser paper continues to be sold at the significant LTFV margins determined by the Department of the Treasury, it is clear that they will be likely to continue to cause injury to the domestic industry.

**Statement of Reasons of Commissioner Bill Alberger**

In order for the Commission to find in the affirmative in an investigation under the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), it is necessary to find that an industry in the United States is being or is likely to be injured, or is prevented from being established,[4] and the injury or the likelihood thereof must be by reason of imports at less than fair value (LTFV). I find in the case of kraft condenser paper (KCP) from France and Finland that the domestic industry is being injured by reason of such imports which the Secretary of the Treasury (Treasury) has determined are being, or are likely to be, sold at LTFV.

*The Imported Article and the Domestic Industry*

KCP, the subject of this investigation, is a capacitor or condenser paper containing 80 percent or more by weight of chemical sulphate or soda woodpulp based on total fiber content. I consider the relevant domestic industry to consist of facilities in the United States which produce kraft condenser paper. Four firms currently produce kraft condenser paper in the United States. Three of the firms—Crocker Technical Papers, Inc. (Crocker), Fitchburg, Mass.; Schweitzer Division of Kimberly-Clark Corp. (Schweitzer), Lee, Mass.; and the Stevens Paper Mill, Inc. (Stevens), Westfeld, Mass.—account for nearly all production of kraft condenser paper in the United States and were the originators of the complaint before Treasury that resulted in these investigations. A fourth firm—Dexter Corp., Windsor Locks, Conn.—accounts for only a small proportion of U.S. production of kraft condenser paper.

[4] Prevention of establishment of an industry in this inquiry is not in question and will not be discussed further in these views.

*LTFV sales*

Treasury's examination of imports of kraft condenser paper from Finland and France covered importations made during the 6-month period extending from February 1, 1978, through July 31, 1978. During this period, all imports from Finland were produced by Tervakoski Oy and margins were found on 80 percent of the sales examined. The LTFV margins found on such imports from Finland ranged from 1.6 percent to 3.5 percent of the fair market value of the sales, with a weighted average margin for all sales examined of 15.3 percent of the fair market value. With regard to the imports from France, all of the French exports were produced by Papeteries Bollore, S.A., of France. LTFV margins were found on 99 percent of the imports from France, and ranged from 28.9 percent to 50.9 percent of the fair market value, with a weighted average of 42.6 percent of the fair market value.

*Injury by reason of LTFV sales*

For the period 1974 through 1978, 1974 was the domestic industry's finest year. Although it has recovered from a very poor year in 1975, the domestic industry, by the end of 1978, still had not attained the 1974 levels for such economic indicia as production, shipments, exports, capacity utilization, and profits. Consumption was up 6 percent over 1974 levels.

During the three years following the recession of 1975, the domestic industry experienced a significant challenge from Finnish and French KCP imports as it bid to capture a share of the market growth. Finnish and French imports represented less than 1 percent of U.S. consumption in 1976, but by 1978 had a combined share of slightly over 13 percent. 1978 Finnish imports represented 7.1 percent of consumption while French imports gained a 6.0 percent share of the market. From 1976 through 1978, the U.S. market experienced a growth of 17 percent.

Production, shipments, and exports by U.S. producers of KCP were at their high point in 1974, before dropping sharply during 1975. All of these categories showed a marked recovery in 1976, but have shown little, if any, growth since then. Year end 1978 figures for production, shipments, and exports had not achieved 1974 levels and statistics for the first five months of 1979 indicate little growth for U.S. producers this year. In fact, shipments for January-May 1979 are down by 9 percent from the comparable period of 1978.

Capacity utilization for the U.S. KCP industry dropped by nearly half from 1974 to 1975. Although it has climbed

since 1976, capacity utilization for U.S. producers continues to run more than 10 percent below the 1974 level.

Employment, like the other categories in this industry, is down. 1978 year-end figures were well below 1974 figures and while increased imports have played a role in this drop, U.S. producers have contributed to this situation as older, less efficient equipment has been retired and existing machinery has been updated and made more productive. Worker productivity for KCP production increased each year from 1974 through 1978.

Profitwise, the U.S. producers of KCP have seen their net profit to net sales ratio dip from 14.8 percent in 1974 to 6.8 percent in 1978. A further decline is evident in January-May 1979. It should be noted, too, that Schweitzer accounts for most of the data and that the smaller producers have not fared nearly as well. Schweitzer accounts for more than half of the KCP produced in the United States and has enjoyed profits many times those of Stevens and Crocker.

Examination of the pricing patterns in this industry again points to Schweitzer as a very dominant factor. In 1976, at approximately the same time French and Finnish imports were beginning their upward movement in the U.S. market, Schweitzer announced an aggressive pricing plan. The plan may have been a reaction to domestic price competition, or in anticipation of or in response to import competition. Regardless, the effect of the plan in conjunction with the low priced imports was a downward pressure on prices for other U.S. producers and a slowing down of the aggregate industry recovery. In viewing the import prices vis a vis the price of the comparable domestic product, the margin of underselling was, in most instances, more than accounted for by the LTFV margins.

With regard to lost sales, the Commission was able to verify four instances where imported KCP was chosen over the domestically produced product. This amounted to approximately $3 million dollars in the aggregate for 1977–78. It should be noted that some of these purchases were of products not available in various sizes from U.S. producers and that a large portion of these purchases were of products not available in acceptable quality from more than one U.S. producer.

In conclusion, I must say that a decision in this investigation is difficult. The role played by the dominant U.S. producer cannot be discounted. That Schweitzer's pricing policy in 1976 played a part in holding prices down is clear. Further, were Schweitzer the sole producer of KCP in the U.S., a finding of injury would be far more difficult to reach. However, the law does not give the Commission the discretion to segregate the various producers within an industry, save for the instance when regional injury is a consideration. Production, shipments, exports, capacity utilization, and profits are down. Inventories, although down for the industry as a whole, are up for the two smaller producers. Prices have been held down and there is evidence of lost sales to LTFV imports from both France and Finland. Finally, what growth there has been in the domestic KCP market since the entry of imports from France and Finland has largely been captured by those imports. The domestic industry has missed an opportunity for market recovery and growth. On balance, I believe injury is present by reason of LTFV sales.

**Statement of Reasons for the Determination of Commissioner Paula Stern**

On the basis of the information obtained in this investigation, I have determined that an industry in the United States is being injured by reason of imports of kraft condenser paper from Finland and from France sold at less than fair value within the meaning of the Antidumping Act of 1921, as amended.

*Imported Article*

Kraft condenser paper (KCP) is a very thin, dense, and costly paper which is made from specially treated wood pulp. The Commission's investigation covered both varieties of draft condenser paper (KCP) produced in the United States, electrostatic and electrolytic KCP.[5] These types of KCP are provided for in items 252.40 and 256.30 of the Tariff Schedules of the United states. Ninety-five percent of KCP imported into the United States has been of the electrostatic variety. The bulk of KCP is used as an essential component in certain kinds of condensers. Ultimately, KCP becomes a part of such consumer goods as telephone line systems, household appliacnes, air conditioning units and fluorescent lighting.

[5] Upon advice from the Commission, Treasury concluded that electrolytic and electrostatic KCP are of the same general class of kind. However, these two varieties have different uses and constitute vastly different proportions both of imports into the United states and of domestic production. Treasury collected no data on electrolytic KCP, yet its determination that sales of less than fair value existed covered both categories. Thus, the Commission in this case is forced to find injury to the entire KCP industry, even though there is no separate data substantiating Treasury's determination that electroyltic KCP was in fact sold at less than fair value.

Significant quantities of KCP imports began entering the U.S. market in 1977 and increased so rapidly that their share of apparent consumption more than doubled in just two years, rising from 5.9 percent in 197 to 13.1 percent in 1978. Treasury found less than fair value (LTFV) margins ranging from 2 to 31 percent on 80 percent of those import sales from Finland which it examined. On 100 percent of the sales examined from France, Treasury found LTFV margins ranging from 29 to 51 percent.

*Domestic Industry*

In order to understand the character of the domestic industry, it is important to note that the structure of the industry and the differences in production capabilities of these firms had an important bearing on this case. Size of market share and thus market power distinguish Schweitzer from the other two firms which produce electrostatic KCP. Schweitzer has consistently dominated the U.S. KCP market, maintaining a market share substantially above that of the two smaller firms. This domination has been reinforced by its extremely aggresive pricing policy, highlighted by the "VIP plan," [6] which went into effect in 1977. The struggle of the two smaller domestic producers to compete with Schweitzer's stiff price competition may have contributed to their losses, which continued beyond the 1975 recession year.

Differences in production abilities of the industry were also important. Three of the four domestic firms constituting the industry produce electrostatic KCP: Schweitzer Division of Kimberly-Clark Corp., Crocker Technical Papers, Inc., and Stevens Paper Mill, Inc.—all located in Massachusetts. These three were the petitioners in this case. The record shows that quality considerations and variety of product availability often influenced competition among the three domestic producers of electrostatic KCP and between domestic producers and importers. Some types of KCP were reported to be unavailable from any U.S. producers; in many other instances substitutes for imported products could be obtained from only one domestic producer, Schweitzer. Evidence gathered by the Commission also suggests that at least one of the two smaller producers may have been incapable of producing certain types of KCP in an acceptable quality. These differences in production capabilities influenced purchasing decisions by limiting the number of suppliers for certain specific needs.

[6] Volume Incentive Pricing Plan.

Thus, size and production distinctions which characterize the domestic industry indicate that its individual firms were not equally vulnerable to the impact of KCP imports. These peculiarities of the industry made the analysis by the Commission more difficult.

*The Commission's Determination*

In order to make an affirmative finding, the Commission must decide that the following two requirements of the law, as provided for in the Antidumping Act of 1921, as amended, are fulfilled:

(1) that the industry be injured, and

(2) that injury be caused by imports which were sold at less than fair market value.

The law gives the Commission a great deal of discretion in making its determination, because no single check list can acurately determine the exact degree of injury experienced by an industry nor ascertain the extension of a definitive causal link between imports and injury. In order to evaluate economic health of an industry, the Commission has customarily used the traditional economic indicators for production and shipments, capacity, capacity utilization, employment, sales and profitability. In analyzing the indicators and the other information obtained in this investigation, I found that mitigating factors prevented me from drawing clear conclusions in almost every instance. It was therefore with great difficulty that I determined that the two requirements of the law outlined above have been met.

*Injury*

After evaluating all the relevant information, I believe that there is a reasonable basis for determining that injury to the domestic industry exists. This case required me to analyze the traditional indicators of injury in the face of two important, potentially distorting, considerations: the cyclical nature of the demand for KCP and the particular structure of the domestic industry. Before reviewing the economic indicators which led to an affirmative injury finding, it is important to note the difficulties posed by these considerations.

First, this industry's production must respond to cyclical demand. Of the five years investigated by the Commission, 1974 (a profitable year, generally) was clearly the most favorable for domestic producers. This peak in the demand cycle was followed by a recession year, which considerably weakened the entire industry. Data for 1976–78, however, reveal that the industry had begun its recovery process. Because much of kraft condenser paper is ultimately used in consumer goods such as appliances or in fluorescent lighting, it is possible that this industry's recovery has been restrained by general economic conditions and the somewhat reduced consumer demand resulting from these conditions.

Secondly, analysis of the evidence was often complicated by the fact that all firms in the industry do not behave in the manner indicated by aggregate figures. The performance of the market dominator, Schweitzer, differs greatly from that of the two smaller producers of electrostatic KCP. While Schweitzer consistently exhibited a strong performance, the much slower, and as yet incompete, recoveries of Crocker and Stevens have effectively continued to hold aggregate industry averages at low levels.

With these two factors in mind, one can note that aggregate data for almost all of the indicators followed the same general trend: very strong performance in 1974, an uncharacteristically poor performance in the recession year 1975, followed by performances in the period from 1976 through 1978 which though weaker than in 1974, represent continuous improvement. A slight deteriotation for the first 5 months of 1979 (as compared with the January–May 1978) may be indicated.

Capacity utilization fell from the 1974 level of 84.2 percent to 72 percent in 1978. However, the industry average improved by over two percentage points between 1976 and 1978, when imports of KCP began to enter the United States in significant quantities.[7] It is significant that producers have recently increased productivity enough to allow them to retire a number of machines and some employees while maintaining production levels. Therefore, declines in employment and capacity figures in this case do not necessarily indicate injury.

Figures for producers shipments, which are more meaningful than production data,[8] remained about even during the 1976–78 period, but have yet to reach 1974 levels in terms of value or quantity. Producers inventories, however, collectively declined every year since 1975, as did the ratio of inventories to shipments. Despite this decline in aggregate figures, inventories of the two smaller firms increased considerably during the 1976–78 period.

Data for financial performance followed the same trends. Although 1974 was by far the most profitable year for the industry, the 1978 ratio of net operating profit to net sales was 6.8 percent, an improvement over 1976's ratio of 5.4 percent. The difference between the performance of the industry's largest firm and the two smaller producers is perhaps most efficient in this category, with one of the smaller firms managing to show only a small profit for the first time in 1978.

It is apparent from the above indicators that, when taken as a whole, the industry is injured. However, the difficulty facing the Commission was to determine the existence of injury to the industry, when the aggregate data disguise the uneven performances of individual members of that industry. In short, it is not clear that without the existence of the two smaller producers, who were suffering severly even before LTFV imports entered the United States, a determination of injury would be justified.

I did not find that threat of injury or likelihood thereof exists in this case. Foreign producers are operating at high levels of capacity utilization and the performance of domestic producers has continued to improve, even in the presence of current levels of imports.

*By reason of LTFV imports*

In determining whether injury was caused by dumped imports of KCP, the Commission considered factors such as market penetration, lost sales, and price suppression or depression.

Market penetration: Market penetration by imports of KCP was both rapid and significant. Imports first entered the United States in significant quantities in 1977. Both in terms of absolute quantities and as a share of apparent domestic consumption, imports rose rapidly in 1977 and 1978. Over the five-year period investigated by the Commission, imports' share of the domestic market has increased from .6 percent in 1974 to 13.1 percent in 1978. Imports from Finland claimed 7.1 percent and those from France 6.0 percent of consumption in 1978.

*Lost sales:* The Commission investigation produced evidence of lost sales. In the crucial period from 1977 to 1978, apparent domestic consumption increased by 3.7 million pounds, or 16 percent.

Although some of this large increase in consumption did result in increased purchases from domestic producers, domestic shipments rose by only 6 percent. The data in fact show that all three firms producing electrostatic KCP lost market share to imports. Because

[7] Capacity utilization figures must be carefully scrutinized because at least two producers included in capacity figures inactive machinery which might be excessively costly to put back into use.

[8] Approximately 14 percent of all production becomes waste.

two-thirds of the growth in the market was captured by foreign producers, domestic producers were not able to increase their share of the domestic market. However, it had to be determined that these lost sales occurred as a result of imports sold at less than fair value.

Because product availability, assurance of consistent supply, and quality have played an influential role in U.S. purchasers' choice of supplier, it was important to make a careful examination of these nonprice factors in relation to prices of imports. It is clear that at least some of these sales would have occurred in the absence of dumping. The best evidence of the secondary nature of price is the fact that on occasion, domestic purchasers have paid higher prices to two firms, in effect subsidizing them, in order to assure the continued presence of an alternate supplier. The Commission has also confirmed that purchasers experienced quality problems and interruptions of supply, conditions giving rise to the need for an alternate supplier. In addition, some of the products supplied by importers were simply not available from U.S. producers.

Furthermore, in evaluating the relationship between price and purchases, one must take into account the unique role of the customer. In this industry, the customer enjoys great leverage in determining prices. At times, both the presence of imports and institution in 1977 of Schweitzer's aggressive pricing policies may have been used by the customer to manipulate prices downward. Therefore, even if the actions of the customer were based on the ultimate motive of sustaining foreign suppliers as insurance against inadequate domestic production—in terms of delivery, quality, *and price*—rather than simply a cheaper price on a specific sale, domestic producers lost sales.

The Commission was faced with the difficulty of deciding whether or not these other influences on purchasing decisions completely replaced the role of price as a determinate of sale or whether all were contributing factors to the injury to the domestic industry.

Despite the fact that these other determinants were important factors influencing purchasers' decisions to import KCP, it is clear that the margins of dumping did contribute to imports underselling domestic products in the U.S. market. The importance of the impact of the margins of dumping in terms of underselling is highlighted by the report, of the Senate Finance Committee on the Trade Act of 1974, which states at p. 179, that—

> * * * the [Antidumping] Act is primarily concerned with the situation in which the margin of dumping contributes to underselling the U.S. product in the domestic market, resulting in injury or likelihood of injury to a domestic industry.

In the critical period from January 1978 to May 1979, when three-quarters of all KCP imports entered the United States, Finnish products undersold the competing U.S. product 89 percent of the time by a weighted average of 7 percent. In 44–67 percent of those sales (depending upon whether minimum or maximum LTFV margins are used) LTFV margins accounted for the margins of underselling. In the same period, French producers undersold U.S. producers 86 percent of the time by a weighted average margin of 10 percent. The margin of underselling could be accounted for by the LTFV margin in every case.

Primarily based on the contribution of dumping to underselling, I have found that sales and market opportunities were lost to imports, at least in part, as a result of dumping.

*Price Depression:*

Price data from 1977 and 1978 show the existence of price depression in this industry. Price comparisons based on average weighted prices of U.S. producers to respective principal customers for normal density and six different thicknesses reveal consistently lower price trends in 1978 for all categories.

In addition to the impact of imports underselling domestic products, two other factors may be cited as important influences on prices or on price trends in the industry: (1) the relatively successful customer efforts to dictate prices, and (2) the Schweitzer VIP pricing strategy for increasing its market share at the expense of other suppliers, foreign or domestic.

Given the margins of dumping and of underselling cited above, however, I have concluded that, notwithstanding the obvious effects of Schweitzer's VIP policy, imports sold at less than fair value did contribute to this downward pressure on prices, and therefore cannot be discounted in establishing the existence of a causal link between the dumped imports and injury.

On page 180 of the report cited above, the Senate Finance Committee analyzes the causal link:

> The law does not contemplate that injury from less-than-fair-value imports be weighed against other factors which may be contributing to injury to an industry. The words 'by reason of' express a causation link but do not mean that dumped imports must be a (or the) principal cause, a (or the) major cause, or a (or the) substantial cause of injury caused by all factors contributing to overall injury to an industry.
>
> In short, the Committee does not view injury caused by unfair import competition, such as dumping, to require as strong a causation link to imports as would be required for determining the existence of injury under fair trade conditions.
>
> It is thus clear that the law is designed to protect domestic industry from an unfair price discrimination practice which *contributes* to the existence of injury to that industry.

Thus, I have determined that rapid import penetration and the fact that dumping contributed to lost sales and price depression support the existence of a causal link between LTFV imports and injury to the domestic industry. Although the information obtained in this investigation does not show that LTFV imports of kraft condenser paper were the major cause of injury, they were a contributing factor.

*Conclusion*

The Commission's investigation shows that a slow recovery on the part of the two smaller firms from the recession year of 1975 left the domestic industry in a weakened state. It was, therefore, particularly vulnerable to the events of 1977, the year when Schweitzer's VIP policy went into effect and when imports of KCP began to enter the country in significant quantities. I found that one probable effect of the VIP plan was to significantly weaken Schweitzer's two domestic competitors. The influx of dumped imports, which occurred simultaneously, produced an additional shock to the industry.

I have determined that the domestic industry has been injured and that, of that injury, dumped imports was a cause. The conclusions on which this determination is based were not easily drawn. Both on the questions of injury and causation interpretation of the information in this case required me to make borderline judgments. Although, as I have stated above, no dumping case can be decided on the basis of one set of economic indicators, this case was particularly difficult because the data was colored by the following complicating circumstances:

(1) At least two of the domestic producers exhibited exceptionally weak performances in 1976, prior to the influx of imports into the U.S. market. Thus, the industry was injured before there was any price competition from imports.

(2) The large increase in demand during 1977–78 resulted in improving performances for the two weakest producers and gave an impression of recovery, albeit incomplete, in the industry as a whole.

(3) The dominant U.S. producer aggressively sought to capture market sales from its already vulnerable domestic competitors at the same time there was dramatic import penetration.

(4) The importance of many non-price considerations somewhat diminished the role of price as a significant influence on purchasers' decisions.

(5) Purchasers used their strength in the market place in ways which had contradictory effects on price. While at times they were willing to subsidize certain producers in the interests of maintaining alternate suppliers, they were also effective in exerting downward pressure on both foreign and domestic prices.

Careful review of the information obtained in this investigation, however, indicated that the industry has not recovered and is indeed in a state of injury. Import penetration was dramatic and significant. The Commission investigators found that lost sales had occurred and that the margins of dumping contributed importantly to the margins of underselling. In addition, Commission data show that price depression did result, at least in part, from sales of imports at less than fair value. In establishing the existence of a causal link between imports and injury, the law requires only that LTFV imports be a contributing factor to injury to the domestic industry. Thus, despite the circumstances listed above which complicated the analysis of the data, the information obtained in this investigation does demonstrate that LTFV imports caused injury to domestic producers of Kraft condenser paper.

By order of the Commission.

Issued: August 31, 1979.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 79-27822 Filed 9-5-79; 8:45 am]

BILLING CODE 7020-02-M

## DEPARTMENT OF JUSTICE

**[AAG/A Order No. 28-79]**

## Privacy Act of 1974; Notice of New System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice proposes to establish a new system of records to be maintained by the Drug Enforcement Administration (DEA).

The DEA Air Wing Reporting System (JUSTICE/DEA-021) is a new system of records for which no public notice consistent with the provisions of 5 U.S.C. 552a(e)(4) has been published in the **Federal Register.**

5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment; the Office of Management and Budget, which has oversight responsibility under the Act, requires a 60-day period in which to review the system before it is implemented. Therefore, the public, the Office of Management and Budget (OMB), and the Congress are invited to submit written comments on this system. Comments should be addressed to the Administrative Counsel, Office of Management and Finance, Room 1118, Department of Justice, 10th and Constitution Avenue, N.W., Washington, D.C. 20530. If no comments are received from either the public, OMB, or the Congress on or before November 5, 1979, the system will be implemented without further notice in the **Federal Register.** No oral hearings are contemplated.

A report of the proposed system has been provided to the Director, OMB, to the President of the Senate and to the Speaker of the House of Representatives.

Dated: August 22, 1979.

**W. D. Van Stavoren,**

*Acting Assistant Attorney General for Administration.*

**JUSTICE/DEA-021**

**SYSTEM NAME:**

DEA Air Wing Reporting System.

**SYSTEM LOCATION:**

Drug Enforcement Administration (DEA) Aviation Division, DEA/Justice, P.O. Box 534, Addison, Texas 75001.

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

DEA pilots.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system contains: (1) Records relating to the operation and maintenance of DEA aircraft. (2) Records relating to pilot qualifications (CSC Form 671).

This system is maintained to monitor the utilization and maintenance of DEA aircraft and the qualifications of DEA pilots in furtherance of DEA enforcement operations conducted pursuant to the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Public Law 91-513).

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

(1) Federal Aviation Administration for purposes of aircraft documentation and pilot certification.

(2) Department of Defense for communication purposes.

(3) United States Coast Guard for communication purposes.

(4) Communications relay services under contract with DEA for communications purposes.

(5) Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(6) Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise requested to be released pursuant to 5 U.S.C. 552, may be made available to a Member or Congress or staff acting upon the Member's behalf when the Member of staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(7) Release of information to the National Archives and Records Service: A record from a system of records may be disclosed as a routine use to the National Archives and Records Service (NARS) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

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

The automated portion of the records is maintained on an ADP disk storage device. Documentary records are maintained in manual file folders.

**RETRIEVABILITY:**

Information relating to individuals in the system is retrieved by pilot name or identifying number assigned by DEA.

**SAFEGUARDS:**

Access to the system is restricted to DEA personnel on a need-to-know basis. The records are maintained in a secure room at the Addison Aviation Facility in accordance with DEA security procedures and are protected by an electronic alarm system.

**RETENTION AND DISPOSAL:**

The automated records are maintained for five years and then purged from the data base. Manual records are maintained indefinitely.

**SYSTEM MANAGERS AND ADDRESS:**

Chief, Aviation Division, Drug Enforcement Administration, 1405 I Street, N.W., Washington, D.C. 20537.

**NOTIFICATION PROCEDURE:**

Inquiries should be addressed to the Freedom of Information Division, Drug Enforcement Administration, 1405 I Street, N.W., Washington, D.C. 20537.

**RECORD ACCESS PROCEDURE:**

Same as above.

**CONTESTING RECORD PROCEDURE:**

Same as above.

**RECORD SOURCE CATEGORIES:**

Information pertaining to individuals in the system is obtained from reports submitted by DEA pilots.

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

None.

[FR Doc. 79-27632 Filed 9-5-79; 8:45 am]

BILLING CODE 4410-09-M

## U.S. v. Central Illinois Public Service Co.; Proposed Consent Decree in Action To Enjoin Discharge of Water Pollutants

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed consent decree in *United States* v. *Central Illinois Public Service Company* was lodged with the United States District Court for the Central District of Illinois. The proposed decree would require Central Illinois Public Service Company to construct by October 1, 1979, treatment facilities to comply with the company's NPDES permit, payment of a civil penalty, and the dedication of the company's cooling lake to recreational purposes acceptable to the State of Illinois.

The Department of Justice will receive on or before October 9, 1979, written comments relating to the proposed judgment. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and refer to *United States* v. *Central Illinois Public Service Company*, D. J. Ref. 90-5-1-1-654.

The proposed consent decree may be examined at the office of the United States Attorney, Central District of Illinois, Post Office Box 375, Springfield, Illinois 62705, at the Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Pollution Control Section, Land and Natural Resources Division, Department of Justice (Room 2625), Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Pollution Control Section, Land and Natural Resources Division, Department of Justice.

**James W. Moorman,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 79-27769 Filed 9-5-79; 8:45 am]

BILLING CODE 4410-01-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 79-73]**

### Performance Review Board, Senior Executive Service

The Civil Service Reform Act (4314(C)(4)) requires that appointments of individual members to a Performance Review Board be published in the **Federal Register.**

The performance review function for the Senior Executive Service in the National Aeronautics and Space Administration will be performed by the NASA Performance Review Board and the NASA Senior Executive Committee. The latter is to perform this function for senior executives who report directly to the Administrator or the Deputy Administrator. The following individuals serve on the Committee and the Board:

**SENIOR EXECUTIVE COMMITTEE**

Alan M. Lovelace, Chairperson, Edwin C. Kilgore, Robert F. Allnutt.

**PERFORMANCE REVIEW BOARD**

Robert F. Allnutt, Chairperson, Carl E. Grant, Executive Secretary, Leonard Jaffe (Term expires July 1980), Robert E. Smylie (Term expires July 1980), John M. Klineberg (Term expires July 1981), Gerald D. Griffin (Term expires July 1981), Gerald J. Mossinghoff (Term expires July 1982), Richard G. Smith (Term expires July 1982), Edwin C. Kilgore (Term expires July 1982).

**Robert A. Frosch,**

*Administrator.*

August 29, 1979.

[FR Doc. 79-27605 Filed 9-5-79; 8:45 am]

BILLING CODE 7510-01-M

## NATIONAL COMMISSION ON UNEMPLOYMENT COMPENSATION

### Commission Work Plan To Include Proposals To Be Evaluated by Senate Finance Subcommittee on Unemployment and Related Problems; Public Requested To Assist Commission

At its meeting on August 25, 1979, held in New York City, the National Commission unanimously agreed to incorporate into its work plan issues relating to possible cost reduction and budgetary status improvement including but not limited to a list issued by the Honorable David L. Boren, Chairman of the Senate Finance Subcommittee on Unemployment and Related Problems on August 6, 1979, reading as follows:

**Summary of Various Proposals for Reducing Costs and Improving the Budgetary Status of the Unemployment Program**

*A-1. Require disqualification for duration of unemployment for voluntary quits, discharge for misconduct, and refusal of suitable work.*—When an unemployed worker has voluntarily left his job without good cause, has been discharged for misconduct, or has refused what the State agency considers a suitable job offer for him, he becomes ineligible for benefits. However, in many States the disqualification is lifted after a period of time. Other States continue the disqualification for the duration of unemployment. A recent research study by SRI International concluded that the average length of unemployment tends to be lower in States which impose disqualification for the duration of unemployment. Consideration could be given to requiring all States to utilize this rule.

*A-2. Require that States not pay benefits beyond 13 weeks to an individual refusing any reasonable job offer.*—The unemployment compensation program exists to provide protection against income loss during periods of involuntary unemployment. Generally, a worker qualifies for up to 26 weeks of benefits if he was laid off from work for reasons other than his own misconduct or his own voluntary decision to quit and if he remains ready, willing, and able to accept new employment. For the benefit of both the worker and the labor market, newly unemployed workers are not required to take any available job but are permitted to seek a job which reasonably matches their previous experience, training, and earnings level. After seeking such work unsuccessfully for a reasonable period of time, however, individuals may be required to seek jobs not meeting their full qualifications as a condition of continued benefit eligibility. Consideration could be given to establishing a Federal requirement that States not continue benefits beyond 13 weeks unless, at that point, the unemployed individual is willing to accept any job which meets minimum standards of acceptability (such as basic health and safety standards, compliance with the Federal minimum wage, and acceptability under existing Federal standards). A similar requirement was included in the legislation extending the

now expired Emergency Unemployment Compensation Act of 1974.

*A–3. Require that States not pay benefits on the basis of predictable layoffs from seasonal employment.*—The main objective of the unemployment program is to provide security for workers against the sudden loss of income which occurs when they are unavoidably laid off. It could be argued that it is inconsistent with this objective to pay benefits to workers whose layoff is a regularly recurring and predictable event because of the seasonal nature of that employment. In extending unemployment coverage to State and local government workers, Congress addressed this problem as it applies to school employees by providing for the denial of benefits during regularly scheduled periods of nonwork. The 1976 amendments also provided for denying benefits to professional athletes during the offseason. Consideration could be given to requiring States to establish a seasonal employment exclusion of general applicability as a few States have done already. For example, employment for firms with a pattern of seasonal layoffs could be excluded from consideration in determining benefit eligibility during the offseason unless the unemploy person was fully employed during the same offseason in the prior year.

*A–4. Require all States to establish a one-week waiting period.*—Most States do not now pay benefits for the first week of unemployment on the basis that requiring a "waiting week" before benefit eligibility starts provides an important incentive to immediately undertake a search for reemployment (or even to finds ways to avoid being laid off). Consideration could be given to requiring that the one-week waiting period be incorporated into all State programs.

*A–5. Provide increased assistance to States in control of error and fraud.*—In the past, when benefit costs were almost entirely borne from State imposed taxes, there has not been a highly visible Federal concern over the need to control the extent of error, fraud, and abuse in State unemployment programs. Given the increased impact of these programs on the Federal budget and the increasingly large direct Federal contribution to benefit costs through the extended benefit program and other programs involving Federal funding, consideration might now be given to providing additional aid and incentives for improved State administration in these areas. Elements which could be considered might include Federal aid in establishing computerized quality control systems and the reduction of Federal payments under the various Federally funded parts of the program to the extent that errors are determined to exceed certain minimum levels.

*A–6. Eliminate the national trigger for the extended benefit program.*—Under existing law, an additional 13 weeks of benefits over and above the usual maximum duration of 26 weeks for regular State unemployment benefits become payable in times of high unemployment. Fifty percent of the costs of these extended benefits are paid from the proceeds of the Federal unemployment tax. The basis for the extended benefits program is that unemployed workers may reasonably be expected to find themselves unable to obtain employment for a longer period of time when jobs are scarce as indicated by high levels of unemployment. Consequently, the law requires States to participate in the extended benefits program when insured unemployment levels in the State have increased by at least 20 percent (measured against the two prior years) and an absolute insured unemployment rate of 4 percent has been reached. The law also, however, requires that all States implement the extended benefit program when the national insured unemployment rate reaches a level of 4.5 percent. This can result in adding three months of benefit duration in a State which has experienced neither a particularly high level of unemployment nor any relative growth in unemployent levels. In such States there would, therefore, seem to be no particular basis for assuming that unemployed workers required additional benefit duration in order to find new work. Consideration could be given to deleting this national trigger so that extended benefits would be payable only in those States where economic conditions indicated a need for the additional duration.

*A–7. Permit States to establish optional extended benefit trigger at higher insured unemployment levels.*—Under present law, States which are not required to participate in the extended unemployment compensation program under the mandatory trigger provisions may elect to opt into the program when the State insured unemployment rate reaches a level of 5 percent. States do not, however, have the option of triggering the program only at a higher level (such as six percent). Consideration might be given to providing States this additional flexibility.

*A–8. Provide incentives for Federal agencies to contest improper benefit claims.*—An important element of the unemployment compensation program in the States is the experience rating system which provides a strong incentive for employers to avoid unnecessary employee turnover and to monitor claims for unemployment to assure that improper awards are not being made by the State agency. Federal agencies do not have a similar incentive in the case of their employees since benefit costs are funded through a separate account not chargeable to the individual agency. Consideration could be given to requiring each agency, as a part of its annual budget request, to provide information concerning the amount of benefits paid to its former employees in the prior year and its expectations for the coming year. In addition, the Labor Department could be charged with a continuing analysis of the agency experience and could be required, in its annual budget submissions, to include information concerning any agencies with unusually high benefit charges.

*A–9. Modify trade adjustment assistance program to provide same benefit amount as regular program.*—The trade adjustment assistance program provides additional benefits to workers who become unemployed as a result of import competition which causes a decline in the sales or production of their employers. Under existing law, adjustment assistance is provided in the form of both higher benefits than would be payable under regular unemployment compensation program and a longer duration of benefits (generally 52 weeks as opposed to 26 weeks under regular State programs). While the impact of import competition may justify a longer duration of benefits on the basis that many similar firms in a given area could be simultaneously impacted so that it would take a longer time for workers in the affected industry to find new work, there does not appear to be a similar rationale for providing a higher level of benefits than are provided to workers losing other types of jobs. Consideration could be given to modifying the program by continuing the additional benefit duration but limiting benefit levels to those of the regular State unemployment compensation program.

*A–10. Require States to pay interest on funds borrowed from Federal accounts.*—Under present law, State benefit costs are paid from the proceeds of State unemployment taxes which are deposited in the State accounts of the unemployment Trust Fund. If a State

account drops to a level where the State will be unable to meet its benefit obligations, a loan to meet the shortfall is made from the Federal unemployment account. (If the Federal unemployment account proves inadequate, it in turn borrows from the general fund of the Treasury.) In each case, the loans that are made bear no interest. Once a loan is made to a State under this provision, the State has between 23 and 35 months to make repayment. At the end of that period, Federal collection action begins by reducing the Federal tax credit otherwise available to employers in the State. Even so, no interest or other penalty applies. (Because of the severe impact of the recent recession, States with outstanding loans were given 3 additional years to make repayment during which no action is being taken to effect collection.) Since these loans are provided on an interest-free basis, there is little incentive for States to make repayment any sooner than they have to. The Federal government, however, is actually paying interest on these balances since they represent an increase in the public debt. A change in the law could be considered to increase State incentive to repay outstanding loans as quickly as possible by charging interest on any loan balance outstanding at a rate equal to the going rate of interest on Federal securities.

*A–11. Provide for reduction of benefits when the unemployed individual is receiving a pension based on recent employment.*—When the 1976 Amendments to the unemployment laws were under consideration by Congress, concern was expressed over the situation in which an individual who is in fact retired rather than unemployed may receive unemployment benefits at the same time that he is receiving retirement pension. The law was amended to provide for a dollar-for-dollar reduction in unemployment benefits by the amount of any pension concurrently payable to the individual. Because of concern that the provision may have been too broadly drawn, the effective date was set in the future to permit time for study and that effective date was subsequently further extended to March 31, 1980. The interim report of the National Commission on Unemployment Compensation recommended that the provision be repealed. As an alternative to this proposal, consideration could be given to making the provision effective with a modification meeting the most serious objections by limiting the reduction to pensions based in whole or part on employment within the 2 years preceding the date of unemployment.

The National Commission on Unemployment Compensation will welcome comments in writing on any possible cost reduction and budgetary status improvement proposals that will assist it in developing and making research and administrative studies available on these types of issues. Comments are particularly requested from State employment security agencies and employer and employee groups and organizations.

All comments should be directed to the Chairman of the Commission, as identified herein, as soon as possible, but not later than October 1, 1979: Wilbur J. Cohen, Chairman, National Commission on Unemployment Compensation, 1815 Lynn Street, Suite 440, Rosslyn, Virginia 22209.

Telephone inquiries concerning this notice should be directed to: James M. Rosbrow, Executive Director, National Commission on Unemployment Compensation, (703) 235–2782.

Signed at Rosslyn, Virginia, this 29th day of August 1979.

**James M. Rosbrow,**

*Executive Director.*

[FR Doc. 79–27745 Filed 9–5–79; 8:45 am]

BILLING CODE 4510–30–M

## NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

### White House Conference on Library and Information Services; November 15–19, 1979

**AGENCY:** National Commission on Libraries and Information Science.

**ACTION:** Announcement of Open Hearings at the White House Conference on Library and Information Services.

**SUMMARY:** The National Commission on Libraries and Information Science announces plans and procedures for open hearings during the White House Conference on Library and Information Services. The intent of these procedures is to provide for the orderly conduct of open hearings during the White House Conference on Library and Information Services in accordance with the authority vested in the Commission to organize and convene the Conference.

**EFFECTIVE DATE:** These procedures and any amendments thereafter suggested are effective on September 1, 1979.

**FOR FURTHER INFORMATION OR COMMENT CONTACT:** Jean-Anne South, Program Coordinator, White House Conference on Library and Information Services, c/o National Commission on Libraries and Information Science, 1717 K Street N.W., Suite 601, Washington, D.C. 20036, telephone 202–634–1527

**Section 1—Definitions of terms used.**

(a) "Commission" means the National Commission on Libraries and Information Science, established by Pub. L. 91–345, July 20, 1970.

(b) "Advisory Committee" means the Advisory Committee to the White House Conference on Library and Information Services composed of 28 members: three designated by the Chairman of the Commission; five designated by the Speaker of the House of Representatives; five designated by the President Pro Tempore of the Senate (with no more than three being members of the Senate); and not more than fifteen appointed by the President. The Advisory Committee shall assist and advise the Commission in planning and conducting the White House Conference on Library and Inforamtion Services in accordance with Public Law 93–568, December 31, 1974.

(c) "Conference" means the White Hosue Conference on Library and Information Services, to be organized and convened by the Commission in accordance with Public Law 93–568.

(d) "State" includes the fifty States and the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territories of the Pacific Islands, unless otherwise specified.

(e) "Act" means Pub. L. 93–568, December 31, 1974.

(f) "Open hearing" sessions refer to the meetings which may be held at the following times:

Session I. November 16, afternoon.
Session II. November 17, morning.
Session III. November 17, afternoon.

**Section 2—Words importing gender.**

As used in these procedures, unless the context requires a different meaning, all works importing the msaculine gender include both masculine and femine genders.

**Section 3—Open hearings process.**

3.8.7 Unscheduled Testimony.
3.8.8 Minutes.
3.9 Parliamentary authority.
3.10 Conference officials.

*3.1 Call to Conference.*

The Commission shall determine the time, place and the agenda of the Conference and shall issue official notice thereof to the Chair, to the State Library Agency heads of each State, to all delegates, and to the general public.

*3.2 Purpose of open hearings.*

The purpose of the open hearigns is to provide an opportunity for groups or special interests to state their concerns, to maintain the openness of the Conference to the general public, to offer an opportunity for conflicting or contrasting opinions to be heard.

*3.3 Panel.*

Panels for each open hearing shall consist of members of the National Commission on Libraries and Information Science, or such other individuals as the Commission shall designate for this purpose.

*3.4 Identification.*

All participants involved in open hearing sessions shall wear identification badges. Badges shall not be transferable and they shall be visible at all meetings.

*3.5 Registration for Conference sessions.*

All persons (including press) who intend to testify before the open hearings sessions shall comply with Conference registration requirements including registering with name, address, identification, and payment of any required fee. Upon compliance with registration requirements, each registratant shall be issued an identification badge as delegate at large, special guest, observer, alternate, press, staff, discussion leader, resource persons, or recorder.

*3.6 Requirements.*

All individuals who desire to pre-file for the open hearings in conjunction with the White House Conference shall be required to fulfill the following:

*3.6.1 Statement of intent.*

Each individual or group which desires to present a position to the open hearings shall file a statement of intent to present such testimony. In the case of group, representation of a statement shall be accompanied by notarized proof of authorization.

*3.6.2 Abstract.*

Each participant who pre-files for open hearing sessions shall provide an abstract no more than one page, 8½ by 11, to include the topic area to be addressed, issues to be raised, a statement of a position taken, and any recommendations which are to be included in the presentation.

*3.6.3 Paper.*

Each individual who pre-registers to speak at the open hearings shall submit to the White House Conference staff in advance of the Conference, a paper which expresses that position. This paper should be no longer than 10 pages in length, double spaced on 8½ by 11. The author of the paper and/or organization represented should be clearly indicated on each page of the submitted testimony. The format of the paper should follow the outline as indicated above in 3.6.2.

*3.7 Timekeepers.*

Timekeepers shall be present at all sessions of the Conference. Their duty shall be to indicate to each speaker an appropriate warning before expiration of the allowed time.

*3.8 Process.*

The process of the open hearings shall be governed by the procedures enumerated below:

*3.8.1 Scheduling.*

All individuals who have pre-filed their statement of intent to testify at the open hearings by the deadline of October 1, 1979 shall be scheduled at one of the open hearing sessions of the Conference.

*3.8.2 Length of presentation.*

Each individual who has been duly registered and scheduled for a presentation at the open hearing shall have a maximum of five minutes to summarize his or her presentation. Participants will be held to this time period by the Conference timekeepers.

*3.8.3 Questions/Clarifications.*

Members of the panel shall have the option to ask the participant questions for clarification of the positions or recommendations proposed. Such questioning shall be at the discretion of the presiding officer.

*3.8.4 Place of open hearing sessions in White House Conference process.*

The open hearings will be an integral part of the White House Conference. There will be recorders to summarize important positions, points, or opinions expressed during the open hearing sessions. These summaries will be published in official record of White House Conference and brought to the attention of the appropriate Recommendations Committee of the White House Conference for consideration.

*3.8.5 Eligibility.*

(a) Any association, agency, individual or group may participate in the open hearings in accordance with the requirements as stated in 3.6.

(b) Any duly registered observer at the White House Conference shall be permitted to participate in the open hearing sessions in accordance with procedures enumerated in 3.8.7 below.

*3.8.6 Deadline for scheduling testimony.*

All participants who desire to pre-register for the open hearing sessions shall file all items specified under Requirements, 3.6, by October 1, 1979.

*3.8.7 Unscheduled testimony.*

The open hearing sessions shall be scheduled to allow time at the end of each scheduled hearing for presentations by those duly registered Conference participants who have not pre-filed their intent to testify at the open hearing sessions. These participants will be allowed to testify to the open hearings' panels on a first-come basis after registering with the secretary for the open hearing sessions. The secretary shall provide to the presiding officer, one-half hour prior to the end of each open hearing sessions, a list of those individuals who have signed in with him or her and who have provided the necessary abstract and paper as detailed in item 3.6 Requirements.

*3.8.8 Minutes.*

The recording secretary(s) shall be responsible for the preparation of the official minutes of all open hearings. Tape recordings shall be provided for all open hearing sessions discussions to aid in the preparation of accurate minutes or summaries by this designated recorder or these recorders. Minutes shall be approved by the presiding officers of these session(s) and by the Chairman of the Commission or his delegates.

*3.9 Parliamentary authority.*

(a) The rules in Robert's Rules of Order Newly Revised shall govern all open hearing sessions of the Conference in all cases applicable when not inconsistent with the White House Conference rules.

(b) The format, agenda, order of business, and seating arrangements of the Conference open hearing sessions

shall be determined in all cases by the Commission.

*3.10 Open hearing officials.*

At each open hearing session there shall be in attendance a presiding officer and assistant presiding officer, Federal officer appointed pursuant to the requirements in the Federal Advisory Committee Act, the chair of the Rules Committee or his or her designee, the chair or co-chair of the Recommendations Committee, the chair of the Credentials Committee or his designee, Conference parliamentarian, timekeepers, recording secretary(s) and credentials monitors. Presiding officers of each open hearing session shall be appointed by the Commission.

**Marilyn K. Gell,**

*Director, White House Conference on Library and Information Services.*

August 29, 1979.

[FR Doc. 79-27819 Filed 9-5-79; 8:45 am]

BILLING CODE 7527-01-M

## NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

### Humanities Panel; Meeting

August 30, 1979.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at 806 15th Street, NW., Washington, D.C. 20506:

1. Date: September 20, 1979. Time: 9:00 a.m. to 5:30 p.m. Room: 807. Purpose: To review NEH Practitioners Seminar applications submitted to the National Endowment for the Humanities for projects beginning after January 1, 1980.
2. Date: September 24, 1979. Time: 9:00 a.m. to 5:30 p.m. Room: 807. Purpose: To review Public Library Program applications submitted to the National Endowment for the Humanities for projects beginning after January 1, 1980.
3. Dates: September 27 and 28, 1979. Time: 9:00 a.m. to 5:30 p.m. Room: 807. Purpose: To review Museums and Historical Organizations Program applications submitted to the National Endowment for the Humanities for projects beginning after January 1, 1980.
4. Dates: Ocotber 3 and 4, 1979. Time: 9:00 a.m. to 5:30 p.m. Room: 1025. Purpose: To review Media Program applications submitted to the National Endowment for the Humanities for projects beginning after January 1, 1980.
5. Dates: October 4 and 5, 1979. Time: 9:00 a.m. to 4:00 p.m. Room: 1134. Purpose: To review state humanities committee applications in all the fields of the humanities submitted to the National Endowment for the Humanities for projects beginning after January 1, 1980.
6. Dates: October 9, 10 and 11, 1979. Time: 9:00 a.m. to 5:30 p.m. Room: 807. Purpose: To review Museums and Historical Organizations Program applications submitted to the National Endowment for the Humanities for projects beginning after January 1, 1980.

Because the proposed meetings will consider financial information of a a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that the meetings would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close these meetings to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street, N.W., Washington, D.C. 20506, or call 202-724-0356.

**Stephen J. McCleary,**

*Advisory Committee Management Officer.*

[FR Doc. 79-27792 Filed 9-5-79; 8:45 am]

BILLING CODE 7536-01-M

## NATIONAL SCIENCE FOUNDATION

### Permit Applications Received Under Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Permit Applications Received Under Antarctic Conservation Act of 1978, Pub. L. 95-541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 45 Part 670 of the Code of Federal Regulations.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to these permit applications by October 9, 1979. Permit applications may be inspected by interested parties at the Permit Office, address below.

**ADDRESS:** Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, D.C. 20550.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Myers at the above address or (202) 632-4238.

**SUPPLEMENTAL INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain mammals and certain geographic areas as requiring special protection. The regulations establish such a permit system and a way to designate specially protected areas and sites of special scientific interest. The regulations were presented for public comment in draft form in the 6 March 1979 **Federal Register**. They appeared in final form in the 7 June 1979 **Federal Register**. They are effective 1 July 1979, in advance of the 1979-80 field season.

The purpose of the regulations is to conserve and protect the mammals, birds, and plants of Antarctica and the ecosystem upon which they depend. To that end, unless the following activities are specifically authorized by permit, it is unlawful:

- To take any mammal or bird native to Antarctica (note that "take" means "to remove, harass, molest, harm, pursue, hunt, shoot, wound, kill, trap, capture, restrain, or tag" any native mammal or bird to attempt to engage in such conduct)
- To collect any plant native to Antarctica in specially protected area
- To enter any specially protected area or certain sites of special scientific interest
- To import into or export from the United States any mammal or bird native to Antarctica or any plant collected in a specially protected area
- To introduce to Antarctica any nonindigenous plant or animal.

The Antarctic Conservation Act of 1978 mandates civil and criminal penalties for noncompliance with the regulations.

All mammals and birds normally found in Antarctica, excluding whales regulated by the International Whaling Commission, are designated as native mammals or native birds. Activities involving these mammals or birds require a permit. Areas of outstanding ecological interest are designated as Specially Protected Areas. No one may enter these areas or collect any native plants in these areas without a permit. Areas of unique scientific value that need protection from interference are designated as Sites of Special Scientific

Interest. Entry into certain of these areas without a permit is prohibited.

The permit system is described in the regulations. To obtain a permit, each applicant must provide the scientific names and numbers of native mammals or birds to be taken, including age, size, sex, and condition (e.g., pregnant or nursing) or the scientific names and numbers of native plants to be collected in a specially protected area. Each applicant must include a complete description of the location, the time period, and the manner of taking or collecting specimens. If the specimens are to be imported into the United States, the applicant must also indicate the ultimate disposition of the materials.

Permits for taking or collecting mammals, birds, or plants will be issued by the Director of the National Science Foundation or his designated representative. Each permit will be evaluated in terms of the objective of the Antarctic Conservation Act, that is, the conservation and protection of antarctic flora and fauna and the antarctic ecosystem. Permits issued under these regulations (or copies of them) must be held in the possession of those authorized to engage in a permitted action. The permits must be displayed upon request to any person responsible for enforcing the regulations.

Anyone who knowingly commits an act prohibited by the Antarctic Conservation Act of 1978 is liable to a civil penalty of up to $10,000 for each violation. If the violation was committed without knowledge of the regulations, the fine will not exceed $5,000. Criminal penalties for willful violation of the regulations may involve a fine of up to $10,000 and/or imprisonment for not more than 1 year.

The Antarctic Conservation Act of 1978 does not supersede the Marine Mammal Protection Act of 1972, the Endangered Species Act of 1973, or the Migratory Bird Treaty Act. Permit applicatons involving native mammals or native birds covered by these acts will be forwarded by NSF to the agencies that administer them. If a proposed activity involves approval under more than one law, then the activity must satisfy the conditions of all applicable laws or a permit cannot be granted. Even if a permit is approved by other appropriate agencies, the Director of the National Science Foundation still must decide whether to issue a permit according to the requirements of the Antarctic Conservation Act of 1978.

The regulations amend Title 45 of the Code of Federal Regulations by adding Part 670.

The applications received are as follows:

1. Applicant, Donald R. Siniff, University of Minnesota, Minneapolis, Minnesota 55455.

*Activities for Which Permit Requested*

Take (tag-release; collect animals found dead) seals (leopard, Weddell, crabeater, ross), Import into U.S.A.

*Location*

Antarctic Peninsula region and McMurdo Sound area.

**Note.**—Dr. Siniff has applied for and been granted Marine Mammal Protection Act Permit No. 242 to take the seals described above.

*Dates*

October 15, 1979—April 15, 1980.

2. Applicant, David F. Parmelee, University of Minnesota, Minneapolis, Minnesota 55455.

*Activities for Which Permit Requested*

Take birds (skuas, gulls, sheathbills, terns, shags, storm-petrel, penguin), Import into U.S.A., Enter Specially Protected Area (SPA).

*Location*

Anvers Island, Litchfield Island (SPA).

*Dates*

October 15, 1979—April 15, 1980.

3. Applicant, David E. Murrish, Department of Biological Sciences, State University of New York, Binghamton, New York 13901.

*Activities for Which Permit Requested*

Take birds (Giant Petrel, penguins).

*Location*

Anvers Island.

*Dates*

December 1, 1979—March 31, 1980.

4. Applicant, Robert E. Ricklefs, Department of Biology, University of Pennsylvania, Philadelphia, Pennsylvania 19104.

*Activities for Which Permit Requested*

Take birds (penguins, Giant Fulmar, Blue Eyed Shag, South Polar Skua, Antarctic Tern), Import into U.S.A.

*Location*

Anvers Island and vicinity.

*Dates*

December 1, 1979—March 31, 1980.

5. Applicant, David G. Ainley, Point Reyes Bird Observatory, Stinson Beach, California 94970.

*Activities for Which Permit Requested*

Take birds (penguins [adelie, emperor], petrel, albatross, fulmar, prion, skua), Import into U.S.A.

*Location*

Ross Sea area.

*Dates*

December 1, 1979—March 31, 1980.

6. Applicant, Arthur L. DeVries, 524 Burill Hall, University of Illinois, Urbana, Illinois 61801.

*Activities for Which Permit Requested*

Introduction of a nonindigenous species *(Notothenia angustata)* into Antarctica.

*Location*

McMurdo, Antarctica.

*Dates*

October 15, 1979—December 31, 1979.

Authority to take this action has been delegated by the Director, NSF to the Director, Division of Polar Programs under National Science Foundation Staff Memorandum O/D 79–16, of May 29, 1979.

**Edward P. Todd,**

*Division Director, Division of Polar Programs.*

[FR Doc. 79-27770 Filed 9-5-79; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

**[Project M-25]**

### Notice of Extension of Comment Period for the Draft Generic Environmental Impact Statement

### Uranium Milling; (GEIS) and Notice of Public Hearings on Draft GEIS and Associated Proposed Regulation Changes

As stated in the **Federal Register** Notice announcing the availability of the Draft Generic Environmental Impact Statement (GEIS) on Uranium Milling (44 FR 24963), regulation changes have been developed which incorporate conclusions of the Draft GEIS and implement provisions of the "Uranium Mill Tailings Radiation Control Act of 1978." These regulation changes were formally proposed in the **Federal Register** on August 24, 1979, (44 FR 50012). Since the bases for many of the regulation changes are developed in the Draft GEIS, it is essential that they be considered together. Therefore, the comment period on the Draft GEIS is being extended an additional thirty (30) days (in addition to the previous sixty (60) day extension) from September 24, 1979, to October 24, 1979, in order to provide adequate time for review.

Further, notice is hereby given that the Commission will hold two informal public hearings on the GEIS on Uranium Milling and associated proposed regulation changes. The hearings will be held on October 1–2, 1979 at the Holiday Inn in Denver, Colorado and on October 18–19, 1979, at the Convention Center in Albuquerque, New Mexico. Persons wishing to attend these hearings should arrange for their own accommodations.

The purpose of the hearings will be to provide interested persons an

opportunity to participate in rulemaking through oral comments. The amount of time allowed for oral remarks will be determined by prehearing response; however, it is anticipated that individuals will be allowed approximately fifteen minutes. The hearing panel, consisting of NRC staff members responsible for preparing the draft GEIS and proposed regulation changes, as well as a representative from the State (in which the hearing is being held), will ask clarifying questions, of commenters, and NRC staff members will answer general questions about the draft GEIS and proposed regulation changes to the extent that they can at the time. Persons interested in presenting comments at either of the two informal hearings should notify Mrs. Betty Fisher in care of the Director, Division of Waste Management or at (301) 427–4103 by September 14, 1979. It would be helpful if written versions of comments to be presented orally are made available prior to or at the time of the hearings. Opportunity to speak will be given to those persons who do not provide advance notificaiton of their intent to comment, if time is available. However, the hearing chairman will retain the right to refuse the floor to anyone who does not address the draft GEIS or proposed regulation changes. Any further procedural rules needed for the proper conduct of the hearing will be announced by the hearing Chairman. The hearings will be recorded and the transcripts will be placed in the Public Document Room as part of the official record.

The hearings will run from 8:30 a.m. to 5:30 p.m. each day. Evening sessions will be held if it is determined that this is necessary in view of pre-hearing response. Both hearings will follow the same simple agenda:

I. Registration.

II. Introduction and Opening Remarks by Chairman and members of hearing panel. Remarks by Chairman will consist of brief summarization of the scope of the Draft GEIS and proposed regulation changes as well as a review of the schedule for issuing the final GEIS and regulation changes.

III. The remainder of the two days will be available for interested persons to make comments on the Draft GEIS and proposed regulation changes.

Written comments in furtherance of oral remarks will be accepted by the hearing chairman at the time of the hearing or may be sent by October 24, 1979, to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Waste Management.

Dated At Silver Spring, Maryland, this 29th day of August, 1979.

For the Nuclear Regulatory Commission.

**Ross A. Scarano,**

*Chief, Uranium Recovery Licensing Branch, Division of Waste Management.*

[FR Doc. 79-27771 Filed 9-5-79; 8:45 am]

BILLING CODE 7590-01-M

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[Docket No. 50-321]

## Georgia Power Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 71 to Facility Operating License No. DPR–57 issued to Georgia Power Company, Oglethorpe Electric Membership Corporation, Municipal Electric Association of Georgia, and City of Dalton, Georgia, which revised Technical Specifications for operation of the Edwin I. Hatch Nuclear Plant, Unit No. 1, (the facility) located in Appling County, Georgia. The amendment is effective as of the date of issuance.

The amendment consists of changes of the Technical Specifications by adding Limiting Conditions for Operation and Surveillance Requirements for the Tail Pipe Pressure Switches installed on the Relief/Safety Valves.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated July 13, 1979, (2) Amendment No. 71 to License No. DPR–57, and (3) the Commission's letter dated August 29, 1979. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D. C. and at the Appling County Library, Parker Street, Baxley, Georgia 31513. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D. C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 29th day of August, 1979.

For the Nuclear Regulatory Commission,

**Thomas A. Ippolito,**

*Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.*

[FR Doc. 79-27772 Filed 9-5-79; 8:45 am]

BILLING CODE 7590-01-M

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[Docket No. 50-320]

## Metropolitan Edison Co., et al. (Three Mile Island Nuclear Station, Unit 2); Order

On July 20, 1979, the Director, Office of Nuclear Reactor Regulation, issued an order suspending the licensee's authority to operate this facility and directing that, pending further order, the licensee maintain the facility in a shutdown condition in accordance with the approved operating and contingency procedures. The Order further provided that a subsequent order would be issued within about thirty (30) days addressing (1) the imposition of new and/or revised Technical Specifications setting forth appropriate license conditions and (2) the time in which the licensee may file an answer and persons affected by the Order may request a hearing in this matter. The new and/or revised Technical Specifications have not yet been completed. Accordingly, the period of time in which to issue that order is extended for an additional thirty (30) days.

It is so ordered.

Dated at Washington, DC, this 20th day of August, 1979.

For the Nuclear Regulatory Commission,

**Edson Case,**

*Acting Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 79-27774 Filed 9-5-79; 8:45 am]

BILLING CODE 7590-01-M

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[Docket No. 50-263]

## Northern States Power Co.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 41 to Provisional Operating License No. DPR–22, issued to Northern States Power Company, which revised the license for operation of the Monticello Nuclear Generating Plant (the facility) located in Wright County, Minnesota. The amendment will become

effective twenty days from the date of publication of this notice of issuance unless a hearing has been requested.

The amendment adds a license condition pertaining to the completion of facility modifications to improve the fire protection program.

The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the licensee's submittals dated December 10, 1976, July 5, 1977, May 18, 1978, November 7, 1978, and January 4, 1979, (2) Amendment No. 41 to License No. DPR-22, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Envionmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 29th day of August 1979.

For the Nuclear Regulatory Commission.

**Thomas A. Ippolito,**

*Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.*

[FR Doc. 79-27775 Filed 9-5-79; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket Nos. 50-514 and 50-515]**

### Portland General Electric Co., et al. (Pebble Springs Nuclear Plant, Units 1 and 2); Reconstitution of Board

James R. Yore, Esq. was Chairman of the Atomic Safety and Licensing Board for the above proceeding. Mr. Yore is unable to continue his service on this Board.

Accordingly, Elizabeth S. Bowers, Esq., whose address is Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, is appointed Chairman of this Board. Reconstitution of the Board in this manner is in accordance with § 2.721 of the Commission's Rules of Practice, as amended.

Dated at Bethesda, Maryland this 29th day of August 1979.

**Robert M. Lazo,**

*Acting Chairman, Atomic Safety and Licensing Board Panel.*

[FR Doc. 79-27776 Filed 9-5-79; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50-244]**

### Rochester Gas and Electric Corp.; Issuance of Amendment to Provisional Operating License

The U.S Nuclear Regulatory Commission (the Commission) has issued Amendment No. 29 to Provisional Operating License No. DPR-18, issued to Rochester Gas and Electric Corporation (the licensee), which revised the Technical Specifications for operation of the R. E. Ginna Nuclear Power Plant (the facility) located in Wayne County, New York. The amendment is effective as of its date of issuance.

The amendment modifies the provisions of the Technical Specifications to incorporate the new Standby Auxiliary Feedwater System pumps, which relates to the result of the Commission's staff review of the licensee's analysis for high energy line breaks outside of containment.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the Commission's letter to the licensee dated December 18, 1972, (2) the application for amendment dated February 1, 1977, and the licensee's letters dated February 6, 1978 and August 25, 1978, (3) Amendment No. 29 to License No. DPR-18, and (4) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Rochester Public Library, 115 South Avenue, Rochester, New York 14627. A copy of items (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 24th day of August, 1979.

Dated at Bethesda, Maryland, this 24th day of August, 1979.

For the Nuclear Regulatory Commission.

**Dennis L. Ziemann,**

*Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.*

[FR DOC 79-27777 Filed 9-5-79; 8:45 am]

BILLING CODE 7590-01-M

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## NATIONAL TRANSPORTATION SAFETY BOARD

**[N-AR 79-36]**

### Accident Reports, Responses to Safety Recommendations; Availability

#### Aircraft Accident Reports

*U.S. Civil Aviation Accidents, 1978 (Brief Format): Issue No. 3* (NTSB-BA-79-1).—The National Transportation Safety Board Announces the availability of copies of the third volume in its series of briefs reports of general aviation accidents which occurred last year. The computer-printout reports document the causal factors assigned by the Safety Board in each of the 899 accidents covered. In addition to the causal factors, Issue No. 3 also provides statistical information tabulated by type of accident, phase of operation, kind of flying, injury index, aircraft damage, conditions of light, pilot certificate, and injuries.

The Safety Board, in Press Release SB 79-68 concerning Issue No. 3, cites one accident involving a Bonanza N-35 which crashed April 26, 1978, near Atlanta, Ga. The pilot and his wife were killed. In determining the probable cause of this accident, the Board found that spatial disorientation of the pilot caused him to exceed the designed stress limits of the aircraft during an attempted operation beyond his ability. The subsequent airframe separation in flight occurred in instrument weather conditions that included icing. The Board noted that the pilot was instrument rated but had no logged aircraft instrument time since 1974.

Holding an instrument rating, the Board observed, does not by itself make

a competent instrument pilot. Pilots must fly in instrument conditions regularly or lose the proficiency demonstrated when they sccessfully passed the instrument rating flight examination. In the Georgia accident, the pilot had lost that proficency, with fatal results.

Note.—The brief reports in this publication contain essential information; more detailed data may be obtained from the original factual reports on file in the Washington Office of the Safety Board. Upon request, factual reports will be reproduced commercially at an average cost of 17 cents per page for printed matter, $5 per page for black-and-white photographs, and $4 per page for color photographs, plus postage. Requests concerning aircraft accident report briefs should include this information: (1) date and place of occurence, (2) type of aircraft and registration number, and (3) name of pilot.

Copies of Issue No. 3 may be purchased from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22151.

**Safety Recommendation Letters**

*Aviation*

*A–79–62 through 66 to the Federal Aviation Administration.*—During the investigation of the United Air Lines DC–8 accident at Portland, Oreg., December 28, 1978, the Safety Board Discovered several problems which affected adversely the survivability of the aircraft occupants; namely, exit markings, adequacy of child restraints, preimpact warnings over the public address system, accuracy of passenger manifests, and crew coordination. The Board believes that these problems are not limited to this particular air carrier or to this particular aircraft; thus they may affect persons involved in future accidents. Accordingly, on August 24, the Safety Board recommended that FAA:

Issue an Air Carrier Maintenance Bulletin clarifying the content of 14 CFR 25.811(d) regarding the conspicuity of passenger emergency exit signs when exits are open and the requirement for exit signs to be relocated in aircraft which have signs affixed on the exit closure. (A–79–62)

Expedite research with a view toward early rulemaking on a means to most effectively restrain infants and small children during in-flight upsets and survivable crash landings. (A–79–63)

Expedite the release of Operations Review Program Notice No. 13 containing the Safety Board's 1974 recommendation regarding a power source for public address systems independent of the main aircraft power supply in passenger-carrying air craft. (A–79–64)

Include in the anticipated new rule a requirement for domestic and flag air carriers to maintain passenger lists with the proviso that both ticketed and nonticketed passengers' names be provided. (A–79–65)

Issue an Air Carrier Operations Bulletin which will provide guidance and criteria to FAA Inspectors in determining the scope, quality, and effectiveness of training programs with respect to communication and coordination among crewmembers. (A–79–66)

Each of the above recommendations is designated "Class II, Priority Action." The Board's formal report on the investigation of the Portland accident, No. NTSB–AAR–79–7, was made public on July 6. Earlier recommendations resulting from investigation of this accident, Nos. A–79–32 through 34 issued May 11 and A–79–47 issued June 13 to FAA, are reproduced in the report. (See 44 FR 42349, July 19, 1979.)

*A–79–67 to the Federal Aviation Administration.*—Investigation of the Antilles Air Boats, Inc., accident on September 2, 1978, has resulted in the issuance of another safety recommendation. The Grumman 21A struck the water while on a passenger flight from St. Croix to St. Thomas, V.I. The aircraft broke apart and the captain and three of the ten passengers drowned. The aircraft was not required to have liferafts or approved flotation-type seat cushions on board, nor was it so equipped. Individual life preservers were located underneath each seat.

The Board's investigation revealed that before takeoff the captain only advised the passengers to fasten their seatbelts; he did not brief them on the location of survival equipment as was required by 14 CFR 135.81, "Briefing of Passengers Before Flight," which was in effect at that time. The passengers may not have known about the availability of life preservers, and no warning of an impending emergency landing was given to the passengers. Seven of the ten passengers survived because they clung to floating aircraft debris. Several passengers attempted to use seat cushions, but the cushions were covered with a vinyl material which became too slippery to hold in the water. There were no straps or handholds to facilitate grasping the cushions.

Since this accident again shows the need for a readily available means of flotation in water accidents when insufficient time is available to retrieve and don more conventional flotation equipment, the Safety Board on August 24 recommended that FAA:

Amend 14 CFR Part 135 to require all aircraft conducting passenger service under Part 135 in any overwater operation be equipped with approved flotation-type seat cushions, and to require aircraft conducting extended overwater operations to also be equipped with an approved life preserver equipped with an approved survivor locator light. (A–79–67) (Class II, Priority Action)

The Safety Board's formal report (NTSB–AAR–79–9) on the investigation of the Antilles Air Boats accident was released July 20; it contains four other recommendations issued to FAA earlier this year: A–79–11 on May 4, A–79–31 on May 9, and A–79–56 and 57 on July 12. (See 44 FR 45496, August 2, 1979.)

*A–79–68 through 70 to the Federal Aviation Administration:* The Safety Board's investigation of the Rocky Mountain Airlines DeHavilland DHC aircraft accident near Steamboat Springs, Colo., on December 4, 1978, illustrated the immediate need for survival training for crewmembers and for the installation of shoulder harnesses on crew seats. The accident occurred in near-blizzard conditions about 1945 m.s.t. in mountainous terrain at the 10,500-ft. level. The first emergency rescue team arrived at the accident site about 10 hours later; the evacuation was completed 16 hours after the accident. Falling and blowing snow, strong winds, rugged terrain, darkness, and subfreezing temperatures hampered the search and rescue efforts.

There was a great potential for serious postcrash trauma, including hypothermia and frostbite. However, because one of the passengers aboard was trained in winter survival techniques, and acted promptly and appropriately with the few available resources, the lives of many of the aircraft occupants were saved. Only one of the 20 passengers and one crewmember died as a result of this accident; one crewmember sustained minor frostbite. The Board notes that the Federal Aviation Regulations regarding crewmember emergency training do not extend to postcrash survival problems outside the aircraft and that the actions taken by the passenger were the responsibility of the crewmembers.

Further, the Board's investigation established that shoulder harnesses, if worn by the crewmembers, might have reduced their injuries. New 14 CFR Part 135, effective last December 1, specifies installation of shoulder harnesses at flightcrew stations of certain commuter aircraft by June 1, 1979, with provisions for the granting of extensions to December 1, 1980, to individual operators. The Safety Board believes that the June 1 date allowed adequate time for most operators to comply.

In view of the above, the Safety Board on September 6 recommended that FAA:

Amend 14 CFR 135.331 and 121.417 to require that each certificate holder provide a survival training program for its crewmembers that would include the basic information on sea, desert, winter, and mountain survival. (A–79–68)

Issue an Advisory Circular which outlines acceptable means of compliance with such a survival training program requirement. (A–79–69)

Strictly enforce the compliance date for the installation of shoulder harnesses as required by 14 CFR 135.171. (A–79–70)

Priority action has been requested on each of the above Class II recommendations. The Safety Board's formal investigation report on this accident was made public on May 21. (See 44 FR 31331, May 31, 1979.)

*Marine*

*M–79–80 to the University-National Oceanographic Laboratory System.*—At 1435 on December 9, 1978, the motor vessel HOLOHOLO, under bareboat charter contract to the Research Corporation of the University of Hawaii (RCUH), sailed from Honolulu harbor and has been missing since it was seen about an hour later proceeding on a south easterly course off Waikiki toward Diamond Head. The HOLOHOLO was engaged on the second of six planned 6-day voyages involving a project the University of Hawaii had contracted to perform over a 1-year period at a site centered about 17 miles west of Kawaihae, Island of Hawaii. Despite an extensive air-sea search by the Coast Guard, the Air Force, the University, and others, the HOLOHOLO was not found. A joint U.S. Coast Guard/National Transportation Safety Board investigation into this accident is continuing. More than 40 persons testified during 12 days of public hearings which began on January 9 in Honolulu.

The 10 persons on board the HOLOHOLO included the owner, a Coast Guard-licensed master of research vessels, a hydraulic mechanic, and seven scientists associated with the research to be conducted. The owner, who bought the HOLOHOLO on September 18, 1978, was not licensed by the Coast Guard and had little knowledge or experience in the operation of such vessels and in seamanship, vessel stability, watertight integrity, navigation, or shiphandling. The chief scientist (principal investigator), who was an employee of the University and in charge of the scientific project and personnel, was a highly regarded scientist with considerable knowledge and experience in ocean research, but there is no evidence that he or the other scientists had expertise in vessel seaworthiness, stability, navigation, or ship-handling.

The investigation has obtained a great deal of evidence regarding alterations made to the HOLOHOLO to accommodate the research equipment and related operations. These alterations included the creation of openings in the weather deck, trunks, hatches, and bulkhead, and involved the installation of two large winches, a large pool of cable, and an A-frame cargo boom on the after part of the vessel. Some heavy equipment for the scientific work was taken aboard and stowed on the after main deck and bulwarks, and other equipment and supplies were stowed in various aft above- and below-deck locations. These circumstances may have adversely affected the seaworthiness of the vessel.

Since the HOLOHOLO was registered as a yacht and had never been surveyed for hull insurance purposes, or by the American Bureau of Shipping (ABS) for load line purposes, and was not built, maintained, or altered under ABS or Coast Guard inspection, there is a lack of information about the actual condition of the vessel. Therefore, calculations must be based on incomplete information compiled from available drawings, photographs, documents, and witness testimony. Deviation tables had not been prepared for the compass, and it has not been compensated in several years. The electronic navigation equipment had recently been installed near the compass in the wheelhouse, and alterations had been made to the vessel's structure and equipment which could have caused a large compass error.

The estimated 135-mile route from Honolulu to the site would have taken the HOLOHOLO no more than 25 miles from promontory shorelines, well within the range of the 26-mile radar. Therefore, an inaccurate compass should not have caused the vessel to be steered to an unintended position. Although some electrical problems had developed in the 32-volt system that powered the electronic navigation equipment during the first voyage, all the items were operative a few days before the second voyage commenced. The VHF radio was operating just before the HOLOHOLO sailed on December 9, since radio transmissions were exchanged between the vessel and the Honolulu harbormaster in Aloha Tower.

The Safety Board notes that in May 1976 the recommendation addressee, the University-National Oceanographic Laboratory System (UNOLS), promulgated voluntary guideline safety standards for research vessels—"Research Vessel Safety Standards," May 1976, UNOLS Office, Woods Hole Oceanographic Institution, Woods Hole, Mass. 02543. Those guidelines were compiled by a group of UNOLS members, and the membership was encouraged to adopt them as applicable and appropriate to vessels owned and operated by member institutions. The guidelines are intended to supplement existing laws and regulations, and include an excellent array of standards and procedures which would be applicable to most research vessel operations. The University of Hawaii was a member of UNOLS but had not applied the guideline standards to vessels contracted for its use by RCUH. Therefore, the operation of the HOLOHOLO apparently relied on the charter contract for vessel seaworthiness, the contract with the master for safe operation, and on the judgment of the chief scientist as to the suitability of the vessel to serve as a platform for the research projects to be conducted. There is no evidence that any of the guideline standards were considered or applied by the three individuals involved or by other officials of the University or RCUH.

It will be some time before the investigation is completed so that the Safety Board can analyze the evidence and reach conclusions regarding the probable cause of the accident. Meanwhile, notwithstanding the outcome of the efforts to determine the seaworthiness of the HOLOHOLO, the evidence leads the Board to conclude that several corrective actions should be taken to improve the survivability aspects of similar operations. Accordingly, on September 6, the Safety Board recommended that UNOLS:

Distribute a copy of this recommendation letter and the Safety Board's recommendations letter to the University of Hawaii to its members, and urge them to review the guideline standards promulgated by UNOLS and to formally prescribe appropriate minimum requirements from among those standards to be applicable to all vessels used by the member institutions, and for each specific voyage made by such vessels. (M–79–80) (Class I, Urgent Action)

*M–79–81 through 87 to the University of Hawaii.*—Also on September 6 the Safety Board by letter similar to that, above, forwarded to UNOLS recommendations that the University of Hawaii take the following actions in an effort to improve the safety of research vessel operations:

For each voyage made by vessels engaged in research conducted under the auspies of the University, provide EPIRB (emergency position indicating radiobeacon) equipment and necessary operating instructions for each voyage to the chief scientist on board, and ensure that the master is familiar with the EPIRB's operation and use. (M–79–81)

Establish a system of scheduled radio communications between its research vessels

and appropriate officials ashore to monitor the progress of such vessels, and require all departures and arrivals to be reported. (M-79-82)

Require the chief scientist to compile and disseminate a formal cruise plan for each voyage to include at least the planned itinerary and a roster of all persons actually on board. (M-79-83)

Require the chief scientist to report all significant changes to the cruise plan to appropriate officials ashore. (M-79-84)

Review the guidelines standards promulgated by UNOLS, and formally prescribe appropriate specific minimum requirements from among those standards to be applicable to all vessels used by the University, and for each particular voyage made by such vessels. (M-79-85)

Review the procedures used by RCUH to contract for the service of masters and the charter of vessels for University use, and prescribe the relationship and responsibility of each entity involved to provide for the safety of each voyage or series of voyages, as appropriate. (M-79-86)

Develop a formal procedure to ensure that the terms of all charter and master contracts related to safety are known and understood by the chief scientist, and fulfilled to his complete satisfaction before a vessel sails on each voyage. (M-79-87)

All of the above recommendations are designated "Class I, Urgent Action," with the exception of No. M-79-82 which is designated "Class II, Priority Action."

*M-79-88 through 97 to the U.S. Coast Guard.*—On January 15, 1978, the U.S. motor tankship SEALIFT CHINA SEA rammed the Italian-registered cargo vessel LORENZO D'AMICO which was moored in Los Angeles harbor. The bow of the SEALIFT CHINA SEA penetrated about 15 feet into a cargo hold of the LORENZO D'AMICO. No deaths or injuries resulted from the accident, but the LORENZO D'AMICO was damaged beyond economical repair and was declared a constructive total loss. The SEALIFT CHINA SEA was damaged slightly.

Investigation showed that the accident resulted when the pitch was applied in the wrong direction to the SEALIFT CHINA SEA's controllable-pitch propeller during a turning maneuver. The automated engine control system was inoperative and propeller pitch was being operated manually at the local control station. The pilot ordered half astern and full astern but the propeller was operated at half ahead and full ahead. The errors occurred through a misunderstanding of the hand signals used among three persons in the engineroom to transmit pitch orders to the local control station two levels below and about 50 feet aft of the engine control room.

The Safety Board notes that the automated control systems on the SEALIFT CHINA SEA and the eight other ships of the class have failed many times. Those failures are significant in that the vessels have been operated in restricted waters on several occasions with no indication on the bridge regarding the actual direction of pitch. The Board believes that to be an unacceptably risky situation; also, ships' bridges should be equipped with prominently displayed thrust indicators which operate regardless of the failure of the automated control systems.

The ship was designed for manual operation of the pitch in the event of automated system failure, but did not provide for a reliable method to relay thrust orders to the local control station. The Board believes that hand signals are an inadequate method, as demonstrated by this accident, and that appropriate equipment should be installed so that persons in the wheelhouse, the engine control room and at the local control station can communicate reliably with each other.

The history of failures of the automated control system indicates that an adequate degree of maintainability had not been achieved. Investigation of this accident revealed that the technical manuals, spare parts, training of engineers, and shoreside support in combination have not been adequate. Therefore, the Safety Board believes these factors should be reanalyzed to identify and eliminate the definiencies and to revise the equipment and manning requirements needed to achieve a satisfactory level of maintenance.

Finally, the Board believes that failures of thrust control systems should be reported to the Coast Guard before vessels enter restricted waters, which is now required in cases of certain other equipment failures. Therefore, the Board on September 6 recommended that the Coast Guard:

Amend 46 CFR 113.30-5(a) to add propulsion local control stations to those locations required to be provided with an efficient means of communications in vessels equipped with automated control systems. (M-79-88)

Amend 46 CFR 113.30-20(b) to permit propulsion local control station telephone to be installed on the same circuit as the telephone stations listed in 46 CFR 113.30-5(a), and to require such installations to meet the criteria of 46 CFR 113.30.25, with special emphasis on paragraphs (c) through (g) thereof in regard to noisy locations. (M-79-89)

Amend 46 CFR 113.35-5 to require the installation of engine order telegraph systems between engineroom control stations and propulsion local control stations in vessels equipped with automated control systems if manual operation is an acceptable alternate means of control and the local station is not immediately adjacent to the engineroom control station. (M-79-90)

Amend 46 CFR Part 113 to prescribe standards for thrust indicators similar to those prescribed by 46 CFR 113.40 for rudder angle indicators and by 46 CFR 113.35 for engine order telgraph systems. Regulations should require vessels of 1,600 or more tons to be equipped with thrust indicators which are: (1) separate and independent from such indicators provided by the automated control consoles, (2) positioned prominently near the rudder angle indicator in the wheelhouse and bridge wings, and at the engineroom control station, (3) illuminated appropriately for effective day and night visibility, and (4) designed to display the exact shaft rpm and propeller pitch direction in either combined or individual instruments. (M-79-91)

Instiate appropirate proposals to the Intergovenmental Maritime Consultative Organization for the establishment of international standards similar to those prescribed by 46 CFR Part 113 as revised pursuant to the preceding four recommdations. (M-79-92)

Make a special evaluation, in coordination with the Military Sealift Command, to determine any deficiencies involved in maintaining the automated control systems of all nine vessels of the class, as measured by the criteria stated in NVC No. 1-69, and make the changes in manning and equipment requirements needed to achieve an acceptable degree of maintainability. (M-79-93)

Revise and reissue NVC No. 1-69 to provide guidance for standards in consonance with those prescribed by 46 CFR Part 113 as revised pursuant to the first four preceding recommendations, and to reflect maintainability criteria related to the adequacy of manning, equipment design, instruction manuals, spare parts, and shoreside support for automated control systems and other factors, as determined to be needed by the recommended special evaluation. (M-79-94)

Amend 33 CFR 164.35 to add illuminated shaft rpm indicators to the equipment required in the wheelhouse, and illuminated thrust direction indicators in the wheelhouse and on the bridge wings of vessels equipped with controllable-pitch propellers. (M-79-95)

Amend 33 CFR 164.53(b) to add automated control systems and shaft rpm and thrust direction indicators to those equipments specifically required to be reported to the Coast Guard when they are not operating properly. (M-79-96)

Amend 33 CFR 124.16 to enumerate specific conditions or inoperative equipment, including automated control systems and shaft rpm and thrust direction indicators, that are deemed to constitute abnormal conditions required to be reported to the Coast Guard. (M-79-97)

*M-79-98 to the U. S. Navy Military Sealift Command.*—Also as a result of the Sealift China Sea/Lorenzo D'Amico accident investigation, the Safety Board on September 6 forwarded a letter similar to that addressed to the Coast Guard, recommending that the U. S. Military Sealift Command:

Collaborate with the U. S. Coast Guard to make a special evaluation to determine the deficiencies involved in maintaining the automated control system of the SEALIFT CHINA SEA and the other eight vessels of that class and make the changes in manning and equipment needed to achieve an adequate degree of maintainability onboard those vessels. (M–79–98)

All of the recommendations above, M–79–88 through 97 and M–79–98, are designated "Class II, Priority Action." The Board's formal report on the investigation of this accident is being prepared for distribution and copies will be available in the near future.

*Pipeline*

*P–79–27 to the Research and Special Programs Administration, U.S. Department of Transportation.*—At 1:10 a.m. last January 19, in North Richland Hills, Texas, an accumulation of natural gas in a house was ignited by an unknown source. The resulting explosion and fire destroyed the house. One resident was killed and another was critically injured.

The Safety Board's investigation of this acident has shown that the houses in the accident area were connected to a 6-inch Lone Star Gas Company gas main by 1¼-inch sevice lines. The service connection was made with two 90-degree elbows to allow for both horizontal and vertical movement of the line as the soil moved. This "swing connection" did not prevent the fracture of the pipe. Investigators have determined that gas escaped from a circumferential fracture at the threads of a 1¼-inch nipple above the service tap on the main. The wet clay soil at the accident site retarded the upward movement of the leaking gas. The gas moved laterally along the pipe; through the drier, more permeable clay; and into the house.

On November 27, 1978, a leak occurred on the Lone Star System in Arlington, Texas. This leak was also at the threaded section of a main/service line connection. The leak resulted in an explosion in which one person was killed. The conditions at the January 19, 1979, accident were also similar to those which existed on October 4, 1971, when a connection failed in North Richland Hills. In all three cases, the pipelines were located in dense clay soil that swells when it is wet. The movement of the soil applied force to the pipes, which in turn induced stresses which concentrated at the threaded connections of the 1¼-inch nipple at the service tap. The continued stress eventually caused the threaded areas to crack. In the 1971 accident, the effects of the stress were heightened because of brittleness caused by the hydrogenation of the galvanized pipe used at that connection. Investigators determined that the 1978 leak was also induced by a combination of stress and corrosion.

Failure of pipe at the main/service line connection with threaded couplings on the Lone Star system appears to be a recurring problem. After the 1971 accident, Lone Star only addressed the galvanized pipe-hydrogenation corrosion problem and not the stress problem. The short time between the November 1978 and the January 1979 accidents has caused the Safety Board concern as to the safety of the entire Lone Star system. Accordingly, on September 6 the Safety Board recommended that the Research and Special Programs Administration:

In conjunction with the Texas Railroad Commission, determine if the type of main/service line connection with threaded couplings installed by the Lone Star Gas Co. constitutes a hazard to life and property, and take appropriate action under Section 3(b) of the Natural Gas Pipeline Safety Act of 1968. (P–79–27) (Class I, Urgent Action)

**Responses to Safety Recommendations**

*Aviation*

*A–79–41.*—The Federal Aviation Administration on August 23 responded to the Safety Board's recommendation that an emergency airworthiness directive be issued immediately to inspect all pylon attach points on all DC–10 aircraft by approved inspection methods. The recommendation was the first of a series issued during the early investigation stage on the crash of the American Airlines DC–10 at Chicago's O'Hare International Airport last May 25. (See 44 FR 32756, June 7, 1979.)

FAA states that on May 28 a telegraphic airworthiness directive (AD) was issued, requiring the recommended inspection. Amendments to this AD were issued May 29 and June 4. In addition to actions taken with respect to recommendations A–79–41, 45, 46, and 52, FAA initiated a number of other actions, including FAA monitoring of AD compliance, grounding of U.S. registered DC–10 airplanes, suspension of the DC–10 type certificate, issuance of two Orders of Investigation involving evaluation of the DC–10 manufacturer's type certification data and operator's airworthiness procedures, and issuance of a Special Federal Aviation Regulation prohibiting operation of foreign registered DC–10 airplanes from operating in U.S. airspace except for nonrevenue departures. On June 11 FAA issued GENOT N8320.234 directing principal maintenance inspectors to review pylon and wing attach area inspection procedures of their assigned operators, and to amend the maintenance operations specifications to require inspections of the Boeing 747, Lockheed 1011, and the A–300 engine pylons. Copies of the AD and amendments were provided.

*A–79–42 and 43.*—On August 22 FAA responded to recommendations issued June 8 concerning air traffic control oprational control. Recommendations A–79–42 asked FAA to conduct a directed safety study on a priority basis, to examine the runway incursion problem and to formulate recommended remedial action to reduce the likelihood of such hazardous conflicts. A–79–43 recommended alerting all controller/pilot personnel that runway incursion mishaps represent a serious safety problem which requires their immediate attention, emphasizing the need for both groups to maintain greater visual surveillance in those taxi operations involving any runway crossing. (See 44 FR 34221, June 14, 1979).)

In response to A–79–42, FAA has commissioned Transportation Systems Center to conduct a study on "Runway and Taxiing Transgression." Also, FAA regional air traffic divisions will review all local procedures for control of ground movements on and along active runways and airfield configurations that may contribute to the potential for taxi conflictions. FAA has also continued to analyze the impact of procedures contained in the Eastern Region's Regional Notice (RENOT) 8/21, dated June 27, 1978, to apply those procedures throughout the national system. FAA concludes that input from user and operator activities is necessary to further determine the impact that may result if the provisions of the RENOT are adopted. Accordingly FAA plans to publish a document change proposal for review and comment by aviation and air traffic control interest groups.

In response to A–79–43, FAA in July 1978 issued General Notice 7110.552 reminding controller that specific coordination must be accomplished prior to authorizing an aircraft to use any portion of an active runway. After the Chicago and Memphis incidents, cited in the Safety Board's recommendation letter, FAA issued General Notice 7210.144 requiring regional air traffic division chief approval of any local procedures developed regarding runway usage. This Notice further required them to ensure that all facility managers/supervisors and specialists are thoroughly apprised of and adhere to the provisons of Handbook 7100.65A, paragraph 971.

FAA says that similar actions have been taken to increase pilot awareness of the potential for safety problems in

the ground environment. The National Aeronautics and Space Administration's study, "Human Factors Associated with Runway Incursions," was widely disseminated. The Air Line Pilots Association has indicated it will remind pilots of the associated problems of pilot discipline and practices. Also, FAA is revising Advisory Circular AC–90–48A, "Pilots' Role in Collision Avoidance," effective October 1979, which contains clearing procedures that a pilot should use before taxiing onto a runway or landing area.

*A–79–47.*—FAA's letter of August 22 informs the Safety Board that the agency is preparing an air carrier operations bulletin instructing all principal operations inspectors to urge their assigned carriers to include resource management training in their flight crewmember training programs—as recommended following investigation of the above-referenced United Airlines DC–8 accident at Portland International Airport, December 28, 1978. (See 44 FR 26272, June 21, 1979.)

*Highway*

*H–78–44.*—The Federal Highway Administration on August 15 forwarded a followup to its formal response of last October 4 (43 FR 48744, October 19, 1978) which indicated that a Technical Advisory was being prepared to provide interim guidelines for the design of emergency escape ramps; also, an FHWA Notice to encourage construction of escape ramps was discussed. FHWA's August 15 letter encloses copies of FHWA Notice N5040.34, dated July 9, 1979, "Emergency Escape Ramps on Federal-aid Projects," and FHWA Technical Advisory T5040.10, dated July 5, 1979, "Interim Guidelines for Design of Emergency Escape Ramps."

Recommendation H–78–44 was one of several issued to FHWA following investigation of the May 12, 1977, truck-semitrailer/van collision near Marion, N.C. See also 44 FR 18750, March 29, 1979, for FHWA/NTSB correspondence subsequent to the October 4 response regarding this recommendation.

*Marine*

*M–79–52 and 53.*—The U.S. Coast Guard on August 10 responded to recommendations issued following investigation of the collision of the USS L.Y. SPEAR and the Liberian tanker ZEPHYROS which occurred February 22, 1978, in the lower Mississippi River below New Orleans, La. The recommendations sought inclusion in Coast Guard's ongoing study of aids to navigation a determination of maximum safe speeds which can be accommodated when equated with time required for navigators to perform their functions safely, and further research with the Maritime Administration to determine if speed limits and other controls are necessary in additional restricted or congested waterways. (See 44 FR 27511, May 10, 1979.)

Coast Guard reports that its research and development program is directed toward inland waterways specifically in coordination with the Corps of Engineers, which also has concerns in this area based on their responsibilities for channel design and lock and dam operation. Results of these studies will be used in future analysis of port and waterway traffic management needs. A vessel Traffic Management Simulation Program was developed over the last few years is to be tested and evaluated under different conditions for efficacy in solving traffic management problems. Completion of this phase is expected in March 1980.

Also, Coast Guard reports that a memorandum of understanding with the Maritime Administration regarding joint efforts in the vessel management area is currently entering the final stages of negotiation. Coast Guard is using the Computer Automated Operations Research Facility at the National Maritime Research Center for simulation work.

*Pipeline*

*P–79–16 through 19.*—Letter of August 17 from Alyeska Pipeline Service Company is in response to recommendations issued July 13 as a result of investigation of two oil spills which occurred in June on the Trans Alaska Pipeline System. (See 44 FR 43824, July 26, 1979.)

In response to recommendation P–79–16 which called on Alyeska to complete the scheduled run of the curvature monitoring device expeditiously to determine other locations with abnormal buckles or bends, Aleyska reports that the curvature pig was launched from Pump Station No. 1 on July 29. Results of this run will be analyzed as soon as possible, recognizing that the necessary computer software for expeditious handling of the data is still in the developmental stages. The current investigation program consists of (1) geotechnical (3) field investigation including pipe exposure of areas indicating large ovalities or sharp signals from the Kaliper pig runs, (4) correlation of all of this data to screen for areas of concern, and (5) detailed examination of curvature pig data at locations of concern from this correlation.

Recommendation P–79–17 called for development and implementation of a quarterly inspection program adequate to detect curvature aberrations. Alyeska notes that its response to P–79–16 outlines a program to detect "curvature aberration" albeit less precisely than is expected from the curvature pig. Alyeska' s program of surveillance and monitoring, which will take place after the initial investigation, will occur more frequently than quarterly. Alyeska believes that it is premature to establish the frequency for using the curvature monitoring pig. Analysis of the data from the current curvature pig runs will be used in part as the basis for establishing this frequency.

Recommendation P–79–18 asked Alyeska to reevaluate the ground stabiliztion in all areas where pipeline is buried without insulation in bedrock or ground considered to be thaw stabilized. Alyeska states that this recommendation is addressed in the response to P–79–16.

Recommendation P–79–19 asked Alyeska to fabricate a variety of special split-sleeve repair clamps large enough to encompass pipe wrinkles similar to those encountered in the latest failures and to store the sleeves for rapid disposition to leak sites. Alyeska reports that it is currently investigating commercially available sleeves large enough to encompass pipe wrinkles similar to those encountered. Six split sleeves similar in design to those installed at MP 166 and MP 734 are now on order. Further design improvements are being considered. All split sleeves will be analyzed and tested to comply with existing regulations.

**Note.**—Copies of recommendation letters issued by the Safety board, response letters, and related correspondence are available free of charge. All requests for copies must be in writing, identified by recommendation number. Address inquiries to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

(Secs. 304(a)(2) and 307 of the Independent Safety Board Act of 1974 (Pub. L. 93–633, 88 Stat. 2169, 2172 (49 U.S.C. 1903, 1906)))

**Margaret L. Fisher,**

*Federal Register Liaison Officer.*

August 31, 1979.

[FR Doc. 79–27791 Filed 9–5–79; 8:45 am]

BILLING CODE 4910–58–M

## SMALL BUSINESS ADMINISTRATION

### Region II Advisory Council Meeting; Public Meeting

The Small Business Administration Region II Advisory Council, located in the geographical area of New York, New York, will hold a public meeting at 2:00 p.m., Tuesday, September 25, 1979, in Room 29–118, U.S. Federal Building, 26

Federal Plaza, New York, New York, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Andrew P. Lynch, Acting District Director, U.S. Small Business Administration, 26 Federal Plaza, New York, New York 10007, (212) 264–1318.

Dated: August 29, 1979.

K. Drew,

*Deputy Advocate for Advisory Councils.*

[FR Doc. 79–27795 Filed 9–5–79; 8:45 am]

BILLING CODE 8025–01–M

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### Region II Advisory Council Meeting; Public Meeting

The Small Business Administration Region II Advisory Council, located in the geographical area of Syracuse, New York, will hold a public meeting on Friday, October 26, 1979, at 9 a.m., at the University Club of Syracuse, located at 431 East Fayette Street, Syracuse, New York, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call J. Wilson Harrison, District Director, U.S. Small Business Administration, 1071 Federal Building, 100 South Clinton Street, Syracuse, New York 13260, (315) 423–5371.

Dated: August 29, 1979.

K. Drew,

*Deputy Advocate for Advisory Councils.*

[FR Doc. 79–27802 Filed 9–5–79; 8:45 am]

BILLING CODE 8025–01–M

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### Region IV Advisory Council Meeting; Public Meeting

The Small Business Administration Region IV Advisory Council, located in the geographical area of Atlanta, Georgia, will hold a public meeting from 9:00 a.m. to 12:00 noon, Friday, September 21, 1979, at the Ramda Inn-Intown, 231 W. Boundry Street, Savannah, Georgia, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information write or call Clarence B. Barnes, District Director, U.S. Small Business Administration, 1720 Peachtree Road, N.W., 6th Floor, Atlanta, Georgia 30309, (404) 881–4749.

Dated: August 29, 1979.

K. Drew,

*Deputy Advocate for Advisory Councils.*

[FR Doc. 79–27796 Filed 9–5–79; 8:45 am]

BILLING CODE 8025–01–M

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### Region IV Advisory Council Meeting; Public Meeting

The Small Business Administration Region IV Advisory Council, located in the geographical area of Birmingham, Alabama, will hold a public meeting at 9 a.m., Thursday, September 20, 1979, at the Birmingham Hilton Inn, 260 Goodwin Crest Drive, Birmingham, Alabama, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call James C. Barksdale, District Director, U.S. Small Business Administration, 908 South 20th Street, Birmingham, Alabama 35205, (205) 254–1341.

Dated: August 29, 1979.

K. Drew,

*Deputy Advocate for Advisory Councils.*

[FR Doc. 79–27797 Filed 9–5–79; 8:45 am]

BILLING CODE 8025–01–M

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### Region IV Advisory Council Meeting; Public Meeting

The Small Business Administration Region IV Advisory Council, located in the geographical area of Miami, Florida, will hold a public meeting from 10:00 a.m. to 4:00 p.m., Wednesday, October 24, 1979, at the University Federal Savings & Loan Building, Community Room, Second Floor, 2222 Ponce de Leon Boulevard, Coral Gables, Florida, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Bernard Layne, District Director, U.S. Small Business Administration, 2222 Ponce de Leon Boulevard, 5th Floor, Coral Gables, Florida 33134, (305) 350–5533.

Dated: August 29, 1979.

K. Drew,

*Deputy Advocate for Advisory Councils.*

[FR Doc. 79–27799 Filed 9–5–79; 8:45 am]

BILLING CODE 8025–01–M

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### Region VI Advisory Council Meeting; Public Meeting

The Small Business Administration Region VI Advisory Council, located in the geographical area of San Antonio, Texas, will hold a public meeting from 9:00 a.m., Friday, October 19, 1979, at the Sunday House Inn, Interstate 10, Highway 16, Kerrville, Texas, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call James S. Reed, District Director, U.S. Small Business Administration, Room A–513, Federal Building, 727 E. Durango, San Antonio, Texas 78206, (512) 229–6105.

Dated: August 29, 1979.

K. Drew,

*Deputy Advocate for Advisory Councils.*

[FR Doc. 79–27798 Filed 9–5–79; 8:45 am]

BILLING CODE 8025–01–M

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### Region VIII Advisory Council Meeting; Public Meeting

The Small Business Administration Region VIII Advisory Council, located in the geographical area of Helena, Montana, will hold a public meeting at 9:30 a.m. on Wednesday, September 12, 1979, at the Federal Building, 301 South Park, Room 389, Helena, Montana, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Ottley R. Tschache, District Director, U.S. Small Business Administration, Federal Building, 301 South Park, Drawer 10054, Helena, Montana 59601, (406) 449–5381.

Dated: August 29, 1979.

K. Drew,

*Deputy Advocate for Advisory Councils.*

[FR Doc. 79–27800 Filed 9–5–79; 8:45 am]

BILLING CODE 8025–01–M

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### Region X Advisory Council Meeting; Public Meeting

The Small Business Administration Region X Advisory Council, located in the geographical area of Anchorage, Alaska, will hold a public meeting at 9:00 a.m., Thursday, September 20, 1979, at the U.S. Small Business Administration District Office, 1016 West Sixth Avenue, Suite 200, Anchorage, Alaska, to discuss such business as may be presented by members, the staff of the U.S. Small

Business Administration, and others attending.

For further information write or call Frank D. Cox, District Director, U.S. Small Business Administration, 1016 W. Sixth Avenue, Suite 200, Anchorage, Alaska 99501, (907) 271–4022.

Dated: August 29, 1979.

K. Drew,
*Deputy Advocate for Advisory Councils.*

[FR Doc. 79-27801 Filed 9-5-79; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### Grants and Denials of Applications for Exemptions

**AGENCY:** Materials Transportation Bureau, DOT.

**ACTION:** Notice of Grants and Denials of Applications for Exemptions.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted July 1979. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo-vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

**Renewals**

| Application No. | Exemption No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 2587-X | DOT-E 2587 | Denison, Inc., Fredonia, Kans | 49 CFR 173.315(a)(1) | To ship a nonflammable liquefied gas in a non-DOT specification cargo tank designed and constructed in accordance with Section VIII of the ASME Code. (Mode 1.) |
| 2805-X | DOT-E 2805 | Dow Chemical Co., Midland, Mich.; Allied Chemical Corp., Morristown, N.J.; Great Lakes Chemical Corp., El Dorado, Ark.; SunOlin Chemical Co., Claymont, Del. | 49 CFR 172.101, 173.315(a) | To ship liquefied ethylene in non-DOT specification insulated cargo tanks. (Mode 1.) |
| 3134-X | DOT-E 3134 | Hooker Chemicals and Plastics Corp., Niagara Falls, N.Y. | 49 CFR 173.249(a)(5), 179.200-4(a). | To ship a corrosive liquid in DOT Specification 103W or 111A100W1 tank car tanks. (Mode 2.) |
| 3630-P | DOT-E 3630 | MC/B Manufacturing Chemists, Cincinnati, Ohio. | 49 CFR 177.839 (a), (b) | To become a party to Exemption 3630. (Mode 1.) |
| 4600-P | DOT-E 4600 | Halocarbon Products Corp., Hackensack, N.J. | 49 CFR 173.315, 178.245-3(a) | To become a party to Exemption 4600. (Mode 1.) |
| 4698-X | DOT-E 4698 | American Bosch Marketing, Springfield, Mass. | 49 CFR 173.302(a)(1), 175.3 | To ship a certain nonflammable compressed gas in non-DOT specification containers. (Modes 1, 2, 3, 4.) |
| 5038-X | DOT-E 5038 | The Synthantron Corp., Parsippany, N.J.; M & T Chemicals, Inc., South San Francisco, Calif. | 49 CFR 173.135(a)(6), 173.136(a)(5), 173.247(a)(1). | To ship corrosive and flammable liquids in a non-DOT Specification Type 304 stainless steel cylinder. (Modes 1, 2.) |
| 5196-X | DOT-E 5196 | Air Products and Chemicals, Inc., Allentown, Pa. | 49 CFR 172.101, 173.315(a)(1) | To ship a flammable gas in a non-DOT specification insulated cargo tank, designed and constructed in accordance with Section VIII of the ASME Code. (Mode 1.) |
| 6007-X | DOT-E 6007 | Nuclear Products Co., El Monte, Calif.; Pennwalt Corp., Holmdel, N.J. | 49 CFR 173.391(b)(5) | To ship a radioactive device containing polonium under the provisions of 49 CFR 173.391. (Modes 1, 2, 3, 4, 5.) |
| 6218-X | DOT-E 6218 | Liquid Carbonic Corp., Chicago, Ill.. | 49 CFR 173.315(a) | To ship certain nonflammable liquefied compressed gases in a non-DOT specification cargo tank. (Mode 1.) |
| 6299-X | DOT-E 6299 | Minnesota Valley Engineering, New Prague, Minn. | 49 CFR 173.315(a)(1) | To manufacture, mark and sell non-DOT specification portable tanks, designed and constructed in accordance with Section VIII of the ASME Code for shipment of non-flammable compressed gases. (Modes 1, 3.) |
| 6583-X | DOT-E 6583 | Phillips Petroleum Co., Bartlesville, Okla. | 49 CFR 173.249(a)(7) | To ship a corrosive material in a DOT Specification 51 portable tank with certain exception. (Mode 1.) |
| 6614-X | DOT-E 6614 | FMC Corp., Philadelphia, Pa | 49 CFR 173.263(a)(28), 173.277(a)(6). | To transport certain corrosive liquids in non-DOT specification plastic bottles, packed inside a high density polyethylene box. (Mode 1.) |
| 6614-X | DOT-E 6614 | Jones Chemicals, Inc., Caledonia, N.Y. | 49 CFR 173.263(a)(28), 173.277(a)(6). | To become a party to Exemption 6614. (Mode 1.) |
| 6626-X | DOT-E 6626 | Airco Welding Products, Springfield, N.J. | 49 CFR 173.34(e)(15)(i), 175.3 | To ship certain compressed gases in DOT Specification 3A or 3AA cylinders and ICC-3, 3A or 3AA cylinders. (Modes 1, 2, 3, 4, 5.) |
| 6637-X | DOT-E 6637 | Advanced Chemical Technology, City of Industry, Calif. | 49 CFR Part 173; 178.19 | To mark and sell not-DOT specification polyethylene drums for shipment of corrosive liquids, Class B poisonous liquids, flammable liquids and oxidizers. (Modes 1, 2, 3.) |
| 6712-X | DOT-E 6712 | Air Products and Chemicals, Inc., Allentown, Pa. | 49 CFR 173.34(e) | To extend the ten year retest provisions to DOT-3A, or 3AA or ICC-3, 3A, or 3AA cylinders over 35 years old. (Modes 1, 2, 3, 4, 5.) |
| 6712-P | DOT-E 6712 | Suburban Welders Supply Co., Inc., Ashland, Mass. | 49 CFR 173.34(e)(15)(i) | To become a party to Exemption 6712. (Modes 1, 2, 3, 4, 5.) |
| 6757-X | DOT-E 6757 | Degussa, Frankfort, West Germany; FMC Corp., Philadelphia, Pa. | 49 CFR 173.266(f)(2) | To ship an oxidizer in a non-DOT specification aluminum portable tank. (Modes 1, 3.) |
| 6787-X | DOT-E 6787 | Advanced Chemical Technology, City of Industry, Calif. | 49 CFR Part 173 | To manufacture, mark and sell DOT specification 34 polyethylene drums for shipment of Class B poisonous liquids, flammable liquids, organic peroxides and corrosive liquids. (Modes 1, 2, 3.) |
| 6790-X | DOT-E 6790 | Dow Chemical Co., Midland, Mich.. | 49 CFR 173.249(a)(6), 173.263(a)(10). | To ship corrosive liquids in a non-DOT specification fiberglass reinforced plastic cargo tank. (Mode 1.) |

**Renewals**—Continued

| Application No. | Exemption No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 6806-P | DOT-E 6806 | Norton Co., Worchester, Mass | 49 CFR 173.302(a), 175.3 | To ship a certain flammable gas in a DOT Specification 3E1800 cylinder integral to a gas chromatograph device. (Mode 5.) |
| 6858-P | DOT-E 6858 | Marcevaggi S.p.A., Vignole Borbera, Italy. | 46 CFR 90.05-35; 172.119, 173.125, 173.245, 173.346. | To become a party to Exemption 6858. (Modes 1, 2, 3.) |
| 6922-X | DOT-E 6922 | Halocarbon Products Corp., Hackensack, N.J. | 49 CFR 173.314(c), 179.300-15 | To ship a certain flammable compressed gas in DOT Specification 106A500-X multi-unit tank car tanks. (Modes 1, 2, 3.) |
| 6922-P | DOT-E 6922 | E. I. du Pont de Nemours & Co., Inc., Wilmington, Del. | 49 CFR 173.314(c), 179.300-15 | To become a party to Exemption 6922. (Modes 1, 2, 3.) |
| 6923-X | DOT-E 6923 | Dow Chemical Co., Midland, Mich. | 49 CFR 172.101, 173.315(a)(1) | To ship a flammable gas in non-DOT specification insulated cargo tank, designed and constructed in accordance with the ASME Code. (Mode 1.) |
| 6939-X | DOT-E 6939 | Warren Petroleum Co., Tulsa, Okla. | 49 CFR 173.315 (a)(1), (c)(1) | To ship a flammable gas mixture in a DOT Specification MC-331 cargo tank. (Model 1.) |
| 6958-X | DOT-E 6958 | Dow Chemical Co., Findlay, Ohio; Great Lakes Chemical Corp., El Dorado, Ark. | 49 CFR 173.252(a) | To ship bromine in a non-DOT specification portable tank. (Modes 1, 3.) |
| 7005-X | DOT-E 7005 | Logemafer, S.A., Paris, France | 46 CFR 90.05-35; 49 CFR Part 173. | To ship certain flammable, corrosive, Class B poisons and combustible liquids and ORM-A materials in non-DOT specification portable tanks. (Modes 1, 2, 3.) |
| 7060-P | DOT-E 7060 | Atlantic Air, Inc., Baltimore, Md | 49 CFR 175.75(a)(3), 175.700 | To become a party to Exemption 7660. (Mode 4.) |
| 7078-X | DOT-E 7078 | Carroll Air Service, Inc., Kingston, N.Y. | 49 CFR 175.75(a)(3), 175.700(a) | To transport radioactive materials with a transport index in excess of 50 and with separation distance requirements less than those prescribed in the regulations. (Mode 4.) |
| 7218-X | DOT-E 7218 | Structural Composites Industries, Inc., Azusa, Calif. | 49 CFR 173.302(a)(1), 173.304(a)(1), 175.3. | To manufacture, mark and sell non-DOT Specification filament-wound reinforced plastic aluminum lined cylinders for shipment of nonflammable gases. (Modes 1, 2, 3, 4, 5.) |
| 7220-X | DOT-E 7220 | Greif Brothers Corp., Union, N.J | 49 CFR Part 173; 178.19 | To manufacture, mark and sell non-DOT specification reusable, blow-molded, polyethylene containers for shipment of certain corrosive liquids, flammable liquids, oxidizers and Class B poisonous liquids. (Modes 1, 2, 3.) |
| 7244-X | DOT-E 7244 | United Airlines, Inc., San Francisco, Calif. | 49 CFR 173.302, 173.304, 175.3 | To transport organ transplant modules containing certain compressed gases aboard a passenger-carrying aircraft. (Mode 5.) |
| 7249-X | DOT-E 7249 | E. I. du Pont de Nemours & Co., Inc., Wilmington, Del. | 49 CFR 173.128(a) | To ship certain flammable liquids in DOT Specification 34 reusable molded polyethylene containers. (Mode 1.) |
| 7269-X | DOT-E 7269 | U.S. Energy Research and Development Adm., Washington, D.C. | 49 CFR 173.65(a) | To ship certain Class A explosives in sift-proof paper or plastic bags overpacked in DOT Specification 21C fiber drums. (Mode 1.) |
| 7269-P | DOT-E 7269 | Rockwell International Corp., Canoga Park, Calif. | 49 CFR 173.65(a) | To become a party to Exemption 7269. (Mode 1.) |
| 7286-X | DOT-E 7286 | Liquid Carbonic Corp., Chicago, Ill. | 49 CFR 173.34(e)(15)(i) | To extend the ten year retest provisions to DOT Specification 3A or 3AA cylinders ICC-3, 3A or 3AA cylinders over 35 years old. (Modes 1, 2, 3, 4, 5.) |
| 7440-X | DOT-E 7440 | Roux Laboratories Inc., Jacksonville, Fla. | 49 CFR Part 173 | To ship a nonflammable gas in a non-DOT specification cylindrical aluminum container complying with DOT Specification 2Q with certain exceptions. (Modes 1, 2, 3.) |
| 7446-X | DOT-E 7446 | Kaiser Aluminum and Chemical Corp., Erie, Pa. | 49 CFR 173.30 (a)(1), 178.36 | To manufacture, mark and sell non-DOT specification seamless aluminum cylinders for shipment of a dry powderfire extinguishant charged with compressed air or nitrogen. (Modes 1, 2, 3.) |
| 7483-P | DOT-E 7483 | Compagnie Generale Maritime, Paris, France. | 46 CFR 90.05-35; 49 CFR Part 173. | To become a party to Exemption 7483. (Modes 1, 2, 3.) |
| 7489-X | DOT-E 7489 | Micor Company, Inc., Milwaukee, Wis. | 49 CFR 172.312, 173.249 | To ship a corrosive liquid in a DOT Specification 37A metal drum having inside metal containers. (Modes 1, 2, 3.) |
| 7495-X | DOT-E 7495 | General American Transportation Corp., Chicago, Ill. | 49 CFR 173.315(a)(1) | To manufacture, mark and sell non-DOT specification steel portable tanks for shipment of chlorine or sulfur dioxide. (Modes 1, 2, 3.) |
| 7513-X | DOT-E 7513 | Burdett Oxygen Co., Norristown, Pa. | 49 CFR 173.315(a)(1) | To ship liquid oxygen in DOT Specification MC-331 cargo tanks. (Mode 3.) |
| 7520-X | DOT-E 7530 | Puerto Rico Maritime Shipping Authority, Elizabeth, N.J.; Dow Chemical Co., Midland, Mich. | 49 CFR Part 173; 46 CFR 90.05-35. | To ship certain combustible and flammable liquids in non-DOT specification steel portable tanks. (Modes 1, 3.) |
| 7555-X | DOT-E 7555 | Provost Cartage, Inc., D'Anjou, Quebec, Canada. | 49 CFR 173.263(a)(10), 173.265(b)(4), 172.101. | To ship certain corrosive liquids in a non-DOT specification fiberglass reinforced plastic cargo tank. (Mode 1.) |
| 7607-P | DOT-E 7607 | E. I. du Pont de Nemours & Co., Inc., Wilmington, Del. | 49 CFR 172.101, 175.3 | To become a party to Exemption 7607. (Mode 5.) |
| 7621-X | DOT-E 7621 | Great Lakes Chemical Corp., West Lafayette, Ind. | 49 CFR 173.353, 173.357 | To ship methyl bromide, a posion B liquid, in a non-DOT specification portable tank. (Modes 1, 2, 3.) |
| 7625-P | DOT-E 7625 | Van Waters & Rogers, St. Paul, Minn. | 49 CFR 173.245, 173.249, 173.263, 173.268, 173.272. | To become a party to Exemption 7625. (Mode 1.) |
| 7628-X | DOT-E 7628 | Chemtech Industries, Inc., St. Louis, Mo. | 49 CFR 173.264(a)(11), 173.265(b)(3). | To ship certain corrosive liquids in DOT Specification 111A100W-5 tank cars. (Mode 2.) |
| 7654-P | DOT-E 7654 | Fisher Scientific Co., Fair Lawn, N.J.; J. T. Baker Chemical Co., Phillipsburg, N.J. | 49 CFR 173.119(f) | To become a party to Exemption 7654. (Modes 1, 2.) |
| 7694-X | DOT-E 7694 | Nuclear Valve Div., Borg Warner Corp., Van Nuys, Calif. | 49 CFR 173.302(a)(4), 175.3 | To ship a cold gas actuation system containing helium, argon or nitrogen in non-DOT specification steel cylinders made in compliance with DOT Specification 39 with certain exceptions. (Modes 1, 2, 4.) |

**Renewals**—Continued

| Application No. | Exemption No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 7726-X | DOT-E 7726 | Hughes Aircraft Co., Culver City, Calif. | 49 CFR 173.34(d), 173.302, 175.3. | To manufacture, mark and sell small low pressure non-DOT specification aluminum containers for shipment of nonflammable gases. (Modes 1, 4.) |
| 7744-X | DOT-E 7744 | Dow Corning Corp., Midland, Mich. | 49 CFR 172.101, 173.315(a), 178.337-11(c). | To ship liquefied anhydrous hydrogen chloride in non-DOT cargo tanks. (Mode 1.) |
| 7755-X | DOT-E 7755 | Varian Associates, Palo Alto, Calif | 49 CFR Parts 100-199 | To ship small quantities of liquid hazardous materials, descirbed as analytical standards, essentially without regulation. (Modes 1, 2, 3, 4, 5.) |
| 7765-X | DOT-E 7765 | Carleton Controls Corp., East Aurora, N.Y. | 49 CFR 173.302(a)(4), 175.3 | To ship nitrogen in steel spheres patterned after DOT Specification 39 with certain exceptions. (Modes 1, 2, 4.) |
| 7774-X | DOT-E 7774 | Weatherford/DMC, Houston, Tex. | 49 CFR 173.246 | To ship bromine triflouride in non-DOT specification seamless steel cylinders. (Mode 1.) |
| 7819-P | DOT-E 7819 | Societe Anonyme Pour L'Industrie Chimique, Paris, France. | 49 CFR Part 173; 46 CFR 90.05-35. | To become a party to Exemption 7819. (Modes 1, 2, 3.) |
| 7820-X | DOT-E 7820 | Compagnie des Container Reservoirs, Neuilly S/Seine, France. | 49 CFR Part 173; 46 CFR 90.05-35. | To ship certain corrosive liquids flammable liquids, poison B liquids and combustible liquids in a non-DOT specification portable IMCO Type II insulated portable tank. (Modes 1, 2, 3.) |
| 7820-P | DOT-E 7820 | Liquor Control Board of Ontario, Toronto, Canada. | 49 CFR Part 173; 46 CFR 90.05-35. | To become a party to Exemption 7820. (Modes 1, 2, 3.) |
| 7862-X | DOT-E 7862 | General Electric Co., Miami, Fla. | 49 CFR 173.302, 175.3 | To ship xenon in a non-DOT specification steel pressure vessel overpacked in a plywood box. (Modes 1, 4, 5.) |
| 7871-X | DOT-E 7871 | Atlas Powder International Ltd., Miami, Fla. | 49 CFR 176.155(a)(4) | To stow electric blasting caps and nonel primadets, Class A explosives, near other class A explosives and oxidizers at a distance less than prescribed. (Mode 3.) |
| 7938-X | DOT-E 7938 | Bignier Schmidt-Laurent, Paris, France. | 49 CFR Part 173 | To ship certain corrosive, flammable Class B poisonous and combustible liquids and ORM-A materials in non-DOT Specification portable tanks. (Modes 1, 2, 3.) |
| 7938-P | DOT-E 7938 | Transcontainer Leasing, S.A., Paris, France. | 49 CFR Part 173 | To become a party to Exemption 7938. (Modes 1, 2, 3.) |
| 7966-X | DOT-E 7966 | The Enterprise Companies, Wheeling, Ill. | 49 CFR 173.245(a)(12) | To ship a corrosive material in steel containers overpacked in DOT Specification 12B fiberboard boxes. (Modes 1, 2.) |
| 8006-P | DOT-E 8006 | Bland Brothers, Inc., New York, N.Y. | 49 CFR 172.400(a), 172.504 | To become a party to Exemption 8006. (Mode 1.) |
| 8030-P | DOT-E 8030 | NL McCullough, Houston, Tex. | 49 CFR 173.80(b)(c) | To become a party to Exemption 8030. (Mode 1.) |
| 8088-P | DOT-E 8088 | U.S. Steel Products, Pittsburgh, Pa. | 49 CFR 175.3; Part 178 | To become a party to Exemption 8088. (Modes 1, 2, 3, 4.) |
| 8109-X | DOT-E 8109 | Lowaco, S.A., Geneva, Switzerland. | 49 CFR Part 173; 46 CFR 90.05-35. | To ship certain hazardous materials (liquids) in non-DOT specification intermodal portable tanks. (Modes 1, 2, 3.) |
| 8109-P | DOT-E 8109 | Transport International Container, Paris, France; CATU Container, S.A., Geneva, Switzerland. | 49 CFR Part 173; 46 CFR 90.05-35. | To become a party to Exemption 8109. (Mode 1, 2, 3.) |
| 8110-P | DOT-E 8110 | Transport International Container, S.A., Paris, France. | 49 CFR Part 173; 46 CFR 90.05-35. | To become a party to Exemption 8110. (Mode 1, 2, 3.) |
| 8159-P | DOT-E 8159 | Lowaco, S.A., Geneva, Switzerland; Transport International Containers, S.A., Paris, France. | 49 CFR 173.266 | To become a party to Exemption 8159. (Modes 1, 2, 3.) |

**New Exemptions**

| Application No. | Exemption No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 7873-N | DOT-E 7873 | Bromine Compounds Limited, Beer Sheva, Israel. | 49 CFR 173.353a | To ship a Class B poison liquid in non-DOT specification portable tanks. (Modes 1, 3.) |
| 8097-N | DOT-E 8097 | AGFA-Gevaert, Inc., Teterboro, N.J. | 49 CFR 173.204, 175.3 | To ship sodium hydrosulfite in DOT Specification 12B corrugated fiberboard boxes having inside PE bags packed in metal cans. (Modes 1, 4.) |
| 8127-N | DOT-E 8127 | Societe Nationale Des Poudres, et Explosifs, Bergerac, France. | 49 CFR 173.127, 173.184, 178.224. | To ship nitrocellulose, wet with alcohol or water in a non-DOT specification fiberboard drum. (Modes 1, 2, 3.) |
| 8139-N | DOT-E 8139 | Utility Chemical Co., Paterson, N.J. | 49 CFR 173.217 | To ship trichloro-s-triazinetrione, dry in a non-DOT specification corrugated fiberboard box having inside polyethylene pails or bags. (Modes 1, 2, 3.) |
| 8146-N | DOT-E 8146 | Thiokol, Wasatch Division, Brigham City, Utah. | 49 CFR 173.375 | To ship sodium azide in a DOT specification 56 portable tank or a non-DOT specification collapsible flexible container. (Modes 1, 2.) |
| 8151-N | DOT-E 8151 | Ropak West, Inc., La Mirada, Calif. | 49 CFR Part 173 | To manufacture, mark and sell non-DOT specification removable head, 5-gallon polyethylene containers for shipment of corrosive liquids and flammable liquids. (Modes 1, 2, 3.) |

**New Exemptions**—Continued

| Application No. | Exemption No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 8156-N | DOT-E 8156 | Gardner Cryogenics Corp., Bethlehem, Pa. | 49 CFR 173.302(a)(4), 173.304(a)(1)(i). | To ship various flammable gases in DOT Specification 39 steel cylinders not exceeding 225 cubic inch capacity. (Modes 1, 2.) |
| 8157-N | DOT-E 8157 | Igloo Corp., Houston, Tex | 49 CFR 173.346 | To manufacture, mark and sell DOT Specification 34 containers for shipment of weed killing compounds including dinitrophenol solutions. (Modes 1, 2, 3.) |
| 81587-N | DOT-E 81587 | Ford Aerospace and Communications Corp., Palo Alto, Calif. | 49 CFR 173.260(a)(1), 175.3 | To ship wet electric storage batteries in DOT Specification 15A or 15 B wooden boxes. (Modes 1, 2, 4.) |
| 8159-N | DOT-E 8159 | Fauvet/Girel, Paris, France | 49 CFR 173.266 | To ship hydrogen peroxide in non-DOT specification portable tanks. (Modes 1, 2, 3.) |
| 8164-N | DOT-E 8164 | Westinghouse Electric Corp., Athens, Ga. | 49 CFR Parts 170-177 | To ship an explosive disconnector in a non-DOT specification fiberboard box. (Modes 1, 2, 3.) |
| 8168-N | DOT-E 8168 | Container Corp. of America, Wilmington, Del. | 49 CFR 173.217, 173.245b, 178.19. | To manufacture, mark and sell non-DOT specification blow-molded, removable head polyethylene containers for the shipment of certain corrosive solids and solid oxidizers. (Modes 1, 2, 3.) |
| 8170-N | DOT-E 8170 | Ray-O-Vac Div.; Madison, Wis. | 49 CFR 173.154(a)(1) | To ship silver oxide, dry powder in non-DOT specification removable head stainless steel drums contained in wire containers. (Modes 1.) |
| 8171-N | DOT-E 8171 | Abercom Investments Limited, London, England. | 49 CFR Part 173, 46 CFR 90.05-35. | To ship certain flammable liquids, corrosive liquids, poison B liquids, and combustible liquids in non-DOT specification portable tanks. (Modes 1, 2, 3.) |

**Emergency Exemptions**

| Application No. | Exemption No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| | | APPLICATIONS RECEIVED AND GRANTED | | |
| EE6554-P | DOT-E 6554 | Aspen Industries, Inc., Tully, N.Y. | 49 CFR 173.154, 173.217 | To become a party to Exemption 6554. (Modes 1, 2, 3.) |
| EE8228-N | DOT-E 8228 | The U.S. Dept. of Treasury, Washington, D.C. | 49 CFR 173.86, 173.100(bb), 173.113(a)(1). | To ship certain materials or devices classed as explosive C in a DOT Specification 12H fiberboard box. (Mode 1.) |
| EE8242-N | DOT-E 8242 | Hill Brothers Chemical Co., City of Industry, Calif. | 49 CFR 173.217 | To ship an oxidizer in non-DOT specification removable head polyethlene container not exceeding 5 gallon capacity. (Mode 1.) |
| EE8246-N | DOT-E 8246 | Honeywell Inc., Minneapolis, Minn. | 49 CFR 173.302, 178.38, 178.42 | To ship helium and neon gases in modified DOT specification 3E1800 or 3B400 cylinders. (Mode 1.) |

**Denial**

8169-N—Request by Hercules Inc., Wilmington, Del.—To transport blasting caps which exceed the 14 grain limit specified in the "IME Standard for the Safe Transportation of Electric Blasting Caps in the Same Vehicle with other Explosives", denied July 9, 1979.

**J. R. Grothe,**

*Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.*

[FR Doc. 79-27759 Filed 9-5-79; 8:45 am]

BILLING CODE 4910-60-M

## VETERANS ADMINISTRATION

### Domiciliary and 54-Bed Nursing Home Care Unit, VAMC, Prescott, Arizona; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the construction of a Domiciliary and 54-bed Nursing Home Care Unit (NHCU) Facility at the Veterans Administration Medical Center (VAMC), Prescott, Arizona.

The project proposes construction of a one or two story domiciliary and 54-bed Nursing Home Care Unit building south of the main hospital building. The domiciliary will house living quarters, all auxiliary services, rehabilitative medicine, occupational therapy and recreation. The present domiciliary space, buildings Nos. 12, 13 and 14, will be renovated and used for various VAMC needs.

Development of the project will have minimal impacts on the human and natural environment as it affects topography, surface runoff and erosion. During construction, additional noise, dust, fumes and visual impacts will exist. The historic character of the station will be somewhat adversely affected.

Mitigation of the project impacts include: slope stabilization, soil erosion and sedimentation control, onsite noise abatement measures and control of construction dust and fumes. An historical analysis, in accordance with the National Historic Preservation Act of 1966, will be performed by contract to evaluate mitigating actions in regard to the station's historical significance.

This Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, § 1508.9, Title 40, Code of Federal Regulations. A "Finding of No Significant Impact" has been reached based on the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. Willard Sitler, Director, Office of Environmental Affairs (004A), Room 1018, Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420. Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: August 29, 1979.

By direction of the Administrator.

**Maury S. Cralle, Jr.,**

*Assistant Deputy Administrator for Financial Management and Construction.*

[FR Doc. 79-27588 Filed 9-5-79; 8:45 am]

BILLING CODE 8320-01-M

## 60-Bed Nursing Home Care Unit, VAMC, Reno, Nevada; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the construction of a new 60-Bed Nursing Home Care Unit (NHCU) at the Veterans Administration Medical Center (VAMC), Reno, Nevada.

The project proposes construction of a 60-bed Nursing Home Care Unit with a corridor connection to the northwest side of building No. 1. The nursing home will be a one-story structure of approximately 29,497 gross square feet.

Development of the project will have minimal impacts on the human and natural environment. There will be some temporary noise, dust, fumes, and visual impacts during construction.

Mitigation of the project impacts include: soil erosion and sedimentation control, onsite noise abatement measures and control of construction dust and fumes.

This Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, Section 1508.9, Title 40, Code of Federal Regulations. A "Finding of No Significant Impact" has been reached based on the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. Willard Sitler, Director, Office of Environmental Affairs (004A), Room 1018, Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420. Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: August 29, 1979.

By direction of the Administrator:

**Maury S. Cralle, Jr.,**

*Assistant Deputy Administrator for Financial Management and Construction.*

[FR Doc. 79-27599 Filed 9-5-79; 8:45 am]

BILLING CODE 8320-01-M

[No MC-F-12312, etc.]

## Whitfield Transportation, Inc. and System 99; Operating Rights Under Temporary Authority

Decison MC-F-12312. Whitfield Transportation, Inc., Purchase (Portion), Lee Hawkes Transfer, and Whitfield Transportation, Inc., Control and merger, Miller Brothers Truck Line; MC 108461 (Sub-123), Whitfield Transportation, Inc., Conversion irregular to regular routes; MC-F-13311, Whitfield Transportation, Inc., Purchase, Idaho Falls Transfer & Storage Co.; MC 108461 (Sub-128), Whitfield Transportation, Inc. Extension, Idaho Points, Reentitled; MC-F-12312, System 99, Purchase (Portion), Lee Hawkes Transfer, and System 99, Control and Merger, Miller Brothers Truck Line; MC 108461 (Sub-123), System 99, Conversion Irregular to Regular Routes; MC-F-13311, System 99, Purchase, Idaho Falls Transfer & Storage Co.; MC 108461 (Sub-128), System 99 Extension, Idaho Points. Decided: August 30, 1979.

On August 27, 1979, Whitfield Transportation, Inc., and System 99 filed a joint petition for substitution of the latter applicant in these proceedings. As good cause has been demonstrated for this substitution, we will grant the request. Whitfield is leasing the above entitled operating rights under temporary authority. System 99 will be permitted to replace Whitfield in temporarily leasing the same rights.

System 99 had also sought to be substituted in docket No. MC 108461 (Sub-133TA), *Sundance Freight Lines, Inc., Alternate Route.* This is an alternate route application for the conservation of energy and the safety of the traveling public during the tourist season. Due to the nature of the temporary alternate route authority, substitution is not permissible. This portion of System 99's petition will be dismissed.

*It is ordered:* System 99 is substituted as applicant in the above entitled proceedings for Whitfield Transportation, Inc.

In docket No. MC 108461 (Sub-No. 133TA), *Sundance Freight Lines, Inc., Alternate Route,* System 99's requests for substitution is dismissed.

Notice of this decision will be published in the **Federal Register.**

By the Commission, Alan M. Fitzwater, Director, Office of Proceedings.

**Agatha L. Mergenovich,**

*Secretary.*

[FR Doc. 79-27754 Filed 9-5-79; 8:45 am]

BILLING CODE 7035-01-M

[Sixty-Eighth Revised Exemption No. 90]

## Exemption Under Provision of Rule 19 of the Mandatory Car Service Rules Ordered in Ex Parte No. 241

*It appearing,* That the railroads named below own numerous 50-ft. plain boxcars; that under present conditions there are substantial surpluses of these cars on their lines; that return of these cars to the owners would result in their being stored idle; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of these cars, resulting in unnecessary loss of utilization of such cars.

*It is ordered,* That pursuant to the authority vested in me by Car Service Rule 19, 50-ft. plain boxcars described in the Official Railway Equipment Register, ICC RER 6410-B, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM," and bearing reporting marks assigned to the railroads named below, shall be exempt from provisions of Car Service Rules 1, 2(a), and 2 (b).

Aberdeen and Rockfish Railroad Company, Reporting Marks: AR.
Ann Arbor Railroad System, Michigan Interstate Railway Company, Operator, Reporting Marks: AA.
Apalachicola Northern Railroad Company, Reporting Marks: AN.
Atlanta & Saint Andrews Bay Railway Company, Reporting Marks: ASAB.
Bath and Hammondsport Railroad Company, Reporting Marks: BH.
Berlin Mills Railway Inc., Reporting Marks: BMS.
*Cadiz Railraod Company, Reporting Marks: CAD.
Camino, Placerville & Lake Tahoe Railroad Company, Reporting Marks: CPLT.
City of Prineville, Reporting Marks: COP.
The Clarendon and Pittsford Railroad Company, Reporting Marks: CLP.
Columbus and Greenville Railway Company, Reporting Marks: CAGY.
Duluth, Missabe and Iron Range Railway Company, Reporting Marks: DMIR.
East Camden & Highland Railroad Company, Reporting Marks: EACH.
*East St. Louis Junction Railroad Company, Reporting Marks: ESLJ.
Galveston Wharves, Reporting Marks: GWF.
Genessee and Wyoming Railway Company, Reporting Marks: GNWR.
Greenville and Northern Railway Company, Reporting Marks: GRN.
The Hutchinson and Northern Railway Company, Reporting Marks: HN.
Indiana Eastern Railroad and Transportation, Inc., d.b.a. The Hoosier Connection, Reporting Marks: HOSC.
*Lake Erie, Franklin & Clarion Railroad Company, Reporting Marks: LEF.

*Additions.

Lake Superior & Ishpeming Railroad Company, Reporting Marks: LSI.
Lenawee County Railroad Company, Inc., Reporting Marks: LCRC.
*Longview, Portland & Northern Railway Company, Reporting Marks: LPN.
Louisiana Midland Railway Company, Reporting Marks: LOAM.
Louisville and Wadley Railway Company, Reporting Marks: LW.
Louisville, New Albany & Corydon Railroad Company, Reporting Marks: LNAC.
Manufacturers Railway Company, Reporting Marks: MRS.
Maryland and Delaware Railroad Company, Reporting Marks: MDDE.
Middletown and New Jersey Railway Company, Inc., Reporting Marks: MNJ.
Missouri-Kansas-Texas Railroad Company, Reporting Marks: MKT–BKTY.
*Moscow, Camden & San Augustine Railroad, Reporting Marks: MCSA.
New Hope and Ivyland Railroad Company, Reporting Marks: NHIR.
New Orleans Public Belt Railroad, Reporting Marks: NOPB.
New York, Susquehanna and Western Railroad Company, Reporting Marks: NYSW.
Octararo Railway, Inc., Reporting Marks: OCTR.
Oregon & Northwestern Railroad Co., Reporting Marks: ONW.
Pearl River Valley Railroad Company, Reporting Marks: PRV.
Peninsula Terminal Company, Reporting Marks: PT.
Port Huron and Detroit Railroad Company, Reporting Marks: PHD.
Port of Tillamook Bay Railroad, Reporting Marks: POTB.
Providence And Worcester Company, Reporting Marks: PW.
Raritan River Rail Road Company, Reporting Marks: RR.
Sacramento Northern Railway, Reporting Marks: SN.
St. Lawrence Railroad, Reporting Marks: NSL.
*St. Marys Railroad Company, Reporting Marks: SM.
Savannah State Docks Railroad Company, Reporting Marks: SSDK.
Sierra Railroad Company, Reporting Marks: SERA.
Terminal Railway, Alabama State Docks, Reporting Marks: TASD.
The Texas Mexican Railway Company, Reporting Marks: TM.
Tidewater Southern Railway Company, Reporting Marks: TS.
Toledo, Peoria & Western Railroad Company, Reporting Marks: TPW.
*Union Railroad of Oregon, Reporting Marks: UO.
Vermont Railway, Inc., Reporting Marks: VTR.
*Wabash Valley Railroad Company, Reporting Marks: WVRC.
WCTU Railway Company, Reporting Marks: WCTR.
Youngstown & Southern Railway Company, Reporting Marks: YS.
Yreka Western Railraod Company, Reporting Marks: YW.

*Effective August 15, 1979,* and continuing in effect until futher order of this Commission.

Issued at Washington, D.C., August 10, 1979.

Interstate Commerce Commission.

**Joel E. Burns,**

*Agent.*

[FR Doc. 79-27808 Filed 9-5-79; 8:45 am]

BILLING CODE 7035-01-M

## Fourth Section Application for Relief

August 31, 1979

This application for long-and-short-haul relief has been filed with the I.C.C. Expedited handling of the application has been granted.

FSA 43742, Southern Freight Association, Agenct No. A6354, reduced rates on furniture between stations on the Southern Railway and stations on the Florida East Coast Railway published in Supplement 57 to Tariff ICC SFA 4972 to be effective September 29, 1979 and to expire with September 30, 1979. Grounds for relief—motor competition and improved car utilization. Authority has been requested to advance effective date to an earlier date. Protests against grant of relief are due at the offices of the Commission, Suspension and Fourth Section Board, in Washington, D.C., not later than noon, September 12, 1979. Telegraphic filing with indication of notarization is acceptable.

By the Commission.

**Agatha L. Mergenovich,**

*Secretary.*

[FR Doc. 79-27809 Filed 9-5-79; 8:45 am]

BILLING CODE 7035-01-M

## ICC Order No. 49 Under Service Order No. 1344

### Rerouting Traffic

In the opinion of Joel E. Burns, Agent, The Baltimore and Ohio Railroad Company is unable to transport promptly all traffic over its car float transfer bridge at its St. George Lighterage, Staten Island, New York, is out of service because the pontoon will not float.

*It is ordered.* (a) *rerouting traffic.*—The Baltimore and Ohio Railroad Company, being unable to transport promptly all traffic over its car float transfer bridge at its St. George Lighterage, because the pontoon will not float, is hereby authorized to divert or reroute such traffic over any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers, or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 2:00 p.m., August 17, 1979.

(g) *Expiration date.* This order shall remain in effect until modified or vacated by order of this Commission.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of the order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., August 17, 1979.

Interstate Commerce Commission,

**Joel E. Burns,**

*Agent.*

[FR Doc. 79-27813 Filed 9-5-79; 8:45 am]

BILLING CODE 7035-01-M

# Sunshine Act Meetings

Federal Register
Vol. 44, No. 174
Thursday, September 6, 1979

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## CONTENTS



### 1

**[M-242; Sept. 4, 1979]**

**CIVIL AERONAUTICS BOARD.**

**TIME AND DATE:** 10 a.m., September 10, 1979.

**PLACE:** Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

**SUBJECT:** Oral Argument—Dockets 32711, 33019, and 34582—Interstate Service At Love Field.

**STATUS:** Open.

**PERSON TO CONTACT:** Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-1727-29 Filed 9-4-79; 2:55 pm]

**BILLING CODE 6320-01-M**

### 2

**COMMODITY CREDIT CORPORATION.**

**TIME AND DATE:** 2 p.m., September 13, 1979.

**PLACE:** Room 218-A, Administration Building, U.S. Department of Agriculture, Washington, D.C.

**STATUS:** Open, except for item 10 which will be closed to the public.

**MATTERS TO BE CONSIDERED:**

1. Minutes of CCC board meeting on April 10, 1979.
2. Docket UCP 109a re: 1979 gum naval stores loan program.
3. Docket UCP 66a re: 1979 crop honey loan and purchase program.
4. Docket UCP 40a re: 1979 tobacco loan program.
5. Docket UCP 137a, Amendment 1 re: 1979 crop barley, corn, oats, rye, and sorghum loan, purchase, payments, set-aside and land diversion programs.
6. Docket CZ 157, Revision 4 re: Policy and procedure governing the submission of dockets to the Board of Directors, CCC, and the handling of dockets considered by the Board.
7. Docket UCP 98a re: Milk price support program, 1979-80.
8. Docket CZ 193, Revision 5 re: Policy governing the approval of warehousing facilities and bonding requirements for the warehousing of certain commodities.
9. Resolution 17, CZ 266 re: Commodities available for Public Law 480 during fiscal year 1980.
10. Docket VNP 307 re: Purchase and distribution of agricultural commodities and other foods for domestic distribution with FNS and Section 32 funds, fiscal year 1980.

**CONTACT PERSON FOR MORE INFORMATION:** Bill Cherry, Secretary, Commodity Credit Corporation, Room 202-W, Administration Building, U.S. Department of Agriculture, Washington, D.C. 20013, Telephone (202) 447-7583.

[S-1724-79 Filed 9-4-79; 10:37 am]

**BILLING CODE 3410-05-M**

### 3

**FEDERAL COMMUNICATIONS COMMISSION.**

**TIME AND DATE:** 9:30 a.m., Thursday, September 6, 1979.

**PLACE:** Room 856, 1919 M Street NW., Washington, D.C.

**STATUS:** Special open Commission meeting.

**MATTERS TO BE CONSIDERED:**

*Agenda, Item Number, and Subject*

Broadcast—1—Notice of Inquiry looking toward an analysis of all non-technical rules and policies which regulate the radio industry and consider changes in the Commission's policies and regulations concerning intra-industry conduct.

Broadcast—2—Modification or elimination of Commission rules and policies pertaining to AM and Commercial FM radio in the areas of nonentertainment programing, ascertainment, commercialization and related fields.

This meeting may be continued the following workday to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from the FCC Public Affairs Office, telephone number (202) 632-7260.

Issued: August 31, 1979.

[S-1725-79 Filed 9-4-79; 11:50 am]

**BILLING CODE 6712-01-M**

### 4

**FEDERAL COMMUNICATIONS COMMISSION.**

**TIME AND DATE:** 10:30 a.m., Tuesday, September 11, 1979.

**PLACE:** Room 856, 1919 M Street NW., Washington, D.C.

**STATUS:** Special open Commission meeting.

**MATTER TO BE CONSIDERED:**

*Agenda, Item Number, and Subject*

General—1—Preliminary Staff Report, UHF Comparability Task Force.

This meeting may be continued the following workday to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from the FCC Public Affairs Office, telephone number (202) 632-7260.

Issued: September 4, 1979.

[S-1726-79 Filed 9-4-79; 2:55 pm]

**BILLING CODE 6712-01-M**

### 5

**[Federal Register No. 1704]**

**FEDERAL ELECTION COMMISSION.**

**PREVIOUSLY ANNOUNCED DATE AND TIME:** Wednesday, September 5, 1979, 10 a.m.

**CHANGE IN MEETING:** The following item has been added—Litigation

**PREVIOUSLY ANNOUNCED DATE AND TIME:** Thursday, September 6, 1979, 10 a.m.

**CHANGE IN MEETING:** The following items have been added to the open portion of the meeting—

Revision of proposed regulations on the funding and sponsorship of candidate debates.

Final audit report—Democratic Executive Committee of Florida.

Final audit report—Republican Party of Florida—Federal campaign account.

**PERSON TO CONTACT FOR INFORMATION:** Mr. Fred S. Eiland, Public Information Officer, telephone: 202-523-4065.

**Marjorie W. Emmons,**

*Secretary to the Commission.*

[S-1723-79 Filed 9-4-79; 10:08 am]

**BILLING CODE 6715-01-M**

### 6

**FEDERAL HOME LOAN BANK BOARD.**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** Vol. 44, FR page 51398, August 31, 1979.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 9:30 a.m., September 5, 1979.

**PLACE:** 1700 G Street NW., sixth floor, Washington, D.C.

**STATUS:** Open meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Franklin O. Bolling (202–377–6677).

**CHANGES IN THE MEETING:** The following items have been added to the agenda for the open meeting—

Appeal for Compromise, Remission or Reduction of Liquidity Deficiency Penalties—American Federal Savings and Loan Association, Pueblo, Colo.

Application for Permission to Acquire Control By—Pennsylvania Life Company, Santa Monica, California and Houston First Financial Group, Houston, Texas of American Savings and Loan Association of Houston, Houston, Texas and subsequent merger of said association with Houston First Savings Association, Houston, Tex.

Regulation on Handling Classified Information.

Regulation on Rate of Return on Accounts Subject to Automatic Transfer.

Regulation on Clarifying Document.

No. 268, September 4, 1979.

[S–1728–79 Filed 9–4–79; 2:55 pm]

BILLING CODE 6720–01–M

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7

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.**

August 31, 1979.

**TIME AND DATE:** 10 a.m., September 7, 1979.

**PLACE:** Room 600, 1730 K Street NW., Washington, D.C.

**STATUS: OPEN.**

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following: 1. *Peabody Coal Company* v. *MSHA, UMWA and Local Union No. 1670;* Docket No. VINC 77–40 and VINC 77–50.

**CONTACT PERSON FOR MORE INFORMATION:** Jean Ellen, 213–653–5632.

[S–1729–79 Filed 9–4–79; 2:55 am]

BILLING CODE 6820–12–M

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8

**NATIONAL COUNCIL ON EDUCATION RESEARCH.**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENTS:** S–1548, filed July 26, 1978; 11:44 a.m.

**DATE AND TIME:** 9:30 a.m.–3:30p.m., September 14, 1979.

**PLACE:** Room 823, National Institute of Education, 1200 19th Street NW., Washington, D.C.

**STATUS:** Certification has been received from the HEW Office of General Counsel, that in the opinion of that office, the NCER "would be authorized to close portions of its meeting on September 14, 1979, under 5 U.S.C. 522b(c)(9)(B) and 45 CFR 1440.2(a)(9) for the purposes of reviewing and discussing with the Acting Director of NIE, the proposed executive branch budget for fiscal 1981, in particular, the sections dealing with the proposed budget and funding priorities of NIE." Agenda item No. 4 will be closed, the rest of the agenda remains open to the public.

**MATTERS TO BE CONSIDERED:**

*Friday, September 14, 1979*

1. Approve July 12–13 Minutes (9:30–9:35 a.m.)
2. Director's Report (9:35–10:30 a.m.)
3. Report on HEW's Congressionally-Mandated Study of School Finance (10:30–11:15 a.m.)
4. Closed: Fiscal year 1981 budget (11:15–12:00 noon).
5. Literacy: Part I (1–3:30 p.m.)

**CONTACT PERSON FOR MORE INFORMATION:** Ella L. Jones, Administrative Coordinator, telephone: 202/254–7900.

Peter H. Gerber,

*Chief, Policy and Administrative Coordination, National Council on Educational Research.*

[S–1722–79 Filed 9–4–79; 10:08 am]

BILLING CODE 4110–39–M

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9

[NM–79–30]

**NATIONAL TRANSPORTATION SAFETY BOARD.**

**TIME AND DATE:** 9 a.m., Thursday, September 13, 1979.

**PLACE:** NTSB board room, National Transportation Safety Board, 800 Independence Avenue SW., Washington, D.C. 20594.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. *Railroad Accident Report*—Louisville & Nashville Railroad Company Freight Train Derailment and Puncture of Hazardous Material Tank Cars near Crestview, Florida, April 18, 1979, and *Recommendations* to Louisville & Nashville Railroad Co.
2. *Railroad Accident Report*—National Railroad Passenger Corporation, Head End Collision of Train No. 111 and Plasser Track Machine Equipment, Edison, New Jersey, April 20, 1979, and *Recommendations* to the National Railroad Passenger Corp.
3. *Safety Report to Congress*—Safety Modifications of Railroad Tank Cars Carrying Hazardous Materials and a *Recommendation* to the Secretary, Department of Transportation.
4. *Special Investigation Report on the Safe Transportation of Hazardous Materials*—Onscene Coordination Among Agencies at Hazardous Materials Accidents and *Recommendation* to Secretary, Department of Transportation.
5. *Aircraft Accident Report*—New York Airways, Inc., Sikorsky S61–L, N681PA, Newark, N.J., April 18, 1979.

**CONTACT PERSON FOR MORE INFORMATION:** Sharon Flemming, 202–472–6022.

September 4, 1979.

[S–1730–79 Filed 9–4–79; 3:12 pm]

BILLING CODE 4910–58–M

federal register

Thursday
September 6, 1979

Part II

# Department of Transportation

## Federal Aviation Administration

## Petition for Rulemaking of the Air Transport Association of America

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### [14 CFR Ch. I]

### [Docket No. 18691; Notice No. PR-79-9]

## Petition for Rulemaking of the Air Transport Association of America, Airport Noise Abatement Plans: Regulatory Process

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

**ACTION:** Publication of petition for rule making; request for comments.

**SUMMARY:** This notice publishes for public comment the petition and supporting documents of the Air Transport Association of America (ATA), dated January 16, 1979, on behalf of its member air carriers, for amendment of the Federal Aviation Regulations to add a new Part 150 (14 CFR Part 150) to those provisions applicable to airports. The ATA petition requests, for the reasons disclosed, the Administrator to initiate rule-making proceedings to adopt regulations prescribing the process under which airport noise abatement plans, or similar restrictions upon the operation of aircraft at an FAA certificated airport, must be submitted to and considered by the FAA before the plan is implemented or enforced.

The ATA's petition involves some issues that are similar to those involved in a notice of proposed rule making issued by the FAA in 1976 based on recommended regulations submitted to it by the U.S. Environmental Protection Agency under section 611(c) of the Federal Aviation Act of 1958, as amended. That notice (Notice No. 76–24), among other things, contains proposals to require development and submission of airport noise abatement plans and periodic up-dates to those plans by all proprietors of civil airports certificated by the FAA under Part 139. Those proposals, if adopted, would prescribe the regulatory process for development, approval, and implementation of airport noise abatement plans which would, unless disapproved by the FAA, become an essential part of the airport's operating certificate issued by the FAA. For the benefit of commenters the EPA recommended rule is being republished as an appendix to this notice. The FAA believes the ATA petition should be published verbatim in order—(1) to receive public comment on the question of whether additional Federal regulations are needed and on the differences, as well as the similarities, between the two regulatory approaches to airport noise abatement plans; and (2) to ensure due consideration of each separately under the applicable FAA rule-making procedures. Although this notice sets forth without change the contents of the ATA petition as received by the FAA, its publication in accordance with FAA procedures governing the processing of petitions for rule making does not represent an FAA position on the merits of the petition. Unlike Notice No. 74–22, which contained the EPA's recommended regulations, this notice does not propose any amendment of the current rules. If, after consideration of the available data and comments received in response to this notice, the FAA determines it should initiate rule-making proceedings based on the ATA petition, a notice of proposed rule making containing specific regulatory proposals will be issued.

**DATES:** Comments must be received on or before November 5, 1979.

**ADDRESSES:** Send comments on the petition in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–24), Docket N. 18691, 800 Independence Avenue, SW., Washington, D.C. 20591.

**FOR FURTHER INFORMATION CONTACT:** Richard Tedrick, Noise Policy and Regulations Branch (AEE–110), Noise Abatement Division, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 755–9027.

**SUPPLEMENTARY INFORMATION:**

### I. Comments Invited

Interested persons are invited to submit such written data, views, or arguments on the petition for rule making as they may desire. Communications should identify the docket or petition notice number and be submitted in duplicate to the address indicated above. All communications timely received will be considered by the FAA before taking action on the petition for rule making. All comments submitted will be available for examination in the Rules Docket.

### Background

The ATA petitioned the FAA under the general rule-making procedures contained in FAR Part 11 to amend the Federal Aviation Regulations (FARs) to add a new Part 150 governing the administrative process under which airport noise abatement plans must be submitted to the FAA for review before the plan is implemented. Current regulations do not cover the subject; however, the FAA has established, nonregulatory programs for the development and implementation of airport noise abatement and land-use compatibility plans which include Federal grants to develop plans and submission of proposed plans to the FAA for review and comment on their potential impacts on flight safety, on efficient use and management of navigable airspace, on interstate and foreign air transportation and air commerce, and on the national air transportation system. More detailed discussion of those programs is contained in the Aviation Noise Abatement Policy statement issued in November 1976 and the FAA orders and advisory circulars which implement the programs. As indicated in the summary, the FAA is also considering the EPA recommended regulation for developing, approving, implementing, and up-dating airport noise abatement plans. Notice No. 76–24, containing the EPA proposal, was published in the **Federal Register** on November 22, 1976 (41 FR 51522) and comments submitted in response to that notice and presented at a public hearing are available for examination in the Rules Docket. Notice No. 76–24 is republished as an appendix to this notice to assist commenters in preparing their views and suggestions regarding the ATA petition.

In support of its petition the ATA states that it is convinced that the FAA must affirm and exercise the Federal government's preemptive authority in the public interest to ensure that environmental and safety objectives are met in a manner consistent with the laws relating to air transportation and air commerce and with the effective and expeditious resolution of Federal, State, and local responsibilities in the field of noise abatement. The ATA requests the FAA to formally disapprove any local noise abatement rules that are found to be—

(1) Inconsistent with the highest degree of safety in air commerce and air transportation;

(2) Inconsistent with the efficient utilization of navigable airspace;

(3) Unduly burdensome to interstate or foreign commerce or unduly interfering with the national air transportation system;

(4) Unjustly discriminatory; or

(5) In conflict with the Federal Aviation's statutory regulatory authority.

While all comments are invited and will receive due consideration, to assist the FAA in its review of the ATA petition, comments are particularly

welcomed on the following matters concerning the petition and on any appropriate comparisons that may be drawn with the EPA recommended regulation:

1. The need for additional Federal regulations to govern airport noise abatement and related local land-use compatibility planning and the implementation or enforcement of those plans, and whether those rules should ensure that—

a. Necessary airport noise analysis and noise abatement and compatible land-use planning is accomplished and adequately implemented and enforced;

b. Proposed plans adequately protect the public health and welfare from aircraft noise by identifying and selecting available noise abatement strategies;

c. Proposed plans and implementation do not exceed legitimate proprietary rights or State or local police powers and do not conflict with actions in areas in which the Federal Government has preempted; and

d. Proposed plans reflect the needs and desires of the affected communities and are based on adequate public participation.

2. The need for additional or clarifying legislative authority for using Federal regulations to prescribe any necessary and proper requirements governing—

a. A Federal process for developing, submitting, reviewing, and implementing airport noise abatement and compatible land-use plans, including those plans that contain local airport operating rules.

b. Federal preemption authority over the exercise of proprietary rights and State and local police powers in connection with such planning and implementation or enforcement, and

c. Any limitations on Federal preemption authority in those areas.

4. Should any Federal regulation prescribe—

a. Limitations on the exercise of proprietary rights or State or local police powers until the FAA determines, according to established procedures, that a proposed plan or use restriction is an appropriate exercise of local authority and does not conflict with Federal action that preempts the field;

b. The involvement of aircraft and airport operators and other aviation interests, Federal agencies, State and local governmental bodies, and the public;

c. Mandatory (or optional) airport noise evaluation unit, process, or methodology for use in noise analysis and planning efforts;

d. Airport noise abatement plans (and their updates) as a necessary part of an airport's operating certificate, an airport master plan, or some other Federal approval, as a condition to its continued effectivity after specified dates or periods;

e. The recommended (or permissible) compatible landuses that may exist in areas impacts by noise levels above specified limits as a condition of Federal grants or other FAA certificate or program approvals for the airport; or

f. The means for funding airport noise and compatible land-use planning or implementation, including Federal grants?

5. Should any Federal regulations prescribe the administrative procedures or proceedings under which the FAA decides whether it should object to or disapprove noise abatement plans that contain local operating rules, airport use restrictions, or other potentially offensive features? If so—

a. What form of process should be provided? E.g.—

(1) An informal, administrative procedure for public hearings or for the opportunity for interested persons to submit written views and comments; or

(2) A formal, adversary proceeding for receiving testimony and evidence presented for the record by the parties to the proceeding?

b. How should the process be inititated—

(1) Automatically (or under specified conditions) for all noise abatement plans required to be submitted;

(2) At the discretion of the Administrator on his or her own initiative; or

(3) Upon the complaint or request of any person seeking to have a plan considered for objection or disapproval?

c. What should be the basis for the FAA's ultimate decision?—

(1) Should it be limited to consideration of matters presented on the records; or

(2) Also upon other relevant matters available or presented?

6. Any economic consequences (including costs and benefits) that could be anticipated from the requirements and administration of the rule requested by the petitioner.

7. The need to apply the rule requested to any airport proprietor or local community that has, or will have, substantially or completely achieved the objectives of airport noise abatement and compatible land-use planning or whose action has otherwise been determined to be an appropriate exercise of proprietary or police power authority.

8. Any regulatory requirements in addition to (or substitution for) those requested by the petitioner that should be considered for inclusion in any rule that may be proposed by the FAA in response to the petition.

9. Any environmental consequences that could be anticipated from the requirements of the rule requested, including any assessment of the scope and nature of the Federal action involved under the regulatory process for reviewing and disapproving plans submitted.

10. Any other matters that would affect a decision whether public rule making procedures should be initiated on the proposals presented in the petition.

**The ATA Petition**

Accordingly, the Federal Aviation Administration publishes verbatim for public comment the following petition for rule making of the Air Transport Association, dated January 16, 1979.

Issued in Washington, D.C., on August 30, 1979.

**Edward P. Faberman,**

*Acting Assistant Chief Counsel, Regulations & Enforcement Division.*

Air Transport Association of America,
*1709 New York Avenue, N.W.,*
*Washington, D.C.*
*January 16, 1979.*

Hon. Langhorne M. Bond,
*Administrator, Federal Aviation Administration, Washington, D.C.*

Re: A Regulatory Proposal, Petition for Rulemaking—Airport Noise Abatement Plans.

**Dear Mr. Bond:** Pursuant to the procedural rules of the Federal Aviation Administration (FAA), the Air Transport Association of America (ATA) on behalf of its member airlines hereby files the attached petition to the Administrator for the issuance of a notice of proposed rulemaking to adopt a regulation governing the promulgation of airport noise abatement plans.

Such a regulation, particularly in the light of the expansion of air transportation and the Airline Deregulation Act of 1978, is essential in the public interest to assure that safety and environmental needs are met in a manner that is consistent with the laws related to air transportation and air commerce, the effective and expeditious resolution of Federal, state and local responsibilities for noise abatement, the need to reduce confusion, and to avert repetitive and time-consuming litigation in the courts.

Essentially, the Air Transport Association calls upon the Federal Aviation Administration to comply with the Federal Aviation Act of 1958, as amended, by disapproving local noise abatement rules related to air transportation, which are found to be:

1. Inconsistent with the highest degree of safety in air commerce and air transportation; or

2. Inconsistent with the efficient utilization of navigable airspace; or

3. Unduly burdensome to interstate or foreign commerce or unduly interfering with the national air transportation system; or

4. Unjustly discriminatory; or

5. In conflict with the Federal Aviation Administration's statutory regulatory authority.

ATA and its member carriers are convinced that the major hope for bringing order to the disruptive airport noise abatement situation is for the Federal Government to affirm and exercise its preemptive authority in this area. These efforts have been met in the past with governmental reluctance. The reason frequently advanced by the FAA for refusing to take affirmative action is that liability could attach to the Federal Government for damage attributable to aircraft noise at given airports. As explained in the attached petition, ATA does not believe that there is, or has ever been, a valid reason for inaction in an area affecting the vital interests of the Federal Government, state and local governmental authorities, airport proprietors, airport communities, the airline industry, general aviation, air travellers and shippers and the public at large.

In lieu of affirmative action, the FAA has partially fulfilled its responsibilities by participating in the consideration of and challenge to proposed airport plans only through "advisory opinions" and statements in local public hearings. This is despite the fact that the FAA's public statements and its internal guidelines support the position that state and local governmental authorities cannot exercise their proprietary or police power in a manner that (1) is inconsistent with air safety, (2) is inconsistent with the efficient utilization of the navigable airspace, (3) unduly burdens interstate or foreign commerce, (4) is unjustly discriminatory, or (5) otherwise intrudes into an area of exclusive Federal responsibility.

The FAA rightfully contends, and we agree, that the field of airport noise abatement has not been totally preempted, and that there is a shared responsibility with state and local authorities that permits some local action. While the FAA has remained relatively passive, state and local authorities have actively moved in an effort to establish and expand the parameters of their authority. The result has been frequent public hearings and litigation—brought by air carriers, general aviation and airport proprietors—challenging state regulations. The objective of these challenges is to insure that state or local action does not seriously impair the ability of air carriers to provide the air transportation services required by the public interest. The educational and persuasive process involved in litigation is time-consuming, expensive and difficult for both airport proprietors and air carriers.

The thrust of the attached rulemaking proposal is to establish a regulatory procedure under which any airport proprietor desiring to implement a noise abatement plan, that would restrict aircraft operations in interstate or foreign air transportation,* would not be able to implement that plan without submitting it to the FAA at least 90 days in advance of proposed effectiveness. Upon publication in the **Federal Register**, any interested party could file a statement in support of or a complaint against implementation of the plan. Based upon such a complaint, or upon his own motion, the Administrator could suspend the implementation of the plan for a maximum period of 180 days beyond its proposed effectiveness. Interested parties could then submit written position statements to the FAA supporting or opposing the plan, and a formal hearing could be convened. There are several levels of administrative appeal provided for before the Administrator issues a final decision whether to disapprove a proposed plan or terminate an existing plan.

The FAA would not be required to approve each airport proprietor plan, but would be required to take action only upon a finding that a proposed plan if implemented, or an existing plan, if continued, would adversely affect a valid Federal interest. Also, the proposed regulation would authorize (1) disapproval of a proposed plan or (2) termination of an existing plan on the basis of individual or cumulative impact. This would permit review and termination of a state or local plan, even after it had been subjected to the hearing process without disapproval, based upon a finding that the cumulative effect of that plan, in combination with other plans implemented or proposed subsequent to its effectiveness, would jeopardize the safety of aircraft, interfere with the efficient utilization of the navigable airspace, unduly burden interstate or foreign commerce, be unjustly discriminatory, or conflict with the Federal Aviation Administration's regulatory authority.

In the interest of all concerned with aircraft noise abatement—the Federal Government, state and local governmental authorities, airport proprietors, airport communities, the airline industry, general aviation, and the traveling public who are adversely affected by burdensome operating restrictions, ATA respectfully requests that you grant the attached petition and institute a rulemaking proceeding to adopt the proposed regulations.

Sincerely,

Paul R. Ignatius

Attachment

**Docket**

**Petition For Rule-Making Air Transport Association of America, Airport Noise Abatement Plans**

*Petition for Rule-Making*

Pursuant to § 11.25 of the Procedural Rules of the Federal Aviation Administration (FAA), the Air Transport Association of America (ATA) on behalf of its member airlines hereby petitions the Administrator to institute a rule-making proceeding to promulgate a regulation which provides that any airport noise abatement plan, or similar restriction upon the operation of an FAA certificated airport, must be submitted to the Administrator of the FAA for review. In support of its petition, ATA respectfully states as follows:

*Introduction*

ATA is an organization representing virtually all of the certificated scheduled air carriers in the United States. As the representative of the airline industry, ATA has appeared as a party in numerous hearings conducted by various airport proprietors and the FAA regarding the development of airport noise abatement plans and policies. It has closely followed, and is intimately familiar with the background and development of aircraft noise abatement policies and procedures on both national and local levels. The strides made by the FAA in controlling aircraft noise at its source are commendable, but the time has come for the FAA to exercise its authority and assume a more active leadership role with respect to all airport noise abatement programs.

*A Uniform Federal Regulatory System is Required to Protect and Promote the National Air Transportation System*

This petition is necessitated by the unilateral and uncoordinated restrictions that have been, or are planned to be, imposed by various State and local jurisidictions upon the use of this country's airports, including those serving Los Angeles, Burbank, San Diego, New York, Chicago, Boston, Omaha, Washington, D.C. and San Francisco. These restrictions have the potential to proliferate nationwide and strangle the air transportation system that has required years to develop. The regulation proposed in this petition is designed to avoid the destructive effect that airport operating restrictions could have upon interstate commerce, the airline indusry and the traveling public, and to achieve compatibility between (1) the statutory duty of the FAA to promote, encourage and develop civil aeronautics by—among other means—asserting the preemptive authority it possesses to insure the safe and efficient utilization of this nation's navigable airspace, and (2) the proper right of an airport proprietor to respond, within reasonable limits, to local community airport noise considerations.

Operating restrictions that have been imposed on airports have produced numerous court cases, some of the more significant being *American Airlines* v. *Town of Hempstead*, 398 F. 2d 369 (1968), *City of Burbank* v. *Lockheed Air Terminal*, 411 U.S. 624, 93 S. Ct. 1854, 36 L. Ed. 2d 78 (1973), *ATA* v. *Crotti*, 389 F.

* Except in unusual situations, airport actions that are traditionally and properly local in nature, such as airport design and compatible land use restrictions, would not be covered by the regulations.

Supp. 58 (1975), *National Aviation* v. *City of Hayward*, 418 F. Supp. 417 (1976), and *British Airways* v. *Port Authority of New York*, 564 F. 2d 1002 (1977), and *San Diego Unified Port District* v. *Gianturco, et al*, (U.S.D.C. S.D. Cal.) Civil No 78–0097–S. September 1978. See also Brief of the United States of America as amicus Curiae, *Santa Monica Airport Association* v. *City of Santa Monica, et al*, Civil Action No. 77 2852–IH, *cf. San Diego Port District* v. *Superior Court*, 67 Cal. App. 3d 361 (1977), *cert. denied*, 46 LW 3215 (1977), *Allegheny Airlines* v. *Village of Cedarhurst*, 238 F. 2d 812 (1956), and *Opinion of the Justices, Massachusetts*, N.E. 2d 374 (Mass 1971). Unless subjected to reasonable constraints, these restrictions may continue to proliferate and, by necessity, spawn additional litigation. The current on-going cycle of state and local legislation, followed by litigation, has failed to bring substantial and long-term relief to local communities airport proprietors, the airline industry, or the traveling public. This cycle can be halted, to the benefit of all, only if the FAA will exercise the authority granted to it and discharge the responsibilities imposed upon it by the Federal Aviation Act of 1958, as amended ("the Act").

ATA recognizes that, in July, 1975, the FAA invited public comment on the general subject of an Airport Noise Policy and conducted extensive hearings directed toward building a documented record upon which to base the development of that policy. On November 18, 1976, the DOT/FAA promulgated the Aviation Noise Abatement Policy. Implementation of that policy has compounded the issues the FAA initially recognized, but desired to avoid, when it released its Notice on Airport Noise Policy, stating:

> The question of airport noise has been the subject of extensive litigation in the context of very specific and somewhat circumscribed issues being presented to the Courts in a limited factual context. The FAA does not believe that policy in this area should be the result or product of piece-meal judicial decisions. The FAA believes its role is to develop policy in a manner which, the maximum extent possible, eliminates potential conflicts and accommodates the varying and competing interstate and local multijurisdictional interests. Federal Register, Vol. 40. N. 132, July 9, 1975, p. 28844)

However well intended those comments may have been, the failure of the FAA in assuming an affirmative and active role has encouraged a proliferation of complex and conflicting local restriction proposals and regulations. The FAA's present passive policy of merely reviewing use restriction proposals and providing advice to airport proprietors on their proposed actions has permitted promulgation of these proposals and regulations, many of which either constitute an undue burden on interstate commerce, or discriminate against air transportation, or both. Where litigation has not been pursued, the communities, the traveling and shipping public and the airline industry have reluctantly, but pragmatically, accepted disruption to scheduled service, passenger and shipper inconvenience and increased costs. Yet, it cannot be concluded that these airport operating restrictions have afforded airport communities much, if any, relief from aircraft and airport noise. Stronger FAA leadership is needed to assure a meaningful and equitable result in such cases.

The various attempts of state and local jurisdictions to control aircraft noise have demonstrated that the respective authority and responsibility of the Federal Government must be more clearly and firmly established. States and local jurisdictions have or are attempting to promulgate airport noise abatement regulations which clearly intrude into areas over which the Federal Government possesses and has exercised preemptive authority, such as:

(1) Extending the Part 91 operating noise limits regulations to foreign air carriers, when the FAA has excluded aircraft engaged in foreign air commerce from the coverage of the regulations until after January 1, 1980.

(2) Imposing the higher standard of the FAR 36, Stage 3 noise levels, first published as FAR 36 Amendment Number 7, effective October 1, 1977, even though the federal compliance requirement of Part 91 is based on December 1, 1969 noise standards.

(3) Imposing the federal concept of obtaining system compliance by air carriers with Part 91 noise standards on an aircraft fleet basis, but requiring that an air carrier meet the phased compliance requirements of FAR 91.305 with respect to the aircraft it operates at a specific airport; *i.e.*, improper application of a system concept to an individual airport.

(4) Establishing methods to measure aircraft noise at various locations around an airport, for the purpose of determining compliance with prescribed community noise levels, an action that does or could have the effect of regulating the flight of aircraft, which is an invalid intrusion upon the authority of the FAA as found in *ATA* v. *Crotti*.

Other local restrictions which have been proposed and/or implemented, and which actually or potentially conflict with the statutory regulatory authority of the FAA, are as follows:

(1) A curfew or limitation on the hours of airport operation;

(2) A ban on the use of jet powered aircraft;

(3) A ban or curfew on aircraft which do not meet FAR Part 36 noise level criteria;

(4) A limit on the number of operations conducted at an airport;

(5) Runway use restrictions, such as:

(a) Preferential runway use;

(b) Assigned departure and landing paths associated with runway use;

(c) Prohibitions or curfews on the use of certain runways;

(d) Limitations on the number of operations from a runway;

(6) Takeoff and landing procedures for aircraft; and

(7) The establishment of various airport noise measurement systems which interfere with, or attempt to regulate, the operation of aircraft.

Actions by airport proprietors that would clearly not conflict with the FAA's authority include the acquisition of aviation easements and the establishment of compatible land use programs. To avoid conflict, however, the rights of the Government and proprietors should be defined as clearly as possible and, where conflict arises, a method should exist to achieve prompt and fair resolution of the issues. It is imperative, therefore, that the FAA expeditiously and decisively act to clearly identify the boundaries of its preemptive authority, and thereby prevent this important matter of national concern from constantly being the subject of controversy and turmoil, as a result of piecemeal judicial decisions.

The United States Court of Appeals for the Second Circuit, in *British Airways* v. *Port Authority of New York*, 564 F.2d 1002 (1977) succinctly summarized the respective and potentially conflicting rights of the Federal Government and airport proprietors:

> Our intial opinion in this case delineated the extremely limited role Congress had reserved for airport proprietors in our system of aviation management. Common sense, of course, required that exclusive control of airspace allocation be concentrated at the national level, and communities were therefore preempted from attempting to regulate planes in flight. The task of protecting the local population from airport noise, however, has fallen to the agency, usually of local government, that owns and operates the airfield. It seemed fair to assume that the *proprietor's intimate knowledge of local conditions, as well as his ability to acquire property and air easements and assure compatible land use*, would result in a rational weighing of the costs and benefits of proposed service. Congress has consistently reaffirmed its commitment to this two-tiered scheme, and both the Supreme Court and executive branch have recognized the important role of the airport proprietor in developing noise abatement programs consonant with local conditions.

The maintenance of a fair and efficient system of air commerce, of course, mandates that each airport operator be circumscribed

to the issuance of reasonable, nonarbitrary and nondiscriminatory rules defining the permissible level of noise which can be created by aircraft using the airport. *We must carefully scrutinize all exercises of local power under this rubric to insure that impermissible parochial considerations do not unconstitutionally burden interstate commerce or inhibit the accomplishment of legitimate national goals.* (Citations omitted; italic supplied).

Recognizing that both Federal and state entities have valid and enforceable rights with respect to airport noise abatement, the critical issue is whether, based upon the factual circumstances, certain actions taken by or required of airport proprietors result in an intrusion upon the authority of the Federal Government, as delegated to the FAA. The resolution of this sensitive and complex issue requires considerable aviation and technical expertise. As a result, in public hearings before local governmental agencies considering airport noise regulations, and in litigation challenging such regulations, substantial effort is required merely to give laymen and judges a threshold education in the basics of aviation and the national air transportation system. Thereafter, decisions are sometimes made on the basis not of fact, but of self-interest and political considerations.

What is required is to create a forum in which subject matter expertise is consistently maintained at a high level; all viewpoints may be openly expressed; a formal evidentiary record is developed; decision-making standards are publicly known and fairly applied; decisions are consistently made on an equitable and uniform basis. In short, the forum should be one that is conducive to light, not heat. The FAA can best provide such a forum in which all viewpoints can be expressed, evaluated and, hopefully, reconciled for the benefit of the public interest.

*Federal Preemption Can Co-Exist With a Shared Responsibility With Airport Proprietors Without Imposing Liability on the Federal Government*

In the Aviation Noise Abatement Policy of November 18, 1976, the DOT/FAA stated:

> We have been urged to undertake—and have considered carefully and rejected—full and complete federal preemption of the field of aviation noise abatement. In our judgment the control and reduction of airport noise must remain a shared responsibility among airport proprietors, users, and governments. (Page 34)

Two significant—but erroneous—justifications for the FAA thus far failing to fully exercise its preemptive authority in the field of aviation noise abatement are reflected in the above statement. The first and most apparent is the FAA's assumption that proper assertion of its preemptive authority is totally inconsistent with a shared responsibility with airport proprietors, users and governments to control airport noise. The second, but not as obvious reason, is that the FAA apparently fears that liability for airport noise damage may attach to its "full and complete federal preemption of the field of aviation noise abatement." Neither justification is well founded. To the contrary, the concept that federal preemption of the field of aviation noise abatement can exist in harmony with a shared local responsibility to control airport noise, without a shift in liability, can be demonstrated simply by reviewing appropriate statutes and case law. Furthermore, the review will also reveal that the DOT/FAA, in the Aviation Noise Abatement Policy, has attempted to fulfill its responsibility by avoiding resolution of the difficult issue.

The Congressional findings and statement of policy set forth in the Noise Control Act of 1972 reveal that the concepts of federal preemption and a shared local responsibility to control noise are totally consistent and harmonious. Section 4901, 42 U.S.C., provides in part:

> "(a) The Congress finds—
>
> * * * * *
>
> (3) That, while primary responsibility for control of noise rests with State and local government, Federal action is essential to deal with major noise sources in commerce control of which require national uniformity of treatment."

Before enactment of the Noise Control Act, the Courts had universally recognized the deep-seated police power of the states to control noise and to preserve and protect the health and welfare of their citizens by controlling local zoning, land use planning and transportation siting. With respect to airports, the Courts had recognized that the local proprietor had the authority, responsibility and liability for determining the number of runways, their direction and length and the land and navigation easements required for the operation of the airport. *Griggs* v. *County of Allegheny*, 369 U.S. 84, 82 S. Ct. 531, 7 L. Ed. 2d 585 (1962), *Loma Portal Civic Club* v. *American Airlines, Inc.*, 394 P. 2d 548 (1964) and *City of Los Angeles* v. *Japan Air Lines Co.*, 41 Cal. App. 3d 416 (1974). To this extent, the control of noise at an airport had been recognized as the responsibility of local government, acting as an airport proprietor. By enacting the Noise Control Act, Congress reaffirmed not only this local responsibility, but also the preemptive federal involvement in controlling noise sources in or affecting interstate and foreign commerce. Since the passage of the Act, the courts that have been called upon to determine the validity of local airport use restrictions have stated that the control of noise is a responsibility shared by the Federal Government and airport proprietors. *City of Burbank* v. *Lockheed Air Terminal*, 411 U.S. 624, 93 S. Ct. 1854, 36 L. Ed. 2d 78 (1973), *National Aviation* v. *City of Hayward*, 48 F. Supp. 417 (1976), *British Airways* v. *Port Authority of New York*, 564 F. 2d 1002 (1977) and others.

Sharing the responsibility, however, does not preclude federal preemption of the field of aviation noise abatement. Such preemption can exist with local control of noise because the Federal Government has no authority to relieve local governments of their historic responsibility to preserve and protect the health and welfare of their citizens; to control local zoning, including land use planning, transportation siting and the operation of transportation facilities. At least to that extent, local government still has the responsibility to control airport noise.

Where an airport proprietor's authority to regulate the operation of his airport ends, is the difficult issue the FAA has not adequately addressed. Instead of asserting its preemptive authority in the field of aviation noise abatement, the FAA has merely reviewed airport use restrictions and provided "advice" in an "attempt to ensure that uncoordinated and unilateral restrictions at various individual airports do not work separately or in combination to create an undue burden on interstate or foreign commerce, unjustly discriminate or conflict with FAA's statutory regulatory authority" (Aviation Noise Abatement Policy, November 18, 1976, page 59).

Providing "advice" to avoid liability for airport noise damage does not further or fulfill the basic national policies Congress assigned to the FAA to carry out. The proper discharge of the FAA's responsibilities to regulate air commerce, to promote and develop civil aeronautics, to control the navigable airspace, and to develop a common system of air traffic control, does not require "full and complete federal preemption of the field of aviation noise abatement." Rather, what is required to properly fulfill and discharge those responsibilities is to affirm the existence of federal preemption to the extent necessary to ensure that the FAA's partners in aircraft noise abatement—

states and local governments—do not interfere with the authority of the Federal Government. Furthermore, liability for airport noise damage should not attach to the FAA if it affirms the existence of and asserts federal preemeption to the extent necessary to prevent the imposition of such airport noise abatement plans. This is particularly true where, as under the regulation proposed herein, the FAA would not be required to take positive action to approve or disapprove each noise abatement plan in the country, but would only be called upon to discharge its responsibilities under the Federal Aviation Act by disapproving any such plan that is contrary to the national interests that Congress has mandated the FAA to protect and promote.

Under existing case law, the liability for damage caused by airport noise rests upon the airport proprietor, *Griggs* v. *Allegheny County and Air Transport Association* v. *Crotti*, even though, as Justice Jackson stated in *Northwest Airlines, Inc.* v. *Minnesota*, 322 U.S. 292, 64 S. Ct. 950, 88 L. Ed. 1283 (1944):

> Planes do not wander about in the sky like vagrant clouds. They move only by federal permission subject to federal inspection in the hands of federally certificated personnel and under an intricate system of federal commands. The moment a ship taxies onto a runway, it is caught up in an elaborate and detailed system of controls. It takes off only by instruction from the control tower, it travels on prescribed beams; it may be diverted from its intended landing, and it obeys signals and orders. Its privileges, rights, and protection, so far as transit is concerned, it owes to the Federal Government alone and not to any state government. (322 U.S. at 302).

This liability was imposed upon the airport proprietor, despite pervasive federal regulatory control, as described in *American Airlines, Inc.* v. *Town of Hempstead*, 272 F. Supp. 226 (1966):

> It would be difficult to visualize a more comprehensive scheme of combined regulation, subsidization and operational participation than that which the Congress has provided in the field of aviation. Federal aid for public airport development is provided, and both economic, technical and operational regulation is provided starting from the basis of an unqualified assertion of the public right of freedom of transit through the navigable air space of the United States. Carriers in routes are certificated by the Civil Aeronautics Board, The FAA certificates aircraft and airmen. The Administrator of the FAA is authorized and directed to prescribe air traffic rules and regulations governing the flight of aircraft for the navigation and protection of aircraft and for the protection of persons and property on the ground, including rules as to safe altitudes of flight and for the prevention of aircraft collision. In exercising his rulemaking authority, the Administrator is subject to the provisions of the Administrative Procedure Act. He is authorized and directed to assign by rule, regulation or order the use of navigable air space to insure the safety of aircraft and the efficient utilization of air space. The Administrator is authorized within the limits of appropriations—to acquire and operate air navigation facilities where necessary and to provide necessary facilities and personnel for the regulation and protection of traffic. (Citations omitted, 272 E. Supp. at 232)

The passage of the Noise Control Act of 1972 has not affected or changed the liability of the local airport proprietor for airport noise damage. *Aaron* v. *City of Los Angeles*, 40 Cal. App. 3d 471 (1974) and *City of Los Angeles* v. *Japan Air Lines Co., Ltd., supra*. The burden of proof still remains upon the airport proprietor to demonstrate that damages were not caused by its acts or omissions in the planning, zoning and siting of transportation facilities. A distinction can be drawn between areas of federal preemption of aircraft operations and the failure of local governments to control the dispersion of noise outside of the navigable airspace. It is the responsibility of the FAA to make this distinction in order to fulfill and further the basic policy and public interest considerations that were established by Congress in the Federal Aviation Act (Section 103, 49 U.S.C. 1303), including:

> (a) The regulation of air commerce in such manner as to best promote its development and safety and fulfill the requirements of national defense;
>
> (b) The promotion, encouragement, and development of civil aeronautics;
>
> (c) The control of the use of the navigable airspce of the United States and the regulation of both civil and military operations in such airspace in the interest of the safety and efficiency of both * * * and
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> (d) The development and operation of a common system of air traffic control and navigation for both military and civil aircraft.

However, even if the courts subsequently determine that liability should attach to the Federal Government by virtue of the FAA's affirmation and assertion of federal preemption, it would be a small price to pay to prevent uncoordinated and unilateral restrictions at varius airports from working separatedly, or in combination, to endanger the maintenance, promotion and development of the national air transportation system.

*Highlights of Proposed Regulation*

The rulemaking proposal contained in this petition is designed to establish a regulatory procedure under which an airport proprietor, desiring to implement a noise abatement plan that would restrict aircraft operations in interstate or foreign air transportation, would not be able to implement that plan without submitting it to the Administrator of the Federal Aviation Administration at least 90 days in advance of proposed effectiveness. However, except in unusual situations, airport actions that are traditionally and properly local in nature, such as airport design and compatible land use restrictions, are not covered by the regulation.

The regulation applies to each airport holding an operating certificate under Part 139 of the Code of Federal Regulations. The heart of the regulation provides that the Administrator may disapprove and prevent the implementation of any proposed plan or revision, or terminate any effective plan, which he determines would, either individually, or cumulatively in combination with other proposed or effective plans:

(1) Be inconsistent with maintaining the highest degree of safety in air commerce and air transportation in the public interest; or

(2) Be inconsistent with maintaining the efficient utilization of the navigable airspace; or

(3) Create an undue burden on interstate or foreign commerce or interfere unduly with the national air transport system; or

(4) Be unjustly discriminatory; or

(5) Conflict with the Federal Aviation Administration's statutory regulatory authority.

The public will be notified of all proposals submitted to the Administrator, who may, upon complaint or his own initiative, and upon required notice to the airport proprietor, suspend and investigate the operation of a proposed plan or revision, for a period of from ninety (90) to one hundred eighty (180) days. The Administrator may also call for a review of existing plans, upon complaint or his own initiative, to determine whether he should disapprove and terminate such plans. The rule permits discretionary review and reconsideration by the Administrator before a decision to disapprove a proposed plan or terminate an existing plan, becomes final. The balance of the regulation covers the hearing process, initial decision of the hearing officer, petitions for review and petitions for reconsideration by the Administrator, and judicial review of the Administrator's final decisions pursuant to Section 1006 of the Federal Aviation Act.

*Authority for Regulation*

The Administrator's Authority to promulgate the proposed regulation is contained in Sections 103, 305, 306, 307, 312(a), 313(a), 601(a)(6), 611 and 612, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1303, 1346, 1347, 1348, 1353(a), 1354(a), 1421(a)(6), 1431 and 1432); Section 6(c); Department of

Transportation Act (49 U.S.C. 1655 6(c); Section 18(a)(1), Airport and Airway Development Act of 1970, as amended by the Airport and Airway Development Act Amendments of 1976 (49 U.S.C. 1718(a)(1)); and Article 1, Section 8, Clause 3, and Article VI, Clause 2, of the Constitution of the United States.

Beginning with the Federal Aviation Act, Section 1108(a), (49 U.S.C. 1508), provides in part, that "the United States of America is hereby declared to possess and exercise complete and exclusive sovereignty in the airspace of the United States." The Secretary of Transportation, by Section 307(a) of the Act (49 U.S.C. 1348), is given the authority "to develop plans for and formulate policy with respect to the use of the navigable airspace under such terms, conditions, and limitations as he may deem necessary in order to insure the safety of aircraft and the efficient utilization of such airspace." Section 307(c) also authorizes the Secretary to "prescribe air traffic rules and regulations governing the flight of aircraft, for the navigation, protection, and identification of aircraft, for the protection of persons and property on the ground, and for the efficient utilization of the navigable airspace * * *." Furthermore, the Secretary is directed by Section 312 "to make long range plans for and formulate policy with respect to the orderly development and use of the navigable airspace * * *." These sections of the Act clearly establish that the Secretary of Transportation has been given jurisdiction, to the exclusion of all other state or local governmental authority to determine the terms, conditions and limitations that may be imposed upon the use of the navigable airspace.

The Department of Transportation Act, Section 6(c), (49 U.S.C. 1655(6)(c)) transferred to the Federal Aviation Administrator the duty to "exercise the functions, powers, and duties of the Secretary pertaining to aviation safety * * *." It explicitly provided that in exercising the enumerated functions, powers, and duties, the Administrator "shall be guided by the declaration of policy in section 103 of the Federal Aviation Act of 1958, as amended" (quoted at page 16, *supra*).

The Administrator has exercised the authority granted by Section 307 by promulgating comprehensive federal regulations governing the use of the navigable airspace and the control of air traffic.[1] Similarly, the Administrator has exercised his aviation safety authority, including the certification of airmen, aircraft, air carriers, air agencies, and airports under Title VI of the Federal Aviation Act by undertaking extensive federal regulatory action.[2]

With respect to Title VI of the Act, Section 611 was amended in 1972 to provide that the FAA, "In order to afford present and future relief and protection to the public health and welfare from aircraft noise and sonic boom, * * * shall prescribe and amend standards for the measurement of aircraft noise and sonic boom and shall prescribe and amend such regulations as the FAA may find necessary to provide for the control and abatement of aircraft noise and sonic boom, including the application of such standards and regulations in the issuance, amendment, modification, suspension, or revocation of any certificate authorized by this title." Under Section 612 of the Act, the Administrator is empowered to issue airport operating certificates to airports serving air carriers and to establish minimum safety standards for the operation of such airports. In addition to supporting the Administrator's authority to promulgate the proposed regulation, Sections 611 and 612 provide a statutory basis upon which to enforce the regulation.

Under Section 18 (49 U.S.C. 1718) of the Airport and Airway Development Act Amendments of 1976, the Secretary is to receive written assurances from the airport which receives funds that it "will be available for public use on fair and reasonable terms and without unjust discrimination * * *." This Section, and FAA regulations issued pursuant thereto, also provide a basis upon which to enforce the proposed regulation.

*Conclusion*

The exclusive authority and jurisdiction to regulate commerce and to impose limitations on the use of the navigable airspace rests with the Federal Government. Included in that jurisdiction is the Administrators responsibility to insure that no impermissible limitations on the use of the airspace are imposed by airport proprietors. Any airport noise abatement plan that unduly burdens commerce, jeopardizes safety of aircraft, unjustly discriminates, or impinges upon the management or safe and efficient utilization of the navigable airspace, would be in direct conflict with the authority of the Federal Government and should not be permitted. The Administrator's authority and jurisdiction are sufficient to support promulgation of a regulation pursuant to which he can disapprove state or local governmental actions on these grounds.

In view of the generally unsatisfactory experience under the existing procedure in which FAA's role is passive and advisory, and the creeping encroachments upon the national air transport system that result from local noise abatement plans, the Administrator should act forthwith and adopt a rule providing for review by the Administrator of local noise abatement plans, existing and proposed, and providing for disapproval in appropriate cases.

Wherefore, it is respectfully requested that the Administrator grant this petition and institute a rulemaking proceeding to consider, accept comments upon and ultimately adopt the regulation attached hereto as Part 150 of Title 14, Code of Federal Regulations.

Respectfully submitted,

**James E. Landry,**

*Senior Vice President and General Counsel.*

**Part 150—Airport Noise Abatement Plans**

*150.1 Applicability and Definitions*

(a) The provisions of this part apply to each airport holding an operating certificate issued under Part 139 of this Title.

(b) This Part prescribes rules and procedures under which airport noise abatement plans will be submitted to and considered by the Administrator.

(c) As used in this Part:

(1) "Airport" means any land airport holding an airport operating certificate issued under Part 139 of this Title:

(2) "Airport Noise Abatement Plan" means any action taken by an airport proprietor by means of a rule, regulation or other enactment, which imposes any restriction upon aircraft operations (to, from or at any airport) that are in air transportation or air commerce as defined in Title I of the Federal Aviation Act of 1958 as amended, or which affects the management or safe and efficient use of navigable airspace.

(3) "Airport Proprietor" means the Board, Department, Commission, Port Authority or other person (including a State if the airport proprietor is a political subdivision of a State) that owns, operates or otherwise exercises direct supervision over, and responsibility for, the management of an airport.

(4) "Person" means any individual, firm, co-partnership, corporation, company, association, or body politic.

(5) "Effective plan" means any airport noise abatement plan in effect on the effective date of this Part or which becomes effective pursuant to § 150.7.

*150.3 General Requirements*

After the effective date of this Part, no airport proprietor may adopt and enforce an airport noise abatement plan, or revise any effective plan, without filing a copy the proposed plan, or revision, with the Administrator at least ninety (90) days before

[1] See 14 CFR Parts 71, 73, 75, 91, 93, 95 and 97.

[2] See 14 CFR Parts 21 through 43, 61 through 67, 91, 121 through 149.

the effective date of the proposed plan or revision.

*150.5 Contents of Plan filed with Administrator*

(a) Each airport noise abatement plan, or revision of an effective plan, filed under this Part shall contain the following:

(1) A statement of the legal authority pursuant to which the proposed plan or revision of an effective plan is to be promulgated, and a verification that all procedural legal and administrative requirements for such promulgation have been met;

(2) The reason or reasons for which the airport proprietor believes the proposed plan or revision is required;

(3) A copy of the plan;

(4) The effective date and anticipated duration of the proposed plan or revision;

(5) A complete description of the plan's proposed method for restricting aircraft operations at the subject airport and an analysis of whether the plan will:

(i) Be inconsistent with maintaining the highest degree of safety in air commerce and air transportation in the public interest;

(ii) Be inconsistent with maintaining the efficient utilization of the navigable airspace;

(iii) Create an undue burden on interstate or foreign commerce; or interfere unduly with the national air transport system;

(iv) Be unjustly discriminatory; or

(v) Conflict with a Federal statute or regulation or intrude into a field which Congress intended to occupy.

(b) Any plan or revision filed which does not meet the procedural or administrative requirements of this section may be dismissed, without hearing, by the Administrator.

(c) Each plan, revision, or any other document filed under this section shall be submitted in duplicate to the Federal Aviation Administration, Washington, D.C. 20591.

(d) Within twenty (20) days of receipt, the Administrator shall give notice to the public regarding the filing of a proposed airport noise abatement plan, or revision of an effective plan, by publishing a copy of the proposed plan or revision in the **Federal Register.**

*150.7 Suspension of Proposed Plans*

(a) Whenever any airport proprietor files a proposed airport noise abatement plan, or revision of an effective plan, with the Administrator, the plan or revision will become effective on the date set forth therein unless the Administrator, at any time prior to the effective date of the plan or revision, upon complaint or his own initiative, suspends the operation of the plan or revision and institutes a proceeding for the purpose of determining whether the plan or revision should be disapproved.

(b) Pending the hearing and decision thereon, the Administrator may, upon giving the Notice required by Section 150.19, suspend the operation of the proposed plan or revision for a period of ninety days beyond its effective date. If the proceeding has not been concluded and a final order made within such period, the Administrator may from time to time extend the period of suspension, but not for a period longer than one hundred eighty (180) days beyond the time such proposed plan or revision would otherwise become effective.

(c) If the proceeding has not been concluded and a final decision made within the period of the suspension, the proposed plan or revision shall go into effect at the end of such period, subject, however, to being terminated when the proceeding has been concluded.

(d) If, after the proceeding is concluded, the Administrator is of the opinion that the plan or revision should be disapproved and/or terminated under Section 150.11, he shall issue an order disapproving and/or terminating said plan or revision.

*150.9 Investigations of Effective Plans*

With respect to each airport noise abatement plan in effect at the time this Part becomes effective, or which becomes effective thereafter, the Administrator may, at any time, upon his own initiative or upon complaint in writing by any person, by notice in the **Federal Register**, institute a proceeding to determine whether he should disapprove and terminate such plan or plans according to the standards of § 150.11.

*150.11 Standards for Disapproval and/or Termination*

In exercising and performing his powers and duties with respect to determining whether any proposed or effective airport noise abatement plan should be disapproved and/or terminated, the Administrator shall, upon complaint or his own initiative, after notice and hearing, disapprove and/or terminate each plan which he determines would either individually, or cumulatively in combination with other proposed or effective plans:

(1) Be inconsistent with maintaining the highest degree of safety in air commerce and air transportation in the public interest; or,

(2) Be inconsistent with maintaining the efficient utilization of the navigable airspace;

(3) Creater an undue burden on interstate or foreign commerce; or interfere unduly with the national air transport system;

(4) Be unjustly discriminatory; or

(5) Conflict with a Federal statute or regulation or intrude into a field which Congress intended to occupy

*150.13 Filing and Service of Complaints*

(a) Any person may file a complaint and request for hearing with the Administrator against any proposed or effective airport noise abatement plan or plans. The complaint shall set forth fully the basis upon which the plan should be disapproved and/or terminated in accordance with the standards of § 150.11, because of the individual or cumulative effect of the plan or plans.

(b) A copy of the complaint filed with the Administrator shall be simultaneously served by the complainant upon:

(1) Each air carrier authorized by the Civil Aeronautics Board, or holding other appropriate authority to render regular or charter service to the airport(s) identified in the complaint.

(2) The airport proprietor of each airport against whose plan the complaint is filed;

(3) The chief executive of the state, territory, or possession of the United States in which the subject airport is located; provided, however, that if there be a state commission or agency having jurisdiction over transportation by air, service shall be made on such commission or agency, rather than the chief executive of the state;

(4) Each air taxi operator operating to or from the subject airport under Part 135 of this chapter.

(c) The Administrator may, in his discretion, order additional service to be made on such person or persons as the facts of the situation warrant.

(d) Service shall be made by mailing a copy of the complaint, postage prepaid, to all persons required to be served under this section.

(e) A complaint requesting the suspension and investigation of any proposed plan, or revision of an effective plan, will not be considered unless made in accordance with the requirements of this section and filed within twenty (20) days after the proposed plan or revision was published in the **Federal Register.**

(f) A complaint requesting an investigation of an effective plan may be filed at any time.

*150.15 Answer*

(a) Any interested person may file an answer in suport of or in opposition to the complaint within 10 days after the complaint is served.

(b) Any interested person includes those described in § 150.13(b) and any others served with a copy of the complaint.

(c) Answers will be served upon the complainant and those served with a copy of the complaint.

*150.17 Reply*

(a) The complainant, or any person having filed an answer, may file a reply to any other answer submitted under this part.

(b) Replies must be filed within ten (10) days of the service of the answer to which they respond.

(c) No further responsive documents will be filed except for good cause shown.

*150.19 Notice and Hearing*

(a) If the Administrator, upon complaint or his own initiative, determines that a proposed plan, or revision of an effective plan, should be suspended and investigated, or an effective plan investigated, he shall deliver a written statement to the airport proprietor or proprietors affected thereby, and shall publish a notice in the **Federal Register** instituting a proceeding to determine whether the plan or revision should be disapproved and/or terminated and specifying the date, time and place of the public hearing.

(b) The Administrator shall appoint a hearing officer to conduct the hearing regarding the investigation of any plan.

(c) Any person, including any state or subdivision thereof, State aviation commission or other public body, may appear at any hearing and present any evidence which is relevant to the issues designated by the hearing officer. A written statement of position may be submitted for the record.

(d) The hearing officer shall have the following powers, in addition to any others specified in this part:

(1) To give notice concerning and to hold hearings;

(2) To administer oaths and affirmations;

(3) To examine witnesses;

(4) To issue subpoenas and to take or cause depositions to be taken;

(5) To rule upon offers of proof and to receive relevant evidence;

(6) To regulate the course and conduct of the hearing;

(7) To hold conferences before or during hearings, for the settlement or simplification of issues;

(8) To rule on motions and to dispose of procedural requests or similar matters;

(9) To make initial or recommended decisions;

(10) To take any other action authorized by this part, by the Administrative Procedure Act, or by the Federal Aviation Act.

(e) A written transcript of all oral statements made at the hearing will be prepared by a certified reporter. Copies of the transcript, statements of position and all other documentary material presented at the hearing will be made available to interested persons, and the public, upon payment of applicable reproduction costs to the reporting firm.

(f) The hearing officer's authority in each case will terminate either upon the certification of the record in the proceeding to the Administrator, or upon the expiration of the period within which petitions for discretionary review of his initial or recommended decision may be filed, or when he shall have withdrawn from the case upon considering himself disqualified.

(g) At any time prior to the close of the hearing, the Administrator may direct the hearing officer to certify any question or the entire record in the proceeding to the Administrator for decision. In cases where the record is thus certified, the hearing officer shall not render an initial decision but shall recommend a decision to the Administrator as required by section 8(a) of the Administrative Procedure Act.

*150.21 Hearing Briefs*

(a) In his own discretion, or upon request by a party, the hearing officer may permit the filing of written briefs setting forth final statements of position of the parties.

(b) Briefs must be filed within thirty (30) days of the conclusion of the hearing, or within such time period as the hearing officer may specify. Unless specifically authorized by the hearing officer, reply briefs are not permitted.

*150.23 Initial Decision*

(a) Not later than sixty (60) days following the conclusion of the hearing, or the filing of hearing briefs, if applicable, the hearing officer shall issue an Initial Decision specifying his findings and clearly incorporating therein the bases in fact and law for such decision. Such decision shall be served upon all parties.

(b) Such Initial Decision is subject to review under § 150.25.

*150.25 Petition for Review by Administrator*

(a) A petition for discretionary review of an Initial Decision may be filed with the Administrator by a party within ten (10) days after service of the Initial Decision. Such petition shall be accompanied by proof of service on all parties to the hearing.

(b) Petitions for discretionary review may be filed with the Administrator only on one or more of the following grounds:

(1) A finding of material fact is erroneous, or

(2) A necessary legal conclusion is contrary to law or precedent, or

(3) A substantial and important question of law, policy, or precedent is involved.

(c) If no petition for discretionary review is filed with the Administrator within ten (10) days after service of the Initial Decision by the hearing officer, and the Administrator does not act on his own motion to review the decision, such decision shall become the final decision of the Administrator.

(d) The Administrator's decision on a petition for discretionary review shall be rendered within sixty (60) days of the filing of said petition, or the Initial Decision shall become the final decision of the Administrator.

*150.27 Petition for Reconsideration*

(a) Any party may file a petition for reconsideration of a final decision by the Administrator.

(b) Unless a different period is specified by the Administrator, petitions for reconsideration shall be filed within twenty (20) days after service of the final order.

(c) Neither the filing nor the granting of such a petition shall operate as a stay of such final order unless specifically so ordered by the Administrator.

(d) Within ten (10) days after filing of a petition for reconsideration, any party may file an answer in support of or opposition to the petition. No other responsive documents shall be permitted.

(e) Motions for extensions of time to file a petition or answer will not be granted by the Administrator except upon a showing of unusual and exceptional circumstances, constituting good cause for movant's inability to meet the established procedural dates.

(f) A petition for reconsideration shall state, briefly and specifically, the matter or record alleged to have been erroneously decided, the ground relief upon and the relief sought. Petitions and answers thereto that exceed twenty-five (25) pages (including appendices) in length shall not be accepted for filing.

(g) The Administrator's decision on a petition for reconsideration shall be rendered within sixty (60) days of the filing of said petition.

*150.29 Judicial Review*

Final decisions rendered by the Administrator under this part are subject to judicial review pursuant to Section 1006 of the Federal Aviation Act of 1958, as amended (47 U.S.C. 1486).

*Suggested Economic Impact Statement*

On January 16, 1979, the Air Transport Association of America ("ATA") filed a Petition for Rulemaking regarding Airport Noise Abatement Plans with the Federal Aviation Administration. The proposed regulation would become Part 150 of Title 14, Code of Federal Regulations.

Essentially, the ATA proposal would require any airport proprietor proposing a noise abatement plan that would restrict aircraft operations in interstate or foreign air transportation to submit it to FAA at least 90 days prior to the effective date of the plan. Procedures for public comments, hearings, and agency review are set forth in the proposal. Judicial review of final orders under the proposed rule would be in accordance with Section 1006 of the Federal Aviation Act of 1958, as amended (47 U.S.C. 1486).

The ATA proposal is based on the DOT/FAA *Aviation Noise Abatement Policy* adopted November 18, 1976. Its principal difference with the Policy Statement is that under the proposed rule no airport proprietor may adopt and enforce an airport noise abatement plan without filing a copy of the proposed plan (or revision) with FAA. Under the Policy Statement FAA support and endorsement will be withheld for any noise abatement plans not submitted for its review. The ATAT proposal provides for FAA orders of disapproval and/or termination of such plans which the DOT/FAA Policy Statement does not do. It also set forth time limits for FAA action on proposed plans.

As a practical matter today many major airports submit noise abatement plans to FAA for reivew and advice. Under the Policy Statement FAA is responsible for reviewing such plans and advising the airport proprietor if it believes the limitation in question is or is not unjustly discriminatory or detrimental to the national air transportation system. Thus under the existing system FAA must devote staff time in the Regions, and sometimes in Washington, to examining proposed noise reduction plans.

Precise quantification of the economic impact on Federal and local governments and the aviation interests involved in noise control and abatement efforts is difficult. However, it follows from what is said above that economic costs of those efforts will not be increased significantly even at the outset if the ATA proposal is adopted. There is every reason to believe that they will be reduced measurably once the new system takes hold.

The substantive considerations involved in review of noise reduction plans by FAA will be changed very little by the ATA proposal. What will be changed is that all parties will have a stricter sense of direction from the Federal Government. All of them will know from the beginning that noise abatement plans must be filed with FAA if they are expected to take effect, and that the action taken by the agency will determine whether or not a particular plan will be legally enforceable. These certainties will be within the contemplation of all parties, those proposing noise plans and those who are opposing them or seeking modifications or changes. This cannot help but lead to more exact dialogues between, say, the airlines and local authorities in discussing noise abatement proposals. In most instances each side will know that its case will stand or fall on what FAA concludes on the merits. This means that criteria will be evolved to which all parties must adjust in working out noise abatement measures.

It must be assumed that at the outset a few hearings will be requested in which some costs will be incurred by all parties, including FAA who must set up the machinery for conducting hearings. However, it is doubtful that those costs will exceed the overall costs being incurred under the existing arrangement. For instance, we have been advised that during the past 4½ years the airlines through ATA have spent approximately $2,000,000 in participating in administrative and judicial proceedings concerned with local noise regulations. Since two sides are involved in such controversies, it is safe to assume that local governmental agencies have spent approximately that much. For its part, under the existing system FAA must review the proposals that are submitted to it, give advice and on occasions participate in court proceedings. The costs to FAA and other federal agencies concerned with local noise proposals, whether in the formative or litigation stages, has been approximately ———.

Adoption of the proposed rule will not eliminate all of these costs. However, it seems likely that fewer man hours and dollars will be expended by aviation interests, local governments, and the FAA itself once the proposed rule is implemented.

In brief: If any costs are increased as a result of adoption of the ATA Proposal they will be minimal and transitory. In the long run, and probably sooner, the overall costs will surely be reduced.

**Appendix to Petition Notice No. PR-79-9—Department of Transportation**

*Federal Aviation Administration*

**[14 CFR Part 140]**

[Docket No. 16279; Notice No. 76-24]

*Proposed Regulations Submitted to the FAA by the Environmental Protection Agency: Airport Noise Regulatory Process; Notice of Proposed Rule Making*

This notice of proposed rule making contains recommended regulations submitted by the Environmental Protection Agency (EPA) to the Federal Aviation Administration (FAA), pursuant to § 611(c)(1) of the Federal Aviation Act of 1958, as amended by the Noise Control Act of 1972 (Pub. L. 92-574). Section 611(c)(1) of the Federal Aviation Act of 1958 provides that EPA shall submit to the FAA recommended regulations to provide such control and abatement of aircraft noise and sonic boom as EPA determines is necessary to protect the public health and welfare. That section also provides that the FAA "shall consider such proposed regulations submitted by EPA under this paragraph and shall, within thirty days of its submission to the FAA, publish the proposed regulations in a notice of proposed rule making." This notice is published pursuant to that provision of law.

The EPA recommended regulation contained in this notice of proposed rule making (NPRM) proposes to amend Subchapter G of the Federal Aviation Regulations (14 CFR Chapter I) to establish a new Part 140 to prescribe (as stated by EPA) "procedures for the development, approval, and implementation of an Airport Noise Abatement Plan for airports required to be certificated under Part 139. This plan would constitute an amendment to the existing Airport Operating Certificate."

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue, SW., Washington, D.C. 20591. Comments on the overall environmental aspects of the proposed rule are specifically invited. Information on the economic impact that might result because of the adoption of the proposed rule is also requested. All communications received by the FAA on or before March 24, 1977, will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of the comments received. All comments will be available, both before and after the closing date for comments, in the FAA Rules Docket for examination by interested persons. The EPA has requested that an additional information copy of each public comment be sent to: U.S. Environmental Protection Agency, Office of Noise Control, AW-471, Attention: Docket No. ONAC 76-13, 401 "M" Street, SW., Washington, D.C. 20460. However, to ensure consideration as part of the regulatory process of the FAA, each comment must be submitted to the FAA Rules Docket.

Any person may obtain a copy of this notice of proposed rule making (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

A separate notice of hearing, published today in the "NOTICES" section of the **Federal Register**, announces that, pursuant to § 611(c) of the Federal Aviation Act of 1958, as amended, the FAA will conduct a public hearing in Washington, D.C., on January 17, 1977 to receive oral, as well as written, comments regarding the proposals contained in this notice of proposed rule making.

The following EPA opinions, conclusions, and proposed regulatory language are published verbatim as received from EPA by the FAA on October 26, 1976:

**EPA Proposal as Submitted to FAA**

In accordance with a recommendation made by the Administrator of the Environmental Protection Agency, pursuant to Section 7 of the Noise Control Act of 1972, the Federal Aviation Administration is considering the adoption of a new Part 140 to the Federal Aviation Regulations prescribing procedures for the development, approval, and implementation of an Airport Noise Abatement Plan for airports required to be certificated under Part 139. This plan would constitute an amendment to the existing Airport Operating Certificate.

*Legislative History*

Under the requirements of Section 7(a) of the Noise Control Act of 1972 (Pub. L. 92-574; 86 Stat. 1239). The Administrator of the Environmental Protection Agency conducted a study of the adequacy of Federal Regulation of aircraft and airport noise and submitted a report thereon to the Congress (Report on Aircraft/Airport Noise, Senate Committee on Public Works, Serial No. 93-8, August 1973). Under Section 611 of the Federal Aviation Act, as amended by the Noise Control Act of 1972, the Administrator of the EPA is also required to submit to the Federal Aviation Administration proposed regulations to provide such control and abatement of aircraft noise and sonic boom (including control and abatement of aircraft noise through the exercise of any of the FAA's regulatory authority over air commerce or transportation or over aircraft or airport operations) as the Administrator of the EPA determines is necessary to protect the public health and welfare. In accordance with the foregoing requirement, the EPA published in the **Federal Register** on February 19, 1974 (39 FR 6112), a "Notice of Public Comment Period" containing a synopsis of the proposed rules it was considering to achieve a level of aircraft noise control and abatement satisfactory for the protection of the public health and welfare. The proposed

aircraft and airport rules were divided into three categories: flight procedures for noise control, source noise control, and airport operations and planning for noise control. EPA has already proposed the following rules to the FAA:

| Title | Date to FAA | NPRM No., publication date in FEDERAL REGISTER | Date of hearings |
|---|---|---|---|
| 1. Noise Standards for Propeller Driven Small Airplanes | Dec. 6, 1974 | 74-39, Jan. 6, 1975, 40 FR 1061. | Mar. 3, 1975. |
| 2. Noise Abatement Minimum Altitudes for Turbojet Airplanes in Terminal Areas. | Dec. 6, 1974 | 74-40, Jan. 6, 1975, 40 FR 1072. | Mar. 5, 1975. |
| 3. Civil Subsonic Turbojet Engine-Powered Airplanes: Noise Retrofit Requirements. | Jan. 28, 1975 | 75-4, Feb. 26, 1975, 40 FR 8218. | Mar. 18, 1975. |
| 4. Fleet Noise Level Requirements | Jan. 28, 1975 | 75-6, Feb. 26, 1975, 40 FR 8222. | Apr. 17, 1975. |
| 5. Civil Supersonic Airplanes | Feb. 27, 1975 | 75-15, Mar. 28, 1975, 40 FR 14093. | May 16, 1975, May 22, 1975. |
| 6. Reduced Flap Setting Noise Abatement Approach for Turbojet Engine-Powered Airplanes. | Aug. 29, 1975 | 75-35 I, Sept. 25, 1975, 40 FR 44256. | Nov. 5, 1975. |
| 7. Visual Two-Segment Noise Abatement Approach for Turbojet Engine-Powered Airplanes. | Aug. 28, 1975 | 75-35 II, Sept. 25, 1975. | Nov. 5, 1975. |
| 8. Two Segment ILS Noise Abatement Approach for Turbojet-Engine Powered Airplanes. | Aug. 29, 1975 | 75-35 III | Nov. 5, 1975. |
| 9. Airplane Noise Requirements for Operation To or From U.S. Airports. | Jan. 13, 1976 | 76-1, Feb. 12, 1976, 41 FR 6270. | Apr. 5, 1976. |

The EPA is currently preparing the following further regulations which may be submitted to the FAA in the near future.

Noise Levels for Turbojet Powered Airplanes and Large Propeller Driven Airplanes.

Modifications to Noise Measurement and Evaluation Procedures for Aircraft Type & Airworthiness Certification.

Aircraft Takeoff Procedures for Noise Control.

All of the above proposals are directed at source noise control, to be complied with by manufacturers, or operational procedures, to be complied with by air carriers. In its report to Congress, the EPA emphasized that a full aviation noise control program would require action by airport proprietors as well. The rule which is the subject of this notice of proposed rulemaking, identified as the Airport Noise Regulation, would implement a comprehensive planning and abatement process at the nation's airports serving certificated air carriers. This proposed rule is the result of an intense investigation and analysis over the past two years and pilot projects at eight domestic airports. The key elements of the process consist of: (1) Determining boundary line noise levels at the airport in order to determine the extent of planning needed at the facility, (2) development of a noise abatement plan by the airport proprietor, (3) presentation of the plan to all interested parties at a public hearing, (4) submission of the plan, revised pursuant to public hearing as appropriate, to the Administrator (FAA) for his review, (5) inclusion of a plan as part of amended Airport Operating Certificate, and (6) implementation of the plan by the proprietor. This regulatory procedure is therefore established under Title 14 of Chapter 1 of the Code of Federal Regulations, Part 140, and would provide for an amendment to airport operating certificates issued pursuant to Part 139.

The FAA's authority to promulgate these requirements derives from the Federal Aviation Act of 1958, as amended, and the Airport and Airway Development Act of 1970. Section 611 of Title VI of the Federal Aviation Act of 1958, as amended (Pub. L. 90-411), provides in pertinent part that the Administrator of FAA shall prescribe and amend such rules as he finds necessary for the control and abatement of aircraft noise, including the application of such rules in the issuance or amendment of any certificate authorized by Title VI of that Act. Under Section 612 of that title, as amended by the Airport and Airway Development Act of 1970 (Pub. L. 91-258), the Administrator of FAA is authorized to issue airport operating certificates to airports serving air carriers certificated by the Civil Aeronautics Board, and to establish minimum safety standards for the operation of those airports.

Congress has repeatedly expressed its intent that airport planning and development be consistent with environmental considerations. The Airport and Airway Development Act of 1970 (Pub. L. 91-258) provides for Federal aid to airport development projects, including the location of an airport, runway, or runway extension. Encompassing the process of application, hearing, and approval at all levels for airport development projects is the declaration of national policy that those projects provide for the protection and enhancement of the natural resources and the quality of environment of the nation. In this respect the Secretary of Transportation may not approve an airport development project found to have an adverse environmental impact unless he finds that there is "no feasible and prudent alternative", and that "all possible steps have been taken to minimize" such adverse effects. (49 U.S.C.A. § 1716(c)(4)).

Section 16(a) of the Airport and Airway Development Act of 1970 also requires any development to be in accordance with standards established by the Secretary of the Department of Transportation, including standards for site location and airport layout. In addition, under section 18 of that Act before the Secretary approves an airport development he must receive satisfactory assurance that appropriate action, including the adoption of zoning laws, has been or will be taken, to the extent reasonable, to restrict the use of land adjacent to or in the immediate vicinity of airport operations. Finally, that Act provides *in pertinent part* that no airport development project may be approved by the Secretary of Transportation unless he is satisfied that "fair consideration has been given to the interest of the communities in or near which the project may be located." "Fair consideration" as used in that provision of the Act is based upon criteria designed to "provide for the protection and enhancement of the natural resources and the quality of the environment of this nation." (49 U.S.C.A. § 1716(c)(3)).

Section 13 of the Act also authorizes the FAA to make grants to public and planning agencies for preparation of airport master plans. Under this Planning Grant Program, Federal grants of up to two-thirds of the eligible costs are available, with no state being eligible for more than 7.5 percent of the funds available in any one fiscal year. All grants are subject to the National Environmental Policy Act of 1969; and Section 102(2)(C) of the Act requires an environmental impact statement when any Federal action would constitute a major action significantly affecting the environment.

In summary, the foregoing statutory provisions establish a firm foundation for the formulation of airport and aircraft noise abatement rules and for requiring airports to prepare and implement noise abatement plans as provided for in this proposed regulation.

**The Problem**

The airport noise problem results primarily from three factors: (1) the introduction of jets into the air carrier fleet in 1959, (2) airport encroachment by neighboring communities, and (3) airport expansion and operational increases and changes.

A portion of residential areas currently exposed to high levels of aircraft noise were developed before 1959 and were constructed, for the most part, in areas not then seriously impacted by aircraft noise. The rapid replacement of propeller driven aircraft by jets during the 1960's increased the extent and intensity of the noise problem.

However, in many cases a considerable portion of land already impacted by aircraft noise was subsequently developed for residential uses. By 1964 the FAA had developed the "composite noise rating" system (CNR) which permitted the prediction of community annoyance as a function of the number and type of aircraft operations and the time of day during which they occur. Even with the availability of CNR, local government bodies continued to permit incompatible development.

An increase in aircraft operations coincided with the replacement of propeller aircraft by jets. Runways and flight tracks at many large and severely encroached airports

became saturated and rapid airport expansion resulted in additional runways and flight tracks and noise complaints.

Among the more serious constraints to the development of a workable airport noise regulation are: (1) The individuality of each airport/community conflict situation, (2) the attraction which airports provide for incompatible development, (3) complexities associated with noise impact assessment, and (4) ambiguities in the judicial and political allocation of authority, accountability, and liability. The availability of noise abatement options, often thought to be the major constraint, is not in EPA's judgment a serious impediment to substantial improvement in the noise environment around most of the nation's airports. There are many cost-effective noise abatement actions which can be taken, provided the constraints identified above can be dealt with. This proposed regulation provides a simple approach to noise impact assessment and establishes a planning and decision-making process designed to deal with the other enumerated constraints.

Each airport is an individual case requiring special consideration. The types of airport proprietorship, extent of fragmentation of local government, the operational mission and size of airport and the pattern of surrounding land use are presented in an astounding number of combinations. Thus, a national regulation must make many simplifying generalizations to be workable. The trade-offs between equitable uniformity and reasonable flexibility have been difficult to make and undoubtedly have impeded progress more than any other single factor. Some actions clearly should be taken on a nationally uniform basis. Others are best suited to site specific application, especially where a national rule would of necessity have to be a "lowest common denominator" approach which would leave serious noise problems unabated at a significant number of airports.

Airport proprietorship may be public, quasi-public, or private. A typical form of public proprietorship is exemplified by the municipal department of airports; it varies depending on the form of local government in question, but many are line agencies directly accountable to a chief executive, council or commission. Quasi-public airport proprietorship is typified by the port authority or commission and is subject to all of the variations associated with special purpose forms of government. Private proprietorship is rare among airports serving certificated air carriers, with Burbank Airport (which is presently owned by Lockheed Air Terminal Corp.) providing the only example.

The operational mission and size of an airport also present a set of limiting factors, the most important of which are related to the national or international status of the airport, the amount of air cargo shipped, the annual number of operations, the type of aircraft accommodated, the physical size of the airport and the degree of encroachment. Large international airports and airports with high volumes of air cargo operations require a higher percentage of night operations and are less amenable to night curfew. Adjoining land use patterns also create a wide variety of constraints. Some airport related activities and the community infrastructure necessary to support them are noise sensitive, for example, residential land uses, schools and theaters. The spatial distribution of such incompatible development varies considerably from airport to airport; encroachment may be partial or circumferential gradually increasing or decreasing in intensity as a function of distance from the airport. In addition, the nature of housing types and population densities which are critical determinants of background noise levels, as well as structural absorption and human sensitivity also vary.

The airport is an example of an essential land use which must be effectively integrated into the urban economy it serves, but which is incompatible with the land use that, if unconstrained, tends to develop in the impacted land area.

There have also been many important constraints associated with the art of aircraft noise impact assessment. All but the most experienced practitioners have difficulty deciphering the abbreviations and acronyms which abound in the field of psychoacoustics. Planners and airport proprietors have digested dB, dBA, dBD, PNL, EPNL, SEL, SENEL, CNR, NEF, CNEL, ASDS, $L_{dn}$ and $L_{eq}$ with patience and understandable confusion.

Finally, a remarkable court history has resulted in a type of legal constraint which is so pervasive and important that it deserves separate and special consideration—the legal liability for aircraft noise effects. The liability for the aircraft noise effects experienced by property owners has been left by the courts to the airport proprietor, who in the past has frequently been held to have limited or no authority to abate aircraft noise. This has created a serious dilemma for airport proprietors, the Federal Aviation Administration, and local land use decision-makers.

The proprietor's dilemma arises from the fact that the aircraft serving his airport are engaged in interstate commerce and are flying in Federally controlled airspace. Thus, many attempts to implement noise abatement strategies have been seen as interfering with interstate commerce or as being null and void because of Federal preemption. If litigation is pending against the proprietor, it is likely that he will be reluctant to reveal aircraft noise forecasting information for fear that it will be used against him in court. This confused and paradoxical situation has dissuaded many airport proprietors from moving to reduce noise and has encouraged them to keep a low profile and to concentrate on those tasks related to the day-to-day running of the airport.

Local governments face their own peculiar dilemma. Noise has simply not been a priority consideration in most local land use decisions. Even where the prevention of encrouchment does receive priority local attention, many forces operate to mitigate its effectiveness. Every local governing body must face the difficult choice between (1) acquiring rights in property for a public purpose at considerable expense, or (2) regulating land use without compensation in the name of protecting the public health, safety, and welfare. At some point, increasing regulatory restrictions placed on the use of property may constitute a whole or partial taking of property, in which case compensation is necessary.

The uncertainty associated with the legal authority, accountability, and liability for noise has been compounded by the large number of diverse groups and their respective interests which play a major role in noise and noise abatement around airports. Included in the involved groups are the Federal and State governments, aircraft manufacturers, air carriers, owners of general aviation aircraft, airline pilots, land developers, home owners around the airport, the airport proprietor, local land use planners, and city councils of those communities either benefiting from or adversely affected by the airport. In the past, no one group has wanted to shoulder the principal burden of noise abatement. The unhappy result has been that noise abatement actions which could have been taken have not been, and the neighbors of our nation's airports have continued to suffer.

### The Regulatory Rationale

Despite the foregoing constraints there are many noise abatement actions that can be taken by various levels of government, the public, and the aviation industry, including airport proprietors. The history of noise control indicates that little is accomplished, notwithstanding large expenditures of money, unless a comprehensive approach is taken the considers all of the elements and participants involved in a particular situation and their relationship to each other. Nowhere is there a single private or governmental entity that has the complete capability, legally and technically, to address the entire aviation noise problem. The EPA believes that a Federal/State/local program for airport noise control and abatement, established under uniform procedures prescribed by the Federal Government for the coordination, consideration, and resolution of a particular airport/community noise problem is needed: That is the purpose of this proposed procedure. EPA has already made a number of regulatory proposals which, if adopted by the Federal Aviation Administration, will provide federal leadership on a national basis for noise abatement. However, additional noise abatement actions need to be taken at the local level. In the past, progress in such abatement actions has suffered from a lack of an overall airport noise abatement strategy which evaluates the available options and chooses those which are the most cost-effective for the protection of public health and welfare. The Environmental Protection Agency believes that such a noise abatement strategy for a specific airport can best be developed by the airport proprietor in cooperation with the other interested groups. To this end, this regulation requires that the airport proprietor evaluate each of the following possible noise abatement actions and develop a noise abatement program for his airport which provides for the protection of the health and welfare of the surrounding community:

1. Takeoff and landing noise abatement procedures for aircraft,

2. Limitations on the use of aircraft which do not meet the certification noise limits of Federal Aviation Regulation 36,

3. Noise abatement preferential runway systems,
4. Glide slopes and glide slope intersections for landing configuration,
5. Flight tracks,
6. Approach paths,
7. Landing paths,
8. Limitations on the class of aircraft using the airport,
9. Shifting aircraft to neighboring airports,
10. Location of run-up areas,
11. Operational limitations/curfews,
12. Priority landing directions for all aircraft,
13. Landing fees based on performance specifications,
14. Landing fees based on noise emission characteristics,
15. Compatible use of impacted land,
16. Other actions which would have a beneficial impact on public health and welfare,
17. Other actions recommended for analysis by the FAA or EPA for the specific airport.

The depth of the analysis required of an individual airport proprietor will depend on the extent of the noise problem at that particular airport. For most airports in the country, the actual amount of planning and analysis required will be small. The EPA has prepared, and will furnish, a manual technique for evaluating noise abatement options; this technique, which does not require the use of computers, can be used at most certificated air carrier airports.

In order to carry out this abatement planning and implementation effectively the airport proprietor must have a planning process by which he can determine the most effective means of noise abatement in his particular situation and by which there can be a meaningful dialogue with those—local governing bodies, airport neighbors, airport users, local Chambers of Commerce, and airlines, among others—who want and should have a role in determining what is to be done at the airport to abate noise.

EPA has designed and developed an environmental aircraft noise impact assessment methodology for airports to meet those needs. This methodology, called the Airport Noise Evaluation Process (ANEP) is set forth in Appendix A to this regulation. This process has the very important quality of providing for the display of the relative effectiveness of various noise abatement actions in a form which is understandable to both technical and non-technical persons, including the airport's neighbors.

The ANEP methodology is based upon the use of the Day-Night Average Sound Level ($L_{dn}$) description which EPA has recommended for use in all community noise studies and planning efforts. The $L_{dn}$ noise description is formulated to encompass all of the noise events which take place within a 24 hour period, with a penalty for nighttime noise events. Although one may argue that an averaged description which is based upon a 24 hour time period cannot fully reflect specific variations in noise level during discrete time periods, EPA believes that the use of such a formulation is warranted since (1) predicted public reaction to noise correlates well with average daily levels, and (2) data requirements for analyses by specific time periods during the day rapidly assume such awesome proportions as to render any analytical scheme unmanageable.

Under the planning process proposed herein, city councils and land use planners, as well as the people most directly affected by aircraft noise will have the opportunity to take a part in the planning and abatement process. Their effective participation is made possible by the nontechnical manner in which this methodology presents the results of the analysis. This kind of participant process is essential if the airport and the community are to continue to coexist on an amicable basis and if the growing problem of incompatible land use is to be brought under reasonable control.

Under the present proposal, every airport in the United States subject to Part 139, serving air carriers holding a certificate of public convenience and necessity from the Civil Aeronautics Board, must develop and implement a noise abatement plan. In many cases, general aviation airports also generate severe noise impacts on the airport neighbors. Thus, they will need to be brought within the regulatory process at a subsequent date. However, because only air carrier airports are presently required to have an Airport Operating Certificate under Part 139 of Title 14 of the Code of Federal Regulations and because a regulatory process such as this must start with the most serious problems, air carrier airports are the natural starting point.

A noise abatement plan must be developed and implemented under this regulation for both two years and five years from promulgation and thereafter on a continuing basis every five years.

Development of the Airport Noise Abatement Plan must be coordinated with areawide and local planning programs so that alternative noise abatement strategies under study by the airport proprietor consider and are coordinated with patterns of residential and other major land uses in the area, with other transportation facilities and public services, and with objectives, policies and programs for the area in which the airport is located. It is *desirable* for areawide and local planning to be integrated with noise abatement planning in all plans developed under this regulation. The regulation *requires* that these two types of planning be fully integrated in the plan submitted under this regulation for the second five-year period.

**Methodology**

It is essential that a uniform methodology be used to evaluate and describe the noise impact of present and future operations at the nation's airports and the relative effectiveness of controls which could be implemented at these airports. Such a uniform methodology will ensure consistent and equitable evaluation among all airports and will greatly simplify the decision-making process which today is plagued by numerous methodologies. The EPA-proposed methodology (Airport Noise Evaluation Process—ANEP) has the added advantage of being understandable to persons who are not trained in aviation noise matters. This is essential since noise abatement around airports requires intelligent and farsighted actions on the part of many groups of persons, many of which are not generally skilled in the intricacies of noise control, per se.

The EPA uniform methodology for conducting aircraft noise impact analyses is prescribed by the proposed regulation in detail in Appendix A. The methodology requires: (1) The delineation of all land areas exposed to aircraft noise levels in excess of 55 $L_{dn}$, which is the gross study area for a specified base year; (2) the projection of the incremental contribution of aircraft noise to community noise in the study area; (3) the delineation of a net study area, which is the developed or developable land within the gross study area which is exposed to an increment of aircraft noise of more than 2 dB (This eliminates from the study area land whose noise levels would not be significantly affected by abatement of aviation noise.); (4) the determination of the population exposed to the aircraft increments estimated in (2); and (5) the demonstration of the beneficial effects of various noise abatement options, in terms of the reduction of noise exposure to the population. On the basis of this analysis, the airport proprietor in conjunction with the community will evaluate all options, and determine which should be included in the noise abatement implementation plan for the airport in question.

Each regulation which EPA recommends to FAA under Section 611(c) of the Federal Aviation Act, as amended, must in the EPA Administrator's judgment, be necessary to protect public health and welfare. Further, under Section 611(d), the FAA Administrator must consider cost, safety, the needs of air transportation in the public interest, and other factors in addition to the protection of public health and welfare. In pursuance of this mandate, this regulation would require that each plan provide for the noise abatement requisite to protect public health and welfare, taking into consideration the matters set forth in Section 611(d) of the Act. Each plan will be different in that the measures appropriate for each airport will be determined by the characteristics of the specific site. EPA considered the desirability of specifying particular health and welfare-based boundary line standards in the body of the regulation which every airport would be required to meet. EPA determined that such national uniform standards are not appropriate to the airport noise problem. For some less-impacted airports a national uniform standard would require far less abatement than could be effectively developed for the protection of health and welfare. For other severely impacted airports, uniform national standards would result in very little improvement in health and welfare protection. Consequently, the EPA has recommended that the health and welfare test be applied on a local basis.

In addition, this rule is to be distinguished from one which would require the airport proprietor to abate to the extent necessary to mitigate every possible impact which may have an adverse effect on the economic value of land around the airport (taking into account cost and the other Section 611(d) factors). This objective, although perhaps desirable from the point of view of the

individual community, is not within the authority and responsibility of the Federal Government. It can be expected that meeting the health and welfare standard of this regulation will eliminate much of the serious economic impact on the value of land around the nation's airports. A final decision regarding all the actions which will constitute an acceptable plan can best be made after an examination of the available options based on an analysis developed pursuant to the use of ANEP. However, the minimum that should be expected of a plan can be specified on a national basis for certain categories of airports based upon the experience at the eight pilot projects which EPA has conducted using the ANEP methodology.

EPA's judgment of the abatement which would be acceptable on a national basis as a minimum step toward meeting the health and welfare standard of this regulation is based on an assessment of the effectiveness and feasibility of the available options, their impact on the air transport system, and the severity of the noise problem at various classes of airports. That judgment is specified below for various classes of airports categorized according to the severity of their noise problems and their stage of development.

With regard to the first category of airports, which at a minimum should require that all aircraft using the facility meet the 1969 Federal Aviation Regulations (FAR) Part 36 noise levels and should utilize takeoff and landing noise abatement procedures, it should be noted that EPA has proposed or will shortly propose national rules for promulgation by the FAA requiring the use of all of these abatement options on a national scale. It is EPA's recommendation that the FAA promulgate these requirements. However, if the FAA has not finally promulgated these requirements by the time that airport plans are required to be submitted under this regulation, then it is EPA's judgment that the health and welfare standard used in this regulation would require the airport proprietor to implement these requirements at the categories of sites indicated below.

Additional efforts will be necessary at many airports in order to comply with the health and welfare requirement of this regulation. A conclusion as to what these additional efforts are for a particular airport should be based on the analysis of available options made pursuant to the application of the planning methodology required by this regulation (ANEP). In addition, a proprietor may, at his own discretion, decide to include even more restrictive actions in his plan in order to deal with other problems at the airport including those adverse impacts of the airport's operation on local land values not related to health and welfare.

**Mininum Acceptable Plan**

As used in the following discussion, "community impact boundary level" means the day-night average sound level resulting solely from aircraft operations at the line established by (1) the land held in fee simple by the airport or (2) land not held in fee simple by the airport (a) provided such land is actually being used and can reasonably be expected to continue to be used in a way which is compatible with the noise levels to which it is exposed or (b) provided the development rights of such land have been purchased such that only development compatible with the airport noise levels is allowed. Land which is merely zoned for compatible use with no other legal controls or for which aviation easements have been purchased and on which incompatible land use is possible is not included in this definition of community impact boundary level. Compatibility is to be judged according to guidelines adopted from HUD Report TE/NA-472, November 1972, "Aircraft Noise Impact: Planning Guidelines for Local Agencies." EPA's use of the referenced HUD document is based upon an analysis of the materials contained therein and does not preclude later modification of the compatibility criteria as new information becomes available. The key elements of the compatibility vs. noise level data base are contained in Table 1 of Appendix A. The noise resulting from aircraft operations is the noise level computed in terms of the annual average daily level of operations at the facility.

1. *All Airports With a Community Impact Boundary Noise Level of 65 $L_{dn}$ or Over at Any Point on the Boundary.*—At a minimum, these airports should require takeoff and landing noise abatement procedures for aircraft using their facilities and limit such aircraft to those meeting 1969 FAR 36 noise levels. The one exception to this minimum acceptable plan should be where the proprietor is able to reduce the community impact boundary level below 65 $L_{dn}$ using other abatement measures which he finds more acceptable.

If these other measures do not reduce the community impact boundary level to below 65 $L_{dn}$, then at a minimum the proprietor should require takeoff and landing noise abatement procedures and exclude the use of non-FAR 36 aircraft. Having determined the community impact boundary level resulting from the implementation of an approvable plan under this regulation, the airport proprietor shall use whatever additional available abatement measures are necessary to maintain no greater than this level in the future.

2. *Airports with Community Impact Boundary Levels of Less Than 65 $L_{dn}$ at All Points on the Boundary.*—At a minimum, these airports should use whatever available abatement options are necessary to maintain the community impact boundary level now existing and to reduce it further if this is possible.

3. *Airports Which Contemplate Expansion of Their Facilities.*—At a minimum, these airports should maintain their community impact boundary level after expansion at a level which is no greater than that which represents the level necessary for an acceptable plan prior to expansion.

4. *New Airports.*—At a minimum, these airports should be designed and developed so that at no time in the future will the community impact boundary noise level exceed 65 $L_{dn}$.

In the development of noise abatement plans pursuant to this regulation, special attention should be focused on those airports which are so severely impacted that they have community impact boundary noise levels of 75 $L_{dn}$ or over. This situation can have such a serious impact on the health and welfare of the population exposed to such levels that ever reasonable effort should be made to reduce this level to under 75 $L_{dn}$ as soon as possible.

As an immediate objective, EPA believes that every airport with a community impact boundary level in excess of 75 $L_{dn}$ should reduce that level to less than 75 $L_{dn}$ as soon as possible but in any case by the end of 1980 unless this would impose a severe hardship. In EPA's view such a severe hardship would exist only in the event that (1) the less than 75 $L_{dn}$ goal cannot be met fully without the purchase of land; (2) such purchase is not covered by the 1970 Airport and Airway Development Act (ADAP), as amended or, (3) such extra-ADAP purchases are not reasonably possible in relation to the airport proprietor's financial capability, the amount of litigation damages which the purchase would diminish, and the excess in purchase price over the recoupment value of converting the land to a campatible use.

In summary, the EPA believes that as a longer-term objective, all airports should work toward bringing their community impact boundary levels down below 65 $L_{dn}$. Furthermore, in those cases where community impact boundary levels are at 75 $L_{dn}$ or above, a serious problem exists which calls for immediate and forceful action.

It is generally agreed that 75 $L_{dn}$ is an unacceptable exposure level for people in normally constructed homes. 65 $L_{dn}$ was chosen as a longer-term objective because present limited data indicate that at some airports, a contribution of noise from aircraft of less than 65 $L_{dn}$ is difficult to distinguish from other ambient noise, given the environmental noise levels around those airports. However, as indicated in *Information on Levels of Environmental Noise Requisite to Protect Health and Welfare With An Adequate Margin of Safety*, (EPA 550/9-74-004, March 1974), effects from noise occur at levels below $L_{dn}$ 65 and further analysis is needed in the future to refine further practical objectives for airport noise abatement.

**Public Hearing and Evaluation of the Plan**

Upon completion of the draft Airport Noise Abatement Plan, the proprietor of an airport (or the State, if the proprietor is a political subdivision thereof) is required by this proposed regulation to hold a public hearing to afford all interested persons an opportunity to submit data, views, and comments with regard to the merits of the draft implementation plan for that airport.

Based upon the record of the hearing, the draft plan is, to the extent practicable and necessary, to be changed by the proprietor of the airport to reflect the views, data, and comments received at the hearing. The revised plan will then be forwarded to the Administrator of the FAA.

If the Administrator does not notify the airport proprietor of his disapproval of the plan, the plan is then automatically incorporated as submitted into the Airport

Operating Certificate for that airport. Notification of disapproval will be made within 120 days of the date of receipt of the plan by the FAA. The Administrator may disapprove any plan on the basis of (1) safety, (2) significant disruption of the national air transportation system, or (3) evidence that the plan has not been the subject of adequate public participation.

If the Administrator is considering a disapproval action, he may ask the airport proprietor for any additional pertinent information which is needed to clarify those issues which are being considered as the basis for disapproval. Such a request will stop the running of the 120-day period which will then begin to run again as soon as the additional information is submitted. This request and the submission of new information does not authorize an additional period of 120 days; the intent rather is to allow the proprietor to gather and submit new information without this period of time being counted against the 120-day review period.

If the Administrator intends to disapprove a Plan, he will publish in the **Federal Register** a notice of his intention to disapprove the Plan, setting forth his reasons for such disapproval and inviting comment. The Administrator must also notify directly those persons who testified at the local hearing. Thereafter, the Administrator will either withdraw his disapproval of the Plan or direct the airport proprietor to prepare a revised plan to overcome the adverse findings of the Administrator.

**Compliance**

If the plan is not disapproved within 120 days, the plan automatically is incorporated as an amendment to the Airport Operating Certificate for that airport. The regulation requires that the airport proprietor must then implement this plan. Each such plan will be in effect for no more than five (5) years. The Plan must be revised and the revision submitted to the Administrator for review no later than one (1) year prior to the termination date of the original plan. The first such revision is due four (4) years after incorporation of the original plan in the operating certificate. The Administrator may suspend the Airport Operating Certificate if at any time the airport proprietor does not carry out the abatement plan as so incorporated. During such suspension the Administrator may limit operations at the airport and no ADAP funds may be expended or obligated in connection with the airport except for noise planning or abatement purposes.

Failure to comply with the provisions of this regulation within a reasonable time under the circumstances will be deemed by the Administrator to constitute a denial by the airport proprietor of "fair consideration" to the communities in or near which an airport development project may be located, within the meaning of the Airport and Airway Development Act, so as to constitute the basis for denial of grant approval for airport development projects under that Act.

Airport Noise Abatement Plans required by this regulation must be submitted in a phased schedule between January 1, 1978 and July 1, 1979 pursuant to a schedule developed and published by the Administrator of the FAA.

Any action taken by the Administrator of the FAA pursuant to the requirements of this regulation which relate to the disapproval of an Airport Noise Abatement Plan, or the publication of general guidelines or regulations affecting noise planning and abatement at airports, will be taken after consultation with the Administrator of the EPA.

All airports subject to this regulation must develop plans which meet the health and welfare standard of this regulation on a time-phased basis with the first target no later than two (2) years and the second target five (5) years from the date of submission. In addition, each plan is required to project population changes and noise impact for 10 years after submission and display alternatives available to local communities for land use controls.

This amendment is proposed under the authority of sections 313(a), 611(c), and 612 of the Federal Aviation Act 0f 1958, as amended (49 U.S.C. 1354(a), 1431(c), and 1432); section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); Title I of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and Executive Order 11514, March 5, 1970.

In consideration of the foregoing, it is proposed to amend Subchapter G of the Federal Aviation Regulations (14 CFR Chapter I) to establish a new Part 140 to read as follows:

**Subchapter G—Air Carriers, Air Travel Clubs, and Operators for Compensation or Hire: Certification and Operations**

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**Part 140—Airport Noise Abatement**

Sec.



140.1 *Applicability.*

The provisions of this Part apply to each airport proprietor subject to Part 139 of this Title.

140.2 *General Requirement.*

Pursuant to Sections 611 and 612 of the Federal Aviation Act of 1958, the Administrator of the Federal Aviation Administration shall require that each airport proprietor must obtain an Amended Airport Operating Certificate which is an amendment to the existing Airport Operating Certificate, to include an Airport Noise Abatement Plan as provided in this Part.

140.3 *Noise Level Information.*

Each airport proprietor shall submit to the Administrator within 120 days a report prepared in accordance with Appendix A showing the boundary line noise levels of its airport. The Administrator shall publish this informtion in the **Federal Register.**

140.4 *Airport Noise Abatement Plan.*

Each airport proprietor shall submit to the Administrator on dates to be set by the Administrator (in no case earlier than January 1, 1978, nor later than July 1, 1979) an Airport Noise Abatement Plan, prepared in accordance with the requirements of this section.

(a) Each Plan prepared under this section shall be developed according to the Airport Noise Evaluation Process (ANEP) specified in Appendix A, and shall detail the proprietor's considertion of all available abatement options. All airports subject to this regulation must develop plans which protect the public health and welfare taking into consideration the factors prescribed by Section 611(d) of the Federal Aviation Act as amended on a time phased basis with the first target no later than two (2) years and the second target five (5) years from the date of submission. In addition, each plan shall project population changes and noise impacts for ten (10) years after submission and display alternatives available to local communities for land use controls.

(b) Each airport proprietor (or the State if the airport proprietor is a political subdivision of a State) shall, after preparing a Plan meeting the requirements of subsection (a) but prior to submission to the Administrator, conduct a public hearing on the Plan to afford all interested persons an opportunity to submit data, views, and comments with regard to the merits of the draft noise abatement Plan for that airport.

(1) The proprietor shall, no later than one year prior to the date that his initial plan is to be submitted to the Administrator, cause to be published a notice in newspapers and other media of the communities affected by the airport which sets forth his proposed procedure for developing the plan, including the approximate date of the public hearing.

(2) Such hearing shall be conducted in the manner of an informal hearing in accordance with procedures described in section 11.67 of this Chapter.

(3) Copies of the draft Plan shall be made available to all interested parties no less than 45 days before the hearing is held.

(c) Based upon the record of the hearings, the draft Plan shall, to the extent practicable and reasonable, be changed by the proprietor of the airport to conform with the views, data, and comments received at the hearing.

(d) The submission of the final Airport Noise Abatement Plan to the Administrator shall include the following:

(1) The Plan, as revised under subsection (c).

(2) The record of the hearing held under subsection (b);

(3) A list of the parties, and their addresses, who participated in the hearing held under subsection (b);

(4) A synopsis of the views presented at the hearing;

(5) The proprietor's comments on the views presented at the hearing.

140.5 *Action of the Administrator.*

Except as otherwise provided in this section, the plan as submitted will be

automatically incorporated into the Airport Operating Certificate for each airport for which an Airport Noise Abatement Plan has been properly submitted in accordance with § 140.4(d).

(a) The Administrator will publish in the **Federal Register** a notice of the incorporation of such plan into an Airport Operating Certificate under this Part.

(b) At any time within 120 days following receipt by the Administrator of an Airport Noise Abatement Plan properly submitted in accordance with § 140.4(d), the Administrator may notify the airport proprietor that he intends to disapprove such Plan.

(1) The Administrator may disapprove any Plan if he determines that the Plan

(i) May create a safety hazard, or

(ii) May significantly disrupt the national air transportation system, or

(iii) was submitted without adequate public participation as required by § 140.4(b).

(c) If the Administrator determines that a Plan should be disapproved, he shall publish in the **Federal Register** his intention to disapprove the Plan, setting forth his reasons for such a determination, and inviting comment.

(1) Within 10 days after publication of any notice under this subsection, the Administrator shall notify directly each party who participated in the public hearing held by the airport proprietor of his determination and invite comment.

(2) The Administrator may at his discretion hold a public hearing for the purpose of receiving views and comments of interested persons in connection with any Plan disapproval. Any such hearing will be conducted by the Administrator as an informal hearing in accordance with the rules of conduct prescribed in section 11.67 of this Chapter.

(3) Based upon review of all comments received, the Administrator shall either withdraw his notice of his intent to disapprove or shall direct the airport proprietor to prepare a revised Plan to overcome the adverse findings of the Administrator.

(d) At any time during the 120-day period prescribed in subsection (b) above, the Administrator may request the airport proprietor to submit any additional information which is reasonably necessary to clarify those matters specified in subsection (b)1 above which may serve as a basis of the Administrator's approval. The period of time required by the airport proprietor to furnish this data shall not be counted in determining whether the 120-day period specified in this section has elapsed.

(e) Any actions by the Administrator of the FAA under this Section or in the form of general guidelines or regulations affecting noise planning or noise abatement at airports, shall be taken only after consultation with the Administrator of the Environmental Protection Agency or his designee.

(f) Once a plan is incorporated as an amendment to the Airport Operating Certificate the airport proprietor shall implement the plan in accordance with the schedule included in the plan. The airport proprietor may revise his plan by submitting a new plan to the Administrator pursuant to § 140.4.

140.6 *Termination of Plan.*

(a) Each Airport Noise Abatement Plan terminates whenever the Airport Operating Certificate is terminated, surrendered, or revoked as provided in Part 139.

(b) Unless earlier terminated under subsection (a) each Airport Noise Abatement Plan terminates five years from the date of incorporation of the plan in the Airport Operating Certificate under § 140.5. Termination of the Noise Abatement Plan shall result in the termination of the Airport Operating Certificate.

140.7 *Revision of Plan.*

The Plan must be revised and submitted to the Administrator for review no later than one (1) year before the termination date of the original plan. The first such revision is due not later than four (4) years after incorporation of the original plan in the Airport Operating Certificate. This revision shall include a full description of the relationship of this plan to areawide planning in land use and transportation which has been carried out in neighboring communities. Each revision is subject to all requirements of this Part.

140.8 *Effect of Failure to Comply with this Part.*

Failure to comply with any provision of this Part shall be deemed by the Administrator to constitute a denial by the airport proprietor of "fair consideration" to the communities in or near which an airport development project may be located within the meaning of the Airport and Airway Development Act, so as to constitute the basis for denial of grant approval of an airport development project under that Act.

140.9 *Failure to Comply with Plan.*

The Administrator may suspend the Airport Operating Certificate at any time that the airport proprietor does not carry out the abatement plan as approved. During such suspension the Administrator may limit or otherwise control operations at the airport and no ADAP funds shall be expended or obligated in connection with the airport except for noise planning or for noise abatement purposes.

**Appendix A—Airport Noise Evaluation Process (ANEP)**

*Definitions.—Sound Exposure Level* ($L_{AE}$), in decibels, is the level of the time integral of A-weighted squared sound pressure, with reference to the square of the standard reference sound pressure of 20 micro pascals and a reference duration of one second.

*Equivalent Continuous Sound Level* ($L_{eq}$), in decibels, is the A-weighted mean square sound pressure level over a stated time period.

*Day-Night Average Sound Level* ($L_{dn}$), in decibels, is the 24-hour average sound level, from midnight to midnight, obtained after adding 10 decibels to sound levels in the night from midnight to 7 a.m. and from 10 p.m. to midnight (0000 to 0700 and 2200 to 2400 hours).

*Indigenous Sound Level*, in decibels, is the day-night average sound level normally associated with activities and sources common to residential neighborhods, in the absence of aircraft noise and the noise generated by major freeways, trains, industries, or other specific sources.

*Background Sound Level*, in decibels, is the common logarithmic sum of indigenous sound level and the contribution to day-night average sound level provided by all other residential noise sources other than aircraft. If other sources in the residential area do not exist, or are disregarded, the background sound level is equal to the indigenous sound level.

*Incremental Aircraft Impact*, in decibels, is the positive arithmetic difference between background sound level and the common logarithmic sum of aircraft and background sound levels where that sum is computed on the following scale:

| Aircraft sound level less background sound level | Value added to Background Sound Level to Determine Common Logarithmic Sum of Aircraft and Background Levels |
|---|---|
| 10 or more | 10 or more. |
| 9 | 10. |
| 8 | 9. |
| 7 | 8. |
| 6 | 7. |
| 5 | 6. |
| 4 | 5. |
| 3 | 5. |
| 2 | 4. |
| 1 | 4. |
| 0 | 3. |
| −1 | 3. |
| −2* | 2. |

* The cut-off at—2db is utilized because this is considered as the minimum value where recognition of aircraft noise can be identified as a contributor to total noise, i.e., aircraft plus background.

*Gridpoint Array* is the format used to display aircraft day-night average sound levels and consists of a cartesian grid system of uniformly spaced points; aircraft average day-night sound level is computed at each point of the cartesian grid and so displayed.

*Gridblock* is the land area bounded by 4 gridpoints which form a square, the sides of which are parallel to the axes of the cartesian grid system.

*Gross Study Area* is the land area enclosed by a line which connects the gridpoints of an aircraft day-night average sound level gridpoint array printout which are nearest to 55 $L_{dn}$ but which do not exceed 55 $L_{dn}$.

*Net Study Area* is the land area included within the gross study area which is exposed to an incremental aircraft impact.

*Airport Boundary Line Level*, in decibels, is the aircraft average day-night sound level on the line established by the land held in fee simple by the airport.

*Community Impact Boundary Line* is the line established by the land (a) which is now used and can reasonably be expected to continue to be used in a way which is compatible with the noise levels to which it is exposed or (b) for which the development rights have been purchased such that only development compatible with the noise levels to which it is exposed is allowed. Land which is merely zoned for compatible use or for which avigation easements have been purchased and on which incompatible land use is possible is not included. Compatibility

is determined according to Table 1 of this Appendix.

*Homogenous Development* is defined as land in residential use upon which there is a uniform spacing of residential structures of a similar type.

*Noise Units* are calculated by taking the product of incremental aircraft impact in a specific area and the residential population of that area.

*Potential Noise Units* are calculated by taking the product of incremental aircraft impact in a specific area and the population which would reside in that area if undeveloped property were to be developed in a manner consistent with its principal permitted use, pursuant to local land controls, control policies or use plans.

*Undevelopable Property* is land which cannot be built upon because of permanent physical or legal constraints, e.g., held in fee, flood plains, land subject to use easements, restrictive covenants or lease-hold agreements by governmental entities for public purposes having the same effect as permanent open space restrictions.

*Undeveloped Property* is land which is developable, but which has shown a 10 to 15 year history of stability, i.e., an absence of zoning changes, plating or subdivisions, water, sewer and utility extensions, building permit applications, and the existence of tax assessment valuation consistent with permitted use.

*Developing Property* is land with a 10 to 15 year history of instability, as evidenced by the same public record criteria used to define undeveloped land.

2. *Purpose.*—It is the purpose of this part to establish a uniform methodology for Aircraft Noise Evaluation in the vicinity of airports, including the determination of Boundary Line $L_{dn}$ Levels. Such methodology employs a prescribed set of noise descriptors which are used to determine cumulative aircraft noise levels, for boundary line assessments, and to compare cumulative aircraft noise levels with activities indigenous to affected communities, for assessment of Aircraft Incremental Impact. All airport noise abatement plans prepared pursuant to the Airport Noise Regulation shall employ this methodology, or its equivalent, for the characterization of aircraft noise impact.

3. *Noise Descriptors.*—(a) *Single Event.* The sound exposure level ($L_{AE}$) shall be employed for the analysis and characterization of single aircraft noise events.

(b) *Cumulative Events.* The day-night average level ($L_{dn}$) shall be employed for the analysis and characterization of multiple aircraft noise events and for the estimation of community indigenous and/or background noise levels. Multiple aircraft events are analyzed in terms of an annual average daily number of operations.

(c) *Incremental Aircraft Impact.* The positive arithmetic difference between background sound level and the common logarithmic sum of aircraft and background sound levels. Aircraft sound levels are considered to provide an increment to background sound levels when the aircraft level exceeds the background level by an increment at which recognition of aircraft noise can be identified as a contributor to total noise.

4. *Determination of Airport Boundary and Community Impact Boundary $L_{dn}$ Values.*—To provide the public with an indication of the extent of the noise impact of an airport, the proprietors of all civil air carrier airports, i.e., those airports which hold a current Airport Operating Certificate under Part 139 of the Federal Aviation Regulations, shall determine their airport boundary line $L_{dn}$ values at a sufficient number of points on their boundary line so as to be able to certify that said levels are nowhere in excess of 65 $L_{dn}$ or that said levels do exceed 65 $L_{dn}$ and likewise for $L_{dn}$ 75. At any boundary line point where $L_{dn}$ values exceed 65 $L_{dn}$, the proprietor shall determine the Community Impact Boundary Line and identify land which is exposed to greater than $L_{dn}$ 65 and to greater than $L_{dn}$ 75 which is not contained within the Community Impact Boundary Line. Proprietors may further specify what portions of this latter land is zoned for compatible use. Table 1 of this Appendix presents compatible use information for several land uses as a function of $L_{dn}$ levels for the purpose of identifying the Community Impact Boundary line and land zoned for compatible use.

Airport boundary line level and Community Impact Boundary line designations shall be submitted to the Administrator within 120 days of the date of promulgation of this regulation. Said designations and declarations shall be submitted together with copies of the working materials and data used to develop them, as described below.

Boundary line $L_{dn}$ levels shall be determined according to the data and methods presented in "Calculation of Day Night Levels ($L_{dn}$) Resulting From Civil Aircraft Operations," (GPO No. ————) and shall explicitly follow the techniques described in Section III of the referenced document, "Calculation of $L_{dn}$ Values at a Point" where all such points lie on the boundary line. At a minimum, $L_{dn}$ values shall be determined for the intersection of each extended runway centerline and boundary line; $L_{dn}$ calculations shall be performed at a sufficient number of points between the intersections of the extended runway centerlines and boundary lines to enable the proprietor to certify that boundary line levels either do or do not exceed 65 $L_{dn}$ and likewise for $L_{dn}$ 75.

5. *Incremental Aircraft Impact.*—When required by this regulation, the Incremental Aircraft Impact methodology shall be used to determine the extent and severity of aircraft noise problems in the vicinity of civil aviation airports, as well as the effectiveness of noise impact reduction options. The methodology consists of a series of subtasks, as described in the following subsections.

TABLE 1. Land use compatibility with day-night average sound level ($L_{dn}$) at a site for buildings as commonly constructed.

COMPATIBLE ☐ MARGINALLY COMPATIBLE ▨

| LAND USE | DAY-NIGHT AVERAGE SOUND LEVEL IN DECIBELS 50 | 60 | 70 | 80 |
|---|---|---|---|---|
| Transient Lodging | | | ▨ | |
| Office Buildings, Personal, Business and Professional | | | ▨ | |
| Commercial-Retail, Movie Theaters, Restaurants | | | ▨ | |
| Commercial-Wholesale, Some Retail, Ind., Mfg., Utilities | | | | ▨ |
| Livestock Farming, Animal Breeding | | | ▨ | |
| Agriculture (Except Livestock), Mining, Fishing | | | | ▨ |
| Public Right-of-way | | | | ▨ |

Source: Adapted by R. W. Young from Figure 2-15 of HUD Report TE/NA-472 November 1972 "Aircraft Noise Impact: Planning Guidelines for Local Agencies" by Wilsey & Ham and Bolt Beranek and Newman.

### A. Defining the Study Area

The IAI methodology operates on two distinct data bases which are used to characterize (1) the population distributions and demographics in the vicinity of the airport and (2) the aircraft operations at the airport: Each of these data bases is used to determine a "noise picture" of the area around the airport, one for non-aviation sources and the other for aviation sources. A comparison of the two noise pictures leads to a determination of the noise impact of aviation sources, over and above non-aviation sources. Hence, it is desirable to define a study area which is large enough to permit the evaluation of all potentially feasibly aviation noise reduction options while minimizing the need to continually acquire additional information for the population distribution and demographics data base. For this reason, the proprietor shall define a Gross Study Area which includes all land exposed to an Aircraft Day-Night Average Sound Level of 55 $L_{dn}$ or greater. Said definition is to be made in terms of annual average daily airport activity levels and mode of operation for the twelve (12) month period prior to the date of promulgation of this regulation, except where the designated 12-month period includes major disruptions to the normal operation and activity of the airport such as reduction of activity levels due to strikes or other abnormal service reductions or modifications such as those imposed by runway closings for resurfacing. Should the 12-month period prior to the date of promulgation of this regulation include such service abnormalities, the proprietor shall use data for the 12-month period prior to the beginning of the service abnormality. The 12-month period used to define the Gross Study Area is hereafter referred to as the Base Year.

For the Base Year, the proprietor shall acquire the avaiation operations data necessary to develop a Gridpoint Array using an FAA approved $L_{dn}$ computer program [1], or its equivalent, or, for smaller airports, the manual technique presented in "Calculation of Day-Night Levels ($L_{dn}$) Resulting From Civil Aircraft Operations." Although the specific details of alternative equivalent $L_{dn}$ calculation programs may require that data be put into specific formats, all such calculation programs require the same functional types of data which are as follows:

- A map of the airport and its environs at a scale of 1 inch to 2000 feet indicating runway length, alignments, landing thresholds, takeoff start-of-roll points, airport boundary, and flight tracks out to at least 50,000 feet from the end of each runway.
- Airport activity levels and operational data which will indicate, on an annual average daily basis, the number of aircraft, by type of aircraft, which utilize each flight track, in both the day (0700–2200 hours.) and night (2200–0700 hrs.) periods for both landings and takeoffs.
- For landings—glide slopes, glide slope intercept altitudes, and other pertinent information needed to establish approach profiles, i.e., the relationship altitude to distance to touch-down along with the engine power levels needed to fly that approach profile.
- For takeoffs—the flight profile which is the relationship of altitude to distance from start-of-roll along with the engine power levels needed to fly that takeoff profile; these data shall reflect the use of noise abatement departure procedures and the takeoff weight of the aircraft or some proxy for weight such as stage length.

Existing topographical or airspace restrictions which preclude the utilization of alternative flight tracks.

- The Government furnished data base depicting aircraft noise characteristics.

The Base Year airport activity and operations data and the aircraft noise emission characteristics, when processed by an approved $L_{dn}$ calculation program or the referenced manual technique, will yield aircraft $L_{dn}$ values in the vicinity of the airport in a geographical gridpoint array. The gridpoint array shall be at a scale of 1 inch to 2000 feet with a uniform spacing of 1000 feet between gridpoints. The gridpoint array is normally centered on the runway complex; however, for facilities which exhibit a preponderence of operations over specific area adjacent to the airport, the gridpoint array center should be translated toward that area in order to include all impacted areas while excluding areas over which there is minimal aircraft activity.

### B. Determining the Gross Study Area Boundary

The gross study area boundary is that line which includes all land area exposed to 55 $L_{dn}$ or greater due to aircraft operations. This boundary is determined by connecting the line of gridpoints which are nearest to 55 $L_{dn}$ but which do not exceed 55 $L_{dn}$. The gross study area is then composed of all gridblocks which are intersected by or lie within the connecting line.

### C. Determining the Locus and Extent of Authority

The gross study area may fall completely within the boundary of a single political jurisdiction which has comprehensive land use planning and control authority or it may be composed of a variety of governmental entities. The airport proprietor shall identify and depict the geographic extent of each governmental entity which is either wholly or partially contained within the Gross Study Area and describe the land use planning and control authority available to each. The description of planning authority shall be of sufficient detail to distinguish between comprehensive or master planning authority and other types such as areawide, regional, special purpose.

An acceptable analysis of the types of land use control available to the impacted jurisdictions should include, but not be limited to, the following general categories of land use control:

- Acquisition and disposition of land
- Regulatory (police) power
- Capital improvement programs
- Monetary and fiscal policy
- Contractual agreements

For prospective applications of local land use control authority, the airport proprietor shall indicate whether the specified authority is (1) as a matter of administrative discretion, (2) pursuant to the enactment of a local law, or (3) as requiring State enabling legislation.

### D. Estimating Community Background Levels

The community background level is the common logarithmic sum of the indigenous (self-generated) noise level and the contributions of other specific residential sources such as limited access highways which are within the gross study area. Background levels must be estimated in a manner which is methodologically compatible with the format of the aircraft noise analysis, i.e., background levels must be presented in $L_{dn}$ at each gridpoint in the array which was defined for the aircraft noise analysis.

1. *Estimating Indigenous Levels.* Indigenous levels shall be estimated for all residentially developed areas within the gross study area. The data requirement for this task consist of (1) a base map of the area surrounding the airport to the same scale as the Aircraft Day-Night Average Sound Level Gridpoint Array (1 inch to 2000 feet), (2) up-to-date aerial photography of the area surrounding the airport, and (3) up-to-date census data and tract maps on population and housing for the gross study area. The selection of a 1 inch to 2000 foot scale reflects the wide availability of U.S. Geodetic Survey (USGS) and Census maps which are produced in that scale. Aerial photography is not an absolute necessity for airports which are not located within built-up areas; in such cases an existing land use map or physical survey may be used. However, in built-up urban areas the use of aerial photography is advised to determine population densities and land use characteristics for given census tracts. These materials are basically all that are necessary to perform the indigenous noise estimation part of impact methodology. However, any additional material such as land use surveys and maps and population and housing surveys and analyses can be used as a supplement to the census information. Census tracts will vary

[1] Two computer programs are now in general use for $L_{dn}$ calculations, the AMRL program was used in the development and testing of this regulation. "Community Noise Exposure Resulting from Aircraft Operations: Computer Program Operator's Manual," AMRL TR 73–108, Aerospace Medical Research Laboratory, Wright-Patterson Air Force Base, Ohio, July 1975. "Airport Noise Reduction Forecast, Volume II–NEF Computer Program Description and User's Manual," Department of Transportation, DOT–TST– 75–4, October 1975.

considerably in size throughout urban and rural areas and any additional information on population and where it is actually within tract boundaries will enable more precise calculation of indigenous levels.

In order to estimate indigenous levels, the gross study area must be subdivided into study units which are areas of homogenous residential development. The following items constitute the basic criteria for study unit definition.

- A study unit shall be residential development of homogenous density throughout. Residential development is categorized into three separate groups; single unit detached dwellings uniformly distributed, multi-family dwellings uniformly distributed, and a uniformly distributed mix of single and multi-family units.
- The boundary of a study unit shall follow the physical boundary of a homogeneous development category.
- The maximum geographical size of a study unit shall be the census tract boundaries in which the development category lies.
- The minimum geographical area for a study unit of homogenous density in built up urban areas shall be 10 acres (built up is defined as development of homogenous density which is surrounded by other land uses).
- The maximum range of aircraft day-night average sound levels in a study unit shall not exceed 10 db.

Indigenous noise may be estimated as a function of population density for each study unit using the following equation:

$L_{dn} = 10 \log p + 22$

Where p = population density, people/square mile

or p = Study unit population/study unit area in square miles

and the population may be computed by a physical inspection of the number of dwellings within a study unit and multiplying it by the average number of people per dwelling within the census tract which contains the study unit; if the study unit boundary and the census tract boundary are the same, total population may be directly determined from the census data.

The EPA has identified a minimum criteria level of 55 $L_{dn}$ as being adequate to protect the public health and welfare with an adequate margin of safety and for those study units which due to sparse population do not exhibit an indigenous level of 55 $L_{dn}$, the estimated level is disregarded and 55 $L_{dn}$ is assigned for the purposes of this study as the indigenous level. This procedure applies to any area with a population density of less than 2000 people per square mile.

2. *Noise From Other Sources.* The community background level is composed of indigenous noise and the noise contribution from other sources within the community such as freeways and industrial sites. Prediction of noise levels resulting from sources may be done on a site specific basis, based upon measured data and put into the $L_{dn}$ gridpoint format according to the following formula:

$L_{dn} = 10 \log \frac{1}{24} (15 \text{ antilog } L_{eq} \text{ day} + 9 \text{ antilog } (L_{eq} \text{ night} + 10)$

where $L_{eq}$ day and $L_{eq}$ night are the equivalent average sound levels in the day and night periods, 0700–2200 hrs. and 2200 hrs. to 0700 hrs. respectively.

For arterials and freeways approaching design hour volumes, the following formula can be used:

$L_{dn} = 30 - 30 \log D$

where D is the distance from the near lane in miles and the equation does not reflect the influence of highway configuration or local topography.

Estimation of the contribution of other noise sources within the community is a potentially complex and time consuming effort. Thus, this methodology leaves that effort to the discretion of the proprietor and allows indigenous levels to be used in lieu of background levels. The use of indigenous levels in lieu of actual background levels yields an optimistic, i.e., low side, estimate of community levels without aircraft noise and hence provides a high side estimate of aircraft impact. Since the formulas specified above are not capable of reflecting the exact physical situation corresponding to specific unique sites, measured background noise levels may be substituted for calculated values when such measurements are available and the proprietor must substitute such measured values where he has reason to believe that the estimation technique yields highly inaccurate levels for a particular land area. Although such measured levels may be more accurate than estimated levels, it is EPA's judgment that the estimated values are generally accurate enough for the use to which they are put in this noise evaluation process—namely, to identify the priority areas for noise abatement and the relative effectiveness of abatement options. The estimation methods may be refined in time as more data become available.

3. *Background Levels for Undeveloped Areas.* Undeveloped property which is within the gross study area must be viewed within the context of constituting a potential noise problem. Once land has been categorized as undeveloped but developable, a determination should be made of the principal permitted use under existing land use regulations. Such information may then be combined with the three development categories to define discrete study areas and assign "potential" population to appropriate gridblocks. This information will be of use in the evaluation of noise abatement options which may shift noise impact to such areas as well as aiding in the evaluation of land use control policies which may be used to preclude development in noise impacted areas. Potential noise impacts shall be evaluated for the time frame 10 years in the future, as required by this regulation.

4. *Determining Incremental Aircraft Impact and Noise Units.* At this stage of the analysis, several data sets and displays have been produced:

- A base map which shows airport configuration and flight tracks (1 inch to 2000 feet)
- A gridpoint array of aircraft average day-night sound levels, with gridpoints every 1000 feet, presented at a scale of 1 inch to 2000 feet
- A second map, also at 1 inch to 2000 feet which shows the study units, defined according to the criteria in Section B.1.
- Indigenous sound levels for each study unit
- Sound level contributions of other residential sources; this is optional and may be neglected at the discretion of the airport proprietor

The first step in the combination of the above listed materials to determine Incremental Aircraft Impact and Noise Units is to formulate Community Background Levels from Indigenous Levels and Other Residential Sources at each gridpoint.

- The Community Background Level at a gridpoint is the common logarithmic sum of the Indigenous Level at that gridpoint and the contribution of Other Residential Sources at the same gridpoint. If the analyst elects to exclude Other Residential Sources, the Community Background Level at a gridpoint is identical to the Indigenous Level at that gridpoint

The analyst now has a Community Background Level and an Aircraft Average Day-Night Level for each gridpoint in the airport vicinity.

- For each study unit which contains two or more gridpoints, Community Background Level, referred to the study unit, is the arithmetic mean of all gridpoint Community Background Levels contained in the study unit. If the analyst has excluded the contribution of Other Residential Sources, the study unit Community Background Level is identical to the study unit Indigenous Level.
- The study unit Aircraft Average Day-Night Level is determined by taking the arithmetic mean of all aircraft gridpoint levels within the boundary of the study unit. Where a small study unit does not have a gridpoint within its boundary, the aircraft gridpoint value at the gridpoint nearest to the study unit boundary is adopted as the study unit aircraft level.

For each study unit, the analyst now has developed a Community Background Level, an Aircraft Average Day-Night Level, and, from the earlier computation of indigenous noise, the study unit population.

- The Total Noise Level for a study unit is the common logarithmic sum of the Community Background Level and the Aircraft Average Day-Night Level of the study unit.
- The Incremental Aircraft Impact, in a study unit, is the positive arithmetic difference between the Total Noise Level and Community Background Level.
- The Noise Units, in a study area, are determined by multiplying the Incremental Aircraft Impact in the study area by the residential population of the study area.

The step by step process described herein is summarized in the following example for a study unit:

LCB = LI + LORS—Logarithmic sum
LT = LCB + LA—Logarithmic sum
IAI = LT—LA—Arithmetic Difference
NU = IAI × P—Simple Multiplication
where LORS = Other Residential Sources Level, db
LI = Indigenous Level, db
LCB = Community Background Level, db
LA = Aircraft Level, db

LT=Total level, db
IAI=Incremental Aircraft Impact, db
P=Population
NU=Noise Units

The information developed in the preceding series of steps should be retained in a tabular form, by study since the later analysis of noise abatement options, leading to an Airport Noise Abatement Plan, will compare future situations to the existing Base Year case. Further, while the total number of Noise Units around an airport is taken as the most aggregated metric for the severity of the noise impact situation, the less aggregated results, i.e., results by study area, are the most useful in actually determining the effectiveness of specific noise abatement options.

5. *Analysis of Program Alternatives.* The preceding section prescribes a methodology for the characterization and presentation of the aircraft noise impacts which result from an existing set of airport operating conditions and land development configurations. The objective of the Airport Noise Regulation is to reduce the existing noise impact problem and it is probable that the airport proprietor may find it necessary to consider a fairly large number of abatement strategies comprised of different combination of options in order to demonstrate that his noise abatement plan is optimal. Noise abatement options should be considered and presented according to the following categorization:

- Noise abatement options for which the airport proprietor has adequate implementation authority.
- Noise abatement options for which the requisite implementation authority is vested in a local agency, governing body, or state agency or governing body.
- Noise abatement options for which requisite authority is vested in an agency of the Federal Government.

The minimization of Base Year Noise Units can be achieved through actions considered discretionary to the Federal Aviation Administration or the airport proprietor or pursuant to FAA approval or discretionary to State or local governing bodies. At a minimum, the proprietor should analyze the following options, subject to the constraint that the option is appropriate to the specific airport, i.e., evaluation of night curfews is inappropriate if there are no night flights. Even though the airport proprietor responsible for the plan cannot require the FAA or State or local governing bodies to take certain actions which might have a positive noise abatement benefit for the airport, the proprietor must analyze and make available for review the effect which such actions would have on the noise impact from the airport. At a minimum, the following options should be analyzed and displayed.

1. Takeoff and landing noise abatement procedures for aircraft
2. Limitations on the use of aircraft which do not meet the certification noise limits of Federal Aviation Regulation Part 36.
3. Noise abatement preferential runway systems
4. Glide slopes and glide slope intersections for landing configuration
5. Flight tracks
6. Approach paths
7. Landing paths
8. Limitations on the class of aircraft using the airport
9. Shifting aircraft to neighboring airports
10. Location of run-up areas
11. Operational limitations/curfews
12. Priority landing directions for all aircraft
13. Landing fees based on performance specifications
14. Landing fees based on noise emission characteristics
15. Compatible use of impacted land
16. Other actions which would have a beneficial impact on public health and welfare
17. Other actions recommended for analysis by the FAA or EPA for the specific airport

The set of noise abatement options and strategies which will meet or exceed the health and welfare standard of the regulation shall be presented to the public as a proposed noise abatement plan, subjected to areawide public hearings and delivered to the Administrator of the FAA. Such plans must include the following:

- The impact of current operations on the surrounding community.
- The effect of the proposed plan on reducing noise impact in the surrounding community for time frames of two (2) and five (5), and ten (10) years from the date of submission, given reasonable assumptions concerning the future operations at the airport and projected population changes in the community.
- The relative contribution of each of the proposed options to the overall effectiveness of the plan.
- Land use alternatives available to local and State authorities.
- A schedule for implementation of the proposed noise abatement plan.

The FAA has not received from the Environmental Protection Agency an inflationary impact assessment for the recommended regulation set forth in this notice.

Issued in Washington, D.C., on November 12, 1976.

**Charles R. Foster,**

*Director of Environmental Quality.*

[FR Doc. 79-27773 Filed 9-5-79; 8:45 am]

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federal register

Thursday
September 6, 1979

Part III

# Department of the Interior

## Office of Surface Mining Reclamation and Enforcement

## Surface Coal Mining and Reclamation Operations Permanent Regulatory Program; Performance Bonding

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### [30 CFR Chapter VII]

### Surface Coal Mining and Reclamation Operations Permanent Regulatory Program; Performance Bonding

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM) U.S. Department of the Interior.

**ACTION:** Notice of intent to commence rulemaking.

**SUMMARY:** OSM intends to amend portions of 30 CFR Chapter VII, Subchapter J, Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations.

**FOR FURTHER INFORMATION CONTACT:** David R. Maneval, Assistant Director, Technical Services and Research, Office of Surface Mining, U.S. Department of the Interior, Washington, D.C. 20240; 202–343–4264.

**ADDRESS:** See supplementary information below.

**SUPPLEMENTARY INFORMATION:** The Mining and Reclamation Council of America (MARC), the Green Mountain Company, and the Travelers Indemnity Company submitted a petition to the Office of Surface Mining (OSM) for amendments to selected paragraphs of Subchapter J of the permanent regulatory program published in 30 CFR on March 13, 1979. Public comment on the petition was solicited through a notice published in the Federal Register on May 14, 1979. As a result of comments received and testimony presented at a public hearing held June 5, 1979, OSM has decided to initiate rulemaking to amend portions of Subchapter J to more clearly reflect the intent of Pub. L. 95–87 with respect to performance bonding of surface coal mining and reclamation operations. In accordance with the MARC petition, the following portions of the permanent regulations, Subchapter J, will be considered for amendment:

**SUBCHAPTER J—BOND AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS**

Sec.
805.11 Determination of bond amount.
805.13(b) Period of liability.
805.13(e) (proposed) Alternative postmining land use plan exemption.
805.14(a) Adjustment of amount.
806.11(b) Form of the performance bond.
807.12(b) Criteria and schedule for release of performance bond.
809(a) (proposed) Bonding requirements for underground coal mines, refuse areas, preparation plants, coal-loading facilities, and associated structures and facilities.

OSM may propose to revise other portions of Subchapter J as deemed necessary. OSM intends to publish proposed amendments to Subchapter J in the Federal Register on or before October 20, 1979. A period for public comment will follow that publication.

**AVAILABILITY OF COPIES:** Copies of 30 CFR Subchapter J and the MARC petition, and additional information on the bonding regulations, are available and may be obtained at the following offices:

OSM Headquarters, U.S. Department of the Interior, South Building, Room 135, 1951 Constitution Avenue, NW., Washington, D.C. 20240; 202–343–4728.
OSM Region I, First Floor, Thomas Hill Building, 950 Kanawha Boulevard, East Charleston, W. Va. 25301; 304–342–8125.
OSM Region II, 530 Gay Street, SW., Suite 500, Knoxville, Tenn. 37902; 615–637–8060.
OSM Region III, Federal Building and U.S. Courthouse, 46 East Ohio Street, Indianapolis, Ind. 46204; 317–269–2609.
OSM Region IV, 818 Grant Avenue, Scarritt Building, 5th Floor, Kansas City, Missouri 64106; 913–758–2193.
OSM Region V, Post Office Building, 1823 Stout Street, Denver, Colo. 80205; 303–837–5511.

Walter N. Heine,

*Director.*

August 30, 1979.

[FR Doc. 79-27781 Filed 9-5-79; 8:45 am]

BILLING CODE 4310-05-M

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### 30 CFR Part 705

### Restriction of Financial Interests of State Employees

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior, Washington, D.C.

**ACTION:** Proposed rulemaking.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement has granted in part a petition to initiate rulemaking to amend the definition of "employee" in 30 CFR 705.5. New language for the amended definition is proposed in two alternatives and OSM seeks public comment on the proposed amendment.

**DATES:** A public hearing on the proposed amendment will be held at the Department of the Interior Auditorium, 18th and C St., NW. Washington, D.C. 20240, on September 25, 1979, at 9:30 a.m. Comments must be received by November 5, 1979 at the address above by no later than 5 p.m. on that date. Individuals making oral statements are limited to ten minutes.

**ADDRESSES:** Written comments must be mailed to: Office of Surface Mining, U.S. Department of the Interior, P.O. Box 7267, Benjamin Franklin Station, Washington, D.C. 20044; or be hand delivered to: Office of Surface Mining, Room 135, U.S. Department of the Interior, South Bldg., 1951 Constitution Avenue, NW. Washington, D.C. 20240.

**FOR FURTHER INFORMATION CONTACT:** Carl C. Close, Assistant Director for State and Federal Programs, Office of Surface Mining, U.S. Department of the Interior, Washington, D.C. 20240, (202) 343–4225.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

On August 23, 1977, the Department issued proposed regulations to implement the two conflict of interest provisions of the Surface Mining Control and Reclamation Act, P.L. 95–87 (the Act): § 201(f) concerning Federal employees and § 517(g) concerning State regulatory authority employees. Sections 201(f) and 517(g) of the Act make it a crime for Federal or State employees performing any function or duty under the Act knowingly to have a direct or indirect financial interest in any coal mining operation. The Act further directs the Secretary to publish regulations which establish methods for monitoring and enforcing the conflict of interest provisions. After publication of proposed rules and a comment period, the final financial restriction regulations were published on October 20, 1977. (42 FR 56060).

The Secretary's final regulations implementing the above provisions are based on to guiding principles. First, these regulations reiterate the "clear Congressional intent that affected employees maintain the highest standards of honesty, integrity and impartiality to avoid even the appearance of conflict of interest." (42 FR 56060, Oct. 20, 1977). Second, in keeping with the legislative intent and at the suggestion of several States, the regulations place primary responsibility upon the States to resolve internal financial restriction problems of State employees.

On December 15, 1978, five environmental organizations—the National Wildlife Federation, Save Our Mountains, Inc., Colorado Open Space Council, Save Our Cumberland Mountains, and Council of Southern Mountains—jointly petitioned the Office of Surface Mining to amend two definitions contained in 30 CFR 705.5 concerning financial interest restrictions. That petition was

previously published for public comment. (44 FR 11795, March 2, 1979).

Petitioners proposed the following changes to the current definitions:

1. Amend the definitions of "employee" to eliminate the exception created there for "members of advisory boards or commissions established in accordance with State law or regulations to represent multiple interests . . .".

2. Change the definition of "indirect financial interest" to read:

(a) Ownership or part-ownership of, or employment by, a firm or business that is a subsidiary or affiliate of a coal mining operation or which controls, is controlled by, or is under common control with, a coal mining operation;

(b) Ownership or part-ownership of, or employment by, a firm or business that derives a significant portion of its income (more than 10%) from contracts with firms or businesses involved in coal mining operations;

(c) Benefits reaped by the employee of the direct or indirect interests (as described in (a) and (b) above or as described for direct financial interests) held by the employee's spouse, minor child, or other relatives, including in-laws residing in the employee's home; and

(d) For purpose of this section, ownership of shares in a mutual fund or other similar diversified investment funds that have interest in coal or coal-related firms does not constitute a prohibited indirect interest.

The proposed change to the definition of "indirect financial interest" was rejected by OSM on July 12 in a letter to Mr. Terrence Thatcher of the National Wildlife Federation.

Under the current definition of "employee," members of State advisory boards or commissions serving a function under the Surface Mining Act are exempt from filing the financial interest statements if the board or commission is required by State regulation or statute to represent multiple interests. The petitioners maintained that this exemption is contrary to the intent of congress as expressed in section 517(g) of the Act and they asked OSM to delete this exemption.

To the petitioners, the mandate of the Section 517(g) Act is unequivocal. In their view, State boards or commissions exercising decisionmaking functions under the Act should be conclusively deemed employees irrespective of the rationale underlying their formation. To the petitioners, the Act clearly intended "to guard against any possibility that regulatory decisions would be made by individuals attached to the coal mining industry or who might benefit financially, even if indirectly, from the coal mining operation." While there is no specific discussion of this matter in the legislative history, petitioners draw support for their arguments from the fact that Congress considered, in a 1975 draft of the surface mining bill, allowing employees to hold up to 100 shares of commonly traded coal company stock without violating the conflict of interest provisions. (121 Cong. Rec. 6786, March 17, 1975.) The exception, however, was subsequently eliminated. (121 Cong. Rec. 13368.) Petitioners believe that since Congress refused to grant exceptions to the financial restriction provisions, OSM has no authority to do so by regulations.

On the one hand, OSM said that "the existence of employee/employer, ownership and creditor relationships that conflict with official duties is the type of situtation that Section 517(g) intended to prevent." 42 FR 56061, yet OSM stated that the exception in the definition of employee was included to "avoid dismembering boards or commissions composed in such a manner as to represent divergent interests." *Ibid.*

More importantly the petitioners claim that their proposal focuses on the phrase "performing any function or duty under the Act." This phase not only helps delineate which "employees" should be covered, but also establishes and focuses upon the critical area of concern to the Congress. The fundamental change which Congress intended to accomplish through section 517(g) was to ensure that functions or duties which affect the administration and integrity of a State's program to regulate surface mining would not be performed by persons with direct or indirect financial interest in the coal industry. As shown by the petitioners, several State boards or commissions which otherwise meet this exemption exercise more than purely advisory functions. Because the decisions of these Boards directly affect the functioning and the integrity of the State regulatory program, the petitioners believe that they should not be exempted from the financial interest restrictions.

## II Public Comments on the Petition

The Director, Office of Surface Mining Reclamation and Enforcement, received 39 written comments on the petition by the close of the public comment period April 2, 1979. Twelve commenters expressed support for the petition in whole or part and twenty-three commenters opposed the petition.

### *A. Comments Supporting the Petition*

Commenters suggest that when OSM promulgated the definition of "employee" it relied upon two contradictory rationales. In the commenters' view, it was the influence of these boards and consequent self-regulation by the industry that permittted the widespread abuses which lead to the passage of SMCRA and which the prohibitions of section 201(f) and 517(g) were designed to correct. They maintain that the exception for advisory boards defeats the purpose of the Act and consequently inhibits the reforms that SMCRA was intended to accomplish.

Those commenters supporting the petition believe that the current definition of employee is inconsistent with the intent of Congress as expressed in SMCRA. Most of the commenters felt that the exemption perpetuates the very practices which the Act prohibits. Commenters claim that section 517(g) of the Act is unequivocal. The majority of the commenters believe that the defintions in question, as presently written, are legally and logically unsupportable.

Another commenter stated that, unless the petition is granted, restrictions of financial interests cannot be monitored or administered consistently. Some State board members will file financial interest statements and others will not, depending on the purpose of the boards or commissions as established in statute or regulations. The commenters maintained that the effectiveness of SMCRA depends, in part, on unified and consistent administration among the States.

Finally, a few commenters believed that, unless the petition is accepted, there will be severe damage to the public perception of, and confidence in, the enforcement of SMCRA. In other words, "even the appearance of conflict of interest" (42 FR 56060), which OSM claimed must be avoided, is not eliminated so long as the exception is continued.

### *B. Comments Opposing the Petition*

Some commenters pointed out that the petitioner's arguments are devoid of support in the Act or its legislative history. Several citations were mentioned to support this contention. First the Act refers to an employee, not multiple-interest-boards; secondly, it refers to an employee, not the broader term, person, thus limiting the conflict of interest provision.

One commenter pointed out that according to Webster's Dictionary, an employee is "one employed by another,

usually for wages or salary and in a position below the exectuive level." Board or commission members generally do not receive wages or salary for their services, and the positions are at the executive level.

One commenter claimed that the petitioners provided no support for the claim that Congress anticipated, or indeed intended, that boards or commissions whose members represent divergent interests directly or indirectly related to coal mining would be dismembered. The only legislative history dates back to March 1975, and a prior version of the Act that was finally passed. Another commenter also stated that Congress did not intend that all regulation under SMCRA be accomplished without the benefit of any person with experience in the mining industry.

Section 505 is cited as the proof that the requested change is not legal. Section 505 says that State laws are not pre-empted by SMCRA if they are not inconsistent. The commenter argues that because "employee" is not defined under SMCRA, any provision of State law which relates to citizen members of boards or commissions and does not treat them as employees should prevail.

Several commenters pointed out that multiple interest boards have many advantages. One advantage mentioned was the expertise, knowledge and experience that a representative of the mining industry can provide, which benefits the quality of the board's decision, because he or she can fully understand the issues and practical solutions. A financial restriction on board members would limit the number of qualified people who could be willing or able to serve on the board. It would be increasingly difficult to get competent people to accept appointments. A commenter stated that the history of multiple interest boards demonstrates how more knowledgeable examinations, informed arguments, and realistic decisions can be derived from those with experience in respective industries, than can those advanced by the general public. Another commenter stated that independent special interest boards requiring expertise in various fields of business and professions have long been approved in Federal and State court decisions as well as by numerous treatises.

One commenter said that the additional exclusionary requirements will insure that no one who works for a regulatory authority will know anything at all about coal mining. Another commenter proposed that, if the industrial interests were precluded, then environmental interests should be equally precluded.

Other commenters pointed out that a multiple-interest board can also promote good relations with industry and prompt compliance with the laws. Also, as one commenter stated, a board which is advisory should not have the same impact as a board which issues or denies a permit. One State agency representative mentioned that its board has created some competitive interest in reclamation among coal companies. An appeal board can help to mediate disputes and minimize an unnecessary burden on the courts.

Other comments referred to the importance of striking a balance between protection of the environment and agricultural productivity and the Nation's need for coal, as required in section 102(f) of the Act. Multiple interest boards are one effective means of coordinating and balancing these diverse interests, especially if the number of members representing the mining industries is limited so that the board is not dominated by mining industry representatives.

Various State agency representatives stated that in their experience multi-interest boards have proven to be effective under present surface mining regulatory schemes. They claimed that there is no basis for allegations in the petition that any board member has obtained financial benefits from any decision. Also, a State may require that board members who represent the mining industry not vote on any matter in which they have an interest. Another method to avoid such a conflict is to impose severe restrictions on board members' participation in decisions which might affect their own financial interests. In many States, these board members are subject to the Governor's appointment and State Senate review. They may also be subject to State conflict of interest laws.

Other commenters stated that current State multiple interest boards do not have a majority of coal members on any boards. Although the number of industry representatives on these boards varies from State to State, commenters claimed that they do not control a board's policies.

Moreover, two commenters were concerned that the proposed changes could apply to the multiple-interest boards composed of only officials of State agencies. It was claimed that this type of restriction could limit the ability of the State regulatory authority to utilize personnel of other agencies of that State because potential conflicts could arise. In the commenter's view, the State regulatory authority would have no authority under State or Federal law to take action against "employees" of other agencies of that State or require them to file financial disclosure statements.

One commenter stated that OSM had gone too far in establishing the regulations as they exist; any board member is a nonemployee, whether it is a multiple-interest board or not. Another stated that the petition contradicts the "State-lead" concept and, because the boards are convened in accordance with State laws, an argument could be posed as to whether these bodies are performing any function under SMCRA.

A commenter stated that pre-empting State law is a Congressional prerogative, not an option available at will to executive branch officials. Another commenter stated that the legislative support for a State program may well hinge on the continued involvement of part-time unpaid multi-interest board members.

Several commenters proffered alternatives to the definition proposed by the petitioners. Citing the fact that industry representation on an oversight board is necessary for balanced judgments, one commenter suggested that such representation should be allowed, but limited. as an example, the board in one particular State by statute cannot have more than one member with a direct connection with the mining industry, but does not limit any members with indirect financial interests.

Another commenter suggested that industry representative be allowed to be Board members, but not to exceed a majority of the voting members. All Board members would file conflict of interest statements to insure that the majority of the board had no conflict of interest, either direct or indirect. Under this approach, the Board would be considered as a unit. Boards or commissions already established by State statute would not be dismembered, input would be received from all of the multiple interests represented and no one faction could dominate the voting or decisionmaking.

### III Proposed Changes

OSM favors the alternative suggested above and proposes the following language:

*Employee* Means (i) any person employed by the State Regulatory Authority who performs any function or duty under the Act and (ii) advisory board or commission members and consultants who perform any function or duty under the Act, if they perform decisionmaking functions for the State Regulatory Authority under the

authority of State law or regulations. Members of advisory boards or commissions established in accordance with State law or regulations to represent multiple interests must file annual financial interest statements but may continue to participate in the activities of the board or commission as long as the number of members with prohibited financial interests does not exceed 50 percent of the total membership and such members do not act on any matter which relates to their own financial interests. State officials may through State law or regulations expand this definition to meet their program needs for more stringent financial interest restrictions.

As a second alternative the petitioners propose deletion of the Board exemption in its entirety. The exemption can be eliminated by deleting the second sentence of the current definition resulting in the following language:

Employee, means (i) any person employed by the State Regulatory Authority who performs any function or duty under the Act, and (ii) advisory board or commission members and consultants who perform any function or duty under the Act, if they perform decisionmaking functions for the State Regulatory Authority under the authority of State law or regulations. State officials may through State law or regulations expand this definition to meet their program needs.

The final alternative would be to take no action and leave the definition as it presently reads. OSM welcomes further comment and discussion of the three alternatives during the comments period and at the hearing. The purpose of the hearing is to allow full public participation in the rulemaking process. Individuals making oral statements or submitting written comments should limit their statements to this proposed rule. Individuals are encouraged to submit statements in writing. Reservation of time for oral statements may be obtained by contacting Carl C. Close, Assistant Director, State and Federal Programs, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, Washington, D.C. 20240, (202)343–4225.

## IV Additional Information Requested

During the public comment period, OSM welcomes information about States which currently have multiple-interest commissions or boards. Of particular interest are the nature of commissions or boards' functions, such as hearings, rulemaking, administrative appeals, permit reviews, and enforcement actions. The history of a board's decisions is also important. A pattern of decisions in favor of State regulatory authorities, industry or citizen groups could be indicative of serious conflicts of interest. Commenters should also provide information concerning the mechanism for appeal and review of boards or commissions decisions, and any historical patterns to these appeals. It should be noted whether or not the membership of these boards has historically favored any special interest group. Further, commenters should indicate whether or not boards or commissions are currently subject to State conflict of interest laws and, if so, whether coal related interests are prohibited and what disclosure of financial interests is already required.

## V Determination of Significance

The proposed definition does not fall within any of the categories listed in 43 CFR 14.3(c). Consequently, the Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Furthermore, the Department has determined that a notice of intent to purpose rules will not be beneficial in the drafting process. OSM received sufficient information during the public comment period, which was initiated when the petition was published in the **Federal Register**, to prepare a draft rule and proceed directly to proposed rulemaking. A notice of intent to propose rules would only duplicate OSM's efforts in the first public comment period.

## VI Statement of Authorship

The primary authors of this document are Gregory Carroll and Arthur Abbs, State Programs Division, Office of Surface Mining.

Dated: August 29, 1979.

**Joan M. Davenport,**

*Assistant Secretary for Energy and Minerals.*

## Text of the Amendment

30 CFR 705.5 is amended by changing the definition of Employee as follows:

**§ 705.5 Definitions.**

* * * * *

*Employee* Means (1) any person employed by the State Regulatory Authority who performs any function or duty under the Act and (2) advisory board or commission members and consultants who perform any function or duty under the Act, if they perform decisionmaking fuctions for the State Regulatory Authority under the authority of State law or regulations. Members of advisory boards or commissions established in accordance with State law or regulations to represent multiple interests must file annual financial interest statements but may continue to participate in the activities of the board or commission provided that members with prohibited financial interests do not exceed 50 percent of the membership and that such members do not act on any issue which concerns their own financial interests. State officials may throught State law or regulations expand this definition to meet their program needs for more stringent financial interest restrictions.

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Part IV

# Department of Transportation

## Federal Railroad Administration

## Track Safety Standards; Miscellaneous Proposed Revisions

**DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration**

**[49 CFR Part 213]**

**[Docket No. RST-3, Notice No. 1]**

# Track Safety Standards; Miscellaneous Proposed Revisions

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** This notice proposes to amend the FRA regulations containing Track Safety Standards. The proposed amendments would update, consolidate, and clarify existing rules and would eliminate certain rules no longer considered necessary for safety. This action is taken by FRA in an effort to improve its safety regulatory program.

**DATES:** (1)Written Comments: Written comments must be received before November 30, 1979. Comments received after that date will be considered so far as possible without incurring additional expense or delay.

(2) Public Hearing: A public hearing will be held at 10:00 a.m. on November 14, & 15, 1979. Any person who desires to make an oral statement at the hearing should notify the Docket Clerk before November 7, 1979.

**ADDRESSES:** (1) Written Comments: Written comments should identify the docket number and the notice number and should be submitted in triplicate to: Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW, Washington, D.C. 20590. Persons desiring to be notified that their written comments have been received by FRA shall submit a stamped, self-addressed post card with their comments. The Docket Clerk will indicate on the post card the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for written comments, during regular business hours in Room 4406 of the Trans Point Building, 2100 Second Street, SW, Washington, D.C. 20590.

(2) Public Hearing: A public hearing will be held in room 2230 of the Nassif Building, 400 Seventh Street, SW, Washington, D.C. 20590. Persons desiring to make an oral statement at the hearing should notify the Docket Clerk by telephone (202–426–8836) or by writing to: Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW, Washington, D.C. 20590.

**FOR FURTHER INFORMATION CONTACT:**

**Principal Authors**

Principal Program Person: Rolf Mowatt-Larssen, Office of Standards and Procedures, Federal Railroad Administration, Washington, D.C. 20590. Phone 202–426–0924. Principal Attorney: Edward F. Conway, Jr., Office of the Chief Counsel, Federal Railroad Administration, Washington, D.C. 20590. Phone 202–426–8836.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. Regulatory Reform*

On March 23, 1978, the President issued Executive Order 12044. In that Order, he directed all executive agencies to adopt procedures to improve existing and future regulations. As a matter of policy, the Order requires that regulations be as simple and clear as possible, achieve legislative goals effectively and efficiently, and not impose unnecessary burdens.

In response to the policies set forth in Executive Order 12044, FRA initiated a General Safety Inquiry for the purpose of evaluating and improving its safety regulatory program. This inquiry and the hearings related to the Track Safety Standards were announced in the May 8, September 25 and October 4, 1978 issues of the **Federal Register** (43 FR 19696, 43 FR 43339, and 43 FR 45905).

### *B. Hearings on Track*

As part of the General Safety Inquiry, FRA conducted two days of public hearings on track and related structures, appliances and devices on November 15 and 16, 1978. These hearings were designed to obtain information from the public that would help FRA to determine whether any sections of its Track Safety Standards set forth in 49 CFR Part 213 should be expanded in scope, revised, or revoked.

The following discussion will focus on the matters receiving most emphasis at the hearing. Testimony was presented in response to the forty-nine issues set forth in the hearing notice (43 FR 43339). This testimony and the written comments filed in this inquiry have been fully considered. They will be available for examination by interested persons at tny time during regular working hours in Room 4406, Trans Point Building, 2100 Second Street, S.W., Washington, D.C. 20590.

*Performance standards.* The major issue raised during the hearing and in written comments submitted to FRA was the feasibility of adopting performance standards for track. The Association of American Railroads (AAR) and the individual railroads favored development of performance standards on the grounds that they would permit innovation and use of alternative approaches to track safety.

On the other hand, the National Association of Regulatory Utility Commissioners (NARUC) and the Railway Labor Executives Association (RLEA) indicated that adoption of performance standards would further complicate existing enforcement problems. The National Transportation Safety Board (NTSB) suggested a middle ground by recommending that the regulations combine design and performance standards in a manner which would facilitate implementation of new technology while permitting simplicity in enforcement.

Unfortunately, neither the hearing nor the written comments provided any workable examples of track regulations utilizing the performance standard approach. Moreover, even those parties who favored adoption of performance standards acknowledged that substantial additional research and cooperative effort are needed to make performance standards feasible.

*Financial condition of the rail industry.* Throughout the hearing, the subject of the fragile financial condition of the rail industry repeatedly surfaced. Both AAR and the individual railroads reminded FRA that heavy fines and unreasonable regulatory requirements resulted in a severe burden for many railroads.

Both DOT and FRA recognize the economic difficulties of the rail industry. The recent preliminary report published by DOT, "A Prospectus for Change in the Freight Railroad Industry", analyzes the problems currently facing the industry.

One consequence of those economic difficulties is that the rail industry has limited resources available to it. This makes it all the more critical that these resources be used in the most effective and efficient manner to eliminate safety hazards.

*Maintenance and inspection standards.* At the hearing, the AAR and a number of individual railroads asserted that many FRA track standards, such as those concerning vegetation (§ 213.37), ballast (§ 213.103 and § 213.105), tie-plates (§ 213.123), rail anchors (§ 213.125), track shims and planking (§ 213.129 and § 213.131), and switch heaters (§ 213.207), are, in effect, maintenance or "good practice" standards, rather than safety standards. Many witnesses insisted that these provisions were actually counter-

productive from the standpoint of safety since they diverted limited financial resources from other areas directly related to safety.

*Crosstie defects.* During the FRA track hearing, the AAR and individual railroads expressed dissatisfaction with the existing regulations concerning crossties and stated that specific enumeration of tie defects resulted in an arbitrary list of conditions that in many circumstances are no threat to safety whatsoever.

They contended that the adequacy of crossties from the standpoint of safety could not be realistically quantified and that crossties should merely be subject to a general requirement that they be capable of holding the rails to gage and of distributing loads from the rails to the ballast.

*Knowledge.* Discussing whether knowledge of defective track conditions should continue to be required for liability, one railroad commenter took the position that elimination of the knowledge requirement would be unfair since many railroads do not have access to the same sophisticated equipment used by FRA inspectors. NARUC also indicated that some knowledge requirement should be retained in the standards.

It should be noted that many railroad commenters favoring retention of the knowledge requirements, objected to provisions requiring immediate corrective action upon discovery of track defects; these commenters alleged that these remedial requirements discourage the use of rail detector cars and foster a philosophy of "ignorance is bliss". Taking this line of reasoning a step further, RLEA recommended that parties responsible for track conditions be liable regardless of whether or not they have knowledge of the specific defect. Strict liability would provide the railroads with a strong incentive to discover and correct defects, rather than relying upon a lack of knowledge defense. NTSB also suggested dropping the knowledge requirement so that any defect would be a violation.

*Population density and hazardous materials.* Nearly all commenters agreed that no additional regulatory requirements should be imposed on the basis of population density: a sparsely populated rural area should not be exposed to a greater risk of hazard by virtue of less stringent track safety standards than those for track in densely populated urban areas.

Similarly, most of the commenters did not appear to favor amendment of the Track Safety Standards to specifically address track over which hazardous materials are transported. Commenters addressing this issue noted the difficulty of distinguishing those lines over which hazardous materials are carried from those over which they are not; they asserted that all track, even Class 1, should be safe for transporting hazardous materials.

**II. Future Actions Relating to Track Safety: Long- and Short-Term Research Efforts**

The FRA research and development program has a series of projects currently underway in a number of key track safety areas. These projects are designed to generate engineering and technical data for use in identifying areas where the existing regulations are deficient and new safety standards or other regulatory modifications are necessary. The program covers a broad range of subjects that pertain to track safety.

*Vehicle and track interaction.* Since 1975, FRA has been examining vehicle response to various components of the track structure. Some of this research has provided the basis for the changes proposed in § 213.9 with regard to vehicle speed, rail weight, and classes of track.

A continuing study is being conducted utilizing computer simulation of vehicle interaction with track geometry. It is hoped that this will identify the outer bounds of track geometry deviations over which rail vehicles can safely operate. Also, accident-prone cars are being identified on the basis of performance histories (non-accident related component failures), vehicle tests and accident data. These cars will be subjected to thorough investigation. Completion of the preliminary analysis of the first car type is expected this year. The conclusions and data from both investigations will then be correlated and field tested. The result should be an identification of the most critical vehicle-track combinations.

Additional research is being devoted to rail stress and rail deflection analyses. These concern the relationship between train speeds and the resulting vehicle loads applied to the track structure. Both laboratory and field tests will be used to confirm the initial findings. Initial recommendations may be available within a year, but further refinements of the conclusions and additional investigation in this key area will continue.

*Rail inspection and remedial actions.* Recently, FRA began studying the correlation between rail flaw detector car findings and derailments. Early results have provided new information on the growth and potential for failure of certain types and sizes of rail flaws. These results are reflected in §213.113 and §213.237. The remedial actions required by §213.113 for less serious rail flaws would be made less stringent. The FRA believes that the current standards are unnecessarily restrictive and might discourage full utilization of available rail flaw detection equipment. However, §213.237 would be strengthened by requiring that all Class 3 track and all Class 2 track over which passenger trains operate be inspected for rail flaws. In addition, the frequency of rail inspections would be correlated to rail weight, rail age and traffic volume rather than based simply on a time interval. This research will continue through 1980 and will enhance FRA's ability to evaluate the effectiveness of its rail inspection, defect identification and remedial requirements.

*Continuous welded rail track.* Both conventional 39 feet length jointed rail and continuous welded rail (CWR) expand longitudinally (lengthwise) as the temperature of the rail increases. Moreover, the amount of this expansion increases proportionately as the length of the rail increases. Since CWR is laid in approximately ¼ mile lengths (1320 feet), the amount of expansion at any given temperature elevation in an unrestrained CWR would be almost 34 times that in a conventional 39 foot long rail. CWR is installed with rail anchors to forestall most of this expansion. As a result of the anchoring of the rail, the CWR is subjected to high compressive and tensile forces. If not restrained sufficiently, these forces will cause track instability such as rails pulling apart at low rail temperatures and rails buckling at high rail temperatures.

Recent research has established a theoretical model or description of the track buckling and pull-apart phenomena in CWR track. However, much additional work is necessary before means can be developed to measure the conditions that cause these phenomena and appropriate preventative measures can be devised.

*Identification of defective crossties.* At the present time, there is no rail industry consensus as to what constitutes a "defective", or unacceptably degraded timber crosstie for a specific service. To a large extent, this is due to an inability to objectively evaluate the functional capability of a crosstie by its in-track physical appearance. Evaluation of completely deteriorated crossties on the one hand, or new sound crossties on the other, is not a problem. The disagreement lies in the large gray area where descriptions of what is a defective tie frequently boil down to a subjective judgement that "I

know one when I see one". Thus far, efforts to establish a rational research approach that would permit more discriminating guidelines for decisions for individual ties have not been successful. A possible approach may be a performance-based standard associated with methods for estimating track strength.

*Rail end mismatch and batter.* An element of the FRA rail stress investigation, started in 1978 and still in progress, is considering the effect of wheel impact forces on the growth of rail end "batter". It is often caused by the impact of the wheels of equipment passing over rail joints where the ends of the rails are vertically or laterally mismatched. The research in this area is not yet complete.

*Performance standards.* In addition to the proposed updating of the existing Track Safety Standards and various short-term research projects, many of which were discussed above, FRA is investigating the feasibility of developing new safety regulations based on the "performance standards" concept. This is a long term project, which is not expected to be completed for many years.

As was demonstrated at the FRA track hearing, there is no agreement within the rail industry at the present time as to what "performance standards" are. Theoretically, "performance standards" are the other side of the "design or specification standards" coin.

In the area of track safety, "performance standards" would prescribe what the entire track system as well as each component of that system must be capable of doing and prescribe appropriate measures to determine that these requirements are met. (In contrast, "design or specifications standards" would specify how and with what materials the track system and its components are to be built, maintained and inspected.) More specifically, track performance standards would consist of *quantified* descriptions of: (1) The service environment in which the track system and each of its components must be capable of performing; (2) the functions that they must be capable of performing in that environment and for how long a period; and (3) the integrity or the strength and reliability of the entire system and each component.

The prescribed testing to verify that the performance standards are met would consist of a combination of routine production tests and other more extensive measures such as engineering analyses, for each design, manufacturing process and method of installation.

The process of establishing these new performance standards will be difficult and time-consuming. Extensive research and testing under laboratory conditions, on track test facilities, and on railroad property will be necessary to develop and verify any proposed performance standards. These standards would also need to be adapted to translate into existing designs, components, and equipment.

The eventual implementation of performance standards would benefit the rail industry and the public by allowing significantly greater flexibility to railroads in deciding how to meet safety requirements. Since a number of designs and materials may meet a specific safety performance standard, each railroad would have the option of selecting the one most appropriate for its situation.

## III. Safety Performance Incentive

The railroad industry has in the last two decaes dramatically improved the design and construction of track and equipment. However, these changes have also resulted in increased length, axle load, and volume capacity of freight equipment. Similarly, the development of higher horsepower locomotives has resulted in heavier and longer trains. These longer and heavier trains require that crews have more knowledge of train handling procedures in order to control the dynamic forces within varying speed ranges, track conditions, and terrain.

In the last four years (1975–1978) the number of reported train accidents and the total number of casualties have increased at the annual rate of about 10 and 8 %, respectively. These increases have occurred in spite of new Federal safety regulations and substantial increases in the number of Federal and State enforcement personnel. The majority (62%) of the train accidents were reported to have been caused by either defective track or equipment. However, it must be recognized that accidents rarely occur due to a single defect. Accidents are usually due to the combination of defects or due to marginal track and equipment conditions accentuated by in-train dynamic forces or poor operating practices.

In addressing the issue of railroad safety, the FRA has promulgated regulations in a variety of areas. Track safety standards and freight car safety standards are examples of FRA regulation of parts of the total railroad environment. However, regulation of fragments of the total system is less effective than a total system approach would be.

Unfortunately, a total system approach has not proved feasible. This is true because of the complexity of the variables and because the FRA cannot effectively regulate every variable that affects train, equipment and track dynamic response, e.g., train length, loads, load distribution, speed, and terrain. However, the real issue is performance of train operations in a safe manner and not merely compliance with Federal regulations. The method a railroad utilizes to achieve safety should be irrelevant so long as its trains stay on the track and do not cause personal injury.

Thus, the FRA is interested in establishing comprehensive safety performance norms for individual railroads or portions of a railroad. In developing a yardstick for measuring safety performance, the FRA will consider the objective criteria of past experience and traffic of the railroad. Specifically, the FRA will consider:

1. Normalized accident/injury profile.
2. Use of safety monitoring devices (hot wheel detectors, hot bearing detectors, cracked wheel detectors, dragging equipment detectors, oversized load detectors, signal systems for broken rail detection, track geometry equipment, rail flaw equipment, track settlement detectors, communications systems).

Individual railroads or portions of a railroad that exceed the FRA established safety norm for a prescribed period of time would be eligible for exemption from various FRA safety requirements.

In establishing this safety performance level, FRA recognizes that each railroad has the responsibility to inspect and maintain track and equipment in accordance with its operating environment. One railroad may choose to manage its resources and operations in a more effective manner by employing monitoring devices. Another railroad may choose to ensure that the track system is not overtaxed by conducting its operations at lower speeds, operating shorter and lighter trains or adopting special train operating procedures. The safety performance level would also enable FRA to utilize its limited railroad safety resources in a more effective manner by concentrating on railroads that have an unacceptable safety performance record.

## IV. Discussion of Proposal

### *A. Objectives of the Proposed Track Safety Standards*

In October of 1971, the original FRA Track Safety Standards were introduced (36 FR 20336) in response to the

congressional mandate of the Federal Railroad Safety Act of 1970 (45 U.S.C. 421 *et seq.*). The original standards were based on the safety practices of the rail industry at that time, available track-related data, and public comments and testimony. The goal of these initial standards was to establish "minimum requirements for safety", rather than to include all "preferred or recommended practices from an economic and engineering standpoint". The standards were not intended as the last word on safe track conditions, but as an evolving set of safety requirements: ". . . the standards . . . will be continually reviewed and revised by FRA in light of technical innovations, the results of the FRA research and development program, and experience under these standards." 36 FR 20336.

In developing the amendment proposed in this notice, FRA reviewed research findings, technical innovations, available accident data, public comments and testimony, and the more than seven years experience the agency has had with the standards. The approach taken when the standards were introduced is still applicable to the proposed standards. Therefore, FRA seeks to set forth the minimum necessary requirements for safe track rather than a comprehensive list of all potentially hazardous conditions. The railroads, not FRA, will remain directly responsible for finding and correcting all unsafe track conditions. The proposal is not a major overhaul of the standards; instead, it is intended to refine or "fine tune" the existing requirements.

FRA has undertaken a complete review of the Track Safety Standards with three primary objectives: (1) All requirements that are burdensome and unessential for safe track are to be eliminated; (2) all requirements that cannot be justified or sufficiently clarified for enforcement purposes by existing data or research are to be eliminated until further information becomes available; and (3) knowledge gained from research, data collection, and experience is to be used to strengthen and clarify the remaining requirements. As each section of the proposal is discussed, the particular justification and objective will be set forth.

As part of its review effort, FRA has examined all available accident data for the years 1975 through 1978. This data is culled from accident reports submitted to FRA by the nation's railroads, and is supplemented by information generated by FRA accident investigations. Under 49 CFR Part 225, all railroads are required to file monthly Rail Equipment Accident/Incident Reports with FRA (Form FRA F 6180.54). A rail equipment accident/incident is classified as a collision, derailment, or any other event involving the operation of railroad on-track equipment that results in excess of a specified amount of damage to railroad equipment, signals, trackage, track structures and roadbed, regardless of whether any casualty resulted. The cumulative dollar amount of damage that must result before an accident need be reported is adjusted every two years to reflect changes in labor and material costs. For example, the reporting threshold for 1975 and 1976 was $1,750; in 1977 and 1978, it was $2,300; and it is now $2,900.

According to the published accident data for the years 1975 through 1978, there were 16,570 reported accidents caused by track defects. These accidents accounted for 42 percent of the total number of train accidents for the four year period. They resulted in 12 fatalities, 788 personal injuries, and a reported cost of approximately $368,540,000 is property damage.

The track-related accidents for this four year period can be divided into four major categories by principle cause: (1) Roadbed defects (830 accidents), (2) geometry defects (7,759 accidents), (3) rail and joint bar defects (4,588 accidents), and (4) frog, switch, and track appliance defects (3,243 accidents). The proposed changes address each of these accident categories. For example, the changes to §213.113 (Defective Rails) and § 213.237 (Inspection of Rail) concern rail defects; § 213.57 (Curves, Elevation and Speed Limitation) and § 213.109 (Crossties) involve geometry defects; and the changes to § 213.9 (Classes of Track) affect rail and geometry defect categories of accidents.

*B. Section-by-Section Analysis*

*Application.* To assist the reader in assessing this proposal, both the text of the proposed changes and the existing regulations are published side-by-side at the end of this notice.

The existing § 213.3 extends application of 49 CFR Part 213 (Track Safety Standards) to all standard gage track in the general system of transportation with the exception of trackage located inside an installation that is not part of the general system, and track that is used exclusively for rapid transit, commuter, or other short haul passenger service in a metropolitan or suburban area.

The proposed change would clarify application of the Track Safety Standards in several ways. First, the phrase "general railroad system of transportation" is not defined in the existing standards and has resulted in significant confusion and uncertainty. The purpose of the current provision was to exclude only trackage used *exclusively* by an intra-plant railroad; it was not intended to exclude trackage used by other railroads for the pick up or delivery of cars or for contract switching. The proposed rule would resolve this ambiguity by deleting from paragraph (a) the term "general railroad system of transportation" and providing instead that these standards apply to *all* standard gage track over which a common carrier by railroad operates, including trackage in non-railroad installations such as steel plants, chemical plants and refineries. The impact of this change should be slight since it is consistent with existing FRA enforcement practices and the affected trackage constitutes only about three percent (3%) of the total railroad system. Trackage used exclusively for industrial purposes would continue to be excluded.

Second, the current exclusion of track used exclusively for commuter or other short-haul passenger service in a metropolitan or suburban area would be deleted. Since issuance of the standards in 1971, FRA has encountered significant unsafe conditions on track used exclusively for local commuter operations that are conducted by major railroads. The absence of directly applicable regulations has hampered FRA's efforts to obtain prompt remedial action. Therefore, all track used by railroads for commuter service (less than one percent (1%) of the total railroad system) would be made subject to the Track Safety Standards.

The exclusion of rapid transit operations would be retained, since the Urban Mass Transportation Administration (UMTA) is now solely responsible for rapid transit safety (*see, Chicago Transit Authority* v. *Flohr*, 570 F. 2d 1305 (7th Cir., 1977)). However, the proposed rule would make it clear that FRA retains jurisdiction over the Port Authority Trans Hudson (PATH), because it operates in interstate commerce as a rail common carrier.

Third, the proposed change would eliminate the present paragraph (c), which specifies when various subparts of the initial standards went into effect. Since all subparts have been in effect for years, this provision is no longer necessary.

Finally, proposed paragraph (c) would provide that certain track may be excepted from the minimum requirements for Class 1 track. To be eligible for this exception, track cannot be operated over at speeds that exceed

10 mph, used to transport hazardous materials or passenger trains, nor elevated more than 10 feet above adjacent terrain. In addition, the track would have to be located more than 100 feet away from other active tracks, public streets and highways, occupied structures and other facilities and installations where persons are likely to be endangered by a derailment. To become excepted, eligible track would have to be designated as "excepted track" by a railroad. This would be accomplished by the railroad preparing a written record of the designation and filing a copy of it with the FRA Associate Administrator for Safety in Washington, D.C. and the FRA Regional Director for Safety for the region in which the track is located. Proposed paragraph (c) further provides that whenever track previously designated as "excepted track" by a railroad ceases to meet the prescribed conditions, that track shall immediately become subject to the Track Safety Standards. In addition, within 10 calendar days after this occurs, the railroad must so notify the FRA in writing. A railroad's utilization of this exception would not make the track involved subject to State regulation.

The purpose of this exception is to address two important realities that have plagued the administration of the current standards. First, there are many track segments, particularly on low density branch lines, that are used only for the transportation of non-hazardous cargo at low speeds. These segments are on comparatively level terrain and pass through areas where it is highly unlikely that a derailment would endanger persons along the railroad right of way. Moreover, the risk of injury to train crew members in a derailment in these circumstances is remote. Consequently, only property would be seriously endangered by derailments on excepted track segments.

During the four year period 1975–1978, a total of 16,750 track-related accidents were reported to FRA. These accidents resulted in 12 fatalities and 788 injuries. Although 74.6% (12,370) of these accidents occurred at speeds of 1–10 mph, they accounted for only 25% (3) of the track-related fatalities and less than 23.5% (185) of the track-related injuries during this period.

Examination was made of the circumstances surrounding the three fatalities reported as being track-related and occurring at speeds of 1–10 mph. The first fatality in a reportedly track-related accident occurred on the Soo Line Railroad at Ambrose, North Dakota, on January 13, 1976. The FRA investigation of this accident (FE–59–76) revealed that the fatality occurred during the rerailing of a car that had derailed several days earlier apparently due to a track condition. The car being rerailed suddenly toppled over onto a carman who was examining the underside of the car. The direct cause of the fatality was the failure of the carman to perform his duties in accordance with the railroad's safety rules.

The second fatality occurred on the Southern Railway at Knoxville, Tennessee, on March 27, 1976. In this accident (FRA File: FE–74–76), a track foremen was fatally injured when he was run over by a derailed car while repairing track in the John Sevier Yard at Mascot, Tennessee. The derailment was caused by a switch malfunction. The foreman was engaged in cutting a rail in a track adjacent to that on which the derailment occurred and apparently did not see or hear the approaching derailed car.

The third fatality occurred in a track-related derailment on the Chicago and Northwestern Railroad at Wheatland, IA on July 25, 1976 (FRA File: FE–100–76). This accident was investigated by the National Transportation Safety Board (Brief of Railroad No. 76–158). The fatality occurred when the lead locomotive of a freight train derailed apparently due to a track irregularity on a bridge and plunged into a river. The engineer of the train drowned.

Thus, only the third fatality was directly caused by a track-related derailment, although a track defect did contribute to the second fatality. However, neither of these fatalities occurred on track that would be excepted from the minimum requirements for Class 1 track under this proposal. One occurred on a busy yard track that handles hazardous materials and the other occurred on a bridge.

FRA realizes that no regulatory proposal can eliminate entirely the hazards inherent in railroad operations. The amount of private and public resources that can be devoted to improving railroad safety are limited. These limited resources should be expended so that they achieve maximum safety results. FRA believes these resources should be concentrated in the more hazardous areas where they can achieve maximum results.

The second important reality that has plagued the administration of the current standards is that many railroads (particularly those in the Midwest and the East) have substantially more rail lines than are needed to serve current markets. These railroads simply cannot afford to maintain all of their low density branch lines. FRA realizes that this proposal will be opposed by those who regard the track safety standards as a mechanism to be used to prevent what amounts to abandonment of lines due to track deterioration. However, FRA should not be expected to accomplish under the guise of safety that which the collective efforts of the Interstate Commerce Commission, the bankruptcy courts and interested groups have been unable to achieve under controlling law.

Under this proposal, railroads could choose between maintaining their low density track to at least Class 1 standards or acknowledging publicly that this track is being allowed to deteriorate below the level necessary to provide quality rail service. The proposed notification procedure would provide early identification of track that is being allowed to so deteriorate and provide time for shipper and other affected groups to adjust to this reality or take appropriate remedial action.

*Responsibility.* The current § 213.5 (Responsibility) creates civil penalty liability only where it is shown that the track owner, or other responsible party, "knows or has notice" that the track does not comply with the requirements of the Track Safety Standards. The proposal would establish absolute liability for non-compliance similar to that imposed by the Safety Appliance Acts and other older railroad safety statutes that have been authoritatively upheld by the courts since the early days of this century. The Federal Railroad Safety Act of 1970 also reads in terms of absolute liability since it does not require scienter (knowledge) before a railroad may be penalized for non-compliance with standards issued under that Act.

FRA believes that the safety considerations of the proposed standards are of a gravity equal to those of the older safety statutes. Railroads should be held to a strict duty to discover and correct unsafe track conditions. Retention of the knowledge requirements would perpetuate the current disincentive for railroads to make thorough track inspections, maintain complete and accurate records of track conditions, and promptly execute appropriate remedial measures before non-complying conditions are discovered by FRA or participating state inspectors.

The existing regulation confines responsibility for compliance with the Track Safety Standards to track owners and their assignees and sets forth the procedure for submission and approval of petitions for assignment of responsibility.

This approach has suffered from several disadvantages. First, ownership does not always equate to practical control. Second, ownership is a complex legal concept that may be unevenly understood by those who maintain, operate, or otherwise enjoy possessary interests in track. Third, State ownership of many light density lines as well as long-term leases, joint usage contracts, and similar agreements have complicated the administration and enforcement of the current regulations. Fourth, track owners and operating carriers have often neglected to file assignment agreements reflecting responsibility for track conditions.

Accordingly, FRA proposes to eliminate reference to ownership and assignment, and focus instead on track usage and control. The proposed rule would make a railroad responsible for all track over which it operates, as well as all track over which it authorizes another railroad to operate. This would mean that in some instances, more than one railroad may be responsible for track conditions.

This change would resolve several problems by permitting greater enforcement flexibility. FRA could take appropriate action against a railroad that fails to comply with speed limits or other movement restrictions required under the standards, even if the non-complying railroad has neither ownership nor maintenance responsibilities. Under the existing rule, FRA is limited to the track owner or assignee in determining responsibility for noncompliance with the safety standards. Similarly, the revised rule would address enforcement questions that arise when maintenance, operating, and control responsibilities are confusingly divided by private agreements. For the purposes of the standards, each railroad operating over the track, or authorizing other carriers to operate over the track, would be responsible for track conditions regardless of previous private arrangements. Correspondingly, a railroad could not disclaim compliance responsibility solely on the basis of prive agreements or past conduct.

This proposed change would have a negligible impact on the rail industry since railroads generally have ownership or maintenance responsibilities with respect to most of the trackage over which they operate.

The proposed rule would also eliminate the procedural requirements contained in existing § 213.5 (b) and (c) for submitting a petition for assignment of responsibility. This would reduce paperwork for both the Government and railroads.

Finally, it is proposed to include within § 213.5 the civil penalty reminder currently found under § 213.15 and the provision for exemptions currently found under § 213.17. Consolidation of these sections would facilitate reference to these three interrelated subjects: responsibility, penalties, and exemptions.

*Designation of qualified persons to supervise certain renewals and inspect track.* The existing § 213.7 addresses the qualifications for persons designated by railroads to supervise restorations and renewals of track under subsection (a) and the qualifications for track inspectors under subsection (b). An erroneous inference has been drawn from this section by some railroads that the person designated to supervise renewals must also act as a supervisor of persons designated to inspect for track defects. The proposed consolidation of the functions and qualifications of designated persons would make it clear that this is not so.

Both the existing and proposed sections require the track owner, or other party responsible under § 213.5, to maintain a written record of the basis for each designation. The existing rule is not sufficiently specific concerning the recording of the basis for each designation. As a result, there has been some confusion on the part of railroads as to what information is actually required. The additional language proposed in § 213.7(c)(2) would describe more precisely the information to be recorded.

*Classes of track: Operating speed limits.* Under the existing § 213.9(a), maximum permissible operating speeds for trains are determined by two criteria: (1) The class of track over which the train is operating and (2) the type of train, freight or passenger, being operated. Passenger trains are now permitted to operate at higher speeds than freight trains on all classes of track except Class 6 where the maximum allowable operating speed is 110 mph for both freight and passenger trains.

During the hearing and in written comments submitted to FRA, some witnesses and commenters urged that the regulations take into account the dynamic response of the vehicle to track structure and defects in determining maximum allowable operating speeds. These requests are prompted by the fact that dynamic forces generated by trains in starting, stopping, running and negotiating curves and turnouts are transmitted from the wheel to the rail. If these forces are not absorbed and restrained by the track structure, the track will fail. Considerable research is being conducted by FRA in order to understand more completely the dynamic interaction of wheel and rail. Available information on certain aspects of operating speeds has been applied in developing the proposed changes to § 213.9 (Classes of Track: Operating Speed Limits).

Research findings indicate that the relationship between the maximum load that a track is capable of supporting and the stress that train operations place on track is a critical factor in evaluating track safety. The existing § 213.9 prescribes maximum speeds for each class of track but does not take into account the ability of the track to safely withstand passing axle loads. FRA believes that this factor has a direct bearing on the 48% increase in broken rail accidents during the past four years.

FRA recently evaluated maximum stresses in the rail (peak rail stress) for various rail weights and types of track. A copy of the evaluation has been placed in Docket No. RST–3. Interested persons may examine the evaluation during regular business hours in Room 4406 of the Trans Point Building, 2100 Second Street, SW., Washington, D.C. 20590.

This evaluation of rail stresses utilizes a method for estimating dynamic loads (dynamic load magnification factor) developed by the American Railway Engineering Association (AREA). This method is used to take into account the increases in loads (dynamic effect) caused by the movement of the vehicle. Lateral loads are incorporated into the study by considering the lateral loads to be one-tenth (1/10) the vertical loads. This figure is based on the results of recent cooperative research efforts by FRA and the railroad industry that were conducted on railroad properties. The evaluation revealed that at certain speeds permitted under the existing table in § 213.9, the maximum (peak) rail stresses at the base of the rail sometimes exceed the endurance limit of rail steel. This was particularly evident when heavier vehicles operate over lighter weight rails. As operating stresses in the rail rise above this level, rail failure is more likely to occur.

Initial FRA working drafts of this proposed revision of § 213.9 took into consideration track class, rail weight and vehicle axle load in determining maximum permissible operating speeds. However this approach was abandoned by FRA when it became evident that there is insufficient technical data and research information available to justify at this time a regulatory change that includes an axle load factor. In addition, a cost analysis supplied to FRA by an independent consulting firm indicates that inclusion of the axle load portion of

the initial draft proposal would result in an extremely costly financial burden to the rail industry. A copy of the cost analysis prepared by the independent consulting firm can be found in Docket No. RST–3; it is available for examination by any interested person during regular business hours in Room 4406 of the Trans Point Building. Accordingly, consideration of axle loads in determining maximum permissible operating speeds is being postponed until further technical information provides sufficient safety justification for this step, or future investigation reveals significant cost reductions.

However, proposed § 213.9 would prescribe maximum permissible speeds that are correlated to the strength or weight of the rail in the track. Since dynamic forces generated by passage of both freight and passenger trains increase as train speed increases, with rail support conditions remaining constant, the stresses developed in the rail will likewise increase. Heavier rail is needed to sustain these higher forces.

Thus, FRA proposes to lower many of the present maximum permissible speeds over the various classes of track that have rail weighing less than 112 pounds per yard (112 lb./yd.) and to increase the maximum permissible speeds over track with rail that weighs more than 131 pounds per yard (131 lb./yd.). The maximum permissible speeds over track with rails that weigh between 112 and 131 lb./yd. would remain essentially the same.

In addition, the maximum allowable operating speed over each class of track would be made the same for passenger trains as it is for freight trains. Adoption of uniform speed limits for both passenger and freight trains will have the effect of reducing the maximum allowable operating speed for passenger trains on certain classes of track. Many locomotives in passenger service impose as severe loads on the track as any freight equipment. The increased probability of personal injuries in passenger train accidents warrants at least the same level of safety for passenger trains as for freight trains.

Stated more specifically, the proposed changes in maximum permissible speeds are as follows:

On Class 1 track, the maximum speed for freight trains would remain at 10 mph except that it would be increased from 10 to 15 mph over rail weighing more than 131 lb./yd.; the maximum speed for passenger trains would remain at 15 mph over rail weighing more than 131 lbs./yd. but would be reduced from 15 to 10 mph over lighter rail.

On Class 2 track, the maximum permissible speed for freight trains would remain 25 mph over rail that weighs 112 lb./yd. and increased from 25 to 30 mph over heavier rail; the maximum permissible speed for passenger trains would remain at 30 mph over rail that weighs 112 lb./yd. or more, but would be reduced from 30 to 25 mph over rail that weighs less than 112 lb./yd.

On Class 3 track, the maximum permissible speed for freight trains would be reduced from 40 to 30 mph over rail that weighs less than 112 lb./yd., remain at 40 mph over rail that weighs between 112 and 131 lb./yd., and be increased from 40 to 50 mph over track that weighs more than 131 lb./yd.; the maximum permissible speed for passenger trains would be decreased from 60 to 30 mph over rail that weighs less than 112 lb./yd., to 40 mph over rail that weighs between 121 and 131 lb./yd., and to 50 mph over heavier rail.

On Class 4 track, the maximum permissible speed for freight trains would be reduced from 60 to 50 mph over rail that weighs less than 112 lb./yd., remain at 60 mph over rail that weighs between 112 and 131 lb./yd., and be increased from 60 to 80 mph over heavier rail; the maximum speed for passenger trains would be reduced from 80 to 50 mph over rail that weighs less than 112 lb./yd., and to 60 mph over rail that weighs between 112 and 131 lb./yd., and remain at 80 mph over heavier rail.

On Class 5 track, the maximum permissible speed for freight trains would be reduced from 80 to 70 mph over rail that weighs less than 112 lb./yd., remain at 80 mph over rail that weighs between 112 and 131 lb./yd., and be increased from 80 to 110 mph over heavier rail; the maximum permissible speed for passenger trains would be reduced from 90 to 70 mph over rail that weighs less than 112 lb./yd., and from 90 to 80 mph over rail that weighs between 112 and 131 lb./yd., and increased from 90 to 110 mph over heavier rail.

On Class 6 track, the maximum permissible speed for both freight and passenger trains would be reduced from 110 to 90 mph over rail that weighs less than 112 lb./yd., remain at 110 mph over rail that weighs between 112 and 131 lb./yd., and be increased from 110 to 125 mph over heavier rail.

A detailed explanation of the technical basis for the proposed changes in maximum permissible speeds is contained in a document entitled "FRA Evaluation of Peak Stresses for Various Weights and Track Constructions" prepared by D. P. McConnell, Transportation Systems Center, Cambridge, Massachusetts. A copy of this document has been placed in Docket No. RST–3 and may be examined by interested persons during regular business hours in Room 4406 of the Trans Point Building, 2100 Second Street, SW., Washington, D.C. 20590.

*Restoration or renewal of track under traffic condition.* Only a minor modification is proposed in § 213.11. This section provides that if track that does not comply with these standards continues to handle traffic while it is being restored or renewed, it must be under the continuous supervision of a person designated to perform this function. Because of past misunderstanding by some railroads as to what constitutes "continuous supervision", this term would be changed to "continuous visual supervision". The purpose of this change is to express more clearly the original intent of this section that a qualified person must be present and continuously observe and supervise each train movement over track that is being restored or renewed and does not comply fully with the requirements of the Track Safety Standards.

*Civil penalties and exemptions.* It is proposed that § 213.15 (Civil Penalty) and § 213.17 (Exemptions) be deleted. The civil penalty and exemption provisions would be included in § 213.5 (Responsibility).

*Alinement.* Existing § 213.55 provides that track alinement may not "deviate from uniformity" more than the amounts specified in a table contained in that section. The term "deviations from uniformity" has proved to be difficult to apply because these deviations are often extremely difficult to measure with precision and because the concept of uniformity is imprecise. This difficulty becomes particularly evident when track remains out of alinement to widely varying degrees for a considerable distance. More important from the standpoint of safety, the term "deviations from uniformity" fails to encompass all abrupt changes in alinement that may be unsafe. This is true because a section of track could vary from the maximum limit of permissible deviation from uniformity in one direction to the maximum limit of permissible deviation in the other direction. This currently permissible variation in alinement can generate sufficient dynamic lateral forces to cause derailments. FRA proposes to shift the focal point of § 213.55 from "deviations from uniformity" to "changes in alinement". The term "changes in alinement" more accurately describes the geometrical irregularities on track that could cause derailments.

In addition to minor language changes for the purpose of clarification, FRA proposes to make a number of adjustments to the table in this section. The maximum permissible change in alinement on Class 1 track would be increased from 5 inches to 6 inches, and on Class 4 track, it would be reduced from 1½ inches to 1¼ inches. The intent of these changes is to make the requirements for alinement of Class 1 and 4 track more consistent with those currently prescribed for other classes on track.

*Curves; elevation and speed limitations.* Under current § 213.57(a),

the outside rail in curved track may not be lower than the inside rail. FRA proposes to delete this provision because it is adequately addressed in proposed § 213.57. Application of the formula in paragraph (b) inherently sets a minimum elevation for any given curve and speed.

In addition, under the proposal the maximum allowable elevation of the outside rail above the inside rail would be 6½ inches. Current § 213.57(a) provides that the maximum allowable elevation of the outside rail is 6 inches. However, this maximum may be increased or decreased by the allowable deviations set out in current § 213.63. The allowable deviation is ½ inch for Class 6 track and increases incrementally to 3 inches for Class 1 track. Thus, the actual maximum permissible elevation of the outside rail is between 6½ inches (Class 6) and 9 inches (Class 1). Therefore, by eliminating the cross reference to the permissible deviations provided in § 213.63, proposed § 213.57(a) would reduce the maximum permissible elevation of the outside rail for track Classes 1–5.

Experience indicates that the possibility of derailment increases as the amount of elevation exceeds 6½ inches. Since the elevation on almost all curved track has already been reduced to 6½ inches or less, this change should have little impact.

The proposed changes to § 213.57 (b) are clarifying and substantive in nature. The existing requirement for determining the maximum allowable speed on curves would be changed by the addition of language to make it clear that the degree of curvature must be based on actual field measurements rather than the original design.

The substantive change is a proposed addition of a separate and more restrictive formula for determining the maximum allowable speeds on curved track for vehicles that have high centers of gravity (more than 97 inches above the top of the rail) or have trucks with more than 2 axles. FRA research indicates that vehicles with these features subject the track structure to much higher levels of dynamic stress than other vehicles operating at the same speed. The proposed new formula, which reduces the 3 inch unbalance factor in the current equation to 1½ inches, will result in appropriate reductions in the current maximum speeds in curved track for vehicles that have centers of gravity that exceed 97 inches or have trucks with more than 2 axles. The new equation will result in a reduction in the maximum permissible speed of approximately 10% to 30% depending on the elevation of the outer rail. In most cases, the reduction will be less than 5 miles per hour.

Unbalance is determined by subtracting the actual elevation of the outside rail from the elevation that would provide equal forces on both rails when a vehicle passes though the curve at a given speed. Thus, if the outside rail is 2 inches higher than the inside rail but the total amount of elevation necessary to result in equal forces on both rails is 5 inches, the result would be 3 inch unbalance.

As speed is increased, the amount of unbalance increases causing the forces generated by a vehicle passing through the curve to fall increasingly to the outside rail. This shifting of the force to the outside rail also increases in direct proportion to the height of the center of gravity of the vehicle. As unbalance increases, the magnitude of the lateral force begins to approach that of the vertical force. Therefore, the greater the shift of force to the outside rail, the greater the possibility of an undesirably high lateral/vertical (L/V) force ratio. FRA believes that many derailments attributed to track shift, rail spreading, rail turnover, wheel climbing and wheel lifting may actually have been caused by high L/V force ratios.

The performance characteristics or cars with high centers of gravity have long been the subject of concern. AAR Interchange Number 89 provides that loaded cars with a center of gravity of more than 98 inches are not acceptable in interchange. Nevertheless individual railroads may and often do agree with one another to accept these cars in interchange.

The Track-Train Dynamics Report (copyright 1973), prepared under a government-industry research program involving the AAR, the Railway Progress Institute (RPI) and the FRA, recommends that the maximum speed in curves of cars with a center of gravity of more than 98 inches should not exceed that which would result in a 2 inch unbalance. The FRA proposal is somewhat more restrictive than this recommendation. It would limit the amount of unbalance in high center of gravity to 1½ inches, rather than 2 inches. The resulting reduction in the maximum speeds in curves of high center of gravity vehicles would generally be less than 5 miles per hour. FRA believes that the additional margin of safety more than compensates for this minor speed reduction. FRA also chose the 97 inch figure rather than the 98 inch figure to provide an additional margin of safety. The proposed 97 inch figure would also prevent confusion and disputes. Some vehicles now in service that are identified as having 98 inch centers of gravity actually have centers of gravity that are somewhat lower.

With respect to 3 axle trucks, FRA recently sponsored tests of the Amtrak SDP–40F locomotive conducted on Chessie System track. A copy of the Executive Brief on these tests, which were a joint effort between FRA and the rail industry, has been placed in Docket No. RST–3. Interested persons may examine this document during regular business hours in Room 4406 of the Trans Point Building. As a result of these Chessie System tests, it was concluded that trains powered by vehicles with two 3-axle trucks (6 axles) can be operated at approximately 1.5 inches unbalance on typical Class 3 track. Moreover, the proposed distinction between vehicles of less than 4 axles and those of more than 4 axles is not new. The Swiss government has imposed a similar restriction for quite some time with good results. Finally, it should be noted that in the event a railroad could demonstrate that a particular vehicle of more than 4 axles has the dynamic load equivalent of a 4 axle vehicle, the railroad could petition for a waiver of exemption with regard to that particular vehicle under FRA regulations, 49 CFR Part 211. If a waiver of exemption is granted, the railroad would be permitted to operate the 6 (or more) axle vehicle under conditions appropriate for that particular vehicle.

In response to comments received, FRA has given consideration to increasing the amount of unbalance used in determining the maximum allowable operating speed for passenger trains on curved track. Experience has shown that passenger cars will ride comfortably around a curve at a speed determined by an unbalance of greater than 3 inches. However, this does not take into consideration the fact that essentially the same motive power is used in passenger and freight service. Research is underway to establish whether under certain conditions a greater unbalance may be permitted in calculating maximum allowable operating speeds without compromising safety. However, until there is justification to safely increase the unbalance, FRA will continue to use the 3 inch unbalance formula for all 4 axle vehicles.

Testimony received during the FRA public hearing further substantiates the use of the 3 inch unbalance formula for passenger trains. In response to specific questioning at the hearing on the issue of unbalance for passenger trains, an Amtrak representative agreed that he would not run a train over existing track

at a speed that would increase the unbalance without prior testing the specific vehicle involved. After petitioning FRA under Part 211, higher speeds may be permitted where special equipment is used and the test results indicate that no adverse safety impact results from the higher unbalance speeds.

*Elevation of curved track; runoff.* It is proposed to delete § 213.59 concerning curved track. Safety considerations dealing with elevation of curved track and runoff are provided for in § 213.57 (Curves; Elevation and Speed Limitation) and § 213.63 (Track Surface). This deletion is expected to have very little, if any, impact on the industry since FRA inspectors found no defects and filed no violations under this section during the period from 1975 through 1977.

*Curve data for classes 4 through 6 track.* Under current § 213.61, a railroad is required to maintain records on curve data for track Clases 4 through 6. It is proposed to delete § 213.61 because it is primarily a record-keeping requirement that has no direct bearing on track safety. Moreover, between 1975 and 1977, FRA inspectors noted only 13 deviations from this section—less than 5 defects per year. This deletion would reduce paperwork and related costs for the railroads.

*Track surface.* The changes proposed in § 213.63 would modify the permissible track surface deviations for Classes 1, 4 and 6 so that the rate of change of the deviations between each class would be more uniform. Accordingly, the maximum permissible deviation from uniform profile would be increased from 3 inches to 3½ inches on Class 1 track, decreased from 2 inches to 1⅝ inches on Class 4 track and increased from ½ inch to ⅝ inch on Class 6 track. In addition, the maximum permissible deviation in elevation between the two rails (cross level) on tangent (straight) track would be increased from ½ inch to ⅝ inch.

The proposal would also simplify and clarify the present regulations by eliminating repetitive and unnecessary requirements. First, the present provision which places limits on the amount of rise or fall in elevation in any 31 feet of rail (runoff), would be deleted because runoff is addressed in the proposed limits on deviation from uniform profile. Second, the present provisions that limit deviations from designated (planned) elevation on spirals (track segments that serve as a transition from straight to curved track) and on curves between spirals, would be deleted because these limits are not necessary for track safety. The major safety considerations in this area are: (1) The actual difference in track elevation measured as prescribed in the last two provisions of the proposed chart; and (2) speed limitations placed on the track by the formula in § 213.57

*Ballast and disturbed track.* It is proposed to delete § 213.105 because its provisions concerning the condition of ballast in disturbed track are not sufficiently specific to provide meaningful guidance to railroad personnel and are virtually unenforceable. In the three year period from 1975 through 1977, FRA filed only ond defect under this section. Research has not established specific, measurable guidelines for determining when "ballast is sufficiently compacted" in disturbed track. This section may be re-established in the future as a result of further research and additional reliable data.

*Crossties.* Crossties are a crucial part of track safety; they are a key factor in maintaining proper track geometry thresholds and avoiding rail failures. Geometry defects and rail defects are two of the broad cause categories for track accidents. They account for 74% of the track accidents that occurred in 1977. For this reason, a significant part of FRA's enforcement effort concerns crosstie requirements. During the three year period from 1975 through 1977, FRA inspectors reported 61,687 defects and 2086 violations under this section.

During the track hearing, the issue was raised as to the difficulty of identifying defective or unsafe crossties. Both written comments and testimony indicated that under the existing rule a tie may be "defective" and still be safe to operate over. Unfortunately, to spell out all possible individual conditions as well as all possible combinations of conditions that make a tie unsafe would result in such a complex and lengthy regulation that it would be unmanageable. Identification of defective crossties has always been to some extent a matter of judgment. The rail industry has never developed a universally agreed upon definition of what constitutes a "defective" crosstie.

Another related issue raised at the hearing and in written comments was that the FRA should not prescribe those conditions that render a crosstie "defective" but should instead merely require that track be in proper alinement, gage and surface. FRA does not believe such a requirement would be sufficient to assure safety. Crossties play a crucial safety role. Without adequate crosstie support, track that is in proper alinement, gage and surface while not under load will nevertheless be unable to withstand the dynamic forces generated by passing equipment. As a result, a derailment is likely to occur.

Until a simple, enforceable definition of a defective crosstie emerges, FRA cannot justify a major departure from the existing standard. With only minor revisions, the proposed role identifies specific conditions that make a crosstie defective. It also contains a general prohibition against the use of a crosstie that "fails to effectively support the vertical, lateral, and/or longitudinal loads imposed on it".

Changes are proposed to the table in § 213.109(c). The current table does not distinguish between curved and tangent (straight) track; it merely prescribes a uniform maximum permissible distance between nondefective ties in each class of track. FRA believes that increased tie support is needed to assure track stability in Classes 1, 2 and 3 track of 4 or more degrees curvature. The level of centriugal force applied to curved track by passing equipment increases proportionately as the degree of track curvature increases. Thus, the force level in a 4 degree curve is twice that in a 2 degree curve. Moreover, the introduction of heavier and high center of gravity equipment is imposing greater lateral dynamic forces on the track structure in curves and these forces are further magnified by any track perturbations (irregularities) that are present. Accordingly, the proposed table would shorten the maximum permissible distance between nondefective ties in Class 1 track from 100 to 80 inches and in Classes 2 and 3 track from 70 to 60 inches. During 1977 and 1978, approximately 80% of all rail accidents caused by track deficiencies occurred on these classes of track.

This change also conforms with another of the recommendations based on the FRA-Chessie tests discussed earlier in this notice. The study advised that priority maintenance be directed at lateral track strengthening to provide greater rail fastening capacity in curves. This includes strengthening the track structure with additional nondefective crossties.

It is proposed that the provision of the existing table requiring a minimum number of nondefective crossties per 39 feet of track be deleted as surplusage. The proposed requirements prescribing maximum distance between nondefective ties will provide sufficient support for the track structure.

The proposal would clarify § 213.109(d) concerning the positioning and placement of nondefective crossties under rail joints. In contrast to the present requirement that merely prescribes the number of ties and their relative position with respect to the

joint, proposed § 213.109 would also require that these ties be within a prescribed distance of the joint. This change would not increase the number of ties that would be required.

Both commenters and hearing witnesses mentioned the fact that under the current § 213.109(b), (c) and (d), references to "timber" limit application of the requirements to timber crossties. The proposal would delete these references so that this section will apply to crossties made of any material.

Finally, it is proposed to delete § 213.109(e), which prohibits the use of interlaced crossties in place of switch ties (except in cases of emergency or temporary installation) because FRA has concluded that this prohibition is not necessary from the standpoint of safety. Interlaced crossties are separate standard length crossties that support only one track at switch locations. In contrast, switchties are of sufficient length to support more than one track at switch locations. Because switchties facilitate track maintenance, they are generally preferred over interlaced ties. However, if interlaced crossties meet the other requirements of proposed § 213.109, the track geometry is within the parameters prescribed in this part, and the other requirements of this part are met, FRA believes that track supported by interlaced ties will also safely handle traffic.

*Defective rails.* The proposal would make a number of changes in the chart in § 213.113. The chart lists various remedial actions to be taken if defective rails are not replaced. The prescribed remedial actions vary according to the size of the defect.

No changes are proposed with respect to rails with any of the following defects: transverse fissure, compound fissure, detail fracture, engine burn fracture, defective weld, ordinary break, and damaged rail.

Changes are proposed with respect to rails with the following defects: horizontal split head, vertical split head, split web, piped rail, head web separation, bolt hole crack, and broken base. These changes are described below.

Rails with a horizontal or vertical split head that is more than 4 inches long are now subject to a 10 mph speed restriction (Note B), and if any metal has broken out of the railhead, each operation over the rail must be conducted under the visual supervision of a person qualified to supervise restoration and renewal of track under traffic conditions (Note A).

The proposal provides that rails with a horizontal or vertical split head that is between 4 and 6 inches long would continue to be subject to a 10 mph speed restriction (Note B) but they would also have to be inspected after 30 days (Note G), and if the split head is more than 6 inches long, each operation over the rail would have to be conducted under the visual supervision of a qualified person (Note A).

Rails with a split web or piped rail defect that is not more than ½ inch long are now subject to a 50 mph speed restriction (Note H) and must be inspected after 90 days (Note F); if the defect is between ½ inch and 3 inches long, the rails are subject to a 30 mph speed restriction (Note I) and must be inspected after 30 days (Note G); if the defect is more than 3 inches long, they are subject to a 10 mph speed restriction (Note B); and if any metal has broken out of the railhead, each operation over the defective rails must be visually supervised by a person qualified to supervise restoration and renewal of track under traffic conditions (Note A).

The proposal provides that rails with a split web or piped rail defect that is not more than 2 inches long would be subject to a 50 mph speed restriction (Note H) and would have to be inspected after 90 days (Note F); if the defect is between 2 and 4 inches long, the rails would be subject to a 30 mph speed restriction (Note I) and would have to be inspected after 30 days (Note G); if the defect is between 4 and 6 inches long, the rails would be subject to a 10 mph speed restriction (Note B) and have to be inspected after 30 days (Note G); and if the defect is more than 6 inches long, each operation over the defective rails would have to be conducted under the visual supervision of a qualified person (Note A).

Rails with a head and web separation that is not more than ½ inch long are now subject to a 50 mph speed restriction (Note H) and must be inspected after 90 days (Note F); if the separation is between ½ inch and 3 inches long, the rails are subject to 30 mph speed restriction (Note I) and must be inspected after 30 days (Note G); if the separation is more than 3 inches long, the rails are subject to a 10 mph speed restriction (Note B); and if any metal has broken out of the railhead, each operation over the defective rails must be visually supervised by a person qualified to supervise restoration and renewal of track under traffic conditions (Note A).

The proposal provides that rails with a head and web separation that is not more than 1½ inches long would be subject to a 50 mph speed restriction (Note H) and would have to be inspected after 90 days (Note F); if the separation is between 1½ and 3 inches long, the rails would be subject to a 30 mph speed restriction (Note I) and would have to be inspected after 30 days (Note G); and if the separation is more than 3 inches long, each operation over the defective rails would have to be conducted under the visual supervision of a qualified person (Note A).

Rails with a bolt hole crack that is not more than ½ inch long are now subject to a 50 mph speed restriction (Note H) and must be inspected after 90 days (Note F); if the crack is between ½ inch and 1½ inches long, the rails are subject to a 30 mph speed restriction (Note I) and must be inspected after 30 days (Note G); if the crack is more than 1½ inches long, the rails are subject to a 10 mph speed restriction (Note B); and if any metal has broken out of the railhead, each operation over the defective rails must be visually supervised by a person qualified to supervise restoration and renewal of track under traffic conditions (Note A).

The proposal provides that rails with a bolt hole crack that is not more than 1½ inches long would be subject to a 50 mph speed limitation (Note H) and would have to be inspected after 90 days (Note F); if the crack is between 1½ and 3 inches long, the rails would be subject to a 30 mph speed restriction (Note I) and would have to be inspected after 30 days (Note G); and if the crack is more than 3 inches long, each operation over the defective rails would have to be conducted under the visual supervision of a qualified person (Note A).

Rails with a broken base that is more than 6 inches long are now required to be replaced. The proposal would allow them to remain in service but each operation over the defective rails would have to be visually supervised by a person qualified to supervise restoration and renewal of track under traffic conditions (Note A).

These proposed changes are based on results from a recent analysis of rail flaw behavior conducted by FRA that revealed that the size of some defects can be increased over existing prescribed tolerances without significantly affecting the safety of railroad operations. A copy of these results has been placed in Docket No. RST–73–1. This change is consonant with the proposed revisions of § 213.237 (Inspection of Rail), which would increase the number of rail inspections based on rail weight, rail age, and annual tonnage over the track. The increased inspections will require each railroad to monitor more closely the development of these defects and take appropriate action before they develop to the point of failure.

The proposal would also delete § 213.113(b) and (c)(12)–(14) which concern minor rail surface imperfections such as rails with shelly spots, head checks, engine burns and mill defects and rails that are flaking, slivered, corrugated and corroded. While these conditions may eventually lead to defects similar to those in § 213.113(a), they do not in themselves represent serious safety hazards. The rail inspections required under § 213.237 are designed to detect those defects before they develop to the point of rupture.

*Rail end mismatch and batter.* The existing § 213.115 prescribes tolerances for mismatch of rail at joints on the tread and gage side of the rail ends and § 213.117 prescribes limits on the amount of "batter" (damage or disfiguration) that rail ends may sustain. When the ends of adjoining rails are vertically or laterally mismatched, they may be damaged by the battering and pounding they receive from the wheels of passing equipment. The proposed changes would delete the portion of § 213.115 prescribing thresholds for mismatch on the tread of rail ends and would delete § 213.117 in its entirety because they are maintenance rather than safety standards. FRA recognizes that if tread mismatch and rail end batter are left uncorrected, they may eventually lead to broken and/or cracked angle bars, defective rails, and deteriorated surface conditions. However, each of these hazardous conditions is addressed elsewhere in the standards. FRA plans to conduct further research on the effect of rail tread mismatch and rail end batter on rail life and wheel damage. This research may lead to establishing safety requirements in this area.

*Continuous welded rail.* Current § 213.119 provides that continuous welded rail must be installed at or adjusted for a rail temperature range that should not result in forces that will produce lateral displacement of the track or the pulling apart of rail ends or welds. It also provides that after installation, continuous welded rail should not be disturbed at rail temperatures higher than its installation or adjusted temperature. FRA proposes to delete this section in its entirety because it is so general in nature that it provides little guidance to railroads and is difficult to enforce. From 1975 through 1978, a total of only 14 defects were reported by FRA inspectors and one violation was filed under this section. While the importance of controlling thermal stresses within continuous welded rail has long been recognized, research has not advanced to the point where specific safety requirements can be established. Continuing research may produce reliable data in this area in the future.

*Rail joints.* Section 213.121 sets forth various requirements with respect to rail joints. The proposal would clarify § 213.121(d) and (e) by specifying that each rail *end*, not simply each rail, must be bolted as required. As discussed earlier, the number of derailments due to broken rail has increased, particularly within the lower track classes. Torch cut or burned bolt holes establish stress points in the web area that often lead to broken rails. For these reasons, FRA proposes to clarify the current prohibition § 213.12(g) against the use of torch cut or burned bolt holes in rails or joint bars in Classes 3–6 track and to extend this prohibition to Class 2 track.

*Tie plates.* FRA proposes to delete § 213.123 which requires use of tie plates in Classes 3 through 6 track. While use of tie plates is a good maintenance practice, it is not necessary for safe operations if railroads comply with the other sections in this part. There is no evidence that the absence of tie plates has ever caused a derailment or other accident.

*Rail anchoring.* FRA proposes to delete § 213.125 concerning use of rail anchors. While rail anchors are an important aspect of lateral track stability, the existing rule is virtually unenforceable because of the vagueness of the term "effectively controlled". It is recognized that if longitudinal rail movement is permitted to exist, conditions may develop that lead to either track buckling or pull-aparts, both of which can and do cause train accidents. Therefore, FRA is conducting research in this area in order to more thoroughly understand track structure. This section may be reestablished when research results identify specific, measurable requirements for safe operations.

*Rail fastenings.* A number of changes are being proposed in recognition of the increased use of rail fastenings other than spikes. The proposed rule would change the caption of § 213.127 from "Track Spikes" to "Rail Fastenings". Similarly, the word "cut" has been deleted from § 213.127(a) to permit application to any type of spike, including screw or drive spikes.

A new § 213.127(b) would be added by the proposal to specifically address rail fastenings other than spikes. These requirements are substantially the same as those that apply to spikes.

*Track shims and planks used in shimming.* FRA Proposes to delete § § 213.129 and 213.131 that address the use of track shims and planks, which are pieces of wood that are placed between the base of the rail and the top of a tie. They are particularly useful to restore track to the required geometric threshold after it has been displaced by frost heaves and ground thaws. As long as the requirements of the other sections of this part, such as § 213.63, are met, the maintenance method used to achieve this result is immaterial from the standpoint of safety. Furthermore, there is no evidence that shims or planks have ever been the sole cause of a derailment or other train accident.

*Switches.* The existing requirements of § 213.135(b) (Switches) consider only lateral and vertical rail movement when addressing the fit of the switch point and stock rail. However, it has been recognized for some time that longitudinal rail movement in and around switches is also hazardous. Logitudinal movement of either the switch points or stock rail will result in conditions that adversely affect the ability of the wheels to make the safe transition through the switch area. Excessive rail movement in and around switches was directly related to 216 derailments in 1978.

A new § 213.135(i) would control longitudinal movement in and around switches by providing that a switch point may not have an unprotected vertical or inclined surface that is $^{15}/_{16}$ inch or wider, measured ¾ of an inch below the top of the stock rail. The parameters of the proposed rule are taken from the Penn Central MW–1 (Manual of Standards of Practice for Construction and Maintenance of Track) which is substantially the same as its predecessor used on the Pennsylvania Railroad (CE 78). The Penn Central MW–1, and its counterpart currently in use by Conrail, require that immediate remedial action be taken upon discovery of a switch point that exceeds these parameters. This practice has proven to be a good safety measure of over the years for these railroads. This proposal is also similar to the condemning limits recommended by the Engineering Division of the AAR in 1970. Although these recommendations were not adopted by FRA in the original draft of the Track Safety Standards, subsequent experience has demonstrated a need to establish condemning limits for switch points. Accident data reveals that worn or broken switch points were the cause of 1625 train accidents during the four year period of 1975 through 1978. This is 9.8% of the total number of track-related accidents of that period.

*Frogs.* The current § 213.137 prescribes general requirements for frogs. The proposed § 213.137 would

consolidate the meaningful requirements from § 213.141, which governs self-guarded frogs, with these general requirements.

*Track appliances and track-related devices.* It is proposed that Subpart E, Track Appliances and Track-Related Devices, be deleted. These appliances and devices (derails and switch heaters) do not have a significant impact on track safety. A review of the accident history for the four years from 1975 through 1978 revealed a total of only 12 accidents involving track appliances and devices, all of which occurred at speeds of 10 mph or less, and none of which resulted in a death or personal injury.

*Turnout and track crossing inspections.* Current § 213.235 provides that each switch and track crossing must be inspected on foot each month. However, on track that is not used at least once a month, they need only be so inspected before the track is used. The proposal would clarify what must be inspected and by whom by substituting the word "turnout" for "switch" and specifying that these inspections are to be made be a qualified person designated under § 213.7(a).

*Inspection of rail.* The number of train accidents caused by broken rails has continued to increase during recent years. In 1975, 660 accidents were reported by carriers as caused by broken rails. In 1977, the number of accidents increased by about 30% to 855 and in 1978 the increase was about 13% to 969. These increases occurred primarily in the lower classes of track and indicate a need to strengthen the rail inspection requirements in § 213.237. In 1978, the amount of damage reported for track-related accidents caused by rail and joint bar defects constituted about 37% of the total damage caused by track-related accidents that year. Further analysis of dollar amounts of damage from track accidents reveals that accidents occurring on Class 3 track accounted for a higher dollar amount of damage than any other single class.

Current § 213.237(a) requires that all Classes 4 through 6 track and all Class 3 track over which passenger trains operate, be inspected annually for internal rail defects. The proposed § 213.237(a) would require that all track in Classes 3 through 6, as well as all Class 2 over which passenger trains operate, be inspected for internal defects at varied intervals. Depending upon the weight and age of the rail as well as the amount of traffic it carries, rail would be required to be inspected from one to four times each year.

Data from rail research clearly shows that as tonnage accumulates, rail becomes increasingly defect-prone. In older, light-weight rail that carries heavy traffic, the likelihood of rail defects growing from below detection level to rupture within the present required inspection intervals is especially high. Accordingly, under the proposed rule, the intervals between rail inspections would be based upon rail age, weight, and tons of traffic.

At the present time, if a new rail is inspected prior to installation or within the first 6 months after installation, the next inspection need not be made until 3 years after the initial inspection. FRA is proposing to require inspection of new "A" rails prior to their installation in Classes 3 through 6 track and Class 2 track over which passenger trains operate. All other new rail would not have to be inspected until 3 years after installation.

Mill defects in rails are the primary cause of service failures in new rails. These defects consist of deformations, cavities, seams, or foreign materials found in the head, web or base of a rail, that form when the ingot is poured. Mill defects may also occur when metal that splashes on the side of an ingot mold, cools and oxidizes to some extent before fusing with the liquid metal. The vast majority of these mill defects appear in the top rail rolled from each ingot. This rail is lettered "A". In order to reduce the likelihood that these defects will grow to rupture, the proposal would require inspection of the defect-prone "A" rails before installation, while permitting other rails to be installed without prior inspection.

*Inspection records.* Section 213.241 requires each railroad to prepare and maintain records of certain required inspections. In order to improve the quality and usefulness of these reports, a number of minor changes are proposed.

The existing § 213.241(b) describes the information the inspection report is required to contain. The proposal would clarify this requirement by listing separately and describing in more detail the items of information to be reported; it does not impose any additional reporting requirement on railroads. These changes will provide reporting uniformity and reduce confusion.

The proposal would also highlight the railroad inspector's responsibility under § 213.7 to prescribe remedial action upon discovery of track defects.

### C. Economic Impact

FRA has determined that this notice does not contain a significant regulatory proposal. Therefore, a regulatory analysis under Executive Order 12044 is not required (E. O. 12044, 43 FR 12661, March 24, 1978).

However, FRA has prepared a Regulatory Evaluation of the changes proposed in this notice in accordance with the DOT's policies for evaluation of regulatory impacts (Regulatory Policies and Procedures, 44 11034, February 26, 1979). After conducting an informal review, FRA secured the services of an independent consulting firm to evaluate the proposal and estimate the costs that would result if it were adopted. The consultant reviewed and assessed the cost impact of all the proposed changes and prepared a detailed impact analysis of the proposed changes in the following sections:

Sec.
213.9 Classes of Track: Operating Speed.
213.237 Inspection of Rail.
213.57 Curves, Elevation and Speed Limitations.
213.109 Crossties.

The consultant concluded that the estimated total impact of all proposed changes would increase rail industry operating expenses by $21.18 million annually and require a $47 million one-time track rehabilitation expense.

Upon reviewing the consultant's analysis, FRA found that is disagreed with many of the assumptions and the overall methodology used in that analysis. Accordingly, FRA directed its staff to perform another cost analysis and assess the benefits that would result from adoption of the proposed changes.

FRA recognizes that much of the detailed information necessary to precisely evaluate the impact of this proposal is simply nonexistent or unavailable. FRA is unaware of any reliable surveys, samplings or data banks of the myriad of important variables in track conditions throughout the nation (such as the number of miles of track within each FRA class, the number of miles of rail by specific weight in each FRA class, the number of miles of track in curves that exceed 4 degrees, and the volume of traffic and types of vehicles operating over each track class and rail weight). To assemble this information would be a massive and expensive undertaking that would require the imposition of a considerable reporting burden on the railroad industry. Moreover, much of this information changes daily as track is reclassified to reflect its current condition. In these circumstances, any cost analysis must be based largely upon the experience, judgment and "best estimate" of the analyst.

Briefly, the FRA staff analysis indicates that only four of the amended sections would have a noticeable

economic impact on the rail industry. FRA anticipates a total one-time track rehabilitation cost of about $20.2 million and a total increase of $3.5 million in annual operating costs. The proposed change to § 213.109 (Crossties) is expected to generate the largest one-time cost ($12 million) while § 213.9 (Classes of Track: Operating Speed Limits) and § 213.57 (Curves, Elevation and Speed Limitations) would result in one-time expenditures of $3.1 and $5.1 million, respectively. In addition to the one-time costs, increased operating expenditures of $3.5 million would be incurred annually under § 213.237 (Inspection of Rail). FRA's evaluation of the benefits shows that the proposal would result in an estimated $19.9 million annual saving by reducing the number of rail accidents and eliminating regulatory burdens. Reducing the number of rail accidents would reduce the number of injuries and the amount of property damage, along with other associated costs.

Copies of the cost analysis prepared by the independent consultant and of the cost benefit analysis prepared by FRA have been placed in the Public Docket for this proceeding (FRA Docket No. RST–3). Interested persons may examine these documents during regular business hours in Room 4406 of the Trans Point Building.

*D. Environmental Impact*

On March 16, 1979, the FRA published (44 FR 16062) revised procedures for insuring full consideration of the environmental impacts of FRA actions as required by the National Environmental Policy Act ("NEPA", 42 U.S.C. 4321 *et seq.*), the Department of Transportation Act ("DOT Act", 49 U.S.C. 1651 *et seq.*), other environmental statutes, executives orders, and DOT Order 5610.113.

These FRA procedures require that an "environmental assessment" be performed prior to all major FRA actions. The procedures contain a provison that enumerates seven criteria which, if met, demonstrate that a particular action is not a "major" action for environmental purposes. These criteria involve diverse factors, including environmental controversiality; the availability of adequate relocation housing, the possible inconsistency of the action with Federal, State, or local law; the possible adverse impact on natural, cultural, recreational, or scenic environments; the use of properties covered by section 4(f) of the DOT Act; and the possible increase in traffic congestion. The proposed revision of track requirements meets the seven criteria that establish an action as a non-major action.

For the reasons above, the FRA has determined that the proposed revision of Part 213, Track Safety Standards, does not constitute a major FRA action requiring an environmental assessment.

*Participation in This Proceeding; Written Comments and Hearing*

Interested persons are invited to participate in this proceeding by submitting written data, views, or comments. Communications should identify the regulatory docket number, and the number, and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, 2100 Second Street, SW., Washington, D.C. 20590. Persons desiring receipt of their communications to be acknowledged should attach a stamped pre-addressed postcard to the first page of each communication. Communications received before November 30, 1979, will be considered before final action is taken on the proposed rules. All comments received will be available for examination by interested persons at any time during regular working hours in Room 4406, Trans Point Building, 2100 Second Street, SW., Washington, D.C. 20590.

In addition, the FRA will conduct a public hearing on November 14 and 15, 1979, in Washington, D.C. at 10:00 a.m. The hearing will be informal, and not a judicial or evidentiary hearing. There will be no cross examination of persons making statements. A staff member of FRA will make an opening statement outlining the matter set for the hearing.

Interested persons may present oral or written statements at the hearing. All statements will be made a part of the record of the hearing and will be a matter of public record. Any person who wishes to make an oral statement at the hearing should notify the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 7th Street, SW., Washington, D.C. 20590 (Phone 202–426–8836), before November 7, 1979, stating the amount of time required for the initial statement.

The proposals contained in this notice may be changed in light of the oral statements made at the public hearing, or the written comments submitted in response to this notice.

This notice is issued under the authority of Section 202 and 208 of the Federal Railroad Safety Act of 1970, as amended, 45 U.S.C. 431 and 437); Regulations of the Office of the Secretary of transportation (49 CFR 1.49(n)). Issued in Washington, D.C., on August 23, 1979.

**John M. Sullivan,**
*Administrator.*

PROPOSED CHANGES AND ADDITIONS
TO
FRA TRACK SAFETY STANDARDS
49 CFR - Part 213

SUBPART A - GENERAL

| Present | Proposed |
|---|---|
| § 213.1 Scope of Part. | § 213.1 Scope of Part. |
| | No Change. |
| § 213.3 Application. | § 213.3 Application |
| (a) Except as provided in paragraphs (b) and (c) of this section, this part applies to all standard gage track in the general railroad system of transportation. | (a) Except as provided in paragraph (b) of this section, this part applies to all standard gage track over which a common carrier by railroad operates. |
| (b) This part does not apply to track- | (b) This part does not apply to track that is- |
| (1) Located inside an installation which is not part of the general railroad system of transportation; or; | (1) Used exclusively for rapid transit service by an entity other than a common carrier by railroad; or |
| (2) Used exclusively for rapid transit, commuter, or other short haul passenger service in a metropolitan or suburban area. | (2) Excepted under paragraph (c) and (d) of this section. |
| (c) Until October 16, 1972, Subparts A, B, D (except §213.109), E, and F of this part do not apply to track constructed or under construction before October 15, 1971. Until October 16, 1973, Subpart C and § 213.109 of Subpart D do not apply to track constructed or under construction before October 15, 1971. | (c) A segment of track is eligible to be excepted from the minimum requirements of this part for Class 1 track if it is |
| | (1) Only operated over at speeds that do not exceed 10 miles per hour; |
| | (2) Not used to transport passenger trains or freight cars required to be placarded by Hazardous Materials Regulations (49 CFR §172.504); |
| | (3) Located more than 100 feet from other active tracks, public streets and highways, occupied structures, and other facilities and installations where persons could be placed in danger by a derailment; |
| | (4) Not more than 10 feet higher than adjacent terrain within 50 feet of the track centerline throughout its entire length and for a distance of 200 feet beyond each end. |
| | (d) A railroad shall designate each segment of track to be excepted from the minimum requirements of this part for Class 1 track by: |
| | (1) Preparing and maintaining a record of the designation at the appropriate railroad division office that includes: |
| | (i) A description of the track segment; |
| | (ii) A statement that the track segment is eligible to be excepted under paragraph (c) (1) of this section; |
| | (iii) The name, title and signature of the railroad official making the designation; and |

| Present | Proposed |
| --- | --- |
| | (iv) The date of the designation; and<br><br>(2) Filing a copy of the designation with the:<br><br>(i) Associate Administrator for Safety (RRS-25), FRA, Washington, D. C. 20590; and<br><br>(ii) FRA Regional Director of Railroad Safety for the region in which the track segment is located.<br><br>(3) Whenever track that has been designated by a railroad to be excepted from the minimum requirements for Class 1 track ceases to meet the conditions set forth in paragraph (c) of this section, the track shall become subject to the requirements of this part. Within 10 calendar days after this occurs, the railroad shall so notify the Associate Administrator for Safety and the appropriate FRA Regional Safety Director. Each notification shall be in writing, identify the track that is no longer excepted, state the date this occurred, and be signed and dated by the railroad official taking the action. A copy of the record of designation for that track shall accompany each notification. |
| § 213.5 Responsibility of track owners.<br><br>(a) Any owner of track to which this part applies who knows or has notice that the track does not comply with the requirements of this part, shall -<br><br>(1) Bring the track into compliance; or<br><br>(2) Halt operations over that track. | § 213.5 Responsibility.<br><br>(a) A railroad that fails to comply with any requirement of this part with respect to any track over which it -<br><br>(1) Operates; or<br><br>(2) Authorizes any other railroad to operate;<br><br>is subject to a civil penalty as provided in Appendix B of this part. Each day of violation constitutes a separate offense. |
| (b) If an owner of track to which this part applies assigns responsibility for the track to another person (by lease or otherwise), any party to that assignment may petition the Federal Railroad Administrator to recognize the person to whom that responsibility is assigned for purposes of compliance with this part. Each petition must be in writing and include the following-<br><br>(1) The name and address of the track owner;<br><br>(2) The name and address of the person to whom responsibility is assigned (assignee); | (b) A railroad may petition the Federal Railroad Administrator for exemption from any or all requirements prescribed in this part. Each petition must be filed in accordance with Part 211 of this chapter. |

| Present | Proposed |
| --- | --- |
| (3) A statement of the exact relationship between the track owner and the assignee; | |
| (4) A precise identification of the track; | |
| (5) A statement as to the competence and ability of the assignee to carry out the duties of the track owner under this part; and | |
| (6) A statement signed by the assignee acknowledging the assignment to him of responsibility for purposes of compliance with this part. | |
| (c) If the Administrator is satisfied that the assignee is competent and able to carry out the duties and responsibilities of the track owner under this part, he may grant the petition subject to any conditions he deems necessary. If the Administrator grants a petition under this section, he shall so notify the owner and the assignee. After the Administrator grants a petition, he may hold the track owner or the assignee or both responsible for compliance with this part and subject to penalties under § 213.15. | (c) Delete. |
| § 213.7 Designation of qualified persons to supervise certain renewals and inspect track. | § 213.7 Designation of qualified persons. |
| (a) Each track owner to which this part applies shall designate qualified persons to supervise restorations and renewals of track under traffic conditions. Each person designated must have - | Each railroad shall designate qualified persons to inspect track for deviations from the requirements of this part, prescribe appropriate remedial action to correct or safely compensate for those deviations, and supervise restorations and renewals of track under traffic conditions. Each person designated to perform any of these tasks shall have at least - |
| (1) At least - | |
| (i) 1 year of supervisory experience in railroad track maintenance; or | (a) 1 year experience in railroad track inspection or maintenance; or |
| (ii) A combination of supervisory experience in track maintenance and training from a course in track maintenance or from a college level educational program related to track maintenance; | (b) a combination of experience and training from a course in track inspection and maintenance or from a college level education program related to track inspection and maintenance. |
| (2) Demonstrated to the owner that he- | |
| (i) Knows and understands that requirements of this part; | |
| (ii) Can detect deviations from those requirements; and | |

Present

§213.7 (Continued)

(iii) Can prescribe appropriate remedial action to correct or safely compensate for those deviations; and

(3) Written authorization from the track owner to prescribe remedial actions to correct or safely compensate for deviations from the requirements in this part.

(b) Each track owner to which this part applies shall designate persons to inspect track for defects. Each person designated must have -

(1) At least -

(i) 1 year of experience in railroad track inspection; or

(ii) A combination of experience in track inspection and training from a course in track inspection or from a college level educational program related to track inspection;

(2) Demonstrated to the owner that he -

(i) Knows and understands the requirements of this part;

(ii) Can detect deviations from those requirements; and

(iii) Can prescribe appropriate remedial action to correct or safely compensate for those deviations; and

(3) Written authorization from the track owner to prescribe remedial actions to correct or safely compensate for deviations from the requirements of this part, pending review by a qualified person designated under paragraph (d) of this section.

(c) With respect to designations under paragraphs (a) and (b) of this section, each track owner must maintain written records of -

(1) Each designation in effect;

(2) The basis for each designation; and

(3) Track inspections made by each designated qualified person as required by § 213.241.

These records must be kept available for inspection or copying by the Federal Railroad Administrator during regular business hours.

Proposed

§ 213.7 (Continued)

(b) Each person designated under this section shall demonstrate to the railroad that he or she -

(1) Knows and understands the requirements of this part;

(2) Can detect deviations from these requirements and record such deviations as required in 213.241; and

(3) Can prescribe appropriate remedial action to correct or safely compensate for those deviations.

(c) Each railroad shall maintain written records of -

(1) Each of its designations in effect; and

(2) The basis used to determine qualifications for each designation including, but not limited to, length of experience, type and length of training course and the manner in which the designee demonstrated knowledge of the requirements of this part.

(d) Each railroad shall provide to the designated person, written authorization to prescribe remedial action to correct or safely compensate for deviations from the requirements in this part.

Present

§ 213.9 Classes of track: operating speed limits.

(a) Except as provided in paragraph (b) of this section §§ 213.57(b), 213.59(a), 213.105, 213.113(a) and (b), and 213.137(b) and (c), the following maximum allowable operating speeds apply:

| Over track that meets all of the requirements prescribed in this part for- | The maximum allowable operating speed for freight train is- | The maximum allowable operating speed for passenger train is- |
|---|---|---|
| Class 1 track.... | 10 m.p.h. | 15 m.p.h. |
| Class 2 track... | 25 m.p.h. | 30 m.p.h. |
| Class 3 track.... | 40 m.p.h. | 60 m.p.h. |
| Class 4 track.... | 60 m.p.h. | 80 m.p.h. |
| Class 5 track.... | 80 | 90 m.p.h. |
| Class 6 track.... | 110 m.p.h. | 110 m.p.h. |

(b) If a segment of track does not meet all of the requirements for its intended class, it is reclassified to the next lowest class of track for which it does meet all of the requirements of this part. However, if it does not at least meet the requirements for Class 1 track, no operations may be conducted over that segment except as provided in § 213.11.

§ 213.9 Classes of track: operating speed limits.

(c) Maximum operating speed may not exceed 110 m.p.h. without prior approval of the Federal Railroad Administrator. Petitions for approval must be filed in the manner and contain the information required by § 211.11 of this chapter. Each petition must provide sufficient information concerning the performance characteristics of the track, signaling, grade crossing protection, trespasser control where appropriate, and equipment involved and also concerning maintenance and inspection practices and procedures to be followed, to establish that the proposed speed can be sustained in safety.

§ 213.11 Restoration or renewal of track under traffic conditions.

If, during a period of restoration or renewal, track is under traffic conditions and does not meet all of the requirements prescribed in this part, the work and operations on the track must be under the continuous supervision of a person designated under § 213.7(a).

§ 213.13 Measuring track not under load

Proposed

§ 213.9 Classes of track: operating speed limits.

(a) Except as provided in paragraph (b) of this section and 213.57(b), 213.113(a) and 213.137(b) and (c), maximum allowable operating speeds may not exceed those in the following table:

| Over track that meets all of the requirements prescribed in this part for - | The maximum allowable operating speed for vehicles operating over rail of: less than 112 lb/yd | 112 lb/yd to 131 lb/yd | more than 131 lb/yd |
|---|---|---|---|
| Class 1 | 10 | 10 | 15 |
| Class 2 | 25 | 30 | 30 |
| Class 3 | 30 | 40 | 50 |
| Class 4 | 50 | 60 | 80 |
| Class 5 | 70 | 80 | 110 |
| Class 6 | 90 | 110 | 125 |

(b) No change

§ 213.9 Classes of track:operating speed limits.

(c) Maximum operating speed may not exceed 125 m.p.h. without prior approval of the Federal Railroad Administrator. Petitions for approval must be filed in the manner and contain the information required by Part 211 of this chapter. Each petition must provide sufficient information concerning the performance characteristics of the track, signaling, grade crossing protection, trespasser control where appropriate, and equipment involved and also concerning maintenance and inspection practices and procedures to be followed, to establish that the proposed speed can be sustained in safety.

§ 213.11 Restoration or renewal of track under traffic conditions

If, during a period of restoration or renewal, track is under traffic conditions and does not meet all of the requirements prescribed in this part, the work and operations on the track must be under the continuous visual supervision of a person designated under § 213.7.

§ 213.13 Measuring track not under load

No change.

| Present | Proposed |
|---|---|
| § 213.15 Civil penalty. | § 213.15 Civil penalty. |
| (a) Any owner of track to which this part applies, or any person held by the Federal Railroad Administrator to be responsible under § 213.5(c), who violates any requirement prescribed in this part is subject to a civil penalty of at least $250 but not more than $2,500. | Delete entire section. |
| (b) For the purpose of this section, each day a violation persists shall be treated as a separate offense. | |
| § 213.17 Exemptions. | § 213.17 Exemptions. |
| (a) Any owner of track to which this part applies may petition the Federal Railroad Administrator for exemption from any or all requirements prescribed in this part. | Delete entire section. |
| (b) Each petition for exemption under this section must be filed in the manner and contain the information required by § 211.11 of this chapter. | |
| (c) If the Administrator finds that an exemption is in the public interest and is consistent with railroad safety, he may grant the exemption subject to any conditions he deems necessary. Notice of each exemption granted is published in the Federal Register together with a statement of the reasons therefor. | |

SUBPART B -ROADBED

| Present | Proposed |
|---|---|
| § 213.31 Scope. | § 213.31 Scope. |
| | No change |
| § 213.33 Drainage. | § 213.33 Drainage. |
| | No change. |
| § 213.37 Vegetation. | § 213.37 Vegetation. |
| | No Change. |

SUBPART C TRACK GEOMETRY

| | |
|---|---|
| § 213.51 Scope. | § 213.51 Scope. |
| | No change. |
| § 213.53 Gage. | § 213.53 Gage. |
| | No change. |

Present

§ 213.55 Alinement.

Alinement may not deviate from uniformity more than amount prescribed in the following table:

| Class of track | Tangent track The deviation of the mid-offset from 62-foot line[1] may not be more than- | Curved track The deviation of the mid-ordinate from 62-foot chord[2] may not be more than- |
|---|---|---|
| 1..... | 5" | 5" |
| 2..... | 3" | 3" |
| 3..... | 1 3/4" | 1 3/4" |
| 4..... | 1 1/2" | 1 1/2" |
| 5..... | 3/4" | 5/8" |
| 6..... | 1/2" | 3/8" |

[1]The ends of the line must be at points on the gage side of the line rail, five-eights of an inch below the top of the railhead. Either rail may be used as the line rail, however, the same rail must be used for the full length of that tangential segment of track.

[2]The ends of the chord must be at points on the gage side of the outer rail, five-eights of an inch below the top of the railhead.

§ 213.57 Curves; elevations and speed limitations.

(a) Except as provided in § 213.63, the outside rail of a curve may not be lower than the inside rail or have more than 6 inches of elevation.

(b) The maximum allowable operating speed for each curve is determined by the following formula:

$$V\ max = \sqrt{\frac{Ea + 3}{0.0007D}}$$

where

V max = Maximum allowable operating speed (miles per hour).

E a = Actual elevation of the outside rail (inches)

D = Degree of curvature (degrees).

Proposed

§ 213.55 Alinement.

The change of alinement between any two adjacent points 31 feet apart may not exceed the amounts prescribed in the following table:

| Class | Tangent track Change between any adjacent 31-foot stations measured at the mid-offset from a 62-foot line[1] may not be more than- | Curved track Change between any adjacent 31-foot stations measured at the mid-offset from a 62-foot line[2] may not be more than- |
|---|---|---|
| 1..... | 6" | 6" |
| 2..... | 3" | 3" |
| 3..... | 1-3/4" | 1-3/4" |
| 4..... | 1-1/4" | 1-1/4" |
| 5..... | 3/4" | 5/8" |
| 6..... | 1/2" | 3/8" |

[1]The ends of the line shall be at points on the gage side of the line rail, five-eighths of an inch below the top of the railhead. Either rail may be used as the line rail, however, the same rail must be used for the full length of that tangential segment of track.

[2]The ends of the chord must be at points on the gage side of the outer rail, five-eighths of an inch below the top of the railhead.

§213.57 Curves; elevations and speed limitations.

(a) A curve may not have an actual elevation in excess of 6-1/2 inches.

(b)(1) Railroad equipment having a center of gravity in excess of 97 inches or trucks with more than two axles shall not exceed, on each curve, the maximum allowable speed, as determined by the following formula:

$$V\ max = \sqrt{\frac{Ea + 1.5}{0.0007D}}$$

(2) For all other railroad equipment the maximum allowable speed for each curve shall be determined using the following formula:

$$V\ max = \sqrt{\frac{Ea + 3}{0.0007D}}$$

(3)V max = Maximum allowable operating speed (miles per hour)

Ea = Actual elevation of the outside rail (inches)

D = Degree of curvature based on field measurements (degrees)

| Present | Proposed |
| --- | --- |
| § 213.59 Elevation of curved track; runoff. | § 213.59 Elevation of curved track; runoff. |
| (a) If a curve is elevated, the full elevation must be provided throughout the curve, unless physical conditions do not permit. If the elevation runoff occurs in a curve, the actual minimum elevation must be used in computing the maximum allowable operating speed for that speed for that curve under § 213.57(b). | Delete entire section. |
| (b) Elevation runoff must be at a uniform rate, within the limits of track surface deviation prescribed in § 213.63, and it must extend at least the full length of the spirals. If physical conditions do not permit a spiral long enough to accommodate the minimum length of runoff, part of the runoff may be on tangent track. | |
| § 213.61 Curve data for Classes 4 through 6 track. | § 213.61 Curve data for Classes 4 through 6 track. |
| (a) Each owner of track to which this part applies shall maintain a record of each curve in its classes 4 through 6 track. The record must contain the following information: | Delete entire section. |
| (1) Location;<br>(2) Degree of curvature;<br>(3) Designated elevation<br>(4) Designated length of elevation runoff; and<br>(5) Maximum allowable operating speed. | |
| § 213.63 Track Surface | § 213.63 Track Surface |
| Each owner of track to which this part applies shall maintain the surface of its track within the limits prescribed in the following table: | Track surface shall be maintained within the limits prescribed in the following table: |

Present

§ 213.63 (Continued)

| Track surface | Class of track | | | | | |
|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 |
| The runoff in any 31 feet of rail at the end of a raise may not be more than... | 3 1/2" | 3" | 2" | 1 1/2" | 1" | 1/2" |
| The deviation from uniform profile on either rail at the midordinate of a 62-foot chord may not be more than..... | 3" | 2 3/4" | 2 1/4" | 2" | 1 1/4" | 1/2" |
| Deviation from designated elevation on spirals may not be more than... | 1 3/4" | 1 1/2" | 1 1/4" | 1" | 3/4" | 1/2" |
| Variations in cross level on spirals in any 31 feet may not be more than..... | 2" | 1 3/4" | 1 1/4" | 1" | 3/4" | 1/2" |
| Deviation from zero cross level at any point on tangent or from designated elevation on curves between spirals may not be more than.. | 3" | 2" | 1 3/4" | 1 1/4" | 1" | 1/2" |
| The difference in cross level between any two points less than 62 feet apart on tangents and curves between spirals may not be more than... | 3" | 2" | 1 3/4" | 1 1/4" | 1" | 5/8" |

Proposed

§ 213.63 (Continued)

| | Class of Track | | | | | |
|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 |
| The deviation from uniform profile on either rail at the midordinate of 62' cord may not be more than | 3-1/2" | 2-3/4" | 2-1/4" | 1-5/8" | 1-1/4" | 5/8" |
| Deviation from zero cross level at any point on tangent or the difference in cross level between any two points 62 feet or less apart on tangents and curves may not be more than | 3" | 2" | 1-3/4" | 1-1/4" | 1" | 5/8" |
| Variations in cross level on spirals in any 31 feet may not be more than | 2" | 1-3/4" | 1-1/4" | 1" | 3/4" | 1/2" |

## SUBPART D - TRACK STRUCTURE

| Present | Proposed |
|---|---|
| § 213.101 Scope. | § 213.101 Scope.<br>No change. |
| § 213.103 Ballast; general. | § 213.103 Ballast; general.<br>No change. |
| § 213.105 Ballast; disturbed track.<br>If track is disturbed, a person designated under § 213.7 shall examine the track to determine whether or not the ballast is sufficiently compacted to perform the functions described in § 213.103. If the person making the examination considers it to be necessary in the interest of safety, operating speed over the disturbed segment of track must be reduced to a speed that he considers safe. | § 213.105 Ballast; disturbed track.<br>Delete entire section. |
| § 213.109 Crossties.<br>(a) Crossties may be made of any material to which rails can be securely fastened. The material must be capable of holding the rails to gage within the limits prescribed in § 213.53(b) and distributing the load from the rails to the ballast section. | § 213.109 Crossties.<br>(a) Crossties shall be made of material to which rails can be securely fastened. The material shall be capable of holding the rails to gage within the limits prescribed in § 213.53(b) and distributing the load from the rails to the ballast section. |

Present

§ 213.109 (Continued)

(b) A timber crosstie is considered to be defective when it is:

(1) Broken through

(2) Split or otherwise impaired to the extent it will not hold spikes or will allow the ballast to work through.

(3) So deteriorated that the plate or base of rail can move laterally more than one-half inch relative to the crosstie.

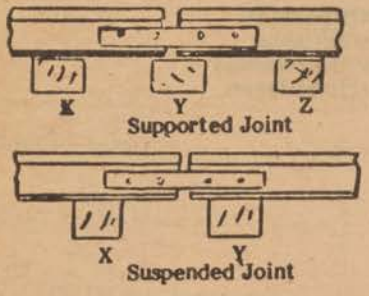
(4) Cut by the tie plate through more than 40 percent of its thickness; or

(5) Not spiked as required by Section 213.127.

(c) If timber crossties are used, each 39 feet of track must be supported by nondefective ties as set forth in the following table:

| Class of track | Minimum number of nondefective ties Per 39 ft. of track | Maximum distance between non-defective ties (center to center) |
|---|---|---|
| 1..... | 5 | 100" |
| 2,3..... | 8 | 70" |
| 4,5..... | 12 | 48" |
| 6..... | 14 | 48" |

(d) If timber ties are used, the minimum number of nondefective ties under a rail joint and their relative positions under the joint are described in the following chart. The letters in the chart correspond to letters underneath the ties for each type of joint depicted.




Proposed

§ 213.109 (Continued)

(b) A crosstie is defective when it is:

(1) Broken through

(2) Split or otherwise impaired to the extent it will not securely hold spikes or fasteners.

(3) So deteriorated or impaired that the tie plate or rail base can move laterally more than one-half inch relative to the crosstie

(4) Cut by the tie plate or rail base or worn by abrasion through more than 40 percent of its thickness; or

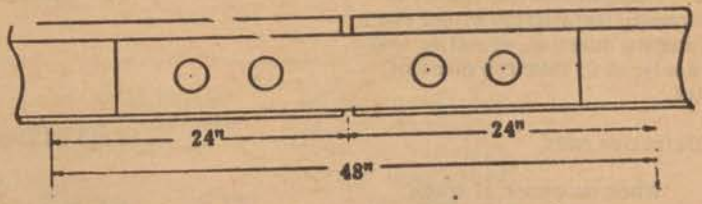
(5) Not fastened as required by Section 213.127.

(c) Maximum distance between nondefective ties center to center may not exceed those in the following table:

| Class of Track | Tangent track and curved track less than 4° | Curved track 4° and greater |
|---|---|---|
| 1 | 100" | 80" |
| 2,3 | 70" | 60" |
| 4,5 & 6 | 48" | 48" |

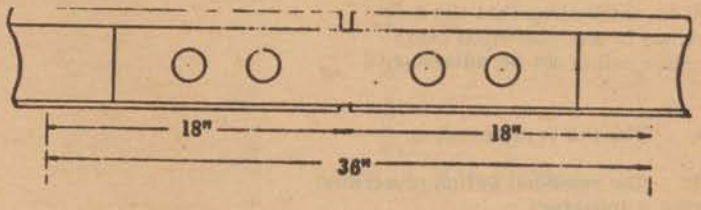
(d) The minimum number of nondefective ties and their relative position under a rail joint are described in the following table:

Class 1




Each rail joint in Class 1 track shall be supported by at least one nondefective crosstie whose centerline is within the 48" shown above.

Classes 2 and 3



Present

§ 213.109 (Continued)

| Class of Track | Minimum number of nondefective ties under a joint | Required position of nondefective ties | |
|---|---|---|---|
| | | Supported Joint | Suspended Joint |
| 1 | One | X, Y, or Z | X or Y |
| 2,3 | One | Y | X or Y |
| 4,5,6 | Two | X and Y, or Y and Z | X and Y |

(e) Except in an emergency or for a temporary installation of not more than six months duration, crossties may not be interlaced to take the place of switch ties.

§ 213.113 Defective rails.

(a) When an owner of track to which this part applies learns, through inspection or otherwise, that a rail in that track contains any of the defects listed in the following table, a person designated under § 213.7 shall determine whether or not the track may continue in use. If he determines that the track may continue in use, operation over the defective rail is not permitted until -

(1) The rail is replaced; or

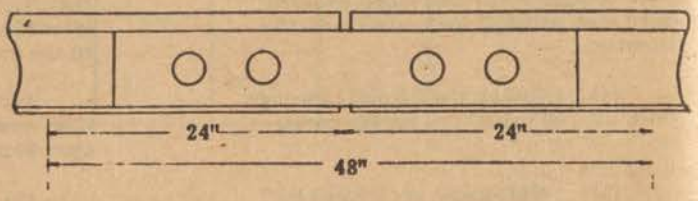
(2) The remedial action prescribed in the table is initiated:

Proposed

§ 213.109 (Continued)

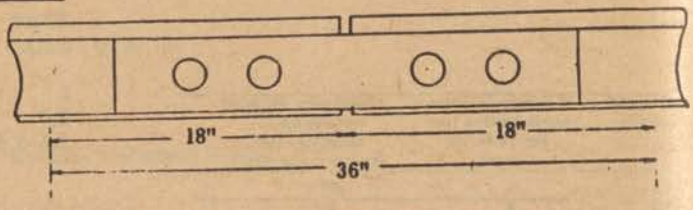
Each rail joint in Classes 2 & 3 track shall be supported by at least one nondefective crosstie whose centerline is within the 36" shown above.

Classes 4 and 5




Each rail joint in Classes 4 & 5 track shall be supported by at least two nondefective crossties. The centerline of both nondefective crossties shall be within the 48" shown above.

Class 6




Each rail joint in Class 6 track shall be supported by at least two nondefective crossties. The centerline of both nondefective crossties shall be within the 36" shown above.

(e) Delete.

§ 213.113 Defective Rails

(a) When rail in track contains a defect listed in the following table, the rail shall be replaced or the remedial action prescribed in that table be taken:

Present

213.113 (Continued)

REMEDIAL ACTION

| Defect | Length of defect (inch) | | Percent of railhead cross-sectional area weakened by defect | | If defective rail is not replaced, take the remedial action prescribed in note |
|---|---|---|---|---|---|
| | More than | But not more than | Less than | But not less than | |
| Transverse fissure | | | 20 | | B. |
| | | | 100 | 20 | B. |
| | | | | 100 | A. |
| Compound fissure | | | 20 | | B |
| | | | 100 | 20 | B |
| | | | | 100 | A. |
| Detail fracture | | | 20 | | C. |
| Engine burn fracture | | | 100 | 20 | D. |
| Defective weld | | | | 100 | A, or E and H. |
| Horizontal split head | 0 | 2 | | | H and F |
| | 2 | 4 | | | I and G |
| | 4 | | | | B |
| Vertical split head | (Break out in railhead) | | | | A |
| Split web | 0 | ½ | | | H and F |
| Piped rail | ½ | 3 | | | I and G |
| | 3 | | | | B |
| Head web separation | (Break out in railhead) | | | | A |
| | 0 | ½ | | | H and F |
| | ½ | 1½ | | | I and G |
| Bolt hole crack | 1½ | | | | B |
| | (Breakout in railhead) | | | | A |
| Broken base | 0 | 6 | | | E and I |
| | 6 | | | | (Replace rail) |
| Ordinary break | | | | | A or E |
| Damaged rail | | | | | C |

Proposed

213.113 (Continued)

REMEDIAL ACTION

| Defect | Length of defect (inch) | | Percent of railhead cross-sectional area weakened by defect | | If defective rail is not replaced, take the remedial action prescribed in note |
|---|---|---|---|---|---|
| | More than | But not more than | Less than | But not less than | |
| Transverse fissure | | | 20 | | B. |
| | | | 100 | 20 | B. |
| | | | | 100 | A. |
| Compound fissure | | | 20 | | B |
| | | | 100 | 20 | B |
| | | | | 100 | A. |
| Detail fracture | | | 20 | | C. |
| Engine burn fracture | | | 100 | 20 | D. |
| Defective weld | | | | 100 | A , or E and H. |

Proposed

213.113 (Continued)

REMEDIAL ACTION

| Defect | Length of defect (inch) | | Percent of railhead cross-sectional area weakened by defect | | If defective rail is not replaced, take the remedial action prescribed in note |
|---|---|---|---|---|---|
| | More than | But not more than | Less than | But not less than | |
| Horizontal split head | 0 | | 2 | | H and F. |
| Vertical split head | 2 | | 4 | | I and G. |
| Split web | 4 | | 6 | | B and G. |
| Piped rail | 6 | | | | A |
| Head and Web Separation | 0 | | 1-1/2 | | H and F. |
| Bolt Hole Crack | 1-1/2 | | 3 | | I and G. |
| | 3 | | | | A |
| Broken Base | 0 | | 6 | | E and I. |
| | 6 | | | | A |
| Ordinary break | | | | | A or E. |
| Damaged rail | | | | | C. |

Present

§ 213.113 (a) (Continued)

Remedial Action

Note:

A - Assign person designated under § 213.7 to visually supervise each operation over defective rail.

B - Limit operating speed to 10 m.p.h. over defective rail.

C - Apply joint bars bolted only through the outermost holes to defect within 20 days after it is determined to continue the track in use. In the case of Classes 3 through 6 track, limit operating speed over defective rail to 30 m.p.h. until angle bars are applied; thereafter, limit speed to 50 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower.

D - Apply joint bars bolted only through the outermost holes to defect within 10 days after it is determined to continue the track in use. Limit operating speed over defective rail to 10 m.p.h. until angle bars are applied; thereafter, limit speed to 50 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower.

E - Apply joint bars to defect and bolt in accordance with § 213.121(d) and (e).

Proposed

§ 213.113 (a) (Continued)

Remedial Action

A - No Change

B - No Change

C - No Change

D - No Change

E - No change

| Present | Proposed |
|---|---|
| § 213.113 (a) (Continued) | § 213.113 (a) (Continued) |
| F - Inspect rail ninety days after it is determined to continue the track in use. | F - No change |
| G - Inspect rail thirty days after it is determined to continue the track in use. | G - No change |
| H - Limit operating speed over defective rail to 50 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower. | H - No change |
| I - Limit operating speed over defective rail to 30 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower. | I - No change |
| § 213.113 | § 213.113 |
| (b) If a rail in Classes 3 through 6 track or Class 2 track on which passenger trains operate evidences any of the conditions listed in the following table, the remedial action prescribed in the table must be taken: | (b) Delete |

| Condition | Remedial Action | |
|---|---|---|
| | If a person designated under § 213.7 determines that condition requires rail be replaced | If a person designated under § 213.7 determines that condition does not require rail to be replaced |
| Shelly spots | Limit speed to 20 m.p.h. and schedule the rail for replacement. | Inspect the rail for internal defects at intervals of not more than every 12 months. |
| Head checks. | ...do... | Inspect the rail at intervals not more than every 6 months. |
| Engine burn (but not fracture). | | |
| Mill defect. | | |
| Flaking. | | |
| Slivered... | | |
| Corrugated | | |
| Corroded... | | |

| | |
|---|---|
| § 213.113(c) (1) - (11) | § 213.113(c) (1) - (11) No Change. |
| (12) "Shelly spots" means a condition where a thin (usually three-eights inch in depth or less) shell-like piece of surface metal becomes separated from the parent metal in the railhead, generally at the gage corner. It may be evidenced by a black spot appearing on the railhead over the zone of separation or a piece of metal breaking out completely, leaving a shallow cavity in the railhead. In the case of a small shell there may be no surface evidence, the existence of the shell being apparent only after the rail is broken or sectioned. | (12) Delete. |

| Present | Proposed |
|---|---|
| § 213.113(c) (Continued) | § 213.113(c) (Continued) |
| (13) "Head checks" means hairline cracks which appear in the gage corner of the rail head, at any angle with the length of the rail. When not readily visible the presence of the checks may often be detected by the raspy feeling of their sharp edges. | (13) Delete. |
| (14) "Flaking" means small shallow flakes of surface metal generally not more than one-quarter inch in length or width break out of the gage corner of the railhead. | (14) Delete. |
| § 213.115 Rail end mismatch. | § 213.115 Rail end mismatch. |
| Any mismatch of rails at joints may not be more than that prescribed by the following table: | Any mismatch on the gage side of the rails ends may not be more than 1/4 inch on Class 1 track, 3/16 inch on Classes 2 and 3 track, and 1/8 inch on Classes 4, 5 and 6 track. |

| Class of track | Any mismatch of rails at joint may not be more than the following - | |
|---|---|---|
| | On the tread of the rail ends (inch) | On the gage side of the rails ends (inch) |
| 1..... | 1/4 | 1/4 |
| 2..... | 1/4 | 3/16 |
| 3..... | 3/16 | 3/16 |
| 4,5..... | 1/8 | 1/8 |
| 6..... | 1/8 | 1/8 |

| | |
|---|---|
| § 213.117 Rail End Batter. | § 213.117 Rail End Batter. |
| (a) Rail end batter is the depth of depression at one-half inch from the rail end. It is measured by placing an 18-inch straightedge on the tread on the rail end, without bridging the joint, and measuring the distance between the bottom of the straightedge and the top of the rail at one-half inch from the rail end. | Delete entire section. |
| (b) Rail end batter may not be more than that prescribed by the following table: | |

| Class of track | Rail end batter may not be more than- (inch) |
|---|---|
| 1..... | 1/2 |
| 2..... | 3/8 |
| 3..... | 3/8 |
| 4..... | 1/4 |
| 5..... | 1/8 |
| 6..... | 1/8 |

| Present | Proposed |
| --- | --- |
| § 213.119 Continuous welded rail. | § 213.119 Continuous welded rail. |
| (a) When continuous welded rail is being installed, it must be installed at, or adjusted for, a rail temperature range that should not result in compressive or tensile forces that will produce lateral displacement of the track or pulling apart of rail ends or welds. | Delete entire section. |
| (b) After continuous welded rail has been installed it should not be disturbed at rail temperatures higher than its installation or adjusted installation temperature. | |
| § 213.121 Rail joints. | § 213.121 Rail Joints. |
| (a-c) | (a-c) No change. |
| (d) In the case of conventional jointed track, each rail must be bolted with at least two bolts at each joint in Classes 2 through 6 track, and with at least one bolt in Class 1 track. | (d) In the case of conventional jointed track, each rail end shall be bolted with at least two bolts at each joint in Classes 2 through 6 track, and with at least one bolt in Class 1 track. |
| (e) In the case of continuous welded rail track, each rail must be bolted with at least two bolts at each joint. | (e) In the case of continuous welded rail track, each rail end shall be bolted with at least two bolts at each joint. |
| (f) | (f) No change |
| (g) No rail or angle bar having a torch cut or burned bolt hole may be used in Classes 3 through 6 track. | (g) Torch cut or burned bolt holes in rails or joint bars may not be used in Class 2 through 6 track. |
| § 213.123 Tie plates. | § 213.123 Tie plates. |
| (a) In Classes 3 through 6 track where timber crossties are in use there must be tie plates under the running rails on at least eight of any 10 consecutive ties. | Delete entire section. |
| (b) Tie plates having shoulders must be placed so that no part of the shoulder is under the base of the rail. | |
| § 213.125 Rail Anchoring. | § 213.125 Rail Anchoring |
| Longitudinal rail movement must be effectively controlled. If rail anchors which bear on the sides of ties are used for this purpose, they must be on the same side of the tie on both rails. | Delete. |

Present

§ 213.127 Track Spikes.

(a) When conventional track is used with timber ties and cut track spikes, the rails must be spiked to the ties with at least one line-holding spike on the gage side and one line-holding spike on the field side. The total number of track spikes per rail per tie, including plate-holding spikes, must be at least the number prescribed in the following table:

| Class of track | Minimum number of track spikes per rail per tie, including plate-holding spikes: Tangent track and curved track with not more than 2° of curvature | Curved track with more than 2° but not more than 4° of curvature | Curved track with more than 4° but not more than 6° of curvature | Curved track with more than 6° of curvature |
|---|---|---|---|---|
| 1 | 2 | 2 | 2 | 2 |
| 2 | 2 | 2 | 2 | 3 |
| 3 | 2 | 2 | 2 | 3 |
| 4 | 2 | 2 | 3 | - |
| 5 | 2 | 3 | - | - |
| 6 | 2 | - | - | - |

(b) A tie that does not meet the requirements of paragraph (a) of this section is considered to be defective for purposes of § 213.109(b).

§ 213.129 Track shims.

(a) If track does not meet the geometric standards in Subpart C of this part and working of ballast is not possible due to weather or other natural conditions, track shims may be installed to correct the deficiencies. If shims are used, they must be removed and the track resurfaced as soon as weather and other natural conditions permit.

(b) When shims are used they must be -

(1) At least the size of the tie plate;

Proposed

§ 213.127 Rail Fastenings

(a) When conventional track is used with timber ties and track spikes, the rails shall be spiked to the ties with at least one line holding spike on the gage side and one line-holding spike on the field side. Longitudinal rail movement shall be effectively controlled. The total number of track spikes per rail per tie, including plate-holding spikes, shall be at least the number prescribed in the following table:

| Class of track | Minimum number of track spikes per rail per tie, including plate-holding spikes: Tangent track and curved track with not more than 2° of curvature | Curved track with more than 2° but not more than 4° of curvature | Curved track with more than 4° but not more than 6° of curvature | Curved track with more than 6° of curvature |
|---|---|---|---|---|
| 1 | 2 | 2 | 2 | 2 |
| 2 | 2 | 2 | 2 | 3 |
| 3 | 2 | 2 | 2 | 3 |
| 4 | 2 | 2 | 3 | - |
| 5 | 2 | 3 | - | - |
| 6 | 2 | - | - | - |

(b) When rail fastenings other than track spikes are used, they shall be:

(1) Securely attached to the tie
(2) So positioned as to effectively restrain lateral rail movement.
(3) Properly installed
(4) Positioned so vertical and longitudinal movement of the rail is effectively controlled
(5) Installed so that at least one fastener is on each side of the rail, except when used on the same tie in combination with track spikes as prescribed in paragraphs (a) of this section.

(c) A tie that does not meet the requirements of paragraph (a) or (b) of this section is defective for purposes of § 213.109(b).

§ 213.129 Track shims.

Delete entire section.

| Present | Proposed |
| --- | --- |
| § 213.129 Track shims. | § 213.129 Track shims. |
| (2) Inserted directly on top of the tie, beneath the rail and tie plate;<br>(3) Spiked directly to the tie with spikes which penetrate the tie at least 4 inches.<br>(c) When a rail is shimmed more than 1-1/2 inches, it must be securely braced on at least every third tie for the full length of the shimming.<br>(d) When a rail is shimmed more than 2 inches a combination of shims and 2-inch or 4-inch planks, as the case may be, must be used with the shims on top of the planks. | |
| § 213.131 Planks used in shimming. | § 213.131 Planks used in shimming. |
| (a) Planks used in shimming must be at least as wide as the tie plates, but in no case less than 5-1/2 inches wide. Whenever possible they must extend the full length of the tie. If a plank is shorter than the tie, it must be at least three feet long and its outer end must be flush with the end of the tie. | Delete entire section. |
| (b) When planks are used in shimming on uneven ties, or if the two rails being shimmed heave unevenly, additional shims may be placed between the ties and planks under the rails to compensate for the uneveness. | |
| (c) Planks must be nailed to the ties with at least four 8-inch wire spikes. Before spiking the rails or shim braces, planks must be bored with 5/8-inch holes. | |
| § 213.133 Turnouts and track crossings generally. | § 213.133 Turnouts and track crossings generally. |
| | No change. |
| § 213.135 Switches. | § 213.135 Switches. |
| (a) | (a) No change. |
| (b) Each switch point must fit its stock rail properly, with the switch stand in either of its closed positions to allow wheels to pass the switch point. Lateral and vertical movement of a stock rail n the switch plates or of a switch plate on a tie must not adversely affect the fit of the switch point to the stock rail. | (b) Each switch point shall **fit** its stock rail properly. Lateral, vertical and longitudinal rail movement shall be effectively controlled so the fit of the switch point to the stock rail is not adversely affected. |
| (c)-(h) | (c) -(h) No Change. |
| | (i) A switch point may not have an unprotected vertical or inclined surface 5/16 inch or more in width at depth of 3/4 inch below the top of the stock rail. |

| Present | Proposed |
|---|---|
| § 213.137 Frogs | § 213.137 Frogs. |
| (a) - (c) | (a) - (c) No Change. |
| | (d) The distance between the gage line and the face of the raised guard on self guarded frog may not exceed 4-3/8 inches. |
| § 213.139 Spring rail frogs. | § 213.139 Spring rail frogs. |
| | No change. |
| § 213.141 Self-guarded frogs. | § 213.141 Self-guarded frogs. |
| (a) The raised guard on a self-guarded frog may not be worn more than three-eights of an inch. | Delete entire section. |
| (b) If repairs are made to a self-guarded frog without removing it from service, the guarding face must be restored before rebuilding the point. | |
| § 213.143 Frog guard rails and guard faces; gage. | § 213.143 Frog guard rails and guard faces; gage. |
| | No change. |

SUBPART E - TRACK APPLIANCES AND TRACK-RELATED DEVICES

| Present | Proposed |
|---|---|
| § 213.201 Scope. | § 213.201 Scope. |
| This subpart prescribes minimum requirements for certain track appliances and track-related devices. | Delete. |
| § 213.205 Derails. | § 213.205 Derails. |
| (a) Each derail must be clearly visible. When in a locked position a derail must be free of any lost motion which would allow it to be operated without removing the lock. | Delete entire section. |
| (b) When the lever of a remotely controlled derail is operated and latched it must actuate the derail. | |
| § 213.207 Switch heaters. | § 213.207 Switch heaters. |
| The operation of a switch heater must not interfere with the proper operation of the switch or otherwise jeopardize the safety of railroad equipment. | Delete. |

SUBPART F - INSPECTION

Present

§ 213.231 Scope.

§ 213.233 Track inspections.

§ 213.235 Switch and track crossing inspections.

(a) Except as provided in paragraph (b) of this section, each switch and track crossing must be inspected on foot at least monthly.

(b) In the case of track that is used less than once a month, each switch and track crossing must be inspected on foot before it is used.

§ 213.237 Inspection of rail.

(a) In addition to the track inspections required by § 213.233, at least once a year a continuous search for internal defects must be made of all jointed and welded rails in classes 4 through 6 track, and class 3 track over which passenger trains operate. However, in the case of a new rail, if before installation or within 6 months thereafter it is inductively or ultrasonically inspected over its entire length and all defects are removed, the next continuous search for internal defects need not be made until three years after that inspection.

Proposed

§ 213.231 Scope.

No change.

§ 213.233 Track inspection.

No change.

§ 213.235 Turnout and track crossing inspections.

(a) Except as provided in paragraph (b) of this section, each turnout and track crossing shall be inspected on foot at least monthly by a person designated under 213.7.

(b) In the case of track that is used less than once a month, each turnout and track crossing must be inspected on foot before it is used. This inspection must be made by a person designated under 213.7.

§ 213.237 Inspection of rail.

(a)(1) In addition to the track inspections required by § 213.233, a continuous search for internal rail defects shall be made of all rail in classes 3 through 6 track and all track over which passenger trains operate in class 2.

In the case of new "A" rails to be used in Classes 3 through 6 track or Class 2 over which passenger trains operate an inspection for internal defects shall be made before installation. If all defects are removed before installation, the next continuous search for internal defects need not be made until three years after installation.

(a)(2) Minimum Required Number of Rail Inspections Per Year

| Rail Wt. | Rail Age More than | Rail Age Less than | Annual Million Gross Tons of Traffic During Preceeding Calendar Year (mgt) Less than 10 mgt | Between 10 and 20 mgt | Between more than 20 & 40 mgt | More than 40 mgt |
|---|---|---|---|---|---|---|
| less than 90 lb/yd | 3 | 10 | 1 | 1 | 2 | 2 |
| | 10 | 20 | 1 | 2 | 2 | 3 |
| | 20 | 40 | 1 | 2 | 2 | 3 |
| | 40 | — | 1 | 2 | 3 | 4 |
| 90 lb/yd to 110 lb/yd | 3 | 10 | 1/2 | 1 | 1 | 2 |
| | 10 | 20 | 1 | 1 | 2 | 2 |
| | 20 | 40 | 1 | 2 | 2 | 2 |
| | 40 | — | 1 | 2 | 2 | 3 |
| More than 110 lb/yd | 3 | 10 | 1/2 | 1 | 1 | 1 |
| | 10 | 20 | 1/2 | 1 | 1 | 2 |
| | 20 | 40 | 1 | 1 | 2 | 2 |
| | 40 | — | 1 | 1 | 2 | 2 |

(3) The time interval between rail inspections shall be as follows:

(i) Where inspection is required every other year (1/2 peryear) the interval between inspections may not be more than 29 months.

| Present | Proposed |
| --- | --- |
| § 213.237 (Continued) | § 213.237 (Continued) |
| | (ii) Where one inspection per year is required, the interval between inspections may not be more than 14 months or less than 6 months. |
| | (iii) Where two inspections per year are required, there shall be at least a 4 month interval between inspections. |
| | (iv) Where three inspections per year are required, there shall be at least a 3 month interval between inspections. |
| | (v) Where four inspections per year are required, there shall be at least a 2 month interval between inspections. |
| (b) Inspection equipment must be capable of detecting defects between joint bars and in the area enclosed by joint bars. | (b) Inspection equipment shall be capable of detecting defects between joint bars and in the area enclosed by joint bars. |
| (c) Each defective rail must be marked with a highly visible marking on both sides of the web and base. | (c) Each defective rail shall be marked with a highly visible marking on both sides of the web and base. |
| § 213.239 Special Inspections. | § 213.239 Special Inspections. |
| | No Change |
| § 213.241 Inspection records | § 213.241 Inspection records. |
| (a) Each owner of track to which this part applies shall keep a record of each inspection required to be performed on that track under this subpart. | (a) No change |
| (b) Each record of an inspection under §§ 213.233 and 213.235 shall be prepared on the day the inspection is made and signed by the person making the inspection. Records must specify the track inspected, date of inspection, location and nature of any deviation from the requirements of this part, and the remedial action taken by the person making the inspection. The owner shall retain each record at its division headquarters for at least one year after the inspection covered by the record. | (b) Each record of an inspection under §§ 213.233, and 213.235 shall be prepared on the day the inspection is made and signed by the person making the inspection. The railroad shall retain each record at its Division Headquarters for at least one year after the inspection covered by the record. Records shall specify:<br>(1) Track inspected and limits of inspection.<br>(2) Class of track.<br>(3) Date of inspection.<br>(4) Location and a description of any deviation of the requirements of this part. The description must include measurement where necessary and indicate the defect as being a deviation from this part.<br>(5) Remedial action prescribed by the designated person that made the inspection and indicate that:<br>(i) the track was promptly brought into compliance by repair or reducing the maximum authorized speed; and<br>(ii) operations were halted until the track was brought into compliance. |
| (c) Rail inspection records must specify the date the inspection, the location and nature of any internal rail defects found and the remedial action taken and the date thereof. The owner shall retain a rail inspection record for at least two years after the inspection and for one year after the remedial action is taken. | (c) No change. |
| (d) | (d) No change. |

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Part V

# Department of Energy

## Electric and Hybrid Vehicle Research, Development, and Demonstration Program; Performance Standards; Public Hearing

**DEPARTMENT OF ENERGY**

**[10 CFR Part 475]**

**[Docket No. CAS-RM-79-201]**

# Electric and Hybrid Vehicle Research, Development, and Demonstration Program; Performance Standards for Demonstrations; Public Hearing

**AGENCY:** Department of Energy.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Energy (DOE) is proposing amendments to the minimum performance standards required for electric and hybrid vehicles to be purchased or leased for the demonstration program implemented by DOE pursuant to section 7 of the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976, as amended by the Department of Energy Act of 1978—Civilian Applications. DOE is required to revise the performance standards periodically as the state-of-the-art improves. The proposed amendments to the performance standards would first apply to vehicles to be purchased or leased for the demonstration program in 1980.

**DATES:** Written comments must be received by 4:30 p.m., e.s.t., on or before November 5, 1979. The public hearing will be held on October 16, 1979, at 9:30 a.m., e.d.t. Requests to speak at the hearing must be received by 4:30 p.m., e.d.t., on October 5, and speakers will be notified by October 8, 1979.

**ADDRESSES:** Send written comments, requests to speak and copies of speaker's statement to Joanne Bakos, Office of Conservation and Solar Applications, Mail Stop 2221C, Department of Energy, 20 Massachusetts Avenue, NW., Washington, D.C. 20585. The public hearing will be held in Room 3000A, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461.

**FOR FURTHER INFORMATION CONTACT:**

Charles E. Pax, Office of Conservation and Solar Applications, 20 Massachusetts Avenue, NW., Washington, D.C. 20585, (202) 376-4893).

Pamela M. Pelcovits, Office of the General Counsel, 20 Massachusetts Avenue, NW., Washington, D.C. 20585, (202) 376-9469.

Joanne Bakos, Office of Dockets and Hearings, 20 Massachusetts Avenue, NW., Washington, D.C. 20585, (202) 376-1651.

**SUPPLEMENTARY INFORMATION:**



## I. Background.

### *A. Initial Performance Standards.*

Section 7(b)(1) of the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976 (Pub. L. 94-413), as amended by the Department of Energy Act of 1978—Civilian Applications (Pub. L. 95-238) (together referred to as the Act) required the Department of Energy (DOE), as the successor to the Energy Research and Development Administration, to promulgate rules establishing minimum performance standards for electric and hybrid vehicles (EHV's) to be purchased or leased for use in the demonstration program established under section 7(c) of the Act. On February 6, 1978, DOE issued the proposed initial performance standards for public comment (43 FR 5841, February 10, 1978). The final regulations prescribing the initial performance standards were issued on May 24, 1978 (43 FR 23498, May 30, 1978).

As required by section 7(b)(1) of the Act, the performance standards were developed by DOE taking into account the factors of energy conservation, urban traffic characteristics, patterns of use for "second" vehicles, consumer preferences, maintenance needs, battery recharging characteristics, agricultural requirements, materials demand and their ability to be recycled, vehicle safety and insurability, cost, the best current state-of-the-art and reasonable estimates as to the near-term future state-of-the-art, and other relevant considerations. As required by section 7(b)(2) of the Act, the initial performance standards were set at levels determined by DOE to be necessary to promote the acquisition and use of such vehicles for transportation purposes within the capability (determined by DOE) of EHV's.

### *B. The Demonstration Program.*

Pursuant to section 7(c) of the Act, DOE implemented the EHV demonstration program in 1978 with the selection of demonstration site operators in both the private sector and in Federal agencies, accounting for the introduction of approximately 200 EHV's. Expansion of the demonstration program in 1979 will result in the introduction of an additional 600 vehicles in private, state and local government, university, and Federal agency demonstration sites. Additional information on the demonstration program is available as indicated later in this notice.

## II. Development of Proposed Amendments.

### *A. Introduction.*

The performance standards are to be revised, periodically, as the state-of-the-art improves, pursuant to section 7(b)(3) of the Act. In evaluating the state-of-the-art to identify areas in which the initial performance standards should be revised, DOE used information and data from the following sources: (1) the public response to a Notice of Inquiry (NOI); (2) results of DOE sponsored verification testing of vehicles which have been certified by their manufacturers as meeting the initial performance standards; (3) results and projections from ongoing research and development programs under the Act; (4) data and information from representatives of groups associated with EHV design and safety, including the Department of Transportation; and (5) other available information.

The following paragraphs discuss the contribution of the major sources of information to the proposed amendments. The detailed information used in developing the proposed amendments is available to the public as provided for later in this notice.

### *B. Notice of Inquiry.*

As part of its consideration of what revisions were appropriate to the initial performance standards and pursuant to its policy to develop regulations in an open and accountable manner with public participation early in the rulemaking process, DOE issued an NOI regarding amendments to the performance standards on March 3, 1979 (44 FR 12685, March 8, 1979). The NOI specifically requested comments on any improvements in the state-of-the-art of electric or hybrid vehicles which would justify revisions to the initial performance standards, the manner in which the performance standards should be revised in light of these improvements, and any other basis for revising the performance standards.

In response to the NOI, three written comments were received. One comment stated that it was premature to comment extensively on the existing performance standards, since the commenter was currently testing and evaluating a vehicle for the demonstration program. The commenter referred to comments submitted in a 1978 response to the proposed initial performance standards which had stated that the performance standards, as proposed, were too stringent.

The other two comments suggested that the performance standards for acceleration, range, and forward speed

be increased. DOE has considered these comments, together with other available information, in developing the amendments to the performance standards proposed below.

These two comments also addressed the safety requirements of the performance standards. One supported the position that EHV's should be required to meet the same Federal motor vehicle safety standards as conventional vehicles but also stated that there should be additional standards in specific areas such as electric shock, interlocks and battery ventilation. The other comment stated that the existing safety standards do not adequately address the problems of safety unique to EHV's. Areas such as electrolyte spillage, retention of batteries during collisions, and general crashworthiness were specifically mentioned.

DOE recognized the importance of safety requirements in issuing the initial performance standards which require vehicles to meet all applicable Federal motor vehicle safety standards, unless a waiver is obtained from the Department of Transportation, and also set forth additional safety requirements. DOE reviewed these comments and consulted the National Highway Traffic Safety Administration (NHTSA) on the need for further safety requirements. Based on these reviews, the current safety requirements of the performance standards are appropriate for the vehicles involved in the demonstration program.

*C. Results of DOE Sponsored Verification Testing.*

In order for a vehicle to be eligible for inclusion in the demonstration program, the manufacturer must have vehicles available for sale or lease and must submit a certification to DOE that the vehicle meets the current performance standards. At present, manufacturers have submitted certifications for seventeen EHV's. DOE has instituted a testing program to verify the certification statements. Performance testing is conducted by the U.S. Army Mobility Equipment Research and Development Command (MERADCOM) under contract to DOE.

The comprehensive results of such testing provide the most reliable data on the EHV industry's state-of-the-art. While there has only been extensive testing of four vehicles to date, the reports on these tests were used in developing the proposed amendments, where appropriate.

*D. DOE Research and Development Programs.*

Pursuant to section 7(b)(1)(B), DOE is to take into account "reasonable estimates as to the future state-of-the-art, based on projections of results from research and development conducted under section 6 [of the Act]" in developing performance standards. Over the past several months, experimental vehicles have been introduced to the public which are the results of two such research and developments programs implemented under the Act: the Product Improvement Program and the Near-Term Electric Vehicle Program.

The Product Improvement Program, initiated in June 1978, has resulted in four different vehicles which, from preliminary indications, will offer improved performance over earlier vehicles. These improvements were accomplished through optimization of off-the-shelf technology and components. The vehicles were delivered to DOE in May, 1979, and will undergo testing and evaluation by DOE during the remainder of 1979.

The Near-Term Electric Vehicle Program is developing test vehicles which have been totally designed as electric vehicles and which are intended to represent significant advancement over the existing performance standards. The first such test vehicle was publicly displayed in June 1979 but has not yet been delivered to DOE for testing and evaluation. It is important to note that the goal of this program is to develop designs for vehicles that could be available for mass production by the middle of the 1980's. At present these vehicles are not produced for the consumer market.

In evaluating the current state-of-the-art and estimating future state-of-the-art, DOE has considered the goals for vehicles of the Near-Term and Product Improvement Programs. However, at the present no verified performance data on these vehicles are available, and the vehicles are still considered experimental.

*E. Information From Groups Associated with EHV Design and Safety.*

To further evaluate the initial performance standards, DOE contracted with the Aerospace Corporation to conduct discussions with representatives of groups involved in the EHV industry and in various parts of DOE's research, development and demonstration programs. Discussions were held with persons in the following groups: electric vehicle manufacturers, private sector demonstration site operators, Federal government agencies, universities, general vehicle manufacturers, battery manufacturers, consumer interest groups and other persons familiar with the EHV industry.

Over one-half of the people interviewed stated that, based on the present state-of-the-art, the performance standards should not be changed. Another quarter were divided between stating that specific items in the initial performance standards—such as range, acceleration, battery lifetime, and recharge time requirements—were too stringent or too lenient. The remainder of those contacted did not have any recommendations on whether to amend the initial performance standards. Details of specific discussions and the evaluation of these comments are contained in the contractor's report.

DOE also discussed the initial performance standards with representatives of NHTSA, particularly as to the need for any additional safety standards. The NHTSA representatives did not recommend any substantive changes or additions to the safety requirements of the initial performance standards but did suggest some clarifying language to the performance standards.

*F. Public Access to Information.*

In order to assist the public in commenting on DOE's proposed amendments, copies of the following documents will be available for public inspection and copying in the DOE Reading Room, Room GA–152, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m.:

*Major Sources of Information used in Evaluating the State-of-the-Art of the EHV Industry.*

1. Evaluation of Demonstration Performance Standards, Electric and Hybrid Vehicle Program (Final Report), Aerospace Corporation, ATR–79 (7767)–1, August, 1979.

2. Verification Test Reports on Four EHV's Certified by Manufacturers for the Demonstration Program: Jet Industries E Van 1000 Verification and Baseline Test Results; Battronic Minivan M065NLB Verification Test Results; Electric Vehicle Associates, Change of Pace, Verification Tests; and Jet Industries Van Model 600, Verification Tests.

3. Comments received by DOE in Response to a Notice of Inquiry published in the Federal Register on March 8, 1979.

4. Near Term Electric Vehicle Program, Phase 2, Mid-Term Summary Report, August 1978.

5. Electric and Hybird Vehicle Program, Product-Improved Vehicles, Information Bulletin No. 402, June 1979.

*Additional Sources of Information on the State-of-the-Art of the EHV Industry.*

6. United States Postal Services Specifications for light delivery truck USPS–T–855 (R&DE) February 15, 1979.

7. GSA, Interim Federal Specification Truck, Light, Commercial, Electric Powered, Front or Rear Wheel Driven, 4x2 500 to 3000 Pounds Minimum Payload. Specification number KKK–T–001985 1 September 1977.

8. State-of-the-Art Assessment of Electric and Hybrid Vehicles, Report numbers HCP/M1011–01, 1977; (HCP/M1011–0311, July, 1978; HCPM 1011–03/2. November, 1978).

9. Public Comments Received in response to a Notice of Proposed Rulemaking published in the **Federal Register** on February 10, 1978.

10. Four Reports used in Developing the Initial Performance Standards: (a) Arthur D. Little Report (SAN/1335–1); (b) General Research Corporation Report (SAN/1215–1); Society of Automotive Engineers Report (CONS/5053); and National Highway Traffic Safety Administration Report (DOT HS 802611).

*Additional Information on DOE's EHV Demonstration Program.*

11. EHV Program Quarterly Report Number 7, DOE/CS–0026–7.

## III. Discussion of Proposed Amendments.

### *A. Proposed Quantitative Amendments to the Performance Standards.*

DOE is today proposing amendments to the initial performance standards which would require the following quantitative changes in the performance standards for personal-use vehicles: (1) Acceleration (§ 470.10(a))—reducing the time allowed to accelerate from rest to 50 km/hr from 15 to 13.5 seconds; and (2) Range (§ 470.10(e))—increasing the distance a vehicle must be capable of operating without a recharge from 50 km (on the SAEJ227a/C cycle) to 55 km. DOE is also proposing the following quantitative changes to the initial performance standards for commercial vehicles: (1) Acceleration (§ 470.11(a))—reducing the time allowed for commercial vehicles with a payload carrying capacity of 600 kg or less to accelerate from rest to 50 km/hr from 15 to 14 seconds and eliminating any performance standard for acceleration for commercial vehicles with a payload carrying capacity of greater than 600 kg; (2) Forward Speed Capability (§ 470.11(d))—increasing the forward speed capability of commercial vehicles from 70 km/hr (for five minutes) to 75 km/hr; and (3) Range (§ 470.11(e))—increasing the range requirement for commercial vehicles from 50 km (on the SAEJ227a/B cycle) to 60 km. No quantitative changes to any of the other performance standards are proposed.

In proposing amendments to the initial performance standards, DOE has taken into account the elements required by section 7(b)(1) of the Act for developing performance standards (as set forth in section I.A. above). In determining to propose the upgrading of certain performance standards and in determining the extent of the proposed improvements, DOE has evaluated both the current state-of-the-art of the EHV industry and reasonable estimates of the future state-of-the-art when the revised performance standards will first be applicable, pursuant to section 7(b)(3) of the Act. In making these determinations, DOE has considered the interrelationship of performance characteristics in EHV's, in large part due to the limiting factor of battery capability. For example, if each performance standard were independently set at a maximum achievable level, no vehicle could meet all the performance standards, and none would, therefore be eligible to participate in the demonstration program. Accordingly, in determining which performance standards to amend, DOE has exercised its judgment in choosing to upgrade the requirements in those areas which it believes, based on the available information, are most important to potential vehicle users in the demonstration program.

Similarly, DOE has use its judgment in determing what levels of improvement to recommend. The proposed quantitative amendments reflect the trade-off among performance characteristics discussed above and DOE's interest in maintaining the potential for demonstration vehicles to represent a cross-section of available EHV technologies, pursuant to section 7(c)(1) of the Act. Moreover, the levels of improvement stated above represent the best judgment of DOE personnel based on the evaluation of verified data, program goals and the recommendations of the various representatives of organizations interested in the EHV industry, rather than exact quantitative calculations of expected improvement. More detailed information on the information used in determining the level of each proposed amendment is available as indicated in section II.F above.

It should be noted that DOE is not proposing any amendments to the performance standards for personal-use and commercial hybrid vehicles (as opposed to electric vehicles) due to the lack of sufficient data on the performance of hybrid vehicles, either from the demonstration program or the DOE research and development programs.

In evaluating the amendments to the initial performance standards, it is important to understand the scope and application of these standards. The performance standards do not establish general requirements for EHV's available to the public but are intended for use only in DOE's demonstration program established under section 7(c) of the Act. As required by section 7(b)(2) of the Act, the performance standards present minimum levels of performance which are required with respect to any vehicles to be purchased or leased in the demonstration program. In the implementation of the demonstration program, demonstration site operators may and, in fact, do require additional specifications to meet their particular operation requirements.

DOE is interested in comments on the proposed amendments. These comments would be more useful if they refer to specific requirements of the performance standards rather than the standards generally.

### *B. Additional Proposed Amendments to the Performance Standards.*

In addition to these quantitive changes, DOE is proposing several amendments to clarify the performance standards. The definition of "personal-use vehicle" in § 475.2 "Definitions" is revised to mean a vehicle designed to carry 10 persons or less, except a "multipurpose passenger vehicle," "motorcycle," "truck," or "trailer," as those terms are defined in NHTSA's Motor Vehicle Safety Standard Regulations (49 CFR part 571). The defintion of each of these terms in the NHTSA regulations is a simple description of the design and/or purpose of the particular type of motor vehicle. DOE believes that the amended definition is more precise than the current definition which required a subjective determination as to whether a vehicle was designed and primarily used for transporting the operator and passengers. In addition, since the amended definition closely tracks the definition of "passenger vehicle" in the NHTSA regulations, it will simplify the application of NHTSA's Federal motor vehicle standards to personal-use vehicles, as required by § 475.10(o) of the performance standards.

Sections 475.10(g) and 475.11(g) are revised to make clear that an automatic recharge control is required, excluding the possibility of manual battery charging operation. Sections 475.10(1) and 475.11(1) are revised to specify that the vehicle must have the capabiliy of having a passenger comfort heater. It

remains the option of the purchaser to determine if his needs require installation of a heater. However, this does not eliminate the need for vehicles to meet the windshield defrosting requirements of Federal Motor Vehicle Safety Standard 103.

Sections 475.10(o) and 475.11(o) are revised to clarify the applicability of all Federal motor vehicle safety standards to the demonstration vehicles, unless the manufacturer obtains a temporary exemption from the Department of Transportation (DOT). This clarification was requested by DOT during DOE's coordination with DOT on this rulemaking. In addition, DOE is clarifying § 475.10(o)(vi) and § 475.11(o)(vi) to indicate that "operation" after extended exposure to high or low temperature means the ability of the vehicle to move forward under its own power.

DOE is interested in comments on the appropriateness of these clarifications and any other clarifications which could be made to the performance standards.

## IV. Opportunities for Public Comment.

### *A. Written Comments.*

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposed regulations set forth in this notice. Comments should be submitted to the address indicated in the addresses section of this preamble and should be indentified on the outside of the envelope and on documents submitted to DOE with the designation "EHV Performance Standards (Docket No. CAS–RM–79–201)." Fifteen (15) copies should be submitted. All comments received will be available for public inspection in the DOE Reading Room, Room GA–152, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, between the hours 8:00 a.m. and 4:30 p.m., Monday through Friday. All comments received by [60 days from date of publication] before 4:30 p.m., e.s.t., and all other relevant information will be considered by DOE before final action is taken on the proposed regulations.

Pursuant to the provisions of 10 CFR 1004.11 (44 FR 1908, January 8, 1979), any person submitting information which he or she believes to be confidential and which may be exempt by law from public disclosure should submit one complete copy, and fifteen copies from which information claimed to be confidential has been deleted. In accordance with the procedures established at 10 CFR 1004.11, DOE shall make its own determination with regard to any claim that information submitted be exempt from public disclosure.

### *B. Public Hearing.*

1. *Request Procedures.* The time and place of the public hearing are indicated in the dates and addresses sections of this preamble. DOE invites any person who has an interest in this proposed rulemaking or who is a representative of a group or class of persons that has an interest in the proposed rulemaking to make a written request for an opportunity to make an oral presentation. Such a request should be directed to DOE at the address indicated in the addresses section of this preamble and must be received before 4:30 p.m., e.d.t., on October 5, 1979. A request may be hand delivered between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Request should be labeled both on the document and on the envelope "EHV Performance Standards—Public Hearing (Docket No. CAS–RM–79–201)."

The person making the request should briefly describe the interest concerned; if appropriate, state why she or he is a proper representative of a group or class of persons that has such an interest; and give a concise summary of the proposed oral presentation and a telephone number where the requester may be contacted through the day before the hearing. Each person selected to be heard will be notified by DOE before 4:30 p.m., e.d.t., October 8, 1979. Fifteen (15) copies of a speaker's statement should be brought to the hearing. In the event that any person wishing to testify cannot provide 15 copies, alternative arrangements can be made in advance of the hearing by so indicating in the letter requesting an oral presentation or by calling Joanne Bakos at 376–1651.

2. *Conduct of the Hearing.* DOE reserves the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

A DOE official will be designated to preside at the hearing. This will not be a judicial type hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of the persons presenting statements. Any decision made by DOE with respect to the subject matter of the hearing will be based on all information available to DOE. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if she or he so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any person who wishes to have a question asked at the hearing may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any person wishing to make an oral presentation at the hearing, but who does not file a timely request as specified above, may notify Joanne Bakos before the hearing or the presiding officer during the hearing of his or her desire to make a presentation. Such person will be admitted as a "limited" participant and will be heard at such time and for such duration as the presiding officer may permit.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Office, Room GA–152, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

## V. Other Matters

### *A. Environmental Review.*

Upon review of an Environmental Assessment prepared to evaluate the environmental effects of the EHV Research, Development, and Demonstration Program of which this rulemaking is a part, it has been determined that the program does not constitute a major federal action significantly affecting the quality of the human environment and that, therefore, no Environmental Impact Statement need be prepared pursuant to the National Environmental Policy Act (42 U.S.C. 4321 *et seq.* ).

### *B. Regulatory Review.*

It has been determined that the proposed regulation is significant, as that term is used in Executive Order 12044 and amplified in DOE Order 2030. This determination is based upon the importance of the overall electric and hybrid vehicle program in encouraging the development of alternative means of transportation. It has been further determined that this regulatory action is

not likely to have a major impact, as defined by Executive Order 12044 and DOE Order 2030; consequently, no regulatory analysis will be prepared in this instance.

*C. Urban Impact Analysis.*

This proposed regulation has been reviewed in accordance with OMB Circular A–116 to assess the impact on urban centers and communities. In accordance with DOE's finding that the regulation is not likely to have a major impact, DOE has determined that no community and urban impact analysis of the rulemaking is necessary, pursuant to section 3(a) of Circular A–116.

*D. Coordination with the Secretary of Transportation.*

As required by section 5(a) of the Act, DOE has consulted and coordinated the proposed amendments to the performance standards with the Secretary of Transportation. Such consultation and coordination will continue during the preparation of the amendments.

(Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976, Pub. L. 94–413, 90 Stat. 1260 *et. seq.* (15 U.S.C. 2501 *et. seq.* ), as amended by the Department of Energy Act of 1978–Civilian Applications, Pub. L. 95–238; Depatment of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565 *et. seq.* (42 U.S.C. 7101 *et. seq.* ))

In consideration of the foregoing, DOE hereby proposes to amend Part 475 of Chapter II of Title 10 of the Code of Federal Regulations as set forth below.

Issued in Washington, D.C., August 29, 1979.

**Omi G. Walden,**

*Assistant Secretary, Conservation and Solar Applications.*

1. Section 475.2 is amended by revising the definition of "personal-use vehicle" to read as follows:

**§ 475.2 Definitions.**

* * * * *

"Personal-use vehicle" means a vehicle designed to carry ten persons or less, except a multipurpose passenger vehicle, motorcycle, truck, or trailer, as those terms are defined in 49 CFR 571.3.

* * * * *

2. Section 475.10 is amended by revising paragraphs (a), (e), (e)(1), (g), (l), (o)(1), (o)(2)(ii) and (o)(2)(vi) to read as follows:

**§ 475.10 Minimum levels of performance for personal-use vehicles.**

* * * * *

(a) *Acceleration.* The time required to accelerate from rest to 50 km/h shall not exceed 13.5s.

(e) *Range.* The distance which the vehicle can be operated with vital accessories on or equivalent shall be:

(1) For an electric vehicle, at least 55 km on the SAE J227a/C cycle, and

* * * * *

(g) *Recharge control.* The vehicle shall have an automatic recharge control which will meet the requirements of energy, life, and safety as such requirements are stated by these performance standards.

* * * * *

(l) *Passenger comfort heater.* The vehicle shall have the capability of having a passenger comfort heater installed at the option of the purchaser.

* * * * *

(o) *Safety, crashworthiness, damageability, crash avoidance and hazards.* (1) The vehicle shall comply with all applicable Federal motor vehicle safety standards as set forth in 49 CFR Part 571, unless a temporary exemption is obtained by the manufacturer from the Department of Transportation.

(2) * * *

(ii) The vehicle shall be capable of complying with the performance requirements of Federal motor vehicle safety standards 208 and 301 with all battery materials remaining outside the passenger compartment.

* * * * *

(vi) The vehicle shall be capable of being parked for up to 8 hours in temperatures of −25°C to 50°C and subsequently operated, by moving forward under its own power, at any temperature within this temperature range without damage to the vehicle or hazard to persons.

3. Section 475.11 is amended by revising paragraphs (a), (d), (e)(1), (g) (l), (o)(1), (o)(2) (ii) and (vi) to read as follows:

**§ 475.11 Minimum levels of performance for commercial vehicles.**

* * * * *

(a) *Acceleratin.* The time required to accelerate from rest to 50 km/h shall not exceed 14s for vehicles with a payload carrying capability of less than or equal to 600 kg.

* * * * *

(d) *Forward speed capability.* The speed which can be maintained for 5 minutes shall be 75 km/h.

* * * * *

(e) *Range.* The distance which the vehicle can be operated with vital accessories on or equivalent shall be:

(1) For an electric vehicle, at least 60 km on the SAE J227a/B cycle, and * * *

* * * * *

(g) *Recharge control.* The vehicle shall have an automatic recharge control which will meet the requirements of energy, life, and safety as such requirements are stated by these performance standards.

* * * * *

(l) *Passenger comfort heater.* The vehicle shall have the capability of having a passenger comfort heater installed at the option of the purchaser.

* * * * *

(o) *Safety, crashworthiness, damageability, crash avoidance and hazards.* (1) The vehicle shall comply with all applicable Federal motor vehicle safety standards as set forth in 49 CFR Part 571, unless a temporary exemption is obtained by the manufacturer from the Department of Transportation.

(2) * * *

(ii) The vehicle shall be capable of complying with performance requirements of Federal Motor Vehicle Safety Standards 208 and 301 with all battery materials remaining outside the passenger compartment.

* * * * *

(vi) The vehicle shall be capable of being parked for up to 8 hours in temperatures of −25°C to 50°C and subsequently operated, by moving forward under its own power, at any temperature within this temperature range without damage to the vehicle or hazard to persons.

[FR Doc. 79–27818 Filed 9–5–79; 8:45 am]

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Part VI

# Department of Energy

## Environmental Effects Abroad of Major Federal Actions; Implementation of Executive Order 12114; Proposed Guidelines

## DEPARTMENT OF ENERGY

### Implementation of Executive Order 12114; Environmental Effects Abroad of Major Federal Actions; Proposed Guidelines

**AGENCY:** Department of Energy.

**ACTION:** Proposed Guidelines for Implementation of Executive Order 12114.

**SUMMARY:** The Department of Energy (DOE) hereby gives notice of a proposal to establish departmental guidelines implementing Executive Order 12114—Environmental Effects Abroad of Major Federal Actions, which was issued on January 4, 1979.

The proposed guidelines supplement the procedures set forth in DOE's proposed guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, which were published for public comment in the **Federal Register** on July 18, 1979, and are designed to be coordinated with the environmental review procedures established by those procedures. They will be applicable to all organizational units of DOE, except the Federal Energy Regulatory Commission (FERC), and independent regulatory commission within DOE not subject to the supervision or direction of the other parts of DOE.

Written comments are requested with respect to these proposed guidelines.

**DATES:** Comments must be received no later than November 5, 1979.

**ADDRESSES:** Comments should be sent to Dr. Robert J. Stern, Acting Director, NEPA Affairs Division, Office of Environment, Department of Energy, Room 4G–064, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

**FOR FURTHER INFORMATION CONTACT:**

Dr. Robert J. Stern, Acting Director, NEPA Affairs Division, Office of Environment, Department of Energy, Room 4G–064, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, 202–252–4600.

Stephen H. Greenleigh, Esq., Assistant General Counsel for Environment, Department of Energy, Room 6G–087, 1000 Independence Avenue, SW., Washington, D.C. 20585, 202–252–6947.

**SUPPLEMENTARY INFORMATION:**



## I. Background

### *A. National Environmental Policy Act*

The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, requires that Federal agencies give appropriate weight to factors affecting the human environment during all stages of their decisionmaking process. In this connection, NEPA requires Federal agencies to prepare detailed statements on proposals for major Federal actions significantly affecting the quality of the human environment.

### *B. Council on Environmental Quality NEPA Regulations*

Executive Order 11991 (May 24, 1977) directed the Council on Environmental Quality (CEQ) to issue regulations implementing the procedural provisions of NEPA. CEQ promulgated those regulations on November 29, 1978 (43 FR 55978). They became binding on all non-exempt Federal agencies on July 30, 1979 for actions with impacts on the U.S., its territories or possessions. The CEQ regulations (40 CFR 1500 *et seq.*) require agencies to adopt implementing procedures no later than July 30, 1979, to supplement the uniform procedures established by CEQ.

### *C. Department of Energy NEPA Guidelines*

On July 18, 1979, DOE published in the **Federal Register** (44 FR 42136) a notice announcing proposed guidelines implementing the CEQ NEPA regulations. These guidelines are intended for use by all persons acting on behalf of DOE in carrying out certain provisions of the CEQ regulations.

At the time the CEQ regulations became effective (July 30, 1979), DOE revoked the NEPA regulations previously promulgated by the Energy Research and Development Administration (10 CFR Part 711) and the Federal Energy Administration (10 CFR Part 208), two of the predecessor agencies of DOE, and adopted the proposed DOE guidelines on an interim basis pending publication in final form.

### *D. Executive Order 12114*

On January 4, 1979, President Carter signed Executive Order 12114, entitled Environmental Effects Abroad of Major Federal Actions. The Order represents the exclusive and complete determination by the Executive Branch of the procedural and other actions to be taken by Federal agencies to further the purpose of NEPA with respect to the environment outside the United States, its territories and possessions.

The Executive Order directed every Federal agency taking actions not exempted by the Order that have significant effects on the environment outside the geographical borders of the United States and its territories and possessions to have procedures in effect to implement the Order by September 4, 1979.

## II. The Proposed Guidelines

### *A. General*

The guidelines proposed herein are intended to satisfy the requirements of Executive Order 12114 regarding supplemental implementing procedures. They are intended for use by all persons acting on behalf of the agency in carrying out the Executive Order. The Executive Order and these proposed guidelines are not intended to create or enlarge any substantive or procedural rights or cause of action against DOE.

These implementing Guidelines in large measure reiterate the Executive Order provisions. It is recommended that these guidelines be read and interpreted in conjunction with Executive Order 12114, DOE's NEPA guidelines implementing the CEQ NEPA regulations and DOE Order 5440.1 governing internal DOE NEPA processes to obtain a more complete understanding of DOE environmental review policies and procedures.

The proposed guidelines will be applicable to all organizational elements of DOE except FERC, an independent regulatory body within DOE.

### *B. Actions for Which Environmental Review Is Required*

Part B of these guidelines describes the categories of DOE activities that require environmental review and the types of analyses necessary to satisfy this requirement. Categories of actions and required environmental reviews are listed below.

1. Major Federal actions significantly affecting the environment of the global commons outside the territorial jurisdiction of any nation, such as the oceans or Antarctica.

Preparation of an environmental impact statement for these actions is required.

2. Major Federal actions significantly affecting the environment of a foreign nation which is not participating with the United States in the activity and which is not otherwise involved in the action.

Preparation of either a bilateral (or multilateral) environmental study or, at DOE's discretion, a concise review of the environmental issues involved, such as by the preparation of an environmental assessment or summary environmental analysis, is required for these actions.

3. Major Federal actions significantly affecting the environment of a foreign nation which provide to that nation:

(a) a product, or physical project producing a principal product or an emission or effluent, which is probibited or strictly regulated by Federal law in the United States because its toxic effects on the environment create a serious public health risk;

(b) a physical project which in the United States is prohibited or strictly regulated by Federal law to protect the environment against radioactive substances.

Preparation of either a bilateral (or multilateral) environmental study or, at DOE's discretion, a concise review of the environmental issues involved, such as by the preparation of an environmental assessment or summary environmental analysis, is required for these actions.

4. Major Federal actions outside the United States, its territories and possessions significantly affecting natural or ecological resources of global importance that are designated for protection by the President or, in the case of such a resource protected by international agreement binding on the United States, by the Secretary of State.

The environmental effects of actions in this category must be analyzed in either an environmental impact statement, a bilateral or multilateral environmental study, or an environmental assessment or summary environmental analysis providing a concise review of the environmental issues involved. The specific type of document to be prepared is left to DOE's discretion.

Environmental impact statements required by these guidelines will contain the information specified in the CEQ regulations for such documents (40 CFR 1502). Bilateral or multilateral studies prepared pursuant to these guidelines must contain a currently valid analysis of all significant environmental impacts and issues associated with the proposed action. A concise analysis of the environmental issues involved, as required by sections 4.2.2, 4.3.2 or 4.4.3 of these proposed guidelines, will include brief discussions of the need for the proposed action, of reasonable alternatives to the proposal and of the environmental impacts of the proposed action and its reasonable alternatives.

Documents required by these proposed guidelines will be commenced as soon as practicable after DOE begins developing or is presented with a proposal. The documents must be completed early enough to that they can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made. The documents must be completed and considered prior to DOE taking an action which would have an adverse impact on the environment or limit or prejudice the choice of reasonable alternatives. Such documents will undergo DOE preparation in accordance with DOE Order 5440.1.

*C. Actions That Are Exempted From Environmental Review Under These Guidelines*

Certain actions are specifically exempted by Executive Order 12114 from its mandatory environmental review requirements. The exemptions, listed in Part C of these guidelines, include actions which DOE has determined do not have a significant effect on the environment outside the United States; actions taken by the President; actions taken by or pursuant to the direction of the President or Cabinet officer when the national security or interest is involved or when the action occurs in the course of an armed conflict; intelligence activities and arms transfers; actions relating to nuclear activities, except actions providing to a foreign nation a nuclear production, utilization, or waste management facility; votes and other actions in international conferences and organizations; and disaster and emergency relief action.

The Executive Order also authorizes agencies to provide for categorical exclusions and such exemptions in addition to those listed above as may be necessary to meet emergency circumstances involving exceptional foreign policy and national security sensitivities or other such special circumstances. Section 6 of the proposed guidelines contains additional categorical exclusions and provisions for case by case exemptions. The guidelines also provide for consultation with the Department of State and the Council on Environmental Quality in utilizing such additional exemptions.

None of the above exemptions or exclusions apply to actions having a significant impact upon the environment of the global commons unless otherwise permitted by law.

Although not exempt from the mandatory environmental review requirements of Executive Order 12114, actions providing to a foreign nation a nuclear production, utilization or waste management facility are specifically excluded from these proposed guidelines. These actions will be addressed in a uniform government-wide set of procedures which are currently under inter-agency development.

None of the above exemptions or exclusions apply to actions having a significant impact upon the environment of the global commons unless otherwise permitted by law.

*D. Other Provisions of the Proposed Guidelines*

Pursuant to provisions in the Executive Order, DOE has provided, in Section 12 of Part D, for appropriate modifications in the contents, timing and availability of documents prepared pursuant to the guidelines proposed herein to enable the agency to decide and act promptly as and when required; avoid adverse impacts on foreign relations or infringement in fact or appearance of other nations' sovereign responsibilities; or ensure appropriate reflection of diplomatic factors, international commercial, competitive and export promotion factors, or needs for governmental or commercial confidentiality, national security, and other such special considerations.

The proposed guidelines, at Section 11 in Part D, contain procedures for notification to other Federal agencies and affected foreign nations of the availability of environmental documents. Also, provisions are included for collaboration with the Department of State in exchanging environmental information and coordinating communications with foreign governments.

If a major Federal action having significant effects on the environment of the United States or the global commons requires preparation of an environmental impact statement (EIS), Section 14 of Part D of the proposed guidelines provides that the EIS need not analyze effects on the environment of foreign nations. It is anticipated that the appropriate environmental review of any such effects would be prepared as a separate document.

These proposed guidelines have been developed with the understanding that the Department of State will act as lead agency for the environmental review of actions providing to a foreign nation a nuclear production, utilization or waste management facility. These reviews will follow a uniform set of procedures which are presently being developed by an inter-agency working group. These uniform procedures will be published in proposed form for public comment. DOE will participate as a cooperating agency in conducting environmental reviews for these actions and will review its own guidelines implementing Executive Order 12114 from time to time to ensure that they do not conflict with the provisions of the uniform procedures.

Attached as appendix A is an illustrative, non-inclusive list prepared by the Council on Environmental Quality of products, emissions, and effluents which are encompassed by Section 4.3 of these proposed guidelines regarding substances which are strictly regulated because of their toxic effects on the environment.

### III. Comment Procedures

*A. Written Comments*

Interested persons are invited to submit written comments with respect to the proposed guidelines to Dr. Robert J. Stern, Acting Director, NEPA Affairs Division, Office of Environment, Department of Energy, Room 4G-064, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585. Comments should be identified on the outside of the envelope and on the documents submitted to DOE with the designation "Compliance with Executive Order 12114." Five (5) copies should be submitted, if possible. All comments and related information should be received by DOE on or before November 5, 1979 in order to ensure consideration. All comments submitted are subject to DOE's regulations at 10 CFR 1004 (44 FR 1908, January 8, 1979) governing freedom of information requests.

With respect to Executive Order 12044, "Improving Government Regulations," DOE has determined that the proposed guidelines are "significant" but not "major" because the anticipated effects of the guidelines would primarily be to provide internal direction for implementation of Executive Order 12114. Consequently, a regulatory analysis has not been prepared.

Issued in Washington, D.C., August 31, 1979.

**Ruth C. Clusen,**

*Assistant Secretary for Environment.*

## Department of Energy Guidelines for Implementation of Executive Order 12114—Environmental Effects Abroad of Major Federal Actions

**Part A—General**

Section:



**Part A—General**

Section 1 *Background*

1.1 The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) establishes national policies and goals for the protection of the environment. Section 102(2) of NEPA contains certain procedural requirements directed toward the attainment of such goals. In particular, all Federal agencies are required to give appropriate consideration to the environmental effects of their proposed actions in their decisionmaking and to prepare detailed environmental statements on recommendations or reports on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. Two recent Executive Orders have been directed toward furthering the purposes of NEPA.

1.2 Executive Order 11991 (May 24, 1977) directed the Council on Environmental Quality (CEQ) to issue regulations to Federal agencies for the implementation of the procedural provisions of NEPA. Accordingly, CEQ published final NEPA regulations on November 29, 1978 (44 FR 55978) which apply to actions having an impact on the United States, its territories and possessions and which become binding on all non-exempt Federal agencies on July 30, 1979. The CEQ regulations (40 CFR 1500 *et seq.*) require agencies to adopt implementing procedures no later than July 30, 1979. To fulfill this requirement, DOE published proposed implementing guidelines on July 18, 1979 (44 FR 42136), which are intended for use by all persons acting on behalf of DOE in considering the impacts on the environment within the U.S., its territories and possessions.

1.3 Executive Order 12114 of January 4, 1979, represents the United States Government's exclusive and complete determination of the procedural and other actions to be taken by Federal agencies to further the purpose of NEPA with respect to the environment outside the United States, its territories and possessions. The Executive Order requires that all Federal agencies taking actions subject to environmental review under the Order adopt implementing procedures by September 4, 1979.

Section 2 *Purpose and Scope*

2.1 This Part establishes guidelines for the Department of Energy's (DOE) implementation of the provisions of Executive Order 12114.

2.2 These guidelines are intended for use by all persons acting on behalf of DOE in implementing Executive Order 12114. The guidelines are not intended to create or enlarge any procedural or substantive rights or cause of action against DOE.

Section 3 *Applicability.*

These guidelines apply to all organizational elements of DOE, except the Federal Energy Regulatory Commission.

**Part B—Actions for Which Environmental Review Is Required**

Section 4 *Categories of Actions and Mandatory Environmental Review Requirements*

In the decisionmaking process for actions in the following categories, DOE will prepare and take into consideration the documents or studies specified below:

4.1 Major Federal actions significantly affecting the environment of the global commons outside the jurisdiction of any nation (e.g., the oceans or Antarctica);

Actions in this category require the preparation of an environmental impact statement, including, as appropriate, generic, program and project statements.

4.2 Major Federal actions significantly affecting the environment of a foreign nation not participating with the United States and not otherwise involved in the action; e.g., by regulatory control.

Actions in this category require the preparation of either:

4.2.1 A bilateral or multilateral environmental study relevant or related to the proposed action. The study is to be conducted by the United States and one or more foreign nations, or by an international body or organization in which the United States is a member or participant; or

4.2.2 A concise analysis of the environmental issues involved, including environmental assessments, summary environmental analyses or other appropriate documents.

4.3 Major Federal actions significantly affecting the environment of a foreign nation which provide to that nation:

(a) A product, or physical project producing a principal product or an emission or effluent, which is prohibited or strictly regulated by Federal law in the United States because its toxic effects on the environment create a serious public health risk (see Appendix A); or

(b) A physical project which in the United States is prohibited or strictly regulated by Federal law to protect the environment against radioactive substances.

For actions in this category, DOE will either:

4.3.1 Prepare a document as specified in Section 4.2.1; or

4.3.2 Prepare a document as specified in Section 4.2.2.

4.4 Major Federal actions outside the United States, its territories and possessions which significantly affect natural or ecological resources of global importance

designated for protection by the President pursuant to section 2–3(d) of Executive Order 12114 or, in the case of such a resource protected by international agreement binding on the United States, by the Secretary of State.

For actions in this category, DOE will either:

4.4.1 Prepare a document as specified in Section 4.1; or

4.4.2 Prepare a document as specified in Section 4.2.1; or

4.4.3 Prepare a document as specified in Section 4.2.2.

**Part C—Actions Exempted From Mandatory Environmental Review**

Section 5 *Actions Exempted by Executive Order 12114*

5.1 The following types of actions are exempted from the mandatory environmental review requirements of Executive Order 12114 and these implementing guidelines:

5.1.1 Actions not having a significant effect on the environment outside the United States, as determined by DOE. (Actions having a potentially significant impact on the United States, its territories or possessions are subject to the provisions of CEQ's NEPA regulations and DOE's guidelines implementing those regulations.)

5.1.2 Actions taken by the President;

5.1.3 Actions taken by or pursuant to the direction of the President or Cabinet officer when the national security or interest is involved or when the action occurs in the course of an armed conflict;

5.1.4 Intelligence activities and arms transfers;

5.1.5 Export licenses or permits or export approvals, and actions relating to nuclear activities except actions providing to a foreign nation a nuclear production or utilization facility as defined in the Atomic Energy Act of 1954, as amended, a nuclear waste management facility, or nuclear actions significantly affect the global commons.

5.1.6 Votes and other actions in international conferences and organizations;

5.1.7 Disaster and emergency relief action.

Section 6 *Actions Exempted by DOE*

6.1 The classes of actions which are listed in Appendix B of these guidelines are hereby categorically excluded from mandatory environmental review under Executive Order 12114 and these guidelines unless DOE determines that a particular action within such classes may possibly have a significant environmental effect requiring such review.

6.2 DOE may exempt, on a case-by-case basis, any action from the mandatory environmental review requirements of these guidelines when such exemption is determined by DOE to be necessary to meet:

6.2.1 Emergency circumstances;

6.2.2 Situations involving exceptional foreign policy or national security sensitivities;

6.2.3 Other such special circumstances.

6.3 In utilizing an exemption pursuant to section 6.2 above, DOE will consult with the Department of State and the Council on Environmental Quality as soon as is feasible.

Section 7 *Required Documentation for Exempted Actions*

For actions in connection with which DOE utilizes any categorical exclusion or other exemption pursuant to section 5 and 6 of these guidelines, DOE will prepare a brief memorandum which describes the basis for its determination to utilize such exclusion or exemption.

**Part D—Other Provisions**

Section 8 *Public Involvement*

DOE will provide for public involvement in the environmental review process conducted pursuant to these guidelines to the following extent:

8.1 Environmental impact statements (EIS) prepared pursuant to Sections 4.1 or 4.4.1 of these guidelines shall be subject to the provisions of:

8.1.1 DOE guidelines regarding publication of a Notice of Intent to prepare an EIS and public involvement in the EIS scoping process;

8.1.2 40 CFR 1502.9 regarding preparation of a draft and final EIS;

8.1.3 40 CFR 1503 regarding comment procedures for a draft EIS.

8.2 Documents or studies prepared pursuant to sections 4.2, 4.3 or 4.4.2 and 3 of these guidelines are not subject to the public involvement procedures in 8.1.1 through 8.1.3 above. DOE may, at its discretion, elect to utilize any or all of these procedures for any such document or study.

Section 9 *Timing*

9.1 DOE will commence preparation of environmental documents required by these proposed guidelines as close as practicable to the time DOE is developing or is presented with a proposal, and complete such documents early enough so that they can serve practically as an important contribution to the decisionmaking process.

9.2 Until an environmental document required by these guidelines has been completed and considered, DOE will take no action concerning the proposal which would have an adverse environmental impact or limit or prejudice the choice of reasonable alternatives.

9.3 For actions which have significant impacts both on the environment of the United States, its territories or possessions and on the environment of foreign nations or the global commons, documents prepared pursuant to sections 4.1, 4.2 or 4.3 of these guidelines analyzing the impacts outside the U.S. will, to the extent practicable, be prepared and reviewed in conjunction with the analyses of the domestic impacts of the proposed action.

Section 10 *Contents*

10.1 Environmental impact statements prepared pursuant to section 4.1 or 4.4.1 of these guidelines will follow the recommended format of 40 CFR 1502.10 and contain the types of information specified in 40 CFR 1502.11–1502.18.

10.2 Bilateral or multilateral environmental studies prepared pursuant to sections 4.2.1, 4.3.1, or 4.4.2 will contain a currently valid analysis of all significant environmental impacts of the proposed action.

10.3 Environmental analyses prepared pursuant to section 4.2.2, 4.3.2 or 4.4.3 will include brief discussions of:

10.3.1 the proposed action and the need therefor;

10.3.2 The reasonable alternatives to the proposed action which could be implemented directly or indirectly by the U.S.; and

10.3.3 The environmental impacts associated with the proposed action and the reasonable alternatives.

Section 11 *Notice of Availability*

11.1 DOE will, as soon as feasible, inform other Federal agencies with relevant interest and expertise of the availability of any documents prepared pursuant to these guidelines.

11.2 DOE will determine, after consultation with the Department of State, the appropriate time and manner for informing an affected nation of the availability of any relevant documents prepared pursuant to these guidelines.

11.3 As soon as practicable after notification to an affected nation in accordance with section 11.2 of these proposed guidelines, DOE will provide notice to the public of the availability of the environmental review documents specified in sections 4.1, 4.2.1, and 4.2.2 of these guidelines.

Section 12 *Modifications to Contents, Timing and Availability*

DOE will make appropriate modifications to the contents, timing and availability of documents prepared pursuant to these guidelines, where necessary to:

12.1 Enable DOE to decide and act promptly as and when required;

12.2 Avoid adverse impacts on foreign relations or infringement in fact or appearance of other nations' sovereign responsibilities; or

12.3 Ensure appropriate reflection of:

12.3.1 Diplomatic factors;

12.3.2 International commercial, competitive and export promotion factors;

12.3.3 Needs for governmental or commercial confidentiality;

12.3.4 National security considerations;

12.3.5 Difficulties of obtaining information and agency ability to analyze meaningfully environmental effects of the proposed action; and

12.3.6 The degree to which DOE is involved in or able to affect a decision to be made.

12.4 DOE will utilize such modifications as permitted in this section only to the extent necessary to accomplish the purposes set forth herein. Modifications to the contents of documents might include, for example, the use of generic, typical or hypothetical environmental impact analyses where critical site specific data cannot be obtained from an affected foreign nation. Regarding modifications to the availability of a document, where an affected nation notifies DOE of its desire not to notify the public of the availability of a document prepared pursuant to sections 4.2, 4.3, 4.4.2 or 4.4.3 of these proposed guidelines, DOE may waive

the requirements of section 11.3 above regarding notices of availability.

12.5 DOE will develop further internal guidance to reflect appropriate office roles in making the above determinations and modifications.

Section 13 *Coordination With the Department of State*

13.1 Section 2–2 of Executive Order 12114 requires the Department of State and the Council on Environmental Quality to conduct a continuing exchange program with other interested Federal agencies for information concerning the environment. DOE shall participate in such a program.

13.2 DOE will coordinate all communications with foreign governments concerning environmental agreements and other activities implementing these guidelines with the Department of State.

Section 14 *Duplication of Resources*

14.1 DOE will not have to prepare any document or study required by Section 4 of these guidelines if it determines that a document or study already exists that is adequate in scope and content to meet the requirements of these guidelines.

14.2 DOE will, in the early stages of preparing any document or study described in Section 4 above, request the cooperation of any Federal agency which DOE determines to possess a statutory mission or expertise relevant to the proposed action.

14.3 Where an action involves multiple Federal agencies including DOE, a lead agency, as determined by the agencies involved, will have responsibility for implementing the provisions of Executive Order 12114 using its own procedures implementing the Executive Order; where no such procedures exist, DOE procedures contained in these guidelines will be used.

14.4 The Department of State has been designated as the lead agency for the environmental review of all activities involving the export of a nuclear production, utilization or waste management facility. The environmental review will be conducted following a uniform set of guidelines which are presently being developed. DOE shall participate as a cooperating agency in conducting these reviews.

14.5 If a major Federal action having significant effects on the environment of the United States or the global commons requires preparation of an environmental impact statement (EIS) by DOE, and if the action is included in Section 4.2 or 4.3 above as an action having significant effects upon the environment of a foreign nation, the EIS does not have to contain a review of these foreign impacts. The appropriate type of environmental review, as described in Section 4.2 or 4.3 above, may be issued as a separate document.

Section 15 *Miscellaneous Provisions*

The provisions of Sections 5 and 6 regarding exclusions or exemptions from these procedures do not apply to any actions that have a significant impact upon the environment of the global commons unless otherwise permitted by law.

Section 16 *Definitions*

16.1 *Environment* means the natural and physical environment, and it excludes social, economic and other environments. Social and economic effects do not give rise to any requirements under these guidelines.

16.2 *Federal Action* means any action that is potentially subject to U.S. Government control and responsibility. It includes actions that are implemented, funded or approved directly or indirectly by the United States Government. It does not include actions in which the United States participates in an advisory, information gathering, representational or diplomatic capacity but does not implement, fund or approve the action or cause the action to be implemented. An action significantly affects the environment if it does significant harm to the environment even though on balance DOE believes the action to be beneficial to the environment.

16.3 *Foreign Nation* means any geographic area (land, water and airspace) that is under the territorial jurisdiction of one or more foreign governments; and any area under military occupation by the United States alone or jointly with any other foreign governments. "Foreign government" in this context includes governments regardless of whether recognized by the United States, political factions, and organizations that exercise governmental power outside the United States.

16.4 *Global Commons* are geographic areas (including land, water and airspace) that are outside the territorial jurisdiction of any nation, and include the oceans outside the territorial limits of any nation, and Antarctica.

16.5 *United States* means all States, territories, and possessions of the United States; and all waters and airspace subject to the territorial jurisdiction of the United States. The territories and possessions of the United States include the Virgin Islands, American Samoa, Wake Island, Midway Island, Guam, Palmyra Island, Johnston Atoll, Navassa Island and Kingman Reef.

Section 17 *Compliance*

These guidelines are intended for use by all persons acting on behalf of DOE in carrying out the provisions of Executive Order 12114. Any deviations from the guidelines must be soundly based and must have the advance approval of the Deputy Secretary of DOE.

**Appendix A—Illustrative List for Determining Compliance With Section 4.3**

1. The following is an illustrative, non-inclusive list of the products, emissions and effluents encompassed by section 4.3 of these proposed guidelines: asbestos, acrylonitrile, pesticides, mercury, arsenic, polychlorinated biphenyls, vinyl chloride, isocyanates, benzene, beryllium, cadmium.

2. The following is an illustrated, non-inclusive list of the products, emissions and effluents *not* encompassed by section 4.3: ammonia, chlorine, sulphuric acid, sulphur dioxide, sulfate and sulfite liquors, caustic soda, nitric acid, nitrogen oxides, phosphoric acid.

**Appendix B—Actions Categorically Excluded by DOE From Environmental Review Under These Guidelines**

1. Approval of DOE participation in international "umbrella" agreements for cooperation in energy R&D which do not commit the U.S. to any specific projects or activities.

2. Approval of technical exchange arrangements for information, data or personnel with other countries or international organizations.

3. Approval of arrangements to assist other countries in identifying and analyzing their energy resources, needs and options.

4. Approval of the export of and subsequent arrangements involving "small quantities" (as defined in the documents listed below) of nuclear materials or isotopic material in accordance with the provisions of the Nuclear Non-Proliferation Act of 1978, the "Procedures Established Pursuant to the Nuclear Non-Proliferation Act of 1978" (published in the **Federal Register** on June 9, 1978, 43 FR 25328) and Section 131 of the Atomic Energy Act of 1954, as amended.

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Part VII

# Federal Emergency Management Agency

Federal Insurance Administration

Riots or Civil Disorders; Offer To Provide Reinsurance Against Excess Aggregate Loss

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Federal Insurance Administration

[Docket No. N79-11]

### Offer To Provide Reinsurance Against Excess Aggregate Loss Resulting From Riots or Civil Disorders

**AGENCY:** Federal Emergency Management Agency/Federal Insurance Administration.

**ACTION:** Notice of Offer To Provide Reinsurance Against Excess Aggregate Loss Resulting From Riots or Civil Disorders.

**SUMMARY:** The Federal Insurance Administrator is publishing in this Notice the terms and conditions of the Standard Reinsurance Contract for 1979–80 governing reinsurance under the Federal insurance program reinsuring against excess aggregate losses resulting from riots or civil disorders to eligible insurers for the contract year from October 1, 1979, to September 30, 1980. In addition, this Notice sets forth the offer to provide reinsurance to eligible insurers and the method for accepting the offer. This offer and the contract set forth are authorized by 12 U.S.C. 1749bbb *et seq.*

In accordance with the provisions of the Urban Property Protection and Reinsurance Act of 1968, as amended, 12 U.S.C. 1749bbb et seq. (the Act) this offer is effective only in a State which has a FAIR Plan in compliance with the statutory or regulatory criteria and in which appropriate State legislation is effective and in compliance with the Act and regulations. The Administrator informs all insurers who may accept this offer that although she is complying with the order of July 3, 1979, in *United States Fire Insurance Company, et al.* v. *U.S. Department of Housing and Urban Development, et al.* (D.C.D.C., Civil Action No. 79–1290), she has recommended appeal of that order to the United States Department of Justice, and will continue to assert the position with respect to other parties not before the Court which resulted in the decision adverse to the Government.

As of the date of this offer, information received by the Administrator indicates that only the States of Connecticut, Georgia, Illinois, Massachusetts, New Mexico, North Carolina, Rhode Island, Washington, and Wisconsin and the District of Columbia have formulated revisions of their State FAIR Plans in a manner complying with the statutory requirements.

The most recent examination by the Office of Review and Compliance indicates that Federal Riot Reinsurance will not be available under this offer in the States of California, Iowa, Kansas, Louisiana, Minnesota, Missouri, New York, Oregon, and Virginia, and the Commonwealth of Puerto Rico.

In the States of Delaware, Indiana, Kentucky, Maryland, Michigan, New Jersey, Ohio and Pennsylvania, steps toward achieving compliance with the Act have been proposed but have not yet been put into effect. The Administrator is consulting with the State insurance authorities in those States.

Therefore, this offer is effective in those States where compliance with the statutory and regulatory requirements are met no later than October, 1, 1979.

**DATES:** The offer is effective September 6, 1979. The Contract is effective 12:01 a.m., e.s.t., October 1, 1979 for all acceptance dispatched before 12:00 (midnight), September 30, 1979. The Contract is effective 12:01 a.m., e.s.t., of the day following dispatch of the acceptance for acceptances dispatched after September 30, 1979.

**FOR FURTHER INFORMATION CONTACT:** Mr. James M. Rose, Jr., Federal Riot Reinsurance Program, 451 Seventh Street, S.W., Washington, D.C. 20410, Telephone number: (202) 755–6580.

**SUPPLEMENTARY INFORMATION:** The purposes of this Notice are:

(1) To offer publicly Federal reinsurance against excess aggregate losses resulting from defined riots or civil disorders to insurers eligible for such reinsurance for the contract year which ends September 30, 1980;

(2) To provide the method by which the offer may be accepted; and

(3) To set forth the terms and conditions of the Standard Reinsurance Contract (1979–80).

Since the offer to provide reinsurance and the terms and conditions of the Standard Reinsurance Contract for the October 1, 1979, to September 30, 1980 contract year must appear in time for acceptance by eligible insurers on or before September 30, 1979, this notice of offer to provide reinsurance against excess aggregate losses resulting from riots or civil disorders is effective September 6, 1979.

The Standard Reinsurance Contract (1979–80) provides for an aggregate basic premium rate of $0.025 per $100 of direct premiums earned on lines reinsured.

Both the aggregate basic premium and the additional premium, if any, are payable on an advance estimated basis as specified in the contract. Interest shall accrue at nine percent (9%) per annum on any portion of any amount due the reinsurer which is not paid to the reinsurer within 30 days from its due date.

The rate of $0.025 per $100 of direct premiums represents an increase of $0.005 over the rate in effect for contract year 1978–79. The right of the reinsurer to impose assessments against the company to pay for a share of excess aggregate losses incurred in a State (Section III—Assessments) has been eliminated.

The offer to provide reinsurance is as follows:

#### Offer To Provide Reinsurance

Pursuant to the provisions of the Urban Property Protection and Reinsurance Act of 1968, as amended (12 U.S.C. 1749bbb–1749bbb–21), subject to all regulations promulgated thereunder and, to the terms and conditions set forth in the Standard Reinsurance Contract (1979–80) as printed below, the Federal Insurance Administrator (hereinafter referred to as the "Reinsurer") offers to enter into the Standard Reinsurance Contract (1979–80), the terms and conditions of which are as printed hereinbelow, with any eligible insurer which accepts this offer. This offer is effective only in a state which has in effect no later than October 1, 1979 a FAIR Plan in compliance with the Reinsurer's statutory or regulatory criteria and in which appropriate state legislation is effective and complies with the Reinsurer's statutory or regulatory criteria no later than October 1, 1979. The Reinsurer's offer to provide reinsurance is effective upon publication in the **Federal Register.**

#### Method of Acceptance of Offer

(1) Acceptance of this offer shall be by telegraphed or mailed notice of acceptance to the Reinsurer. If the date and time of dispatch of the notice of acceptance are not later than midnight, e.s.t., September 30, 1979, reinsurance coverage shall be in effect from 12:01 a.m., e.s.t., October 1, 1979. If the date and time of dispatch of the notice of acceptance are later than midnight, e.s.t., September 30, 1979, reinsurance coverage shall be in effect from 12:01 a.m., e.s.t., on the day after such notice of acceptance is dispatched. The date and time of dispatch of the notice of acceptance must be clearly shown either by telegraph dispatched notation or postmark, and such notation or postmark shall be conclusive proof of the date and time of dispatch.

(2) The telegram or letter accepting this offer of reinsurance shall indicate

the States in which reinsurance on lines of mandatory coverage is to be provided and shall specifically designate for each such State the lines of optional coverage, if any, for which reinsurance is to be provided. The notice of acceptance shall be in substantially the following form:

The (name of insurer or insurers) hereby accepts the offer, as filed with the Office of the Federal Register, of the Standard Reinsurance Contract (1979–80), pursuant to the Urban Property Protection and Reinsurance Act of 1968, as amended, for the mandatory and (specify) optional lines in the following states: (specify).

(3) Any eligible insurer accepting this offer of reinsurance shall be supplied copies of the Standard Reinsurance Contract, (1979–80), for execution and return to the Reinsurer.

**Terms and Conditions of the Standard Reinsurance Contract (1979–80)**

(At this point in the contract, the insurance company or companies reinsured are required to list the names and addresses of the principal company and all property insurance companies under common or related ownership or control as defined in the contract, and space is provided for the execution of the contract by the parties.)

This contract, made by and between the Federal Insurance Administrator (hereinafter referred to as the "Reinsurer") and the company or companies specified above (hereinafter referred to as the "Company").

Witnesseth:

Subject to the provisions of the Urban Property Protection and Reinsurance Act of 1968, as amended, and to the terms and conditions herein set forth, the Reinsurer hereby obligates itself to pay, as reinsurance of the company, the amount of the Company's excess aggregate losses resulting from riot or civil disorders in such lines of mandatory and optional coverage as are designated separately for each State by the Company in its notice of acceptance and confirmed under section XVII.

*Section I. Policies Reinsured*

This Standard Reinsurance Contract applies to:

(A) All policies or contracts of direct property insurance issued by the Company to any property owner, except for policies for which the business is handled for or through any State pool or any other continuing organization, pool, or association of insurers, and

(B) The Company's participations in State pools and, as may be approved by the Reinsurer, in other continuing organizations, pools, or associations of insurers, which policies, contracts, or participations are in force on the effective date hereof or which commence or are renewed on or after such effective date in all the mandatory and in such optional standard lines of property insurance listed below as are designated separately for each State by the Company in its notice of acceptance and confirmed under section XVII.

**Lines of Mandatory Coverage**

(A) Fire and extended coverage;
(B) Vandalism and malicious mischief;
(C) Other allied lines of fire insurance;
(D) Burglary and theft; and
(E) Those portions of multiple peril policies covering similar perils to those provided in (A), (B), (C), (D);

**Lines of Optional Coverage**

(F) Inland marine;
(G) Glass;
(H) Boiler and machinery;
(I) Ocean marine;
(J) Aircraft physical damage.

*Section II. Premiums*

The aggregate basic premium due the Reinsurer for the reinsurance coverage provided under this contract shall be computed by applying an annual rate of twenty-five thousandths of one per centum (.025%) to an aggregate premium base consisting of the sum of the products of the Company's direct premiums earned in each State for each reinsured line for the calendar year 1979 multiplied by the specified percentage of such earned premium, as defined in section XVI of this contract.

If the total amount of all excess aggregate losses paid by the Reinsurer under this contract and all like Standard Reinsurance Contracts issued for the period between October 1, 1979, and September 30, 1980, exceeds the total amount of all aggregate basic premiums paid or payable to the Reinsurer under all such contracts, the Company shall be obligated to pay the Reinsurer, at or subsequent to adjustment, an additional premium determined on the basis of the amount of the remainder derived by subtracting the total amount of all aggregate basic premiums paid or payable to the Reinsurer under all such contracts from the total amount of all excess aggregate losses paid by the Reinsurer under all such contracts. The amount of the additional premium shall be equal to the product of the Company's aggregate basic premium multiplied:

By a factor of one, if the remainder is greater than two times the total amount of all aggregate basic premiums under all such contracts, but is less than or equal to three times that amount;

By a factor of two, if the remainder is greater than three times the total amount of all aggregate basic premiums under all such contracts, but is less than or equal to six times that amount;

By a factor of four, if the remainder is greater than six times the total amount of all aggregate basic premiums under all such contracts, but is less than or equal to ten times that amount;

By a factor of six, if the remainder is greater than ten times the total amount of all aggregate basic premiums under all such contracts, but is less than or equal to twelve times that amount;

By a factor of eight, if the remainder is greater than twelve times the total amount of all aggregate basic premiums under all such contracts, but is less than or equal to eighteen times that amount;

By a factor of ten, if the remainder is greater than eighteen times the total amount of all aggregate basic premiums under all such contracts, but is less than or equal to twenty times that amount; or

By a factor of twelve, if the remainder is greater than twenty times the total amount of all aggregate basic premiums under all such contracts.

An advance premium, which shall be an estimated premium only, shall be computed by the Company on the basis of its direct premiums earned in the calendar year 1978 in the manner required for the computation of the aggregate basic premium. If any line of insurance is added during the term of this contract for which the Company had no premium writings in 1978, the premium base for the advance premium shall be estimated by State for the period from the date of attachment of coverage to the expiration date of this contract. In no event shall the advance premium be less than $25.00 for each State in which reinsurance is provided under this contract. The advance premium shall be paid to the reinsurer without demand within 30 days from the effective date of coverage.

At the option of the Reinsurer and prior to adjustment, the Company shall pay the additional premium on an estimated basis. An estimated additional premium payment equal to the amount of the Company's advance premium shall be payable to the Reinsurer if the total amount of all excess aggregate losses paid by the Reinsurer under this contract and all like Standard Reinsurance Contracts issued by the Reinsurer for the period between October 1, 1979, and September 30, 1980, exceeds the total amount of all estimated premiums collected by the Reinsurer under all such contracts (the total amount of all advance premiums plus the total amount of estimated additional premium payments). The

total amount of estimated additional premium payments, whether required separately or concurrently, shall not exceed twelve times the amount of the Company's advance premium. The actual amount of the additional premiums shall subsequently be computed and adjusted in accordance with the provisions of the preceding paragraphs and section VI.

With the exception of the advance premium which is due without demand of the Reinsurer within 30 days from the effective date of coverage, premium amounts shall be due 30 days after the demand of the Reinsurer. Interest shall accrue at nine per centum (9%) per annum on any portion of any premium amount which is not received on or before 30 days from its due date.

The aggregate basic premium, together with an additional premium which may be due the Reinsurer in accordance with the preceding paragraphs, shall be deemed fully earned on the date that such reinsurance coverage attaches, except as otherwise provided in section V.

*Section III. Claims*

The company shall advise the Reinsurer by letter (A) of all losses from a single occurance which exceed $50,000 and (B) whenever it appears that aggregate losses have been incurred in an amount equal to 90 percent (90%) of the Company's net retention in any State, on the basis of its direct premiums earned and reported to the Reinsurer for the Calendar year 1978.

When the Company incurs aggregate losses which exceed its net retention in any State, the Company may make claim upon the Reinsurer for the payment of excess aggregate losses in that State by filing a certification of loss and thereafter such supporting documentation of such losses as may be required by the Reinsurer, and following the receipt of such certifications and documentation the Reinsurer shall, as promptly as possible, in such installments and on such conditions as may be determined by the Reinsurer to be appropriate (including advance payments made on the basis of preliminary certifications of loss filed in advance of the final determination of the ultimate amount of losses paid), pay to the Company the amount of such excess aggregate losses subject to adjustments on account of underpayments or overpayments.

If the ultimate amount of losses to be paid by the Company has not been finally determined when the certification of loss is filed, the Company shall, in due course, file one or more supplementary certifications of loss and thereafter the Reinsurer or the Company, as the case may be, shall pay the balance due.

Claims paid pursuant to computations of net retentions based upon the direct premiums earned for the calendar year 1978 shall be recomputed and adjusted at the termination of the coverage provided by this contract on the basis of direct premiums earned in reinsured lines for the calendar year 1979.

*Section IV. Inception and Expiration Dates*

Provided the Company has requested reinsurance by States and lines of coverage on or before September 30, 1979, this Standard Reinsurance Contract shall be in effect from 12:01 a.m., e.s.t. on October 1, 1979, and shall expire at 12:00 p.m., (midnight) e.s.t. on September 30, 1980, unless sooner terminated.

If the Company applies for coverage on or after October 1, 1979, this contract shall be effective from 12:01 a.m., e.s.t. on the day after such acceptance is dispatched, as determined by the date of postmark or telegram, provided the offer is effective in any State for which the Company requests coverage specifying by State and line and providing the Company otherwise complies with the eligibility requirements of this contract.

This contract applied only to losses occurring during the term hereof, as follows:

(A) If at the inception of this contract any riot or civil disorder is in progress, no coverage shall be provided for losses resulting therefrom unless this contract is a continuation of coverage from the previous year's contract.

(B) If this contract terminates while a riot or civil disorder covered hereby is in progress, no coverage shall be provided for any losses resulting therefrom which occurred after the date and time of termination of this contract.

*Section V. Cancellations*

Reinsurance under this contract may be cancelled by the Company in its entirety or with respect to any State upon written notice by the Company to the Reinsurer stating that it desires to cancel the reinsurance coverage specified and that it will pay any premium due the Reinsurer in accordance with the provisions of this contract, subject to any adjustments which may be required under section VI; provided, however, that no coverage shall attach under this contract if the Company has willfully concealed or misrepresented any material fact with respect thereto.

Reinsurance under this contract may be cancelled by the Reinsurer in its entirety or with respect to any State upon 30 days written notice by certified mail to the Company of such cancellation, stating one of the following reasons for cancellation: fraud or misrepresentation subsequent to the inception of the contract, nonpayment of premium or any other amount due the Reinsurer, and the grounds set forth in the second paragraph of section XI.

Reinsurance under this contract may be cancelled by Certified mail by the Reinsurer in its entirely or with respect to any State for one of the grounds set forth in the first paragraph of section XI and such cancellation shall be effective immediately upon written notice to the company.

Whenever the Reinsurer determines, in his discretion, that any cancellation of reinsurance is involuntary and without fault on the part of the Company, the premium due the Reinsurer for the coverage afforded under this contract shall be prorated in the ratio of:

(A) The number of days for which coverage was provided prior to the cancellation of such coverage plus thirty, to

(B) The total number of days of coverage provided under this contract from the inception of coverage up to and including September 30, 1980.

In the event of any cancellation of reinsurance coverage under this section, the net retention and assessment of such Company shall be computed, without proration, on the basis of the direct premiums earned for the calendar year 1979. Refunds of premiums, if any, due the Company upon cancellation may, at the discretion of the Reinsurer, be deferred until after final adjustments have been made in accordance with the provisions of section VI hereof.

*Section VI. Adjustments*

The Company shall report to the Reinsurer within 60 days after request its direct premiums earned for the calendar year 1979 in all reinsured lines in all States for which reinsurance was provided under this contract, for the purpose of computing and adjusting the reinsurance premium due to the Reinsurer with respect to the coverage provided. The direct premiums earned to be reported for any line of insurance added during the contract term for any State in which the company had no premium writings in such line in 1979 shall be the direct premiums earned for the first nine months of 1980 as estimated by the Company, subject to audit by the Reinsurer.

In no event shall the adjusted amount of direct premiums earned by the Company result in a basic premium to

the Reinsurer in an amount less than $25 for each State during the contract year, which shall constitute the minimum adjusted reinsurance premium for any State under this contract.

On or before December 31, 1980, or such later date as may be permitted at the option of the Reinsurer, the Company shall report to the Reinsurer its aggregate losses.

Any overpayment or underpayment between the Reinsurer and the Company shall be adjusted and paid in accordance with the obligations assumed herein under.

*Section VII. Insolvency*

In the event of insolvency of the Company the reinsurance under this contract shall be payable by the Reinsurer to the Company or to its liquidator, receiver, or statutory successor on the basis of the liability of the Company under all policies, contracts, or participation shares reinsured without diminution because of the insolvency of the Company.

It is further agreed that the liquidator, or receiver, or statutory successor of the Company shall give written notice to the Reinsurer of the pendency of any claim against the Company on the policies, contracts, or participation shares reinsured within a reasonable time after such claim is filed in the insolvency proceeding, and that during the pendency of such claim the Reinsurer may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated, any defense or defenses which may be deemed available to the Company or its liquidator, receiver, or statutory successor. The expense thus incurred by the Reinsurer shall be chargeable, subject to court approval, against the Company as part of the expense of liquidation to the extent of a proportionate share of the benefit which may accrue to the Company solely as a result of the defense undertaken by the Reinsurer.

*Section VIII. Errors and Omissions*

Inadvertent delays, errors, or omissions made in connection with any transaction under this contract shall not relieve either party from any liability which would have attached had such delay, error, or omission not occurred, provided always that such delay, error or omission is rectified as soon as possible after discovery.

*Section IX. Restriction of Benefits*

No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

*Section X. Participation in Statewide Plans*

No reinsurance shall be offered or be effective under this contract in any State unless there is in effect in such State, on the date coverage commences, a continuing statewide plan to make essential property insurance more widely available which is in compliance with the Reinsurer's statutory or regulatory criteria, and the Company is fully participating in such plan on a risk-bearing basis and is certified by the State insurance authority as meeting the requirements of this section. Except with respect to its runoff business after ceasing to do business within a State, the Company shall not be eligible for reinsurance under this contract in any State in which it is not engaged in the direct writing of property insurance at the time coverage is requested, or in which it is writing business on a nonadmitted basis, unless it reports such nonadmitted business to the State insurance authority and participates in the statewide plan of such State on the basis of such reported business. The Company shall file and maintain with the State insurance authority in each State in which it is participating in the statewide plan a statement pledging its full participation and cooperation in carrying out the plan and shall file a copy of each such statement with the Reinsurer. The Company shall not direct any agent, broker, or other producer not to solicit business through such plans and shall not penalize in any way any agent, broker, or other producer for submitting applications for insurance under such plans. The Company shall also establish and carry out an education and public information program to encourage agents, brokers, and other producers to utilize the programs and facilities available under such statewide plans.

In the event that the Company after the inception of this contract voluntarily withdraws from any State plan, pool, or other facility required by the provisions of this section, such withdrawal shall be deemed to constitute cancellation by the Company with respect to that State as of the effective date of the withdrawal.

*Section XI. Limitations on Reinsurance*

The Reinsurer shall cancel this contract in writing to the company: (a) if legislation to reimburse the Reinsurer, as necessary, for the portion of the aggregate losses specified in section 1223(a)(1) of the National Housing Act, as amended (12 U.S.C. 1749bbb–9(a)), paid by the Reinsurer under this contract, has not been enacted by the State or has expired or been repealed, or has otherwise ceased to be effective; or (b) following a merger, acquisition, consolidation, or reorganization involving the Company and one or more insurers with or without such reinsurance, unless the surviving insurer meets all criteria for eligibility for reinsurance and within 10 days pays any reinsurance premium due.

The Reinsurer shall cancel coverage, in accordance with the provisions of this contract, with respect to any State in which:

(A) the Reinsurer has found (after consultation with the State insurance authority) that (1) it is necessary to have a suitable program adopted, in addition to required statewide plans, to make essential property insurance available without regard to environmental hazards and that such a program has not been adopted, or (2) the Company is not fully participating in the Statewide plan; and , where it exists, in a State pool or other facility; and, where it exists, in any other program found necessary to make essential property insurance more readily available in the State; or

(B) the Reinsurer has found (after consultation with the State insurance authority) that a statewide plan is not complying with the Reinsurer's statutory or regulatory criteria or has become inoperative.

Notwithstanding the foregoing provisions, reinsurance may at the election of the Reinsurer be continued, up to and including September 30, 1980, for the term of such policies and contracts reinsured prior to the date of termination of reinsurance under this section, provided the Company pays the reinsurance premiums in such amounts as may be required. For the purposes of this section, the renewal, extension, modification, or other change in a policy or contract for which any additional premium is charged, shall be deemed to be a policy or contract written on the date such change was made effective.

Reinsurance under this contract shall be subject to all of the provisions of the Urban Property Protection and Reinsurance Act of 1968, 12 U.S.C. 1749bbb–1749bbb21, as amended, and to all regulations duly promulgated by the Reinsurer pursuant thereto.

*Section XII. Arbitration*

If any misunderstanding or dispute arises between the Company and the Reinsurer with reference to the amount of premium due, the amount of loss, or to any other factual issue under any provisions of this contract, other than as

to legal liability or interpretation of law, such misunderstanding or dispute may be submitted to arbitration for a determination which shall be binding only upon approval by the Reinsurer. The Company and the Reinsurer may agree on and appoint an arbitrator who shall investgate the subject of the misunderstanding or dispute and make his determination. If the Company and the Reinsurer cannot agree on the appointment of an arbitrator, then two arbitrators shall be appointed, one to be chosen by the Company and one by the Reinsurer.

The two arbitrators so chosen, if they are unable to reach an agreement, shall select a third arbitrator who shall act as umpire, and such umpire's determination shall become final only upon approval by the Reinsurer. The Company and the Reinsurer shall bear equally all expenses of the arbitration.

Findings, proposed awards, and determinations resulting from arbitration proceedings carried out under this section shall, upon objection by the Reinsured or the Company, be inadmissible as evidence in any subsequent proceedings in any court or competent jurisdiction.

*Section XII. Access to Books and Records*

The Reinsurer and the Comptroller General of the United States, or their duly authorized representatives, shall have access for the purpose of investigation, audit, and examination to any books, documents, papers, and records of the Company that are pertinent to the business reinsured under this contract. Such audits shall be conducted to the maximum extent feasible in cooperation with the State insurance authorities and through the use of their examining facilities. The Company shall keep records which fully disclose all matters pertinent to the business reinsured, including premiums and claims paid or payable under this contract. Records relating to premiums shall be retained and available for three (3) years after final adjustment of premiums, and to reinsurance claims three (3) years after final adjustment of such claims.

*Section XIV. Information and Annual Statements*

The Company shall furnish to the Reinsurer such summaries and analyses of information in its records as may be necessary to carry out the purposes of the Urban Property Protection and Reinsurance Act of 1968, as amended, in such form as the Reinsurer, in cooperation with the State insurance Authority, shall prescribe; and the Company shall file with the Reinsurer a true and correct copy of the Company's Fire and Casualty annual statement, or amendment thereof, as filed with the State insurance authority of the Company's domiciliary State, at the time it files such statement or amendment with the State insurance authority. The Company shall also file with the Reinsurer an equivalent of page 14 of such annual statement for each State in which reinsurance is provided under this contract.

*Section XV. Exclusions*

Reinsurance under this contract shall not be applicable with respect to any claim for:

(A) All or any part of a loss which is the direct or indirect result of controlled or uncontrolled nuclear reaction, radiation, or radioactive contamination; or

(B) Any loss to any aircraft while the aircraft is in flight, including that period between the time when power is turned on for the purpose of taxiing connected with takeoff until the time when the landing run has ended, taxiing has been completed, and power has been turned off; or

(C) Any loss to any aircraft, or resulting from collision with aircraft, which is precipitated or caused by hijacking or any aircraft or attempt thereat, including loss from wrongful seizure, wrongful diversion from course of flight pattern, or wrongful exercise of command or control, or an aircraft, by any person or persons, through the use of force or violance or the threat of force or violance.

*Section XVI. Definitions*

As used in this contract the term:

(1) "Aggregate losses" means the sum total of losses resulting from riots or civil disorders occurring in a State and allocable to a State in which reinsurance is provided;

(2) "Company" means any company authorized to engage in the insurance business under the laws of any State, except that if there are two or more companies within a State in which reinsurance is to be provided under this contract which, as determined by the Reinsurer:

(A) Are under common ownership and ordinarily operate on a group basis; or

(B) Are under single management direction; or

(C) Are otherwise determined by the Reinsurer to have substantially common or interrelated ownership, direction, management, or control; then all such related, associated, or affiliated companies, excluding nonadmitted companies, which are not specifically included by endorsement to this contract, shall be reinsured only as one aggregate entity;

(3) "Continuing organization, pool, or association of insurers" means an industry pool created to provide direct insurance to meet special problems of insurability, such as for a particular class or type of business;

(4) "Direct premiums earned" means direct premiums earned as reported in column 2 on page 14 of the Company's Fire and Casualty annual statement for the specified calendar year in the form adopted by the National Association of Insurance Commissioners, subject to (A) adjustment as approved by the Reinsurer for cessions to pools, facilities, and associations, and for the inclusion of participations in such pools, facilities, and associations, and (B) such other appropriate adjustments as may be approved or required by the Reinsurer, which shall include adjustments for dividends paid or credited to policyholders and reported in column 3 on page 14, subject to a maximum credit of 20 percent (20%) of direct premiums earned for any one line of insurance;

(5) "Excess aggregate losses" means that part of aggregate losses which is equal to the sum of:

(A) Ninety percent of the Company's aggregate losses in excess of its net retention, until the Company's 10 percent share of aggregate losses under this provision (A) equals the amount of its net retention;

(B) Ninety-five percent of the Company's remaining aggregate losses (after deducting the Reinsurer's share of aggregate losses under (A)) in excess of twice its net retention, until the Company's 5 percent share of aggregate losses under this provision (B) equals the amount of its net retention; and

(C) Ninety-eight percent of the Company's remaining aggregate losses (after deducting the Reinsurer's share of aggregate losses under (A) and (B)) in excess of an amount equal to three times its net retention;

(6) "Losses" means all claims proved, approved, and paid by the Company under reinsured policies, resulting from riots or civil disorders occurring in a State during the period of this contract after making proper deduction for salvage and for recoveries other than reinsurance, together with an allowance for expense in connection therewith, hereby agreed to equal an amount per claim of 8 percent (8%) of the first $25,000 of any such claim, plus 3 percent (3%) of the amount by which such claim exceeds $25,000 but is less than $100,000, plus 1 percent (1%) of the amount by which the claim exceeds $100,000; it

does not mean any claim excluded under section XV.

(7) "Net retention" means the amount of aggregate losses that the Company must stand before the Reinsurer's liability hereunder attaches. The net retention shall be one aggregate figure for each State determined by applying a factor of two and one half percent (.025) to the specified percentage of the Company's direct premiums earned in the State of the calendar year 1979 on those lines of insurance hereby reinsured. The retention amount is subject to a minimum figure of $1,000.00 for each State, and to a maximum figure of $1,000,000.00 per State.

(8) "Loss resulting from riot" means loss of or damage to property actually and immediately resulting from an overt and tumultuous disturbance of the public peace by three or more persons mutually assisting one another, or otherwise acting in designed concert, in the execution of a common purpose through the unlawful use of force and violence.

"Loss resulting from civil disorders" means:

(A) Loss of or damage to property actually and immediately resulting from any pattern of unlawful incidents taking place within close proximity both as to time and place and involving damage to property intentionally caused by persons apparently having the primary motivation of disturbing the public peace through civil disruption, civil disobedience, or civil protest; provided that at least two of such related incidents result in property damage in excess of $1,000 each; or

(B) Loss of or damage to property actually and immediately resulting from any occurrence involving property damage in excess of $2,000 caused by persons whose unlawful conduct in so causing the occurrence manifest their primary purpose of disturbing the public peace through civil disruption, civil disobedience, or civil protest.

(9) "Specified percentage" means 100 percent (100%) of the direct premiums earned for each line of insurance reinsured under this contract except that the specified percentage of homeowners multiple peril shall be 85 percent (85%) and that of Commerical multiple peril shall be 65 percent (65%);

(10) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions, and the Trust Territory of the Pacific Islands; and

(11) "State pool" means any State Fair Plan pool or insurance placement facility which is intended to meet the requirements of Part A of the Urban Property Protection and Reinsurance Act of 1968 (82 Stat. 558, 84 Stat, 1791, 12 U.S.C. 1749bbb–3—1749bbb–6a).

*Section XVII. Schedule of Coverage*

The Company shall indicate with an (X) in the appropriate column and line those States in which the mandatory lines are to be reinsured under this contract. Coverage of mandatory line may be designated only for those States in which the Company is eligible for reinsurance in accordance with section X of this contract.

The Company shall also indicate by State with an (X) in the appropriate column and line any optional lines which are to be reinsured under this contract. Coverage of optional lines is available only for those States in which the mandatory lines are reinsured.

(The schedule of mandatory and optional coverage by State and line is set forth at this point in the Contract.)

(12 U.S.C. 1749bbb *et seq.*, and Executive Order 12127 dated March 31, 1979.)

Issued at Washington, D.C. on September 4, 1979.

**Gloria M. Jimenez,**

*Federal Insurance Administrator.*

[FR Doc. 79-27953 Filed 9-5-79; 8:45 am]

BILLING CODE 4210-23-M

# Reader Aids

Federal Register

Vol. 44, No. 174

Thursday, September 6, 1979

## INFORMATION AND ASSISTANCE

Questions and requests for specific information may be directed to the following numbers. General inquiries may be made by dialing 202-523-5240.

**Federal Register,** Daily Issue:

| | |
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| **202-783-3238** | Subscription orders (GPO) |
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| | "Dial-a-Reg" (recorded summary of highlighted documents appearing in next day's issue): |
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**Code of Federal Regulations (CFR):**

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| **523-3419** | |
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**Presidential Documents:**

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| **523-5233** | Executive Orders and Proclamations |
| **523-5235** | Public Papers of the Presidents, and Weekly Compilation of Presidential Documents |

**Public Laws:**

| | |
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| **523-5266** | Public Law Numbers and Dates, Slip Laws, U.S. |
| **-5282** | Statutes at Large, and Index |
| **275-3030** | Slip Law Orders (GPO) |

**Other Publications and Services:**

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| **523-5239** | TTY for the Deaf |
| **523-5230** | U.S. Government Manual |
| **523-3408** | Automation |
| **523-4534** | Special Projects |
| **523-3517** | Privacy Act Compilation |

## FEDERAL REGISTER PAGES AND DATES, SEPTEMBER



## CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

401.....52010
402.....52010

**49 CFR**

571.....51603
1033.....51607

**Proposed Rules:**

Ch. X.....51830
213.....52104
571.....51623

**50 CFR**

17.....51980
32.....51982, 51984, 51985
280.....51608
285.....51801
611.....51801
672.....51801
674.....51988

**Proposed Rules:**

32.....52011
33.....52011

## AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

| Monday | Tuesday | Wednesday | Thursday | Friday |
|---|---|---|---|---|
| DOT/SECRETARY* | USDA/ASCS | | DOT/SECRETARY* | USDA/ASCS |
| DOT/COAST GUARD | USDA/APHIS | | DOT/COAST GUARD | USDA/APHIS |
| DOT/FAA | USDA/FNS | | DOT/FAA | USDA/FNS |
| DOT/FHWA | USDA/FSQS | | DOT/FHWA | USDA/FSQS |
| DOT/FRA | USDA/REA | | DOT/FRA | USDA/REA |
| DOT/NHTSA | MSPB/OPM | | DOT/NHTSA | MSPB/OPM |
| DOT/RSPA | LABOR | | DOT/RSPA | LABOR |
| DOT/SLSDC | HEW/FDA | | DOT/SLSDC | HEW/FDA |
| DOT/UMTA | | | DOT/UMTA | |
| CSA | | | CSA | |

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

***NOTE: As of July 2, 1979, all agencies in the Department of Transportation, will publish on the Monday/Thursday schedule.**

## REMINDERS

The items in this list were editorially compiled as an aid to **Federal Register** users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.

### Rules Going Into Effect Today

**ENVIRONMENTAL PROTECTION AGENCY**

46273 8–7–79 / Air quality implementation plan; availability of revision for State of Hawaii

**INTERIOR DEPARTMENT**

Indian Affairs Bureau—

46269 8–7–79 / Election of interim Yurok governing committee; procedures for conduct of election and committee duties

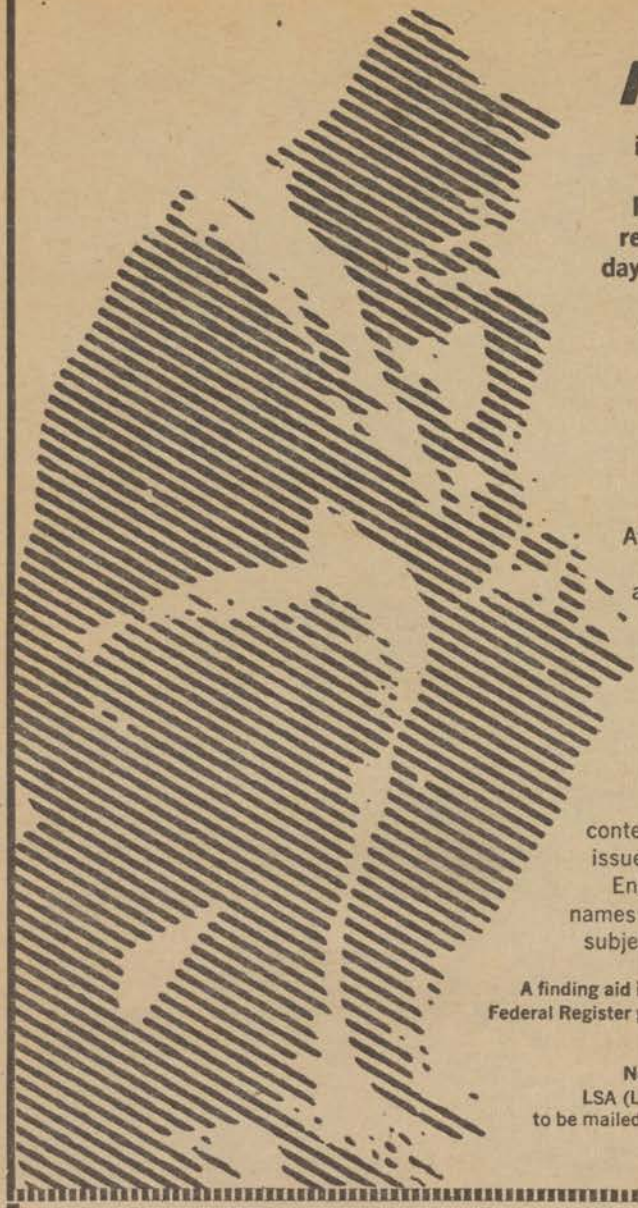
Land Management Bureau—

46385 8–7–79 / Public lands and resources; planning, programming, and budgeting

### List of Public Laws

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

**Last Listing August 17, 1979**



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