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Federal Register

Wednesday
October 31, 1979

Highlights

Briefings on How to Use the Federal Register—For details on briefings in **Washington, D.C.**, see announcement in the Reader Aids Section at the end of this issue. **An interpreter for hearing impaired persons will be present for the November 16 briefing.**

62752 **The Congregate Housing Services Program** HUD/FHC gives notice of fund disbursement for local Public Housing Agencies and nonprofit borrowers

62510 **Pensions, Bonuses and Veteran's Relief** VA provides final regulations increasing the maximum interest rate on guaranteed, insured and direct loans for homes and condominiums

62862 **Food Stamps** USDA/FNS proposes regulations for the provision of social security numbers, fraud disqualification and recoupment, and group living arrangements under the Act; comments by 12–17–79

62510 **Indian Self-Determination and Education Assistance** Interior/Sec'y issues a rule requiring that preference be given to Indians in employment, training, and subcontracting, 11–30–79

62546 **Security for the Protection of the Public** FMC proposes regulations to increase the amount of insurance, escrow account, guaranty and surety bond required of holders of a certificate; comments by 1–2–80

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62848 **Crude Oil** DOE/ERA intends to establish regulations providing for the computation of maximum permissible selling prices to which all resales would be subject; comments by 12–31–79; hearing 12–6 and 12–11–79

62531 **Insured Single Family Mortgages** HUD/FHC proposes regulations no longer requiring 30 days advance notice of prepayment or payment on an interest payment date; comments by 12–31–79

62481 **Banks and Banking** FHLBB issues amending regulations reducing the overall liquidity requirement; effective 10–25–79

62478 **Banks and Banking** FHLBB provides final rules on removals, suspensions, and prohibitions where a crime is charged or proven; effective 10–31–79

62519 **Banks and Banking** FHLBB proposes amending regulations concerning outside borrowing; comments by 12–31–79

62491 **Education Loan Program** VA establishes regulations implementing the provisions of the GI Bill Improvement Act of 1977

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62877 **Improving Government Regulations** CWPS publishes semiannual agenda of regulations (Part VIII of this issue)

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 906, 944

[Texas Orange and Grapefruit Reg. 31; Orange Import Reg. 10]

Fresh Oranges and Grapefruit Grown in Texas; Grade and Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: These regulations specify minimum grade and size requirements for shipments of fresh oranges and grapefruit grown in Texas, and for oranges imported into the United States. The action is necessary to assure shipment and importation of ample supplies of fruit of acceptable grades and sizes in the interest of producers and consumers.

DATES: Effective November 5 through December 31, 1979.

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

SUPPLEMENTARY INFORMATION: *Findings.* The Texas orange and grapefruit regulation is issued under the marketing agreement, as amended, and Order No. 906, as amended (7 CFR Part 906) regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The orange import regulation is issued under section 8e (7 U.S.C. 608e–1) of this Act. The regulation applicable to oranges and grapefruit grown in Texas is based upon recommendations and information submitted by the Texas Valley Citrus Committee, and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

These grade and size requirements reflect the Department's appraisal of current and prospective supply and demand factors and need for regulating shipments of oranges and grapefruit for the period November 5 through December 31, 1979. More than ample quantities of these fruits meeting such requirements will be available.

The Texas orange crop for the 1979–80 season is estimated at 4,000,000 boxes (85 pounds net weight), compared with 6,400,000 boxes produced in 1978–79, and 6,100,000 boxes produced in 1977–78. Fruit sizes appear to be equal to or larger than last season, with good quality.

The Texas grapefruit crop for the 1979–80 season is now estimated at 6,500,000 boxes (80 pounds net weight), compared with 9,000,000 boxes produced in 1978–79, and 11,900,000 boxes produced in 1977–78. Grapefruit sizes appear to be equal to or greater than last season, with good quality. Growing conditions have been favorable and soil moisture is adequate.

The committee estimates that about 55 percent of the Texas orange crop, and 60 percent of the Texas grapefruit crop will be needed to fill the demand in the regulated domestic market, Canada and Mexico. The balance will be available for other markets such as the fresh export market, the processed products market, and the local unregulated market within the production area. Fresh shipments of Texas oranges and grapefruit meet considerable competition in major markets from citrus produced in other areas of the country. This season, 1.6 percent of the nation's orange supply and 8.7 percent of the nation's grapefruit supply is expected to be produced in Texas.

The proposed grade and size requirements for imported oranges are consistent with § 8e of the Act. This section requires that when specified commodities, including oranges, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity, grown in the area in most direct competition with the imported commodity.

It is concluded that the grade and size requirements hereinafter set forth are necessary to establish and maintain orderly marketing conditions, and to provide quality fruit in the interest of producers and consumers pursuant to the declared policy of the Act.

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 of these regulations until 30 days after publication in the **Federal Register** (5 U.S.C. 553), and good cause exists for making the provisions hereof effective as hereinafter set forth in that (1) shipments of the current crop of oranges and grapefruit grown in Texas have already begun; (2) the current grade and size regulations for Texas oranges and grapefruit expires November 4, 1979; (3) the recommendations upon which the regulation for Texas oranges and grapefruit is based were developed by the committee at an open meeting on October 2, 1979, held after due notice was given, and all interested persons present were given an opportunity to express their views; (4) the regulatory requirements herein specified for Texas oranges and grapefruit and imported oranges are the same as those currently in effect; (5) the requirements of the import regulation are imposed pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), which makes such requirements mandatory; (6) such import regulation imposes the same grade and size requirements on imports of oranges as are being made applicable to the shipment of oranges grown in Texas; (7) the Department has determined that imported oranges are in most direct competition with oranges grown in Texas under M.O. 906; (8) the effective date of the domestic and import regulation, if reasonably practicable, should be identical; and (9) three days notice thereof, the minimum prescribed by said section 8e, is given with respect to this import regulation.

Further, in accordance with procedures in Executive Order 12044, the emergency nature of these regulations warrants publication without opportunity for further public comments. The regulations have not been classified significant under the USDA criteria for implementing the Executive Order 12044. An Impact Analysis is available from Malvin E. McGaha, (202) 447–5975.

Accordingly, it is found that the requirements for the handling of Texas

oranges and grapefruit and those applicable to imported oranges should be and are established as follows:

§ 906.362 Texas Orange and Grapefruit Regulation 31.

(a) During the period November 5 through December 31, 1979, no handler shall handle any variety of oranges or grapefruit grown in the production area unless:

(1) Such oranges grade U.S. Fancy, U.S. No. 1, U.S. No. 1 Bright, U.S. No. 1 Bronze, U.S. Combination (with not less than 60 percent, by count, of the oranges in any lot thereof grading at least U.S. No. 1), or U.S. No. 2;

(2) Such oranges are at least pack size 288, as such size is specified in § 2851.691(c) of the U.S. Standards for Oranges (Texas and States other than Florida, California, and Arizona), except that the minimum diameter limit for pack size 288 oranges in any lot shall be 2$^{6}/_{16}$ inches;

(3) Such grapefruit grade U.S. Fancy, U.S. No. 1, U.S. No. 1 Bright, U.S. No. 1 Bronze, or U.S. No. 2;

(4) Such grapefruit are at least pack size 96, as such size is specified in § 2851.630(c) of the U.S. Standards for Grapefruit (Texas and States other than Florida, California, and Arizona), except that the minimum diameter limit for pack size 96 grapefruit in any lot shall be 3$^{9}/_{16}$ inches: *Provided,* That any handler may handle grapefruit smaller than pack 96, provided such grapefruit grade at least U.S. No. 1 and they are at least pack size 112, as such size is specified in the aforesaid U.S. Standards for Grapefruit, except that the miniumum diameter limit for pack size 112 grapefruit in any lot shall be 3$^{5}/_{16}$ inches;

(5) An appropriate inspection certificate has been issued for such fruit within 48 hours prior to the time of shipment; and

(6) The fruit meets all the applicable container and pack requirements effective under this marketing agreement and order.

(b) Terms used in this section shall mean the same as in the marketing order, and terms relating to grade and diameter shall mean the same as in the U.S. Standards for Oranges (Texas and States other than Florida, California, and Arizona) (7 CFR 2851.680–2851.714) or in the U.S. Standards for Grapefruit (Texas and States other than Florida, California, and Arizona) (7 CFR 2851.620–2851.653).

(c) Upon the effective date of § 906.362 Texas Orange and Grapefruit Regulation 31, § 906.361 Orange and Grapefruit Regulation 30 is hereby terminated.

§ 944.309 Orange Import Regulation 10.

(a) *Applicability to imports.* Pursuant to section 8e of the Act and Part 944—Fruits; Import Regulations, the importation into the United States of any oranges is prohibited during the period November 5, 1979, through December 31, 1979, unless such oranges meet the minimum grade and size requirements specified in paragraphs (a)(1) and (a)(2) of § 906.362 Texas Orange and Grapefruit Regulation 31.

(b) It is hereby determined that imported oranges are in most direct competition with oranges grown in the Lower Rio Grande Valley in Texas, and that the requirements specified in this section for imported oranges are the same as those for Texas oranges in § 906.362 Texas Orange and Grapefruit Regulation 31.

(c) The Federal or Federal-State Inspection Service, Fruit and Vegetable Quality Division, Food Safety and Quality Service, United States Department of Agriculture is designated as the governmental inspection service for certifying the grade, size, quality, and maturity of oranges that are imported into the United States. Inspection by the Federal of Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective Service, applicable to the particular shipment of oranges, is required on all imports. The inspection and certification services will be available upon application in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 2851) and in accordance with the Procedure for Requesting Inspection and Certification (7 CFR Part 944.400).

(d) The term "importation" means release from custody of the United States Customs Service.

(e) Any person may recondition any shipment of oranges prior to importation, to make it eligible for importation.

(f) *Minimum quantity exemption:* Any person may import up to ten $^{7}/_{10}$ bushel cartons, or equivalent quantity, of oranges exempt from the requirements specified in this section.

(g) Upon the effective date of § 944.309 Orange Import Regulation 10, § 944.308 Orange Regulation 9 is hereby terminated.

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

Dated, October 26, 1979, to become effective November 5, 1979.

D. S. Kuryloski,

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

[FR Doc. 79-33743 Filed 10-30-79; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1980

General; Business and Industrial Loan Program; Amendments

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations pertaining to the Business and Industrial (B&I) loan program. The intended effect of this action is to strengthen various administrative procedures to more effectively administer the program. This action is taken to correct deficiencies in the administrative procedures as suggested by the U.S. Department of Agriculture (USDA) Office of Inspector General.

EFFECTIVE DATE: October 31, 1979.

FOR FURTHER INFORMATION CONTACT: Darryl H. Evans, Director, Business Management and Development Division, telephone (202) 447–4150.

SUPPLEMENTARY INFORMATION: Various sections of Subpart E of Part 1980, Chapter XVIII, Title 7, Code of Federal Regulations have been amended. These changes are made by FmHA at the recommendation of the USDA's Office of Inspector General to strengthen the B&I loan program in areas where experience has indicated that the administrative procedures which apply to specific regulation sections need further clarification.

It is the policy of this Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comment nonwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. These amendments, however, are not published for proposed rulemaking because they affect agency procedures only and immediate implementation is necessary for effective administration of agency programs. This determination has been made by Darryl H. Evans, Director, Business Management and Development Division.

The following specific changes are being made:

1. Section 1980.451 Administrative B.4 is amended to clarify the requirements that preapplications must have a lender.

§ 1980.451 Administrative B.5. is amended to provide for a review procedure on loans in excess of $5 million as to whether projects meet the FmHA's objectives, priorities, and intent of the program. In § 1980.451 Adminsitrative B.7. a revision of credit report procedures has been made to update the service.

2. Section 1980.452 Administrative D. is amended. This revision is to assure that FmHA fully addresses the issue of the amount of guarantee that is appropriate when higher risk is evident, refinancing is involved, or other credit factors indicate unusual risk to the government.

3. Section 1980.469 Administrative B. is amended by adding a new subparagraph 5. which sets forth a requirement for FmHA field staff to conduct an annual meeting with each lender to discuss each guaranteed loan for compliance with conditions and covenants in loan agreements. Such meeting will provide a forum for FmHA and lender to discuss each loan. FmHA already conducts meetings with borrowers on a scheduled basis.

4. The "General Administrative" section at the end of Subpart E is amended to have FmHA more fully utilize the Office of the General Counsel on specific complex loan cases or when work-outs and liquidations are involved.

Accordingly, various sections of Subpart E of Part 1980 are amended as follows:

1. In §1980.451, Administrative B. 5., 7., and 8. are redesignated as 6., 8., and 9., B.4. is revised and new B. 5. and 7. are added, to read as follows:

§ 1980.451 Filing and processing applications.

* * * * *

ADMINISTRATIVE:

* * * * *

B. *The State Director:*

* * * * *

4. *par(f)* Preapplications are not to be accepted or processed unless a lender has agreed in writing to finance the proposal. The preapplication letter is a joint letter prepared by the applicant and lender.

5. *par(g)* Upon receipt of all preapplications in excess of $5 million, the State Director will transmit to the National Office the material required under § 1980.451(f) (1), (4) and (5) of this Subpart together with recommendations and observations including an analysis of the quality and permanency of the employment opportunities involved in the project. The National Office will review the proposed project in relation to objectives, priorities, and intent of the program and will advise the State Director, after receiving the National Office advice or, for loans less than $5 million, the State Director will inform the applicant of the decision. (Copy sent to County Supervisor.)

* * * * *

6. *par(i) 9. Credit reports.*

(a) The National Office has contracted with Dun and Bradstreet, Inc. (the contractor, D&B) for a complete credit reference and monitoring system for use by FmHA National and State Offices. The system provides an independent source of credit information for analyzing applications and provides continuous monitoring of all loan accounts registered.

(b) The State Director will appoint a member of the State staff to act as a State Coordinator for the services. Such coordinator will be provided with instructional material necessary to use this service. The contractor will assign a D&B account executive from the nearest D&B office for assistance to the FmHA State Office Coordinator, answer inquiries, assure proper service, deliver the National Reference Books, and deliver inquiry request forms to the State Office Coordinator. The local D&B office should be notified whenever a new Coordinator is assigned. D&B will then made arrangements to instruct the new Coordinator relative to how best to use the D&B service.

(c) The Credit Reference and Monitoring System Service consists of:

(1) *Credit Reference Service.* One set of Dun & Bradstreet National Reference Books will be delivered to each State Office. These books provide a quick source of certain basic information on a business such as:

(a) Function.
(b) Correct business title.
(c) The age of the business.
(d) Capitalization.
(e) Credit appraisal.

(2) *Business Information Report Service.* When it has been determined that a preapplication or application will be considered for further processing, the State Office Coordinator will order a credit report on the business. The contractor will provide each State Office with a supply of pre-numbered (separate number for each State) Dun & Bradstreet, Inc. Subscriber Inquiry forms JTC 25592 for use in ordering the credit report. The form will contain a complete and correct business name and address. Insert in the "Remarks" section a list of the name(s) of principal(s). The inquiry form is mailed to the designated D&B office for processing. The credit report will be sent by D&B directly to the State Office Coordinator. Telephone requests for reports will be accepted by all local D&B offices. Dun & Bradstreet has begun a new service known as DUNS DIAL, (Direct Information Access Line). Duns Dial provides a Toll Free 800 Number for each FmHA office to call for instant report information direct from the D&B National Information Center at Berkley Heights, N.J. It provides telephone read-outs of reports from D&B's data bank that are as brief or as comprehensive as is needed. States may verify mailing dates of ordered reports, or ask for key-point read-out, full report read-out, or request priority handling of any inquiry when the D&B report must be up-dated. If loan dockets are sent to the National Office for review, they will contain a copy of the D&B credit report. (Note: The National Office may also initiate requests for these reports and will notify the State office.) The "normal" delivery of information by Dun & Bradstreet includes all follow-up reports written during the year following a request for a report. One-Shot reports are available but, in practice, it is not generally feasible to order a D&B without follow-ups. States will automatically receive Continuous Report Service if a One-Shot Report is not specifically requested.

(3) *Dun's Special Purpose Report*—This is a special comprehensive report on businesses and principals providing an indepth investigation and detailed information. If a State Director feels such a report is needed to assist in the review of an application, to make a decision or gain additional information concerning a closed loan, this service is a valuable tool to be used anytime during the life of the loan when a decision must be made. These reports may also be used for non-credit-orientated business decision.

(4) *Key Account Report*—These may be ordered when a decision concerning short-term credit is needed. All Dun's Special Purpose and Key Account Reports must be ordered by memo to the National Office. These should be submitted in narrative form explaining in detail the nature of the information requested. Since these reports are charged by the hour it is imperative that specific and complete information be given. All requests should include the name and address of the borrower, amount of loan requested, purpose of the guarantee, principals involved, and any background which would be relevant to your request. The name and telephone number of the loan officer in charge should also be provided so that the D&B representative may contact him if the need arises.

(5) *Change Notification Service*—This is a continuous monitoring service whereby D&B in Washington, D.C. will coordinate with the National Office to provide certain data relating to then existing Business and Industry Loans.

(i) Each State Coordinator will provide the National Office with an initial listing of all existing business names and addresses where Loan Note Guarantees or letter of conditions has been issued and thereafter, on a monthly basis, a listing of additional names or deletions.

(ii) The National Office will forward the combined listings to D&B, who thereafter will provide a continuous monitoring of these businesses. D&B will report any significant changes that may have developed which affect the business. Such changes will be reported on a D&B change notice Form 9 W2-11 and will be sent by D&B to the National Office. The National Office will review the change notice and send a copy to the State Office Coordinator who may request a D&B updated credit report or take any appropriate follow-up action required. (This system is to be used as a supplement for FmHA's monitoring functions.)

* * * * *

2. In § 1980.452 Administrative D. is amended and read as follows:

§ 1980.452 FmHA evaluation of application. * * *

* * * * *

ADMINISTRATIVE:

* * * * *

D. Applications will be analyzed by an FmHA State Loan Review Board before execution of Form FmHA 449–14. When analyzing the B&I loan request, the State Loan Review Board will specifically address the issue of the guarantee percentage to be approved. Consideration of reducing the maximum guarantee to less than 90% is appropriate when higher business risk is evident, refinancing is involved, or when credit factors indicate unusual risk to the Government. All review board meetings will be fully documented, including the review and decision concerning the guarantee percentage and will be signed by those FmHA employees serving on the board. A copy of such documentation will be retained in the loan file.

* * * * *

3. In § 1980.469 Administrative paragraph B. is amended to add a new subparagraph 5. as follows:

§ 1980.469 Loan servicing.

* * * * *

ADMINISTRATIVE:

* * * * *

B. *The State Director will assure that:*

* * * * *

5. The B&I Chief or Loan Specialist will conduct an annual meeting with each local lender or its agent with whom a loan note guarantee(s) or Contract of Guarantee(s) is outstanding. These meetings may be scheduled at the time FmHA makes periodic field inspections to the borrower's place of business. At the meeting, a review will be made with the lender of the status of each guaranteed loan and the adequacy of the lender's performance in loan servicing, including enforcement of conditions and covenants in the loan agreements. The observations and results of the meeting will be documented by use of Form FmHA 449–39, "Field Visit Review (Business and Industrial Loans)." Servicing exceptions on the part of the lender which are learned will be documented by FmHA by letter to the lender.

* * * * *

4. In the "General Administrative" section at the end of Subpart E following "§§ 1980.496–1980.500 (Reserved)" paragraph A. is revised and reads as follows:

GENERAL ADMINISTRATIVE:

A. *Office of the General Counsel (OGC):* In performing the FmHA functions with respect to B&I loans, the advice and assistance of OGC may be sought and followed on any legal matter. On loans within the State Director's approval authority, the State Director will determine at any time before loan closing whether OGC's services are needed. However, in loanmaking, it is the responsibility of the lender to ascertain that all requirements for making, securing, and servicing the loan are duly met. In loan workouts and liquidations, the State Director will seek the assistance of the Regional OGC Attorney. If the State Director has any questions concerning the lender's resolution of these matters, the State Director should consult with the Regional OGC.

* * * * *

This document has been reviewed in accordance with FmHA Instruction 1901–G "Environmental Impact Statements." It is the determination of FmHA that the action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

This final rule has been reviewed for applicability of USDA criteria established to implement Executive Order 12044, "Improving Government Regulation." A determination has been made that this rule involves agency management only and is therefore exempt from those procedures. This determination was made by Darryl H. Evans. It has also been determined that this action should not be classified significant under USDA criteria.

Authority: (7 U.S.C. 1989; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary of Agriculture for Rural Development, 7 CFR 2.70)

Dated: October 11, 1979.

James E. Thornton,

Associate Administrator, Farmers Home Administration.

[FR Doc. 79–33617 Filed 10–30–79; 8:45 am]

BILLING CODE 3410–07–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 509, 509a, 550, and 566

[79–543]

Amendments Relating to Supervisory Authority

October 25, 1979.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rules.

SUMMARY: In implementation of Title I of Public Law 95–630, the Federal Home Loan Bank Board has revised its regulations pertaining to: (1) removals, suspensions, and prohibitions in cases where officers, directors or employees of institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, or other persons participating in the institutions' affairs, are charged with or are convicted of a crime; and (2) application of rules of practice and procedure in APA adjudicative proceedings relating to new powers included in Title I. The agency also has taken this opportunity to revise, simplify, and update some of its APA hearing rules and delete unnecessary regulatory provisions.

EFFECTIVE DATE: October 31, 1979.

FOR FURTHER INFORMATION CONTACT: Larry M. Berkow, Associate General Counsel, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. (202–377–6430).

SUPPLEMENTARY INFORMATION: Title I of Public Law 95–630, the Financial Institutions Regulatory and Interest Rate Control Act of 1978 ("Act"), expanded the supervisory authority of the Federal Home Loan Bank Board in a number of areas. By Resolution No. 79–402, dated July 26, 1979 (44 FR 45175–45178, dated August 1, 1979), the Board proposed to amend its regulations in implementation of the statutory changes. The comment period ended on August 31, with receipt of responses from two Federal savings and loan associations and one savings and loan trade group. Having considered the public comments and other available information, the Board has determined to adopt the amendments as proposed.

Discussion of Comments

In proposing the changes, the Board stated its belief that its statutory supervisory authority, set forth in subsection 5(d) of the Home Owners' Loan Act of 1933, as amended (12 U.S.C. § 1464(d)), and sections 407 and 408 of the National Housing Act of 1934, as amended (12 U.S.C. 1730 and 1731), including the amendments thereto set forth in Title I of the Act, is self-explanatory and self-executing, and therefore proposed to delete those portions of Parts 550 and 566 (12 CFR Parts 550 and 566), which merely track that statutory language, from its regulations. Two commenters recommended retaining the tracked language; one offered the view that no legal provisions are "self-explanatory and self-executing", and the other suggested that the new statutory provisions, such as those granting supervisory authority over service corporations and savings and loan holding companies, are ambiguous and deserve regulatory elaboration.

The Board believes, and comments from a number of the district Federal Home Loan Banks indicate, that retention of regulatory language corresponding exactly to the statutory provisions is unnecessary. This language is already contained in the Annotated Manual published by the Board. In light of the specific nature of the new

statutory provisions, the Board continues to believe that implementation of the provisions in question does not require the issuance of regulations. Moreover, reiteration of such language would cause unnecessary duplication. However, if it appears in the light of experience that specific provisions warrant regulatory explication, the Board will of course provide it.

A commenter objected that appeals procedures were not specified for agency decisions arising from hearings on removals, suspensions, and prohibitions against individuals where a crime has been charged or proven. These hearings are themselves appeal procedures; they take place after notice that the supervisory action has taken place, and allow affected parties to present evidence showing why the sanction should not continue in effect.

Because the amendments are required implementation of Title I and concern procedural changes needed to promptly and properly process current agency matters, the Board has determined that it is in the public interest to waive the 30-day delay of effective date pursuant to 5 U.S.C. § 553(d) and 12 CFR 508.14.

Accordingly, the Federal Home Loan Bank Board hereby amends its General Regulations by amending Part 509, adding new Part 509a, and deleting Parts 550 and 566, as set forth below.

PART 509—RULES OF PRACTICE AND PROCEDURE: ADJUDICATIONS UNDER ADMINISTRATIVE PROCEDURE ACT

1. Section 509.1 is amended by deleting the word "and" after paragraph (d), substituting a semi-colon for the period at the end of paragraph (e), and adding new paragraphs (f) and (g), to read as follows:

§ 509.1 Scope of regulations.

This Part prescribes rules of practice and procedure applicable to adjudicative proceedings as to which hearings are provided by the following statutory provisions:

* * * * *

(f) Hearings under paragraph (d)(3)(C) of section 407 of the National Housing Act, as amended (12 U.S.C. § 1730(k)(3)(C)), paragraph (j)(4)(C) of section 408 of the National Housing Act, as amended (12 U.S.C. 1730a(j)(4)(C)), and paragraph (d)(8)(B)(iii) of section 5 of the Home Owners' Loan Act of 1933, as amended (12 U.S.C. 1464(d)(8)(B)(iii), to determine whether and/or to what extent civil penalties should be assessed against institutions, affiliate service corporations, savings and loan holding companies, subsidiaries thereof and/or related officials in violation of any order issued under the Board's cease-and-desist authority or any provision of Section 408 of the National Housing Act of 1933, as amended (12 U.S.C. 1730(a) et seq.) or any regulation (See Parts 583 and 584 of these regulations) or order issued pursuant thereto; and

(g) Hearings under paragraph (h)(5)(A) of section 408 of the National Housing Act, as amended (12 U.S.C. § 1730a(h)(5)(A)), to determine whether to terminate certain activities by savings and loan holdings companies or to terminate ownership or control of a noninsured savings and loan holding company subsidiary.

§ 509.2 [Amended]

2. Paragraph (c) of § 509.2 is amended by deleting the words "a hearing examiner" and substituting therefor the words "an administrative law judge".

§ 509.3 [Amended]

3. Paragraph (a) of § 409.3 is amended by deleting the second sentence, and revising the third sentence to read as follows: "Attorneys representing parties, witnesses or others in any proceeding provided for in this Part shall file a written notice of appearance with the Secretary, or with the presiding officer."

§ 509.4 [Amended]

4. Section 509.4 is amended by adding the following sentence to the text thereof: "The matters of fact and law alleged in a notice may be amended by the Board at any stage of the proceedings, and such amended notice may require an answer from the party or parties served and may set a new hearing date."

5. Section 509.6 is amended by deleting the third sentence in paragraph (d) thereof, and revising the first and second sentences in paragraph (e) thereof, to read as follows:

§ 509.6 Conduct of hearings.

* * * * *

(e) *Continuances and changes or extensions of time and changes of place of hearing.* Prior to the appointment of a presiding officer and after the filing of a recommended decision pursuant to § 509.11 of this Part, the Board, except as otherwise expressly provided by law, may by the notice of hearing or subsequent order provide time limits different from those specified in this Part, and the Board may, on its own initiative or for good cause shown, change or extend any time limit prescribed by these rules or the notice of hearing, or change the time and place for beginning any hearing hereunder. The presiding officer may, as permitted by law, change the time for beginning any hearing, continue or adjourn a hearing from time to time and change the location of the hearing. * * *

* * * * *

6. The first two sentences of paragraph (a) and the first sentence of paragraph (b) thereof, of § 509.8 are amended to read as follows:

§ 509.8 Depositions.

(a) *Upon order of the presiding officer.* In connection with any hearing provided for in Parts 509a or 565, or § 583.26 of this Chapter, the presiding officer, by subpena or subpena duces tecum, may order evidence to be taken by oral deposition at any state of any proceeding. Such deposition may be taken before the presiding officer or before any person designated by the presiding officer. * * *

(b) *Application and order to take oral deposition.* Any party desiring to take the oral deposition of a witness, in connection with any hearing provided for in Parts 509a or 565, or in § 583.26 of this Chapter, shall make application in writing to the presiding officer, setting forth the reasons. * * *

* * * * *

7. The first sentence of § 509.11(a) is amended to read as follows:

§ 509.11 Proposed findings and conclusions and recommended decision.

(a) *Proposed findings and conclusions by parties.* Each party shall have a period of 15 days after the close of the hearing or such further time as the presiding officer for good cause shall allow to file with the presiding officer proposed findings and conclusions, which may be accompanied by a brief in support thereof. * * *

* * * * *

8. A new Part 509a is added, to read as follows:

PART 509a—REMOVALS, SUSPENSIONS, AND PROHIBITIONS WHERE A CRIME IS CHARGED OR PROVEN

Sec.

509a.1 Scope.
509a.2 Notice and opportunity for informal hearing.
509a.3 Informal hearing.
509a.4 Waiver of hearing.
509a.5 Default of party.
509a.6 Relevant considerations.
509a.7 Decision of Board.

Authority: Pub. L. 95-630; Sec. 17, 47 Stat. 736, as amended; sec. 5, 48 Stat. 132, as amended; secs. 402, 403, 407, 408, 48 Stat. 1256, 1257, 1260, and 1261, as amended; 12 U.S.C. 1437, 1464, 1725, 1726, 1730, 1731. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071

§ 509a.1 Scope.

The rules in this Part apply to informal hearings afforded to any officer, director or other person participating in the conduct of the affairs of an insured institution, affiliate service corporation, savings and loan holding company or any subsidiary of a savings and loan holding company, and who has been suspended or removed from office or prohibited from further participating in the affairs of the institution, corporation, or subsidiary by a notice or order served by the Board upon grounds set forth in section 407(g) of the National Housing Act (12 U.S.C. 1730(g)) or section 5(d)(4) of the Home Owner's Loan Act (12 U.S.C. 1464(d)(4)).

§ 509a.2 Notice and opportunity for informal hearing.

(a) The Board may serve a notice of suspension, order of removal and/or order of prohibition upon a director, officer or other person participating in the conduct of the affairs of an insured institution, affiliate service corporation, savings and loan holding company or any subsidiary of a savings and loan holding company. A copy of such notice and/or order shall be served upon the institution, corporation or subsidiary. Upon receipt of the notice, the concerned party shall immediately cease service to the company or participation in its affairs. Any notice or order shall indicate the basis for suspension, removal or prohibition and shall inform the individual of the right to request in writing, within 30 days of being served with such notice or order, an opportunity to show at an informal hearing that continued service to or participation in the conduct of the affairs of the institution, corporation or subsidiary, does not, or is not likely to, pose a threat to the interests of the company's depositors or threaten to impair public confidence in the company.

(b) A request for a hearing shall state with particularity the relief desired and the grounds therefor, and shall include supporting evidence, when available. Two copies of such request and supporting evidence shall be filed with the Secretary to the Federal Home Loan Bank Board.

§ 509a.3 Informal Hearing.

(a) Upon receipt of a request for hearing, the Board shall notify the parties of the time and place fixed for hearing and shall designate one or more agency employees to preside.

(b) The hearing shall be scheduled to be held no later than 30 days from the date when a request for hearing is received unless the time is extended at the request of a party afforded a hearing.

(c) A party may appear personally or through counsel to submit relevant written materials and oral argument thereon.

(d) Members of the staff of the Federal Home Loan Bank Board's Office of the General Counsel also may attend the hearing and participate therein as a party. Formal rules of evidence shall not apply to the hearing, nor shall the adjudicative provisions of the Administrative procedure Act (5 U.S.C. § 556) apply. The proceedings shall be recorded and a transcript furnished to a party upon request and after payment of the cost thereof. Witnesses may be presented, within specified time limits, if a list of such witnesses is furnished to the presiding officer prior to the hearing. Witnesses shall not be sworn, unless specifically requested by either party or the presiding officer. The presiding officer may ask questions of any witness and each party shall have an opportunity to cross-examine any witness presented by an opposing party. Upon the request of either the concerned party or a representative of the Office of the General Counsel, the record shall remain open for a period of five (5) business days following the hearing, during which time the parties may make any additional submissions to the record. Thereafter, the record shall be closed.

§ 509a.4 Waiver of Hearing.

The concerned party may, in writing, waive an oral hearing and instead elect to have the matter determined by the Board on the basis of written submissions.

§ 509a.5 Default of Party.

If the concerned party fails to request a hearing, or fails to appear at a hearing, either in person or by attorney, or fails to submit a written argument where a hearing has been waived pursuant to § 509a.4 of this Part, the suspension, removal or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until such removal, suspension, or prohibition is terminated by the Board.

§ 509a.6 Relevant Considerations.

(a) In determining whether removal, suspension, or prohibition should be imposed or retained under this section, the Board will consider the following:

(1) Whether the alleged offense: (i) is a crime punishable by a term exceeding one year under State or Federal law, and (ii) involved dishonesty or a breach of trust;

(2) Whether continued presence of the concerned party in his position may pose a threat to the interests of the institution's depositors because of: (i) the nature and extent of the party's participation in the affairs of the insured institution, or, (ii) the nature of the offense with which the party has been charged; and

(3) Whether there is cause to believe that the continued presence of the concerned party may threaten to impair public confidence in the integrity, safety, or soundness of the institution, corporation or subsidiary, if the party is permitted to retain such position.

(b) The Board may also consider any other factors which, in a specific case, appear relevant to continuation of a suspension or prohibition order, such as whether the individual is covered by the company's fidelity bond and, if so, whether the bonding company is likely to revoke the bond, or coverage under the bond will be affected as a result of the charge.

§ 509a.7 Decision of Board.

(a) Within 60 days following the hearing or submission of written argument in lieu of a hearing, the Board shall notify the parties whether the suspension, removal and/or prohibition will be continued, terminated, or otherwise modified. Such notification shall contain a statement of the basis for the decision, if adverse to the concerned party. A removal or prohibition order remains in effect until terminated by the Board. A suspension and/or prohibition remains in effect until the criminal charge is finally disposed of or until terminated by the Board.

(b) The Board in deciding upon any suspension will not consider the ultimate question of the guilt or innocence of the individual with respect to the criminal charge which is outstanding. A finding of not guilty or other disposition of the charge shall not preclude the Board from thereafter instituting removal proceedings pursuant to section 5(d)(4) of the Home Owners' Loan Act (12 U.S.C. 1464(d)(4)).

PART 550—[RESCINDED]

9. Rescind Part 550 of the Rules and Regulations of the Federal Savings and Loan System (12 CFR Part 550).

PART 566—[RESCINDED]

10. Rescind Part 566 of the Rules and Regulations for Insurance of Accounts (12 CFR Part 566).

(P.L. 95-630; Sec. 17, 47 Stat. 736, as amended; sec. 5, 48 Stat. 132, as amended; secs. 402, 403, 407, 408, 48 Stat. 1256, 1257, 1260, and 1261, as amended; 12 U.S.C. §§ 1437, 1464, 1725, 1726,

1730, 1731, Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 79-33750 Filed 10-30-79; 8:45 am]

BILLING CODE 6720-01-M

12 CFR Part 523

[No. 79-542]

Federal Home Loan Bank Member; Reduction of Liquidity Requirement

October 25, 1979.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: This amendment reduces the overall liquidity requirement of each Federal Home Loan Bank member from 6 to 5½ percent of its liquidity base and reduces each member's short-term liquidity requirement from 2 to 1½ percent of such base. This action is taken because of reduced savings flows into member institutions; it is needed to help fund the large volume of forward mortgage commitments that institutions have outstanding, and to reduce the pressure for advances from Federal Home Loan Banks.

EFFECTIVE DATE: October 25, 1979.

FOR FURTHER INFORMATION CONTACT: Nancy L. Feldman, Associate General Counsel, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552, telephone number 202–377–6440.

The Board finds that (1) notice and public procedure are unnecessary under 5 U.S.C. 553(b) and 12 CFR 508.11, because this amendment relieves restriction, and (2) publication of this amendment for the 30-day notice specified in 5 U.S.C. 553(d) and 12 CFR 508.14 prior to effective date is unnecessary for the same reason.

Accordingly, the Board hereby revises § 523.11(a) of the Regulations for the Federal Home Loan Bank System (12 CFR 523.11(a)) to read as set forth below, effective October 25, 1979.

§ 523.11 Liquidity requirements.

(a) *General.* Except as otherwise provided in paragraphs (b) and (d) of this section, for each calendar month, each member, other than a mutual savings bank with an election under paragraph (e) of this section in effect, shall maintain an average daily balance of liquid assets not less than 5½ percent of the average daily balance of its liquidity base during the preceding calendar month, and each member, other than a mutual savings bank or an insurance company, shall maintain an average daily balance of short-term liquid assets not less than 1½ percent of the average daily balance of its liquidity base during the preceding calendar month.

* * * * *

(Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 252, as amended, sec. 17, 47 Stat. 736, as amended; 12 U.S.C. 1425a, 1437, Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

FR Doc. 79-33742 Filed 10-30-79; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket 9073]

Ford Motor Co., Et Al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: This order, among other things, requires Francis Ford, Inc., a Portland, Oreg. Ford dealer, to cease failing to dispose of repossessed vehicles in a manner designed to obtain the best possible price; provide information regarding the disposition of such vehicles to defaulting customers; properly calculate surpluses realized from the sale of the vehicles; and repay such surpluses in a timely fashion. The order further requires the firm to identify all surpluses realized back to February 10, 1976, and to notify affected consumers of their existence. Additionally, the firm is required to maintain specified records for at least three years.

DATES: Complaint issued Feb. 10, 1978. Final order issued Sep. 21, 1979.*

FOR FURTHER INFORMATION CONTACT: Bruce D. Carter, Attorney, 10R, Seattle Regional Office, Federal Trade Commission, 28th Floor, Federal Bldg., 915 Second Ave., Seattle, Wash. 98174. (206) 442–4655.

SUPPLEMENTARY INFORMATION: In the Matter of Ford Motor Company, Ford Motor Credit Company, and Francis Ford, Inc, corporations. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart-Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533–20 disclosures; 13.533–37 Formal regulatory and/or statutory requirements; 13.533–45 Maintain records; 13.533–55 Refunds, rebates and/or credits. Subpart-Delaying or Withholding Corrections, Adjustments or Action Owed: § 13.675 Delaying or withholding corrections, adjustments or action owed. Subpart-Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1852 Formal regulatory and statutory requirements; § 13.1895 Scientific or other relevant facts.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

The Final Order, including further order requiring report of compliance therewith, is as follows:

[Docket No. 9073]

Final Order

This matter has been heard by the Commission upon the cross-appeals of complaint counsel and respondent's counsel from the initial decision and upon briefs and oral argument in support of and in opposition to each appeal. The Commission, for the reasons stated in the accompanying Opinion, has for the most part, denied the appeals of both sides. Therefore,

It is ordered that the initial decision of the administrative law judge, pages 1–45, be adopted as the Findings of Fact and Conclusions of Law of the Commission, except for:

Finding No. 72, first sentence; Finding No. 73, first 18 words; Page 38, paragraph 4, second sentence; Page 38, paragraph 5; Page 38, Paragraph 6, last 25 words; Page 39; Page 40 through first full paragraph; Page 40, numbered paragraph "7".

Other Findings of Fact and Conclusions of Law of the Commission are contained in the accompanying Opinion.

It is further ordered that the following Order to Cease and Desist be entered:

Order

I. It is ordered that for purposes of this Order the following definitions shall apply:

A. "Respondent" means Francis Ford, Inc., a corporation, and its successors and assigns. It does not include Ford Motor Company or Ford Motor Credit Company.

B. "Vehicle" means an automobile or truck and any and all parts, accessories, and appurtenances repossessed therewith. A van is deemed a "truck."

*Copies of the Initial Decision, Opinion of the Commission and Final Order filed with the original document.

C. "Adjusted balance" means the unpaid balance as of the date of repossession (1) less applicable finance charge and insurance premium rebates, (2) less all amounts received for collision insurance claim payments except those for which the corresponding vehicle damage is repaired, and (3) plus other charges authorized by contract or law and actually assessed prior to repossession.

D. "Proceeds" means whatever is received by respondent upon its disposition of a repossessed vehicle, excluding finance charges, sales taxes, separately priced warranties and service contracts insofar as the charges therefor are itemized in documents provided at that time to the party to whom disposition is made. Any underallowance realized on the disposition shall be included. The amount of any lawful overallowance given on such a disposition may be deducted if (1) the amount so deducted was determined at the time of the disposition and is no greater than the excess of the trade-in allowance over the wholesale value of the vehicle taken in trade on the repossessed vehicle as that value is shown in a current recognized guidebook used in the area, (2) overallowances are given and contemporaneously recorded in the normal course of respondent's sales or leases of nonrepossessed vehicles, and (3) correctly determined underallowances are included in the proceeds of other repossessed vehicle dispositions wherever applicable.

E. "Allowable expenses" means actual out-of-pocket expenses incurred by respondent as a direct result of a repossession. The expenses must be reasonable and result directly from the repossessing, holding, preparing for sale or reselling of the vehicle, and be not otherwise reimbursed to respondent nor prohibited by contract. They are limited to the following charges (insofar as permitted by state law) and no others:

1. Amounts paid to persons who are not employees of respondent nor of a financing institution which financed the prior sale, for repossessing, towing or transporting the vehicle;

2. Filing fees, court costs, cost of bonds, fees and expenses paid to a sheriff or similar officer, and fees and expenses paid to an attorney who is not an employee of respondent nor of the financing institution, for obtaining possession of or title to the vehicle;

3. Fees paid to others to register or obtain title to or legally required inspection of the vehicle;

4. Amounts paid to others for storage (excluding charges for storage at facilities owned or operated by respondent);

5. Labor and associated parts and supplies furnished by respondent for the repair or reconditioning of the vehicle in preparation for resale, computed at the following cost rates:

a. The cost rate for labor of mechanical technicians employed in respondent's retail repair shop (for mechanical work) or for body-paint technicians employed in respondent's retail body shop (for body work) shall be based on actual time spent on the vehicle and may not exceed the greater of:

(i) the sum of respondent's average hourly base rate for that category of technicians (mechanical, body-paint, or heavy truck) plus 20 percent of that average hourly base rate to cover fringe benefits, provided that such data is reflected in a file identifiable with that vehicle, or

(ii) the sum of the average hourly base rate for that category of technicians plus the average annual hourly cost for voluntary and legislated fringe benefits for that category of technicians computed in accordance with the "long form" Warranty Labor Rate Request (Ford Form FCS 9716, April 1978) (Attachment A hereto), provided that such data is reflected in a file identifiable with that vehicle;

b. The cost rate for labor for other reconditioning, clean-up and preparation work performed by employees of respondent shall be based on actual time spent on the vehicle and may not exceed the base hourly wage rate for the employees involved plus 20 percent of their base hourly wage rate to cover fringe benefits, provided that such data is reflected in a file identifiable with that vehicle;

c. The cost rate for parts shall not exceed respondent's cost for the parts used as listed in the current manufacturer's catalogue.

Provided, however, that if the amount of respondent's payoff to the financing institution is reduced because of insured collision damage, or if respondent receives any payment for collision damage or warranty work, then the corresponding vehicle work performed shall not be an allowable expense, but if a payoff adjustment is for uninsured collision damage, the corresponding vehicle work performed shall be deemed an allowable expense.

6. amounts paid to others for labor and associated parts and supplies purchased for the repair or reconditioning of the vehicle in preparation for resale;

7. sales commissions paid for actual participation in the sale of the particular vehicle, computed at a rate no higher than for a similar, non-repossessed vehicle, but excluding all portions of commissions attributable to the selling of service contracts, warranties, financing or insurance;

8. a proportionate share of expenditures for advertisements which specifically mention the particular vehicle;

9. fees and expenses paid to others for auctioning the vehicle;

10. expenses for telephone calls and postage incurred in arranging for the repossession, holding, transportation, reconditioning or resale of the vehicle; and

11. amounts respondent was contractually required to pay and did pay to reimburse the financing institution to which payoff was made, for expenses such as repossession of the vehicle or allowance for uninsured collision damage, if such expenses were not included in the payoff.

F. "Surplus" means the excess of (1) the proceeds plus any applicable rebates or credits not deducted by the financing institution, over (2) the adjusted balance, allowable expenses, and amounts paid to discharge any other security interest provided for by law. A negative (minus) amount produced by such calculation is referred to herein as a "deficiency."

G. "Diligent efforts" means that in any case where the full surplus or disclosure is not actually received by the defaulting customer within the specified time frame, respondent's efforts to effectuate such payment and/or disclosure shall meet at least the following criteria: The payment and/or disclosure are to be sent by regular mail within the specified time frame to the customer's last residence address known to respondent or available from the financing institution, with the face of the envelope (1) showing respondent's name and return address and (2) indicating that it is to be forwarded and that if there is no forwarding address it is to be returned to the sender. If the envelope is returned undelivered, the payment and/or disclosure are to be sent to the most recent of the following known addresses: the last employment address known to respondent or available from the financing institution; the address provided by the military locator service (if applicable); or the address of a co-signer, relative or other person through whom the customer may be reached. If an insurance rebate or other credit is received after a surplus payment has been sent, a further payment in the additional amount, is to be sent in the same manner within 45 days of respondent's dispositon of the vehicle or

within 10 days of receiving the rebate, whichever is later. If such a rebate is received after a prior computation had indicated there was no surplus, a second computation is to be made and any surplus sent in the same manner and within the same time limit.

H. "Best possible price" means that respondent will exercise every reasonable effort to market the vehicle for the highest possible net return for the debtor's account (in terms of proceeds less allowable expenses). For each disposition of a repossessed vehicle by respondent other than by retail sale, respondent shall retain contemporaneous documentation showing with specificity that such manner of disposition could reasonably be expected to produce a greater net return for the debtor's account than would retail sale.

II. It is further ordered that respondent and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the extension and enforcement of motor vehicle retail credit obligations, and in connection with the disposition of repossessed motor vehicles, in or affecting commerce (as "commerce" is defined in the Federal Trade Commission Act, as amended), do forthwith cease and desist from:

A. Failing to determine the following information and to disclose or make diligent efforts to disclose such information to the defaulting customer in substantially the manner indicated on Attachment B hereto, "Resale of a Repossessed Vehicle," within forty-five (45) days of respondent's disposition of a repossessed vehicle:

1. The date, place and manner of disposition;

2. The adjusted balance, itemized to reflect the unpaid balance and all rebates and other adjustments thereto;

3. The proceeds and allowable expenses, itemized and excluding all expenses other than allowable expenses;

4. The amount of surplus or deficiency.

Provided that such disclosures need not be made where respondent can establish that no surplus resulted from the disposition, unless an attempt is made to collect a deficiency from the defaulting customer or from his or her successors or assigns.

B. Failing to pay or make diligent efforts to pay each surplus in full to the defaulting customer or to his or her successors or assigns, accompanied by disclosures as required by Paragraph II A above, within forty-five (45) days of respondent's disposition of the vehicle.

C. Failing to dispose of any repossessed vehicle in a manner designed to obtain the best possible price.

D. Failing to apply promptly for any rebate or credit owing to the defaulting customer's account.

E. Taking any action to obtain or to attempt to obtain or bring about a waiver of a customer's right to a refund of surplus, except in the precise manner and under the precise circumstances contemplated by the applicable state law version of Section 9–505 of the Uniform Commercial Code. Under Section 9–505 a waiver of a customer's right to a surplus may not be sought unless respondent intends to retain the collateral for its own use for the immediate future rather than to resell the collateral in the ordinary course of business. If a waiver is sought, respondent shall not represent that by proposing the waiver it proposes to forego its right to a deficiency judgment, unless it intends to seek such a judgment should the waiver not be given.

F. Collecting or attempting to collect from a defaulting customer or from his or her successors or assigns, by any means, a deficiency in excess of either (1) the amount permissible under applicable state or federal law, or (2) the amount determined in accordance with the definitions set forth in Part I of this Order.

Provided that no customer's waiver of rights or failure to object to any secured party's proposal to retain the repossessed vehicle, unless procured in exact conformity with Paragraph II E, shall limit respondent's obligations under this Order to account for and pay any surplus.

III. It is further ordered that respondent:

A. Proceed immediately to identify, back to February 10, 1976, the existence and amount of each unpaid surplus arising from respondent's dispositions of repossessed vehicles in which respondent held or acquired a security interest or the rights or duties of a secured party at or after default. This identification shall be completed within ninety (90) days of the effective date of this Order.

B. For each defaulting customer entitled to a surplus identified under Paragraph III A above but previously reported to a credit reporting agency by respondent or a representative of respondent as owing a deficiency, advise the credit reporting agency of the correct facts within 120 days of the effective date of this Order.

C. Endeavor in good faith, through contacts with credit reporting agencies, state licensing and employment offices, and other reasonably accessible research sources and records (including published directories), to locate each defaulting customer entitled to a surplus identified under Paragraph III A above, or the successors or assigns of such customers with respect to their surplus rights.

D. Disclose or make diligent efforts to disclose in writing to each defaulting customer, successor or assign located pursuant to Paragraph III C above, within 150 days of the effective date of this Order: (1) the same items of information specified in Paragraph II A of this Order, and (2) in clear lay language, in substantially the form indicated on Attachment C hereto, "Notification Letter," the rights and remedies of such customer, successor or assign under applicable state law and under this Order.

IV. It is further ordered that respondent maintain the following records relating to each repossessed vehicle returned to respondent:

A. Records of payment and of efforts to disclose and pay surpluses and locate defaulting customers entitled thereto under Parts II and III of this Order, including but not limited to canceled checks, returned envelopes and copies of disclosures and other communications (showing dates and manner of mailing).

B. Business records underlying each item specified in Paragraph II A of this Order, including but not limited to payroll records and warranty labor rate forms pertinent to determinations of "cost rates" of labor under Paragraph I E 5 of this Order.

Each such record shall be retained by respondent for at least three years and shall be available for inspection and copying by authorized representatives of the Commission.

V. It is further ordered that respondent shall forthwith deliver a copy of this Order to each of its operating departments, divisions and related business enterprises, and applicable provisions thereof to all present and future personnel of respondent engaged in the sale or offering for sale of motor vehicles and/or in the consummation of any extension of consumer credit or in bookkeeping, accounting or recordkeeping for respondent; and that respondent secure from each such person a signed statement acknowledging receipt of the Order or provisions.

VI. It is further ordered that:

A. Respondent shall, within sixty (60) days after the effective date of this Order, file with the Commission a written report setting forth in detail the

manner and form in which it has complied with this Order.

B. Respondent shall, within one hundred eighty (180) days after the effective date of this Order, submit to the Commission a report demonstrating respondent's compliance with Part III of this Order, including the number of repossessions and surpluses identified, together with a detailed description of respondent's manner of identifying and attempting to disclose such surpluses and of locating and attempting to locate defaulting customers entitled thereto.

C. Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation or corporations, the creation and dissolution of subsidiaries, or any other corporate change which may affect compliance obligations arising out of this Order.

By the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 79-33606 Filed 10-30-79; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 281

[Docket No. RM79-40; Order No. 55]

Natural Gas Curtailment; Interim Regulation Governing the Determination of Alternative Fuels for Essential Agricultural Users

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Interim Regulations.

SUMMARY: The Commission is amending Part 281 of its regulations by adding a new Subpart C that prescribes which fuels the Commission has determined to be economically practicable and reasonably available as a substitute for the essential agricultural use of natural gas during the 1979–1980 winter heating season and how certain essential agricultural users of natural gas must remove from their priority 2 entitlements those volumes of gas for which there is an alternative fuel. The rule applies only to: (1) Essential agricultural use establishments that have requested from any direct supplier, over 300 Mcf of natural gas per day as a priority 2 entitlement; and (2) new boilers with a capacity of 300 Mcf per day, except diesel engines and turbines that can only use distillate fuels as a substitute for natural gas. The application of the rule is limited to the use of coal or residual fuel oil as alternative fuels.

This rule is promulgated under section 401(b) of the Natural Gas Policy Act of 1978 which restricts the protection from curtailment afforded under the Act by excluding from that protection any gas applied to essential agricultural uses, where there are other economically practicable and reasonably available fuels for those uses.

Direct suppliers must request of each essential agricultural user a statement computing its ability to use alternative fuels as a substitute for natural gas. The request must be made by November 7, 1979, and essential agricultural users must respond by November 23, 1979.

Under the interim rule, interstate pipelines will receive sufficient information from customers in the next six weeks to be able to amend their indices of entitlement by downgrading certain volumes now classified as priority 2. New indices must be filed by December 24, 1979.

EFFECTIVE DATE: October 26, 1979.

FOR FURTHER INFORMATION CONTACT: MaryJane Reynolds, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street NE., Room 8000, Washington, D.C. 20426, (202) 357–8455.

October 26, 1979.

I. Background and Summary

A. Statutory Background

Under Section 401(b) of the Natural Gas Policy Act (NGPA), the protection from curtailment required by section 401(a) does not apply to essential agricultural uses "if the Commission, in consultation with the Secretary of Agriculture, determines, by rule or by 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 * * *."

On August 29, 1979, the Commission issued a second proposed rule in this docket which set forth a generic rule for the determination of alternative fuels for essential agricultural users as provided under Section 401(b) of the NGPA (44 FR 51993, September 6, 1979). The statute requires that the determination be made after consultation with the Secretary of Agriculture. The Commission has consulted with Agriculture and the written comments from Agriculture have been placed in the public files. However the Commission is aware that consultation does not necessarily result in full agreement. A public hearing was held on September 24, 1979, and 10 interested persons addressed the proposed rule. Written comments were filed by more than 70 interested persons including representatives of pipelines, distributors, agricultural users, industrial users, State commissions, and Members of Congress. Based on the record developed in this proceeding, the Commission has decided to adopt the rule essentially as proposed, with some modifications to be described.

This rule establishes that the alternative fuel determinations will be made using a generic rule. It further holds that during the forthcoming winter heating season, residual fuel oil and coal can be regarded, for purposes of administration of Title IV of the NGPA, as economically practicable and reasonably available as an alternative fuel to natural gas for those essential agricultural users who have the installed capability to use such fuels. No such finding is made with respect to any other fuel.

Unlike the proposal, the alternative fuel determination promulgated by this final rule will affect only to those agricultural establishments with requirements in excess of 300 Mcf of natural gas per day from a direct supplier.[1] There are several other changes from the proposed rule which are discussed below.

The immediate effect of this rule is that certain users of natural gas who qualify for priority 2 requirements in accordance with Order No. 29 [2] will have their requirements downgraded to a lower priority. The rule also applies to curtailment plans in effect after January 1, 1980, that deviate from Order No. 29 as a result of adjustment and settlements approved by the Commission that allows certain pipelines to implement plans that are different from the type of plan prescribed in Order No. 29.

The major issues raised in the proceedings on the proposed generic rule were the availability of residual fuel oil and distillate and the economic practicability of these liquid heating oil fuels as an alternative to natural gas.[3] Other issues that received considerable attention were the propriety of limiting the alternative fuel rule to those users who have installed capability, the creation of a small volume users exemption and the exclusion from the rule of those who use natural gas for non-boiler fuel uses. Many comments

[1] The rule also applies to certain new agricultural boilers with a capacity in excess of 300 Mcf.

[2] Final Regulation for The Implementation of Section 401(a) the NGPA, Docket No. RM79-15, issued May 2, 1979 (44 FR 26855, May 8, 1979).

[3] The first proposed rule issued in this docket on May 2, 1979, set forth a procedure for the determination of alternative fuel. (44 FR 26894, May 9, 1979.) That proposal would have required all essential agricultural users to file economic and supply data. Based on the information filed the Commission would have subsequently issued a proposed rule which determines the reasonable availability and economic practicability of alternative fuel on a facility-by-facility basis.

addressed the appropriate timing for implementation of the rule. Some persons urged immediate implementation of the rule; others urged it be postponed until after the winter heating season.

In response to comments, the final rule clarifies that the volumes downgraded from priority 2 are *only* those volumes for which residual fuel and coal can be substituted. Further the rule is modified to include a small volumes exemption. The rule will apply only to the essential agricultural users which use in excess of 300 Mcf of natural gas per day at any essential agricultural use establishment. The definition of new boiler is amended to include all turbines and diesel engines except those designed to use middle distillates as the only alternative to natural gas.

II. Discussion of the Major Issues and Comments

A. A Generic Rule

The rule adopted today is a generic rule, which makes two determinations. First, the rule prescribes a general procedure by which the Commission will henceforth make findings as to the availability of alternative fuels. Second, the rule finds that coal and residual fuel oils are economically practicable and reasonably available for the winter heating season of 1979–1980.

Some commentators were apparently misled by the proposed rule of August 29 which proposed a generic rule. They were of the view this rule constituted a rebuttable presumption, not a generic rule. Other essential agricultural users and the Secretary of Agriculture argued that the rule should be a rebuttable presumption.

The first proposed rule in this docket, issued on May 2, 1979, would have provided for a facility-by-facility determination of alternative fuel availability. However, many representatives of groups of essential agricultural users opposed the rule because they asserted that filing the information necessary for such a determination would be burdensome. These agricultural representatives, as well as other interested persons, urged the use of a generic rule. The Commission accepted this counsel and issued the second proposed rule on August 29, which set forth a generic rule. Now many of those who advocated a generic rule want the Commission to adopt a rebuttable presumption.

A rebuttal presumption is administratively infeasible, particularly if there is to be an alternative fuel rule in place for this winter heating season. Moreover, any person who no longer qualifies for priority 2 classification because of alternative fuel may seek an adjustment in accordance with section 502(c) of the NGPA and the adjustment procedures in 18 CFR 1.41. Any person who experiences special hardship, inequity or unfair distribution of burdens because of the rule may seek an adjustment which modifies the rule as applied to such person or exempts the essential agricultural user from the rule. Moreover, any person who seeks adjustment relief may simultaneously seek interim relief which could provide such petitioner with the ultimate relief on an interim basis before a decision has been made on the merits of the petition for adjustment relief.

We recognize that if the Commission did adopt a rebuttable presumption in lieu of a generic rule, that the standards for exclusion from the rule could differ from the section 502(c) standards. It would also involve numerous factual determinations which could be administratively burdensome to resolve in an expeditious manner. Thus, use of a rebuttable presumption could cause substantial delay in implementation of an alternative fuel rule.

The Commission has received comments from various parties [4] requesting assurance of priority 2 entitlements for natural gas used to process "gasohol". The participants note that an assured entitlement is required before distillers will incur the expense of retrofitting their plants to produce the fuel grade alcohol.

It is our belief that it is inappropriate to address this problem in an interim rule. Further, the comments note that retrofitting requires at least six months to accomplish and this interim rule will terminate after this winter heating season.

The Commission is aware of the President's and Congressional interest to develop alternate fuels to motor gasoline. As such, the Commission believes it would be preferable to inquire into the desirability of establishing a long-term determination concerning the alternative fuel availability for gasohol in a separate proceeding.

B. Availability of Fuels

The proposed rule envisioned a Commission determination for this winter heating season that coal and residual fuel oil were "reasonably available" as that term is used in the alternative fuel provision in section 401(b) of the NGPA. It stated further the Commission believes it lacks the relevant basis for a finding that distillates would be reasonably available this winter. There was no significant debate as to the finding of the availability of coal. The Commission finds, based on the data presented in response to the proposed rule of August 29, that coal is a reasonably available fuel.

In contrast, the positions on the availability of liquid fuels proved this to be a devisive issue. Those opposing a finding that any liquid fuels are available noted a general "nationwide shortage of crude oil."

The proposed rule indicated that the Commission did not believe that it had the requisite information to find that middle distillates were reasonably available for this coming winter heating season. The conclusion was supported by numerous statements by the Secretary of Energy and the Deputy Secretary who cited various Department of Energy (DOE) data concerning inventories of middle distillates. They expressed concern about the risks involved and established a target inventory of 240 million barrels at the start of the coming heating season. Over the course of the summer when middle distillate inventories (primary, secondary and tertiary) are historically stockpiled, the DOE data indicated dramatic shortages in primary supplies and a lag in the rates of stockpiling of secondary supplies. As a result, it may be that the buildup of tertiary supplies (summer fill of home and commercial heating oil tanks) was not completed. Recently, the DOE has issued statistics that indicate that primary stocks of middle distillates have reached the desired target for acceptable supplies. Current data is not available on secondary and tertiary supplies.

Thus, as this final rule is promulgated, there is reasonable cause for guarded optimism about the United States heating oil situation. As noted, the DOE guideline inventory target for primary supplies seems to have been achieved. The economic downturn has significantly lessened demand and should an economic recession ensue this winter's demand should be even further reduced. Conservation efforts and higher oil prices are having an effect. This winter may not be as cold as the last several.

On the other hand, the crude oil situation is extremely troublesome. A very key element in the prediction about the winter heating oil supply and demand balance is the assumption that refineries will be able to obtain sufficient crude oil imports. In this

[4] Among those expressing interest in furthering the distillation of "gasohol" were 18 members of the United States Senate.

respect, the confused and uncertain international oil market is a cause for great concern.

Put differently, the question of the "adequacy" or "reasonable availability" of heating oils for the forthcoming winter is a matter of predicting the level and interaction of a variety of complex and uncertain variables. Projecting how these variables will balance out is a risky task and on several previous occasions the Commission has declared its belief that caution and prudence in making decisions based on such projections is the appropriate posture.[5] Misjudgments that might have the unintended consequence of creating unanticipated additional demands for home heating oil this winter when the pertinent markets are in such an uncertain and changing condition should be avoided. In sum, the Commission continues to believe that in this period of significant change in fuel markets it should approach decisions that might create additional and unexpected demands for home heating oil with caution and avoid stimulating unintended exacerbation of the current scramble for heating oil supplies and the already impressive and disturbing run-up in heating oil prices.

In light of these policy considerations, especially the risk to home heating oil consumers this winter of misforecasts and despite guarded optimism about supplies this winter, we find that the data and information in the present record do not provide the requisite basis for the statutory finding of reasonable availablity of distillate fuel oil for this winter.

The reasonable availability of residual fuel oil is a more difficult matter. As some commentators noted, and as just discussed, the crude oil situation remains tight and problematical. There is a national effort of highest priority to reduce imports. Also, as we noted in connection with Order Nos. 30 and 30–A[6], all fuel oil markets are closely linked. On the other hand, stocks of residual oil are reasonably comfortable and the relevant markets seem more stable. Consequently, we believe that there has been the requisite basis established in this proceeding for a Commission determination that for this winter residual fuel oil is readily available pursuant to section 401 of the NGPA. To the extent that local shortages of residual fuel oil manifest themselves this winter, a situation that concerned a number of commentators, the Commission stands ready to act under section 502(c). They also pointed out that the President announced a ceiling on oil imports at the Economic Summit in Japan this summer. A large share of the residual fuel oil consumed in this country is imported. They concluded that the basis exists for a finding that all liquid fuels are not readily available.

However, there are contrary facts that tend to indicate a different supply picture. Notwithstanding the general shortage of domestic crude oil, because of imports, refineries have been operating at a relatively high level of capacity. During the four week period ending September 28, 1979, they have operated at an average capacity of approximately 84 percent. The Commission is cognizant of the import quota policy the President announced in July. It is not known whether the policy will limit imports of residual fuel oil. Some persons alleged there are spot or regional shortages of residual fuel oil but failed to support the claims with data.[7] Thus, based upon the record, the Commission finds that residual fuel oil is reasonably available.

The proposed rule did not address the availability of propane because of a lack of data on this matter. Accordingly, propane will not be found to be reasonably available for this winter heating season. The Department of Energy is presently conducting a rulemaking proceeding addressing decontrol of propane. (44 FR 50072, August 27, 1979). Information may be developed in that rulemaking which would allow the Commission to consider the availablility and economic practicability of propane when it reviews all fuels after the winter heating season.

C. Economic Practicability

For purposes of the rule, the Commission may properly limit the scope of its inquiry to the economic practicability of those fuels found to be reasonably available—coal and residual fuel oil. As indicated in the preamble to the proposed rule, coal is generally less expensive than natural gas and no issue has been raised as to the economic practicability of using coal for those facilities which have installed capability to use coal.

The economic practicability of residual fuel oil is another matter. The relative cost of residual fuel oil as presented in the proposed rule was not seriously rebutted by any subsequent comment filed in this proceeding. The proposed rule found that residual fuel oil usually costs up to 50 percent more than the cost of natural gas.[8] The Commission believes that the use of residual fuel oil for the winter heating season is economically practicable. The Commission does not expect this action will cause "unnecessary increases in the cost of food." A finding that residual fuel oil is a reasonably available and economically practicable alternative for those firms that have installed capacity indicates that increases in food costs contemplated by the statute do not seem likely.

In reaching this conclusion, the impact of the alternative fuel rule (in terms of reduction of deliveries of natural gas during the first year the curtailment rule is in effect) was considered. The alternative fuel rule will cause the downgrading of some requirements of the essential agricultural user to the pre-existing curtailment priority instead of the new priority 2 created by the NGPA. It is anticipated that, over the course of this winter, curtailment will not be severe. Therefore, there is small likelihood that an essential agricultural user will necessarily have extended requirements for using alternative fuel as the agricultural user had over the course of the last two winter heating seasons, even if such essential agricultural user is downgraded to his historic priority. Moreover, no alternative fuel rule was in place over the summer and none will be in place until January 1, 1980. Thus, the difference in the cost of residual fuel oil, vis-a-vis the cost of natural gas, does not necessarily mean that the total annual fuel costs for an essential agricultural user who has requirements removed from priority 2 will result in

[5] Most recently, in Order No. 51, dealing with incremental pricing of natural gas, the Commission determined, subject to Congressional review and possible veto, that the current situation implied that it would be preferable for an interim period covering the current heating season to place the incremental ceiling price at the cost of No. 6 oil to minimize the risk of load shifting from natural gas to heating oil. Among the reasons for this judgment was concern about the impact on heating oil markets. The Commission stated: "Moreover, the shifted load would place a demand on fuel oil markets this winter that could have undesirable consequences." Order No. 51, Docket No. RM79–21 issued September 28, 1979, at 16 (44 FR 57778, October 5, 1979).

[6] Final rule, Transportation Certificates for Natural Gas for the Displacement of Fuel Oil, Docket No. RM79–34, issued May 17, 1979 (44 FR 30323, May 25, 1979); Order on Rehearing, Docket No. RM79–34, issued September 12, 1979 (44 FR 54472, September 29, 1979).

[7] In the event shortages of residual fuel oil materialize, affected persons may seek adjustment relief to release them from the alternative fuel rule.

[8] Some persons argued that the Commission should issue a general standard by which it will measure economic praticability. The Commission finds that doing so would be premature at this time. Those persons who believe this rule will cause them hardship, inequity or an undue burden may seek an adjustment. In such a proceeding, the Commission would consider the cost the alternative fuel rule has on the food prices as a relevant factor.

annual increased fuel costs of the same magnitude.

We have given much attention to that part of the extensive record in this proceeding where persons have alleged that regarding residual fuel oil as an alternative fuel would produce economic difficulty in the agricultural sector. Very little economic data or persuasive factual analysis has been presented. Discussion of the issue was generally limited to a comparison in the costs of fuels. The essential agricultural users contesting the finding of economic practicability of residual oil failed to establish that the use of such oil would increase food costs significantly or unreasonably. For these reasons, the Commission believes that residual fuel oil is economically praticable for the course of this winter's heating season.

The Commission stresses that this rule finds that residual fuel oil and coal are economically practicable for this winter only for those essential agricultural users who presently have installed ability to use such fuels. There is no requirement for incurring conversion costs.

Certain essential agricultural users argue that, even though they have in fact the installed capability and have in fact used either residual fuel oil or coal they do not have adequate storage to use alternative fuel oil for all requirements. The effect of a finding that such essential agricultural users have alternative fuel merely downgrades their priority of service category. As noted above, it does not force them to turn to the alternative fuel for 100 percent of their energy requirement. It is anticipated that gas supplies this winter will be as good or better than in the last several winters. It follows, that essential agricultural users who had adequate storage to meet the exigencies of curtailment in recently past winters will, in large measure, have adequate storage to meet the exigencies of this winter caused by being downgraded from priority 2.

D. Ability To Use Alternative Fuel

The test for the ability to use an alternative fule is twofold. The essential agricultural user must have installed capacity (as of the date of the proposed rule) to use the alternative fuel and it must have, in fact, used such fuel at some time since 1973. Several issues have been raised about this test. Some persons assert that environmental constraints will prevent them from using fuels that they have used in the past. Others have suggested that they experienced a reduction in quality of the product which is made by use of the alternative fuel. The Commission does not believe that either of these problems countervail the efficacy of the rule. Where laws or regulations no longer permit the use of the alternative fuels or where the use of alternative fuel would result in an inferior product, adjustment relief may be sought from the Commission in accordance with the adjustment procedures in 18 CFR 1.41.

Some persons suggest that the ability to use an alternative fuel should be based on actual use over a more extended period of continuous use than one day. The intent of the one day test is merely to establish the ability to use. A more extended test appears to be advocated in order to ensure against potential storage problems.

A number of parties alleged that the rule is unfair because it appears to penalize those essential agricultural users that have installed alternative fuel capability for the use of coal or residual fuel oil. These persons will be downgraded from priority 2 while those persons who failed to take measures to use coal or residual fuel oil in the face of severe natural gas shortages over the course of the last six years will not be required to downgrade. The Commission recognizes the inequity in downgrading only those facilities which have installed capability. Nonetheless, this is an interim rule and the Commission believes that it is impossible for essential agricultural users who have not installed alternative fuel capability to do so over the course of this winter. Therefore, the Commission does not believe it can downgrade essential agricultural users who do not have installed capability. It has not yet been determined if the Commission can find alternative fuel to be economically practicable at some subsequent time in those cases where the essential agricultural user has never installed alternative fuel capability. However, conversion costs would be a relevant factor in the Commission's determination of economic practicability. The Commission wishes to put essential agricultural users on notice that it has not determined whether it will be able to find an alternative fuel economically practicable for those users who have not presently installed alternative fuel capability.

E. Small Volume Exemption

The Commission believes it would be administratively burdensome and impracticable to gather the data concerning essential agricultural users under 300 Mcf per day and have the alternative fuel rule in place for this winter. Therefore, the Commission believes it is appropriate to limit the alternative fuel test only to those essential agricultural use establishments of an essential agricultural user—on a facility by facility basis—which requested in excess of 300 Mcf of natural gas per day from a direct supplier. This is consistent with past Commission policy on large users.[9] The alternative fuel rule also provides that new boilers with capacity in excess of 300 Mcf per day other than diesel engines and gas turbines that use distillate oil, are deemed to have alternative fuel capability. We stress that both the questionable supply of distillates and the fact that the time lapse between design of a boiler and the placement onstream of the new boiler is such that it would be impracticable to apply the presumption of the new boiler test to all boilers for the course of this winter. However, the Commission reserves the right at some future time to reevaluate the question of allowing new boilers which are designed solely to use distillates in lieu of natural gas to obtain a priority 2 preference as essential agricultural users.

F. Limitation of the Rule to Boiler Users

Some persons have suggested that the alternative fuel rule be limited exclusively to boilers. The Commission sees no evidence in the record which supports the distinction between the boiler fuel use and any other use of natural gas by persons who are able to use coal or residual fuel oil. Nor does it perceive any public policy benefit from a rule which gives a preference to users who are able to use coal or residual fuel oil. Therefore, the rule shall apply to all users of residual fuel oil or coal and not just to boiler fuel users.

G. Timing of the Rule

The Commission is fully cognizant of the significant fluctuations in the liquid petroleum market. These fluctuations can affect either supply or price or both. Accordingly, the Commission is herein issuing an interim rule and will address the issues of availability and economics anew at the end of the winter heating season.

A number of persons have advocated that the rule should not be effective over the course of this winter's heating season because it will create problems for essential agricultural users who relied on obtaining natural gas under the priority 2 preference in Order No. 29. The Commission has stated frequently since January, 1979 that an alternative fuel rule would be forthcoming for

[9] The Commission stresses that after this winter heating season it may not feel constrained to classify large users as only those over 300 Mcf per day

essential agricultural users. In May, it was announced that the Commission intended to have an alternative fuel rule in place for the winter heating season. Moreover, the Commission is cognizant that granting a priority 2 preference to essential agricultural users who are able to use residual fuel oil or coal would further jeopardize the availability of natural gas to process and feedstock users. Accordingly, the Commission finds good cause to issue the alternative fuel rule with an immediately effective date. The Commission notes, however, that it will take time to gather the data necessary to adjust the index of entitlements to exclude those essential agricultural users who do have the ability to use alternative fuel, as defined in this rule. Accordingly, this rule will not require the amendment of the indices of entitlements by interstate pipelines (which could result in excluding from priority 2 deliveries to essential agricultural users of volumes for which an alternative fuel is available) until January 1, 1979. This lag in the date upon which the alternative fuel determination will affect the availability of natural gas will give those facilities with installed alternative fuel capability, that have had notice of the proposal since at least August, 1979, three additional months to make arrangements for residual fuel oil or coal for this winter's heating season.

It is the Commission's preliminary view that an environmental impact statement is not necessary. However, the Commission has not completed its evaluation of the effects this rule could have upon the environment. If, upon the completion of its evaluation, the Commission believes an Environmental Impact Statement ("EIS") is necessary, it will undertake to prepare an EIS and will complete it before issuance of a permanent rule.

III. Discussion of Substantive Changes in the Final Rule from the Proposed Rule

A. Data Gathering for Purposes of Implementing the Rule

The draft rule would have required that each essential agricultural user affected by this rule advise its direct supplier of its alternative fuel availability for either residual fuel oil or coal. After receipt of the information the direct supplier would transfer the information up the stream to the interstate pipeline suppliers. The interstate pipeline suppliers would adjust the index of requirements to exclude such essential agricultural users from their priority 2 treatment.

In light of the difficulty experienced in gathering data with respect to the requirements of essential agricultural users under Order No. 29, which implemented the permanent curtailment plan, the Commission has determined it would be more appropriate to place the initial burden of gathering the information about alternative fuel volumes on the direct suppliers of such essential agricultural users. The essential agricultural users must, upon request of their direct suppliers, provide an amended request for priority 2 entitlements which excludes any volumes for which alternative fuel could be used. The user must also submit an oath statement that the amended request excludes all volumes for which it has an ability to use alternative fuels. If, in fact, an essential agricultural user refuses to provide the oath statement, the distribution company may presume that such essential agricultural user has the ability to use an alternative fuel. The essential agricultural user, using the attribution rule of Subpart B, in § 281.209, shall forward the information concerning the decrease in priority 2 requirements to its supplier.

B. Small Volume Exemptions

As discussed more fully above, the Commission does not believe it is administratively feasible to include all essential agricultural users in this first alternative fuel rule. Accordingly, the alternative fuel rule will apply only to those essential agricultural users that have requested, on behalf of an essential agricultural use establishment, natural gas in excess of 300 Mcf per day from a direct supplier.

C. Calculations of Volumes To Be Downgraded

A number of comments were raised which indicated that the volume of natural gas to be downgraded from priority 2 because of alternative fuel availability was unclear. The rule has been clarified but the intent remains unchanged. An essential agricultural user must downgrade its priority 2 requirements to exclude from priority 2 any natural gas for which its essential agricultural use establishments have the ability to use alternative fuel, as defined in this subpart. Assume an essential agricultural user that has requirements of 1,500 Mcf per day of natural gas at a particular essential agricultural use establishment. Of that amount, 1,000 Mcf will be used as boiler fuel and 500 Mcf of this natural gas for which priority 2 classification is requested is used directly as a process fuel for which there is no installed capability to use an alternative fuel. Assume further that the essential agricultural user has installed ability to use either coal or residual fuel oil for 2,000 Mcf for boiler fuel requirements. In that situation, the essential agricultural user would downgrade 1,000 Mcf of natural gas for that establishment from priority 2 because of the alternative fuel rule. The essential agricultural user would retain 500 Mcf in priority 2 for process fuel for the establishment.

D. Definition of Boiler

The definition of boiler has been amended. A new boiler is not subject to the alternative fuel rule if it is a diesel engine or gas turbine designed to use middle distillates as the exclusive alternative to natural gas.

E. Filing Requirements

Section 281.305 of the proposed rule required essential agricultural users with requirements in excess of 300 Mcf per day to file certain information concerning their use of fuel other than natural gas. The Commission believes this information is essential for its future administration of section 301 of the NGPA and the essential agricultural curtailment rule. However, to avoid confusion, this filing requirement, which is in large part a data gathering exercise, will be promulgated as a separate subpart at a subsequent date.

IV. Section-by-Section Summary of the Interim Rule

Purpose (§ 281.301): This section states that it is the purpose of the Subpart C [§§ 281.301–.305) to determine the economic practibility and reasonable availability of alternative fuels for use by certain essential agricultural users of natural gas as a substitute for volumes of any natural gas for which the user is seeking a priority 2 entitlement in the curtailment plans of interstate pipelines.

Applicability (§ 281.302). This section applies to any essential agricultural use establishment, as defined in § 281.303, for which an essential agricultural user requested priority 2 entitlements for natural gas under § 281.207, in volumes over 300 Mcf per day from any single direct supplier, and to any new boiler of such an establishment that has a capacity of 300 Mcf of natural gas per day and is first put into service after August 29, 1979. Diesel engines and turbines that are designed to use distillate fuels as the only substitute for natural gas are not "new boilers" within the scope of the rule. The 300 Mcf limitation relates to an amount requested from a direct supplier on behalf of an essential agricultural use establishment, and indicates a total capacity, in the case of a new boiler.

Definitions (§ 281.303). This section defines the following terms as they are used in this subpart:

"Ability to use" a particular alternative fuel means that an essential agricultural use establishment had the installed physical capability on August 29, 1979, to use an alternative fuel and has used such fuel at some time since 1973 for an essential agricultural use.

"Alternative fuel" means coal or residual fuel oil.

"Boiler" means a fuel burning device used for generating steam or electricity or for producing hot water for space heating or manufacturing processes.

"Direct supplier" means the interstate pipeline or local distribution company that directly supplies natural gas to an essential agricultural use establishment, an interstate pipeline that directly supplies a local distribution company, and an interstate pipeline that directly supplies an interstate pipeline purchaser.

"Essential agricultural use establishment" has the same meaning as in the Department of Agriculture regulations, 7 CFR 2900.2, which reads, in pertinent part:

(b) "Establishment" means an economic unit, generally at a single physical location where business is conducted or where service or industrial operations are performed (for example, a factory, mill, store, mine, farm, sales office, or warehouse). (**Note.**—This is the same definition used in the Standard Industrial Classification Manual, 1972 edition).

(c) "Essential Agricultural Use Establishment" means any Establishment, or portion of an Establishment, which performs (or has the capability to perform) activities specified in § 2900.3.

§ 2900.3 Essential agricultural uses. For purposes of Section 401(c) of the NGPA the following classes or portions of classes are certified as essential agricultural uses in order to meet the requirements of full food and fiber production: * * *

An essential agricultural user, which ultimately requests priority classification for its deliveries of natural gas, may have more than one establishment in more than one location.

"Priority 2 entitlements" means the essential agricultural requirements that are classified by an interstate pipeline as priority 2 in its curtailment plan under Subpart B of the Commission's curtailment regulations.

This section also defines "capacity," "coal," "distillate fuel," "essential agricultural user," "local distribution company," and "residual fuel oil."

General Rule (§ 281.304). This section sets forth the method for calculating what volumes of natural gas of each essential agricultural user are subject to this alternative fuel rule. Paragraph (a) states that the alternative fuel volumes subtracted from the total agricultural requirements of an essential agricultural user under § 281.208 are the sum of the alternative fuel volumes of each essential agricultural use establishment for which such user requested priority 2 entitlements in excess of 300 Mcf per day. The alternative fuel volume for each essential agricultural use establishment is that portion of such establishment's requirements for which it has requested priority 2 entitlement and for which it had, on August 29, 1979, the installed capability to burn coal or residual fuel oil.

Paragraph (b) provides that any boiler of an essential agricultural use establishment put into service after August 29, 1979, and having a capacity over 300 Mcf of natural gas per day, will not receive a priority 2 entitlement for any volumes of natural gas. This generic rule for new boilers does not apply to diesel engines or turbines designed to use only Nos. 1 or 2 heating oil, diesel fuel, or No. 4 fuel oil, in addition to natural gas.

Filing of Amendments To Essential Agricultural Requirements and Priority 2 Entitlements (§ 281.305). Paragraph (a) places the responsibility on direct suppliers of an essential agricultural use establishment for requesting of each such establishment that requests of that supplier over 300 Mcf per day in priority 2 entitlements, that it notify the essential agricultural user of its alternative fuel volumes and that the user in turn submit an amended request for priority 2 classification and an oath statement on alternative fuel capabilities, under paragraph (b). The direct supplier must make the request by November 7, 1979. While the essential agricultural user and the use establishment may be the same entity, the establishment may be one of several parts of the user at one of several locations. The user normally requests priority classification for natural gas for each individual establishment.

By December 7, 1979, the direct supplier must transmit to the next direct supplier, whether an interstate pipeline or interstate pipeline purchaser, the information submitted to it by the essential agricultural user or other direct customer that reduces its essential agricultural requirements for natural gas. Computation and transmittal of the amended essential agricultural requirements must be performed in accordance with the attribution rule in § 281.209.

Paragraph (b) prescribes the responsibilities of an essential agricultural use establishment, for which more than 300 Mcf per day of priority 2 entitlements has been requested from a direct supplier, to reduce its essential agricultural requirements according to its ability to use an alternative fuel as determined under §281.304. The essential agricultural user must respond, by November 23, 1979, to the requests of any direct supplier under paragraph (a). The response must consist of an amended request for priority 2 classification of volumes of natural gas and an oath statement that the amended request contains no volumes of natural gas for which the establishment can use coal or residual oil.

Paragraph (c) states that failure of the essential agricultural user to respond to any direct supplier by November 23, 1979, will result in the irrebuttable presumption of alternative fuel capability for the establishment and will cause the direct supplier to subtract those volumes of natural gas classified as priority 2 from the essential agricultural requirements of the user, which requirements the direct supplier will transmit to its direct supplier.

Paragraph (d) requires interstate pipelines to amend the priority 2 classifications in the indices of entitlements according to the information about essential agricultural requirements as revised to accommodate the ability of end-users to use alternative fuels. The new indices must be filed by December 24, 1979 and have a proposed effective date of January 1, 1980.

Conforming Amendments. Sections 281.204(b)(3), 281.208(b)(1)(i)(B), and 281.211(b)(4) are revised to conform with the new Subpart C. These sections are in the regulations that set forth the basic procedures for establishing curtailment plans for natural gas classified as priority 1 and priority 2. They deal with the revision of indices of entitlement according to the alternative fuel determination, calculation of attributable priority 2 entitlements, and filing procedures for subsequent changes in priority 2 entitlements.

V. Effective Date

These regulations are being issued effective immediately on an interim basis. The Commission finds that the significant fluctuations in the liquid petroleum market prevents a long-range determination of what alternative fuels are economically practical and reasonably available as a substitute for natural gas. The Commission will therefore address the issue again at the end of the 1979–1980 winter heating season. The Commission finds good cause to waive the 30-day delay in the effective date under section 553 of the Administrative Procedure Act. In order

that the interstate pipelines amend the indices of entitlements by the winter season, data on alternative fuels must be requested and transmitted to the pipelines in the next four to six weeks. In a curtailment situation, permitting priority 2 natural gas to be used this winter by essential agricultural users that are able to use coal or residual oil could jeopardize the availability of natural gas to process and feedstock users that do not have the ability to use alternative fuels. Moreover, the Commission has stated its intention to implement an alternative fuel rule on several occasions since January, 1979.

(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, Part 281 of Chapter I, Title 18 of the Code of Federal Regulations is amended as set forth below, effective immediately.

By the Commission.

Kenneth F. Plumb,

Secretary.

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 of amendments to essential agricultural requirements priority 2 entitlements.

Authority: 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.

2. In § 281.204, paragraph (b)(3) is revised to read as follows:

§ 281.204 Tariff filing requirements.

* * * * *

(b) *Index of entitlements.* * * *

(3) *Alternative fuel determination.* The index of entitlements shall not include the volumes of natural gas for which volumes the essential agricultural user has the ability to use an alternative fuel, as determined under Subpart C of this part. Each interstate pipeline shall amend its index of entitlements to remove from the priority 2 classification and place in an appropriate priority of service category any volumes of natural gas included in any index of entitlements that is effective on October 31, 1979 (or on November 30, 1979, if the pipeline elects to file tariff sheets under paragraph (a)(2) of this section).

* * * * *

3. In § 281.208, paragraph (b)(1)(i)(B) is revised to read as follows:

§ 281.208 Calculation of essential agricultural requirements and attributable priority 2 entitlements.

* * * * *

(b) *Calculations by the essential agricultural user.*—(1) *Total agricultural requirements*—(i) *General Rule.* * * *

(B) alternative fuel volumes (determined under § 281.304).

* * * * *

4. In § 281.211, paragraph (b)(4) is revised to read as follows:

§ 281.211 Filing and documentation.

* * * * *

(b) *Priority 2.* * * *

(4) *Subsequent request.* (i) For 1979, changes in priority 2 entitlements for essential agricultural use establishments that have the ability to use an alternative fuel shall be filed under Subpart C of this part.

(ii) For years subsequent to 1979, the data required by this paragraph for any change in priority 2 entitlements must be filed only to the extent that such change is sought. The filing dates are those prescribed in this paragraph, except that an interstate pipeline with a rolling base period may prescribe different dates as appropriate.

5. 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 Natural Gas Policy Act of 1978 for use by essential agricultural use establishments that seek priority 2 entitlements for natural gas.

§ 281.302 Applicability.

This subpart applies to—

(a) Any essential agricultural use establishment for which an essential agricultural user:

(1) Has requested that natural gas be classified as priority 2 entitlements by an interstate pipeline under § 281.207; and

(2) Which has requested from any direct supplier priority 2 entitlements in excess of 300 Mcf per day; and

(b) Any essential agricultural use establishment with a new boiler, other than a diesel engine or turbine designed to use distillate fuels as the only alternative to natural gas, that:

(1) Has a capacity in excess of 300 Mcf of natural gas per day; and

(2) Is put into service for the first time after August 29, 1979.

§ 281.303 Definitions.

For purposes of this subpart—

(a) "Ability to use" a particular alternative fuel means that an essential agricultural use establishment had, on August 29, 1979, the installed 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 any fuel burning device that is used for generating steam or electricity or producing hot water for space heating or manufacturing processes.

(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 rank of bituminous coal or anthracite coal.

(f) "Direct supplier" means, with respect to an essential agricultural use establishment, an interstate pipeline or local distribution company which directly supplies such essential agricultural use establishment; with respect to a local distribution company, an interstate pipeline which directly supplies such local distribution company; and, with respect to an interstate pipeline purchaser, an interstate pipeline which directly supplies the interstate pipeline purchaser.

(g) "Distillate fuel" means Nos. 1 and 2 heating oils, diesel fuel, and No. 4 fuel oil, as defined in the standard specification for fuel oils published by the American Society for Testing and Materials, ASTM, D396 and D975.

(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 any use of natural gas, as defined in § 281.203(a)(2) of this chapter and 7 CFR 2900.3.

(j) "Essential agricultural user" means an essential agricultural user as defined in § 281.203(b)(3).

(k) "Essential agricultural use establishment" is used as defined in 7 CFR 2900.2.

(l) "Local distribution company" means a local distribution company served directly by an interstate pipeline.

(m) "Priority 2 entitlements" means the essential agricultural requirements of an essential agricultural use establishment which requirements are classified by an interstate pipeline as priority 2 in its curtailment plan under Subpart B.

(n) "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.

§ 281.304 Computation of alternative fuel volume.

(a) *General rule.* For purposes of § 281.208(b)(1)(i)(B), and § 281.305:

(1) Alternative fuel volume of an essential agricultural user is equal to the sum of the alternative fuel volumes for each agricultural use establishment for which such user has requested from any direct supplier priority 2 entitlements in excess of 300 Mcf.

(2) Alternative fuel volume for an agricultural use establishment is that portion of such establishment's natural gas requirements for which such establishment has requested priority 2 curtailment and for which the establishment had on August 29, 1979, the ability to use alternative fuel.

(b) *New boilers.* For purposes of § 281.208(b)(1)(i)(B) and § 281.305: any new boiler of an essential agricultural use establishment shall be deemed to have alternative fuel volumes, if the boiler:

(1) Has a capacity in excess of 300 Mcf of natural gas per day;

(2) Is put into service for the first time after August 29, 1979; and

(3) Is not a diesel engine or turbine designed to use distillate fuels as the only substitute for natural gas.

§ 281.305 Filing of amendments to essential agricultural requirements and priority 2 entitlements.

(a) *Direct suppliers.* (1) Any direct supplier that provides natural gas to an essential agricultural use establishment for which an essential agricultural user has requested from that supplier priority 2 entitlements in excess of 300 Mcf per day for the establishment shall request, no later than November 7, 1979, that each such establishment notify its essential agricultural user of its alternative fuel volumes and that such essential agricultural user submit to the direct supplier a statement in accordance with paragraph (b) of this section.

(2) No later than December 7, 1979, the direct supplier shall transmit to its direct supplier the information provided under this section that amends the essential agricultural requirements, in accordance with the attribution procedures in § 281.209.

(b) *Essential agricultural user.* Any essential agricultural user which has requested from any direct supplier priority 2 classification for volumes in excess of 300 Mcf per day for any essential agricultural use establishment shall:

(1) reduce its essential agricultural requirements calculated under § 281.207 to reflect the exclusion of volumes of natural gas for which its essential agricultural establishment has alternative fuel volumes under § 281.304; and

(2) respond no later than November 23, 1979 to the request of any direct supplier under paragraph (a)(1) of this section by submitting an amended request for priority 2 classification, where appropriate, and certifying on oath that the request for priority 2 classification, as amended under paragraph (b)(1) of this section, contains no alternative fuel volumes.

(c) *Presumption of alternative fuel volumes.* Any essential agricultural user that fails to comply with paragraph (b) of this section in timely fashion with respect to any essential agricultural establishment shall be deemed to have alternative fuel volumes for the essential agricultural uses of such establishment, in which case the direct supplier shall subtract all volumes of priority 2 natural gas used by such establishment from the essential agricultural requirements of its essential agricultural user.

(d) *Interstate pipelines.* An interstate pipeline shall revise its index of entitlements in accordance with the information provided under this section and shall file, no later than December 24, 1979, a new index of entitlements pursuant to § 281.204(a)(1), with a proposed effective date of January 1, 1980.

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VETERANS ADMINISTRATION

38 CFR Part 21

Implementing Legislation; Administration of Education Loan Program

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The following regulatory provisions implement the provisions of the GI Bill Improvement Act of 1977 and adjust the administration of the education loan program. Those regulations that implement the provisions of the GI Bill Improvement Act of 1977 provide for increases in monthly rates and other significant changes in the Veterans Administration educational assistance and vocational rehabilitation programs. Most of the changes are liberalizing. Others are of a minor or technical nature.

The adjustments in the education loan program allow veterans to appeal all decisions regarding entitlement to a loan to the Board of Veterans Appeals. Other adjustments are made to the criteria used to determine the amount of an education loan. These regulations will implement the provisions of the GI Bill Improvement Act of 1977 as well as make the administration of the education loan program more equitable.

EFFECTIVE DATES: May 31, 1976: Extended period of eligibility for veterans.

October 1, 1977: Changes in rates of payment.

November 23, 1977: Requirement that veterans and eligible persons be notified of withholding or discontinuance of payments; changes in the prohibition against assigning benefits; clarification that daily attendance need not be taken for courses leading to a standard college degree; and restrictions on offsetting a school's reporting fee in order to recover a liability of the school.

January 1, 1978: Education loan forgiveness through accelerated payment of benefits, a new method for delivering education loan checks; and the change in the fee payable for a school's delivering checks.

February 1, 1978: Changes in provisions for counseling; allowances payable to State approving agencies for administrative expenses; a new report of activities of State approving agencies; changes in the 85–15 percent ratio requirement; changes to the 2-year operation requirement; changes in measurement of certain courses; and changes in determination of satisfactory progress.

August 1, 1978: Other amendments to the education loan program.

December 1, 1978: Extended period of eligibility for spouses and surviving spouses.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education and Rehabilitation Service, Department of Veterans Benefits, Veterans Administration, Washington, DC 20420 (202–389–2092).

SUPPLEMENTARY INFORMATION: On pages 7745 through 7763 of the Federal Register of February 7, 1979, there was published a notice of intent to amend

Part 21 to implement the GI Bill Improvement Act of 1977 and to adjust the administration of the education loan program.

Interested persons were given 60 days in which to submit comments, suggestions or objections regarding the proposed regulations. Five persons submitted letters containing numerous comments (and some requests for minor editorial changes which have been noted).

Two persons suggested that § 21.1043 should be revised to include a definition of willful misconduct. The commenters were concerned over whether veterans, who were addicted to alcohol or other drugs, could qualify for an extended entitlement period.

The Veterans Administration intends to use the same definition of willful misconduct in its education program as it uses in other programs. Since the question of alcohol and other drug abuse involves other programs, the Veterans Administration has decided to consider the matter further. Any changes in policy will be reflected in changes to Part 3, Title 38, Code of Federal Regulations where willful misconduct as it pertains to alcohol and other drug abuse, is discussed. Changes, if any, will appear there. Since the Veterans Administration plans to use the definition, however it may be worded, which appears in Part 3, it does not think it is necessary to include a second definition in § 21.1043.

One person suggested that § 21.1043 be amended to provide that the Veterans Administration would consider psychological evidence as well as medical evidence when determining whether a veteran is entitled to an extended eligibility period. The Veterans Administration has decided not to accept this suggestion, because it does not appear to agree with Congressional intent in providing for an extended eligibility period. The report of the Senate Veterans' Affairs Committee on the GI Bill Improvement Act of 1977 states, "* * * it is not the Committee's intention * * * that all veterans who seek readjustment counseling or receive such services automatically be granted a delimiting date extension. Rather * * * it must be determined * * * that a diagnosable disability or impairment existed during the veteran's period of educational assistance eligibility and was the cause of the veteran's inability to begin or complete his or her educational program." Since the Committee uses the term "diagnosable," it is appropriate that the evidence the Veterans Administration considers be limited to medical evidence.

One commenter believed that § 21.1043(a)(2) does not conform to 38 U.S.C. 601(1) or to the intent of Congress in providing for an extended period of eligibility. The Veterans Administration is satisfied that this section does conform. The Veterans Administration has not changed it.

One person suggested that the provisions of § 21.4251 would cause veterans to have to travel unnecessarily long distances to attend classes at a campus with approved courses. He stated that in order to avoid wasting energy, the provisions of § 21.4251 should not be enforced.

The Veterans Administration recognizes the need to conserve energy. However, the purpose of the 2-year operation requirement is to prevent the development of schools which are aimed at veterans eligible for GI Bill benefits and the abuses that can occur as a result of such a development. The Veterans Administration believes that in order that this purpose may be achieved, there should not be a blanket waiver of this requirement. The provisions for waiver that are included in this section are sufficient.

The same person suggested that the proposed change to § 21.4266 should be deleted. He stated that it would not be cost-effective. Until § 21.4266 was made part of the Code of Federal Regulations, the Veterans Administration did not know if a State approving agency's approval of a school's courses extended to all the school's campuses within the State. This section sets forth the conditions when approval for these courses should be combined with approval of courses at the school's parent facility and when they should not be combined. This eliminates ambiguity and prevents erroneous payments. Therefore, the Veterans Administration has decided to retain this regulation.

One person suggested that the word "enrollment" be substituted for the word "attendance" in the second sentence of § 21.4203(a). He believed that the proposed wording would prevent a school from giving an advance payment check to a veteran or eligible person before he or she actually begins attending class. This is a valid objection. The final regulation is changed accordingly.

One person suggested that the term, "approved length of the course," used in § 21.4277, be defined explicitly. The Veterans Administration has not accepted this suggestion because it believes that State approving agencies should be free to approve whatever length is appropriate for a course.

Another person, also commenting on § 21.4277, suggested substituting a percentage of hours for which unsatisfactory grades have been received. The Veterans Administration has not adopted this suggestion, because it would not be fair to someone who began his or her program of education by taking only a small part of it. A veteran, for example, who began working toward a college degree by taking only one subject, should not be classified as making unsatisfactory progress if he or she has difficulty with it. It would be an insufficient test of the veteran's ability to progress satisfactorily.

This commenter also objected to the criteria used to determine if the provisions of § 21.4277 (a)(2) and (d) can be suspended. He stated that accreditation may be an unreliable criterion. The Veterans Administration is aware of the criticism which has been directed at the Federal government for what some perceive as an overreliance upon institutional accreditation. Nevertheless, the agency believes that accreditation is sufficiently reliable to be used in determining whether the provisions of the two paragraphs can be suspended.

Another commenter suggested eliminating the time limit for applying for an extended period of eligibility. Extension of the basic period of eligibility for veterans and eligible spouses and surviving spouses was provided by the Congress to alleviate the hardship caused under the previous rule, where no extensions were permitted. In some cases the veteran with eligibility for educational assistance was so disabled as to be unable to begin or complete training within the normal 10-year delimiting period. Upon recovery from the condition, the veteran would be unable to complete this vital readjustment service before the expiration of the delimiting period. The primary intent of the Congress in enacting the new limited extension authority was to provide sufficient flexibility to enable the individual to complete the whole process of educational readjustment, but still to do so expeditiously. Educational assistance is not a continuing long-term aid, but rather it is intended to help only in the period immediately following military service.

In most phases of the Veterans Administration programs, a veteran or other eligible person is given a maximum of 1 year in which to apply for benefits to which he or she would otherwise be entitled. Furthermore, traditionally when liberalizing legislation has been enacted the Veterans Administration has allowed 1

year from the date of enactment in which the individual, first eligible, may claim the new benefit. Section 21.1032 is consistent with this past practice. If no such provision were made, a veteran could defer seeking the extension for many years after recovery from the mental or physical condition and then qualify for training. That would be contrary to the longstanding intent of the program.

The same commenter wanted § 21.1043 to be rewritten. He was afraid that the word "clearly" ran counter to Veterans Administration policy, expressed in § 3.102 of this chapter, of resolving all doubt in favor of the veteran. The Veterans Administration does not believe that a conflict exists, and has not changed § 21.1043. Section 3.102 will be applied when determining whether a veteran qualifies for an extended period of eligibility.

The same person suggested that § 21.1043(d) was worded in such a way that veterans would be denied their full extended period of eligibility. He suggested that the regulation be changed. Section 21.1043(d) has wording similar to § 21.1042(d). The Veterans Administration always has interpreted § 21.1042(d) so as to give veterans their full initial period of eligibility. The agency will apply the same interpretation to § 21.1043(d) in the same manner to give veterans their full extended period of eligibility.

The same person suggested that § 21.4154(a) be reworded to make clear that State approving agencies must submit their reports monthly. The Veterans Administration believes that the phrase "each month thereafter" in the regulation is sufficient to indicate that the report should be monthly. Therefore, the agency has not adopted this suggestion.

The commenter also suggested relying upon a school's determination of the cost of attendance when determining if a person is entitled to an education loan. He thought that married persons would be unable to obtain a loan under the proposed regulations. After careful consideration the Veterans Administration has decided not to adopt this suggestion. These regulations are necessary to help reduce the loan default rate. Married persons are helped by the new regulations since only part of their educational assistance allowance is counted as a resource when the agency determines if a loan may be granted.

As a result of internal analysis the Veterans Administration has decided not to make final proposed § 21.4200(n), but instead to include that material in § 21.4500.

The proposed changes to the regulations necessary to implement the GI Bill Improvement Act of 1977 and to adjust the administration of the education loan program are deemed proper and are hereby approved.

Approved: October 24, 1979.

By direction of the Administrator.

Rufus H. Wilson,

Deputy Administrator.

Subpart A—Vocational Rehabilitation Under 38 U.S.C. Chapter 31

1. Section 21.133 is revised to read as follows:

§ 21.133 Rates.

Subsistence allowance is payable at the following monthly rates effective October 1, 1977.

Type of training	Monthly rate of subsistence allowance			
	No dependents	1 dependent	2 dependents	Each additional dependent
Institutional:				
Full-time	$241	$298	$351	$26
3/4 time	181	224	263	19
1/2 time	120	149	176	13
Sheltered workshop, training in the home, independent instructor (full time only)	241	298	351	26
Farm cooperative, apprentice or other on job (OJT) [1] (full time only)	210	254	293	19
Combination (institutional and OJT) (full time only):				
Institutional 1/2 time or more	241	298	351	26
Institutional less than 1/2 time	210	254	293	19
Cooperative (full time only):				
Institutional full time	241	298	351	26
Business/industry full time	210	254	293	19

[1] For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, exclusive of overtime, and the entrance journeyman wage for the veteran's objective.

(38 U.S.C. 1504(b); Pub. L. 95–202, 91 Stat. 1433)

2. In § 21.145, paragraph (a) is revised to read as follows:

§ 21.145 Veteran-student services.

(a) *Eligibility.* Veteran-students who are pursuing full-time programs of education or training under chapter 31 are eligible to receive a work-study allowance. In return for the veteran-student's agreement to perform services for the Veterans Administration totaling 250 hours during an enrollment period an allowance in an amount equal to either the amount of the hourly minimum wage in effect under section 6(a) of the Fair Labor Standards Act of 1938 times 250 or $625, whichever is the higher, will be paid. Veterans who agree to perform a lesser number of hours of services will be paid benefits on a proportional basis. An amount equal to 40 percent of the total amount payable under the contract shall be paid in advance. In the event the veteran ceases to be a full-time student before completing such an agreement, the veteran may, with the approval of the Director of the field station, or his or her designee, be permitted to complete that portion of an agreement that remains. Students must complete portions of an agreement within the same or immediately following term, quarter or semester in which the student ceases to be a full-time student. If the veteran terminates all training, he or she will be permitted to complete that portion of an agreement represented by the sum of money already advanced to the veteran for which no services have been performed. Portions of an agreement for which no advance has been made may not be authorized to be completed by those who have terminated all training. Any hours of unperformed service for which an advance has been made that remain after the time limits stated in this paragraph will be a debt due the United States and will be subject to recovery. The amount of indebtedness shall equal the hourly minimum wage in effect under the Fair Labor Standards Act of 1938 when the time limit expired, or $2.50 (whichever was the basis for the contract) for each hour of unperformed service. (38 U.S.C. 1685; Pub. L. 95–202, 91 Stat. 1433)

* * * * *

(3) Section 21.201 is amended as follows:

(a) By deleting the reference "§ 21.4270 footnote 7" and inserting "§ 21.4270(b) footnote 1" in paragraph (j)(5).

(b) By revising paragraph (j)(1) and (2) as set forth below:

§ 21.201 Types of courses.

* * * * *

(j) *Independent study course leading to a degree.* A course pursued by independent study under the following conditions:

(1) The course is offered by a college or university.

(2) The course leads to or is fully creditable toward a standard college degree.

* * * * *

Subpart B—Veterans' Educational Assistance Under 38 U.S.C. Chapter 34

§ 21.1021 [Amended]

4. The cross reference following § 21.1021 is changed to read "Measurement of courses." See § 21.4270(a).

5. In § 21.1032, paragraph (d) is added to read as follows:

§ 21.1032 Time limits.

* * * * *

(d) *Time limit for filing a claim for an extended period of eligibility.* A claim for an extended period of eligibility as described in § 21.1043 must be received by the Veterans Administration by the latest of the following dates:

(1) November 23, 1978,

(2) One year from the date on which the veteran's original period of eligibility ended,

(3) One year from the date on which the veteran's physical or mental disability ceased to prevent him or her from beginning or resuming the veteran's chosen program of education. (38 U.S.C. 1662)

6. In § 21.1041, paragraphs (a)(3), (d) (introductory portion preceding subparagraph (1)) and (d)(2) are revised to read as follows:

§ 21.1041 Periods of entitlement.

(a) *General.* * * *

(3) The veteran may use his or her entitlement at any time during the 10-year period, including any applicable extension of it, determined under §§ 21.1042 and 21.1043, but in no event shall education or training be afforded a veteran under chapter 34 or 36 after December 31, 1989. It is not required that the entitlement time be used in consecutive months. (38 U.S.C. 1662(a)(1); Pub. L. 95–202, 91 Stat. 1433)

* * * * *

(d) *Extension.* The period of entitlement, including the 45-months period, may be extended, but not beyond the delimiting date specified in §§ 21.1042 and 21.1043: (38 U.S.C. 1662(a)(1); Pub. L. 95–202, 91 Stat. 1433)

* * * * *

(2) To the end of the course or for 12 weeks, whichever is less, in all other schools, when the period of entitlement ends after more than half of the course has been completed. In a course consisting exclusively of flight training and in a course pursued exclusively by correspondence, the period of entitlement will be extended to the end of the course or for the total additional amount of instruction that $806 will provide for flight training and $871 will provide for correspondence training, whichever is less. (38 U.S.C. 1661; 1677(b); 1786(a); Pub. L. 95–202, 91 Stat. 1433)

* * * * *

7. In § 21.1042, paragraphs (a) and (b) are revised to read as follows:

§ 21.1042 Ending dates of eligibility.

The ending date of eligibility will be the latest of the following dates:

(a) *General.* Except as provided by § 21.1043 no educational assistance will be afforded a veteran later than 10 years after his or her last discharge or release from active duty after January 31, 1955, or December 31, 1989, whichever is the earlier. (38 U.S.C. 1662; Pub. L. 95–202, 91 Stat. 1433)

(b) *Correction of military records.* If the veteran becomes eligible for educational assistance as the result of a correction of military records under 10 U.S.C. 1552, or a change, correction or modification of a discharge or dismissal pursuant to 10 U.S.C. 1553, or other corrective action by competent military authority, educational assistance will not be afforded later than 10 years after the date his or her discharge or dismissal was changed, corrected or modified (except as provided by § 21.1043), or December 31, 1989, whichever is the earlier. (38 U.S.C. 1662; Pub. L. 95–202, 91 Stat. 1433)

* * * * *

8. Section 21.1043 is added to read as follows:

§ 21.1043 Extended period of eligibility.

(a) *General.* A veteran shall be granted an extension of the applicable delimiting period, as otherwise determined by § 21.1042 provided:

(1) The veteran applies for an extension.

(2) The veteran was prevented from initiating or completing the chosen program of education within the otherwise applicable delimiting period because of a physical or mental disability that did not result from the willful misconduct of the veteran. It must be clearly established by medical evidence that such a program of education was medically infeasible. A veteran who is disabled for a period of 30 days or less will not be considered as having been prevented from initiating or completing a chosen program, unless the evidence establishes that the veteran was prevented from enrolling or reenrolling in the chosen program of education, or was forced to discontinue attendance, because of the short disability.

(3) The veteran is otherwise eligible for payment of educational assistance for the training pursuant to chapter 34, title 38, United States Code. (38 U.S.C. 1662, Pub. L. 95–202, 91 Stat. 1433)

(b) *Commencing date.* The veteran shall elect the commencing date of an extended period of eligibility. The date chosen:

(1) Must be on or after the original date of expiration of eligibility as determined by § 21.1042, and

(2) Must be on or before the ninetieth day following the date on which the veteran's application for an extension was approved by the Veterans Administration, if the veteran is training during the extended period of eligibility in a course not organized on a term, quarter or semester basis, or

(3) Must be on or before the first ordinary term, quarter or semester following the ninetieth day after the veteran's application for an extension was approved by the Veterans Administration if the veteran is training during the extended period of eligibility in a course organized on a term, quarter or semester basis.

(c) *Length of extended periods of eligibility.* A veteran's extended period of eligibility shall be for the length of time that the individual was prevented from initiating or completing his or her chosen program of education. This shall be determined as follows:

(1) If the veteran is in training in a course organized on a term, quarter, or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the veteran's original delimiting period that his or her training became medically infeasible to the earliest of the following dates:

(i) The commencing date of the ordinary term, quarter or semester following the day the veteran's training became medically feasible,

(ii) The veteran's delimiting date as determined by § 21.1042, or

(iii) The date the veteran resumed training. (38 U.S.C. 1662(a)(1); Pub. L. 95–202, 91 Stat. 1433)

(2) If the veteran is training in a course not organized on a term, quarter

or semester basis, his or her extended period of eligibility shall contain the same number of days from the date during the veteran's original delimiting period that his or her training became medically infeasible to the earlier of the following dates:

(i) The date the veteran's training became medically feasible or

(ii) The veteran's delimiting date as determined by § 21.1042. (38 U.S.C. 1662(a)(1); Pub. L. 95–202, 91 Stat. 1433)

(d) *Discontinuance.* If the veteran is pursuing a course on the date of expiration of an extended period of eligibility as determined under this section, the educational assistance allowance will be discontinued effective the day preceding the end of the extended period of eligibility. (38 U.S.C. 1662; Pub. L. 95–202, 91 Stat. 1433)

9. In § 21.1045, paragraphs (a)(2) and (b)(2) are revised and paragraphs (h) and (i) are added so that the revised and added material reads as follows:

§ 21.1045 Entitlement charges.

(a) *Residence courses.* * * *

(2) *Flight training courses; Chapter 34.* A charge against the period of entitlement for a program consisting exclusively of flight training will be made on the basis of 1 month for each $288 which is paid to the veteran as an educational assistance allowance for such course. Where the computation results in a period of time other than a full month, or other than exactly ¾, ½ or ¼ fractional part of a month, the figure will be reduced to the next lower quarter. (38 U.S.C. 1677(b); Pub. L. 95–202, 91 Stat. 1433)

* * * * *

(b) *Correspondence courses.* * * *

(2) *Other courses.* Except as provided in paragraph (b)(1) of this section, the period of entitlement of any eligible veteran who is pursuing a program of education exclusively by correspondence will be charged with 1 month for each $175 paid to the veteran as an educational assistance allowance for such course, for contracts entered into before January 1, 1973. For agreements entered into after December 31, 1972, the period of entitlement of any eligible veteran, spouse, or surviving spouse, who is pursuing a program of education exclusively by correspondence will be charged with 1 month for each $220 paid before September 1, 1974, to the veteran, spouse, or surviving spouse as an educational assistance allowance for such course. For payments made on or after September 1, 1974, the charge will be 1 month for each $260 paid; for payments made on or after January 1, 1975, the charge will be 1 month for each $270 paid; for payments made on or after October 1, 1976, the charge will be 1 month for each $292 paid; and for payments made on or after October 1, 1977, the charge will be 1 month for each $311 paid. Where the computation results in a period of time other than a full month, or other than exactly ¾, ½ or ¼ fractional part of a month, the figure will be reduced to the next lower quarter. (38 U.S.C. 1786(a)(2); Pub. L. 95–202, 91 Stat. 1433)

* * * * *

(h) *Accelerated payment; chapter 34 and chapter 35.* The entitlement of a veteran or eligible person who receives an accelerated payment will be charged at the rate of 1 month for each amount of accelerated payment (exclusive of the matching payment from the State and-or local governmental unit) equal to the full-time monthly rate payable to the veteran or eligible person under § 21.4136(a) at the time he or she applied for an accelerated payment. Where the computation results in a period of time other than a full month, or other than exactly ¾, ½, or ¼ fractional part of a month, the figure will be reduced to the next lower quarter fraction of a month. (38 U.S.C. 1682A, 1738; Pub. L. 95–202, 91 Stat. 1433)

(i) *Education loan after otherwise applicable delimiting date; chapter 34 or chapter 35 spouse or surviving spouse.* A charge will be made against the entitlement of a veteran, spouse or surviving spouse who receives an education loan pursuant to § 21.4501(c) at the rate of 1 month for each month of entitlement that would have been used had the veteran, spouse or surviving spouse been in receipt of educational assistance allowance for the period for which the loan was granted. Where the computation results in a period of time other than a full month, or other than exactly ¾, ½ or ¼ fractional part of a month, the figure will be reduced to the next lower quarter fraction of a month. (38 U.S.C. 1662, 1712; Pub. L. 95–202, 91 Stat. 1433)

Subpart C—Survivors' and Dependents' Educational Assistance Under 38 U.S.C. Chapter 35

10. In § 21.3032, paragraph (c) is added to read as follows:

§ 21.3032 Time limits.

* * * * *

(c) *Time limit for filing a claim for an extended period of eligibility.* A claim for an extended period of eligibility provided by § 21.3046(d) must be received by the Veterans Administration by the later of the following dates:

(1) One year from the date on which the spouse's or surviving spouse's original period of eligibility ended.

(2) One year from the date on which the spouse's or surviving spouse's physical or mental disability ceased to prevent him or her from beginning or resuming a chosen program of education. (38 U.S.C. 1712).

§ 21.3045 [Amended]

11. Section 21.3045 is amended to delete the reference "§ 21.1045(a) through (c) and (e) through (g)" and insert "§ 21.1045(a) through (c) and (e) through (i)."

12. Section 21.3046 is amended as follows:

(a) By inserting "Pub. L. 95–202, 91 Stat. 1433" in paragraph (c)(3).

(b) By revising the introductory text and the introductory text of paragraph (c) preceding subparagraph (1) and adding paragraph (d) so that the revised and added material reads as follows:

§ 21.3046 Periods of eligibility; spouses and surviving spouses.

The period of eligibility cannot exceed 10 years and can be extended only as provided in paragraphs (c) and (d) of this section. If eligibility arises before October 24, 1972, educational assistance based on a course of apprentice or other on-the-job training, or correspondence approved under the provisions of §§ 21.4256, 21.4261 and 21.4262 will not be afforded later than October 23, 1982 unless the eligible spouse or surviving spouse qualifies for the extended period of eligibility provided in paragraph (d) of this section. The period of eligibility of a spouse computed under the provisions of paragraph (a) of this section, however, will be recomputed under the provisions of paragraph (b) of this section if her or his status changes to that of surviving spouse. (38 U.S.C. 1712(b); Pub. L. 95–202, 91 Stat. 1433)

* * * * *

(c) *Extension to ending date.* Spouse is enrolled and eligibility ceases for a reason specified in paragraph (c)(1), (2), or (3) of this section: extended to end of quarter or semester for schools operating on quarter or semester system, or for schools not operating on quarter or semester system, to end of course or for 12 weeks, whichever is earlier. In a course pursued exclusively by correspondence, the period of eligibility will be extended to the end of the course or for the total additional amount of instruction that $871 will provide, whichever is less. No extension may exceed maximum entitlement or extend beyond the delimiting date specified in paragraph (a) or (d) of this section, as appropriate. Extension is authorized

without regard to whether the midpoint of the quarter, semester or term has been reached. No extension of the period of eligibility will be made when training is pursued in a training establishment as defined in § 21.4200(c). (38 U.S.C. 1712(b); Pub. L. 95–202, 91 Stat. 1433)

* * * * *

(d) *Extended period of eligibility due to physical or mental disability.* A spouse or surviving spouse shall receive an extended period of eligibility when he or she applies for it and meets the criteria of § 21.1043(a). All other provisions of § 21.1043 concerning commencing dates and length of extended periods of eligibility and discontinuance of educational assistance also apply to spouses and surviving spouses who qualify for extended periods of eligibility. (38 U.S.C. 1712(b); Pub. L. 95–202, 91 Stat. 1433)

13. In § 21.3300, paragraph (c) is revised to read as follows:

§ 21.3300 Special restorative training.

* * * * *

(c) Special restorative training may be provided in excess of 45 months where an additional period of time is needed to complete such training. Entitlement, including any authorized in excess of 45 months, may be expended through an accelerated program requiring a rate of payment in excess of $98 per calendar month. See §§ 21.3303 and 21.3333(b). (38 U.S.C. 1741(b); 1742; Pub. L. 95–202, 91 Stat. 1433)

* * * * *

14. In § 21.3333, paragraphs (a) and (b) are revised to read as follows:

§ 21.3333 Rates.

(a) *Rates.* Special training allowance is payable at the following monthly rate except as provided in paragraph (c) of this section:

Course	Monthly rate	Accelerated charges
Special Restorative Training.	$311	If costs for tuition and fees average in excess of $98 per month, rate may be increased by such amount in excess of $98.

(b) *Accelerated charges.* The additional monthly rate may be paid if the parent or guardian concurs in having the eligible person's period of entitlement reduced by 1 day for each $10.40 that the special training allowance exceeds the basic monthly rate of $311. Fractions of more than one-half day will be charged as 1 day; fractions of one-half or less, will be disregarded. Charges will be recorded when the eligible person is entered into training. (38 U.S.C. 1742; Pub. L. 95–202, 91 Stat. 1433)

* * * * *

Subpart D—Administration of Educational Benefits; 38 U.S.C. Chapters 34, 35 and 36

15. Section 21.4100 is revised to read as follows:

§ 21.4100 Counseling.

(a) The purpose of counseling is to assist:

(1) In selecting an educational or training objective,

(2) In developing a suitable program of education or training,

(3) In selecting an educational institution or training establishment appropriate for the attainment of the educational or training objective,

(4) In resolving any personal problems which are likely to interfere with successful pursuit of a program,

(5) In selecting an employment objective for the veteran that would be likely to provide the veteran with satisfactory employment opportunities in light of his or her personal circumstances. (38 U.S.C. 1663, 1720; Pub. L. 95–202, 91 Stat. 1433)

(b) Counseling not required by other Veterans Administration regulations shall be provided as needed for the purposes identified in paragraph (a) of this section upon the request of the veteran or eligible person. (38 U.S.C. 1663; Pub. L. 95–202, 91 Stat. 1433)

§ 21.4102 [Amended]

16. Section 21.4102 is amended by deleting the words "wife, husband, widow or widower" and inserting "spouse or surviving spouse" in the headnote and the first sentence of paragraph (b).

§ 21.4106 [Amended]

17. Section 21.4106 is amended by deleting the words "Wife, Husband, Widow or Widower" and inserting "Spouse or Surviving Spouse" in the headnote of paragraph (a)(3).

18. In § 21.4130, the introductory text and paragraph (b)(2) are revised to read as follows:

§ 21.4130 Educational assistance allowance.

Educational assistance allowance will be paid at the rate specified in § 21.4136 or 21.4137 while the veteran or eligible person is pursuing a course of education. Except for apprenticeship and on-the-job training programs, no payment will be made based on a course not leading to a standard college degree for excessive absences as determined under § 21.4205(b). (See §§ 21.4136(i) and 21.4137(f) for proportionate reduction where less than 120 hours are completed during a month in apprenticeship and on-job training programs). Final payment may be withheld until proof of continued enrollment is received and the account adjusted. No payment may be made for training in an apprenticeship or other on-job training program in excess of the number of hours approved by the State approving agency; no payment may be made for lessons completed in a correspondence course in excess of the number approved by the State approving agency; and no payment may be made for training in any other type of course which occurs after the additional period, provided in § 21.4277, beyond the length of the course approved by the State approving agency. (38 U.S.C. 1674, 1681; Pub. L. 95–202, 91 Stat. 1433)

* * * * *

(b) The ending date will be the earliest of the following dates:

* * * * *

(2) The ending date of the veteran's eligibility as determined under §§ 21.1041, 21.1042 and 21.1043. (38 U.S.C. 1662(a); Pub. L. 95–202, 91 Stat. 1433)

* * * * *

19. Section 21.4133 is added to read as follows:

§ 21.4133 Notification of withholding or discontinuance.

Any eligible veteran or eligible person whose payments are withheld or discontinued pursuant to § 21.4134 or 21.4135 shall concurrently receive written notice of the withholding or discontinuance from the Veterans Administration. The notice shall state the reasons for the withholding or discontinuance of payments, and shall notify the veteran or eligible person that he or she has a right to a hearing and to present evidence why payments should not be discontinued or withheld. (38 U.S.C. 1790(b); Pub. L. 95–202, 91 Stat. 1433)

20. In § 21.4136, paragraphs (a) and (c) are revised to read as follows:

§ 21.4136 Rates; educational assistance allowance; 38 U.S.C. Chapter 34.

(a) *Rates.* Educational assistance allowance is payable at the following monthly rates effective October 1, 1977:

Type of courses	Monthly rate: No dependents	1 dependent	2 dependents	Additonal for each additional dependent
Institutional:				
Full time	$311	$370	$422	$26
¾ time	233	277	317	19
½ time	156	185	211	13
Less than ½ but more than ¼ time [1]	[2]156			
¼ time or less [1]	[2]78			
Cooperative, other than farm cooperative (full time only)	251	294	334	19
Apprentice or on-job (full time only but see footnote [3] below.)				
Payment designated training assistance allowance:				
First 6 months	226	254	277	12
Second 6 months	169	197	221	12
Third 6 months	113	141	164	12
Fourth 6 months and succeeding periods	56	84	108	12
Correspondence	90 per centum of the established charge for number of lessons completed by veteran and serviced by school [4]—Allowance paid quarterly.			
Flight training	90 per centum of the established charges for tuition and fees which similarly circumstanced nonveterans enrolled in the same flight course are required to pay—Allowance paid monthly based on actual flight training received. See § 21.1045(a)(2).			
Farm cooperative:				
Full time	251	294	334	19
¾ time	188	221	251	15
½ time	126	147	167	10

[1] If a veteran under chapter 34 receiving benefits under § 21.4280(b)(2) completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed $156 or $78 as appropriate per month if the maximum allowance is not initially authorized.

[2] See paragraph (b) of this section.

[3] See footnote [5] of § 21.4270(b) for measurement of full time and paragraph (i) of this section for proportionate reduction in award for completion of less than 120 hours per month.

[4] Established charge means that the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost for the eligible veteran whichever is the lesser. Enrollments before January 1, 1973, will receive 100 percent of the established charges.

(38 U.S.C. 1677, 1682, 1786, 1787; Pub. L. 95–202, 91 Stat. 1433)

* * * * *

(c) *Active duty.* The monthly rate for an individual who is pursuing a program of education while on active duty may not exceed the monthly rate of the cost of the course as specified in paragraph (b) of this section. For the purpose of a course pursued under the provisions of § 21.4235(a)(1) "cost of the course" shall include the cost of books and supplies peculiar to the course which the institution requires similarly circumstanced nonveterans enrolled in the same or a similar course to have. Where there is no same program, the cost of the course will be established by the Veterans Administration based on a report from the State approving agency showing the estimated cost for operation of the program and the anticipated enrollment. Subject to these limitations, the rate will be:

Measurement	Rates
Full time	$311
¾ time	233
½ time	156
Less than ½, but more than ¼ time	156
¼ time or less	78

(38 U.S.C. 1682; Pub. L. 95–202, 91 Stat. 1433)

* * * * *

21. Section 21.4137 is amended as follows:

(a) By deleting "§ 21.4270" and inserting "§ 21.4270(b)" in the parenthetical note following paragraph (f).

(b) By revising paragraph (a) to read as follows:

§ 21.4137 Rates; educational assistance allowance; 38 U.S.C. ch. 35.

(a) *Rates.* Educational assistance allowance is payable at the following monthly rates:

Type of courses	Monthly rate effective October 1, 1977
Institutional	
Full time	$311
¾ time	233
½ time	156
Less than ½ but more than ¼ time [3]	156
¼ time or less [3]	78
Cooperative, other than farm cooperative (full time only)	251
Apprentice or on-job (full time only but see footnote [1] below.) Payment designated training assistance allowance:	
First 6 months	226
Second 6 months	169
Third 6 months	113
Fourth 6 months and succeeding periods	56
Farm cooperative:	
Full time	251
¾ time	188
½ time	126
Correspondence	90 per centum of the established charge for number of lessons completed by eligible spouse or surviving spouse and serviced by the school [2]—Allowance paid quarterly.

[1] See footnote 5 of § 21.4270(b) for measurement of full time and paragraph (f) of this section for proportionate reduction in award for completion of less than 120 hours per month.

[2] Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost for the eligible spouse or surviving spouse whichever is the lesser.

[3] If an eligible person under chapter 35 receiving benefits under § 21.4280(b)(2) completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed $156 or $78 as appropriate per month if the maximum allowance is not initially authorized. (38 U.S.C. 1732(c)(3); Pub. L. 95–202, 91 Stat. 1433)

(38 U.S.C. 1682, 1732, 1786, 1787; Pub. L. 95–202, 91 Stat. 1433)

* * * * *

§ 21.4138 [Amended]

22. Section 21.4138 is amended by deleting the cross reference following paragraph (f).

23. In § 21.4145, paragraph (a) is revised to read as follows:

§ 21.4145 Veteran-student services.

(a) *Eligibility.* Veteran-students who are pursuing full-time programs of education or training under chapter 34 are eligible to receive a work-study allowance. In return for the veteran-student's agreement to perform services for the Veterans Administration totaling 250 hours during an enrollment period an allowance in an amount equal to either the amount of the hourly minimum wage in effect under section 6(a) of the Fair Labor Standards Act of 1938 times 250 or $625, whichever is the higher, will be paid. Veterans who agree to perform a lesser number of hours of services will be paid benefits on a proportional basis. An amount equal to 40 percent of the total amount payable under the contract shall be paid in advance. In the event the veteran ceases to be a full-time student before completing such an agreement, the veteran may, with the approval of the Director of the field station, or his or her designee, be permitted to complete that portion of an agreement that remains. Students must complete portions of an agreement within the same or immediately following term, quarter or semester in which the student ceases to be a full-time student. If the veteran terminates all training he or she will be permitted to complete that portion of an agreement represented by the sum of money already advanced to the veteran for which no services have been performed. Portions of an agreement for which no advance has been made may

not be authorized to be completed by those who have terminated all training. Any hours of unperformed service for which an advance has been made that remain after the time limits stated in this paragraph will be a debt due the United States and will be subject to recovery. The amount of indebtedness shall equal the hourly minimum wage in effect under the Fair Labor Standards Act of 1938 when the time limit expired, or $2.50 (whichever was the basis for the contract) for each hour of unperformed service. (38 U.S.C. 1685; Pub. L. 95–202, 91 Stat. 1433)

* * * * *

24. In § 21.4146, paragraph (f) is added to read as follows:

§ 21.4146 Assignments of benefits prohibited.

* * * * *

(f) *Savings clause.* Notwithstanding any other provision of this section the Director of the Veterans Administration field station of jurisdiction may authorize the educational institution to negotiate educational assistance checks payable to the veteran or eligible person under a power of attorney executed by the veteran or eligible person prior to December 1, 1976, authorizing the school to negotiate the check, provided that the following criteria are met:

(1) The veteran or eligible person owes the full proceeds of the check to the educational institution for tuition and fees;

(2) The educational institution is able to establish that it will face undue financial hardship if it is unable to negotiate the check; and

(3) The check is for training:

(i) Received by the veteran or eligible person for a course offered by the educational institution under provisions of subchapter VI of chapter 34, title 38, United States Code, for Predischarge Education Program training, or at a location not in a State under provisions of section 1676, title 38, United States Code, and the course was begun by the veteran or the eligible person prior to December 1, 1976, and completed not later than June 30, 1977; or

(ii) By an accredited correspondence school received by the veteran or eligible person while residing in a State, and represents payment for lessons completed under section 1786, title 38, United States Code, that were serviced by the school prior to January 1, 1977. (Sec. 305(c)(1), Pub. L. 95–202, 91 Stat. 1433)

25. Section 21.4153 is amended as follows:

(a) By changing the citation following paragraph (c)(4) to read "(38 U.S.C. 1774; Pub. L. 95–202, 91 Stat. 1433)".

(b) By revising paragraph (c)(3) to read as follows:

§ 21.4153 Reimbursement of expenses.

* * * * *

(c) *Reimbursable expenses.* * * *

(3) *Administrative expenses.* An allowance for administrative expenses for which payment may be authorized will be determined in accordance with the formula contained in this subparagraph. Salary cost includes basic salary plus fringe benefits such as Social Security, retirement, and health, accident or life insurance which is provided all similarly circumstanced State employees.

Total salary cost reimbursable	Allowable for administrative expense
$5,000 or less	$630.
Over $5,000 but not exceeding $10,000.	$1,134.
Over $10,000 but not exceeding $35,000.	$1,134 for the first $10,000 plus $1,050 for each additional $5,000 or fraction thereof.
Over $35,000 but not exceeding $40,000.	$6,862.
Over $40,000 but not exceeding $75,000.	$6,862 for the first $40,000 plus $908 for each additional $5,000 or fraction thereof.
Over $75,000 but not exceeding $80,000.	$13,608.
Over $80,000	$13,608 for the first $80,000 plus $793 for each additional $5,000 or fraction thereof.

* * * * * *

26. Section 21.4154 is added to read as follows:

§ 21.4154 Report of activities.

(a) *General.* Each State approving agency entering into a contract or agreement pursuant to § 21.4153 shall submit a report of activities to the Veterans Administration on September 30, 1978 for the preceding 12-month period and each month thereafter.

(b) *Content of the report.* The report shall be in the form prescribed by the Administrator and shall detail the activities of the State approving agency under the agreement or contract during the preceding month as well as from the beginning of the fiscal year through the end of that month. Each report shall describe the services performed and the determinations made in supervising and ascertaining the qualifications of educational institutions in connection with the programs of the Veterans Administration. The content of the report shall include as a minimum:

(1) A report of the number of active schools and establishments with approved courses in the jurisdiction of the State approving agency;

(2) The actions taken by the State approving agency on applications for approval of course revisions;

(3) The actions taken by the State approving agency on applications for approval of new courses made by schools which previously have had courses approved;

(4) The actions taken by the State approving agency on applications for approval of new courses made by schools which have not had any courses approved previously;

(5) The number of inspections, approval and supervisory visits to schools made by the State approving agency;

(6) The actions taken by the State approving agency with respect to schools and establishments which the State approving agency found to have deficiencies;

(7) The actions taken by the State approving agency with respect to schools and establishments which the Veterans Administration found to have deficiencies;

(8) The actions taken by the State approving agency in promoting jobs for veterans programs; and

(9) The number of man-months used by the State approving agency pursuant to the contract. (38 U.S.C. 1774; Pub. L. 95–202, 91 Stat. 1433)

28. Section 21.4201 is revised to read as follows:

§ 21.4201 Restrictions on enrollment; percentage of students receiving financial support.

(a) *General.* Except as otherwise provided in this section no enrollment in any course may be approved for an eligible veteran, not already enrolled, for any period during which more than 85 percent of the students enrolled in the course are having all or part of their tuition, fees, or other charges paid to or for them by the educational institution, the Veterans Administration pursuant to title 38, United States Code, and/or grants of any other Federal agency. This restriction may be waived in whole or part.

(b) *Affected schools.* The requirements of paragraph (a) of this section apply to all courses not otherwise exempt or waived offered by all educational institutions, regardless of whether the institution is degree-granting, proprietary profit, proprietary nonprofit, eleemosynary, public and/or tax-supported.

(c) *Affected courses.* The following courses or programs are exempt from the requirements of paragraph (a) of this section:

(1) Any farm cooperative course;

(2) Any course of Special Assistance for the Educationally Disadvantaged, offered pursuant to subchapter V, chapter 34, title 38, United States Code;

(3) Any approved course offered under contract with the Department of Defense which is on or immediately adjacent to a military base, which has been approved by the State approving agency of the State where the base is located or the State of the parent school if the course is offered overseas, and which either:

(i) Is available only to military personnel and their dependents, or

(ii) Is available only to military personnel, their dependents, and civilian employees of the base located in a State, or

(iii) Is available only to persons authorized by the base commander to attend the course provided the base is located outside the United States;

(4) Any course offered by a flying club established, organized and operated pursuant to regulations of a military department of the Armed Forces as "nonappropriated sundry fund activities" which are governmental instrumentalities;

(5) Any course if the total number of veterans and eligible persons receiving assistance under chapters 31, 32, 34, 35 or 36, title 38, United States Code, who are enrolled in the educational institution offering the course, equals 35 percent or less of the total student enrollment at the educational institution (computed separately for the main campus and any branch or extension of the institution) except that the Director of the Veterans Administration field station of jurisdiction shall apply the provisions of paragraph (a) of this section if he or she has reason to believe that the enrollment of veterans and eligible persons in the course may exceed 85 percent of the total student enrollment in the course.

(d) *Application for exemptions.* No applications are required for any exemptions except that found in paragraph (c)(5) of this section. To obtain an exemption as stated in paragraph (c)(5) of this section schools must submit reports as required in paragraph (f)(1) of this section.

(e) *Computing the 85–15 percent ratio–*(1) *Determining when separate computations are required.* Except as provided in paragraph (c) of this section and in paragraph (e)(3) of this section, an 85–15 percent ratio must be computed for each course of study or curriculum leading to a separately approved educational or vocational objective. Computations will not be made for unit subjects, unless only one unit subject is approved by the State approving agency to be offered at a separate branch or extension of a school. Courses or curricula which are offered at separately approved branches or extensions must have an 85–15 percent ratio computed separately from the same course offered at the parent institution. The count of students attending the branch may not be added to those attending the parent institution even for the same courses or curricula. However, the count of those attending courses or curricula offered at an additional facility, as opposed to a branch or extension, must be added to those attending the same course at the parent institution. Pursuit of a course or curriculum that varies in any way from a similar course, although it may have the same designation as the other similar course or curriculum, will require a separate 85–15 percent computation. A course or curriculum will be considered to vary from another if there are different attendance requirements, required unit subjects are different, required completion length is different, etc.

(i) Separate courses for computation purposes in institutions of higher learning will be determined by general curriculum only until the point at which it is reasonable to assume a major field would be declared and after that point by specific curriculum.

(*a*) General 2–year curricula at 2-year institutions of higher learning, general curricula such as AA (Associate of Arts) or AS (Associate of Science) degrees with no major specified, will require separate computations for each curriculum. Terminal 2–year courses (i.e., AAS (Associate of Applied Science), dental technology or auto mechanics certificate) and other associate degree courses where a field is specified must be computed separately for each objective.

(b) Students attending 4–year institutions of higher learning and graduate schools may be counted in general curricula such as BA (Bachelor of Art) and BS (Bachelor of Science) only until the normal point at which the school requires the student to declare a major subject. Then the 85–15 percent computation must be made for each specific curriculum, i.e., BS (Bachelor of Science) in electrical engineering, MA (Master of Arts) in English, etc.

(ii) NCD (noncollege degree) courses must be computed separately by approved vocational objective. If several curricula lead to the same coded vocational objective, each must meet the 85–15 percent requirement separately, unless it can be shown that two or more courses are identical in all respects (scheduling, hours devoted to each unit subject, etc.). Branch or extension courses will be computed separately from courses at the parent facility. Courses offered on a full- and part-time basis which are identical in length and content will be combined for computing the ratio.

(2) *Assigning students to each part of the ratio.* Notwithstanding the provisions of paragraph (a) of this section the following students will be considered to be nonsupported provided they are not receiving educational assistance from the Veterans Administration:

(i) Students who are not veterans, and are not in receipt of Federal or institutional aid.

(ii) All graduate students in receipt of any Federal aid (other than Veterans Administration benefits) and any institutional aid.

(iii) Students in receipt of all types of Federal aid (other than Veterans Administration benefits). However, BEOG (Basic Educational Opportunity Grant) and SEOG (Supplementary Educational Opportunity Grant) recipients shall be counted as supported after notice to the school by the Veterans Administration.

(iv) Undergraduate and noncollege degree students receiving any assistance provided by an institution, if the institutional policy for determining the recipients of such aid is equal with respect to veterans and nonveterans alike, and the students do not have to be counted as supported pursuant to paragraph (e)(2)(iii) of this section.

(3) *Calculation.* (i) To determine if the requirement of paragraph (a) of this section has been met for all courses except flight courses the full-time equivalent, nonsupported students as defined by paragraph (e)(2) of this section will be compared to the full-time equivalent students enrolled in the course. If the full-time equivalent, nonsupported students do not equal at least 15 percent of the total full-time enrollment, the 85-15 percent requirement has not been met for the course. If a non-Veterans Administration student in a correspondence course has not completed a lesson nor made a payment toward the cost of the course during the 6-month period immediately prior to the computation, the student will not be counted in computing the 85–15 percent ratio.

(ii) The 85–15 percent ratio for flight courses shall be computed by comparing the number of hours of training received by or tuition charged to nonsupported students in the preceding 30 days to the total number of hours of training received by or tuition charged to all students in the same period. All courses offered at a flight school which are approved under Part 141, Title 14, Code of Federal Regulations shall be considered to be one course for the

purpose of making this computation. Similarly, all courses offered at a flight school which are not approved under Part 141, Title 14, Code of Federal Regulations shall be considered to be one course for the purpose of making this computation. Hours of training or tuition charges:

(*a*) In the private pilot's course shall be excluded;

(*b*) For students enrolled in courses approved under Part 141, Title 14, Code of Federal Regulations (the Federal Aviation Administration regulations) shall be actual hours of logged instructional flight time or charges; and

(*c*) For students enrolled in courses not approved under Part 141, Title 14, Code of Federal Regulations such as in courses for navigator or flight engineer, shall include ground training time in addition to actual logged instructional flight time or charges.

(4) *Relief from complete calculations.* If 35 percent or fewer of the students in a course, not otherwise exempt from the provisions of paragraph (a) of this section, offered by an institution of higher learning or noncollege degree school receive Veterans Administration educational benefits, the percentage of the school's total enrollment in all courses in all locations receiving BEOG and SEOG totals 85 percent or less the school need make no further calculations. This relief from complete calculations is for application only after the Veterans Administration has notified the school that BEOG and SEOG recipients are considered to be supported students as provided in paragraph (e)(2) of this section.

(f) *Reports.* (1) All calculations needed to support the exemption found in paragraph (c)(5) of this section to the requirements of paragraph (a) of this section must be submitted by a school to the Veterans Administration no later than 30 days after the beginning of the first term for which the school wishes the exemption to apply if the school is organized on a term, quarter or semester basis, or no later than 30 days after the beginning of the first calendar quarter for which the student wishes the exemption to apply if the school is not organized on a term, quarter or semester basis. A school having received an exemption found in paragraph (c)(5) of this section shall not be required to certify that 85 percent or less of the total student enrollment in any course is receiving Veterans Administration assistance:

(i) Unless the Director of the VA field station of jurisdiction has reason to believe that the enrollment of eligible veterans and eligible persons in a specific course may exceed 85 percent of the total enrollment in a specific course, or

(ii) Until such time as the total number of veterans and eligible persons receiving assistance under chapters 31, 32, 34, 35 or 36, title 38, United States Code, who are enrolled in the educational institution offering the course, equals more than 35 percent of the total student enrollment at the educational institution (computed separately for the main campus and any branch or extension of the institution). At that time the procedures contained in paragraph (f)(2) of this section shall apply.

(2) All calculations made pursuant to paragraph (e) (3) and (4) of this section must be submitted by the school to the Veterans Administration no later than 30 days after the beginning of each regular school term (excluding summer sessions) or before the beginning date of the next term, whichever occurs first, if the school is organized on a term, quarter or semester basis. If a school is not organized on a term, quarter or semester basis, reports must be received by the Veterans Administration no later than 30 days after the end of each calendar quarter.

(g) *Effect of the 85–15 percent ratio on processing new enrollments.* (1) The Veterans Administration will process new enrollments of eligible veterans in a course on the basis of the school's submission of the most recent computation showing that either the 85–15 percent ratio is satisfactory or that the course is exempt under paragraph (c)(5) of this section. However, no benefit will be paid when the most recent computation establishes that the course neither has a satisfactory 85–15 percent ratio nor is exempt under paragraph (c)(5) of this section, except for those enrollments which have a beginning date prior to or the same as the date the school completed this computation. If a school fails to submit a timely computation, no benefits will be paid for any enrollment with beginning dates beyond the expiration of the allowable computation period. Enrollments with later beginning dates may be processed only after the school submits a certification either that the proper ratio has been reestablished for the course, or that the course is exempt from the requirement pursuant to paragraph (c)(5) of this section. When a school shows a reestablished 85–15 percent ratio, each new veteran enrollment submitted after reestablishment must be individually computed into the ratio to insure that the 85 percent limitation is not again immediately exceeded. Individual computations will be required until the end of the term for which the ratio was reestablished or until the end of the calendar quarter during which the ratio was reestablished if the school is not operated on a term, quarter or semester basis.

(2) Once a student is properly enrolled in a course either before December 1, 1976 or after November 30, 1976, in a course which either meets the 85–15 percent requirement or which is exempt pursuant to paragraph (c) of this section, such a student may not have benefits for that course terminated because the 85–15 percent requirement subsequently is not met or because the course loses its exemption, as long as the student's enrollment remains continuous. A student enrolled in an institution organized on a term basis need not attend summer sessions in order to maintain continuous enrollment. An enrollment may also be considered continuous if a "break" in enrollment is wholly due to circumstances beyond the student's control such as serious illness.

(h) *Waivers.* Schools which desire a waiver of the provisions of paragraph (a) of this section for a course where the number of full-time equivalent students receiving Veterans Administration education benefits equals or exceeds 85 percent of the total full-time equivalent enrollment in the course may apply for a waiver to the Director, Education and Rehabilitation Service through the Director of the Veterans Administration field station of jurisdiction. A school desiring a waiver of the provisions of paragraph (a) of this section for any other course may apply to the Director of the Veterans Administration field station of jurisdiction.

(1) When applying a school must submit sufficient information to allow the Director, Education and Rehabilitation Service or the Director of the Veterans Administration field station of jurisdiction, as appropriate, to judge the merits of the request against the criteria shown in this subparagraph. This information and any other pertinent information available to the Veterans Administration shall be considered in relation to these criteria:

(i) Availability of comparable alternative educational facilities effectively open to veterans in the vicinity of the school requesting a waiver.

(ii) Status of the school requesting a waiver as a developing institution primarily serving a disadvantaged population. The school should enclose a copy of the notification of developing status from the Office of Education, if applicable. Otherwise, the school should submit data sufficient to allow the

Director, Education and Rehabilitation Service, or the Director of the Veterans Administration field station of jurisdiction, as appropriate, to judge whether the school is similar to officially classified developing institutions according to the criteria and data categories published, in Part 169, Subpart B, Title 45, Code of Federal Regulations. The requirements of those criteria that a school be a "public or nonprofit" institution need not be met.

(iii) Previous compliance history of the school, including such factors as false or deceptive advertising complaints, enrollment certification timeliness and accuracy, and amount of school liability indebtedness to the Veterans Administration.

(iv) General effectiveness of the school's program in providing educational and employment opportunities to the particular veteran population it serves. Factors to be considered should include the percentage of veteran-students completing the entire course, results of the 50 percent employment survey for vocational objective courses, ratio of educational and general expenditures to full-time equivalency enrollment, etc.

(2) If a school disagrees with a field station Director's determination concerning a waiver, it may request that the application along with the director's recommendation be forwarded to the Director, Education and Rehabilitation Service for administrative review. (38 U.S.C. 1673(d); Pub. L. 95–202, 91 Stat. 1433)

28. In § 21.4203, paragraph (a) is revised to read as follows:

§ 21.4203 Reports by schools; requirements.

(a) *General.* (1) Educational institutions are required:

(i) To report promptly the entrance, reentrance, change in hours of credit or attendance, interruption and termination of attendance of each veteran or eligible person who is enrolled;

(ii) To verify enrollment for each veteran and eligible person receiving an advance payment; and

(iii) To verify the delivery of advance payment check and education loan check for each veteran and eligible person receiving an advance payment or education loan.

(2) Nothing in this section or in any other section of Part 21 shall be construed as requiring any institution of higher learning to maintain daily attendance records for any course leading to a standard college degree. (38 U.S.C. 1780(d), 1784, 1785, 1798; Pub. L. 95–202, 91 Stat. 1433)

* * * * *

29. In § 21.4206, paragraphs (a) and (c) are revised and paragraph (d) is added so that the revised and added material reads as follows:

§ 21.4206 Reporting fee.

* * * * *

(a) Except as provided in paragraph (b) of this section, the reporting fee will be computed for each calendar year by multiplying $7 by the number of eligible veterans and eligible persons enrolled under chapter 34, chapter 35, or chapter 36 on October 31 of that year. (38 U.S.C. 1784(b); Pub. L. 95–202, 91 Stat. 1433)

* * * * *

(c) An additional $4 will be paid to those institutions which have delivered to the veteran or eligible person at registration the educational assistance check representing an advance payment, or which have delivered educational loan checks in accordance with the provisions of Subpart F. If an institution delivers both an advance payment check and educational loan check(s) to the same veteran or eligible person within 1 calendar year, it shall receive only one additional $4 fee. In order to receive this fee, the institution shall submit to the Veterans Administration a certification of delivery of each check. If an advance payment check is not delivered within 30 days after commencement of the student's program, the check is to be returned to the Veterans Administration. If an education loan check is not delivered within 30 days of the date the educational institution received it, the check shall be returned to the Veterans Administration. (38 U.S.C. 1784, 1798; Pub. L. 95–202, 91 Stat. 1433)

(d) No reporting fee payable to an educational institution under this section shall be subject to offset by the Veterans Administration against any liability of the educational institution for any overpayment which the Veterans Administration has administratively determined to exist unless the liability of the educational institution was not contested by the educational institution or was upheld by a final decree of a court of appropriate jurisdiction. (38 U.S.C. 1784; Pub. L. 95–202, 91 Stat. 1433)

30. In § 21.4236, paragraphs (c) and (d) are revised to read as follows:

§ 21.4236 Special supplemental assistance (tutorial).

* * * * *

(c) *Educational assistance allowance.* In addition to payment of educational assistance allowance at the monthly rates specified in § 21.4136 or 21.4137 the cost of such tutorial assistance in an amount not to exceed $69 per month will be authorized. (38 U.S.C. 1692(b); Pub. L. 95–202, 91 Stat. 1433)

(d) *Entitlement charge.* No charge will be made against the period of the veteran's entitlement as computed under § 21.1041 or the eligible person's entitlement as computed under § 21.3044. Special supplemental assistance provided under this section will not exceed a maximum of $828. (38 U.S.C. 1690, 1692, 1693; Pub. L. 95–202, 91 Stat. 1433)

31. Section 21.4251 is amended as follows:

(a) By deleting "§ 21.4201(d)(4)" and inserting "§ 21.4201(c)(4)" in paragraph (a)(1).

(b) By revising paragraph (a)(6) and (f) and adding paragraph (h) and a cross reference so that the added and revised material reads as follows:

§ 21.4251 Period of operation of course.

(a) *General.* A course offered by a school other than a job training establishment will be appropriate for the enrollment of a veteran or eligible person only if it has been in operation for 2 years or more immediately prior to the date of enrollment of such person, except that this provision does not apply to:

* * * * *

(6) Any course offered by an educational institution under a contract with the Department of Defense that (i) is given on, or immediately adjacent to, a military base, (ii) is available only to active duty military personnel and/or their dependents and (iii) has been approved by the State approving agency of the State in which the base is located or by the State approving agency in the State having jurisdiction over the educational institution offering the course when the course is a degree course being taught outside the United States. See paragraph (f) of this section for specific additional requirements as to branch location schools. A course is being given at a location immediately adjacent to a military base if the facilities are clearly neighboring to the base or are in close proximity to it and must be easily accessible to active duty personnel. The location must be under effective supervision of the base military authorities. The Director, Education and Rehabilitation Service or the Director of the Veterans Administration field station of jurisdiction pursuant to paragraph (h) of this section may waive the requirements referred to in this subparagraph in whole or in part, when such a waiver is in the interest of the veteran and the Federal Government.

(38 U.S.C. 1789(b); Pub. L. 95–202, 91 Stat. 1433)

* * * * *

(f) *Subsidiary branch or extension.* Notwithstanding the provisions of paragraph (a) (1), (2), (3), or (4) of this section the 2-year period of operation requirement will apply to courses at subsidiary branches or extensions as provided in the following subparagraphs:

(1) This requirement will apply to any course offered by a branch or extension of a public or other tax-supported institution where the branch or extension is located outside the area of the taxing jurisdiction providing support to the institution unless the requirement is waived, in whole or in part, upon a determination by the Director, Education and Rehabilitation Service or the Director of the appropriate Veterans Administration field station pursuant to paragraph (h) of this section that to do so would be in the interest of the veteran and the Federal Government. A course for which such a waiver is granted will be exempt from the 2-year period of operation requirement only if it also satisfies the provisions of either paragraph (a) (1), (2), (3), or (4) of this section.

(2) This requirement will apply to any course offered by a branch or extension of a proprietary profit or proprietary nonprofit educational institution where the branch or extension is located beyond the normal commuting distance of such institution and to a proprietary profit educational institution, even if the branch or extension is located within commuting distance unless the requirement is waived, in whole or in part, upon a determination by the Director, Education and Rehabilitation Service or the Director of the appropriate Veterans Administration field station pursuant to paragraph (h) of this section that to do so would be in the interest of the veteran and the Federal Government. A course for which such a waiver is granted will be exempt from the 2-year period of operation requirement only if it also satisfies the provisions of either paragraph (a) (1), (2), (3) or (4) of this section.

(3) Additional facilities acquired by a school in the same general locality because of space limitations will not be considered to be a subsidiary branch or extension and will not be subject to the 2-year limitation if all of the following conditions are met:

(i) The school has been in operation for a period of 2 years or more;

(ii) The school has reached the limit of its enrollment capacity in its present facilities;

(iii) The courses to be offered at the additional facilities are the same as those given in the present facilities; and

(iv) The additional facilities are within normal commuting distance of the present facilities. (38 U.S.C. 1789(b); Pub. L. 95–202, 91 Stat. 1433)

* * * * *

(h) *Waivers.* Schools which desire a waiver of the provisions of paragraph (a)(6), (f)(1) or (f)(2) of this section may apply to the appropriate Veterans Administration field station Director. The Veterans Administration field station Director may grant a waiver only when the conditions specified in this paragraph have been met. In all other instances he or she shall inform the school requesting a waiver that the request is denied. If a school, upon being informed, would like the request to be considered further, the request will be forwarded to the Director, Education and Rehabilitation Service with the field station Director's recommendation.

(1) The Director of the Veterans Administration field station of jurisdiction may exercise the waiver authority found in paragraph (a)(6) of this section to exempt from the 2-year operation requirement certain courses given pursuant to a contract with the Department of Defense on or immediately adjacent to a military base located within a State. He or she may grant such a waiver only when he or she finds that:

(i) The school on an application sent through the State approving agency certifies that the course is available only to military personnel and/or their dependents, and/or civilian employees of the base, and/or persons who began the course while on active duty and who were discharged while remaining continuously enrolled in it.

(ii) The State approving agency of the State in which the course is offered certifies that the course meets all other approval requirements.

(2) The Director of the Veterans Administration field station of jurisdiction may exercise the waiver authority found in paragraph (a)(6) of this section to exempt from the 2-year operation requirement certain courses given pursuant to a contract with the Department of Defense on or immediately adjacent to a military base located outside the United States. He or she may grant such a wavier only when he or she finds that:

(i) The school on an application sent through the State approving agency certifies that the course is available only to persons whom the base commander has permitted to attend, and

(ii) The State approving agency having jurisdiction over the school offering the course certifies that the course meets all other approval requirements.

(3) The Director of the Veterans Administration field station of jurisdiction may exercise authority found in paragraph (f) of this section to allow a waiver of the requirements of either paragraph (f)(1) or (f)(2) of this section. He or she may grant such a waiver when he or she finds that:

(i) No alternative comparable courses are effectively open to veterans or eligible persons within normal commuting distance of the site where the course is offered for which a wavier is requested.

(ii) The compliance history of the parent school is satisfactory. This includes such factors as enrollment certification timeliness and accuracy, false or deceptive advertising complaints, and school liability indebtedness to the Veterans Administration.

(iii) The course for which a waiver is requested is also being offered at the school's main campus.

(iv) All credits earned in the course offered at the branch or extension are acceptable on transfer to the main campus without reservation.

(v) No contracts exist between the school and any other institution or entity which provide for recruitment of students for the course by the other institution or entity, or student payment of tuition and fees to the other institution or entity rather than to the school, or which effectively prevent the school's faculty on its main campus from overseeing the course being offered at the branch or extension.

(4) A school, which disagrees with a decision made under this paragraph by a Director of a Veterans Administration

field station, has 1 year from the date of the letter notifying the school of the decision to request that the decision be reviewed. The request must be submitted in writing to the Director of the Veterans Administration field station where the decision was made. The Director, Education and Rehabilitation Service shall review the evidence of record and any other pertinent evidence the school may wish to submit. The Director, Education and Rehabilitation Service has the authority either to affirm or reverse a decision of the Director of a Veterans Administration field station. (38 U.S.C. 1789; Pub. L. 95–202, 91 Stat. 1433)

Cross Reference: Courses offered at branches or extensions. See § 21.4266.

32. Section 21.4266 is amended as follows:

(a) By adding a cross reference following paragraph (c) to read as follows:

Cross Reference: Period of operation of course. See § 21.4251.

(b) By revising paragraph (c)(2) (the introductory portion preceding subdivision (i)) to read as follows:

§ 21.4266 Courses offered at subsidiary branches or extensions.

* * * * *

(c) *Separate approval.* If the course offered at a subsidiary branch or extension cannot qualify under paragraph (b) of this section for a combined approval with the courses offered at the educational institution's parent facility, the State approving agency can only approve the courses separately. Such a course may not be approved if the branch or extension neither has administrative capability nor can qualify for an exception to having administrative capability.

* * * * *

(2) Notwithstanding any other provisions of this paragraph courses may be approved separately at a branch or extension without administrative capability if the parent facility within the same State:

* * * * *

33. Section 21.4270 is revised to read as follows:

§ 21.4276 Measurement of courses.

(a) Trade, technical, high school and high school preparatory courses shall be measured as stated in this table. Clock hours and class sessions mentioned in this table mean clock hours and class sessions per week.

Courses

Kind of school	Kind of course	Full time	¾ time	½ time	Less than ½ time more than ¼ time	¼ time or less
Trade or technical-nonaccredited (includes college courses not leading to a standing and degree) [1].	Shop practice an integral part of course.	30 clock hours attendance with not more than 2½ hours rest period allowance and not more than 5 hours of supervised study.	22 through 29 clock hours attendance with not more than 2 hours rest period allowance and not more than 3¾ hours of supervised study.	15 through 21 clock hours attendance with not more than 1¼ hours rest period allowance and not more than 2½ hours of supervised study.	8 through 14 clock hours attendance with not more than ¾ hour rest period allowance and not more than ¼ hour of supervised study.	1 through 7 clock hours attendence.
.....	Theory and class instruction predominates [2].	25 clock hours net instruction and not more than 5 hours of supervised study.	18 through 24 clock hours net instruction and not more than 3¾ hours of supervised study.	12 through 17 clock hours net instruction and not more than 2½ hours of supervised study.	7 through 11 clock hours net instruction and not more than 1¼ hours of supervised study.	1 through 6 clock hours net instruction.
Trade or technical-accredited (includes college courses not leading to a standard degree) [1].	Shop practice and intregral part of course [3].	22 clock hours attendance with not more than 2½ hours rest period allowance.	16 through 21 clock hours attendance with not more than 2 hours rest period allowance.	11 through 15 clock hours attendance with not more than 1¼ hours rest period allowance.	6 through 10 clock hours attendance with not more than ¾ hour rest period allowance.	1 through 5 clock hours attendance.
.....	Theory and class instruction predominates [2,3].	18 clock hours net instruction.	13 through 17 clock hours net instruction.	9 through 12 clock hours net instruction.	5 through 8 clock hours net instruction.	1 through 4 clock hours net instruction.
High school-nonaccredited.	High school diploma or equivalent [3,5].	25 clock hours net instruction and not more than 5 hours of supervised study or 4 units per year or equivalant.	18 through 24 clock hours net instruction and not more than 3¾ hours of supervised study or 3 units per year or equivalent.	12 through 17 clock hours net instruction and not more than 2½ hours of supervised study or 2 units per year or equivalent.	7 through 11 clock hours net instruction and not more than 1¼ hours of supervised study or 1 unit per year or equivalent.	1 through 6 clock hours net instruction.
High school accredited.	High school diploma or equivalent [4,5].	18 clock hours net instruction or 4 units per year or equivalent.	13 through 17 clock hours net instruction or 3 units per year or equivalent.	9 through 12 clock hours net instruction or 2 units per year or equivalent.	5 through 8 clock hours net instruction or 1 unit per year or equivalent.	1 through 4 clock hours net instruction.
Elementary school-nonaccredited [1].	High school-preparatory [3].	25 clock hours net instruction and not more than 5 hours of supervised study.	18 through 24 clock hours net instruction and not more than 3¾ hours of supervised study.	12 through 17 clock hours net instruction and not more than 2½ hours of supervised study.	7 through 11 clock hours net instruction and not more than ¼ hour of supervised study.	1 through 6 clock hours net instruction.
Elementary school-accredited [1].	High school-preparatory [3].	18 clock hours net instruction.	13 through 17 clock hours net instruction..	9 through 12 clock hours net instruction..	5 through 8 clock hours net instruction.	1 through 4 clock hours net instruction.

[1] An educational institution offering courses not leading to a standard college degree may measure such courses on a quarter or semester hour basis as indicated for collegiate undergraduate courses in paragraph (b) of this section, provided: (1) the academic portions of such courses must require outside preparation and be measured on a minimum of 50 minutes net of instruction per week for each quarter or semester hour of credit, (2) the laboratory portions of such courses must be measured on a minimum of 2 hours of attendance per week for each quarter or semester hour of credit, (3) the shop portions of such courses must be measured on a minimum of 3 hours of attendance per week for each quarter or semester hour of credit. In no event shall such courses be considered a full-time course when less than 22 hours per week of attendance is required. Not more than 2 hours rest period shall be allowed per week for courses in which shop practice is an integral part of full-time courses; 1½ hours or ¾ time courses of 16–21 clock hours; 1 hour for ½ time courses of 11–15 clock hours; or ½ hour for less than ½ time courses of 6–10 clock hours; no rest period shall be allowed for courses of less than 6 clock hours of attendance.

[2] In measuring net instruction there will be included customary intervals not to exceed 10 minutes between classes. Shop practice and rest periods are excluded. Supervised instruction periods in school's shops, in farm cooperative programs and the time involved in field trips and individual and group instruction may be included in computing the clock hour requirements.

[3] Supervised study must be excluded.

[4] Diploma course or equivalent based on completion of 16 instruction units. If student is pursuing a course at a rate which would result in an accredited academic high school diploma at the end of a 4 ordinary school years, he or she is considered in full-time training. High school diploma courses or equivalent available only for chapters 32 and 34 and eligible spouses and surviving spouses under chapter 35.

[5] Diploma course or equivalent based on completion of 16 instruction units. High school diploma courses or equivalent are available only for chapters 32 and 34 and eligible spouses and surviving spouses under chapter 35.

(38 U.S.C. 1788; Pub. L. 95–202, 91 Stat. 1433)

(b) Collegiate professional and on-the-job training courses shall be measured as stated in this table. Clock hours and class sessions mentioned in this table mean clock hours and class sessions per week.

Courses

Kind of school	Kind of course	Full time	¾ time	½ time	Less than ½ more than ¼ time	¼ time or less
Collegiate undergraduate.	Standard collegiate courses including cooperative and external degree programs [1].	14 semester hours or equivalent [2].	10 through 13 semester hours or equivalent.	7 through 9 semester hours or equivalent.	4 through 6 semester hours or equivalent.	1 through 3 semester hours or equivalent.
Collegiate graduate.	Standard collegiate graduate courses including law and external degree programs [1].	14 semester hours or equivalent or as certified by a responsible official of the school [2].	10 through 13 semester hours or as certified by a responsible official of the school.	7 through 9 semester hours or as certified by a responsible official of the school.	4 through 6 semester hours or as certified by a responsible official of the school.	1 through 3 semester hours or as certified by a responsible official of the school.
Professional nonaccredited.	Law only [3].....	12 class sessions per week.	9 through 11 class sessions per week.	6 through 8 class sessions per week.	4 through 5 class sessions per week.	1 through 3 class sessions per week.
Professional accredited and equivalent.	Internships and residencies: Medical, Dental Osteopathic.	As established by accrediting association.		Full time only		
.....	Nursing, X-ray, medical technology, medical records librarian, physical therapy [4].	18 clock hours or 14 semester hours, as appropriate.	13 through 17 clock hours or 10 through 13 semester hours, as appropriate.	9 through 12 clock hours or 7 through 9 semester hours, as appropriate.	5 through 8 clock hours or 4 through 6 semester hours, as appropriate.	1 through 4 clock hours or less than 4 semester hours, as appropriate.
Training establishment.	Apprentice or other on-the-job [5].	Standard workweek.		Full time only		
Agricultural.....	Farm cooperative [6].	10 clock hours net instruction [7].	7 clock hours net instruction.	5 clock hours net instruction.	No provision	

[1] Independent study programs will be measured as provided in § 21.4280. Cooperative courses may be measured on full-time basis only.

[2] Where the institution certifies that all undergraduate students enrolled for a minimum of 12 or 13 semester hours or the equivalent are (1) charged full-time tuition, or (2) considered full-time for other administrative purposes, such minimum hours will establish the criteria for full-time measurement.

When 12 hours is properly certified as full-time, 9 through 11 hours will be measured as ¾ time, 6 through 8 hours will be measured as ½ time, 4 through 5 hours will be measured as less than ½ time and more than ¼ time, and 1 through 3 hours will be measured as ¼ time or less. All other undergraduate courses will be measured as indicated in the table for undergraduate or professional courses as appropriate, but where 13 credit hours or the equivalent is certified as full time, ¾ time will be 10 through 12 hours. When in accordance with § 21.4273(a), a responsible official of a school certifies that a lesser number of hours constitute full time, ¾ time, ½ time, less than ½ time and more than ¼ time, or ⅛ time, the certification will be accepted for measurement purposes.

Upon request of a beneficiary, an increase in rates warranted under this criteria may be authorized to him or her effective March 26, 1970, if he or she was enrolled on or after March 26, 1970. The request of the beneficiary will not be required for other payments under this criteria.

To meet criteria for full-time measurement under 38 U.S.C. chapters 34 and 35 in standard collegiate courses which include required noncredit deficiency courses, in the absence of a certification under § 21.4272(f) the noncredit deficiency courses will be converted on the basis of the applicable measurement criteria, that is, 18, 25 or 30 clock hours, 4 "Carnegie Units", or 12, 13 or 14 (as appropriate) semester hours equal full time. The credit-hours equivalent of such noncredit courses may constitute any portion of the required hours for full-time measurement.

[3] Class sessions measured on basis of not less than 50 minutes of classroom instruction. Supervised study periods, class breaks and rest periods are excluded.

[4] Supervised study must be excluded.

[5] Full-time training will consist of the number of hours which constitute the standard workweek of the training establishment, but not less than 30 hours unless a lesser number of hours is established as the standard workweek for the particular establishment through bona fide collective bargaining between employers and employees.

[6] In measuring net instruction there will be included customary intervals not to exceed 10 minutes between classes. Shop practice and rest periods are excluded. Supervised instruction periods in school's shops in farm cooperative programs and the time involved in field trips and individual and group instruction may be included in computing the clock hour requirements.

[7] For full-time training the 440 clock hours a year may be prescheduled to provide not less than 80 clock hours in any 3-month period.

(38 U.S.C. 1682, 1732, 1777, 1787, 1788; Pub. L. 95-202, 91 Stat. 1433)

34. Section 21.4277 is revised to read as follows:

§ 21.4277 Discontinuance; unsatisfactory progress and conduct.

(a) *Satisfactory pursuit of program.* Entitlement to benefits for a program of education is subject to the requirement that the veteran or eligible person, having commenced the pursuit of such program, continues to maintain satisfactory progress. If the veteran or eligible person does not maintain satisfactory progress, educational benefits will be discontinued by the Veterans Administration. Progress is unsatisfactory if:

(1) The veteran or eligible person does not satisfactorily progress according to the regularly prescribed standards and practices of the institution he or she is attending, or

(2) The veteran or eligible person is not progressing at a rate that will permit him or her to graduate within the approved length of the course based on the training time as certified to the Veterans Administration by the educational institution plus an additional length of time as stated in this paragraph, notwithstanding the school's policy, unless mitigating circumstances are found.

(i) If a school is organized on a term basis with credit-hour measurement it will report unsatisfactory progress, if the student accumulates unsatisfactory punitive grades in the equivalent of more credit hours than the minimum full-time training load, for Veterans Administration purposes (normally 12 or 14 hours).

(ii) If a school is organized on a term basis without credit-hour measurement it will report unsatisfactory progress, if the student will be required to extend the equivalent of more than one term based on the minimum full-time requirement.

(iii) If a school is not organized on a term basis, for Veterans Administration purposes, it will report unsatisfactory progress when it determines that the student will require an extension beyond 10 percent of the approved length of the course to complete the program.

(b) *Mitigating circumstances.* Mitigating circumstances include, but are not limited to:

(1) Continuous pursuit of the program of training is precluded because of illness of the veteran or eligible person or because of illness or death in his or her immediate family.

(2) Unavoidable conditions arise in connection with the veteran's or eligible person's employment which preclude continuous pursuit of the program. Such conditions are a geographical transfer or change in the hours or conditions of employment.

(3) Immediate family or financial obligations beyond the control of the veteran or eligible person require him or her to suspend pursuit of the program of training to obtain employment which precludes the continuous pursuit of the training.

(4) The course is being pursued by a student under subchapter V of chapter 34 or section 1733 of chapter 35, title 38, United States Code, who fails to satisfactorily complete a course without fault.

(5) The course is discontinued by the school.

(6) The veteran is required to perform unanticipated active duty military service, including active duty for training.

(c) *Suspension.* (1) After November 22, 1977 the Director of a Veterans Administration field station of jurisdiction may temporarily suspend the requirements of paragraphs (a)(2) and (d) of this section as they apply to any main campus branch or extension of an educational institution that is fully accredited by a recognized regional or national accrediting agency. Any educational institution which wants a suspension must make specific application to the Director through the State approving agency. The beginning date of the suspension shall be set by the Director on the basis of the evidence of record, but in no event shall it be earlier than November 23, 1977. A suspension may be terminated by the Director of the Veterans Administration field station upon written notice to the Chief Officer of the educational institution. A suspension must be terminated whenever a school no longer meets the criteria set forth in paragraph (c)(1) (i), (ii) and (iii) of this section. No suspension may be granted unless:

(i) The educational institution has submitted a copy of the catalog for the appropriate main campus, branch or extension to the Veterans Administration field station through the State approving agency.

(ii) The educational institution certifies that the policies pertaining to standards of progress or conduct contained in the catalog or bulletin pursuant to § 21.4253(d)(1) are being enforced.

(iii) The catalog or bulletin states these policies fully and clearly. This requirement will be satisfied when the policy and regulations relative to standards of progress and conduct:

(*a*) Are stated without omission.

(b) Include a statement describing grades or credit assigned for completed courses.

(c) Specify the points during the course of study which will be designated for evaluation of student progress. Schools operating on a term basis must make such an evaluation at the end of each term, quarter or semester.

(d) Specify as satisfactory a minimum grade average or credit level for each evaluation. These levels must be logically related to the minimum graduation requirements.

(e) Require that at each evaluation point the credit level or grade average maintained by the veteran or eligible person must be compared with the standard.

(f) State the action to be taken by the school when the standards are not met. This must include any provisions for interrupting the student's enrollment, provisions for probationary periods, if any, and conditions for the student's reentrance.

(g) State the progress records kept by the institution and furnished the student.

(h) State the conditions for dismissal for unsatisfactory conduct, and the conditions for reentrance in the school after such a dismissal. (38 U.S.C. 1674, 1724; Pub. L. 95–202, 91 Stat. 1433)

(2) An educational institution, which disagrees with a decision made under this paragraph by a Director of a Veterans Administration field station, has 1 year from the date of the letter notifying the school of the decision to request that the decision be reviewed. The request must be submitted in writing to the Director of the Veterans Administration field station where the decision was made. The Director, Education and Rehabilitation Service shall review the evidence of record and any other pertinent evidence the school may wish to submit. The Director, Education and Rehabilitation Service has the authority either to affirm or reverse a decision of the Director of a Veterans Administration field station. (38 U.S.C. 1674, 1724; Pub. L. 95–202, 91 Stat. 1433)

(d) *Satisfactory conduct.* Entitlement to a program of education is subject to the requirement that the veteran or eligible person, having commenced the pursuit of such program, continues to maintain satisfactory conduct in accordance with the regularly prescribed standards and practices of the institution in which he or she is enrolled. If the veteran or eligible person will no longer be retained as a student or will not be readmitted as a student by the institution in which he or she is enrolled, educational benefits will be discontinued, unless further development establishes that the action of the school is of a retaliatory nature. See § 21.4253. (38 U.S.C. 1674 and 1724)

35. In § 21.4279, paragraph (b)(1) is revised to read as follows:

§ 21.4279 Combination correspondence-residence program.

* * * * *

(b) The rate of educational assistance allowance payable shall be computed as set forth in §§ 21.4270 and 21.4136(a).

(1) The charges for that portion of the program pursued exclusively by correspondence will be in accordance with § 21.4136(a) with 1 month of entitlement charged for each $311 of cost reimbursed. (38 U.S.C. 1786(a); Pub. L. 95–202, 91 Stat. 1433)

* * * * *

Subpart F—Educational Benefits

36. In § 21.4500, paragraphs (d), (e)(4), (f) and (h) are revised and paragraphs (e)(6) and (i) are added so that the added and revised material reads as follows:

§ 21.4500 Definitions.

* * * * *

(d) *Loan period.* (1) Loans made for enrollment periods which begin before August 1, 1978 are normally to be made for a quarter, semester, term, academic year or academic year plus a summer term. Loans made for enrollment periods which begin after July 31, 1978, normally are to be made for a quarter, semester, summer term or two consecutive quarters.

(2) A loan made to a veteran or eligible person attending a course not organized on a term, quarter or semester basis will be granted for a term of not more than 12 months provided the course requires at least 6 months at the full-time rate to complete, and the course begins before August 1, 1978. If such a course begins after July 31, 1978, a loan will be granted for a period of not more than 6 months at a time.

(i) The Director of the Veterans Administration field station of jurisdiction may waive the requirement

that such a course must take at least 6 months to complete. Such a waiver of the length of the course shall be granted by the Director only if a school requests one for a course and the Director finds that:

(a) During the previous 2 years at least 75 percent of the students enrolled in the course completed it.

(b) During the previous 2 years at least 75 percent of the persons completing the course found employment in the occupational category for which the course is designed to provide training.

(c) The default rate on all Veterans Administration education loans ever made to students at the educational institution does not exceed 5 percent or 5 cases, whichever is greater.

(d) The default rate on all loans ever made to students at the educational institution pursuant to loan programs administered by the Department of Health, Education, and Welfare does not exceed 5 percent or 5 cases, whichever is greater.

(e) The course is at least 3 months long.

(f) The course is approved for full-time attendance only.

(g) No more than 35 percent of the students attending the course are receiving educational assistance from the Veterans Administration.

(h) The Field Director for the region in which the Veterans Administration field station is located concurs in the waiver.

(ii) If a school disagrees with a decision of a Director of a Veterans Administration field station, it may, within 1 year from the date of the letter from the Director informing the school of the decision, request that the decision be reviewed by the Director, Education and Rehabilitation Service. The Director of the Veterans Administration field station shall forward all requests to the Director, Education and Rehabilitation Service. He or she shall consider all evidence submitted by the school. He or she has the authority to affirm or reverse a decision of a Veterans Administration field station, but he or she shall not grant a waiver if the requirements of paragraph (d)(2)(i) of this section are not met.

(iii) A waiver will remain in effect until the date on which the course fails to meet one of the requirements of paragraph (d)(2)(i) of this section. A school which has received a waiver for a course must notify the Director of the Veterans Administration field station of jurisdiction within 30 days of the date on which one of those requirements is not met. (38 U.S.C. 1798(c); Pub. L. 95–202, 91 Stat. 1433)

(e) *Total amount of financial resources.* This term means the total of the following:

* * * * *

(4) For a loan period which begins before August 1, 1978, educational assistance received or receivable for the loan period by the veteran or eligible person under section 1631, 1661 or subchapter II of chapter 35, title 38, United States Code, exclusive of an education loan. For a loan period which begins after July 31, 1978, educational assistance received or receivable for the loan period by the veteran or other eligible person under section 1631, 1661, or subchapter II of chapter 35, title 38, United States Code, which applies solely to the veteran or eligible person. This amount shall be exclusive of an education loan. (38 U.S.C. 1798(b))

* * * * *

(6) Veterans Administration work-study allowance received or receivable by the veteran under section 1685, title 38, United States Code, during loan periods which begin after July 31, 1978. (38 U.S.C. 1798(b))

(f) *Actual cost of attendance.* (1) For loan periods which begin prior to August 1, 1978, this term means the actual charge per student for tuition, fees, room and board (or expenses related to commuting a reasonable distance), books, and an allowance for such other expenses as are reasonably related to attendance at the institution at which the veteran or other eligible person is enrolled.

(2) For loan periods which begin after July 31, 1978, this term means the actual per student charges for tuition, fees and books, an allowance for commuting (this allowance will be based on 12 cents per mile for distances which shall not exceed normal commuting distance), an allowance for other such expenses as are reasonably related to attendance at the institution at which the veteran or other eligible person is enrolled, and a room and board allowance. The room and board allowance shall be determined as follows:

(i) If the educational institution actually provides the veteran or eligible person with room and board, the allowance shall equal the actual charges to the veteran or eligible person for room and board.

(ii) If the educational institution provides some students with room and board, but does not provide room and board for the veteran or eligible person, the room and board allowance shall equal either the actual expenses incurred by the veteran or eligible person for room and board, or the amount for room and board which the educational institution would have charged the veteran or eligible person, had the educational institution provided him or her with room and board, whichever is the lesser.

(iii) If the educational institution does not provide any students with room and board, the room and board allowance shall equal either the actual expenses incurred by the veteran or eligible person for room and board or the amount the veteran or eligible person would have been charged for room and board had he or she been provided room and board by the nearest State college or State university that provides room and board. (38 U.S.C. 1798(b))

* * * * *

(h) *Annual adjusted effective income.* (1) For loan periods beginning before August 1, 1978, this income shall be considered to be the net taxable income less the Federal income tax paid or payable of the veteran or other eligible person. It is not limited to such income which may be available for use by the veteran or eligible person for education needs. The amount available for education needs is to be determined in accordance with § 21.4503.

(2) For loan periods beginning after July 31, 1978, this income shall include:

(i) Nontaxable income for the student only for the current tax year in which the application for the education loan is received by the Veterans Administration. This includes income from sources such as Veterans Administration compensation and pension, disability retirement, unemployment compensation, welfare payments, Social Security benefits, etc.

(ii) Adjusted gross income (wages, salary, dividends, interest, rental, business, etc.) for the student only for the current tax year in which the application for the education loan is received by the Veterans Administration, less:

(*a*) Authorized deductions for exemptions;

(*b*) Itemized or standard deduction, whichever is greater;

(*c*) Mandatory withholdings such as Federal and State income taxes, Social Security taxes, etc. (38 U.S.C. 1798(b))

(i) *School term.* This phrase means:

(1) In the case of an institution of higher learning operating on a quarter system, three consecutive quarters within an ordinary school year;

(2) In the case of an institution of higher learning operating on a semester system, two consecutive semesters within an ordinary school year; or

(3) In the case of an educational institution not an institution of higher learning or in the case of an institution

of higher learning not operating on a quarter or semester system, a period of 9 to 11 months provided:

(i) The program of education is divided into segments, and

(ii) At least one segment is completed prior to or during the 9 to 11-month period. (38 U.S.C. 1682A(e); Pub. L. 95–202; 91 Stat. 1433)

37. Section 21.4501 is revised to read as follows:

§ 21.4501 Eligibility.

(a) *General.* The criteria for determining an eligible veteran's or other eligible person's eligibility for an education loan depends upon whether or not the eligible veteran's or eligible person's delimiting period as determined by §§ 21.1042, 21.1043, 21.3041 or 21.3046 has expired. Any eligible veteran or eligible person shall be entitled to an education loan if he or she meets the criteria of this paragraph as well as the criteria of either paragraph (b) or (c) of this section as appropriate. The eligible veteran or eligible person must:

(1) Have financial resources that may be reasonably expected to be expended for education needs which are insufficient to meet the expected actual cost of attendance; and

(2) Execute a promissory note payable to the Veterans Administration, as provided by § 21.4504.

(b) *Additional criteria for eligible veterans and eligible persons eligible to receive educational assistance allowance.* An education loan shall be granted to an eligible veteran or eligible person whose delimiting period as determined by §§ 21.1042, 21.1043, 21.3041 or 21.3046 has not expired if the eligible veteran or eligible person meets the eligibility criteria found in paragraph (a) of this section and if the eligible veteran or eligible person:

(1) At the time the loan is authorized, is in attendance at an educational institution on at least a half-time basis and

(i) Is enrolled in a course leading to a standard college degree, or

(ii) Is enrolled in a course, the completion of which requires 6 months or longer, leading to an identified and predetermined professional or vocational objective; unless the Director of the Veterans Administration field station of jurisdiction waives these requirements, in whole or in part, upon determination that to do so is in the interest of the veteran or eligible person and the Federal Government; and

(2) Is in receipt of educational assistance allowance under section 1661 or subchapter II of chapter 35, title 38, United States Code.

(c) *Additional criteria for eligible veterans, spouses and surviving spouses not eligible to receive educational assistance allowance.* (1) An education loan may be granted to an eligible veteran, spouse or surviving spouse whose delimiting period as determined by §§ 21.1042, 21.1043 or 21.3046 (a), (b) or (d) has expired.

(2) A loan shall be granted if the eligible veteran, spouse or surviving spouse meets the eligibility criteria found in paragraph (a) of this section and if he or she:

(i) Has unused entitlement provided under section 1661 or 1711, title 38, United States Code, and

(ii) During the term, quarter or semester for which the loan is granted, is enrolled on a full-time basis in pursuit of the approved program of education in which he or she was enrolled on the date his or her eligibility expired under §§ 21.1042, 21.1043 or 21.3046(a), (b) or (d) and

(iii) Was enrolled in a program of education on a full-time basis:

(a) On the date his or her period of eligibility expired under §§ 21.1042, 21.1043 or 21.3046(a), (b) or (d), or

(b) On the last date of the ordinary term, semester or quarter preceding the date his or her eligibility expired under §§ 21.1042, 21.1043 or 21.3046(a), (b) or (d), if the delimiting date fell during a school break or summer term.

(3) The period for which a loan may be granted shall not extend beyond the earliest of the following dates:

(i) November 23, 1979, or 2 years after the expiration of the period of eligibility as determined by §§ 21.1042, 21.1043 or 21.3046(a), (b) or (d), whichever is later or

(ii) The date on which the entitlement of the eligible veteran, spouse or surviving spouse is exhausted, or

(iii) The date on which the eligible veteran, spouse or surviving spouse completes the approved program of education which he or she was pursuing on the date the delimiting period determined by §§ 21.1042, 21.1043 or 21.3046(a), (b) or (d) expired. (38 U.S.C. 1662, 1737, 1798; Pub. L. 95–202, 91 Stat. 1433)

(d) *Exclusions.* No veteran or other eligible person shall be authorized an education loan who:

(1) Is pursuing a program of correspondence, flight, apprenticeship, or other on-job or Predischarge Education Program training, or

(2) Has defaulted on a previous education loan and there is a remaining unliquidated payment due the Veterans Administration. (38 U.S.C. 1798(c))

38. In § 21.4502, paragraph (b)(1) and (4) is revised, paragraph (b)(6) is revoked, and paragraph (c) is added so that the added and revised material reads as follows:

§ 21.4502 Applications.

* * * * *

(b) *Information.* The application shall provide the Veterans Administration with the following information and such other information as may be reasonable upon specific request:

(1) For loan periods beginning before August 1, 1978, a statement of the amount of the net income of the veteran or other eligible person, less the Federal income tax paid or payable thereon, as reported or expected to be reported on the Federal income tax return of each such individual for the current tax year in which the application for the education loan is received by the Veterans Administration. For loan periods beginning after July 31, 1978, a statement of nontaxable income for the student for the current tax year in which the application for the education loan is received by the Veterans Administration; as well as a statement of adjusted gross income for the student for the current tax year in which the application for an education loan is received by the Veterans Administration less authorized deductions for exemptions, itemized or standard deduction, whichever is greater, and mandatory withholdings such as Federal and State income taxes, Social Security taxes, etc. (38 U.S.C. 1798(b))

* * * * *

(4) The amount of reasonably anticipated expenses for room and board to be expended by the veteran or other eligible person during the period for which the loan is sought, including a reasonable amount not to exceed 12 cents per mile for commuting normal distances to classes if the student does not reside on campus. Applications for loans covering loan periods which begin after July 31, 1978 may also provide the Veterans Administration with a statement of the amount of charges for room and board which the school would have made to the veteran or eligible person had the school provided the veteran or eligible person room and board. If the school does not provide room and board, the application may provide the Veterans Administration with a statement of the charges for room and board which the veteran or eligible person would have received had he or she been provided room and board at the State college or State university which provides room and board. (38 U.S.C. 1798(b))

* * * * *

(6) [Revoked]

(c) *Assignment.* At the time of application the veteran, spouse or surviving spouse shall assign to the Veterans Administration (for deposit in the Veterans' Administration Education Loan Fund established under 38 U.S.C. 1799) the amount of any accelerated payment of educational assistance allowance to which he or she may become entitled, including any matching contributions of a State or local government unit made pursuant to 38 U.S.C. 1682A(b)(8), in connection with the school term for which the loan is granted. (38 U.S.C. 1798(f); Pub. L. 95–202, 91 Stat. 1433)

39. In § 21.4503, paragraph (b)(2), (3) and (4) is revised to read as follows:

§ 21.4503 Determination of loan amount.

* * * * *

(b) *Amount.* A loan shall be authorized in the amout of the excess of cost over available resources as determined in paragraph (a) of this section subject to the following limitations:

* * * * *

(2) The aggregate of the amounts any veteran or other eligible person may borrow for an education loan may not exceed the amount obtained by multiplying $311 times the number of months of educational assistance allowance to which the veteran or other eligible person is entitled or would be entitled were it not for the expiration of his or her delimiting period under section 1661 or subchapter II of chapter 35, title 38, United States Code, on the date that training commences during the period for which the loan is sought, but in no event more than $2,500 in any one academic year. (38 U.S.C. 1798(b); Pub. L. 95–202, 91 Stat. 1433)

(3) If a student is enrolled in a course organized on a term, quarter or semester basis, no single loan shall be authorized at one time for a period which begins before August 1, 1978 that is longer than the academic year plus the summer term, quarter or semester at least 8 weeks in length or for a period which begins after July 31, 1978 that is longer than two consecutive quarters. If a student is enrolled in a course not organized on a term, quarter or semester basis, no single loan shall be authorized at one time for a period which begins before August 1, 1978 that is longer than 12 months or for a period which begins after July 31, 1978 that is longer than 6 months. (38 U.S.C. 1798)

(4) The following maximum amounts shall be paid on the loan at the beginning of the term:

(i) $2,500 for an academic year which begins before August 1, 1978.

(ii) $3,330 for an academic year and following summer term which begin before August 1, 1978.

(iii) $1,660 for a quarter and following summer term which begin before August 1, 1978.

(iv) $2,080 for a semester and following summer term which begin before August 1, 1978.

(v) $1,250 for any semester.

(vi) $830 for any term of 8 weeks or more leading to a standard college degree which is not part of the normal academic year or for a quarter.

(vii) $1,660 for two consecutive quarters which begin after July 31, 1978.

(viii) $270 per month of enrollment for a course not leading to a standard college degree if less than 6 months in length.

(ix) $1,660 for a course not leading to a standard college degree 6 through 8 months in length provided the loan period begins before August 1, 1978.

(x) $1,660 for a 6-month loan period based on a course not leading to a standard college degree which is 6 or more months in length. Such a loan period must begin after July 31, 1978.

(xi) $270 per month for a loan period of less than 6 months based on a course not leading to a standard college degree which is 6 or more months in length. Such a loan period must begin after July 31, 1978.

(xii) $2,500 for a course not leading to a standard college degree 9 through 11 months in length provided that the loan period begins before August 1, 1978.

(xiii) $3,330 for a course not leading to a standard college degree 12 months in length provided that the loan period begins before August 1, 1978. (38 U.S.C. 1798(b); Pub. L. 95–202, 91 Stat. 1433)

* * * * *

40. In § 21.4504, paragraph (a)(4) is revised to read as follows:

§ 21.4504 Promissory note.

(a) *General.* The agreement by the Veterans Administration to loan money pursuant to section 1798, title 38, United States Code, to any eligible veteran or eligible person shall be in the form of a promissory note which shall include.

* * * * *

(4) A provision for prepayment of all or part of the loan, without penalty, at the option of the borrower. (38 U.S.C. 1798)

* * * * *

41. A new § 21.4505 is added (the former § 21.4505 is revised and redesignated § 21.4507) to read as follows:

§ 21.4505 Check delivery.

(a) *General.* Education loans by the Veterans Administration shall be made by a check payable to the veteran or eligible person and shall be mailed promptly to the educational institution in which the veteran or eligible person is enrolled for delivery by the educational institution.

(b) *Delivery and certification.* (1) The educational institution, electing to participate in this program, shall deliver an education loan check to the veteran or eligible person and shall certify the fact of delivery to the Veterans Administration immediately upon delivery. If the delivery is not made within 30 days after the institution receives the check, it shall return the check to the Veterans Administration.

(2) The Director of the Veterans Administration field station of jurisdiction may direct that education loan checks be sent directly to veterans and other eligible persons when:

(i) The educational institution demonstrates an inability to comply with these requirements; or

(ii) The educational institution fails to provide adequately for the safekeeping of the checks prior to the delivery to the student or return to the Veterans Administration; or

(iii) The educational institution elects not to participate in this program; or

(iv) There is compelling evidence that the institution is unable to discharge its responsibilities under this program. (38 U.S.C. 1798; Pub. L. 95–202, 91 Stat. 1433)

42. The former § 21.4506 is revoked and a new section is added to read as follows:

§ 21.4506 Education loan forgiveness through accelerated payment of educational assistance allowance.

(a) *General.* A veteran or eligible person may qualify for a reduction in the amount of an outstanding education loan obligation. The reduction will consist of an amount representing an offset against the veteran's or eligible person's entitlement and an equal matching amount paid by a State and/or local governmental unit. The offset against the veteran's or eligible person's entitlement is considered to be an accelerated payment of educational assistance allowance. If the veteran or eligible person received a loan for more than one school term, he or she may receive accelerated payment of educational assistance allowance for each.

(b) *Eligibility.* The veteran or eligible person shall be eligible for an accelerated payment of educational assistance allowance for any school term as defined in § 21.4500(i), when all of the following conditions are met:

(1) The veteran or eligible person:

(i) Was enrolled as a full-time student throughout the school term for which the particular education loan was granted, or

(ii) Was enrolled as a full-time student throughout one semester which began after January 1, 1978 and ended before August 1, 1978 and for which an education loan was granted, or

(iii) Was enrolled as a full-time student throughout two consecutive quarters which began after January 1, 1978 and ended before August 1, 1978 and for which an education loan was granted.

(2) The veteran or eligible person was entitled to an educational assistance allowance under either chapter 34 or chapter 35 during the school term for which the education loan was granted. This requirement will be met even though some or all payments may have been withheld.

(3) The student received an education loan from the Veterans Administration after January 1, 1978.

(4) The combined amount of tuition and fees of the educational institution in which the veteran or eligible person was enrolled:

(i) Exceeded $700 for the school term for which the education loan was granted;

(ii) Exceeded $450 for two consecutive quarters beginning after January 1, 1978 and ending August 1, 1978 for which the education loan was granted;

(iii) Exceeded $350 for one semester beginning after January 1, 1978 and ending before August 1, 1978 for which the education loan was granted.

(5) The educational institution in which the veteran or eligible person completed the program of education he or she was pursuing during the term for which he or she received the education loan certifies to the Veterans Administration that:

(i) The veteran or eligible person has satisfactorily completed that program of education and attained the predetermined and identified educational, professional, or vocational objective which the veteran or eligible person had been pursuing during the term he or she received the education loan, and

(ii) The educational institution has awarded the veteran or eligible person the appropriate educational degree, diploma or certificate signifying such attainment.

(6) The veteran or eligible person applies timely for accelerated payment as described in paragraph (c) of this section.

(7) The educational institution in which the veteran or eligible person was enrolled has certified that not more than 35 percent of the total number of students enrolled in the same school term as the one for which the veteran or eligible person received the education loan were receiving educational assistance from the Veterans Administration. This requirement must be met for each semester or quarter within the school term.

(8) A State or local governmental unit has made a matching payment to the Veterans Administration Education Loan Fund pursuant to a program meeting the criteria of paragraph (d) of this section.

(c) *Time limits.* An accelerated payment of educational assistance may be made only if a formal claim for it is received by the Veterans Administration within 180 days of the later of the following two dates:

(1) The date on which the degree, diploma, or certificate described in paragraph (b)(5) of this section was awarded, or

(2) The date on which the State or local governmental unit or jurisdiction established a program as required in paragraph (d) of this section. If more than one such matching payment program is established which may apply to the veteran or eligible person, accelerated payment will be based only on those programs for which a timely application was received.

(d) *State or local participation.* A State or local governmental unit electing to participate in the accelerated payment program must establish a program to do so. Such a program:

(1) Must be established prior to January 1, 1983.

(2) Must pertain only to veterans and eligible persons who received the education loan while enrolled in an educational institution located within the State or area of local governmental jurisdiction that is establishing the program.

(3) Must provide for payments on behalf of the veteran or eligible person to be made to the Veterans Administration for deposit in the Veterans Administration Education Loan Fund. Such payments may match the maximum accelerated payment as computed in paragrah (e) of this section or a lesser amount.

(4) May be limited to veterans and eligible persons who are bona fide residents of the State or local governmental unit establishing the program.

(e) *Computation of accelerated payment.* The amount of accelerated payment for a term shall equal whichever of the following amounts is the least:

(1) The amount equal to the educational assistance allowance actually awarded to the veteran or the eligible person for the school term for which the educational loan was granted;

(2) An amount equal to 33⅓ percent of the amount by which the tuition and fees charged to the veteran or eligible person exceeds $700 for the school term for which the educational loan was granted;

(3) An amount equal to 33⅓ percent of the amount by which the tuition and fees charged to the veteran or eligible person exceeds $450 for two consecutive quarters beginning after January 1, 1978 and ending before August 1, 1978 for which an education loan was granted;

(4) An amount equal to 33⅓ percent of the amount by which tuition and fees charged to the veteran or eligible person exceeds $350 for one semester beginning after January 1, 1978 and ending before August 1, 1978 for which an education loan was granted.

(5) An amount equal to 33⅓ percent of the amount by which the outstanding education loan obligation (principal only) for a school term exceeded $700 on the date on which the application for an accelerated payment was received by the Veterans Administration;

(6) An amount equal to 33⅓ percent of the amount by which the outstanding education loan obligation (principal only) for two consecutive quarters beginning after January 1, 1978 and ending before August 1, 1978 exceeded $450 on the date on which the application for an accelerated payment was received by the Veterans Administration;

(7) An amount equal to 33⅓ percent of the amount by which the outstanding education loan obligation (principal only) for one semester beginning after January 1, 1978 and ending before August 1, 1978 exceeded $350 on the date on which the application for an accelerated payment was received by the Veterans Administration;

(8) The amount which the State and/or local governmental unit concerned pays to the Veterans Administration to match the accelerated payment;

(9) An amount equal to the number of months (and fractional months) of remaining entitlement multiplied by the full-time rate (with dependents) in effect for the last month of the program within the delimiting period. (38 U.S.C. 1682A, 1738; Pub. L. 95–202, 91 Stat. 1433)

(f) *Entitlement charges.* Charges against the period of entitlement of a veteran or eligible person who receives an accelerated payment shall be made as stated in § 21.1045(h). (38 U.S.C. 1682A, 1738; Pub. L. 95–202, 91 Stat. 1433)

43. Section 21.4507 (formerly § 21.4505) is added to read as follows:

§ 21.4507 Advertising.

(a) *General.* No educational institution or training establishment shall include a statement in advertisements or brochures intended to solicit students as to the availability of education loans from the Veterans Administration for eligible persons, except as provided in paragraph (b) of this section.

(b) *Form.* The statement which is permitted shall be as follows: "Certain eligible veterans and other eligible persons may qualify for a maximum educational loan of $2,500 per academic year from the Veterans Administration depending upon need. Applications for such loans shall be made to the Veterans Administration on forms prescribed by it." (38 U.S.C. 1796, 1798(b); Pub. L. 95-202, 91 Stat. 1433)

[FR Doc. 79-33740 Filed 10-30-79; 8:45 am]

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38 CFR Part 36

Increase in Maximum Permissible Interest Rate on New, Guaranteed, Insured, and Direct Loans

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is increasing the maximum interest rate on guaranteed, insured and direct loans for homes and condominiums. The interest rate is also increased on loans for the purchase of a mobile home lot or for site preparation over $2,500 on a lot previously acquired by a veteran. The maximum interest rate is increased because the former interest rate was not sufficiently competitive to induce private sector lenders to make VA guaranteed or insured loans without imposing substantial discounts. The increase in the interest rate will assure a continuing supply of funds for home mortgages; thereby allowing veterans to purchase a home with the assistance of a no downpayment VA loan.

EFFECTIVE DATE: October 26, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Loan Guaranty Service (264), Department of Veterans Benefits, Veterans Administration, 810 Vermont Ave., NW, Washington, D.C. 20420 (202-389-3042).

SUPPLEMENTARY INFORMATION: The Administrator is required to establish a maximum interest rate for loans guaranteed, insured or made by the Veterans Administration as he finds the mortgage money market demands. Recent market indicators—including the rate of discount charged by lenders on VA and Federal Housing Administration loans, the general increase in interest rates charged by lenders on conventional loans, and the results of the bi-weekly Federal National Mortgage Association auctions—have shown that the mortgage money market has become more restrictive. The maximum rate in effect for VA guaranteed loans has not been sufficiently competitive to induce private sector lenders to make VA guaranteed or insured loans without imposing substantial discounts. To assure a continuing supply of funds for home mortgages through the VA loan guaranty program it has been determined that an increase in the maximum permissible rate is necessary. The increased return to the lender will make VA loans competitive with other available investments and assure a continuing supply of funds for guaranteed and insured mortgages.

No change is being made in the maximum interest rate applicable to the mobile home loan program at this time except as to loans to purchase mobile home lots.

A loan to purchase a mobile home lot is similar to other real estate loans and for the purpose of assuring a continuing supply of funds and consistency with other real estate programs, the rate on these loans is also being increased.

The increase in the maximum interest rate is accomplished by amending §§ 36.4212(a) (2) and (3), 36.4311(a), and 36.4503(a), Title 38, Code of Federal Regulations. Compliance with the procedure for publication of proposed regulations prior to final adoption is waived because compliance would create an acute shortage of mortgage funds pending the final date which would necessarily be more than 30 days after publication in proposed form.

By direction of the Administrator:

Approved: October 23, 1979.

Rufus H. Wilson,

Deputy Administrator.

1. In § 36.4212, paragraph (a) (2) and (3) is revised to read as follows:

§ 36.4212 Interest rates and late charges.

(a) The interest rate charged the borrower on a loan guaranteed pursuant to 38 U.S.C. 1819 may not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration prior to October 26, 1979. (38 U.S.C. 1819(f))

* * * * *

(2) 11½ percent simple interest per annum for that portion of the loan which finances the purchase of a lot and the cost of necessary site preparation, if any.

(3) 11½ percent simple interest per annum on that portion of a loan which will finance the cost of the site preparation necessary to make a lot owned by the veteran acceptable as the site for the mobile home purchased with the proceeds of the loan except that a rate of not to exceed 13 percent may be charged if the portion of the loan to pay for the cost of such necessary site preparation does not exceed $2,500.

* * * * *

2. In § 36.4311, paragraph (a) is revised to read as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration which specify an interest rate in excess of 11½ per centum per annum, effective October 26, 1979, the interest rate on any loan guaranteed or insured wholly or in part on or after such date may not exceed 11½ per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

* * * * *

3. In § 36.4503, paragraph (a) is revised to read as follows:

§ 36.4503 Amount and amortization.

(a) The original principal amount of any loan made on of after October 1, 1978, shall not exceed an amount which bears the same ratio to $33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to $25,000. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Loans made by the Veterans Administration shall bear interest at the rate of 11½ percent per annum. (38 U.S.C. 1811(d)(1) and (2)(A))

* * * * *

(38 U.S.C. 1803(c)(1))

[FR Doc. 79-33687 Filed 10-30-79; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of the Secretary

41 CFR Parts 14.1 and 14.7

Indian Preference in Employment, Training and Subcontracting

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Final rule.

SUMMARY: This regulation amends the Interior Procurement Regulation by prescribing policies and procedures to implement Sec. 7(b) of the Indian Self-Determination and Education Assistance Act, Pub. L. 93–638. The regulation requires that preferences be given to Indians in employment, training, and subcontracting under certain categories of contracts.

EFFECTIVE DATE: November 31, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. William Opdyke, Procurement Analyst, Division of Procurement and Grants, Office of Administrative and Management Policy, Room 5528, Department of the Interior, Washington, D.C. 20240, telephone number (202) 343–5914.

SUPPLEMENTARY INFORMATION:

Proposed Regulation to Implement Sec. 7(b) of Public Law 93–638

The Department published its proposed regulations to implement Sec. 7(b) of Public Law 93–638 in the **Federal Register** on August 30, 1977 at 42 FR 43647. Public comments were invited by September 29, 1977. The date for comment was extended to October 31, 1977 as a result of numerous requests and a notice of the extension was published on October 25, 1977 in the **Federal Register** at 42 FR 56345.

Comments Received and Changes Made to Proposed Regulations

Within the time period allotted for comments, the Department received responses from seventeen organizations which recommended changes in the proposed regulations. The Department has given thorough consideration to each of the comments received and has adopted many of the changes recommended by commentors. These comments are discussed below.

1. Two recommendations were received for elimination of the $50,000 threshold established under § 14–1.354(b)(2) for use in the Indian Preference Program Clause. As noted in the supplementary information which accompanied the proposed regulations, the threshold amount was originally proposed at $100,000, but was reduced to $50,000 in response to comments received from tribal leaders. In view of the requirements imposed by the Indian Preference Program Clause, the revised threshold amount is considered to be the minimum level at which a contractor's preference program can be feasibly and practicably administered. Numerous comments were received which indicated that the $50,000 threshold was a satisfactory level since the contracting officer has the authority to use the clause in contracts under $50,000 where substantial subcontracting opportunities exist. Accordingly, the $50,000 threshold amount remains as proposed.

2. Numerous comments were received with respect to the proposed provision under § 14–1.354(c)(1) which would hold the contractor responsible for determining whether a person seeking employment is an Indian. Some commentors suggested that this responsibility be placed with the Bureau of Indian Affairs; others recommended that the Indian Tribe concerned assume this responsibility. In response to these recommendations, an additional provision has been added to the regulations which allows a contractor, in doubtful cases, to grant employment preference to an individual claiming preference as an Indian and to require the individual to obtain evidence from the Tribe concerned that the person is a member of that Tribe. This evidence must be furnished within a period of thirty days. This provision shifts the burden of proof from the contractor to the individual claiming employment preference in terms of providing evidence of Tribal enrollment.

3. Two comments were made regarding the definition used under § 14–1.354(c)(6) of the proposed regulations for the phrase "on or near an Indian reservation". One commentor believed that the definition would violate the New Mexico Human Rights Act since a contractor would be required to discriminate in favor of Indians. Section 703(i) of the Civil Rights Act of 1964 provides for contractors to engage in preferential treatment in the employment of Indians living on or near a reservation. The Department of Labor has adopted the policy under Section 703(i) as the applicable standard under Executive Order 11246 (Equal Opportunity in Federal Employment) for all contractors performing contracts on or near an Indian reservation and has published its implementating regulations in the **Federal Register** of January 18, 1977 (42 FR 3454–3467). These regulations define the word "near", as used in the phrase "on or near an Indian reservation" as "all that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day". This definition is consistent with that offered by the Equal Employment Opportunity Commission to the U.S. Commission on Civil Rights in an opinion letter dated July 18, 1973. In order to maintain consistency, the Department has adopted its definition from that used by the Department of Labor. To the extent Sec. 7(b) of Public Law 93–638 conflicts with a state statute, the Federal statute must prevail under the "federal supremacy" clause of the Constitution.

The other commentor on this issue believed that the definition descriminated against Indians living near the reservation who have no tribal affiliation with the Tribe on that reservation when tribal preference requirements of § 14–1.354(e) are imposed. Paragraph (a) of the clause under § 14–7.5002 requires the contractor to give preferences to Indians regardless of tribal affiliation. In order to insure that any tribal preferences imposed are consistent with the intent of Pub. L. 93–638, the regulations have been amended to require that tribal preferences must represent a further implementation of Sec. 7(b) and must be approved for legal sufficiency by the Department's Office of the Solicitor before incorporation into a solicitation.

4. Several recommendations were received for establishing a specific time period for the contracting officer to respond to complaints of noncompliance pursuant to § 14–1.345(d). Since the time necessary for proper resolution of complaints may vary with the complexity or nature of the complaint received, imposition of a specific time period could result in arbitrary resolution. Therefore, the final regulations have been changed to require a "prompt" investigation and resolution of complaints.

5. Several suggestions were received from commentors for changing the tribal preference requirements of § 14–1.354(e). Three Indian tribes recommended that employment preference requirements of a tribe be made mandatory for contracts performed on the reservation of that tribe. It is the Department's position that such supplemental requirements must remain optional to provide the procuring activity with the necessary flexibility to exercise good business judgement in order to meet varying circumstances and contracting requirements. Therefore, use of tribal preference requirements remains discretionary.

Another commentor objected that some tribal preference requirements may be inconsistent with the intent of Sec. 7(b) in that the preferences in employment should apply to all Indians, not just members of a particular Tribe. The Department fully supports the policy of Indian self-determination and tribal self-government and recognizes, in its regulations, the need to consider the employment preference program of tribes. In order to insure that such additional preference requirements are consistent with the intent of Sec. 7(b), the regulations under § 14–1.354(e) have

been changed to require that any additional requirements to be incorporated into the contract must represent a further implementation of Sec. 7(b) and must be approved for legal sufficiency by the Department's Office of the Solicitor.

However, this does not preclude tribes from independently developing and enforcing their own preference requirements as long as such requirements do not hinder the Government's right to award contracts and to administer their provisions.

One commentor stated that paragraph (a) of the "Indian Preference" clause under § 14–7.5002 conflicts with other laws which require workers in certain occupations to be a minimum age. Accordingly, the regulations have been changed to recognize existing laws and regulations which specify the age of a worker.

6. Comments were received from eight firms which perform cadastral surveys. The firms recommended that contracts for cadastral surveys be exempted from the proposed regulations since the nature and location of the work associated with the performance of such surveys did not lend itself to the training and employment preference requirements of the regulations. These firms also believed that imposition of preference requirements would likely result in a decrease in the quality of work performed at an increase in cost. Although the Department recognizes that some categories of labor under professional service type contracts may not be susceptible to the preference requirements of the regulations, it also believes that sufficient job opportunities remain for employment and training of Indians under these contracts without impacting the quality, efficiency, or cost of work performed. Therefore, no exemptions have been included in the final regulations.

7. Several commentors requested that the regulations be amended to cover grants and subgrants. The regulations being promulgated under this rule apply only to certain contracts and subcontracts issued by Department of the Interior procuring activities as prescribed under § 14–1.354(b). Implementation of Sec. 7(b) for grants and subgrants issued within the Department will be initiated under separate regulation.

Numerous comments were received which questioned the applicability of the proposed regulations to contracts awarded by the Department under Title I and II of Pub. L. 93–638.

The regulations under this rule do not apply to contracts awarded by the Secretary under Title I (25 CFR Part 271). The Bureau of Indian Affairs (BIA) has implemented section 102 of Title I by publication of regulations in the **Federal Register** on November 4, 1975 at 40 FR 51282–51300 and 51331–51345. These regulations are codified under 25 CFR Part 271 and 41 CFR 14H–70 and include implementation of section 7(b) under 25 CFR 271.44 and 41 CFR 14H–70.608 and 14H–70.610. Contracts awarded by BIA pursuant to section 102 (Title I) of Pub. L. 93–638 have been specifically excluded from the regulations adopted under this rule by § 14–1.354(b)(1).

One commentor asked if the provisions of section 102 of Pub. L. 93–638 applied to contractors which give preference to Indians under the proposed regulations. Sec. 102(a) applies only to contracts with Tribal organizations and such contracts have specifically been excluded.

As adopted, the regulations under this rule do not apply to contracts awarded by the Secretary under Title II of Pub. L. 93–638, and 25 CFR Parts 273, 274, and 277. However, pursuant to the revision requirements of 25 CFR 273.3, 274.5 and 277.4, the Bureau of Indian Affairs will consult with Indian Tribes and national and regional Indian organizations, to the extent practicable, in determining applicability of the regulations under this rule to Title II contracts. A future notice of proposed rulemaking will be published in the **Federal Register** which identifies revisions to be made to Title II procurement regulations under 25 CFR for implementation of regulations under this rule. Such action is necessary since the notice of proposed rulemaking which appeared in the **Federal Register** for this rule did not provide for revision to regulations under 25 CFR.

One comment was received on the extent to which the notification requirements of section 107(c) of Pub. L. 93–638 would be followed prior to the adoption of a final regulation for implementation of Sec. 7(b). Sec. 107(c) contains notification requirements which pertain only to rules and regulations which carry out the provisions of Title I of the law. Since section 7(b) is not contained under Title I, the requirements of section 107(c) are inapplicable. The regulations which implement Title I (Sec. 102), as published by the Bureau of Indian Affairs under 41 CFR 14H–70, were issued in accordance with the provisions of section 107(c).

10. Two comments were received in regard to the preparation of an Inflation Impact Statement pursuant to Executive Order 11821. The proposed regulations contained a statement under the supplementary information section which stated that the regulations were not a major rule requiring an Inflation Impact Statement. The commentors believed such a statement was erroneous. The proposed regulations were not considered to be a major rule since they did not meet the criteria for a major rule as prescribed by the Department in its implementation of OMB Circular A–107 and Executive Order 11821. Accordingly, an Inflation Impact Statement was not required.

11. A commentor believed that the proposed regulations would violate Title VII of Civil Rights Act of 1964 and the Civil Rights Act of 1866 because they would illegally authorize reverse discrimination against majority group members. The regulations implement the strict and specific requirements of Sec. 7(b) of Public Law 93–638 which was enacted into law by Congress after the above mentioned civil rights statutes. The Supreme Court, in *Morton* vs. *Mancari*, 94 S. Ct. 2474 (1974), has upheld the constitutionality of similar Indian preference statutes.

Section 703(i) of the Civil Rights Act of 1964 allows contractors to engage in preferential treatment in the employment of Indians living on or near a reservation. As discussed under item No. 3 above, the Department of Labor has issued regulations which exempt contractors from equal employment opportunity requirements when a preference in employment is extended to Indians living on or near a reservation in connection with work on or near such reservation. In adopting its final regulations, the Department of Labor stated that this permissive Indian preference was fully compatible with Pub. L. 93–638 and consistent with Section 703(i) of the Civil Rights Act of 1964. For the above reasons, the Department finds that its regulations do not violate either civil rights statute.

In addition to the changes described above made in response to the comments received, additional changes have been made as follows:

A. Under paragraph (a)(7) of the clause under § 14–7.5003, the record retention requirements have been changed in order to reflect any other retention periods which are required by any other clauses, applicable laws, or regulations.

B. General Accounting Office Decision B–193109, dated December 22, 1978, recommended that the Department should definitize the preference that Indian enterprises will receive because bidders cannot compete on an equal basis as required by law unless they know in advance the basis on which their bids will be evaluated. To accommodate this recommendation, paragraph (4) of the clause set forth

under § 14–7.5003 has been changed to clarify the method by which preference is to be given to Indian firms in the awarding of subcontracts, consistent with efficient performance of the contract.

Authorship Statement

The primary author of this regulation is Mr. William Opdyke, Office of Administrative and Management Policy, Office of the Secretary.

Determination of Significance

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.

Pursuant to the authority of the Secretary of the Interior contained in 5 U.S.C. 301, 41 CFR Chapter 14 is amended as stated below.

Dated: October 22, 1979.

William L. Kendig,

Assistant Secretary of the Interior.

1. The Table of Contents of Part 14–1 is amended by adding a new § 14–1.354 as follows:

Subpart 14–1.3—General Policies

Sec.

* * * * *

14–1.354 Indian preference in employment, training, and subcontracting opportunities.

2. Subpart 14–1.3 is amended by adding a new § 14–1.354 as follows:

Subpart 14–1.3—General Policies

* * * * *

§ 14–1.354 Indian preference in employment, training, and subcontracting opportunities.

(a) *Statutory requirements.* Section 7(b) of the Indian Self-Determination and Education Assistance Act (Sec. 7(b), Public Law 93–638; 88 Stat. 2205; 25 U.S.C. 450e(b)) requires that any contract or subcontract entered into pursuant to the Act; the Act of April 16, 1934 (48 Stat. 596; 25 U.S.C. 452), as amended, (the Johnson-O'Malley Act); or any other Act authorizing contracts with Indian organizations or for the benefit of Indians shall require that, to the greatest extent feasible: (1) Preferences and opportunities for training and employment in connection with the administration of such contracts shall be given to Indians; and, (2) Preference in the award of subcontracts in connection with the administration of such contracts shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (Sec. 3, Pub. L. 93–262; 88 Stat. 77; 25 U.S.C. 1452).

(b) *Applicability.* (1) The Indian Preference clause, set forth in § 14–7.5002 of this chapter, shall be included in all solicitations issued and contracts awarded by: (i) the Bureau of Indian Affairs, except solicitations issued and contracts awarded pursuant to Titles I and II of Pub. L. 93–638, (25 U.S.C. 450 et seq.; and 25 U.S.C. 455 et seq., respectively), (ii) a procuring activity other than the Bureau of Indian Affairs when the contract is entered into pursuant to an act specifically authorizing contracts with Indian organizations and, (iii) a procuring activity other than the Bureau of Indian Affairs where the work to be performed is specifically for the benefit of Indians and is in addition to any incidental benefits which might otherwise accrue to the general public.

(2) The Indian Preference Program clause, set forth in § 14–7.5003 of this chapter, shall be included in all solicitations issued and contracts awarded by a procuring activity which may exceed $50,000 which contain the clause required by paragraph (b)(1) of this § 14–1.354 and where, prior to solicitation, it is determined that the work under the contract will be performed in whole or in part on or near an Indian reservation(s). The Indian Preference Program clause may also be included in solicitations issued and contracts awarded by a procuring activity which may not exceed $50,000, but which contain the clause required by paragraph (b)(1) of this § 14–1.354 and which, in the opinion of the procuring activity, offer substantial opportunities for Indian employment, training and subcontracting.

(c) Definitions. For purposes of this § 14–1.354, the following definitions shall apply:

(1) "Indian" means a person who is a member of an Indian Tribe. If the contractor has reason to doubt that a person seeking employment preference is an Indian, the contractor shall grant the preference but shall require the individual within thirty (30) days to provide evidence from the Tribe concerned that the person is a member of that Tribe.

(2) "Indian Tribe" means an Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(3) "Indian organization" means the governing body of any Indian Tribe or entity established or recognized by such governing body in accordance with the Indian Financing Act of 1974 (88 Stat. 77; 25 U.S.C. 1451).

(4) "Indian-owned economic enterprise" means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit provided that such Indian ownership shall constitute not less than 51 percent of the enterprise.

(5) "Indian reservation" includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act, (85 Stat. 688; 43 U.S.C. 1601 et seq.).

(6) "On or near an Indian reservation" means on a reservation or the distance within that area surrounding an Indian reservation(s) that a person seeking employment could reasonably be expected to commute to and from in the course of a work day.

(d) Compliance enforcement. (1) The procuring activity concerned shall be responsible for conducting periodic reviews to insure contractor compliance with the requirements of the clauses set forth in §§ 14–7.5002 and 14–7.5003 of this chapter. These reviews may be conducted with the assistance of the Indian Tribe(s) concerned.

(2) Complaints of non-compliance with the requirements of the clauses set forth in §§ 14–7.5002 and 14–7.5003 of this chapter which are filed in writing with the procuring activity shall be promptly investigated and resolved by the contracting officer.

(e) Tribal preference requirements. (1) Where the work under a contract is to be performed on an Indian reservation, the procuring activity may supplement the clause set forth in § 14–7.5003 of this chapter by adding specific Indian preference requirements of the Tribe on whose reservation the work is to be performed. The supplemental requirements shall be jointly developed for the contract by the procuring activity and the Tribe. Supplemental preference requirements must represent a further implementation of the requirements of section 7(b) of Pub. L. 93–638 and must be approved by the Office of the Solicitor for legal sufficiency before being added to a solicitation and resultant contract. Any supplemental preference requirements to be added to the clause in § 14–7.5003 of this chapter shall be included in the solicitation and

clearly identified in order to ensure uniform understanding of the additional requirements by all prospective bidders or offerors.

(2) Nothing in these regulations shall be interpreted to preclude Tribes from independently developing and enforcing their own tribal preference requirements. Such independently developed tribal preference requirements shall not, except as provided in § 14–1.354(e)(1) above, become a requirement in contracts covered under this § 14–1.354 and must not hinder the Government's right to award contracts and to administer their provisions.

(3) The Table of Contents of Part 14–7 is amended by deleting and reserving § 14–7.650–6 and by adding new §§ 14–7.5002 and 14–7.5003 as follows:

Subpart 14–7.6—Fixed Price Construction Contracts

Sec.

* * * * *

14–7.650–6 [Reserved]

* * * * *

Subpart 14–7.50—Special Contract Clauses

* * * * *

14–7.5002 Indian preference.
14–7.5003 Indian preference programs.

4. Subpart 14–7.6 is amended by deleting and reserving § 14–7.650–6 as follows:

Subpart 14–7.6—Fixed Price Construction Contracts

* * * * *

§ 14–7.650 Additional Interior contract clauses.

* * * * *

§ 14–7.650–6 [Reserved]

* * * * *

5. Subpart 14–7.50 is amended by adding new §§ 14–7.5002 and 14–7.5003 as follows:

Subpart 14–7.50—Special Contract Clauses

* * * * *

§ 14–7.5002 Indian preference.

The following clause shall be used as prescribed in § 14–1.354(b)(1) of this chapter:

Indian Preference

(a) The Contractor agrees to give preferences to Indians who can perform the work required regardless of age (subject to existing laws and regulations), sex, religon, or tribal affiliation for training and employment opportunities under this contract and, to the extent feasible consistent with the efficient performance of this contract, training and employment preferences and opportunities shall be provided to Indians regardless of age (subject to existing laws and regulations), sex, religion, or tribal affiliation who are not fully qualified to perform under this contract. The Contractor also agrees to give preference to Indian organizations and Indian-owned economic enterprises in the awarding of any subcontracts consistent with the efficient performance of this contract. The Contractor shall maintain such records as are necessary to indicate compliance with this paragraph.

(b) In connection with the Indian employment preference requirements of this clause, the Contractor shall also provide opportunities for training incident to such employment. Such training shall include on-the-job, classroom, or apprenticeship training which is designed to increase the vocational effectiveness of an Indian employee.

(c) If the Contractor is unable to fill its training and employment needs after giving full consideration to Indians as required by this clause, those needs may be satisfied by selection of persons other than Indians in accordance with the clause of this contract entitled "Equal Opportunity."

(d) If no Indian organizations or Indian-owned economic enterprises are available for awarding of subcontracts in connection with the work performed under this contract, the Contractor agrees to comply with the provisions of this contract involving utilization of small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, or labor surplus area concerns.

(e) As used in this clause:

(1) "Indian" means a person who is a member of an Indian Tribe. If the Contractor has reason to doubt that a person seeking employment preference is an Indian, the Contractor shall grant the preference but shall require the individual within thirty (30) days to provide evidence from the Tribe concerned that the person is a member of that Tribe.

(2) "Indian Tribe" means an Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(3) "Indian organization" means the governing body of any Indian Tribe or entity established or recognized by such governing body in accordance with the Indian Financing Act of 1974 (88 Stat. 77; 25 U.S.C. 1451); and

(4) "Indian-owned economic enterprise" means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit provided that such Indian ownership shall constitute not less than 51 percent of the enterprise.

(f) The Contractor agrees to include the provisions of this clause including this paragraph (f) in each subcontract awarded under this contract.

(g) In the event of noncompliance with this clause, the Contractor's right to proceed may be terminated in whole or in part by the Contracting Officer and the work completed in a manner determined by the Contracting Officer to be in the best interests of the Government.

(End of clause)

§ 14–7.5003 Indian preference program.

The following clause shall be used as prescribed in § 14–1.354(b)(2) of this chapter:

Indian Preference Program

(a) In addition to the requirements of the clause of this contract entitled "Indian Preference," the Contractor agrees to establish and conduct an Indian preference program which will expand the opportunities for Indian organizations and Indian-owned economic enterprises to receive a preference in the awarding of subcontracts and which will expand opportunities for Indians to receive preference for training and employment in connection with the work to be performed under this contract. In this connection, the contractor shall:

(1) Designate a liaison officer who will (i) maintain liaison with the Government and the Tribe(s) on Indian preference matters; (ii) supervise compliance with the provisions of this clause; and (iii) administer the Contractor's Indian preference program.

(2) Advise its recruitment sources in writing and include a statement in all advertisements for employment that Indian applicants will be given preference in employment and training incident to such employment.

(3) Not less than twenty (20) calendar days prior to commencement of work under this contract, post a written notice, in the Tribal office of any reservations on which or near where the work under this contract is to be performed, which sets forth the Contractor's employment needs and related training opportunities. The notice shall include the approximate numbers and types of employees needed, the approximate dates of employment; the experience or special skills required for employment, if any; training opportunities available; and all other pertinent information necessary to advise prospective employees of any other employment requirements. The Contractor shall also request the Tribe(s) on or near whose reservation(s) the work is to be performed to provide assistance to the Contractor in filling its employment needs and training opportunities. The Contracting Officer will advise the Contractor of the name, location, and phone number of the Tribal officials to contact in regard to the posting of notices and requests for Tribal assistance.

(4) Establish and conduct a subcontracting program which gives preference to Indian organizations and Indian-owned economic enterprises as subcontractors and suppliers under this contract. Consistent with the efficient performance of this contract, the Contractor shall give public notice of existing subcontracting opportunities by soliciting bids or proposals only from Indian organizations or Indian-owned economic enterprises. The Contractor shall request assistance and information on Indian firms qualified as suppliers or subcontractors from the Tribe(s) on or near whose reservation(s) the work under the contract is to be performed. The Contracting Officer will advise the Contractor of the name, location, and phone number of the Tribal officials to be contacted in regard to the request for

assistance and information. Public notices and solicitations for existing subcontracting opportunities shall provide an equitable opportunity for Indian firms to submit bids or proposals by including (i) a clear description of the supplies or services required including quantities, specifications, and delivery schedules which facilitate the participation of Indian firms; (ii) a statement indicating that preference will be given to Indian organizations and Indian-owned economic enterprises in accordance with Section 7(b) of Public Law 93–638; (88 Stat. 2205; 25 U.S.C. 450e(b)); (iii) definitions for the terms "Indian organization" and "Indian-owned economic enterprise" as prescribed under the "Indian Preference" clause of this contract; (iv) a representation to be completed by the bidder or offeror that it is an Indian organization or Indian-owned economic enterprise; and (v) a closing date for receipt of bids or proposals which provides sufficient time for preparation and submission of a bid or proposal. If after soliciting bids from Indian organizations and Indian-owned economic enterprises, no responsive bid is received, the Contractor shall comply with the requirements of paragraph (d) of the "Indian Preference" clause of this contract. If one or more responsive bids are received, award shall be made to the low responsible bidder if the bid price is determined to be reasonable. If the low responsive bid is determined to be unreasonable as to price, the Contractor shall attempt to negotiate a reasonable price and award a subcontract. If a reasonable price cannot be agreed upon, the Contractor shall comply with the requirements of paragraph (d) of the "Indian Preference" clause of this contract.

(5) Maintain written records under this contract which indicate: (i) the names and addresses of all Indians seeking employment for each employment position available under this contract; (ii) the number and types of positions filled by (A) Indians and (B) non-Indians, and the name, address and position of each Indian employed under this contract; (iii) for those positions where there are both Indian and non-Indian applicants, and a non-Indian is selected for employment, the reason(s) why the Indian applicant was not selected; (iv) actions taken to give preference to Indian organizations and Indian-owned economic enterprises for subcontracting opportunities which exist under this contract; (v) reasons why preference was not given to Indian firms as subcontractors or suppliers for each requirement where it was determined by the Contractor that such preference would not be consistent with the efficient performance of the contract, and (vi) the names and addresses of all Indian organizations and Indian-owned economic enterprises (A) contacted, and (B) receiving subcontract awards under this contract.

(6) The Contractor shall submit to the Contracting Officer for approval a quarterly report which summarizes the Contractor's Indian preference program and indicates (i) the number and types of available positions filled and dollar amounts of all subcontracts awarded to (a) Indian organizations and Indian-owned economic enterprises and (b) all other firms.

(7) Records maintained pursuant to this clause will be kept available for review by the Government until expiration of one (1) year after final payment under this contract, or for such longer period as may be required by any other clause of this contract or by applicable law or regulation.

(b) For purposes of this clause, the following definitions of terms shall apply:

(1) The terms "Indian," "Indian Tribe," "Indian Organization," and "Indian-owned economic enterprise" are defined in the clause of this contract entitled "Indian Preference."

(2) "Indian reservation" includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act, (85 Stat. 688; 43 U.S.C. 1601 et seq.).

(3) "On or near an Indian Reservation" means on a reservation or reservations or within that area surrounding an Indian reservation(s) where a person seeking employment could reasonably be expected to commute to and from in the course of a work day.

(c) Nothing in the requirements of this clause shall be interpreted to preclude Indian Tribes from independently developing and enforcing their own Indian preference requirements. Such requirements must not hinder the Government's right to award contracts and to administer their provisions.

(d) The Contractor agrees to include the provisions of this clause including this paragraph (d) in each subcontract awarded under this contract and to notify the Contracting Officer of such subcontracts.

(e) In the event of noncompliance with this clause, the Contractor's right to proceed may be terminated in whole or in part by the Contracting Officer and the work completed in a manner determined by the Contracting Officer to be in the best interest of the Government.

[FR Doc. 79-33686 Filed 10-30-79; 8:45 am]

BILLING CODE 4310-10-M

GENERAL SERVICES ADMINISTRATION

Automated Data and Telecommunications Service

41 CFR Ch. 101

[FPMR Temp. Reg. F-492]

Federal Conversion Support Center; Appendix—Temporary Regulations

AGENCY: Automated Data and Telecommunications Service, General Services Administration.

ACTION: Temporary regulation.

SUMMARY: This regulation notifies agencies of the establishment of the Federal Conversion Support Center (FCSC) to provide ADP and telecommunications software conversion assistance and makes software conversion studies mandatory in specified circumstances. The lack of agency attention in some instances to the high cost of program conversion when replacing or augmenting ADP systems created the need for the FCSC. The intended effect is to ensure careful consideration of software conversion factors in ADP systems acquisitions.

DATES: Effective date: May 1, 1980. Expiration date: September 30, 1981. Comments due by: May 1, 1980.

ADDRESS: Comments should be addressed to: General Services Administration (CPEP), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: John F. Stewart, Procurement Policy and Regulations Branch, Policy and Evaluation Division (202–566–0834).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this regulation will not impose unnecessary burdens on the economy or on individuals and, therefore, is not significant for the purposes of Executive Order 12044.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter F to read as follows:

October 18, 1979.

Federal Property Management Regulations; Temporary Regulation F–492

To: Heads of Federal agencies
Subject: Federal Conversion Support Center

1. *Purpose.* This regulation notifies agencies of the establishment of the Federal Conversion Support Center (FCSC). The FCSC will specialize in ADP and telecommunications software conversion assistance, guidance, and support services. This regulation makes software conversion studies and evaluations mandatory under certain conditions. This regulation outlines procedures for agencies to obtain software conversion support services including FCSC evaluation of agency conversion studies.

2. *Effective date.* The provisions of this regulation become effective May 1, 1980. However, as the FCSC becomes operational, it may perform certain of its assigned functions earlier, on an agency request basis.

3. *Expiration date.* This regulation expires September 30, 1981.

4. *Applicability.* The provisions of this temporary regulation apply to all Federal agencies as defined in 41 CFR 101–35.2, Appendix A—Glossary of Terms.

5. *General.* The FCSC is established as the primary source for software conversion technology within the Federal Government. It is operated by GSA to provide Federal agencies with specialized expertise, techniques, and tools to conduct conversion studies and accomplish software conversions. It provides these services to Federal activities on a reimbursable basis.

6. *Definitions.*

a. The term "software conversion" means the transformation, without functional change, of operational computer programs or data elements to permit their use on a replacement or changed ADP or telecommunication system or a teleprocessing service.

b. The term "software conversion study" means an analysis of a conversion requirement which at a minimum includes the following information: (1) The problem definition, including an inventory of application programs and system components for both the current and conversion target system, a review of system complexity, and a description of the system operating environment; (2) the requirements specifications including projected schedules, functional performance, and system software and hardware requirements; and (3) the recommended approach to accomplish the conversion tasks, including analyses of alternative approaches and an economic and benefit analysis for each approach.

c. The term "software conversion evaluation report" means a document issued by the FCSC based upon its technical review of an agency-developed conversion study which includes information describing the evaluation of the validity of the conversion requirement and the approach proposed by the agency in solving that requirement.

7. *Federal Conversion Support Center services.* The FCSC provides reimbursable services to the Government in all phases of software conversion. These services include conversion feasibility studies; the review and evaluation of conversion studies submitted by agencies; planning, development, review, and evaluation of conversion requirements; technical and contractual assistance and advice; procurement of conversion services; contract administration; and participation in agency software conversions to the extent that resources permit. The FCSC will conduct software conversions on a limited basis in order to maintain its technical proficiency, to develop and perfect new techniques, and to assist in developing or modifying conversion policy and procedures.

8. *Agency mandatory requirements.*

a. A software conversion study shall be performed when any one of the following conditions exists:

(1) The estimated purchase price of the ADPE and software is expected to exceed $2,500,000 excluding the maintenance and support costs;

(2) The estimated systems life cost for ADP or telecommunication services is expected to exceed $2,500,000.

(3) The estimated conversion costs are expected to exceed $500,000.

(4) The source code to be converted is expected to exceed 300,000 lines; or

(5) The cost of conversion is to be used as the primary justification for a sole source or specific make or model procurement when the estimated value of the procurement exceeds $300,000.

b. An agency may elect to conduct its own software conversion study, or utilize contractual resources to accomplish the study, or request the FCSC to perform the study. Agency- or contractor-performed software conversion studies shall be sent to the FCSC for evaluation. The FCSC will provide an evaluation report to the agency.

c. The FCSC software conversion study or the agency-prepared study plus the FCSC evaluation report shall be submitted to GSA with either the agency procurement request (FPR 1–4.1104) or the GSA Form 2068, Request for ADP Services.

d. An agency requiring a software conversion study or an evaluation report shall address the request to: General Services Administration (CFS), Federal Conversion Support Center, Washington, DC 20405.

9. *Procedures to obtain conversion support services.*

a. An agency seeking conversion support services (other than the studies and evaluations covered in paragraph 8) should submit a GSA Form 2068 request to the appropriate regional GSA ADP Sharing Exchange in accordance with FPMR 101–36.203–1.

b. The sharing exchange will:

(1) Satisfy the conversion requirement through available Government resources, including the FCSC;

(2) Procure the necessary support for the agency by the use of existing GSA contracts or solicitation of commercial sources;

(3) Provide a delegation of procurement authority (DPA) to the agency; or

(4) Send requests that are estimated to equal or exceed the thresholds set forth in subparagraph 8(a) of this regulation to the FCSC.

10. *FCSC action concerning conversion support services.* The FCSC will respond to all requests forwarded to it by the sharing exchange within 20 workdays after receipt. Upon completion of its review of the requests, the FCSC will advise the agency and initiate action to:

a. Provide services from its own or other Government resources on a reimbursable basis;

b. Procure the necessary support from commercial sources on a reimbursable basis; or

c. Issue a delegation of procurement authority to the requesting agency. (To the extent necessary, the FCSC may assist the requesting agency by participating in the procurement of the required conversion services.)

11. *GSA reimbursement.* GSA will bill users for conversion support services provided by the FCSC and will reimburse the Automatic Data Processing Fund for all costs incurred in the FCSC operation.

12. *Comments.* Comments concerning this regulation should be forwarded to the General Services Administration (CPEP), Washington, DC 20405, before the effective date indicated in paragraph 2.

13. *Effect on other regulations.* This temporary regulation supplements 41 CFR Subchapter F (Parts 101–35, 36, and 37).

R. G. Freeman III,

Administrator of General Services.

[FR Doc. 79–33582 Filed 10–30–79; 8:45 am]

BILLING CODE 6820–25–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Ch. I

[Docket No. FEMA–1D]

Correction of Nomenclature Changes

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final Rule.

SUMMARY: On Thursday, May 31, 1979, and Friday, September 28, 1979, the Federal Emergency Management Agency published certain nomenclature changes in its regulations which were transferred to Title 44 from other titles of the Code of Federal Regulations. This document corrects certain errors in those documents and makes several other editorial corrections to the regulations.

EFFECTIVE DATE: September 28, 1979.

FOR FURTHER INFORMATION CONTACT: William L. Harding, Office of the General Counsel, FEMA (202–634–4113).

SUPPLEMENTARY INFORMATION: FEMA published, on September 28, 1979, at 44 FR 56171, *et seq.*, a document transferring to Title 44 Code of Federal Regulations and redesignating the regulations of the United States Fire Administration, and of the former Defense Civil Preparedness Agency and Federal Disaster Assistance Administration. Certain nomenclature changes in the regulations also were made to reflect the organizational changes which were brought about as the result of the transfer to FEMA of the functions of the aforementioned agencies by Reorganization Plan No. 3 of 1978, and Executive Orders 12127 and 12148. This document corrects certain omissions in and errors made in the September 28, 1979, document and as a consequence further changes the affected regulations. Further, a similar transfer and redesignation of the regulations of the Federal Insurance Administration was made in a **Federal Register** document published May 31, 1979, 44 FR 31176. This document corrects certain omissions and errors in the underlying regulations, which were redesignated by the matter published at 44 FR 31176.

Under the document entitled "Transfer and Redesignation of Federal Disaster Assistance Administration Regulation's", 44 FR 56172, add under "Nomenclature Changes" the following:

Administrator	Associate Director
FDAA	ODRR
Department	Federal Emergency Management Agency

Add the following to the document:

References to the Department of Housing and Urban Development are not changed to Federal Emergency Management Agency in § 205.45(e)(1).

§§ 205.47 and 205.51 [Amended]

References to the "Secretary" in §§ 205.47, 205.51 are changed to "Secretary of United States Department of Housing and Urban Development" instead of the Director.

§ 205.46 [Amended]

The reference to the Federal Disaster Assistance Administration in § 205.46 (c)(3) and (d) are changed to Federal Emergency Management Agency instead of Office of Disaster Response and Recovery.

§ 205.48 [Amended]

The reference to "HUD" in § 205.48(k) is changed to "FEMA". Under the document titled "Transfer and Redesignation of Defense Civil Preparedness Agency Regulation and Deletion of Regulations" are the following changes:

(1) Under Deletion of Regulations revise the first paragraph to read: "32 CFR Part 1800 'Organization, Activities and General Statement of Policy' is revoked except for the introductory language in § 1800.6 up to paragraph (a), and § 1800.6(c) and 6(d), and § 1800.20 which remain in effect and are renumbered in accordance with the renumbering herein."

(2) Add at the end of "Nomenclature Changes" the following:

§ 305.2 [Amended]

(a) Section 305.2(d) is revised by deleting "or of the Assistant Director (Plans and Operations)".

§ 307.1 [Amended]

(b) In Part 307, in § 307.1(a) delete "a Department of Defense Component". Also do not change references to "32 CFR Part 300" (which remains in Department of Defense Regulation) or to the "DOD Regulation" so as to make reference to a FEMA regulation.

§§ 301.2 and 305.2 [Amended]

(c) In §§ 301.2(e) and 305.2(b) delete "To the Secretary of Defense by Executive Order 10952 (26 FR 6577)."

In the document entitled "Transfer and Redesignation of U.S. Fire Administration Regulations and Deletion of Regulations" at the end of "Nomenclature changes" add the following:

§ 150.3 [Amended]

In 44 CFR 150.3(a)(2) change "Director, Defense Civil Preparedness Agency, United States Department of Defense, Washington, DC 21231" to "Associate Director, Plans & Preparedness, Federal Emergency Management Agency, Washington, DC 20472."

In the regulations redesignated by the publication on May 31, 1979, at 44 FR 31176, the following corrections are made:

1. The address for the Federal Emergency Management Agency is: 1725 I Street, NW, Washington, DC 20472.

2. "Department" or "Department of Housing and Urban Development" is changed to "Agency" or "Federal Emergency Management Agency."

3. "He" is changed to "he/she" and "him" is changed to "him/her."

§ 61.13 [Amended]

4. 44 CFR 61.13(c) is revised as follows: "(c) Applications. The application and renewal application forms utilized by the National Flood Insurance Program shall be the only application forms used in connection with the Standard Flood Insurance Policy."

5. Appendices B(1) and B(2) of 44 CFR Part 61, National Flood Insurance Program, Regular and Emergency, are hereby deleted.

6. The nomenclature change from the Federal Insurance Administration to Office of Federal Insurance and Hazard Mitigation is withdrawn.

(Reorganization Plan No. 3 of 1979 (43 FR 41943), Executive Order 12127, dated March 31, 1979 (44 FR 19367), and Executive Order 12148 (44 FR 43239).)

George Jett,

General Counsel.

[FR Doc. 79-33707 Filed 10-30-79; 8:45 am]

BILLING CODE 6718-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1002

Interpretation of Fee Filing Regulation

AGENCY: Interstate Commerce Commission.

ACTION: Interpretation of fee filing regulation.

SUMMARY: Due to a continuing problem with certain motor carriers in connection with filing fees submitted with operating authority applications, any carrier who submits (or has submitted) more than two checks which are returned because of insufficient funds or other deficiency will be required, in the future, to submit a certified check in payment of all such filing fees to the Office of the Secretary. All affected carriers will be notified by mail.

In lieu of a formal rulemaking, this procedure is implemented under an interpretation of 49 CFR 1002.2(a), *Filing Fees.*

EFFECTIVE DATE: October 31, 1979.

FOR FURTHER INFORMATION CONTACT: James H. Bayne, 202-275-7428.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-33635 Filed 10-30-79; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1204

[No. 37256]

Pipeline Companies

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: This rule eliminates the annual and quarterly reporting requirements for pipeline companies regulated by the Commission. These carriers will still be required to maintain the Uniform System of Accounts (USOA) so that uniform financial and statistical data can be reported when needed. These carriers will only be required to file an annual certification stating that their records are being maintained in accordance with the USOA. This reporting revision will be effective for the reporting year beginning 1/1/79.

EFFECTIVE DATE: December 17, 1979.

ADDRESS: For copies of the revised reporting requirements call: (800) 424-5403.

FOR FURTHER INFORMATION CONTACT: Bryan Brown, Jr., (202) 275-7448.

SUPPLEMENTARY INFORMATION: The Commission recently established a Data Task Force (DTF) to review the extent and frequency of financial and statistical data usage by the Commission. A major objective of the DTF was to determine where significant reductions in reporting burden could be achieved.

The DTF reviewed the usage of annual and quarterly report data for pipeline companies and found it was not used on a regular basis for analysis or monitoring purposes. Therefore, the DTF concluded that there was no need to require pipeline companies to report on a quarterly or annual basis. Instead, the DTF recommended that pipeline companies only report financial and statistical data on an "as needed" basis. In order to provide for the maintenance and reporting of uniform financial and statistical data, the DTF also recommended that pipeline companies

continue to maintain the Uniform System of Accounts (USOA) prescribed by the Commission.

Commencing with the reporting year beginning January 1, 1979, all pipeline carriers subject to Commission regulation will be exempt from filing annual and quarterly reports. These carriers will be required to file an annual certification stating that their books and records are being maintained in accordance with the USOA. A copy of the proposed certification is presented as an integral part of this rule.

We have concluded that this revision does not require a rulemaking proceeding because it involves a reduction in reporting burden for pipeline companies. However, in keeping with our belief that any rule can benefit from public scrutiny, we are requesting that the public study the rule and report, within 45 days, any changes which need to be made. Persons who desire to study the affected reporting forms may obtain copies by writing the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, or by calling the toll free number listed above.

If the Commission concludes after reviewing the comments, that it is necessary to change the revised rule, a further notice will be published in the **Federal Register** before the effective date of the rule, identifying the changes made. Otherwise, the revision proposed in this Final Rule will take effect on that date.

This decision will not significantly affect the quality of the human environment or energy consumption.

Accordingly, Sections 1241.61 and 1241.62 are amended as shown below.

This revision is issued under the authority of 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided October 11, 1979.

By the Commission.

Agatha L. Mergenovich,

Secretary.

1. Paragraph (a) of § 1241.61 is amended to read as follows:

§ 1241.61 Annual reports of carriers by pipeline.

(a) All pipeline companies subject to 49 USC 10501, are required to file an annual certification stating that their company's books and records are being maintained in accordance with the uniform system of accounts for pipeline companies. This certification shall be filed in duplicate with the Bureau of Accounts, Interstate Commerce Commission, Washington, D.C. 20423, on or before March 31, of the year following the reporting year.

* * * * *

§ 1241.62 [Deleted]

2. *Section 1241.62, Carriers by pipeline; quarterly revenue and volume of traffic,* is deleted.

Pipeline Company Certification Statement

Name, Title, Telephone Number and Address of the person to be contacted:
Name:_____
Title: _____
Telephone Number:_____
Office Address:
(Street and Number) _____
(City, State, and Zip Code) _____

Certification

I, _____(Name and Title of officer in charge of accounts) of the _____ Company, (Full name of reporting company) state that the books and records of the company are being maintained in accordance with the Uniform System of Accounts.

(Signed)_____
(Date)_____

[FR Doc. 79-33647 Filed 10-30-79; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 44, No. 212
Wednesday, October 31, 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.

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 526, 544, 545, 561, and 563

[No. 79-541]

Federal Home Loan Bank System, Federal Savings and Loan System, Federal Savings and Loan Insurance Corporation; Proposed Amendments Concerning Outside Borrowing

October 25, 1979.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The proposed amendments would liberalize and simplify limitations on outside borrowing by Federal savings and loan associations and institutions insured by the Federal Savings and Loan Insurance Corporation. "Outside borrowing" is borrowing from sources other than a Federal Home Loan Bank or a state-chartered central reserve institution. The proposal is intended to provide greater outside borrowing authority and flexibility while continuing to assure that outside borrowing activity does not adversely affect the safety and soundness of insured institutions.

DATE: Comments must be received on or before: December 31, 1979.

ADDRESS: Send comments to the Office of the Secretary, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Douglas P. Faucette, Associate General Counsel (202-377-6410) or John R. Hall, Attorney, (202-377-6445), Federal Home Loan Bank Board, at the above address.

SUPPLEMENTARY INFORMATION: Present § 563.8 of the rules and regulations for Insurance of Accounts (12 CFR 563.8) limits total borrowing by an insured institution to 50 percent of the total amount of its shares, share accounts, savings accounts, stock, certificates of deposit, and investment certificates ("savings"). Within that limitation, outside borrowing is limited to 10 percent of savings, of which one-half, or 5 percent of savings, may be in the form of mortgage-backed bonds that are not in conformity with the requirements of § 563.8-2 ("non-conforming mortgage-backed bonds"). In addition, outside borrowing in the form of mortgage-backed bonds that are in conformity with § 563.8-2 ("conforming mortgage-backed bonds") is authorized in an amount up to an additional 5 percent of savings.

The proposed amendments would authorize total borrowing by an insured institution in an amount up to 50 percent of its assets. Within that limitation, outside borrowing totaling 20 percent of assets would be permitted. No special borrowing categories for conforming and non-conforming mortgage-backed bonds would be specified, and mortgage-backed bonds would be included in the overall 20 percent limitation. Section 563.8-2 would be deleted, and the distinction between conforming and non-conforming mortgage-backed bonds would be eliminated. The definition of mortgage-backed bonds in § 561.25 would also be deleted.

Section 545.24 also would be amended to give Federal associations flexibility to borrow and issue securities as provided in §§ 563.7-2 and 563.8 for state-chartered insured institutions. For example, Federal associations would no longer need Board approval for issuance of commercial paper, secured or unsecured. This change would provide significantly increased borrowing authority and flexibility for Federal associations that are now limited generally to borrowings in compliance with § 563.8-1 or 563.8-2 or specifically approved by the Board. The proposal would also eliminate reference to Section 5(b)(2) of the Home Owners' Loan Act, because it should be understood that borrowings undertaken under § 545.24 will be in conformity with the Act and a statement to that effect appears unnecessary.

By raising the outside borrowing percentage limitation to 20 percent and basing all borrowing limitations on total assets rather than total savings, borrowing authority for insured institutions would be significantly increased. Basing borrowing limits on total assets also represents a liberalization because insured institutions are experiencing a narrowing of savings base while overall assets are increasing. The Board believes liberalization is warranted because, even though few institutions are constrained by current outside borrowing limitations, the Board perceives a trend toward greater use of non-deposit funds, i.e. commercial paper, commercial bank borrowings, reverse repurchase agreements, and mortgage-backed securities. The Board foresees that trend continuing and the need for additional borrowing authority increasing.

In place of present limitations on issuance of mortgage-backed bonds, and in view of the proposed general expansion of authority to engage in secured borrowing and the need to protect the interest of the Federal Savings and Loan Insurance Corporation ("the Corporation"), the proposed amendments would include a new limitation providing that no more than 20 percent of an insured institution's assets may be pledged as security for its outside borrowings. The proposed amendments would not, however, limit collateralization of individual issues, because the Board believes market forces would impose such limits.

An additional new limitation, intended to ensure that savings institutions observe prudent standards in incurring liabilities, would impose additional restrictions regarding "bunching" of maturities. Present § 526.10 of the regulations for the Federal Home Loan Bank System provides that no more than 30 percent of a member institution's total savings accounts may mature in any consecutive 3 months. The proposed amendments would modify that limitation to include outside borrowing in the 30 percent limitation.

These changes reflect the Board's view that a prudent program for managing savings flows must include consideration of debt obligations as well as savings accounts. Further, the Board believes that debt obligations and large certificate accounts represent a more volatile source of funds requiring special consideration. However, the Board is specifically soliciting comments on possible alternative approaches that would assure that increased borrowing

activity includes increased emphasis on cash flow management.

Proposed § 563.8 would also provide that if a sale of mortgages or participations therein includes an agreement that the seller will repurchase mortgages after a specified period, the transaction will be considered a borrowing for purposes of borrowing and collateral limitations provided only outstanding current loans must be repurchased and no substitution of collateral is required. Otherwise such a transaction would be considered a sale with recourse. This provision is intended to assure that borrowing limits are applicable to all transactions involving potential cash outflow at a future date.

The Board is specifically soliciting comments on whether reverse repurchase agreements used for arbitraging purposes should be treated as borrowings.

The Board believes the proposed liberalization of borrowing restrictions, along with the proposed new limitations, will provide a basis for flexible and prudent management of liabilities.

In proposing to delete § 563.8–2, the regulation prescribing specific requirements with respect to issuance or mortgage-backed bonds, the Board notes that problems associated with those obligations have been minimal and waivers of specific requirements have, in many cases, been found to be reasonable and prudent.

The following requirements that are now applicable to issuance of mortgage-backed bonds would be deleted: (1) Issuing institutions must have scheduled items not exceeding 2.5 percent of specified assets; (2) All appraised losses must be offset by specified loss reserves; (3) The institution's income for its last three fiscal years must be at least double its total debt servicing requirement for bonds issued under § 563.8–2; (4) The minimum maturity of such bonds must be at least 5 years; (5) The maximum required principal repayment may not be more than 20 percent per year; and (6) The mortgage pool must meet certain requirements regarding its composition.

The following additional requirements presently included in § 563.8–2 and applicable to conforming mortgage-backed bonds would be included in the revised version of § 563.8 and given more general applicability: (1) For any outside borrowing with an original maturity in excess of one year which is secured by mortgage loans, the obligation must provide for the Corporation to receive notification of default and an opportunity to repurchase or otherwise acquire any collateral that is sold or otherwise disposed of; (2) Each security, regardless of maturity, evidencing outside borrowing must contain a notice that the security is neither a savings account nor insured by the Corporation; and (3) For any outside borrowing with an original maturity in excess of one year, an insured institution must file with the Supervisory Agent a notice of intent to issue.

The notification to the Supervisory Agent would be required to include all information presently required to be provided with a notice of intent to issue a conforming mortgage-backed bond under § 563.8–2. The information includes the principal amount of the debt to be issued, interest rate range, price range, maturity, minimum denomination, prepayment provisions, description of collateral if any, trustee provisions if any, and events and remedies of default. In addition, inclusion of any provisions of the obligation which restrict, conditionally or otherwise, the operations of the institution would be required.

The procedure for Supervisory Agent review would be similar to the procedure provided in present § 563.8–2 with the following changes: (1) The Supervisory Agent would have ten, rather than five, business days after notice is filed to object to issuance of the securities; and (2) The basis for objection would be that the Supervisory Agent finds that terms or convenants of the proposed issue place unreasonable burdens on, or convey to the security holder undue control over, the operation of the association. As in present § 563.8–2, if issuance is deemed unobjectionable, the insured institution would have 120 days to issue its securities. If objection is taken by the Supervisory Agent, the matter would be promptly submitted to the Corporation for decision.

The requirement in present § 563.8 that no insured institution may issue a secured borrowing with an original stated maturity in excess of one year unless the institution meets the net worth requirements of § 563.13(b) would be retained in the proposed revision.

Subject to specified exceptions, the minimum authorized denomination of securities evidencing outside borrowings under the proposal would be $100,000. That minimum is consistent with the present minimum applicable to conforming mortgage-backed bonds. The proposed amendment would provide the following exceptions to that minimum: (1) Subordinated debentures issued under § 563.8–1 would be required to conform to the requirement of that section, i.e., a minimum denomination of $50,000; (2) Securities issued in a private placement to institutional investors and securities constituting evidence of a borrowing from a commercial bank would not be subject to minimum denomination requirements; and (3) A minimum denomination of $10,000 would apply to securities that are not offered or sold at an office of the insured institution or its affiliates or through general advertising, and to securities that may be sold only after purchasers have been furnished an offering circular that is in compliance with the regulations.

The proposed amendments would require that no statement made in connection with the offer, sale, or issuance of a security be false, misleading, or lacking any material fact. This requirement is consistent with the present requirement in § 563.8–2 applicable to issuance of mortgage-backed bonds.

Further, the proposed amendments would provide additional requirements applicable to offering circulars for securities with $10,000 minimum denominations. First, each offering circular would be required to be submitted to the Board's Office of General Counsel for review and declared effective before it could be furnished to purchasers. Second, each offering circular would be required to be in a form satisfactory to the Corporation and, at minimum, contain information in detail comparable to that required under the Securities Act of 1933, General Form of Regulation S–1 and Item 7 of Form PS as prescribed in Part 563b of the Rules and Regulations for Insurance of Accounts. Third, each offering circular would be required to include the insured institution's latest audited annual statement of condition, audited statements of operation for each of its last three years, and its latest unaudited statements of condition and operation on a comparative basis. Financial statements would be required to be prepared in accordance with Part 563c of the rules and regulations for Insurance of Accounts.

The proposed amendments would also amend paragraph (d) of § 544.2 of the rules and regulations for the Federal Savings and Loan System (12 CFR 544.2) by revising the charter amendment approved therein to reflect the proposed increase in borrowing authority in § 563.8. The outside borrowing limit applicable to Federal associations would be increased from 10 percent of capital to 20 percent of assets. The total borrowing limit would be changed from 50 percent of capital to 50 percent of assets. These changes would conform the Regulation applicable to Federal

associations to the revised Insurance Regulations.

The proposed amendments would also amend § 563.8–1 to authorize insured institutions to issue subordinated debt securities under that section without prior approval of the Corporation, provided such approval is subsequently granted. Eligibility requirements would be required to be met on the date of approval. Under the definition of "net worth" in § 561.13, subordinated debt securities issued under § 563.8–1 may be used to meet up to 20 percent of the annual closing net worth requirement in § 563.13(b). The proposed change to § 563.8–1 is intended to permit insured institutions to take advantage of favorable market conditions by issuing subordinated debt securities that may be used to meet the closing net worth requirement without waiting for prior approval. However, associations seeking retroactive approval should be aware that the Board will strictly construe the legal requirements of paragraph (d) of § 563.8–1 in determining whether the form of the debenture and any governing documents are eligible for such approval. Thus, associations should seek to include provisions in the debenture which allow flexibility to make conforming amendments after issuance to meet regulatory requirements.

Additional changes to § 563.8–1 would make requirements applicable to issuance of subordinated debt securities consistent with proposed requirements applicable generally to issuance of securities. Under present § 563.8–1 subordinated debt securities may be offered only in negotiated transactions and only if disclosure is provided as described therein. Under the proposed amendments, offering and disclosure would be required to be made in accordance with the requirements of § 563.8. Special disclosure requirements applicable to offerings to noninstitutional investors would be deleted. Further, exceptions to minimum denomination reqirements in § 563.8 would also be applicable to subordinated debt securities.

Section 563.4 would be amended to exclude securities issued under § 563.8 from the requirement that all securities issued under § 563.8 from the requirement that all securities issued by an insured institution shall be made transferable only on the books of the insured institution. This change is intended to remove any encumberance on the transferability of publicly offered debt instruments.

Section 563.6 would be amended to exclude securities issued in conformity with § 563.8 from the general prohibition of issuance of demand securities by insured institutions. Such a limitation applicable to securities issued under § 563.8 would unnecessarily encumber the borrowing activity of insured institutions.

The proposed amendments also would make a conforming change to § 563.3–3(i) to reflect the proposed rewording of the second sentence of § 563.8.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend § 526.10(a) of the regulations for the Federal Home Loan Bank System, §§ 544.2(d) and 545.24 of the rules and regulations for the Federal Savings and Loan System, and the first sentence of § 563.3–3(i), §§ 563.4, 563.6, 563.8, and 563.8–1 of the rules and regulations for Insurance of Accounts, and to delete §§ 561.24a and 563.8–2 of the rules and regulations for Insurance of Accounts, to read as follows:

PART 526—LIMITATIONS ON RATE OF RETURN

§ 526.10 Distribution of maturities of certificate accounts and outside borrowings.

(a) *General.* No member shall issue or renew a certificate account or engage in additional borrowings from other than a Bank or a state-chartered central reserve institution ("outside borrowings") if the issuance, renewal, or borrowing would cause the total of its certificate accounts and outside borrowings maturing in any consecutive three months to exceed thirty percent of its total savings accounts plus outside borrowings on the date of the issuance, renewal, or borrowing.

* * * * *

PART 544—CHARTER AND BYLAWS

§ 544.2 Amendment of charter.

* * * * *

(d) *Borrowing powers.* Revise clause 9 to read as follows:

9. *Power to borrow.* The association may borrow money in an aggregate amount not exceeding one-half of its assets; the amount which may be borrowed from sources other than a Federal Home Loan Bank or a state-chartered central reserve institution under § 545.24a of the rules and regulations for the Federal Savings and Loan System shall not exceed 20 percent of assets. Notwithstanding the foregoing limitation, the association may, with prior approval by the Board, borrow from a Federal Home Loan Bank or from any Federal agency or instrumentality without limitation, upon such terms and conditions as may be required by such Bank or agency. The association may pledge and otherwise encumber any of its assets to secure its debts.

* * * * *

PART 545—OPERATIONS

§ 545.24 Borrowing, issuing obligations, and giving security.

An association may borrow as its charter permits and may issue notes, bonds, debentures, or other obligations, or other securities provided such borrowing or issuance is in compliance with § 563.8 of this chapter or is approved in writing by the Board. An association may give security as authorized by its charter or by Board approval, except it may not give security for any of its savings accounts representing share interests in the association unless authorized by regulation.

PART 561—DEFINITIONS

§ 561.24a [Deleted effective]

PART 563—OPERATIONS

§ 563.3–3 Marketable fixed-rate, fixed-term accounts.

* * * * *

(i) *Applicability of other provisions.* (1) Sections 563.2, 563.3, 563.3–1, 563.3–2, 563.4, and 563.8 and the provisions of § 563.17–1(c)(5) do not apply to savings accounts in compliance with § 545.1–4 of this chapter or this section, and such savings accounts are not borrowings within the meaning of § 563.8(b). * * *

* * * * *

§ 563.4 Transfer of securities.

Except as to securities issued in conformity with § 563.8 of this Part, all securities issued by an insured institution shall be made transferable only on the institution's books.

§ 563.6 Demand securities.

No insured institution may issue any demand securities or advertise or represent that it will pay holders of its securities on demand, except that this section does not apply to (a) securities issued in conformity with § 563.8, (b) checking accounts as defined in § 561.11a of this subchapter, (c) tax and loan accounts, and (d) note accounts.

§ 563.8 Borrowing limitations.

(a) *General.* Except as the Corporation may otherwise permit by advice in writing, an insured institution shall borrow only in accordance with the provisions of this section.

(b) *Amount Limitations.* (1) No insured institution shall borrow in excess of the amount authorized by the law under which such insured institution operates, subject further to the following limits:

(i) Such borrowings, in the aggregate, shall not exceed 50 percent of assets.

(ii) Borrowings from other than a Federal Home Loan Bank or a state-chartered central reserve institution ("outside borrowings") shall not exceed 20 percent of assets.

(2) No violation of this paragraph (b) shall be found if the limits are exceeded because of a subsequent reduction in assets.

(c) *Limitations on secured borrowings.* (1) For an outside borrowing with an original maturity in excess of one year, an insured institution must meet the net worth requirements of § 563.13(b) after giving effect to such borrowings being refunded out of the proceeds.

(2) For an outside borrowing with an original maturity in excess of one year that is secured by mortgage loans, the terms of such borrowing shall provide that the Corporation receive prompt written notification of any default on the obligation and, before a sale or other disposition of any portion of the collateral, that the Corporation shall have thirty days after written receipt of notice of such proposed sale or other disposition to exercise a right to repurchase such collateral at the price to be paid at such sale or to acquire such collateral at the value to be assigned to it in such other disposition.

(3) The aggregate book value of all collateral securing outside borrowings may not exceed 20 percent of the institution's assets.

(d) *Required statement for all securities evidencing outside borrowings.* Each security shall bear on its face, in a prominent place, the following legend: "This security is not a savings account or a deposit and it is not insured by the Federal Savings and Loan Insurance Corporation".

(e) *Filing requirements for outside borrowings with maturities in excess of one year.* (1) The insured institution shall, at least ten business days prior to issuance, file with the Supervisory Agent a notice of intent to issue securities evidencing such borrowings. Such notice shall contain a summary of the terms of the security, including:

(i) Principal amount of the securities;

(ii) Anticipated interest rate range and price range at which the securities are to be sold;

(iii) Minimum denomination;

(iv) Stated and average effective maturity;

(v) Mandatory and optional prepayment provisions;

(vi) Description, amount, and maintenance of collateral if any;

(vii) Trustee provisions if any;

(viii) Events of default and remedies of default; and

(ix) Any provisions which restrict, conditionally or otherwise, the operations of the institution.

(2) The Supervisory Agent shall have ten (10) business days after receipt of such filing to object to the issuance of such securities. The Supervisory Agent shall object if in his/her judgment the terms or convenants of the proposed issue place unreasonable burdens on, or convey to the security holders undue control over, the operations of the association. If no objection is taken, the insured institution shall have one hundred twenty (120) calendar days within which to issue such securities. If objection is taken, the Supervisory Agent shall promptly cause the question of such issuance to be submitted to the Corporation for decision.

(f) *Minimum denominations of securities evidencing outside borrowings*—(1) *General rule.* The minimum denomination of the security shall be $100,000.

(2) *Exceptions.* (i) There is no minimum denomination for securities:

(*a*) Issued in a private placement to institutional investors; or

(*b*) Constituting evidence of a borrowing from a commercial bank.

(ii) The minimum denomination may be $10,000, if the securities are not offered or sold at any office of the institution or any of its affiliates, and

(*a*) They are not sold to more than 35 persons or offered by an advertisement, including any broadcast or written communication published in a newspaper, magazine or similar medium, or by any letter, circular, or other written communication, sent, given, or communicated to more than 35 persons who prior to such communication have not indicated an interest in purchasing the securities, and any purchases by such persons are for their own account and not with a view to distribution; or

(*b*) Prior to or simultaneously with any offering, and prior to issuance, purchasers of such securities have been furnished an offering circular which conforms to the requirements of paragraphs (g) and (h) of this section.

(3) *Definition of institutional investor for purposes of this paragraph (f).* Any bank as defined in section 3(a)(2) of the Securities Act of 1933 ("Act"), whether acting in its individual or fiduciary capacity; insurance company as defined in section 2(13) of the Act; employee benefit plan, including an Individual Retirement Account that is subject to the provisions of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, that is either a bank, insurance company or registered investment adviser; investment company registered under the Investment Company Act of 1940; Small Business Investment Company or Minority Enterprise Small Business Investment Company licensed by the U.S. Small Business Administration.

(g) *Disclosure.* No insured institution shall, directly or indirectly in connection with the offer, sale, or issuance of a security evidencing a borrowing pursuant to this section, make any statement that: (1) Is false or misleading with respect to any material fact; or (2) omits to state any material fact (i) necessary in order to make the statements made, in light of circumstances under which they were made, neither false nor misleading, or (ii) necessary to correct any earlier statement that has subsequently become false or misleading.

(h) *Offering circular*—(1) *Review.* No offering circular shall be furnished to purchasers under this section unless it is filed with the Securities Division of the Board's Office of General Counsel, and declared effective prior to its use.

(2) *Content.* An offering circular under this section shall be in a form satisfactory to the Corporation. At a minimum, it shall contain information in detail comparable to that required under the Securities Act of 1933, General Form of Registration S–1 and Item 7 of Form PS as prescribed in Part 563 of this subchapter.

(3) *Financial statements.* An offering circular under this section shall contain the insured institution's latest audited annual statement of condition and audited statements of operations for each of its last three years. It shall also contain the insured institution's latest unaudited statements of condition and operations on a comparative basis for the quarter ending within one hundred twenty (120) days of its latest amendment. Such Financial statements shall be prepared in accordance with the requirements of § 563c.1 of this subchapter. The issuer shall also make available promptly upon request to each purchaser of a security issued subject to the requirements of paragraph (f)(2)(ii)(*b*) (including purchasers upon resale) while the securities are outstanding, audited annual statements of condition and operation and comparative unaudited quarterly statements of condition and operations for the first three quarters.

(i) *Note accounts.* For purposes of this section, note accounts are not borrowings.

(j) *Sale and repurchase of mortgages or mortgage participations.* (1) An agreement for the sale by an insured

institution of a pool of mortgages or participations therein that provides that the selling institution will repurchase all mortgages outstanding at a future date, up to a stated percentage of the pool, shall be treated as a borrowing for purposes of paragraph (b) and paragraph (c)(3) of this section: *Provided,* The following conditions are met:

(i) Only current and outstanding mortgages are required to be repurchased; and

(ii) The agreement does not provide for mandatory substitution of collateral.

(2) If the agreement does not contain the limitations prescribed in paragraph (j)(1) of this section, the transaction shall be treated as a sale with recourse.

(3) Loans are not considered current if they would qualify as scheduled items under § 561.15.

§ 563.8–1 Issuance of subordinated debt securities.

(a) *General.* No insured institution shall issue subordinated debt securities pursuant to this section or amend the terms of such securities unless it has obtained written approval of the Corporation. Approval of the issue may be obtained either before or after the securities are issued, but no approval shall be granted unless issuance of the securities and the form and manner of filing of the application are in accordance with the provisions of this section.

(b) *Eligibility requirements.* The Corporation will consider and process an application by an insured institution for approval of the issuance of subordinated debt securities pursuant to this section only if the applicant meets all of the following eligibility requirements at the time of approval, unless one or more of such requirements are waived by the Corporation upon specific request in the case of a particular application:

(1) The issuance of such securities by the applicant is authorized by applicable law and regulation and is not inconsistent with any provision of the applicant's charter, constitution, or bylaws;

(2) Applicant's net worth, without regard to the amount of any subordinated debt securities included or to be included in such net worth, meets the requirements of § 563.13;

(3) Applicant's scheduled items do not exceed 2.5 percent of its specified assets;

(4) All appraised losses have been offset by specific loss reserves to the extent required by the Corporation under § 563.17–2;

(5) Applicant's income from operations before income taxes in its two immediately preceding fiscal years (after distribution of earnings to the holders of savings accounts and payment of interest on, and amortization of, non-subordinated debt) and its average of such income for such three-year period is at least three times the annual amount required for interest, debt, discount amortization (if any), and amortization of the related expenses of issuance on all outstanding and proposed subordinated debt securities (excluding any debt securities to be refunded out of the proceeds of the proposed subordinated debt securities); and

(6) The aggregate amount of all outstanding and proposed subordinated debt securities (excluding any debt securities to be refunded out of the proceeds of the proposed subordinated debt securities) does not exceed 50 percent of applicant's net worth, not including any such outstanding and proposed subordinated debt securities.

(c) *Application form; supporting information.* An application for approval of the issuance of subordinated debt securities by an insured institution pursuant to this section shall be in the form prescribed by the Corporation. Such application and instructions may be obtained from the Supervisory Agent. Information and exhibits shall be furnished in support of the application in accordance with such instructions, setting forth all of the terms and provisions relating to the proposed issue and showing that all of the requirements of this section have been or will be met.

(d) *Requirements as to securities.* Subordinated debt securities issued pursuant to this section shall meet all of the following requirements unless one or more of such requirements are waived by the Board in connection with a sale of such securities to the Corporation in a supervisory situation under paragraph (d)(4) of this section:

(1) *Form of certificate.* Each certificate evidencing subordinated debt issued by an insured institution pursuant to this section shall:

(i) Bear on its face, in bold-face type, the following legend: "This security is not a savings account or deposit and it is not insured by the Federal Savings and Loan Insurance Corporation";

(ii) Clearly state that the security (*a*) is subordinated on liquidation, as to principal, interest, and premium, if any, to all claims (including post-default interest) against the institution having the same priority as savings account holders or any higher priority; (*b*) is unsecured; and (*c*) is not eligible as collateral for any loan by the issuing institution.

(f) *Supervisory objection.* No application for approval of the issuance of subordinated debt securities pursuant to this section shall be approved if, in the opinion of the Corporation, the policies, condition, or operation of the applicant affords a basis for supervisory objection to the application.

(g) *Additional requirements.* The Corporation may impose on the applicant such requirements or conditions with regard to the securities or the offering or issuance thereof as it may deem necessary or desirable for the protection of purchasers, the applicant, or the Corporation.

* * * * *

§ 563.8–2 [Deleted effective]

(Sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended; sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1425b, 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 403, 48 Stat. 1256, 1257, as amended (12 U.S.C. 1726, 1725. Reorg. Plan No. 3 of 1947, 12 FR 4981. 3 CFR, 1943–48 Comp., p.1071)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 79–33744 Filed 10–30–79; 8:45 am]

BILLING CODE 6720–01–M

FARM CREDIT ADMINISTRATION

12 CFR Chapter VI

Semiannual Agenda of Regulations

AGENCY: Farm Credit Administration.

ACTION: Semiannual Agenda of Regulations.

SUMMARY: Pursuant to section 2 of Executive Order 12044, the Farm Credit Administration has established the following agenda of significant regulations which it will have under development and review during the period of October 31, 1979, through March 31, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Sanford A. Belden, Deputy Governor, Office of Administration, Farm Credit Administration, 490 L'Enfant Plaza East, S.W., Washington, DC 20578, (202) 755–2181.

SUPPLEMENTARY INFORMATION:

Significant Regulations Under Development

12 CFR 618.8150(f)—Federal Farm Credit Board

This regulation establishes the rules governing the nomination and election to the Federal Farm Credit Board. The Farm Credit Administration is

considering amending this regulation pursuant to 12 U.S.C. 2243 and 2252 to prohibit all persons who are not directors of the association from being present during voting. It also requires that ballots are to be signed by the director in the chair and attested by a second director at the time of voting.

12 CFR 618.8160(f)—District Board of Directors

This regulation establishes the rules governing the nomination and election of a district board director. The Farm Credit Administration is considering amending this regulation pursuant to 12 U.S.C. 2243 and 2252 to prohibit all persons who are not directors of the association from being present during voting. It also requires that ballots are signed by the director in the chair and attested by a second director at the time of voting.

12 CFR 618.8300-8350—Release of Information

These regulations govern the release of information concerning borrowers by officials of the Farm Credit institutions. The Farm Credit Administration is considering amending this regulation pursuant to 12 U.S.C. 2243 and 2252 to clarify the conditions under which such information may be made available to third parties, including Government authorities.

12 CFR 618.8430—Internal Controls

This regulation provides for the establishment of internal control policies to, among other things, account for all funds, property, and other assets of the Farm Credit banks and associations. The Farm Credit Administration is considering amending this regulation pursuant to 12 U.S.C. 2243 and 2252 to delete the requirement for an internal auditor while, at the same time, emphasizing the responsibility of bank management in maintaining adequate internal financial and administrative controls.

None of the proposed amendments to the above regulations will result in (a) an annual effect upon the economy of $100 million or more, or (b) a major increase in costs of prices for individual industries, levels of government, or geographic regions. Therefore, regulatory analysis of the type required by Section 3 of Executive Order 12044 will not be prepared for these proposals.

Significant Regulations Selected for Review

12 CFR Part 612—Personnel Administration

The personnel administration sections of the Regulations for Banks and Associations of the Farm Credit System are being reviewed. Rewrite of the regulations will be dictated by the Farm Credit Administration's desire to implement decentralization as envisioned by the System's management system and to make consistent the elements of a total human resources management program. Deletion of unnecessary regulations and clarification of existing ones will be of particular importance.

12 CFR 617.7100-7170—Irregularities

These regulations govern the investigation, reporting, and referral for criminal action of irregularities by bank and association personnel, borrowers, and others.

Status of Regulations Previously Selected for Review

On March 30, 1979, the Farm Credit Administration published in the **Federal Register** (44 FR 18982) lists of significant regulations under development and review. The current status of those regulations is as follows:

12 CFR 612.2030—Nepotism

The amendment to this regulation was published in the June 4, 1979 issue of the **Federal Register** (44 FR 31940).

12 CFR 614.4051—Federal Land Bank and Federal Intermediate Credit Bank Credit Review

This regulation was reviewed and no changes are contemplated at this time.

12 CFR 614.4165—Special Credit Needs

This regulation was reviewed. No changes are contemplated at this time.

12 CFR 614.4200—Production Credit Associations

A proposed amendment to this regulation was published in the September 14, 1979 issue of the **Federal Register** (44 FR 53534).

12 CFR 614.4220—General

An amendment to this regulation was approved by the Federal Farm Credit Board on October 5, 1979. It is currently being prepared for publication in the **Federal Register** as a final rule.

12 CFR 614.4334—Banks for Cooperatives

The amendment to this regulation was published in the May 25, 1979 issue of the **Federal Register** (44 FR 30316).

12 CFR 614.4470—Loans Subject to Prior Approval

This regulation was reviewed. No changes are contemplated at this time.

12 CFR 617.7100-7170—Irregularities

Review of these regulatins continues. See Significant Regulations Selected for Review.

12 CFR 618.8430—Internal Controls

A draft regulation is being developed for consideration by the Federal Farm Credit Board. See Significant Regulations Under Development.

12 CFR 618.8300-8350—Release of Information

Draft regulations continue to be developed. See Significant Regulations Under Development.

For further information concerning any item on this agenda, please contact: Mr. Sanford A. Belden, Deputy Governor, Office of Administration, Farm Credit Administration, 490 L'Enfant Plaza East SW., Washington, D.C. 20578, (202) 755-2181.

C. T. Fredrickson,

Senior Deputy Governor.

[FR Doc. 79-33776 Filed 10-30-79; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 791 0073]

W. R. Grace & Co.; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Gonsent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, accepted subject to final Commission approval, among other things, would require a New York City operator of three home improvement store chains to divest the San Jose home improvement stores within one year from the effective date of the order. Should the firm reacquire any or all of the stores as a result of the enforcement of a form of security interest, it would be required to divest the reacquired assets within six months of the reacquisition.

DATE: Comments must be received on or before December 1, 1979.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. and Pennsylvania Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/CS-5, Michael A. Schlanger, Washington, D.C. 20580. (202) 254-5030.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to

cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying of its principal office in accordance with Section 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

[File No. 791 0073]

Agreement Containing Consent Order

In the matter of W. R. Grace & Co., a corporation.

The Federal Trade Commission (the "Commission") having initiated an investigation of the proposed acquisition of Daylin, Inc. ("Daylin") by W. R. Grace & Co. ("Grace"), and it now appearing that Grace, as proposed respondent, is willing to enter into an Agreement containing an Order in settlement of that investigation,

It is hereby agreed by and between Grace, by its duly authorized officer and attorney, and counsel for the Commission that:

1. Grace is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut with its principal offices at Grace Plaza, 1114 Avenue of the Americas, New York, New York 10036.

2. Grace admits all of the jurisdictional facts set forth in the Proposed Complaint attached hereto.

3. Grace waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Agreement.

4. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it, together with the Proposed Complaint contemplated thereby and related material pursuant to Rule 2.34 of the Commission's Rules of Practice, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify Grace, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This Agreement is for settlement purposes only and does not constitute an admission by Grace that the law has been violated as alleged in the Proposed Complaint attached hereto.

6. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules of Practice, the Commission may, without further notice to Grace (1) issue its complaint corresponding in form and substance with the Proposed Complaint attached hereto and its decision containing the following Order in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to Grace's address as stated in this Agreement shall constitute service. Grace waives any right it may have to any other manner of service. The Complaint may be used in construing the terms of the Order, and no agreement, understanding, representation or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

7. Grace has read the Proposed Complaint and Order contemplated hereby, and understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Grace further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

For the purposes of this Consent Order the following definitions shall apply:

1. "Grace" means W. R. Grace & Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut with its principal offices at Grace Plaza, 1114 Avenue of the Americas, New York, New York 10036.

2. "Daylin" means Daylin, Inc., a corporation that prior to the time of its acquisition was organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its principal offices at 10960 Wilshire Boulevard, Los Angeles, California 90024.

3. "San Jose home improvement stores" mean the following home improvement stores that were owned by Daylin and acquired by Grace:

(a) 1975 Story Road, San Jose, California 95122

(b) 865 Blossom Hill Road, San Jose, California 95123

(c) 761 E. El Camino Real, Sunnyvale, California 94087

(d) 1750 S. Bascom, Campbell, California 95008

4. "Person" means any individual, corporation (including subsidiaries thereof), partnership, joint venture, trust, unincorporated association, or other business or legal entity.

5. "Home improvement store" means a retail establishment primarily engaged in selling hardware and tools, wood and non-wood building materials, plumbing and electrical equipment, paint and decorating materials, and lawn and garden tools and supplies in some significant respect to do-it-yourself customers for the building, maintenance, remodeling or decorating of gardens, homes, and apartments.

6. "Eligible person" means any person approved by the Commission.

I

It is ordered and directed that within one (1) year of the effective date of this Consent Order Grace shall divest itself of all assets, title, interests, rights, and privileges, of whatever nature, tangible and intangible, including without limitation all buildings, equipment, inventory, and other property of whatever description of the San Jose home improvement stores subject to the terms and provisions of this Consent Order. Divestiture may be accomplished by offering the San Jose home improvement stores either separately or jointly.

II

It is further ordered that divestiture shall be made only to an eligible person and shall be in a manner which preserves the assets and business of the San Jose home improvement stores as going concerns and fully effective competitors.

III

It is further ordered that pending divestiture required by this Consent Order, Grace shall not cause or permit any deterioration of the assets or business specified in Paragraph I of this Consent Order in a manner that impairs the marketability of any such assets or business, provided, however, that upon application to the Commission demonstrating good cause for ceasing to operate one or more of the San Jose home improvement stores, and upon approval by the Commission, Grace may cease to operate said home improvement store or stores.

IV

It is further ordered that the divestiture ordered and directed by this consent Order shall be made in good faith and shall be absolute and unqualified; provided, however, that an acquirer may give and Grace may accept and enforce any bona fide lien, mortgage, deed of trust or other form of security on all or any portion of any one or more of the San Jose home improvement stores. If a security interest is accepted, in no event should such security interest be interpreted to mean that Grace has a right to participate in the operation or management of such stores. In the event that Grace as a result of the enforcement of any bona fide lien, mortgage, deed of trust or other form of security interest reacquires possession of any one or all of the San Jose home improvement stores, then Grace shall divest the reacquired assets in accordance with the terms of this Consent Order within six (6) months of the reacquisition.

V

It is further ordered that Grace shall within ninety (90) days from the effective date of this Consent Order and every ninety (90) days thereafter until divestiture is completed submit in writing to the Commission a report setting forth in detail the manner and form in

which proposed respondent intends to comply, is complying, and has complied with the terms of this Order and such additional information relating thereto as may from time to time reasonably be required.

VI

It is further ordered that Grace notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance with the obligations arising out of this Consent Order.

Analysis of Proposed Consent

The Federal Trade Commission has accepted subject to final approval an Agreement to a proposed Consent Order from W. R. Grace & Co. (File No. 791 0073). The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the Agreement and the comments received and will decide whether it should withdraw from the Agreement or make the Agreement's proposed Order final.

The Complaint in this matter alleges that Grace's acquisition of Daylin violates Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act because prior to the merger "do-it-yourself" (DIY) home improvement stores owned and operated by Grace in the San Jose, California, metropolitan area were in actual competition with DIY home improvement stores owned and operated by Daylin, Inc. The proposed Consent Order restores competition to this market. It requires that:

1. Within one year of the effective date of the Order, Grace must divest itself of four DIY home improvement stores located in the San Jose metropolitan area.

2. The divestiture can be made only to a person approved by the Commission and the divestiture must be made so as to continue the assets as going competitive concerns.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the Agreement and proposed Order or modify their terms in any way.

Carol M. Thomas,

Secretary.

[FR Doc. 79-33655 Filed 10-30-79; 8:45 am]

BILLING CODE 6750-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1021

Environmental Review; Proposed Procedures

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes procedures to implement the Council on Environmental Quality's final regulations of November 29, 1978 concerning agency compliance with the National Environmental Policy Act. The procedures provide for identification of effects of a proposed action and its alternatives on the environment; for assessment of the significance of these effects; for consideration of effects at appropriate points in the Commission's decision-making process; and for preparation of appropriate environmental documents. The proposed procedures, when issued in final form, will supersede any Commission procedures previously applicable.

DATES: Written comments concerning the proposed procedures must be received by December 31, 1979. Comments or other relevant information received after this date will be considered only to the extent practicable.

The Commission proposes that the procedures become effective 30 days after publication in the **Federal Register** of the final procedures.

ADDRESSES: Written comments, preferably in five copies, should be sent to: Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Received comments may be seen in the Office of the Secretary, Third floor, 1111 18th St., NW., Washington, D.C. during working hours Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Carole Roth, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207 (202-634-7770).

SUPPLEMENTARY INFORMATION:

Background

On November 29, 1978, the Council on Environmental Quality (CEQ) issued regulations (43 FR 55978; 40 CFR Part 1500 et seq.), effective July 30, 1979, implementing the procedural provisions of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321-4347 as amended by Pub. L. 94-83, August 8, 1975). The regulations are intended to replace CEQ's Guidelines of August 1, 1973 (40 CFR Part 1500 et seq.) concerning the preparation of environmental impact statements.

NEPA is the basic national charter for the protection of the environment. Section 102(2) of NEPA contains the procedural provisions of the act. These provisions require that all federal agencies include in their decisionmaking process an appropriate and careful consideration of all environmental aspects of proposed actions and their alternatives, of ways to avoid or minimize adverse effects of proposed actions, and of ways to restore or enhance environmental quality. In addition, NEPA requires agencies to prepare detailed environmental impact statements on proposals for legislation and other major federal actions significantly affecting the quality of the human environment.

Section 1507.3 of CEQ's November 29, 1978 NEPA regulations provides that each agency shall adopt procedures to implement and supplement the Council's regulations. Furthermore, the NEPA regulations state that agency procedures shall be adopted only after a public comment period and after review by CEQ for conformity with the act and the NEPA regulations.

In this document, then, the Commission proposes procedures to implement and supplement the NEPA regulations. These procedures reference the NEPA regulations, where appropriate. However, they do not attempt to restate or paraphrase those regulations. Rather, the Commission's procedures are designed to make the standards established by the comprehensive NEPA regulations meaningful and effective in the context of CPSC decisionmaking.

The Commission administers and enforces the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051, et seq.), the Flammable Fabrics Act (FFA) (15 U.S.C. 1191, et seq.), the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261 et seq.), the Poison Prevention Packaging Act of 1970 (PPPA) (15 U.S.C. 1471, et seq.), and the Refrigerator Safety Act (RSA) (15 U.S.C. 1211, et seq.). These laws confer authority upon CPSC to investigate risks of injury associated with various consumer products, to regulate products to reduce or eliminate certain risks of injury associated with them, and to enforce the laws. In accord with the explicit requirements and criteria of the several laws, Commission action may take any of several forms including: safety standards, bans on products, orders requiring recall and/or correction of products, requirements for cautionary labeling of products, and requirements for safety packaging of products.

The Commission will follow the procedures required by the regulatory statutes it administers in making findings and decisions regarding product safety actions. The environmental review procedures proposed here will be reserved for analysis and findings concerning the effects Commission actions may have upon the environment. The Commission will base its substantive decisions regarding actions on consideration of the results of environmental review in addition to the considerations required by CPSC's regulatory statutes.

It should be noted that on May 18, 1977, the Commission issued interim procedures to be used by CPSC in carrying out its responsiblities under NEPA. (16 CFR Part 1021; 42 FR 25494). The Commission solicited public comments on the procedures at that time and received comments from the Chamber of Commerce of the U.S., the Environmental Defense Fund, and the Council on Environemntal Quality. The Commission never took final action on the interim procedures because the Commision became aware that CEQ was in the process of preparing new regulations on the implementation of NEPA. The Commission concluded that the new regulations might require substantial revision of the interim procedures.

The procedures proposed below, when issued in final form, will replace the May 18, 1977 interim procedures. Until that time, the interim procedures remain in effect.

The Commission is not specifically addressing the comments on the interim procedures in this document because most of them are inapplicable to the procedures below, which are based on the Council's November 29, 1978 NEPA regulations.

The Proposed Procedures

The proposed procedures supplement CEQ's NEPA regulations. With one important exception, discussed below, the proposed procedures follow the interim procedures to the maximum extent possible consistent with the provisions of the new NEPA regulations. The Commission has been operating under the interim procedures for over three years and for the most part, has found them to be workable and effective methods for carrying out the Commission's NEPA responsibilities

The procedures proposed below are basically self-explanatory. They provide for the identification of CPSC actions which require the preparation of various environmental documents, designate the official responsible for CPSC compliance with environmental review requirements, assure coordination of the Environmental review process with CPSC procedures, describe the content of necessary documents, and provide for obtaining information and comment from public agencies and interested persons.

In accordance with § 1507.3(b)(2) of the NEPA regulations, the proposed procedures identify three categories of typical classes of CPSC actions: (1) Actions which normally require environmental impact statements; (2) actions which normally do not require either an environmental impact statement or an environmental assessment (categorical exclusions); and (3) actions which normally require environmental assessments but not necessarily environmental impact statements. The proposed procedures also state that in exceptional circumstances, actions which are categorical exclusions may produce an environmental effect. Upon a determination by the Executive Director of the Commission that a normally excluded propose action may have such an effect, an environmental assessment and a finding of no significant impact or an environmental impact statement is prepared.

This approach for identifying CPSC actions which require the preparation of environment documents is different from the approach of the interim rules. The interim rules classify CPSC actions as those which are normally major actions and those which are normally not major actions in terms of importance and CPSC resources required. An environmental review leading to either an environmental impact statement or a finding of no significant impact is required for all major actions but not for non-major actions.

The Commission believes that the approach of the procedures proposed below which relates to the nature of the impact of a proposed action rather than the nature of the action (major/non-major) more appropriately distinguishes classes of CPSC actions for environmental review purposes. The three commenters on the interim rules suggested that there may be a problem in maintaining a neat, conceptual distinction between the nature of an action and the significance of its environmental effects. The Commission believes this concern has merit and therefore, proposes in this document to divide its actions into three categories based on the nature of environmental effects.

It should be noted that there is no category of CPSC action for which an environmental impact statement is normally required. Since the establishment of the Commission in 1973, the Commission has taken only one action which might have produced significant environmental effects and accordingly, has issued only one environmental impact statement. [1] While it is possible in the future that there may be other individual CPSC actions which could produce significant environmental effects. Commission experience has shown that there is no general class of CPSC actions with the potential for creating such effects.

The Commission would like to receive comments on the categorization approach taken by the proposed procedures as well as on the specific identification of classes of CPSC actions in proposed § 1021.5

Conclusion

Section 1507.3 of CEQ's NEPA regulations provides that agency implementing procedures shall only be adopted after an opportunity for public review and after review by CEQ for conformity with the act and these regulations.

In accordance with the NEPA regulations and Commission policy to solicit public participation and comment whenever practicable, interested persons are invited to submit written comments on these procedures. After reviewing all timely comments, the Commission may revise the procedures, as appropriate, and will submit the final version for review by CEQ for conformity with the act and the NEPA regulations. The Commission will then publish in the **Federal Register** its final procedures which will be effective 30 days after the date of publication.

Accordingly, pursuant to provisions of the National Environmental Policy Act (Pub. L. 91–190, 42 U.S.C. 4321–4347, as amended by Pub. L. 94–83, August 9, 1975) and Regulations issued by the President's Council on Environmental Quality (40 CFR Part 1500 et seq., 43 FR 55978, November 29, 1978), the Commission proposes that Part 1021 of Title 16, Chapter II, Subchapter A, be revised to read as follows:

PART 1021—ENVIRONMENTAL REVIEW

Subpart A—General

Sec.

1021.1 Purpose.
1021.2 Policy.
1021.3 Definitions.

[1] The Commission prepared an environmental impact statement for its ban on lead-containing paint and certain consumer products bearing lead-containing paint. (16 CFR Part 1303; 42 FR 44199). The final statement concluded that the proposed regulatory action would not result in a significant environmental impact.

Sec.

1021.4 Overview of environmental review process for CPSC actions.
1021.5 Categories of CPSC actions.

Subpart B—Procedures

1021.6 Responsible Official.
1021.7 Coordination of environmental review with CPSC procedures.
1021.8 Legislative proposals.
1021.9 Public participation, notice and comment.
1021.10 Emergencies.
1021.11 Information regarding NEPA compliance.

Subpart C—Contents of Environmental Review Documents

1021.12 Environmental assessment.
1021.13 Finding of no significant impact.
1021.14 Environmental impact statement.

Authority: National Environmental Policy Act (Pub. L. 91–190, 83 Stat. 852, 42 U.S.C. 4321–4347, as amended by Pub. L. 94–83, August 9, 1975) and Regulations issued by the President's Council on Environmental Quality (40 CFR Part 1500 et seq., 43 FR 55978, November 29, 1978).

Subpart A—General

§ 1021.1 Purpose.

This part contains Consumer Product Safety Commission procedures for review of environmental effects of Commission actions and for preparation of environmental impact statements (EIS) and related documents. These procedures supersede any Commission procedures previously applicable. The procedures provide for identification of effects of a proposed action and its alternatives on the environment; for assessment of the significance of these effects; for consideration of effects at the appropriate points in the Commission's decision-making process; and for preparation of environmental impact statements for major actions significantly affecting the environment. These procedures are intended to implement the Council on Environmental Quality's final regulations of November 29, 1978 (43 FR 55978; 40 CFR Part 1500, et seq.) concerning agency compliance with the National Environmental Policy Act, as amended (NEPA) (15 U.S.C. 4321–4347 as amended by Pub. L. 94–83, August 8, 1975).

§ 1021.2 Policy.

It is the policy of the Commission to weigh and consider the effects upon the human environment of a proposed action and its reasonable alternatives. Actions will be designed to avoid or minimize adverse effects upon the quality of the human environment wherever practicable.

§ 1021.3 Definitions.

(a) The term "CPSC actions" means rulemaking actions; enforcement actions; adjudications; legislative proposals or reports; construction, relocation, or renovation of CPSC facilities; decisions on petitions; and any other agency activity designated by the Executive Director as one necessitating environmental review.

(b) The term "Commission" means the five Commissioners of the Consumer Product Safety Commission.

(c) The term "CPSC" means the entire organization which bears the title Consumer Product Safety Commission.

(d) The term "NEPA regulations" means the Council of Environmental Quality regulations of November 29, 1978 (43 FR 55978) for implementing the provisions of the National Environmental Policy Act, as amended (42 U.S.C. 4321, et seq.).

(e) The term "environmental review process" refers to all activities associated with decisions to prepare an environmental assessment, a finding of no significant impact, or an environmental impact statement.

(f) The definitions given in Part 1508 of the Council's NEPA regulations are applicable to this Part 1021 and are not repeated here.

§ 1021.4 Overview of environmental review process for CPSC actions.

The environmental review process normally begins during the staff development of a proposed action and progresses through the following steps:

(a) *Environmental assessment* (section 1508.9 of the NEPA regulations). The assessment is initiated along with the staff development of a proposal and the identification of realistic alternatives. The assessment shall be available to the Commission before the Commission votes on a proposal and its alternatives. Its purpose is to identify and describe foreseeable effects on the environment, if any, of the action and its alternatives. The assessment culminates in a written report. This report generally contains analyses of the same categories of information as would an EIS, but in a much less detailed fashion. (See § 1021.10(a), below.) It contains sufficient information to form a basis for deciding whether effects on the environment are likely to be "significant." (See § 1508.27 of the NEPA regulations.)

(b) *Decision as to significance of effects on the environment.* This decision is made by the Executive Director of the CPSC and is based upon the results of the environmental assessment as well as any other pertinent information. If the effects are significant, CPSC publishes in the **Federal Register** a notice of intent to prepare an environmental impact statement. (See § 1508.22 of the NEPA regulations.) If not, a finding of no significant impact is prepared. (Section 1508.13 of the NEPA regulations.)

(c) *Finding of no significant impact.* This is a written document which gives reasons for concluding that the effects of a proposed action, or its alternatives, on the environment will not be significant. Together with the environmental assessment, it explains the basis for not preparing an EIS. The finding of no significant impact is signed by the Executive Director. The finding of no significant impact and the environmental assessment accompany the proposed action throughout the Commission decision-making process.

(d) *Draft environmental impact statement.* The content of a draft EIS is described in § 1021.12, below. For a particular proposal, the breadth of issues to be discussed is determined by using the scoping process described in § 1501.7 of the NEPA regulations. The draft EIS pertaining to a proposed rule is before the Commission at the time it considers the proposed action and is available to the public when the notice of proposed rulemaking is published or as soon as possible thereafter. In appropriate instances, the **Federal Register** preamble for a proposed rule may serve as the draft EIS. The draft EIS shall accompany the proposed action throughout the remainder of the Commission decision-making process.

(e) *Final EIS.* The content of this document is described in § 1021.12 A final EIS responds to all substantive comments on the draft statement. It is before the Commission when it considers a final action.

(f) *Supplemental statements.* When CPSC makes changes in the proposed action that are important to environmental issues or when there is significant new environmental information, the Executive Director instructs CPSC staff to prepare supplements to either the draft or final EIS (See § 1502.9(c) of the NEPA regulations).

(g) *Record of decision.* (Sections 1505.2 and 1506.1 of the NEPA regulations.) At the time of a decision on a proposed action which involves an EIS, CPSC prepares a written record of decision explaining the decision and why any alternatives discussed in the EIS were rejected. This written record is signed by the Secretary of the Commission for the Commission. No action going forward on the proposal may be taken until the record of

decision is signed and filed in the Office of the Secretary of the Commission.

§ 1021.5 Categories of CPSC actions.

(a) There are no CPSC actions which ordinarily produce significant environmental effects. Therefore, there are no actions for which an environmental impact statement is normally required.

(b) The following categories of CPSC actions have the potential of producing environmental effects and therefore, normally require environmental assessments but not necessarily environmental impact statements:

(1) Regulatory actions dealing with health risks.

(2) Actions requiring the destruction or disposal of large quantities of products or components of products.

(3) Construction, relocation, or major renovation of CPSC facilities.

(4) Recommendations or reports to Congress on proposed legislation that will substantially affect the scope of CPSC authority or the use of CPSC resources, authorize construction or razing of facilities, or dislocate large numbers of employees.

(5) Enforcement actions which result in the widespread use of substitute products, which may present health risks.

(c) The following categories of CPSC actions normally have little or no potential for affecting the human environment; and therefore, neither an environmental assessment nor an environmental impact statement is required. (These categories are termed "categorical exclusions" in the NEPA regulations—see §§ 1507.3(b)(2) and 1508.4):

(1) Rules to provide design or performance requirements for products, or revision, amendment, or revocation of such standards.

(2) Product certification or labeling rules.

(3) Rules requiring poison prevention packaging of products or exempting products from poison prevention packaging rules.

(4) Administrative proceedings to require individual manufacturers to give notice of and/or to correct, repair, replace, or refund the purchase price of banned or hazardous products. Other administrative adjudications which are primarily law enforcement proceedings. (See §1508.12(e) of the NEPA regulations.)

(5) Recommendations or reports to Congress on proposed legislation to amend, delete or add procedural provisions to existing CPSC statutory authority.

(6) Decisions on petitions for rulemaking.

(d) In exceptional circumstances, actions within paragraph (c) of this section ("categorical exclusions") may produce effects on the human environment. Upon a determination by the Executive Director that a normally excluded proposed action may have such an effect, an environmental assessment and a finding of no significant impact or an environmental impact statement shall be prepared.

Subpart B—Procedures

§ 1021.6 Responsible official.

(a) The Executive Director of the CPSC shall have the responsibility to ensure that the Commission's policies and procedures set forth in this part are carried out. He or she shall have the following specific powers and duties:

(1) To ensure that CPSC environmental review is conducted in accordance with the NEPA regulations as well as this Part 1021.

(2) To evaluate the significance of effects of a CPSC action on the environment and to determine whether a finding of no significant impact or an EIS should be prepared.

(3) To determine when a categorical exclusion requires environmental review because of exceptional circumstances indicating that the otherwise exluded action may produce an environmental effect.

(4) To instruct CPSC staff to prepare supplements to either draft or final EIS's where there is new environmental information or when CPSC makes changes in a proposed action that are important to environmental issues.

(5) To ensure that environmental documents are before the Commission at all stages of review of proposed action.

(6) To make provisions for soliciting public comment on the anticipated effects on the environment of proposed CPSC actions and their reasonable alternatives at any stage of the environmental review process, whenever he or she decides that such comment will be helpful. The Executive Director, for example, shall have the power to require that provision for soliciting such comments, written or oral, be included in any announcement of a public hearing on proposed rulemaking or on the merits of a petition for rulemaking.

(7) To call upon all resources and expertise available to CPSC to ensure that environmental review is accomplished through an interdisciplinary effort.

(8) To delegate any of his or her powers and duties, other than paragraph (a)(2) and (3) of this section, to any officer or employee of the CPSC.

§ 1021.7 Coordination of environmental review with CPSC procedures.

(a) The Commission shall consider all relevant environmental documents in evaluating proposals for Commission action. The preparation and completion of assessments and statements required by this part shall be scheduled to assure that available environmental information is before the Commission at all appropriate stages of development of CPSC actions along with technical and economic information otherwise required. The range of alternatives discussed in appropriate environmental documents shall be encompassed by the range of alternatives considered by the Commission for an action.

(b) An environmental assessment on a proposed rulemaking action requiring environmental review shall be available to the Commission before the Commission votes on a proposed rule and its alternatives. If the Executive Director determines that an EIS is needed, the draft EIS shall normally be before the Commission at the time it votes to publish a proposed rule. A final EIS shall be before the Commission when it considers final action on a proposed rule. Relevant environmental documents shall accompany the proposed rulemaking action throughout the Commission's decisionmaking process.

(c) Draft EISs or findings of no significant impact together with environmental assessments shall be made available to the public for comment at the time of publication in the **Federal Register** of CPSC proposals for regulatory action requiring environmental review or promptly thereafter. Pursuant to § 1506.10 of the NEPA regulations, no decision on a proposed action shall be made by the Commission until the later of 90 days after the Environmental Protection Agency (EPA) has published a notice announcing receipt of the draft EIS or 30 days after EPA announces receipt of the final EIS. These time periods may run concurrently. In addition, with regard to rulemaking for the purpose of protecting the public health and safety, the Commission may waive the 30 day period and publish a decision on a final rule simultaneously with publication by EPA of the notice of availability.

(d) Whenever the Commission decides to solicit offers by an outside person or organization to develop a proposed consumer product safety standard in accordance with section 7 of the

Consumer Product Safety Act (15 U.S.C. 2056) and the Executive Director has determined that environmental review is needed, the Executive Director shall recommend to the Commission whether the "offeror" should perform an environmental assessment during development of the proposed standard. In making this recommendation, the Executive Director shall take into account the resources of the "offeror", including the expertise and money available to it. If the Commission decides that the "offeror" should perform an assessment, the agreement between the Commission and the offer shall so provide. CPSC, however, shall independently evaluate any assessment prepared and shall take responsibility for the scope and content of the assessment.

(e) CPSC adjudications are primarily law enforcement proceedings and therefore, are not agency actions within the meaning of NEPA. (See § 1508.18(8) of the NEPA regulations.) However, in CPSC formal relemaking proceedings, all available environmental information, including any supplements to a draft or final EIS, shall be filed in the Office of the Secretary and shall be made part of the formal record of the proceeding.

§ 1021.8 Legislative proposals.

Draft EISs on legislative proposals which may significantly affect the environment shall be prepared as described in § 1506.8 of the NEPA regulations. The draft EIS, where feasible, shall accompany the legislative proposal or report to Congress and shall be available in time for Congressional hearings and deliberations. The draft EIS shall be forwarded to the Environmental Protection Agency in accordance with § 1506.9 of the NEPA regulations. Comments on the legislative statement and CPSC's responses shall be forwarded to the appropriate Congressional committees.

§ 1021.9 Public participation, notice, and comment.

(a) Information and comments are solicited from and provided to the public on anticipated environmental effects of CPSC actions as follows:

(1) Promptly after a decision is made to prepare a draft EIS, a notice of intent to prepare the draft EIS shall be published in the CPSC Public Calendar and in the **Federal Register.** The notice shall state the nature of the proposed action and available alternatives and shall describe the planned scoping process. The notice shall solicit information and comment by other governmental agencies and the public.

(2) As soon as practicable after a finding of no significant impact is completed, a copy of the finding together with the environmental assessment report shall be forwarded to the Office of the Secretary of the Commission to be made available to the public. Any information and comments received from the public on the documents will be considered and will accompany the documents throughout the CPSC decisionmaking process, but comments will not ordinarily be answered individually.

(3)(i) Upon completion of a draft EIS, a notice of its availability for comment shall be published in the CPSC Public Calendar and in the **Federal Register.** Copies of the draft EIS shall be filed with the Environmental Protection Agency (EPA) in accordance with § 1506.9 of the NEPA regulations. The length of the comment period on the draft EIS shall be stated in the notice of availability and on the cover of the draft EIS. The comment period, in accordance with § 1506.10 of the NEPA regulations, shall be a minimum of 45 days from the date the notice of receipt of the draft EIS is published in the **Federal Register** by EPA. It should also be stated in the CPSC notice that comments received during the comment period will be addressed in the final EIS, whereas late comments will be considered to the extent practicable, and that all comments will be appended to the final EIS.

(ii) Copies of the draft EIS shall be sent to public and private organizations known by CPSC to have special expertise with respect to the environmental effects involved, those who are known to have an interest in the action, and those who request an opportunity to comment. Also, copies shall be circulated for comment to Federal, State, and local agencies with jurisdiction by law and special expertise with respect to environmental effects involved. Part 1503 of the NEPA regulations shall be consulted for further details of this procedure.

(iii) Draft EIS's shall be available to the public in the Office of the Secretary at Commission headquarters.

(4) Upon completion of a final EIS, a notice of its availability in the Office of the Secretary shall be published in the CPSC Public Calendar and if deemed appropriate, in the **Federal Register.** Copies of the final EIS shall be forwarded to EPA and one copy shall be sent to each entity or person who commented on the draft EIS.

(5) A list of EIS's under preparation and of EIS's or findings of no significant impact and environmental assessments completed shall be available to the public in the Office of the Secretary, at Commission headquarters. The list shall be continuously updated.

(6) In addition to publication in the CPSC Public Calendar and the **Federal Register,** notices called for by this section may also be publicized through press releases or local newspapers, whenever appropriate.

§ 1021.10 Emergencies.

Where emergency circumstances make it necessary to take an action without observing all the provisions of these implementing procedures or the NEPA regulations, CPSC will consult with the Council on Environmental Quality about alternative arrangements.

§ 1021.11 Information regarding NEPA compliance.

Interested persons may contact the Commission's Office of the Executive Director (301–492–6550) for information regarding CPSC NEPA compliance.

Subpart C—Contents of Environmental Review Documents

§ 1021.12 Environmental assessment.

(a) An environmental assessment shall first briefly describe the proposed action and realistic alternative actions. Next, it shall identify all effects on the environment that can be expected to result from the proposed and alternative actions. After each anticipated effect is identified, it shall be described as fully as can be done with available data in order to show its magnitude and significance. Sources of information for assessment include CPSC staff studies and research reports, information gathered at hearings or meetings held to obtain the views of the public on the proposed action, and other information received from members of the public and from governmental entities.

(b) The assessment shall identify and describe any methods or approaches which would avoid or minimize adverse effects on the environment.

§ 1021.13 Finding of no significant impact.

(a) A finding of no significant impact shall cite and be attached to the environmental assessment upon which it is based. It shall refer to anticipated effects upon the environment identified in the environmental assessment and give the reason(s) why those effects will not be significant. This final paragraph of the finding shall give the reasons why the overall impact on the environment is not regarded as significant.

(b) The signature of the Executive Director shall appear at the end of the finding of no significant impact.

§ 1021.14 Environmental impact statement.

(a) Draft and final EIS's, unless there is a compelling reason to do otherwise, shall conform to the recommended format specified in § 1502.10 of the NEPA regulations and shall contain the material required by §§ 1502.11–1502.18 of those regulations.

(b) It may be necessary to include in an EIS a description of effects which are not effects on the natural or physical environment, but rather are, for example, purely economic or health effects. For this reason, an EIS may include issues and facts that are thoroughly analyzed in other comprehensive CPSC documents such as hazard analyses, economic impact analyses, or analyses of impact on particular age groups among consumers. In such cases, the EIS shall not duplicate the other documents, but rather shall cite and summarize from them. A list of background documents and sources of data cited in the EIS shall appear at the end of every EIS.

Dated: October 26, 1979.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 79-33696 Filed 10-30-79; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 203

[Docket No. R-79-722]

Prepayment of Insured Single Family Mortgages

AGENCY: Department of Housing and Urban Development.

ACTION: Proposed rule.

SUMMARY: This rule would provide that insured single family mortgages will no longer require 30 days advance notice of prepayment or payment on an interest payment date; payment in full shall be credited as of the date received; and partial prepayment, other than on an installment due date, need not be credited until the next following installment date. The rule would also relax requirements for mortgage reinstatement.

COMMENT DUE DATE: Comments must be received on or before December 31, 1979.

ADDRESSES: Send comments to: 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: Julius Williams, Director, Single Family Loan Servicing Division, Room 9272, Office of Single Family Housing, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410 (202) 755–6700. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Section 203.558 has been a principal source of consumer complaint in past years and is inconsistent with provisions governing prepayment in full which appear in standard security instruments in use both in FNMA and the Veterans Administration.

The 30-day notice and payment date rule was designed to permit the mortgage banking industry to anticipate prepayment, develop close-out balances and arrange for reinvestment of the prepaid funds. Following discussion with the industry, HUD has determined that the need for the 30-day advance notice no longer applies in today's computer age.

The Department, therefore, proposes to amend 24 CFR 203.558 to provide that after adoption of the rule a mortgagee may not require 30 days advance notice of prepayment. In addition, payment in full shall be credited as of the date received. Partial prepayment, other than on an installment due date, need not be credited until the next following installment due date.

Section 203.608, Reinstatement is being amended in order that HUD's regulations and security instruments will be in conformity with those used by the Veteran's Administration and other Government agencies as mandated by Section 905 of the Housing and Community Development Amendment of 1978 which permits reinstatement of a mortgage after foreclosure proceedings have been instituted under certain circumstances.

The Department has determined that an Environmental Impact Statement is not required with respect to these amendments. A finding of inapplicability in accordance with HUD's environmental procedures is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the above address.

Accordingly, 24 CFR 203.558 is revised as follows:

§ 203.558 Handling prepayments.

(a) Notwithstanding the terms of the mortgage, the mortgagee may accept a prepayment at any time and in any amount so long as monthly interest on the debt is calculated on the actual unpaid principal balance of the loan.

(b) With respect to mortgages insured before * * *, if the mortgagee will not accept a prepayment until the first day of the month following expiration of the 30-day notice period (Section 203.22), unless interest is paid to that date, the mortgagee's response to the mortgagor's inquiry, request for payoff figures, or tender must clearly advise the mortgagor of this fact. If the mortgagor's notice of intention to prepay or prepayment is required to be delivered on a nonworking day, the notice of prepayment shall be considered timely if delivered on the next working day.

(c) With respect to mortgages insured on or after * * *, the mortgagee will not require 30 days advance notice of prepayment or payment on an interest payment date. Payment in full shall be credited as of the date received. Partial prepayment, other than on an installment due date, need not be credited until the next following installment.

Section 203.608 is revised to read as follows:

§ 203.608 Reinstatement.

The mortgagee shall permit reinstatement of a mortgage, even after the institution of foreclosure proceedings, if the mortgagor tenders in a lump sum all amounts required to bring the account current, including foreclosure costs and reasonable attorney's fees and expenses properly associated with the foreclosure action, unless (a) reinstatement will preclude foreclosure following a subsequent default, or (b) reinstatement will adversely affect the priority of the mortgage lien.

Authority: The provisions of this part 203 issued under Secs. 203.211 of the National Housing Act, as amended, 12 U.S.C. 1709, 1715(a); sec. (7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).)

Issued at Washington, D.C., October 2, 1979.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 79-33648 Filed 10-30-79; 8:45 am]

BILLING CODE 4210-01-M

NAVAJO AND HOPI INDIAN RELOCATION COMMISSION

25 CFR Part 700

Commission Operations and Relocation Procedures; "Head of Household"; Definition revised

AGENCY: Navajo and Hopi Indian Relocation Commission.

ACTION: Proposed rule.

SUMMARY: The Navajo and Hopi Indian Relocation Commission proposes to amend its regulations by revising the term "head of household" in an attempt to establish a workable definition. Significant administrative and interpretative problems have been encountered under the language of the present definitions. The proposal is based upon an analysis of the Navajo and Hopi Settlement Act and its history, experience gained from the benefit applicant process, input from Navajo and Hopi applicants and also from Tribal attorneys.

DATE: Comments must be received on or before December 31, 1979.

ADDRESS: Send comments to: Paul M. Tessler, CFR Liaison Officer, Navajo and Hopi Indian Relocation Commission, 2717 N. Steves Boulevard, Bldg. A, Flagstaff, Arizona 86001.

FOR FURTHER INFORMATION CONTACT: Paul M. Tessler, Telephone No.: (602) 779–3311, Extension 1376, FTS: 261–1376.

SUPPLEMENTARY INFORMATION: On November 12, 1976, the existing regulations defining "Head of Household" were published in 41 FR 49982 and are codified in 25 CFR Part 700. That period of time was the formative stage of the Commission's relocation policy. The Commission could not predict who would file applications for relocation benefits nor the extent of such applications. To date, the Commission has received approximately 2,100 (two-thousand one-hundred) applications for relocation benefits. Of these, approximately 500 (five-hundred) files have been reviewed for certification of eligibility and 352 (three-hundred twenty-two) have been certified as eligible; 122 (one-hundred fifty-two) actual relocations have been accomplished.

This proposed rule revision is based upon an analysis of Navajo-Hopi Settlement Act (Pub. L. 93–531, 85 Stat. 1712, 25 U.S.C. 640d–640d–24) and its history, experience gained from the benefit application process, input from Navajo and Hopi applicants and also from Tribal attorneys.

The Commission is aware of the need to establish a workable definition of "Head of Household" as it applies to those people affected by the Act. The existing definition uses the Internal Revenue Code of 1954 to define "Head of Household". As used in the Internal Revenue Code, "head of household" has little relevancy to our applicants and the nature of life on the Former Joint Use Area. The existing regulations also state that ". . . any single person who maintains a separate home and did so for a period of one year prior to the effective date of these regulations shall qualify as a head of household under these regulations". The regulations do not define "maintains a separate home" in a clear, unambiguous manner and therefore significant administrative and interpretative problems have been encountered. The principal author is William G. Lavell, Field Solicitor, Valley Bank Center, Suite 2080, 201 N. Central Avenue, Phoenix, Arizona 85073.

It is proposed to amend 25 CFR § 700.5 by revising paragraph (q) to read as follows:

§ 700.5 Definitions.

* * * * *

(q)(1) *Household.* A household is either:

(i) A married couple, or

(ii) A widow or widower, or

(iii) A person who, on December 22, 1974, actually maintained and supported himself/herself or one or more persons who reside together.

(2) *Head of Household.* The head of household is the individual who exercises control over the other household members based upon a moral or legal obligation to do so; *provided that* any household of two or more persons shall be represented by the head of household in all matters relating to the Commission.

(3) *Household Status and Size.* Household status and size shall be determined by the facts existing on the date of certification for relocation benefits.

* * * * *

Sandra Massetto,

Chairperson Navajo and Hopi Indian Relocation Commission.

[FR Doc. 79–33800 Filed 10–30–79; 8:45 am]

BILLING CODE 4310–HB–M

40 CFR Part 65

[FRL 1249-2]

Proposed Delayed Compliance Order for Koppers Co., Inc.

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: U.S. EPA proposes to issue an Administrative Order to Koppers Company, Inc. (Koppers). The Order requires the Company to bring Boiler No. 3 (the source) into compliance with Ohio Regulations AP-3-07, AP-3-11, and 40 CFR 52.1882(b), part of the federally approved Ohio State Implementation Plan (SIP). Because the Company is unable to comply with these regulations at this time, the proposed Order would establish an expeditious schedule requiring final compliance by January 15, 1980. Source compliance with the Order would preclude suits under the Federal enforcement and citizen suit provision of the Clean Air Act (Act) for violation of the SIP regulations covered by the Order.

The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on U.S. EPA's proposed issuance of the Order.

DATES: Written comments must be received by November 30, 1979 and requests for a public hearing must be received by November 15, 1979. All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held after twenty-one days prior notice of the date, time, and place of the hearing has been given in this publication.

ADDRESSES: Comments and requests for a public hearing should be submitted to Director, Enforcement Division, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Material supporting the Order and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Anne Swofford, Attorney, Enforcement Division, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, at (312) 353-2082.

SUPPLEMENTARY INFORMATION: Koppers has a facility at Youngstown, Ohio. The proposed Order addresses emissions from Boiler No. 3 at this facility, which is subject to Ohio Regulations AP-3-07, AP-3-11, and 40 CFR Section 52.1882(b) of the Ohio Implementation Plan. The regulations limit the emissions of particulate matter, visable emissions, and sulfur dioxide emissions and are part of the federally approved Ohio State Implementation Plan. The Order requires final compliance with the regulations by Koppers, and the source has consented to its terms. The proposed Order satisfies the applicable requirements of Section 113(d) of the Act. If the Order is issued source compliance with its terms would preclude further U.S. EPA enforcement action under Section 113 of the Act against the source for violations of the regulations covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provisions of the Act (Section 304) would be similarly precluded.

Comments received by the date specified above will be considered in determining whether U.S. EPA should issue the Order. Testimony given at any public hearing concerning the Order will also be considered. After the public comment period and any public hearing, the Administrator of U.S. EPA will publish in the **Federal Register** the Agency's final action on the Order in 40 CFR Part 65.

Dated: October 19, 1979.

John McGuire,

Regional Administrator, Region V.

1. In consideration of the foregoing, it is proposed to amend 40 CFR Chapter I, as follows:

By adding the following entry to the table in § 65.400.

§ 65.400 Federal Delayed Compliance Orders issued under Section 113(d)(1), (3), and (4) of the Act.

U.S. Environmental Protection Agency; Region V

In the matter of: Koppers Company, Inc. Youngstown, Ohio, Proceeding Pursuant to Sections 113(d) and 114 of the Clean Air Act, as Amended [42 U.S.C. Sections 7413(d) and 7414]. Order No. EPA-5-79-A-48.

Introduction

The following Order is issued this date pursuant to Section 113(d) and 114 of the Clean Air Act, as amended, U.S.C. Section 7413(d) and 7414 (hereinafter referred to as "the Act"). The Order contains a compliance schedule with increments of progress, interim emission reduction requirements, and reporting conditions. Final compliance is required as expeditiously as practicable, but no later than January 15, 1980. Public notice, opportunity for a public hearing and notice to the State of Ohio have been provided pursuant to Section 113(d)(1) of the Act.

Findings

1. On April 10, 1978, Mr. Dale S. Bryson, Acting Director, Enforcement Division, Region V, U.S. Environmental Protection

Agency (hereinafter referred to as "U.S. EPA"), pursuant to authority duly delegated to him by the Administrator of U.S. EPA, issued a Notice of Violation to the Koppers Company (hereinafter "Koppers"), stating that the Company's facility, located in Youngstown, Ohio, was found to be in violation of the applicable Ohio Implementation Plan, as defined in Section 110(d) of the Act. The Notice cited Koppers' Boiler No. 3 for violation of Ohio Regulations AP–3–07 and AP–3–11, and for violation of 40 CFR section 52.1882(b). A copy of said Notice was sent to the State of Ohio Environmental Protection Agency.

2. Ohio Regulation AP–3–07 deals with the control of visible air contaminants from stationary sources.

3. Ohio Regulation AP–3–11 restricts the emission of particulate matter from fuel burning equipment.

4. 40 CFR Section 52.1882(b) deals with the control of sulfur dioxide.

5. In satisfaction of Section 113(a)(4) of the Act, opportunity to confer with the Administrator's delegate was given to Koppers and on May 18, 1978, a conference was held. At that conference, U.S. EPA advised Koppers that the finding of violation with respect to AP–3–07 was based upon visible emissions observations recorded by a U.S. EPA certified visible emissions reader, and that the finding of violation with respect to AP–3–11 was based upon emission calculations derived from data submitted to U.S. EPA by Koppers.

6. In a letter dated May 17, 1979, Koppers advised U.S. EPA that it intended to bring boiler #3 into compliance with Ohio Regulations AP–3–07 and AP–3–11 and with 40 CFR Section 52.1882(b) by constructing a new boiler #4 which would operate on liquid fuel and which would replace boiler #3. After boiler #4 has been installed, boiler #3 will be converted to liquid fuel and will be maintained as a standby boiler only.

7. It has been determined by the U.S. EPA that Koppers is unable to immediately comply with Regulations AP–3–07 and AP–3–11 and with 40 CFR Section 52.1882(b) of the State of Ohio Implementation Plan.

8. U.S. EPA has determined that said violations have continued beyond the thirtieth day after the date of the Enforcement Director's notification.

Order

After a thorough investigation of all relevant facts, including public comment, it is determined that the schedule for compliance set forth in this Order is as expeditious as practicable, and that the terms of this Order comply with Section 113(d) of the Act. Therefore, it is hereby Agreed and Ordered that:

1. The Koppers Company, Inc. shall come into compliance with the State of Ohio Implementation Plan, Regulations AP–3–07 and AP–3–11 as approved by the U.S. EPA in the **Federal Register** of April 15, 1974, and with 40 CFR Section 52.1882(b) as promulgated by the Administrator of the U.S. EPA on May 31, 1977, by installation of a new boiler #4 with a capacity of 30,000 lbs. of steam per hour to operate on liquid fuel and the conversion of boiler #3 to liquid fuel, with future use restricted to standby capacity only, in accordance with the following schedule:

a. Apply for all necessary permits from Ohio EPA; July 1, 1979.
b. Submit final plan to U.S. EPA; July 15, 1979.
c. Award contract for installation of boiler No. 4; August 1, 1979.
d. Complete installation of boiler No. 4, start-up boiler No. 4, and achieve and certify compliance to U.S. EPA; December 3, 1979.
e. Cease operation of boiler No. 3 and begin burner conversion; December 17, 1979.
f. Complete conversion of boiler No. 3 and certify compliance to U.S. EPA; January 15, 1980.

2. With respect to boiler #4, the fuel burned in boiler #4 on or after December 3, 1979 shall be a combination of liquid and gaseous fuels in the following quantities:

a. Liquid fuels—not to exceed 1,500,000 gallons of liquid fuels which have a sulfur content of 0.75% or less and a content of 140,000 BTU/gallon or more. The following liquid fuels which meet the aforementioned sulfur and heat content requirement shall be deemed to be acceptable: (1) creosote; (2) fuel oil No. 2; (3) fuel oil No. 6.

b. Gaseous fuels—Any heating requirements in excess of that provided by 1,500,000 gallons of liquid fuel will be from the burning of natural gas. This agreement shall not preclude Koppers Company from burning natural gas on boiler #4 in preference to the approved liquid fuels.

3. With respect to boiler #3, the fuel burned in boiler #3 on and after January 15, 1980 shall be a combination of liquid and gaseous fuels in the following quantities:

a. Liquid fuels—not to exceed 1,500,000 gallons of liquid fuels which have a sulfur content of 0.75% or less and a content of 140,000 BTU/gallon or more. The following liquid fuels which meet the aforementioned sulfur and heat content requirement shall be deemed to be acceptable: 1.) creosote, 2.) fuel oil No. 2, 3.) fuel oil No. 6.

b. Gaseous fuel—Any heating requirements in excess of that provided by 1,500,000 gallons of liquid fuel will be from the burning of natural gas. This agreement shall not preclude Koppers Company from burning natural gas on boiler #4 in preference to the approved liquid fuels.

4. The Koppers Company shall include the provisions of paragraphs 2 and 3 in application for any and all permits required by the State of Ohio for construction, installation, or conversion of any of the boilers in issue in this Order. The Koppers Company agrees that it will meet the requirements of the Prevention of Significant Deterioration of Air Quality Regulations at 40 CFR 52.21 by including as enforceable permit conditions in its above-mentioned State of Ohio permits the criteria specified in paragraph 2 of this Order.

5. Pursuant to Section 113(d)(7) of the Act, during the period of this Order, until completion of the compliance schedule set out above, the Company shall use the best practicable system of emissions reduction so as to minimize particulate emissions and shall further comply with the requirements of the applicable implementation plan insofar as it is able.

6. Koppers Company shall, beginning on December 3, 1979 for boiler #4 and on January 15, 1980 for boiler #3 maintain a record of the sulfur and heat contents and the quantity of liquid fuels burned in boilers #3 and #4. Koppers shall, beginning on the dates mentioned above, report on a bi-annual basis

the information required to be maintained in this paragraph.

7. No later than fifteen (15) days after any date for achievement of an incremental step of the compliance schedule specified in this Order, Koppers shall notify U.S. EPA in writing of its compliance or noncompliance with the requirement. If Koppers fails to complete any of the actions required by the dates specified in the Order, it shall included a detailed explanation of such failure. In addition, on or before December 3, 1979, for boiler #4, and on or before January 15, 1980, Koppers will submit to U.S. EPA certification of final compliance with the terms of this Order. All submittals and notifications to U.S. EPA, pursuant to this Order, shall be made to Eric Cohen, Chief, Air Compliance Section, Enforcement Division, Region V, U.S. EPA, 230 South Dearborn, Chicago, Illinois 60604.

8. Nothing herein shall be construed to be a waiver by the Administrator of any rights or remedies under the Clean Air Act, including, but not limited to, Section 303 of the Act, 42 U.S.C. Section 7503.

9. Koppers is hereby notified that its failure to achieve final compliance by July 1, 1979, at the Youngstown, Ohio facility may result in a requirement to pay a noncompliance penalty in accordance with Section 120 of the Act, 42 U.S.C. 7420. In the event of such failure, Koppers will be formally notified, pursuant to section 120(b)(3), 42 U.S.C. 7420(b)(3), and any regulations promulgated thereunder, of its noncompliance.

10. This Order shall be terminated in accordance with Section 113(d)(8) of the Act if the Administrator or his delegate determines on the record, after notice and hearing, that an inability to comply with Regulations AP-3-07, AP-3-11, and 40 CFR Section 52.1882(b) of the Ohio Implementation Plan no longer exists.

11. Violation of any requirement of this Order shall result in one or more of the following actions:

a. Enforcement of such requirement pursuant to Section 113(a), (b), or (c) of the Act, 42 U.S.C. 7413(a), (b), or (c), including possible judicial action for an injunction and/or penalties and in appropriate cases, criminal prosecution.

b. Revocation of this Order, after notice and opportunity for a public hearing, and subsequent enforcement of Ohio Implementation Plan Regulations AP-3-07, AP-3-11, and 40 CFR 52.1882(b), in accordance with the preceding paragraph.

c. If such violation occurs on or after July 1, 1979, notice of noncompliance and subsequent action pursuant to Section 120 of the Act.

12. By proceeding with this schedule, the Koppers Company is protected by Section 113(d)(1) against Federal enforcement action and citizen suits under Section 304 until January 15, 1980, where the owner or operator of said source is in compliance with the terms of such Order.

13. The provisions of this Delayed Compliance Order shall apply to and be binding on the parties to this action, their officers, directors, agents, servants, employees, and successors; in addition, the provisions of this Delayed Compliance order shall apply to all persons, firms, and corporations having notice of the Delayed Compliance Order and who are or will be acting in concert and privity with the Defendant to this action or its officers, directors, agents, servants, employees, and successors. The Company shall give notice of this Delayed Compliance Order to any successors in interest prior to transfer of ownership, and shall simultaneously verify to the United States Environmental Protection Agency, Region V, Enforcement Division, that such notice has been given.

14. This Order is effective upon final promulgation in the **Federal Register.**

Date: _____

_____

Administrator U.S. Environmental Protection Agency

Waiver of Rights to Challenge Order

Koppers Company, Inc., by the duly authorized undersigned, hereby consents to the provisions of this Order, waives any and all rights under any provisions of the law to challenge this Order, and believes it to be a reasonable means by which the Youngstown facility can achieve compliance with the Ohio State Implementation Plan.

Date: _____

_____

Vice Pres., Koppers, Inc. Organic Materials Group

[FR Doc. 79-33684 Filed 10-30-79; 8:45 am]

BILLING CODE 6560-01-M

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40 CFR Part 81

[FRL 1348-8]

State of Maryland; Attainment Status Designations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The State of Maryland has revised its list of air quality attainment designations for two counties within the State with respect to ozone (O_3). For (O_3), the State has changed the designation for Garrett and Allegany Counties from nonattainment of primary standards to attainment.

On June 1, 1979, Maryland submitted these revisions to the Environmental Protection Agency, along with supporting information, for promulgation under Section 107(d) of the Clean Air Act.

EPA proposes to approve these changes submitted by Maryland. The purpose of this notice is to solicit public comment on this proposed action. All other Section 107 designations for the State of Maryland not discussed in this notice remain intact (43 FR 40512 et. seq.)

DATE: Comments on these proposed designation changes should be submitted on or before December 31, 1979.

ADDRESSES: Copies of the associated support material are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Curtis Building, Tenth Floor, 6th & Walnut Streets, Philadelphia, PA 19106.
Maryland Department of Health and Mental Hygiene, Environmental Health Administration, Air Quality Programs, P.O. Box 13387, Baltimore, Maryland 21202, Attn: Mr. George Ferreri
Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

All comments should be addressed to: Mr. Howard R. Heim, Jr., Chief (3AH10), Air Programs Branch, U.S. Environmental Protection Agency, Region III, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106, Attn: 107MD–2.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Mykijewycz, U.S. Environmental Protection Agency, Region III, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106; (Phone) 215/597–8181.

SUPPLEMENTARY INFORMATION:

Background

Section 107(d)(1) of the Clean Air Act requires the States to submit to the Administrator a list identifying all air quality control areas, or portions thereof, that have not attained the National Ambient Air Quality Standards. the Act further requires that the Administrator promulgate this list, with such modifications as he deems necessary, as require by Section 107(d)(2) of the Act. On March 3, 1978, the Administrator promulgated nonattainment designations for Maryland for total suspended particulates (TSP), sulfure dioxide (SO_2), carbon monoxide (CO), ozone (O_3) and oxides of nitrogen (NO_x) (43 FR 8962). These designations were effective immediately and public comment was solicited. On September 12, 1978, in response to the comments received, the Administrator revised and amended certain of the original designations (43 FR 40502). The Act also provides that a State, from time to time, may review and revise its designations list and submit these revisions to the Administrator for promulgation (Section 107(d)(5) of the Act). The criteria and policy guidelines governing these revisions and the Administrator's review of them are the same that were used in the original designations and which are summarized in the Federal Register on March 3, 1978 (43 FR 8962), September 11, 1978 (43 FR 40412) and September 12, 1978 (43 FR 40502). Maryland has revised its original designation list and on June 1, 1979 submitted these revisions to EPA.

Proposed O_3 Redesignation

The State of Maryland has revised the O_3 designation for Garrett County and Allegany County from nonattainment of primary O_3 standards to attainment. On February 8, 1979 the Administrator promulgated a revision to the National Ambient Air Quality Standards for Ozone (44 FR 8202 et. seq.). Pursuant to this revision, the State submitted air quality data supporting a redesignation request from nonattainment status for the counties of Garrett and Allegany. Therefore, EPA proposes to redesignate these areas to "does meet primary standards" in accordance with Maryland's revision.

Submittal of Public Comments

The public is invited to comment on whether Garrett and Allegany Counties, currently nonattainment areas for the O_3 standards, should be redesignated as attainment areas for the O_3 standards. Similarly, the public is invited to comment on whether Washington County, currently designated as a nonattainment area for O_3 should be redesignated as an unclassified area for O_3.

All comments received on or before December 31, 1979 will be considered. However, until EPA actually promulgates final redesignation changing the areas from nonattainment, the required State Implementation Plan revisions satisfying Part D of the 1977 Clean Air Act Amendment will continue to apply.

All comments should be addressed to: Mr. Howard R. Heim, Jr., Chief (3AH10), Air Programs Branch, U.S. Environmental Protection Agency, Region III, Curtis Building, 6th & Walnut Streets, 10th Floor, Philadelphia, PA 19106, Attn: 107MD–2.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order of 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.

(Sections 107(d), 171(2), 301(a) of the Clean Air Act, as amended (42 U.S.C. 7407(d), 7501(2), 7601(a)))

Dated: September 21, 1979.

A. R. Morris,

Acting Regional Administrator.

[FR Doc. 79-33664 Filed 10-30-79; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket No. 79–93]

Security for the Protection of the Public: Increase in Maximum Amount of Required Evidence of Financial Responsibility; Proposed Rulemaking

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Maritime Commission proposes to revise its rules and regulations in order to increase the amount of insurance, escrow account, guaranty and surety bond required of holders of a Certificate (Performance) issued pursuant to section 3 of Public Law 89–777. The purpose and effect of the change is to provide greater protection to the passenger public.

DATES: Comments on or before: January 2, 1980.

ADDRESSES: Comments to: Secretary, Federal Maritime Commission, Room 11101, 1100 L Street NW., Washington, D.C. 20573.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission, Room 11101, 1100 L Street NW., Washington, D.C. 20573, (202) 523–5725.

SUPPLEMENTAL INFORMATION: Pursuant to the authority of section 3 of Pub. L. 89–777 (80 Stat. 1357, 1358) (46 U.S.C. 817e), and section 4 of the Administrative Procedure Act (5 U.S.C. 553), the Federal Maritime Commission, hereinafter referred to as the Commission, is authorized to make regulations necessary to establish the financial responsibility of any person arranging, offering, advertising or provising passage on a vessel having berth or stateroom accommodations for 50 or more passengers and which is to embark passengers at United States ports, for indemnification of passengers for nonperformance of transportation. Section 540.9(j) of the Commission's General Order 20 (46 CFR 540.9(j)) requires that the amount of insurance, escrow account, guaranty or surety bond submitted in compliance with section 3 of the statute shall not be required to exceed $5,000,000.

This regulation has been in effect since March, 1967.

This proposal would increase the maximum coverage required of an applicant (certificate) from $5,000,000 to $10,000,000 when an applicant (certificant) submits insurance, escrow account, guaranty or surety bond as evidence of financial responsibility. The proposal would not alter the existing

requirements with respect to a self-insurer who must demonstrate financial responsibility by maintenance of working capital and net worth each in an amount no less than 110 percent of the highest unearned passenger revenue of the applicant (certificant) within the preceding two fiscal years.

The financial responsibility requirement is intended to offer protection to the passenger public in the event that a vessel owner, charterer or operator fails to perform voyages or cruises. In 1967 the $5,000,000 maximum demonstrated a substantial degree of financial responsibility. In the intervening years, the inflationary impact has been severe. In August 1979, a 1967 dollar was worth 45.2 cents and the Consumer Price Index reached 221.1. based on an index of 100 in 1967. The price of fuel oil has increased approximately 8 times since 1967 and wages have more than doubled. The inflationary spiral and rising fuel costs have resulted in at least a doubling of most fares. Unearned passenger revenue of many owners and charterers has increased substantially and should continue to increase as they add vessels to their fleets, increase the number of available accommodations of their present vessels and raise their fares to meet increased costs.

Consequently, the Commission is of the belief that the maximum amount of coverage by insurance, escrow account, guaranty or surety bond should be increased to $10,000,000.

Under the proposal, § 540.9(j) would be amended to reflect the proposed increase. The introductory paragraph of Part II of the Application for Certificate of Financial Responsibility and Item 8 of the Application would be amended to reflect the increased amount.

Therefore, pursuant to section 3 of Public Law 89–777 (46 U.S.C. 817e); and section 4 of the Administrative Procedure Act (5 U.S.C. 553), the Commission proposes the following revisions:

1. Section 540.9(j) to be revised to read as follows:

§ 540.9 Miscellaneous.

* * * * *

"(j) The amount of (1) insurance as specified in § 540.5(a), (2) the escrow account as specified in § 540.5(b), (3) the guaranty as specified in § 540.5(c), or (4) the surety bond as specified in § 540.6 shall not be required to exceed 10 million dollars."

* * * * *

2. Revise introductory paragraph of "Part II—Performance" of the Application Form FMC–131 to read as follows:

"Answer items 8–15 if applying for Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance. If you are filing evidence of insurance, escrow account, guaranty or surety bond under Subpart A of 46 CFR Part 540 and providing at least ten (10) million dollars of coverage, you need not answer questions 10–15."

3. Revise Item 8 of the Application Form FMC–131 to read as follows:

"8. If you are providing at least ten (10) million dollars of coverage, state type of evidence and name and address of applicant's insurer, escrow agent, guarantor or surety (as appropriate)."

Interested persons may participate in this rulemaking proceeding by filing with the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before January 2, 1980, an original and 15 copies of their views or arguments pertaining to the proposed rule. All suggestions for changes in text should be accompanied by drafts of the language thought necessary to accomplish the desired change.

By order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 79–33636 Filed 10–30–79; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 674

North Pacific Fishery Management Council: Public Hearings

AGENCY: National Oceanic and Atmospheric Administration, DOC.

ACTION: Notice of Public Hearings on High Seas Salmon Fishery off the Coast of Alaska East of 175° East Longitude Fishery Management Plan Amendment.

SUMMARY: The North Pacific Fishery Management Council will hold public hearings for the purpose of public input on the amendment to the High Seas Salmon Fishery off the Coast of Alaska East of 175° East Longitude Fishery Management Plan Amendment.

DATES: Written comments on the amendment from members of the public may be submitted no later than January 1, 1980.

Individuals or organizations wishing to comment on the fishery management plan amendment may do so at public hearings to be held as follows:

November 13—Sitka, Alaska.
November 14—Petersburg, Alaska.
November 15—Juneau, Alaska.
November 16—Ketchikan, Alaska.

ADDRESS: Send comments to: Chairman, North Pacific Fishery Management Council, P.O. Box 3136DT, Anchorage, Alaska 99510.

Public hearing locations:

November 13, 1979—Centennial Building, Harbor Drive, Sitka, Alaska.
November 14, 1979—Petersburg, Alaska.
November 15, 1979—Gold Room of the Baranof Hotel, 127 Franklin Street, Juneau, Alaska.
November 16, 1979—Alaska Department of Fish and Game Auditorium, Ketchikan, Alaska.

All of the above hearings will be held in the evening.

The anomalies of winter travel in Alaska make it necessary to consider alternative meeting locations and dates. We have therefore planned to visit the city where a hearing was cancelled as soon as weather permits. Cancellations and new locations, if necessary, will be announced locally by telephone, radio, newspaper, and television.

Copies of the amendment are available at the following locations:

Anchorage

Alaska Department of Fish & Game, 333 Raspberry Road, Anchorage, Alaska 99502.
National Marine Fisheries Service, Federal Building & U.S. Court House, 701 C. Street, Anchorage, Alaska 99513.
Z. J. Loussac Public Library, 427 F Street, Anchorage, Alaska 99501.
North Pacific Fishery Management Council, Suite 32, 333 West 4th Avenue, Post Office Mall Bldg., Anchorage, Alaska 99513.

Bethel

Alaska Department of Fish & Game, P.O. Box 96, Bethel, Alaska 99559.
Bethel Public Library, Bethel, Alaska 99559.

Cordova

Alaska Department of Fish & Game, P.O. Box 669, Cordova, Alaska 99574.
Cordova Public Library, Cordova, Alaska 99574.

Dillingham

Alaska Department of Fish & Game, P.O. Box 199, Dillingham, Alaska 99576.
Dillingham Public Library, Dillingham, Alaska 99576.

Fairbanks

Alaska Department of Fish & Game, 1300 College Road, Fairbanks, Alaska 99701.
Fairbanks North Star Borough Public Library, 901 1st Avenue, Fairbanks, Alaska 99701.

Homer

Alaska Department of Fish & Game, Homer, Alaska 99603.
Homer Public Library, Homer, Alaska 99603.

Juneau

Alaska Department of Fish & Game, S.E. Regional Office, 210 Ferry Way, Juneau, Alaska 99801.
Alaska Department of Fish & Game, Commissioner, Subport Building, Juneau, Alaska 99801.
National Marine Fisheries Service, Rm. 453, Federal Building, Juneau, Alaska 99801.
Juneau Memorial Library, 114 West 4th Street, Juneau, Alaska 99801.

Ketchikan

Alaska Department of Fish & Game, 208 State Court and Office Building, 415 Main Street, suite 208, Ketchikan, Alaska 99901.
Ketchikan Public Library, 629 Dock Street, Ketchikan, Alaska 99901.

Kodiak

Alaska Department of Fish & Game, Kodiak, Alaska 99615.
A. Holmes Johnson Memorial Library, Kodiak, Alaska 99615.
National Marine Fisheries Service, Gibson Cove, Kodiak, Alaska 99615.

Kotzebue

Kotzebue Public Library, Kotzebue, Alaska 99752.

Petersburg

Alaska Department of Fish & Game, Swanson Bldg., Petersburg, Alaska 99833.
Petersburg Public Library, Petersburg, Alaska 99833.

Sand Point

Alaska Department of Fish & Game, Sand Point, Alaska 99661.
Sand Point Community School/Library, Sand Point, Alaska 99661.

Seward

Alaska Department of Fish & Game, Seward Court Building, Seward, Alaska 99664.

Sitka

Alaska Department of Fish & Game, State Office Building, Sitka, Alaska 99835.
Kedelson Memorial Library, Sitka, Alaska 99835.

Unalaska

Alaska Department of Fish & Game, c/o Standard Oil Dock, Dutch Harbor, Alaska 99685.
Unalaska/School/Community Library, Unalaska, Alaska 99685.

Valdez

Alaska Department of Fish and Game, Valdez, Alaska 99686.

Wrangell

Alaska Department of Fish & Game, P.O. Box 200, Wrangell, Alaska 99929.
Wrangell Public Library, Wrangell, Alaska 99929.

Yakutat

Alaska Department of Fish & Game, P.O. Box 68, Yakutat, Alaska 99689.
Copies of the Amendment will be available from the Executive Director, North Pacific Fishery Management Council, Suite 32, 333 West 4th Avenue, Anchorage, Alaska 99501 (P.O. Box 3136DT, Anchorage, AK 99510), and the National Marine Fisheries Service, Box 1668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT:
James Branson, Exective Director, North Pacific Fishery Management Council, P.O. Box 3136DT, Anchorage, Alaska 99510, Telephone: (907) 274–4563.

SUPPLEMENTARY INFORMATION:

The plan was approved by the Secretary of Commerce on May 15, 1979. The proposed amendment is as follows:

1. Prohibit hand trolling in that portion of the FCZ adjacent to the State of Alaska waters prohibiting hand trolling.
2. Limit to four (4) the number of lines which may be fished from a troll vessel.
3. Time/area closure in FCZ waters bounded by a line projected west of Cape Spencer and north to a point off the mouth of the Dangerous River (from April 15-June 30) (coho salmon from June 15–30);
4. Time/area closure in FCZ waters bounded by a line projected west of the Dangerous River and east to Stikagi Bluffs (from the 1st Monday in July through September 20 the weekly fishing period for troll gear will be 12:01 p.m. Monday through noon Friday;
5. Power Troll Limited Entry into the FCZ;
6. High seas filleting of salmon and its potential impact on retention of sub-legal chinook salmon; and
7. Potential for enforcement problems associated with coho salmon being harvested (incidental to the directed chinook fishery) after the September 20 coho closure.

The Council's purpose is to coordinate the management of the salmon fishery in the FCZ with the fishery in State of Alaska waters in a manner that will enhance, so far as possible, the conservation and enforcement aspects of a salmon fishery which draws, in great measure, from common stocks of chinook and coho salmon.

Dated: October 26, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-33712 Filed 10-30-79; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 44, No. 212
Wednesday, October 31, 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.

DEPARTMENT OF AGRICULTURE

Office of Transportation

Rural Transportation Advisory Task Force Meeting

AGENCY: Office of Transportation, U.S. Department of Agriculture.

ACTION: Notice of Public Meeting of the Rural Transportation Advisory Task Force.

DATES: November 7, 1979; 9 a.m; November 8, 1979, 9 a.m.

ADDRESS: November 7–8, 1979, U.S. Department of Transportation, Room 2230, 400 7th Street SW., Washington, D.C.

SUMMARY: At the completion of its work on January 1, 1980, the Task Force will report on methods for enhancing the economical and efficient movement of agricultural commodities (including forest products) and agricultural inputs and recommend approaches for establishing a national agricultural transportation policy and for identifying impediments to a railroad transportation system adequate for the needs of agriculture. The Task Force formed three subcommittees on policy and essential transportation needs of agriculture; railroad problems of agriculture; and highway, waterway; and air transportation problems of agriculture. The Task Force has published its interim report including the identification of critical agricultural transportation issues. The Task Force has also held 12 regional public hearings. The Task Force has reviewed public comment received during regional hearings.

The purpose of this meeting is to continue discussion on final recommendations.

The public is invited to attend.

FOR FURTHER INFORMATION CONTACT: Dr. Robert J. Tosterud, Office of Transportation; U.S. Department of Agriculture, Washington, D.C. 20250, Phone: (202) 447–7690.

Dated: October 22, 1979.

James H. Lauth,

Deputy Director, Office of Transportation.

[FR Doc. 79-33649 Filed 10-30-79; 8:45 am]

BILLING CODE 3410-02-M

CIVIL AERONAUTICS BOARD

[Order 79-10-170; Docket 36988]

Dallas/Fort Worth-Corpus Christi Subpart Q Proceeding

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause (79–10–170) Dallas/Ft. Worth-Corpus Christi Subpart Q Proceeding, Docket 36988.

SUMMARY: The Board is proposing to award nonstop air route authority between Dallas-Fort Worth and Corpus Christi to Texas International Airlines and USAir under the expedited procedures of Subpart Q of its Procedural Regulations. The original application involves the removal of a certificate restriction in the market; USAir's application involves award of a new segment. The tentative findings and conclusions will become final if no objections are filed.

The complete text of this order is available as noted below.

DATES: Objections: All interested persons having objections to the Board issuing an order making final the tentative findings and conclusions shall file, by November 30, 1979, a statement of objections together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections. Such filings should be served upon all parties listed below.

ADDRESSES: Objections to the issuance of a final order should be filed in Docket 36988, which we have entitled the *Dallas/Fort Worth-Corpus Christi Subpart Q Proceeding.* They should be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

In addition, copies of such filings should be served on Texas International Airlines; USAir; American Airlines; Braniff Airways; Continental Air Lines; Delta Air Lines; Eastern Air Lines; Frontier Airlines; Hughes Airwest; National Airlines; Northwest Airlines; Ozark Air Lines; Pan American World Airways; Piedmont Aviation; Republic Airlines; Southwest Airlines; Western Air Lines; Air Central; Air Illinois; Chaparral Airlines; Eagle Commuter Airlines; Jamaire, Inc.; Metroflight Airlines; Rio Airways; Scheduled Skyway System; Tejas Airlines; Texas Aeronautics Commission; Airport Manager, Dallas-Fort Worth Regional Airport; Airport Manager, Corpus Christi International Airport; Mayor, City of Dallas; Mayor, City of Fort Worth; and Mayor, City of Corpus Christi.

FOR FURTHER INFORMATION CONTACT: Anne W. Stockvis, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673–5198.

SUPPLEMENTARY INFORMATION: The complete text of Order 79–10–170 is available from our Distribution Section, Room 516, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 79–10–170 to that address.

By the Civil Aeronautics Board: October 25, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-33702 Filed 10-30-79; 8:45 am]

BILLING CODE 6320-01-M

[Order 79-10-167; Docket 36986]

Kansas City-Las Vegas/Phoenix Show Cause Proceeding

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 79–10–167 (Docket 36986) Kansas City-Las Vegas/Phoenix Show Cause Proceeding.

SUMMARY: The Board is proposing to grant Kansas City-Las Vegas/Phoenix unrestricted nonstop authority to Braniff Airways, Inc., USAir, Western Air Lines, Inc., Texas International Airlines, Inc. and any other fit, willing and able applicants whose fitness can be established by officially noticeable date. The complete text of this order is available as noted below.

DATES: Objections: All interested persons having objections to the Board issuing the proposed authority shall file, and serve upon all persons listed below, no later than November 30, 1979, at statement of objection, together with a

summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections.

Additional Data: All existing and would-be applicants who have not filed (a) illustrative service proposals, (b) environmental evaluations, and (c) an estimate of fuel to be consumed in the first year are directed to do so no later than November 15, 1979.

ADDRESSES: Objections or Additional Data should be filed in Docket 36986, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Lucille J. Mellema, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, Washington, D.C., 20428, (202) 673–5105.

SUPPLEMENTARY INFORMATION: Objections should be served upon the following persons: Braniff Airways, Inc., USAir, Western Air Lines, Inc., Texas International Airlines, Inc., the mayors of the cities of Kansas City, Las Vegas and Phoenix, the Governors of the States of Missouri, Arizona and Nevada, the Departments of Transportation and the Aviation Administrations of the States of Missouri, Arizona and Nevada, and the airport managers for Kansas City International, McCarran International (Las Vegas) and Phoenix Sky Harbor International Airports.

* * * * *

The complete test of Order 79–10–167 is available from our Distribution Section, Room 516 1825 Connecticut Avenue, N.W. Washington, D.C. Persons outside the metropolitan area may send a post card request for Order 79–10–167 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: October 25, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79–33701 Filed 10–30–79; 8:45 am]

BILLING CODE 6320–01–M

[Order 79–10–168; Docket 36987]

Minneapolis/St. Paul-Atlanta Show-Cause Proceeding

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 79–10–168, *Minneapolis/St. Paul-Atlanta Show-Cause Proceeding,* Docket 36987.

SUMMARY: The Board is proposing to grant Minneapolis/St. Paul-Atlanta nonstop authority to Republic Airlines, Western Air Lines, and any other fit, willing and able applicant whose fitness can be established by officially noticeable data. The complete text of this order is available as noted below.

DATES: Objections: All interested persons having objections to the Board issuing the proposed authority shall file, and serve upon all interested persons listed below, no later than November 30, 1979, a statment of objection, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections.

Additional Data: All existing and would-be applicants who have not filed (a) illustrative service proposals, (b) environmental evaluations, and (c) an estimate of fuel to be consumed in the first year are directed to do so no later than November 15, 1979.

ADDRESSES: Objections or Additional Data should be filed in Docket , Docket Section, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W. Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Sherry Kinland, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. (202) 673–5333.

SUPPLEMENTARY INFORMATION: Objections should be served upon Republic Airlines, Western Air Lines, the Minneapolis/St. Paul Metropolitan Airports Commission, and the Atlanta Chamber of Commerce.

The complete text of Order 79–10–168 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 79–10–168 to the Distribution Section, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

By the Civil Aeronautics Board: October 25, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79–33704 Filed 10–30–79; 8:45 am]

BILLING CODE 6320–01–M

[Docket 36957]

National Airlines, Inc., Service Suspensions Enforcement Proceeding; Assignment of Proceeding

This proceeding is hereby assigned to Chief Administrative Law Judge Joseph J. Saunders. Future communications should be addressed to Chief Judge Saunders.

Dated at Washington, D.C., October 25, 1979.

Joseph J. Saunders,

Chief Administrative Law Judge.

[FR Doc. 79–33700 Filed 10–30–79; 8:45 am]

BILLING CODE 6320–01–M

[Order 79–10–164; Docket 36169]

Pittsburgh-Albany/Atlantic City/Rochester Subpart Q Proceeding

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order To Show Cause (79–10–164), *Pittsburgh-Albany/Atlantic City/Rochester Subpart Q Proceeding,* Docket 36169.

SUMMARY: The Board is proposing to award nonstop air route authority between Pittsburgh and Albany, Atlantic City and Rochester to Trans World Airlines under the expedited procedures of Subpart Q of its Procedural Regulations.

The complete text of this order is available as noted below.

DATES: Objections: All interested persons having objections to the Board issuing an order making final the tentative findings and conclusions shall file, by November 28, 1979, a statement of objections together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections. Such filings should be served upon all parties listed below.

ADDRESSES: Objections to the issuance of a final order should be filed in Docket 36169, which we have entitled the *Pittsburgh-Albany/Atlantic City/Rochester Subpart Q Proceeding.* They should be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

In addition, copies of such filings should be served on Trans World Airlines, the mayors of the cities of Pittsburgh, Albany, Atlantic City and Rochester; the aviation regulatory agencies of Pennsylvania, New Jersey and New York; and the directors of the Greater Pittsburgh Airport, Albany County Airport, N.A.F.E.C./Atlantic City Airport, and Rochester/Monroe County Airport.

FOR FURTHER INFORMATION CONTACT: Carolyn Kramp, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673–5459.

SUPPLEMENTARY INFORMATION: The complete text of Order 79–10–164 is available from our Distribution Section, Room 516, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the

metropolitan area may send a postcard request for Order 79–10–164 to that address.

By the Civil Aeronautics Board: October 25, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79–33703 Filed 10–30–79; 8:45]

BILLING CODE 6320–01–M

COMMISSION ON CIVIL RIGHTS

Colorado, Utah, Arizona, New Mexico Advisory Committees; Cancelled Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a conference of the Colorado, Utah, Arizona and New Mexico Advisory Committees (SACs) of the Commission originally scheduled for November 8–10, 1979, at Durango, Colorado (FR Doc. 79–32271 on page 60347) has been cancelled.

Dated at Washington, D.C., October 26, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79–33639 Filed 10–30–79; 8:45 am]

BILLING CODE 6335–01–M

Colorado, Utah, Arizona, New Mexico Advisory Committees; Cancelled Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a planning meeting of the Colorado, Utah, Arizona, and New Mexico Advisory Committees (SACs) of the Commission, originally scheduled for November 7, 1979, at Durango, Colorado (FR Doc. 79–32270 on page 60347) has been cancelled.

Dated at Washington, D.C., October 26, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79–33640 Filed 10–30–79; 8:45 am]

BILLING CODE 6335–01–M

Delaware Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a factfinding meeting of the Delaware Advisory Committee (SAC) of the Commission will convene at 12 Noon and will end at 4:00 p.m., on November 21, 1979, at the State Human Relations Commission, 820 North French Street, Conference Room, Wilmington, Delaware 19801.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Mid-Atlantic Regional Office of the Commission, 2120 L Street, N.W., Room 510, Washington, D. C. 20037.

The purpose of this meeting is to discuss State and local civil rights issued in Delaware.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 26, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79–33643 Filed 10–30–79; 8:45 am]

BILLING CODE 6335–01–M

District of Columbia Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the District of Columbia Advisory Committee (SAC) of the Commission will convene at 2:00 p.m. and will end at 4:30 p.m., on November 20, 1979, at 2120 L Street, NW., Lower Level Conference Room, Washington, D.C. 20037.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Mid-Atlantic Regional Office of the Commission, 2120 L Street, N.W., Room 510, Washington, D. C. 20037.

The purpose of this meeting is the Chairman's report of Chairpersons' Conference; staff report on preliminary data gathering; and discussion of program plans for fiscally 1980 projects.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 26, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79–33642 Filed 10–30–79; 8:45 am]

BILLING CODE 6335–01–M

Maryland Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Maryland Advisory Committee (SAC) of the Commission will convene at 6:30 p.m. and will end at 10:30 p.m. on November 14, 1979, at the Baltimore-Washington International Airport Terminal, Conference Room No. 1, Baltimore, Maryland.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Mid-Atlantic Regional Office of the Commission, 2120 L Street, NW., Room 510, Washington, D.C. 20037.

The purpose of this meeting is the Maryland police project report; Baltimore Orioles; and planning a statewide conference.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 23, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79–33638 Filed 10–30–79; 8:45 am]

BILLING CODE 6335–01–M

Massachusetts Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Massachusetts Advisory Committee (SAC) of the Commission will convene at 4:00 p.m. and will end at 6:00 p.m., on November 19, 1979, at the New England Regional Office, 55 Summer Street, 8th Floor, Boston, Massachusetts 02110.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the New England Regional Office, 55 Summer Street, 8th Floor, Boston, Massachusetts 02110.

The purpose of this meeting is to discuss follow up action with respect to the meeting with Governor King.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 25, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79–33645 Filed 10–30–79; 8:45 am]

BILLING CODE 6335–01–M

New Hampshire Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the New Hampshire Advisory Committee (SAC) of the Commission will convene at 7:00 p.m. and will end at 9:00 p.m., on November 13, 1979, at 275 Chesnut Street, Manchester, New Hampshire.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the New England Regional Office of the Commission, 55 Summer Street, 8th Floor, Boston, Massachusetts 02110.

The purpose of this meeting is to discuss hearing on issues concerning the Hispanic community of Manchester.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 23, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-33637 Filed 10-30-79; 8:45 am]

BILLING CODE 6335-01-M

Oklahoma Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Oklahoma Advisory Committee (SAC) of the Commission will convene at 6:00 p.m. and will end at 10:00 p.m., on November 27, 1979, at the Lincoln Plaza, Plaza Suite 6, 4545 Lincoln Boulevard, Oklahoma City, Oklahoma 73105.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Southwestern Regional Office of the Commission, Heritage Plaza, 418 South Main, San Antonio, Texas 78204.

The purpose of this meeting is planning for the Oklahoma SAC on higher education desegregation in Oklahoma.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 25, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-33644 Filed 10-30-79; 8:45 am]

BILLING CODE 6335-01-M

Oregon Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Oregon Advisory Committee (SAC) of the Commission will convene at 10:00 a.m. and will end at 5:00 p.m., on November 16, 1979, 304 S. E. Patawa Drive, Yakima Room, Pendleton, Oregon 97801.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northwestern Regional Office of the Commission, 915 Second Avenue, Room 2852, Seattle, Washington 98174.

The purpose of this meeting is to discuss project design and approval process; discuss redlining project (proposed); discuss census project status and activities; and community forum session.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C. October 25, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-33641 Filed 10-30-79; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Announcement of Initial List of Recommended Areas (LRA) for Marine Sanctuary Designation and List of Active Candidates

AGENCY: Office of Coastal Zone Management (OCZM), National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: This notice catalogs those marine sanctuary recommendations submitted to date which have been determined to be eligible for inclusion on the List of Recommended Areas (LRA) in accordance with the revised regulations and those additional sites determined to be eligible for inclusion on the List of Active Candidates.

FOR FURTHER INFORMATION CONTACT: JoAnn Chandler, Acting Director, Sanctuary Programs Office, Office of Coastal Zone Management, Page Building 1, 3300 Whitehaven Street, N.W., Washington, D.C. 20235, (202) 634-4236.

SUPPLEMENTARY INFORMATION: On July 31, 1979, NOAA published revised General Marine Sanctuaries regulations pursuant to Title III of the Marine Protection, Research and Sanctuaries Act of 1972, Pub. L. 92-532, 16 U.S.C. 1431-1434. These regulations (44 FR 44831; July 31, 1979), prescribing the procedures for nominating and designating marine sanctuaries call for NOAA to establish and LRA containing those areas with at least some potential for designation. The initial LRA must be published within 3 months of the effective date of the regulations. From this list NOAA will select Active Candidates following specified procedures and criteria. These Active Candidates must be published in a separate list published concurrently. These lists are published herewith.

All recommendations submitted prior to the date of this notice have been reviewed in accordance with the stated site evaluation criteria (section 922.21(b)). Sites that do not appear on the LRA were not listed because the information contained in the original recommendation was either inadequate or indicated that the site did not meet the criteria. In both cases the recommenders were notified of the decision and given 20 days to provide additional information. No further responses were received; however, the recommendations may be resubmitted at any time with additional information.

If a recommended site does not appear on the LRA and no notification has been received from NOAA, the recommenders are urged to contact the Sanctuary Programs Office. At this time, NOAA has made no effort to revise suggested boundaries as provided for by § 922.21(d). In subsequent review, particularly for selection as Active Candidates, those site descriptions where the recommended boundaries appear either excessive or inadequate to protect the resources may be modified. In certain cases of overlapping or adjacent sites, a combined or revised site description has been prepared on the LRA. Further combinations may be made in the future.

On August 10, 1979, NOAA published a Preliminary List of Active Candidates consisting of those sites for which a Public Workshop had been held or had been scheduled to be held prior to the effective date of the revised regulations (44 FR 47132, August 10, 1979). This publication was made in accordance with section 922.23(d) of the revised regulations.

Since publication, one new Active Candidate, Gray's Reef, has been named (44 FR 58938, October 12, 1979). One site, Georges Bank, is no longer considered an Active Candidate (see FR Doc. 79-33601 in this issue of the **Federal Register**). Accordingly, NOAA's list of Active Candidates is being published concurrently with the initial LRA.

The sites placed on the LRA will be considered for Active Candidate status and possible future designation on the basis of further evaluation criteria, as stated in the regulations. Placement of a site on the LRA or selection as an Active Candidate does not establish any regulatory controls. This can only occur after the designation of a marine sanctuary in accordance with the regulations. Listing is a prerequisite for designation as a marine sanctuary, but it

does not imply that designation will occur.

List of Recommended Areas

The following sites have been placed on the LRA. The abbreviations of the adjacent States are given in parentheses solely for the purpose of facilitating site identification. This identification does not imply that the site lies within the State's territorial sea.

East Coast

Hampton Harbor Estuary (NH), Jeffrey's Ledge and Isles of Shoals (NH), Stellwagen Bank (MA), Nantucket Shoals (MA), Coral/Hydrographer Canyon (MA), Coral/Oceanographer Canyon (MA), Coral/Lydonia Canyon (MA), Coral/Corsair Canyon (MA), Georges Bank (MA), Narrangansett Bay (RI), Ninigret Pond (RI), 12 Miles SE of Fire Island Inlet (NY), Tinicum Marsh (PA), Tinicum Island (PA), Barrier Beach Inlets (NJ), Hudson Canyon (NJ), Great Bay/Mullica River Estuary (NJ), Offshore Sand Ridges/Basins (NJ), Shipwrecks (NJ), Coral/Wilmington Canyon (DE/MD), Coral/Baltimore Canyon (MD), Assateague Island Seashore (MD/VA), Virginia Barrier Islands and Bays (VA), Coral/Washington Canyon (VA), Coral/Norfolk Canyon (VA), Alcyonarian Coral Tree Area in Norfolk Canyon (VA), Beaufort Estuary/Island Sites (NC), North Edisto River and Estuary (SC), Skidaway Island (GA).

Great Lakes

Monroe Harbor Area (MI).

Gulf Coast and Caribbean

Big Bend Seagrass Beds (FL), Florida Middle Ground (FL), Buccaneer Field (TX), Carlos, Mesquite and Ayres Bays (TX), Espiritu Santo Bay (TX), Harbor Island-Redfish Bay (TX), Salt River, St. Croix (VI), Mona/Monito Islands (PR), Culebra Island/Cordillera Reef/Vieques (Biolumuniscent Bay) (PR), Caha de Muertas (PR), La Parquera (PR), Desecheo Island (PR), Salinas/Jobos (PR).

West Coast and Hawaii

Southern California Bight Queets/Kalalock to Neah Bay (CA), Nisqually Delta (WA), Thorndyke Bay and Hood Canal (WA), Padilla and Skagit Bays (WA), Willapa Bay (WA), North Coast Rookeries (CA), Mendocino Offshore (CA), Tanner/Cortes Banks (CA), San Diego Canyons (CA), San Nicholas Island (CA), Waters off San Diego (CA), Waters off Maui (HA).

Alaska

Beaufort Sea, Bering Straits, Yukon Delta–Kuskokwim Bay, Bristol Bay, Anagula Island, Pribilof Islands and Shelf Break, Unimak Pass, Gulf Coast of Alaska Peninsula including Kodiak Islands, Barren Island Areas, Lower Cook Inlet, Kachemak Bay, Tuxedni Bay, Prince William Sound–North Gulf of Alaska.

List of Active Candidates

(1) Flower Garden Banks (off Louisiana and Texas), (2) The Northern Channel Islands and Santa Barbara Island (off California), (3) Monterey Bay (off California), (4) Point Reyes/Farallon Islands (off California), (5) Looe Key (off Florida), (6) St. Thomas, Virgin Islands, (7) Gray's Reef (off Georgia).

Dated: October 25, 1979.

Francis J. Balint,

Acting Director, Office of Management and Computer Systems.

[FR Doc. 79-33598 Filed 10-30-79; 8:45 am]

BILLING CODE 3510-08-M

Announcement of Removal of Georges Bank From List of Active Candidates for Marine Sanctuary Designation

AGENCY: Office of Coastal Zone Management (OCZM), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice.

SUMMARY: The Assistant Administrator for OCZM has determined that the site on Georges Bank nominated for marine sanctuary designation should not continue to be an Active Candidate. The basis for this determination is the fact that the ability of existing regulatory mechanisms to protect fully the values of the Lease Sale 42 area, the area most immediately threatened, has been significantly increased and it appears more likely that sufficient effort will be devoted to protection there without creating a sanctuary. Sites in the general area will continue to be studied as possible Active Candidates.

Discussion: On May 10, 1979, the Gloucester Fishermen's Wives Association and others nominated an area encompassing the entire Georges Bank for designation as a marine sanctuary. On August 10, 1979, OCZM named the area an Active Candidate (44 FR 47132) and at the same time, published a Notice of Availability of an Issue Paper and a schedule of Public Workshops for August 22, 23, and 24 in New England (44 FR 47132). Comments received in response to the Issue Paper and at the Public Workshops indicate that the only threat which would require sanctuary regulations at this time is oil and gas development, in particular Lease Sale 42, scheduled for November 6, 1979.

On September 21, 1979, following the workshops, NOAA, the Environmental Protection Agency (EPA), and the Department of the Interior (DOI) agreed on a variety of safeguards to increase the protection of the rich biological resources of the Bank and their habitats from risks associated with Lease Sale 42. These safeguards include the following:

- The Department of the Interior will delete from the forthcoming lease sale 12 tracts located near the Lydonia and Powell Canyon heads along the southern edge of Georges Bank, containing important communities of lobster, coral, and other bottom dwelling organisms which would be adversely affected by drilling activities;
- A NOAA/EPA/DOI Biological Task Force for Georges Bank will be established to assess the effects of oil and gas development and recommend whatever measures are necessary to assure protection of the ecosystem and fisheries of the Bank;
- NOAA will review exploration and development and protection and production plans with respect to endangered species;
- The lessee will be required to maintain on-site pollution control equipment at both the exploration and development stages;
- Lease stipulations will require:
  - Special surveys, studies and sampling for areas with biological populations or habitats which may require additional protection;
  - Safe disposal of drill cuttings, drill muds and formation waters.

OCZM believes that these measures have significantly increased the ability of existing regulatory mechanisms to protect the values of the area most immediately threatened and make it more likely that sufficient effort will be devoted to such protection. In light of these measures, the belief expressed by a majority of commentators that oil and gas operations could proceed with adequate safeguards, and the comparatively lower risks associated with drilling in this area as opposed to other areas of the Bank, designation of a sanctuary to include the area is not an immediate priority. OCZM will continue to study the desirability of designating areas outside the Lease Sale 42 area, both on the Bank and adjacent to it.

FOR FURTHER INFORMATION CONTACT: JoAnn Chandler, Acting Director, Sanctuary Program Office, Office of Coastal Zone Management, NOAA, Page Building I, 3300 Whitehaven Street, N.W., Washington, D.C. 20235 (202/634–4236).

Dated: October 24, 1979.

Francis J. Balint,

Acting Director, Office of Management and Computer Systems.

[FR Doc. 79-33601 Filed 10-30-79; 8:45 am]

BILLING CODE 3510-08-M

Office of the Secretary

National Voluntary Laboratory Accreditation Program; Public Hearing

The Department of Commerce will hold an informal public hearing on the proposed criteria for accrediting testing laboratories that test carpet. This hearing is being held at the request of

the Carpet & Rug Institute in a letter dated October 10, 1979, to the Assistant Secretary for Science and Technology. These proposed criteria were published in a September 28, 1979 **Federal Register** notice (44 FR 56230–56261) entitled, "National Voluntary Laboratory Accreditation Program; Proposed Criteria for Accrediting Testing Laboratories That Test Thermal Insulation Materials, Freshly Mixed Field Concrete, or Carpet."

The hearing will be held on November 28, 1979, at 9:00 a.m. Eastern Standard Time, in Room 6802, Main Commerce Building, 14th Street between Pennsylvania and Constitution Avenues, Washington, D.C.

Persons desiring to testify at this hearing should notify the Assistant Secretary for Science and Technology, U.S. Department of Commerce, Room 3862, Main Commerce Building, Washington, D.C. 20230, by 5:00 p.m., Eastern Standard Time, November 26, 1979 and should submit to the Assistant Secretary for Science and Technology four copies of their intended statement by that date.

The following procedures are established for the informal hearing:

1. *Purpose* The purpose of the informal hearing on the proposed criteria for accrediting testing laboratories that test carpet is to provide all interested persons an opportunity for the oral presentation of data, views, or arguments on these proposed criteria.

2. *Conduct of Hearing* (a) This hearing will be an informal, non-adversary proceeding at which there will be no formal pleadings or adverse parties. Witnesses should submit a written presentation of their views for the record as indicated above. (b) The presiding officer shall have the right to apportion the time available for making presentations in an equitable manner, and to terminate or shorten the presentation of any witnesses when, in his/her opinion, such presentation is repetitive or not relevant to the purpose of the hearing. (c) The presiding officer and other members of the hearing panel shall have the right to question witnesses appearing at these hearings as to their testimony and other matters relating to the proposed criteria. (d) The presiding officer has the right to exercise such authority as may be necessary to insure the equitable and efficient conduct of the hearing and to maintain order.

3. *General Provisions* (a) This informal hearing will be open to members of the public whether or not such members wish to testify at the hearing. (b) A transcript will be made of the informal hearing. (c) Copies of the transcript, all materials presented by the witnesses at the hearing, and all written comments submitted in response to the notice shall be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, Main Commerce Building, 14th Street between Pennsylvania and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: October 25, 1979

Jordan J. Baruch,

Assistant Secretary for Science and Technology.

[FR Doc. 79-33654 Filed 10-30-79; 8:45 am]

BILLING CODE 3510-13-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increasing the Import Level for Certain Man-Made Fiber Textile Products From Malaysia.

October 26, 1979.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Amending the bilateral agreement to increase by 20,000 dozen the sub-limit for women's, girls', and infants' knit shirts and blouses of man-made fiber (Category 639); to decrease by 10,000 dozen the specific ceiling for women's, girls' and infants' cotton knit shirts and blouses (Category 339); and to decrease by 20,000 dozen the overall specific ceiling for men's and boys', women's, girls' and infants' knit shirts and blouses of man-made fibers (Category 638/639) exported from Malaysia during the agreement year which began on January 1, 1979.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), September 5, 1978 (43 FR 39408), January 2, 1979 (44 FR 94), March 22, 1979 (44 FR 17545), and April 12, 1979 (44 FR 21843)).

SUMMARY: The Governments of the United States and Malaysia have agreed further to amend the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 17 and June 18, 1978, as amended to increase the sub-ceiling established for man-made fiber textile products in Category 639 within the specific ceiling for Category 638/639 by 20,000 dozen during the agreement year which began on January 1, 1979 and the following agreement year. The increase will be balanced by decreases of 10,000 dozen in the level for Category 339 and 20,000 dozen in the overall category limit for Category 638/639, both during the current agreement year which began on January 1, 1979 and the following agreement year.

EFFECTIVE DATE: November 1, 1979.

FOR FURTHER INFORMATION CONTACT: Norman Duckworth, International Trade Specialist, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–5423).

SUPPLEMENTARY INFORMATION: On January 3, 1979, there was published in the **Federal Register** (44 FR 930), a letter dated December 27, 1978 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, which established levels of restraint for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in Malaysia, which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1979 and extends through December 31, 1979. In accordance with the terms of an amendment to the bilateral agreement, the United States Government has agreed to increase the sub-ceiling for Category 639 within the combined Category 638/639 and decrease the specific ceilings for Category 638/639 and Category 339 during the agreement year which began on January 1, 1979 and the following agreement year.

Paul T. O'Day,

Acting Chairman, Committee for the Implementation of Textile Agreements.

U.S. Department of Commerce,
Washington, D.C., October 26, 1979.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 27, 1978 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Malaysia.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 17 and June 8, 1978; and in accordance with the provisions of Executive Order 11651 of March 3, 1971, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on November 1, 1979, and for the twelve-month period beginning on January 1, 1979 and extending through

December 31, 1979, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 638/639, produced or manufactured in Malaysia, in excess of the following restraint:

Category	Amended 12-mo level of restraint [1]
638/639	131,466 dozen of which not more than 86,784 dozen shall be in Cat. 639.
339	126,889 dozen.

[1] The levels of restraint have not been adjusted to reflect any imports after December 31, 1978.

The action taken with respect to the Government of Malaysia and with respect to imports of man-made fiber textile products from Malaysia has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Paul T. O'Day,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 79-33607 Filed 10-30-79; 8:45 am]

BILLING CODE 3510-25-M

Announcing Import Restraint Levels for Certain Cotton and Man-Made Fiber Apparel From the People's Republic of China

On January 4, 1979, there was published in the **Federal Register** (44 FR 1211) a notice dated January 3, 1979, announcing forthcoming discussions concerning cotton, wool and man-made fiber textile products exported to the United States from the People's Republic of China and soliciting public comment thereon.

A series of discussions have taken place between the two governments in 1979 concerning the appropriate levels of exports of certain of these products to the United States. No agreement has yet been reached on these levels.

The Government of the United States has informed the Government of the People's Republic of China that for the twelve-month period beginning on October 31, 1979 and extending through October 30, 1980, imports of apparel in Categories 341 (women's, girls' and infants' woven cotton blouses) and 635 (women's, girls' and infants' coats of man-made fibers) that have been exported on and after October 31, 1979 will be limited to the following levels:

Category	12-month level of restraint
341	266,196 dozen.
635	110,551 dozen.

This action is taken pursuant to Section 204 of the Agricultural Act of 1956, as amended.

Further discussions with the Government of the People's Republic of China are anticipated. The letter published below is subject, therefore, to termination or revision as a result of those discussions.

Accordingly, there is published below a letter of October 29, 1979 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs directing that, effective of October 31, 1979 and extending through October 30, 1980, the amounts of cotton and man-made fiber textile products in Categories 341 and 635, produced or manufactured in the People's Republic of China, which may be entered or withdrawn from warehouse for consumption in the United States, be limited to the designated levels.

Paul T. O'Day,

Acting Chairman, Committee for the Implementation of Textile Agreements.

U.S. Department of Commerce,
Industry and Trade Administraton,
Washington, D.C. 20230, October 29, 1979.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on October 31, 1979, and for the twelve-month period beginning on October 31, 1979 and extending through October 30, 1980, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 341 and 635, produced or manufactured in the People's Republic of China, in excess of the following levels of restraint:

Category	12-month level of restraint
341	266,196 dozen.
635	110,551 dozen.

Cotton and man-made fiber textile products in Categories 341 and 635 that have been exported before October 31, 1979 shall not be subject to this directive.

Cotton and man-made fiber textile products in Categories 341 and 635 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), September 5, 1978 (43 FR 39408), January 2, 1979 (44 FR 94, March 22, 1979 (44 FR 17545), and April 12, 1979 (44 FR 21843).

In carrying out these directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The action taken with respect to the Government of the People's Republic of China and with respect to imports of cotton and man-made fiber textile products from China have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Paul T. O'Day,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 79-33859 Filed 10-30-79; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF DEFENSE

Department of the Army

Fort Knox, Ky.; Filing of Environmental Impact Statement

The Army, on October 26, 1979, provided the Environmental Protection Agency a Draft Environmental Impact Statement (DEIS) concerning the on-going missions at Fort Knox, Kentucky. The alternatives of maintaining, discontinuing, or changing missions at Fort Knox are analyzed. Copies of the statement have been forwarded to concerned Federal, State, and local agencies. Interested organizations or individuals may obtain copies for the cost of reproduction from the Commander, US Army Armor Center and Fort Knox, ATTN: ATZK-FE, Fort Knox, KY 40121, telephone (502) 624-3629.

In the Washington area, copies may be seen during normal duty hours, in the Environmental Office, Office of Assistant Chief of Engineers, Room

1E676, Pentagon, Washington, DC 20310, telephone: (202) 694–3434.

Daniel R. Voss,

Acting Deputy for Environment, Safety and Occupational Health OASA (IL&FM).

[FR Doc. 79–33662 Filed 10–30–79; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Al Sellers Union 76; Proposed Remedial Order

Pursuant to 10 CFR § 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Al Sellers Union 76, 190 W. Calaveras Blvd., Milpitas, CA 95035. This Proposed Remedial Order charges Al Sellers Union 76 with pricing violations in the amount of $936.16, connected with the resale of motor gasoline during the time period August 1, 1979 through September 24, 1979, in the State of California.

A copy of the Proposed Redmedial Order, with confidential information deleted, may be obtained from Jack L. Wood, District Manager of Enforcement, 111 Pine Street, San Francisco, CA 94111, phone (415) 556–7200. Within 15 days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, N.W., Washington, D.C. 20461, in accordance with 10 CFR § 205.193.

Issued in Washington, D.C. on the 24th day of October 1979.

Robert D. Gerring,

Director, Program Operations Division, Economic Regulatory Administration.

[FR Doc. 79–33609 Filed 10–30–79; 8:45 am]

BILLING CODE 6450–01–M

Laebugten Wharf, Inc.; Proposed Remedial Order

Pursuant to 10 CFR § 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Laebugten Wharf, Inc., 16111 76th Place West, Edmonds, WA 98020. This Proposed Remedial Order charges Laebugten Wharf, Inc. with pricing violations in the amount of $837.50 connected with the resale of motor gasoline during the time period August 1, 1979, through September 7, 1979, in the State of Washington.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Robert D. Gerring, Director, Program Operations Division, Economic Regulatory Administration. Within 15 days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, NW., Washington, D.C. 20461, in accordance with 10 CFR § 205.193.

Issued in Washington, D.C. on the 24th day of October 1979.

Robert D. Gerring,

Director, Program Operations Division, Economic Regulatory Administration.

[FR Doc. 79–33610 Filed 10–30–79; 8:45 am]

BILLING CODE 6450–01–M

TNR Texaco Service; Proposed Remedial Order

Pursuant to 10 CFR § 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to TNR Texaco Service, 1259 SE Tualatin Valley Highway, Hillsboro, OR 97123. This Proposed Remedial Order charges TNR Texaco Service with pricing violations in the amount of $1,212.00 connected with the resale of motor gasoline during the time period August 1, 1979, through September 7, 1979, in the State of Oregon.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Robert D. Gerring, Director, Program Operations Division, Economic Regulatory Administration. Within 15 days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, NW., Washington, D.C. 20461, in accordance with 10 CFR § 205.193.

Issued in Washington, D.C. on the 24th day of October 1979.

Robert D. Gerring,

Director, Program Operations Division, Economic Regulatory Administration.

[FR Doc. 79–33608 Filed 10–30–79; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 79–CERT–104]

Aluminum Co. of America (ALCOA); Application for Certification of the Use of Natural Gas To Displace Fuel Oil

Take notice that on October 9, 1979, ALCOA, Warrick Operations, P.O. Box 10, Newburgh, Indiana 47630, filed an application for certification of an eligible use of natural gas to displace fuel oil at ALCOA's Warrick Operations in Warrick County, Indiana, pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979), all as more fully set forth in the application on file with the Economic Regulatory Administration (ERA) and open to public inspection at the ERA, Docket Room 4126–A, 2000 M Street, N.W., Washington, D.C. 20461, from 8:30 a.m.–4:30 p.m., Monday through Friday, except Federal holidays.

In its application, ALCOA states that the volume of natural gas for which it requests certification is up to 11,593 Mcf per day. The eligible seller is Esperanza Transmission Company, P.O. Box 1050, Corpus Christi, Texas 78403. This natural gas is estimated to displace the use of 2,000,000 gallons of No. 2 fuel oil (0.2 percent sulfur) per month, or approximately 10,000,000 gallons during the term of the purchase contract from November 1, 1979, to March 31, 1980.

The gas will be transported by the Texas Gas Transmission Corporation, 3800 Frederica Street, P.O. Box 1160, Owensboro, Kentucky 43201; the Trunkline Gas Company, 3000 Bissonnet, P.O. Box 1640, Houston, Texas 77001; and the Transcontinental Gas Pipeline Corporation, 2700 S. Post Oak Road, P.O. Box 1396, Houston, Texas 77001.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Room 4126–A, 2000 M Street, N.W., Washington, D.C. 20461, Attention: Mr. Finn K. Neilsen, on or before November 10, 1979.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest, and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines an oral presentation is required, further notice will be given to ALCOA and any persons filing comments, and published in the **Federal Register.**

Issued in Washington, D.C., on October 25, 1979.

Doris J. Dewton,

Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.

[FR Doc. 79-33705 Filed 10-30-79; 8:45 am]

BILLING CODE 6450-01-M

Monts Texaco, Columbia, S.C.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order which was issued to Monts Texaco Service Station, 428 Gervais Street, Columbia, South Carolina, 29201, on September 13, 1979.

This Proposed Remedial Order charges Monts Texaco with selling all grades of gasoline in excess of the maximum lawful selling price for those grades of gasoline in violation of 10 CFR § 212.93. It was determined that Monts Texaco violated the Federal Energy pricing guidelines by selling above the maximum lawful selling price in the amounts of 9.7¢ per gallon for Regular Leaded, 7.7¢ for Premium Leaded and 7.7¢ for Regular Unleaded.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from James C. Easterday, Office of Enforcement, U.S. Department of Energy, 1655 Peachtree Street, N.E., Atlanta, Georgia, 30309, Phone: (404) 881-2661. Within 15 days of publication of this Notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, N.W., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Atlanta, Georgia, on the 19th day of October, 1979.

James C. Easterday,

District Manager.

[FR Doc. 79-33692 Filed 10-30-79; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

Notice of Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

October 23, 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.

Colorado Oil and Gas Conservation 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. 80-01238/78-140
2. 05-123-07462
3. 108
4. Martin Oil Service Inc
5. Walsh, #1
6. Wattenberg
7. Weld CO
8. 18.5 million cubic feet
9. October 5, 1979
10. Panhandle Eastern Pipeline Co

1. 80-01239/78-129
2. 05-123-07384
3. 108
4. Martin Oil Service Inc
5. Dryer, #1
6. Wattenberg
7. Weld CO
8. 19.3 million cubic feet
9. October 5, 1978
10. Panhandle Eastern Pipeline Co

1. 80-01240/78-130
2. 05-123-09242
3. 103
4. Martin Oil Service Inc
5. Frederick, #3
6. Spindle
7. Weld CO
8. 84.0 million cubic feet
9. October 5, 1979
10. Panhandle Eastern Pipeline Co

1. 80-01241/78-138
2. 05-123-09240
3. 103
4. Martin Oil Service Inc
5. Pace-Connelly, #6
6. Spindle
7. Weld CO
8. 39.5 million cubic feet
9. October 5, 1978
10. Panhandle Eastern Pipeline Co

1. 80-01242/78-123
2. 05-123-07560
3. 103
4. Martin Oil Service Inc
5. Cinque, #2
6. Spindle
7. Weld CO
8. 25.6 million cubic feet
9. October 5, 1979
10. Panhandle Eastern Pipeline Co

1. 80-01243/78-141
2. 05-123-09241
3. 103
4. Martin Oil Service Inc
5. Walsh #4
6. Spindle
7. Weld CO
8. 24.5 million cubic feet
9. October 5, 1979
10. Panhandle Eastern Pipeline Co

1. 80-01244/78-139
2. 05-123-09226
3. 103
4. Martin Oil Service Inc
5. Pace Connelly #8
6. Spindle
7. Weld CO
8. 25.2 million cubic feet
9. October 5, 1979
10. Panhandle Eastern Pipeline Co

1. 80-01245/78-134
2. 05-123-09311
3. 103
4. Martin Oil Service Inc
5. Pace Connelly #9
6. Spindle
7. Weld CO
8. .0 million cubic feet
9. October 5, 1979
10. Panhandle Eastern Pipeline Co

1. 80-01246/78-137
2. 05-123-09312
3. 103
4. Martin Oil Service Inc
5. Pace Connelly #5
6. Spindle
7. Weld CO
8. 39.5 million cubic feet
9. October 5, 1979
10. Panhandle Eastern Pipeline Co

1. 80-01247/78-135
2. 05-123-09230
3. 103
4. Martin Oil Service Inc
5. Pace Connelly #2
6. Spindle
7. Weld CO
8. 39.5 million cubic feet
9. October 5, 1979
10. Panhandle Eastern Pipeline Co

1. 80-01248/78-136
2. 05-123-09225
3. 103
4. Martin Oil Service Inc
5. Pace Connelly #3
6. Spindle
7. Weld CO
8. 25.2 million cubic feet
9. October 5, 1979
10. Panhandle Eastern Pipeline Co

1. 80-01249/78-128
2. 05-123-09029
3. 103
4. Martin Oil Service Inc
5. Dacono #4
6. Spindle
7. Weld CO
8. 32.2 million cubic feet
9. October 5, 1979
10. Panhandle Eastern Pipeline Co

1. 80-01250/78-127
2. 05-123-09033
3. 103
4. Martin Oil Service Inc
5. Dacono #2
6. Spindle
7. Weld CO
8. 32.2 million cubic feet
9. October 5, 1979
10. Panhandle Eastern Pipeline Co

1. 80-01251/78-142
2. 05-123-09595
3. 103
4. Martin Oil Service Inc
5. Walsh #5
6. Spindle
7. Weld CO

8. 20.0 million cubic feet
9. October 5, 1979
10. Panhandle Eastern Pipeline Co

1. 80–01252/78–121
2. 05–123–09522
3. 103
4. Martin Oil Service Inc
5. Armstead #2
6. Spindle
7. Weld CO
8. .0 million cubic feet
9. October 5, 1979
10. Panhandle Eastern Pipeline Co

1. 80–01253/78–124
2. 05–123–07563
3. 103
4. Martin Oil Service Inc
5. Cinque #3
6. Spindle
7. Weld CO
8. 25.6 million cubic feet
9. October 5, 1979
10. Panhandle Eastern Pipeline Co

1. 80–01254/78–125
2. 05–123–07561
3. 103
4. Martin Oil Service Inc
5. Cinque #4
6. Spindle
7. Weld CO
8. 25.6 million cubic feet
9. October 5, 1979
10. Panhandle Eastern Pipeline Co

1. 80–01255/78–133
2. 05–013–06020
3. 103
4. Martin Oil Service Inc
5. Lutz #1
6. Spindle
7. Weld CO
8. .0 million cubic feet
9. October 5, 1979
10. Panhandle Eastern Pipeline Co

1. 80–01256/78–120
2. 05–123–09521
3. 103
4. Martin Oil Service Inc
5. Armstead #1
6. Spindle
7. Weld CO
8. .0 million cubic feet
9. October 5, 1979
10. Panhandle Eastern Pipeline Co

1. 80–01257/78–122
2. 05–123–07562
3. 103
4. Martin Oil Service Inc
5. Cinque #1
6. Spindle
7. Weld CO
8. 25.6 million cubic feet
9. October 5, 1979
10. Panhandle Eastern Pipeline Co

1. 80–01258/78–126
2. 05–123–07564
3. 103
4. Martin Oil Service Inc
5. Cinque #5
6. Spindle
7. Weld CO
8. 25.6 million cubic feet
9. October 5, 1979
10. Panhandle Eastern Pipeline Co

1. 80–01259/78–131
2. 05–123–09243
3. 103
4. Martin Oil Service Inc
5. Frederick #4
6. Spindle
7. Weld CO
8. .0 million cubic feet
9. October 5, 1979
10. Panhandle Eastern Pipeline Co

1. 79–08294 (Revised)
2. 05–123–09176
3. 103
4. Beaver Mesa Exploration Co
5. Johnston 21–24
6. Spindle 24–1N–68W
7. Weld CO
8. 59.0 million cubic feet
9. June 12, 1979
10. Panhandle Eastern Pipeline Co

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. 80–01456/3–79–66
2. 25–041–21137
3. 108
4. Tricentrol United States Inc
5. Olson 29–6X–31–17
6. Tiger Ridge
7. Hill, MT
8. 6.0 million cubic feet
9. October 5, 1979
10. Northern Natural Gas Company

Ohio Department of Natural Resources, Division of Oil and Gas

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. 80–01264/06648
2. 34–075–22075–0014
3. 103
4. B T Simpson Jr.
5. George & Leona Bower #2
6. Nashville
7. Homes, OH
8. 17.5 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp

1. 80–01265/04322
2. 34–167–23819–0014
3. 108
4. Energy Unlimited Inc
5. A D Steed #1
6.
7. Washington, OH
8. 1.0 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp

1. 80–01266/04328
2. 34–167–23791–0014
3. 108
4. Energy Unlimited Inc
5. Floyd Roberts #1
6.
7. Washington, OH
8. 1.0 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp

1. 80–01267/04558
2. 34–167–23967–0014
3. 108
4. Energy Unlimited Inc
5. G Curry #1
6.
7. Washington, OH
8. 8.0 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp

1. 80–01268/04559
2. 34–167–23976–0014
3. 108
4. Energy Unlimited Inc
5. Gibson Barnes #1
6.
7. Washington, OH
8. 6.7 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp

1. 80–01269/04563
2. 34–167–23912–0014
3. 108
4. Energy Unlimited Inc
5. Frank Proctor #1
6.
7. Washington, OH
8. 6.4 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp

1. 80–01270/04564
2. 34–167–23784–0014
3. 108
4. Energy Unlimited Inc
5. Arthur Reed #1
6.
7. Washington, OH
8. 5.0 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp

1. 80–01271/04565
2. 34–167–23917–0014
3. 108
4. Energy Unlimited Inc
5. Frank Proctor #2
6.
7. Washington, OH
8. 6.5 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission

1. 80–01272/04566
2. 34–167–23644–0014
3. 108
4. Energy Unlimited Inc
5. Loyd Wright #2
6.
7. Washington, OH
8. 1.0 million cubic feet
9. October 5, 1979
10. River Gas Company

1. 80–01273/04567
2. 34–167–23695–0014
3. 108
4. Energy Unlimited Inc
5. Bart Walsh #3
6.

7. Washington, OH
8. 5.0 million cubic feet
9. October 5, 1979
10. River Gas Company
1. 80-01274/04568
2. 34-167-23662-0014
3. 108
4. Energy Unlimited Inc
5. Bart Walsh #2
6.
7. Washington, OH
8. 5.0 million cubic feet
9. October 5, 1979
10. River Gas Company
1. 80-01275/04572
2. 34-167-23663-0014
3. 108
4. Energy Unlimited Inc
5. Walsh-Wright Unit #1
6.
7. Washington, OH
8. 6.0 million cubic feet
9. October 5, 1979
10. River Gas Company
1. 80-01276/05166
2. 34-133-20816-0014
3. 108
4. Jerry Moore Inc
5. Jerry Moore Inc #1-C
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company
1. 80-01277/05167
2. 34-133-20795-0014
3. 108
4. Jerry Moore Inc
5. Jerry Moore Inc #1-B
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company
1. 80-01278/05168
2. 34-133-20681-0014
3. 108
4. Jerry Moore Inc
5. Jerry Moore Inc #1-A
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company
1. 80-01279/05169
2. 34-133-20669-0014
3. 108
4. Jerry Moore Inc
5. Jerry Moore Inc #2
6. Randolph
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company
1. 80-01280/05170
2. 34-133-20668-0014
3. 108
4. Jerry Moore Inc
5. Jerry Moore Inc #1
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company
1. 80-01281/05171
2. 34-151-22614-0014
3. 108
4. Jerry Moore Inc
5. Jerry Moore Inc #3
6. New Baltimore
7. Stark, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company
1. 80-01282/06230
2. 34-199-23734-0014
3. 108
4. Leader Equities Inc
5. Carnes #1
6.
7. Muskingum, OH
8. 1.6 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80-01283/06506
2. 34-009-21395-0014
3. 108
4. C E Beardmore
5. Burson No. 1-deep well
6. Stewart
7. Athens, OH
8. 14.0 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp.
1. 80-01284/06507
2. 34-009-21215-0014
3. 108
4. C E Beardmore
5. Burson No. 28-5
6. New England
7. Athens, OH
8. 2.0 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp.
1. 80-01285/06508
2. 34-009-21758-0014
3. 108
4. C E Beardmore
5. Poston No. 2
6. Canaansville
7. Athens, OH
8. 12.0 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp.
1. 80-01286/06509
2. 34-009-21617-0014
3. 108
4. C E Beardmore
5. Storer No. 1
6. Canaansville
7. Athens, OH
8. 19.0 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp.
1. 80-01287/05153
2. 34-133-20907-0014
3. 108
4. Jerry Moore Inc
5. Harold Keen Unit No. 1
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company
1. 80-01288/05154
2. 34-133-20794-0014
3. 108
4. Jerry Moore Inc
5. R & B M Jackson No. 1-B
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company
1. 80-01289/05155
2. 34-133-20843-0014
3. 108
4. Jerry Moore Inc
5. Paul Zitko Unit No. 1
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company
1. 80-01290/05156
2. 34-133-20323-0014
3. 108
4. Jerry Moore Inc
5. L & M Wolfe No. 1
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company
1. 80-01291/05157
2. 34-133-20905-0014
3. 108
4. Jerry Moore Inc
5. J Toth Unit No 1
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company
1. 80-01292/05158
2. 34-133-20830-0014
3. 108
4. Jerry Moore Inc
5. Jerry Moore Inc No. 5-B
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company
1. 80-01293/05159
2. 34-133-20710-0014
3. 108
4. Jerry Moore Inc
5. James W Wilson No. 1B
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company
1. 80-01294/05160
2. 34-133-20821-0014
3. 108
4. Jerry Moore Inc
5. Jerry Moore Inc No 2-C
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company
1. 80-01295/05161
2. 34-133-20817-0014
3. 108
4. Jerry Moore Inc
5. Jerry Moore Inc No 2-B
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company
1. 80-01296/05162

2. 34–133–20849–0014
3. 108
4. Jerry Moore Inc
5. Jerry Moore Inc No 6–A
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company

1. 80–01297/05163
2. 34–133–20810–0014
3. 108
4. Jerry Moore Inc
5. Jerry Moore Inc No 2–A
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company

1. 80–01298/05164
2. 34–151–22616–0014
3. 108
4. Jerry Moore Inc
5. Jerry Moore Inc No 4
6. Atwater
7. Stark, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company

1. 80–01299/05165
2. 34–133–20820–0014
3. 108
4. Jerry Moore Inc
5. Jerry Moore Inc No 1–D
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company

1. 80–01300/05136
2. 34–133–20705–0014
3. 108
4. Jerry Moore Inc
5. R Jackson—R D Roliff No 1–A
6. Randolph
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company

1. 80–01301/05137
2. 34–031–22180–0014
3. 108
4. Jerry Moore Inc
5. Robert G Mohler No 11426
6. Warsaw
7. Coshocton, OH
8. .3 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission

1. 80–01302/05138
2. 34–031–22251–0014
3. 108
4. Jerry Moore Inc
5. Allen and Roy Noble No 1
6. West Lafayette
7. Coshocton, OH
8. .4 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission

1. 80–01303/05139
2. 34–133–21567–0014
3. 108
4. Jerry Moore Inc
5. Carl L Schnee No 3
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company

1. 80–01304/05140
2. 34–133–21258–0014
3. 108
4. Jerry Moore Inc
5. Carl L Schnee No 2
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company

1. 80–01305/05141
2. 34–133–21206–0014
3. 108
4. Jerry Moore Inc.
5. Carl L Schnee No 1
6. Atwater
7. Portage OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company

1. 80–01306/05142
2. 34–133–20859–0014
3. 108
4. Jerry Moore Inc
5. Vance R Roberts No 1–A
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company

1. 80–01307/05143
2. 34–133–20711–0014
3. 108
4. Jerry Moore Inc
5. Robert H Price No 1
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company

1. 80–01308/05144
2. 34–133–21651–0014
3. 108
4. Jerry Moore Inc
5. O F Vineyard Unit No 4
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company

1. 80–01309/05145
2. 34–133–21600–0014
3. 108
4. Jerry Moore Inc
5. O F Vineyard Unit No 3
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company

1. 80–01310/05146
2. 34–133–21510–0014
3. 108
4. Jerry Moore Inc
5. O F Vineyard Unit No 2
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company

1. 80–01311/05147
2. 34–133–21289–0014
3. 108
4. Jerry Moore Inc
5. O F Vineyard Unit No 1
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company

1. 80–01312/05148
2. 34–133–20704–0014
3. 108
4. Jerry Moore Inc
5. Toth-Stephenson No 1–A
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company

1. 80–01313/05149
2. 34–133–20842–0014
3. 108
4. Jerry Moore Inc
5. Faith Trushell Unit #1
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company

1. 80–01314–05150
2. 34–133–21094–0014
3. 108
4. Jerry Moore Inc
5. House of Glory Baptist Church #1
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company

1. 80–01315/05151
2. 34–133–20883–0014
3. 108
4. Jerry Moore Inc
5. Hall-Burkhead Unit #1
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company

1. 80–01316/05152
2. 34–133–21064–0014
3. 108
4. Jerry Moore Inc
5. Howard Kemph #1
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company

1. 80–01317/04943
2. 34–119–23657–0014
3. 108
4. The Clinton Oil Co
5. Carr #1
6.
7. Muskingum, OH
8. 15.0 million cubic feet
9. October 5, 1979
10. National Gas & Oil Corp

1. 80–01318/04962
2. 34–053–20191–0014
3. 108
4. Robert D Carson & Mary V Carson
5. Carson #3
6.

7. Gallia, OH
8. 6.6 million cubic feet
9. October 5, 1979
10. Columbia Gas Transimission Corp
1. 80–01319/04963
2. 34–053–20201–0014
3. 108
4. Robert D Carson & Mary V Carson
5. Carson #4
6.
7. Gallia, OH
8. 6.6 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80–01320/04965
2. 34–105–21669–0014
3. 108
4. Robert D Carson & Mary V Carson
5. Reed #1
6.
7. Meigs, OH
8. 6.6 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80–01321/04967
2. 34–053–20192–0014
3. 108
4. Robert D Carson & Mary V Carson
5. Carson #2
6.
7. Gallia, OH
8. 6.6 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company
1. 80–01322/04977
2. 34–105–21674–0014
3. 108
4. Robert D Carson & Mary V Carson
5. Reed #2
6.
7. Meigs, OH
8. 6.6 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80–01323/05048
2. 34–031–22346–0014
3. 108
4. Jerry Moore Inc
5. Mabel S Rehard #2–20065
6. West Lafayette
7. Coshocton, OH
8. .3 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission
1. 80–01324/05049
2. 34–031–22524–0014
3. 108
4. Jerry Moore Inc
5. Everett W Kissner #3
6. Warsaw
7. Coshocton OH
8. .2 million cubit feet
9. October 5, 1979
10. Columbia Gas Transmission
1. 80–01325/05050
2. 34–031–22179–0014
3. 108
4. Jerry Moore Inc
5. James A Lee #11427
6. Warsaw
7. Coshocton, OH
8. .6 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission
1. 80–01326/05051
2. 34–031–22345–0014
3. 108
4. Jerry Moore Inc
5. Mabel S Rehard #1–20064
6. West Lafayette
7. Coshocton, OH
8. .2 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission
1. 80–01327/05052
2. 34–031–22392–0014
3. 108
4. Jerry Moore Inc
5. Blanch T Wilson #20089
6. West Lafayette
7. Coshocton, OH
8. .3 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission
1. 80–01328/05053
2. 34–151–22613–0014
3. 108
4. Jerry Moore Inc
5. Oblisk-Miller Unit #1
6. Atwater
7. Stark OH
8. .5 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company
1. 80–01329/05054
2. 34–151–22611–0014
3. 108
4. Jerry Moore Inc
5. Willis Robinson #2
6. Atwater
7. Stark, OH
8. .5 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company
1. 80–01330/05055
2. 34–133–20870–0014
3. 108
4. Jerry Moore Inc
5. Gordon H & F K Weber Unit #1
6. Atwater
7. Portage, OH
8. 1.0 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company
1. 80–01331/05056
2. 34–031–22381–0014
3. 108
4. Jerry Moore Inc
5. Harold Musser #1
6. Clark
7. Coshocton OH
8. .4 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission
1. 80–01332/05057
2. 34–151–22312–0014
3. 108
4. Jerry Moore Inc
5. Andrew P Hershberger Unit #11203
6. Mt. Eaton
7. Stark, OH
8. .4 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission
1. 80–01333/05058
2. 34–031–22250–0014
3. 108
4. Jerry Moore Inc
5. George W Shurtz #1
6. West Lafayette
7. Coshocton, OH
8. .2 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission
1. 80–01334/05059
2. 34–031–22247–0014
3. 108
4. Jerry Moore Inc
5. Dale Wiggins #1
6. Plainfield
7. Coshocton, OH
8. .4 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission
1. 80–01335/05128
2. 34–133–21270–0014
3. 108
4. Jery Moore Inc
5. Burkhead-Wade Unit #1
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company
1. 80–01336/05129
2. 34–133–21207–0014
3. 108
4. Jerry Moore Inc
5. R E Burkhead #1
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company
1. 80–01337/05130
2. 34–133–21271–0014
3. 108
4. Jerry Moore Inc
5. Howard Fields Unit #1
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company
1. 80–01338/05131
2. 34–133–21045–0014
3. 108
4. Jerry Moore Inc
5. Full-Kinsey Unit #1–A
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company
1. 80–01339/05132
2. 34–133–20844–0014
3. 108
4. Jerry Moore Inc
5. Hillard Hall Unit #1
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company
1. 80–01340/05133
2. 34–133–21065–0014
3. 108
4. Jerry Moore Inc
5. Patricia Murray Unit #1
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company
1. 80–01341/05134

2. 34–133–20807–0014
3. 108
4. Jerry Moore Inc
5. Hugh D. McCambridge #1
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company

1. 80–01342/05135
2. 34–133–21334–0014
3. 108
4. Jery Moore Inc
5. L R Wolf Unit #1
6. Atwater
7. Portage, OH
8. .9 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company

1. 80–01343/06882
2. 34–099–20604–0014
3. 108
4. The Mutual Oil & Gas Company
5. Patsy B De Ceder #1
6.
7. Mahoning, OH
8. 3.0 million cubic feet
9. October 5, 1979
10. Ball Corporation

1. 80–01344/06881
2. 34–099–20649–0014
3. 108
4. The Mutual Oil & Gas Company
5. Roth Unit #1
6.
7. Mahoning, OH
8. 1.0 million cubic feet
9. October 5, 1979
10. Ball Corporation

1. 80–01345/06880
2. 34–053–23600–0014
3. 108
4. Orwig Oil Company
5. E D Shoemaker #1
6.
7. Gallia, OH
8. 6.0 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp

1. 80–01346/06883
2. 34–099–20602–0014
3. 108
4. The Mutual Oil & Gas Company
5. Edward C Leonard & Mildred M Leonard
6.
7. Mahoning, OH
8. 3.0 million cubic feet
9. October 5, 1979
10. Ball Corporation

1. 80–01347/06949
2. 34–111–21814–0014
3. 108
4. Carl E Smith
5. #1 James Baker
6.
7. Monroe, OH
8. 4.9 million cubic feet
9. October 5, 1979
10. Columbia Gas Trans Corp

1. 80–01348/06802
2. 34–055–20225–0014
3. 108
4. Resource Exploration Inc
5. Miller #18
6.
7. Geauga, OH
8. 9.4 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp

1. 80–01349/06803
2. 34–055–20226–0014
3. 108
4. Resource Exploration Inc
5. Pechura #1
6.
7. Geauga, OH
8. 9.4 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp

1. 80–01350/06804
2. 34–157–21880–0014
3. 108
4. Resource Exploration Inc
5. Burdette #1
6.
7. Tuscarawas, OH
8. 6.2 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company

1. 80–01351/06805
2. 34–055–20153–0014
3. 108
4. Resource Exploration Inc
5. Dietz #1
6.
7. Geauga, OH
8. 3.5 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp

1. 80–1352/06806
2. 34–055–20233–0014
3. 108
4. Resource Exploration Inc
5. Dewees #1
6.
7. Geauga, OH
8. 3.5 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp

1. 80–01353/06845
2. 34–099–20601–0014
3. 108
4. The Mutual Oil & Gas Company
5. Edward C Leonard & Mildred M Leonard
6.
7. Mahoning, OH
8. 3.0 million cubic feet
9. October 5, 1979
10. Ball Corporation

1. 80–01354/06846
2. 34–099–20603–0014
3. 108
4. The Mutual Oil & Gas Company
5. J A & A A Price #1
6.
7. Mahoning, OH
8. 3.0 million cubic feet
9. October 5, 1979
10. Ball Corporation

1. 80–01355/06847
2. 34–099–20846–0014
3. 108
4. The Mutual Oil & Gas Company
5. Gerald B Keeler & Dorothy H Keeler
6.
7. Mahoning, OH
8. 7.0 million cubic feet
9. October 5, 1979
10. Ball Corporation

1. 80–01356/06879
2. 34–053–22730–0014
3. 108
4. Orwig Oil Company
5. Walder Darst No 1
6.
7. Gallia, OH
8. 5.0 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp

1. 80–01357/06789
2. 34–055–20149–0014
3. 108
4. Resource Exploration Inc
5. Yoder #1
6.
7. Geauga, OH
8. 3.5 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp

1. 80–01358/06790
2. 34–055–20147–0014
3. 108
4. Resource Exploration Inc
5. Mullet #1
6.
7. Geauga, OH
8. 3.5 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp

1. 80–01359/06791
2. 34–055–20158–0014
3. 108
4. Resource Exploration Inc
5. Hershberber #2
6.
7. Geauga, OH
8. 3.5 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp

1. 80–01360/06792
2. 34–055–20234–0014
3. 108
4. Resource Exploration Inc
5. Lucht #1
6.
7. Geauga, OH
8. 3.5 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp

1. 80–01361/06793
2. 34–055–20229–0014
3. 108
4. Resource Exploration Inc
5. Mullet #3
6.
7. Geauga, OH
8. 3.5 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp

1. 80–01362/06794
2. 34–055–20150–0014
3. 108
4. Resource Exploration Inc
5. Zaylor #1
6.
7. Geauga, OH
8. 3.5 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp

1. 80–01363/06795
2. 34–055–20157–0014
3. 108
4. Resource Exploration Inc
5. Sitko #1
6.

7. Geauga, OH
8. 3.5 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80–01364/06796
2. 34–055–20151–0014
3. 108
4. Resource Exploration Inc
5. Troyer #1
6.
7. Geauga, OH
8. 3.5 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80–01365/06797
2. 34–055–20146–0014
3. 108
4. Resource Exploration Inc
5. Miller #4
6.
7. Geauga, OH
8. 3.5 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80–01366/06798
2. 34–055–20138–0014
3. 108
4. Resource Exploration Inc
5. Kovach #2
6.
7. Geauga, OH
8. 3.5 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80–01367/06799
2. 34–055–20173–0014
3. 108
4. Resource Exploration Inc
5. Schmucker #3
6.
7. Geauga, OH
8. 3.5 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80–01368/06800
2. 34–055–20132–0014
3. 108
4. Resource Exploration Inc
5. Farley #2
6.
7. Geauga, OH
8. 3.5 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80–01369/06801
2. 34–055–20155–0014
3. 108
4. Resource Exploration Inc
5. Schmucker #2
6.
7. Geauga, OH
8. 3.5 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80–01370/04359
2. 34–127–23652–0014
3. 108
4. Dick Hart
5. Shirley Mechling #1
6.
7. Perry, OH
8. 1.8 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80–01371/04360
2. 34–127–23650–0014
3. 108
4. Dick Hart
5. Shirley Mechling #2
6.
7. Perry, OH
8. 1.8 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80–01372/04361
2. 34–127–23530–0014
3. 108
4. Dick Hart
5. Donald C Cooperrider #1
6.
7. Perry, OH
8. 3.1 million cubic feet
9. October 5, 1979
10. National Gas & Oil Corp
1. 80–01373/04362
2. 34–127–23531–0014
3. 108
4. Dick Hart
5. Donald C. Cooperrider #2
6.
7. Perry OH
8. 3.1 million cubic feet
9. October 5, 1979
10. National Gas & Oil Corp
1. 80–01374/04363
2. 34–127–23598–0014
3. 108
4. Dick Hart
5. Donald C. Cooperrider #3
6.
7. Perry OH
8. 3.1 million cubic feet
9. October 5, 1979
10. National Gas & Oil Corp
1. 80–01375/04364
2. 34–127–23597–0014
3. 108
4. Dick Hart
5. Donald C. Cooperrider #4
6.
7. Perry OH
8. 3.1 million cubic feet
9. October 5, 1979
10. National Gas & Oil Corp
1. 80–01376/04357
2. 34–127–23566–0014
3. 108
4. Dick Hart
5. John C. Cooperrider #1
6.
7. Perry OH
8. 3.8 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80–01377/03430
2. 34–075–22000–0014
3. 108
4. Amtex Oil and Gas Inc
5. Flint Stone Farms No 3
6.
7. Holmes OH
8. 9.5 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80–01378/03446
2. 34–075–21971–0014
3. 108
4. Amtex Oil and Gas Inc
5. Flint Stone Farms No 5
6.
7. Holmes OH
8. 9.5 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80–01379/03447
2. 34–075–21980–0014
3. 108
4. Amtex Oil and Gas Inc
5. Flint Stone Farms No 4
6.
7. Homes OH
8. 9.5 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80–01380/06766
2. 34–105–21731–0014
3. 108
4. Orwig Oil Company
5. William Chapman #1
6.
7. Meigs OH
8. 10.0 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80–01381/006767
2. 34–105–21737–0014
3. 108
4. Orwig Oil Company
5. William Chapman #2
6.
7. Meigs OH
8. 10.0 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80–01382/06787
2. 34–055–20137–0014
3. 108
4. Resource Exploration Inc
5. Hershberger #1
6.
7. Geauga OH
8. 3.5 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80–01383/06788
2. 34–055–20140–0014
3. 108
4. Resource Exploration Inc
5. Soltis #1
6.
7. Geauga OH
8. 3.5 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80–01384/01434
2. 34–167–23877–0014
3. 108
4. L Boord Oil Company Inc
5. #1 Laural Boord Et al
6.
7. Washington OH
8. 4.5 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80–01385/01762
2. 34–151–22332–0014
3. 108
4. Nucorp Energy Company
5. Reed Well #1–A
6.
7. Stark County OH
8. 4.8 million cubic feet
9. October 5, 1979
10. Columbia Gas Company
1. 80–01386/01805

2. 34–089–23455–0014
3. 108
4. Oxford Oil Co
5. Dawes Arboretum #3
6.
7. Licking OH
8. 17.0 million cubic feet
9. October 5, 1979
10. National Gas & Oil Corp

1. 80–01387/03428
2. 34–075–21813–0014
3. 108
4. Amtex Oil and Gas Inc
5. Flint Stone Farms #1
6.
7. Holmes OH
8. 9.5 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp

1. 80–01388/03429
2. 34–075–21939–0014
3. 108
4. Amtex Oil and Gas Inc
5. Flint Stone Farms #2
6.
7. Holmes OH
8. 9.5 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp

1. 80–01389/06657
2. 34–157–21426–0014
3. 108
4. Resource Exploration Inc
5. McCollam #2
6.
7. Tuscarawas OH
8. 6.6 million cubic feet
9. October 5, 1979
10. American Energy

1. 80–01390/06658
2. 34–157–21549–0014
3. 108
4. Resource Exploration Inc
5. Everett #1
6.
7. Tuscarawas OH
8. 3.3 million cubic feet
9. October 5, 1979
10. American Energy

1. 80–01391/06659
2. 34–157–21290–0014
3. 108
4. Resource Exploration Inc
5. Davidson #2
6.
7. Tuscarawas OH
8. 3.1 million cubic feet
9. October 5, 1979
10. American Energy

1. 80–01392/06660
2. 34–157–21291–0014
3. 108
4. Resource Exploration Inc
5. Davidson #3
6.
7. Tuscarawas OH
8. 3.1 million cubic feet
9. October 5, 1979
10. American Energy

1. 80–01393/06661
2. 34–157–21289–0014
3. 108
4. Resource Exploration Inc
5. Kinser #1
6.
7. Tuscarawas OH
8. 4.4 million cubic feet
9. October 5, 1979
10. American Energy

1. 80–01394/06662
2. 34–067–20124–0014
3. 108
4. Resource Exploration Inc
5. McCaulley Harshey #1
6.
7. Harrison OH
8. 4.0 million cubic feet
9. October 5, 1979
10. American Energy

1. 80–01395/06663
2. 34–067–20127–0014
3. 108
4. Resource Exploration Inc
5. Harshey #2
6.
7. Harrison OH
8. 2.0 million cubic feet
9. October 5, 1979
10. American Energy

1. 80–01396/06664
2. 34–157–21282–0014
3. 108
4. Resource Exploration Inc
5. Leggett #1
6.
7. Tuscarawas OH
8. 5.8 million cubic feet
9. October 5, 1979
10. American Energy

1. 80–01397/06665
2. 34–157–21292–0014
3. 108
4. Resource Exploration Inc
5. Davidson #1
6.
7. Tuscarawas OH
8. 7.0 million cubic feet
9. October 5, 1979
10. American Energy

1. 80–01398/06666
2. 34–157–21319–0014
3. 108
4. Resource Exploration Inc
5. Sherer #3
6.
7. Tuscarawas OH
8. 6.5 million cubic feet
9. October 5, 1979
10. American Energy

1. 80–01399/06667
2. 34–157–21270–0014
3. 108
4. Resource Exploration Inc
5. Everett #3
6.
7. Tuscarawas OH
8. 7.3 million cubic feet
9. October 5, 1979
10. American Energy

1. 80–01400/06668
2. 34–157–21281–0014
3. 108
4. Resource Exploration Inc
5. Everett #2
6.
7. Tuscarawas OH
8. 7.3 million cubic feet
9. October 5, 1979
10. American Energy

1. 80–01401/06669
2. 34–157–21280–0014
3. 108
4. Resource Exploration Inc
5. Everett #4
6.
7. Tuscarawas OH
8. 7.3 million cubic feet
9. October 5, 1979
10. American Energy

1. 80–01402/06729
2. 34–157–21856–0014
3. 108
4. Resource Exploration Inc
5. Kleski #3
6.
7. Tuscarawas OH
8. 6.2 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company

1. 80–01403/06730
2. 34–157–21863–0014
3. 108
4. Resource Exploration Inc
5. Garbrandt No 1
6.
7. Tuscarawas OH
8. 6.2 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company

1. 80–01404/06731
2. 34–157–21734–0014
3. 108
4. Resource Exploration Inc
5. Jarvis No 1
6.
7. Tuscarawas OH
8. 6.2 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company

1. 80–01405/06732
2. 34–157–21672–0014
3. 108
4. Resource Exploration Inc
5. Brainard No 2
6.
7. Tuscarawas OH
8. 6.2 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company

1. 80–01406/06733
2. 34–157–21729–0014
3. 108
4. Resource Exploration Inc
5. Willer No 1
6.
7. Tuscarawas OH
8. 6.2 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company

1. 80–01407/06734
2. 34–157–22055–0014
3. 108
4. Resource Exploration Inc
5. Charlton No 1
6.
7. Tuscarawas OH
8. 6.2 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company

1. 80–01408/06735
2. 34–157–21733–0014
3. 108
4. Resource Exploration Inc
5. Poulson No 1
6.

7. Tuscarawas OH
8. 6.2 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company
1. 80-01409/06736
2. 34-157-21854-0014
3. 108
4. Resource Exploration Inc
5. Chandler No 2
6.
7. Tuscarawas OH
8. 6.2 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company
1. 80-01410/06737
2. 34-157-22056-0014
3. 108
4. Resource Exploration Inc
5. Metcalf No 2
6.
7. Tuscarawas OH
8. 6.2 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company
1. 80-01411/06738
2. 34-157-22264-0014
3. 108
4. Resource Exploration Inc
5. N AM Coal No 4
6.
7. Tuscarawas OH
8. 6.2 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company
1. 80-01412/06739
2. 34-157-22256-0014
3. 108
4. Resource Exploration Inc
5. Harper No 1
6.
7. Tuscarawas OH
8. 6.2 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company
1. 80-01413/06740
2. 34-157-21851-0014
3. 108
4. Resource Exploration Inc
5. N AM Coal No 1
6.
7. Tuscarawas OH
8. 6.2 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company
1. 80-01414/06741
2. 34-157-21740-0014
3. 108
4. Resource Exploration Inc
5. Errington No 2
6.
7. Tuscarawas OH
8. 6.2 million cubic feet
9. October 5, 1979
10. East Ohio Gas Company
1. 80-01415/06556
2. 34-073-20716-0014
3. 108
4. Quaker State Oil Refining Corp
5. Kenneth Scott No 1 80063-1
6.
7. Hocking OH
8. .7 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80-01416/06557
2. 34-073-21568-0014
3. 108
4. Quaker State Oil Refining Corp
5. Clyde Ruff No 1 80107
6.
7. Hocking OH
8. 1.8 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80-01417/06558
2. 34-073-21567-0014
3. 108
4. Quaker State Oil Refining Corp
5. Gertrude Kuns No 2 80105-2
6.
7. Hocking OH
8. 1.5 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80-01418/06559
2. 34-073-21550-0014
3. 108
4. Quaker State Oil Refining Corp
5. Gertrude Kuns No 1 80105-1
6.
7. Hocking OH
8. 1.5 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80-01419/06560
2. 34-073-20734-0014
3. 108
4. Quaker State Oil Refining Corp
5. Johnson No 1 80047
6.
7. Hocking OH
8. 2.6 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80-01420/06614
2. 34-067-20183-0014
3. 108
4. Resource Exploration Inc
5. Baradall-Slensby No 1
6.
7. Harrison OH
8. 12.0 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80-01421/06615
2. 34-067-20236-0014
3. 108
4. Resource Exploration Inc
5. Milarcik No 2
6.
7. Harrison OH
8. 12.0 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80-01422/06616
2. 34-067-20288-0014
3. 108
4. Resource Exploration Inc
5. Chaney No 1
6.
7. Harrison OH
8. 12.0 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80-01423/06617
2. 34-067-20176-0014
3. 108
4. Resource Exploration Inc
5. E McGuire No 1
6.
7. Harrison OH
8. 12.0 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80-01424/06618
2. 34-067-20272-0014
3. 108
4. Resource Exploration Inc
5. Clendening No 1
6.
7. Harrison OH
8. 12.0 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80-01425/06619
2. 34-067-20200-0014
3. 108
4. Resource Exploration Inc
5. Shugart No 1
6.
7. Harrison OH
8. 12.0 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80-01426/06550
2. 34-127-23283-0014
3. 108
4. Quaker State Oil Refining Corp
5. Lewis et al No 1-A 80139
6.
7. Perry OH
8. 5.1 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80-01427/06551
2. 34-127-23052-0014
3. 108
4. Quaker State Oil Refining Corp
5. Henry No 1 80163-1
6.
7. Perry OH
8. 2.0 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80-01428/06552
2. 34-127-23226-0014
3. 108
4. Quaker State Oil Refining Corp
5. John Gill No 1 80140
6.
7. Perry OH
8. 1.8 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80-01429/06553
2. 34-127-23054-0014
3. 108
4. Quaker State Oil Refining Corp
5. Danielson No 1 80176
6.
7. Perry OH
8. 2.9 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80-01430/06554
2. 34-073-21531-0014
3. 108
4. Quaker State Oil Refining Corp
5. Kenneth Scott No 3 80063-3
6.
7. Hocking OH
8. .7 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp
1. 80-01431/06555

2. 34–073–20744–0014
3. 108
4. Quaker State Oil Refining Corp
5. Kenneth Scott No 2 80063–2
6.
7. Hocking OH
8. .7 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp

1. 80–01432/06549
2. 34–127–23553–0014
3. 108
4. Quaker State Oil Refining Corp
5. Elmer Wesney No 1 80141
6.
7. Perry OH
8. 3.7 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Corp

1. 80–01433/06023
2. 34–127–22900–0014
3. 108
4. Quaker State Oil Refining Corp.
5. Chester Ketcham No. 1–A 80157–1
6.
7. Perry OH
8. .2 million cubic feet
9. October 5, 1979
10. Foraker 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. 80–01434/06162
2. 42–065–00000
3. 108
4. Getty Oil Company
5. Schafer Ranch No. 30
6. Panhandle
7. Carson TX
8. 3.0 million cubic feet
9. October 5, 1979
10. Getty Oil Co. Natural Gas Plant

1. 80–01435/06172
2. 42–065–00000
3. 108
4. Getty Oil Co.
5. Schafer Ranch No. 32
6. Panhandle
7. Carson TX
8. 3.0 million cubic feet
9. October 5, 1979
10. Getty Oil Co. Natural Gas Plant

1. 80–01436/06174
2. 42–065–00000
3. 108
4. Getty Oil Co.
5. Schafer Ranch No. 25
6. Panhandle
7. Carson TX
8. 3.0 million cubic feet
9. October 5, 1979
10. Getty Oil Co. Natural Gas Plant

1. 80–01437/06177
2. 42–065–00000
3. 108
4. Getty Oil Co.
5. Schafer Ranch No. 24
6. Panhandle
7. Carson TX
8. 3.0 million cubic feet
9. October 5, 1979
10. Getty Oil Co. Natural Gas Plant

1. 80–01438/08416
2. 42–211–00000
3. 103
4. Petroleum Inc.
5. Jones Ranch Unit No. 1
6. Feldman-Douglas
7. Hemphill TX
8. 50.0 million cubic feet
9. October 5, 1979
10. Pandhandle Eastern Pipeline Co.

1. 80–01439/06181
2. 42–065–00000
3. 108
4. Getty Oil Co.
5. Schafer Ranch No. 33
6. Panhandle
7. Carson TX
8. 3.0 million cubic feet
9. October 5, 1979
10. Getty Oil Co. Natural Gas Plant

1. 80–01440/06182
2. 42–065–00000
3. 108
4. Getty Oil Co.
5. Schafer Ranch No. 27
6. Panhandle
7. Carson TX
8. 3.0 million cubic feet
9. October 5, 1979
10. Getty Oil Co. Natural Gas Plant

1. 80–01441/06188
2. 42–065–00000
3. 108
4. Getty Oil Co.
5. Schafer Ranch No. 12
6. Panhandle
7. Carson TX
8. 3.0 million cubic feet
9. October 5, 1979
10. Getty Oil Co. Natural Gas Plant

1. 80–01442/00106
2. 42–461–31185
3. 103
4. Hunt Oil Company
5. V. T. Amacker 63 No. 2 05322
6. Amacker Tippett (Strawn)
7. Upton TX
8. 250.0 million cubic feet
9. October 5, 1979
10. El Paso Natural Gas Co., Pecos Co

1. 80–01443/00321
2. 42–357–30769
3. 103
4. Horizon Oil & Gas Co. of Texas
5. McGarraugh B 4–151 04080
6. Horizon Cleveland
7. Ochiltree TX
8. 9.0 million cubic feet
9. October 5, 1979
10. Diamond Shamrock Corp

1. 80–01444/00923
2. 42–427–31158
3. 103
4. Harkins & Company
5. Harkins & Co. No. 1 F. F. Martinez
6. Rincon North (7100 Vicksburg) Field
7. Starr TX
8. 95.9 million cubic feet
9. October 5, 1979
10. Tennessee Gas Pipeline Co., Lo-Vaca Gathering Company

1. 80–01445/02265
2. 42–341–30521
3. 103
4. Gas Producing Enterprises Inc.
5. Thompson 2–4 RO
6. West Panhandle Red Cave
7. Moore TX
8. 2.0 million cubic feet
9. October 5, 1979
10. Colorado Interstate Gas Co.

1. 80–01446/02282
2. 42–375–30600
3. 103
4. Gas Producing Enterprises Inc.
5. Bivens 17–18–RO
6. West Panhandle Red Cave
7. Potter TX
8. 7.0 million cubic feet
9. October 5, 1979
10. Colorado Interstate Gas Co.

1. 80-01447/02699
2. 42–065–00000
3. 108
4. Phillips Petroleum Company
5. Bryan No. 8
6. Panhandle West
7. Carson TX
8. 10.2 million cubic feet
9. October 5, 1979
10. Cabot Corporation

1. 80–01448/03062
2. 42–083–31656
3. 103
4. Delray Oil Inc.
5. M. L. Stone A. No. 1–A
6. Talpa
7. Coleman TX
8. .0 million cubic feet
9. October 5, 1979.
10.

1. 80–01449/05847
2. 42–135–32942
3. 103
4. Continental Oil Company
5. Wight Unit No. 722 (20661)
6. Cowden North
7. Ector TX
8. 18.3 million cubic feet
9. October 5, 1979
10. Amoco Production Co.

1. 80–01450/06143
2. 42–065–00000
3. 108
4. Getty Oil Company
5. Schafer Ranch No. 1
6. Panhandle
7. Carson TX
8. 3.0 million cubic feet
9. October 5, 1979
10. Getty Oil Co. Natural Gas Plant

1. 80–01451/06145
2. 42–065–00000
3. 108
4. Getty Oil Company
5. Schafer Ranch No. 14
6. Panhandle
7. Carson TX
8. 3.0 million cubic feet
9. October 5, 1979
10. Getty Oil Co. Natural Gas Plant

1. 80–01452/06146

2. 42–065–00000
3. 108
4. Getty Oil Company
5. Schafer Ranch No. 16
6. Panhandle
7. Carson and Gray TX
8. 3.0 million cubic feet
9. October 5, 1979
10. Getty Oil Co. Natural Gas Plant

1. 80–01453/06154
2. 42–065–00000
3. 108
4. Getty Oil Company
5. Schafer Ranch No 5
6. Panhandle
7. Carson TX
8. 3.0 million cubic feet
9. Octobetr 5, 1979
10. Getty Oil Co Natural Gas Plant

1. 80–01454/06158
2. 42–065–00000
3. 108
4. Getty Oil Company
5. Schafer Ranch No 26
6. Panhandle
7. Carson TX
8. .0 million cubic feet
9. October 5, 1979
10. Getty Oil Co Natural Gas Plant

1. 80–01455/06161
2. 42–065–00000
3. 108
4. Getty Oil Company
5. Schafer Ranch No 31
6. Panhandle
7. Carson TX
8. 3.0 million cubic feet
9. October 5, 1979
10. Getty Oil Co Natural Gas Plant

West Virginia Department of Mines, 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. 80–01457
2. 47–021–01941
3. 108
4. Cecil Meadows Enterprises
5. R C McHenry Well #1 55–0489904
6. Sand Fork
7. Gilmer WV
8. 5.0 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp

1. 80–01458
2. 47–017–01052
3. 108
4. Cecil Meadows Enterprises
5. Fred Bode #1 55–0489904
6. Holbrook
7. Doddridge WV
8. .7 million cubic feet
9. October 5, 1979
10. Pennzoil Co

1. 80–01459
2. 47–013–02252
3. 108
4. Cecil Meadows Enterprises
5. W C Farrar 197A #2 55–0489904
6. Nicut
7. Calhoun WV
8. 5.7 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp

1. 80–01460
2. 47–013–02223
3. 108
4. Cecil Meadows Enterprises
5. Sherman Brown Well #3 55–0489904
6. Nicut
7. Calhoun WV
8. 4.3 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp

1. 80–01461
2. 47–013–02147
3. 108
4. Cecil Meadows Enterprises
5. Sherman Brown Well #1 55–0489904
6. Nicut
7. Calhoun WV
8. 3.1 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp

1. 80–01462
2. 47–013–02115
3. 108
4. Cecil Meadows Enterprises
5. W C Farrar 51A #1 55–0489904
6. Nicut
7. Calhoun WV
8. 5.7 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp

1. 80–01463
2. 47–013–02060
3. 108
4. Cecil Meadows Enterprises
5. Thelma Stalnaker Well #1 55–0489904
6. Nicut
7. Calhoun WV
8. 6.7 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp

1. 80–01464
2. 47–013–02050
3. 108
4. Cecil Meadows Enterprises
5. Anna Longfellow Well 55–0489904
6. Nicut
7. Calhoun WV
8. 3.6 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp

1. 80–01465
2. 47–007–00566
3. 108
4. Cecil Meadows Enterprises
5. E T Miller Well #1 55–0489904
6. Nicut
7. Braxton WV
8. 3.3 million cubic feet
9. October 5, 1979
10. Equitable Gas Company

1. 80–01466
2. 47–007–00564
3. 108
4. Cecil Meadows Enterprises
5. D O Chenoweth 25A #1 55–0489904
6. Nicut
7. Braxton WV
8. .6 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp

1. 80–01467
2. 47–087–00868
3. 108
4. H F Young
5. Grace Nester #3 55–06031015
6. Little Creek
7. Roane WV
8. 2.3 million cubic feet
9. October 5, 1979
10. Harry C Boggs Natural Gas

1. 80–01468
2. 47–007–00856
3. 108
4. H F Young
5. Grace Nester #2 55–6031015
6. Little Creek
7. Roane WV
8. 2.3 million cubic feet
9. October 5, 1979
10. Harry C Boggs Natural Gas

1. 80–01469
2. 47–087–01637
3. 108
4. Cecil Meadows Enterprises
5. W C Lowry Well #6 55–0489904
6. Ambler Ridge
7. Roane WV
8. .3 million cubic feet
9. October 5, 1979
10. Pennzoil Company

1. 80–01470
2. 47–087–01573
3. 108
4. Cecil Meadows Enterprises
5. W C Lowry Well #5 55–0489904
6. Ambler Ridge
7. Roane WV
8. .3 million cubic feet
9. October 5, 1979
10. Pennzoil Company

1. 80–01471
2. 47–087–01502
3. 108
4. Cecil Meadows Enterprises
5. W C Lowry Well #4 55–0489904
6. Ambler Ridge
7. Roane WV
8. .3 million cubic feet
9. October 5, 1979
10. Pennzoil Company

1. 80–01472
2. 47–087–01346
3. 108
4. Cecil Meadows Enterprises
5. W C Lowry Well #3 55–0489904
6. Ambler Ridge
7. Roane WV
8. .3 million cubic feet
9. October 5, 1979
10. Pennzoil Company

1. 80–01473
2. 47–021–01992
3. 108
4. Cecil Meadows Enterprises
5. R C McHenry Well #3 55–0489904
6. Sand Fork
7. Gilmer WV
8. 4.3 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp

1. 80–01474
2. 47–021–01990

3. 108
4. Cecil Meadows Enterprises
5. R C McHenry Well #2 55–0489904
6. Sand Fork
7. Gilmer WV
8. 3.1 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp

1. 80–01475
2. 47–021–01959
3. 108
4. William Grambling
5. Cecil Gainer #1
6.
7. Gilmer WV
8. 1.9 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp

1. 80–01476
2. 47–021–01965
3. 108
4. William Grambling
5. Miller—Most #2
6.
7. Gilmer, WV
8. 2.5 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp

1. 80–01477
2. 47–021–03004
3. 108
4. W Va Energy Associates 77LP
5. Queen Flesher #6
6.
7. Gilmer, WV
8. 9.0 million cubic feet
9. October 5, 1979
10. Equitable Gas Company

1. 80–01478
2. 47–021–02891
3. 108
4. W Va Energy Associates 77LP
5. Pearl Varner #1
6.
7. Gilmer, WV
8. 4.0 million cubic feet
9. October 5, 1979
10. Carnegie Natural Gas Co

1. 80–01479
2. 47–021–02945
3. 108
4. W Va Energy Associates 77LP
5. Pearl Varner #2
6.
7. Gilmer, WV
8. 2.0 million cubic feet
9. October 5, 1979
10. Carnegie Natural Gas Co

1. 80–01480
2. 47–021–01969
3. 108
4. William Grambling
5. William Harvey #1
6.
7. Gilmer, WV
8. .0 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp

1. 80–01481
2. 47–021–01970
3. 108
4. William Grambling
5. Oldacre—Glover #2
6.
7. Gilmer, WV
8. 5.2 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp

1. 80–01482
2. 47–021–01979
3. 108
4. William Grambling
5. Cegala—Glover #1
6.
7. Gilmer, WV
8. 1.3 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp

1. 80–01483
2. 47–021–01983
3. 108
4. William Grambling
5. William Harvey #2
6.
7. Gilmer, WV
8. .0 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp

1. 80–01484
2. 47–021–02001
3. 108
4. William Grambling
5. Paul Jones #2
6.
7. Gilmer, WV
8. 4.0 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp

1. 80–01485
2. 47–021–02886
3. 108
4. W Va Energy Associates 77LP
5. Queen Flesher #2
6.
7. Gilmer, WV
8. 3.0 million cubic feet
9. October 5, 1979
10. Equitable Gas Company

1. 80–01486
2. 47–021–02887
3. 108
4. W Va Energy Associates 77LP
5. Queen Flesher #3
6.
7. Gilmer, WV
8. 8.0 million cubic feet
9. October 5, 1979
10. Equitable Gas Company

1. 80–01487
2. 47–021–02910
3. 108
4. W Va Energy Associates 77LP
5. Queen Flesher #4
6.
7. Gilmer, WV
8. 3.0 million cubic feet
9. October 5, 1979
10. Equitable Gas Company

1. 80–01488
2. 47–085–03707
3. 108
4. Floe Energy Inc
5. C A Keith #1
6.
7. Ritchie, WV
8. .0 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp

1. 80–01489
2. 47–085–03708
3. 108
4. Floe Energy Inc
5. C A Keith #2
6.
7. Ritchie, WV
8. .0 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp

1. 80–01490
2. 47–013–01513
3. 108
4. Arlen Carpenter
5. J A Dye #1
6.
7. Calhoun, WV
8. 4.0 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp

1. 80–01491
2. 47–013–02340
3. 108
4. Arlen Carpenter
5. S G Parsons #1
6.
7. Calhoun, WV
8. 2.5 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp

1. 80–01492
2. 47–013–02468
3. 108
4. Arlen Carpenter
5. E C Knotts #2
6.
7. Calhoun, WV
8. 6.0 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp

1. 80–01493
2. 47–085–03649
3. 108
4. Pennsylvania Gas Associates
5. Delbert Ludwig #1
6.
7. Ritchie, WV
8. .4 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp

1. 80–01494
2. 47–085–03650
3. 108
4. Pennsylvania Gas Associates
5. Orlan Newbrough #1
6.
7. Ritchie, WV
8. .3 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp

1. 80–01495
2. 47–085–03675
3. 108
4. Pennsylvania Gas Associates
5. Lindsey Bartlett #1
6.
7. Ritchie, WV
8. .5 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp

1. 80–01496
2. 47–085–03681
3. 108
4. Pennsylvania Gas Associates
5. Harry Moats #1
6.

7. Calhoun, WV
8. 20.0 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp
1. 80–01497
2. 47–013–01897
3. 108
4. Grimm & Dorward
5. E G McKown #1
6.
7. Calhoun, WV
8. 2.0 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp
1. 80–01498
2. 47–013–01909
3. 108
4. Grimm & Dorward
5. E G & B C McKown #1
6.
7. Calhoun, WV
8. 6.0 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp
1. 80–01499
2. 47–013–01980
3. 108
4. Grimm & Dorward
5. E L Wayne #1
6.
7. Calhoun, WV
8. 5.0 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp
1. 80–01500
2. 47–013–02019
3. 108
4. Grimm & Dorward
5. G W & E L Hays #1
6.
7. Calhoun, WV
8. 4.0 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp
1. 80–01501
2. 47–013–01213
3. 108
4. MGM
5. John Lockney #1
6.
7. Calhoun, WV
8. 5.0 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp
1. 80–01502
2. 47–013–01308
3. 108
4. MGM
5. J R Lockney #2
6.
7. Calhoun, WV
8. 5.0 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp
1. 80–01503
2. 47–085–03679
3. 108
4. Floe Energy Inc
5. Goldie Jobes #1
6.
7. Ritchie, WV
8. .0 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp
1. 80–01504
2. 47–085–03706
3. 108
4. Floe Energy Inc
5. Snow Hendrickson #1
6.
7. Ritchie, WV
8. .0 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp
1. 80–01505
2. 47–085–03709
3. 108
4. Floe Energy Inc
5. C A Keith #3
6.
7. Ritchie, WV
8. .0 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp
1. 80–01506
2. 47–013–02916—FRA–C
3. 108 Denied
4. Arlen Carpenter
5. E C Knotts No 1
6.
7. Calhoun WV
8. 2.0 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp
1. 80–01507
2. 47–017–01649
3. 108
4. McRain Petroleum
5. Robinson Davis No 1
6.
7. Doddridge WV
8. 7.5 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Co
1. 80–01508
2. 47–017–01651
3. 108
4. McRain Petroleum
5. Davis Craig No 1
6.
7. Doddridge WV
8. 8.5 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Co
1. 80–01509
2. 47–017–01672
3. 108
4. McRain Petroleum
5. Kenneth Kile No 1
6.
7. Doddridge WV
8. 6.0 million cubic feet
9. October 5, 1979
10. Columbia Gas Transmission Co
1. 80–01510
2. 47–107–01636
3. 108
4. McRain Petroleum
5. Trader-Fleming No 1
6.
7. Doddridge WV
8. 8.5 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp
1. 80–01511
2. 47–017–01662
3. 108
4. McRain Petroleum
5. Chancey Davis No 1
6.
7. Doddridge WV
8. 6.0 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp
1. 80–01512
2. 47–017–01665
3. 108
4. McRain Petroleum
5. Vonda Smith No 1
6.
7. Doddridge WV
8. 4.5 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp
1. 80–01513
2. 47–017–01767
3. 108
4. McRain Petroleum
5. Vincent No 1
6.
7. Doddridge WV
8. 1.0 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp
1. 80–01514
2. 47–013–00054
3. 108
4. F F McIntosh St Estate
5. Eddie Gunn #1
6.
7. Calhoun WV
8. .6 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp
1. 80–01515
2. 47–013–00163
3. 108
4. F F McIntosh Estate
5. S A Hays #1
6.
7. Calhoun WV
8. .0 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp
1. 80–01516
2. 47–013–00180
3. 108
4. F F McIntosh Estate
5. Mary Hays #1
6.
7. Calhoun WV
8. 4.6 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp
1. 80–01517
2. 47–013–00191
3. 108
4. F F McIntosh Estate
5. Mary Hays #2
6.
7. Calhoun WV
8. 4.6 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp
1. 80–01518
2. 47–013–00447
3. 108
4. F F McIntosh Estate
5. George Lynch #1
6.
7. Calhoun WV
8. 4.2 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp
1. 80–01519

2. 47–013–02229
3. 108
4. F F McIntosh Estate
5. Vere Haymaker #3
6.
7. Calhoun WV
8. 3.0 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp

1. 80–01520
2. 47–013–02345
3. 108
4. F F McIntosh Estate
5. S A & George Hays #2
6.
7. Calhoun WV
8. 5.0 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp

1. 80–01521
2. 47–013–02385–00
3. 108
4. F F McIntosh Estate
5. George McCoy #1
6.
7. Calhoun WV
8. 3.7 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp

1. 80–01522
2. 47–013–02443
3. 108
4. F F McIntosh Estate
5. Roy Morgan #2
6.
7. Calhoun WV
8. 8.9 million cubic feet
9. October 5, 1979
10. Consolidated Gas Supply Corp

1. 79–21633 (Revised)
2. 47–035–00132
3. 108
4. Cities Service Company
5. Fisher A #1
6. Colbon 6
7. Kanawha WV
8. 11.9 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Corp

1. 79–21634 (Revised)
2. 47–039–02408
3. 108
4. Cities Service Company
5. Hanna D–1
6. Kaput
7. Kanawha WV
8. 14.0 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Corp

1. 79–21677 (Revised)
2. 47–067–00067
3. 108
4. Cities Service Company
5. Flynn Coal & Lumb A #4
6. Gauley
7. Nicholas WV
8. 17.1 million cubic feet
9. September 24, 1979
10. Equitable Gas Company

U.S. Geological Survey, Metairie, La.

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. 80–01260/G9–803
2. 17–700–40331–00D1–1
3. 102
4. Union Oil Company of California
5. OCS–0911 #C–2
6. West Cameron
7. 280
8. 1,460.0 million cubic feet
9. October 5, 1979
10. Texas Eastern Transmission Corp

1. 80–01261/G9–804
2. 17–700–40331–00D2–2
3. 102
4. Union Oil Company of California
5. OCS–0911 #C–2D
6. West Cameron
7. 280
8. 219.0 million cubic feet
9. October 5, 1979
10. Texas Eastern Transmission Corp

1. 80–01262/G9–839
2. 17–700–40372–0000–0
3. 102
4. The Superior Oil Co
5. OCS–G–3381 A No 6
6. West Cameron
7. 264
8. 666.0 million cubic feet
9. October 5, 1979
10.

1. 80–01263/G9–836
2. 42–711–50375–0000–0
3. 102
4. Aminoil Development Inc
5. OCS G–2743 No B–5
6. High Island
7. A–349
8. 1,825.0 million cubic feet
9. October 5, 1979
10. Natural Gas Pipeline Co of Amer; National Fuel Gas Supply Corp; Transcontinental Gas P/L; United Gas P/L; Tennessee Gas P/L; Mich-Wisc P/L 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 NE., 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 within fifteen (15) days of the date of publication of this notice in the **Federal Register.**

Please reference the FERC control number in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary

[FR Doc. 79–33717 Filed 10–30–79; 8:45 am]

BILLING CODE 6450–01–M

Notice of Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

October 15, 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.

West Virginia Department of Mines, 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. 79–21452
2. 47–039–02653
3. 108
4. Ray Resources Div of Flying Diamond
5. Reamer & Brown #463
6. Big Sandy Dist
7. Kanawha WV
8. 8.0 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21453
2. 47–039–02657
3. 108
4. Ray Resources Div of Flying Diamond
5. Sam Littlepage #454
6. Big Sandy Dist
7. Kanawha WV
8. 12.1 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21454
2. 47–039–02659
3. 108
4. Ray Resources Div of Flying Diamond
5. Union Carbide #455
6. Elk
7. Kanawha WV
8. 7.3 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21455
2. 47–039–02677
3. 108
4. Ray Resources Div of Flying Diamond
5. Union Carbide #444
6. Big Sandy Dist
7. Kanawha WV
8. 8.6 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21456
2. 47–039–02686
3. 108
4. Ray Resources Div of Flying Diamond
5. Union Carbide #494
6. Elk
7. Kanawha WV
8. 14.5 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21457
2. 47–039–02684
3. 108
4. Ray Resources Div of Flying Diamond
5. Union Carbide #456
6. Elk Dist
7. Kanawha WV
8. 14.5 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21458
2. 47–039–02678
3. 108
4. Ray Resources Div of Flying Diamond
5. Union Carbide #447
6. Big Sandy
7. Kanawha WV
8. 8.6 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21459
2. 47–039–02545
3. 108
4. Ray Resources Div of Flying Diamond
5. Union Carbide #370
6. Elk Dist
7. Kanawha WV
8. 3.6 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21460
2. 47–039–02579
3. 108
4. Ray Resources Div of Flying Diamond
5. C C Lewis #406
6. Big Sandy
7. Kanawha WV
8. 12.8 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21461
2. 47–039–02577
3. 108
4. Ray Resources Div of Flying Diamond
5. Union Carbide #407
6. Big Sandy Dist
7. Kanawha WV
8. 8.6 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21462
2. 47–039–02561
3. 108
4. Ray Resources Div of Flying Diamond
5. James Brown #382
6. Big Sandy Dist
7. Kanawha WV
8. 10.4 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21463
2. 47–039–02550
3. 108
4. Ray Resources Div of Flying Diamond
5. Sam Littlepage #379
6. Big Sandy Dist
7. Kanawha WV
8. 7.3 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21464
2. 47–105–00743
3. 103
4. Ray Resources Div of Flying Diamond
5. Ray McVey #794
6. Reedy
7. Wirt WV
8. 3.6 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21465
2. 47–105–00751
3. 103
4. Ray Resources Div of Flying Diamond
5. McConaughey-Roberts #808
6. Burning Springs
7. Wirt WV
8. 15.0 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21466
2. 47–105–00750
3. 103
4. Ray Resources Div of Flying Diamond
5. Harry Belt Unit #814
6. Burning Springs
7. Wirt WV
8. 4.8 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21467
2. 47–039–01233
3. 108
4. Ray Resources Div of Flying Diamond
5. Falling Rock #157–(117)
6. Big Sandy
7. Kanawha WV
8. 3.5 million cubic feet
9. September 21, 1979
10. Pennzoil United Inc

1. 79–21468
2. 47–015–00982
3. 103
4. Ray Resources Div of Flying Diamond
5. Frank Mathenry #465
6. Otter Dist
7. Clay WV
8. 1.1 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21469
2. 47–015–00846
3. 108
4. Ray Resources Div of Flying Diamond
5. Nettie Starcher #1 (154)
6. Otter Dist
7. Clay WV
8. 3.9 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21470
2. 47–015–00908
3. 108
4. Ray Resources Div of Flying Diamond
5. Dice Boggs #311
6. Otter Dist
7. Clay WV
8. .2 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21471
2. 47–015–00912
3. 108
4. Ray Resources Div of Flying Diamond
5. B C Eakle #321
6. Otter Dist
7. Clay WV
8. .2 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21472
2. 47–015–00973
3. 108
4. Ray Resources Div of Flying Diamond
5. C A Boggs #432
6. Otter Dist
7. Clay WV
8. 4.2 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21473
2. 47–039–02548
3. 108
4. Ray Resources Div of Flying Diamond
5. Union Carbide #371
6. Elk Dist
7. Kanawha WV
8. 3.6 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21474
2. 47–039–02651
3. 108
4. Ray Resources Div of Flying Diamond
5. Reamer & Brown #461
6. Big Sandy Dist
7. Kanawha WV
8. 8.0 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21475
2. 47–021–00306
3. 108
4. Consolidated Gas Supply Corporation
5. Louis Bennett 7809
6. West Virginia Other A–85772
7. Gilmer WV
8. 7.0 million cubic feet
9. September 21, 1979
10. General System Purchasers

1. 79–21476
2. 47–017–01099
3. 108
4. Consolidated Gas Supply Corporation
5. W L Davis 10541
6. West Virginia Other A–85772
7. Doddridge WV
8. 5.0 million cubic feet
9. September 21, 1979
10. General System Purchasers

1. 79–21477
2. 47–017–00226
3. 108
4. Consolidated Gas Supply Corporation
5. W B Maxwell 10079
6. West Virginia other A–85772
7. Doddridge, WV
8. 8.0 million cubic feet
9. September 21, 1979
10. General system purchasers

1. 79–21478
2. 47–017–00033
3. 108
4. Consolidated Gas Supply Corporation
5. Perry Tate 1043

6. West Virginia other A–85772
7. Doddridge, WV
8. 3.0 million cubic feet
9. September 21, 1979
10. General system purchasers

1. 79–21479
2. 47–013–01526
3. 108
4. Consolidated Gas Supply Corporation
5. Joseph Knotts 10021
6. West Virginia other A–85772
7. Calhoun, WV
8. 5.0 million cubic feet
9. September 21, 1979
10. General system purchasers

1. 79–21480
2. 47–013–01118
3. 108
4. Consolidated Gas Supply Corporation
5. Howard Stump 9663
6. West Virginia other A–85772
7. Calhoun, WV
8. 2.0 million cubic feet
9. September 21, 1979
10. General system purchasers

1. 79–21481
2. 47–013–00962
3. 108
4. Consolidated Gas Supply Corporation
5. Clay McDonald 9169
6. West Virginia other A–85772
7. Calhoun, WV
8. 3.0 million cubic feet
9. September 21, 1979
10. General system purchasers

1. 79–21482
2. 47–013–00931
3. 108
4. Consolidated Gas Supply Corporation
5. C L Strother 9105
6. West Virginia other A–85772
7. Calhoun, WV
8. 3.0 million cubic feet
9. September 21, 1979
10. General system purchasers

1. 79–21483
2. 47–013–00877
3. 108
4. Consolidated Gas Supply Corporation
5. R W White 9013
6. West Virginia other A–85772
7. Calhoun, WV
8. 7.0 million cubic feet
9. September 21, 1979
10. General system purchasers

1. 79–21484
2. 47–013–00760
3. 108
4. Consolidated Gas Supply Corporation
5. G W Hardman 8662
6. West Virginia other A–85772
7. Calhoun, WV
8. 4.0 million cubic feet
9. September 21, 1979
10. General system purchasers

1. 79–21485
2. 47–013–00014
3. 108
4. Consolidated Gas Supply Corporation
5. Sylvester Stump 5610
6. West Virginia other A–85772
7. Calhoun, WV
8. 8.0 million cubic feet
9. September 21, 1979
10. General system purchasers

1. 79–21486
2. 47–005–00460
3. 108
4. Consolidated Gas Supply Corporation
5. F B Nelson 8507
6. West Virginia other A–85772
7. Boone, WV
8. 3.0 million cubic feet
9. September 21, 1979
10. General system purchasers

1. 79–21487
2. 47–001–00169
3. 108
4. Consolidated Gas Supply Corporation
5. C B Tenney 10634
6. West Virginia other A–85772
7. Barbour, WV
8. 6.0 million cubic feet
9. September 21, 1979
10. General system purchasers

1. 79–21488
2. 47–001–00138
3. 108
4. Consolidated Gas Supply Corporation
5. I S Ward 10483
6. West Virginia other A–85772
7. Barbour, WV
8. 5.0 million cubic feet
9. September 21, 1979
10. General system purchasers

1. 79–21489
2. 47–001–00068
3. 108
4. Consolidated Gas Supply Corporation
5. Stanley Stewart 9298
6. West Virginia other A–85772
7. Barbour, WV
8. 7.0 million cubic feet
9. September 21, 1979
10. General system purchasers

1. 79–21490
2. 47–033–00021
3. 108 Denied
4. Consolidated Gas Supply Corporation
5. Davis Heirs 11051
6. West Virginia other A–85772
7. Harrison, WV
8. 5.0 million cubic feet
9. September 21, 1979
10. General system purchasers

1. 79–21491
2. 47–005–00918
3. 108 Denied
4. Consolidated Gas Supply Corporation
5. Albert H Cole 10314
6. West Virginia other A–85772
7. Boone, WV
8. 2.0 million cubic feet
9. September 21, 1979
10. General system purchasers

1. 79–21492
2. 47–001–00150
3. 108, Denied
4. Consolidated Gas Supply Corporation
5. Virginia B Poling 10410
6. West Virginia other A–85772
7. Barbour, WV
8. 1.0 million cubic feet
9. September 21, 1979
10. General system purchasers

1. 79–21493
2. 47–107–00666
3. 108
4. Ray Resources Div of Flying Diamond
5. Wilbur Pringle #479
6. Walker Dist
7. Wood, WV
8. 3.0 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply

1. 79–21494
2. 47–105–00703
3. 108
4. Ray Resources Div of Flying Diamond
5. A S Rowand #724
6. Ready
7. Wirt, WV
8. 3.8 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21495
2. 47–105–00710
3. 108
4. Ray Resources Div of Flying Diamond
5. A S Rowand #745
6. Reedy
7. Wirt, WV
8. 7.2 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21496
2. 47–105–00753
3. 108
4. Ray Resources Div of Flying Diamond
5. McConaughey-Roberts #817
6. Burning Springs
7. Wirt, WV
8. 15.0 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21497
2. 47–105–00759
3. 108
4. Ray Resources Div of Flying Diamond
5. Summers-Lee #816
6. Burning Springs
7. Wirt, WV
8. 5.3 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21498
2. 47–107–00673
3. 108
4. Ray Resources Div of Flying Diamond
5. Wilbur Pringle #482
6. Walker Dist
7. Wood, WV
8. 3.0 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply

1. 79–21499
2. 47–105–00702
3. 108
4. Ray Resources Div of Flying Diamond
5. Billy Full #723
6. Reedy
7. Wirt, WV
8. 1.1 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21500
2. 47–105–00673
3. 108
4. Ray Resources Div of Flying Diamond
5. Hall-Roberts #546
6. Burning Springs
7. Wirt, WV
8. 15.0 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21501
2. 47–039–02730
3. 108
4. Ray Resources Div of Flying Diamond
5. Elizabeth Mickley
6. Elk Dist
7. Kanawha, WV
8. 1.3 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21502
2. 47–039–02745
3. 108
4. Ray Resources Div of Flying Diamond
5. Sam Littlepage #536
6. Big Sandy
7. Kanawha, WV
8. 1.7 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21503
2. 47–043–01550
3. 108
4. Ray Resources Div of Flying Diamond
5. James Nunn #477
6. Duval Dist
7. Lincoln, WV
8. 5.8 million cubic feet
9. September 21, 1979
10. Industrial Gas

1. 79–21504
2. 47–021–00623
3. 108
4. Consolidated Gas Supply Corporation
5. Louis Bennett 8838
6. West Virginia other A–85772
7. Gilmer, WV
8. 3.0 million cubic feet
9. September 21, 1979
10. General system purchasers

1. 79–21505
2. 47–033–00142
3. 108
4. Consolidated Gas Supply Corporation
5. M W Smith 8016
6. West Virginia other A–85772
7. Harrison, WV
8. 5.0 million cubic feet
9. September 21, 1979
10. General system purchasers

1. 79–21506
2. 47–033–00317
3. 108
4. Consolidated Gas Supply Corporation
5. Porter Maxwell 10530
6. West Virginia other A–85772
7. Harrison, WV
8. 4.0 million cubic feet
9. September 21, 1979
10. General system purchasers

1. 79–21507
2. 47–033–00511
3. 108
4. Consolidated Gas Supply Corporation
5. John Dolan 7940
6. West Virginia Other A–85772
7. Harrison WV
8. 3.0 million cubic feet
9. September 21, 1979
10. General System Purchasers

1. 79–21508
2. 47–017–01653
3. 108
4. Consolidated Gas Supply Corporation
5. W B Maxwell 11394
6. West Virginia Other A–85772
7. Doddridge WV
8. 8.0 million cubic feet
9. September 21, 1979
10. General System Purchasers

1. 79–21509
2. 47–021–00434
3. 108
4. Consolidated Gas Supply Corporation
5. Louis Bennett 8509
6. West Virginia Other A–85772
7. Gilmer WV
8. 1.0 million cubic feet
9. September 21, 1979
10. General System Purchasers

1. 79–21510
2. 47–021–00490
3. 108
4. Consolidated Gas Supply Corporation
5. W G Bennett 8542
6. West Virginia Other A–85772
7. Gilmer WV
8. 1.5 million cubic feet
9. September 21, 1979
10. General System Purchasers

1. 79–21511
2. 47–021–00491
3. 108
4. Consolidated Gas Supply Corporation
5. Louis Bennett 8553
6. West Virginia Other A–85772
7. Gilmer WV
8. 5.0 million cubic feet
9. September 21, 1979
10. General System Purchasers

1. 79–21512
2. 47–021–00544
3. 108
4. Consolidated Gas Supply Corporation
5. F R Beall 8617
6. West Virginia Other A–85772
7. Gilmer WV
8. 4.0 million cubic feet
9. September 21, 1979
10. General System Purchasers

1. 79–21513
2. 47–013–00584
3. 108
4. Consolidated Gas Supply Corporation
5. Lottie McEndree 8536
6. West Virginia Other A–85772
7. Calhoun WV
8. 4.0 million cubic feet
9. September 21, 1979
10. General System Purchasers

1. 79–21514
2. 47–033–00077
3. 108
4. Consolidated Gas Supply Corporation
5. Tilman Boggess 3224
6. West Virginia Other A–85772
7. Harrison WV
8. 5.0 million cubic feet
9. September 21, 1979
10. General System Purchasers

1. 79–21515
2. 47–021–01984
3. 108
4. Consolidated Gas Supply Corporation
5. William C Bush 6871
6. West Virginia Other A–85772
7. Gilmer WV
8. 1.0 million cubic feet
9. September 21, 1979
10. General System Purchasers

1. 79–21516
2. 47–021–00960
3. 108
4. Consolidated Gas Supply Corporation
5. Groves-McKinley 9812
6. West Virginia Other A–85772
7. Gilmer WV
8. 13.0 million cubic feet
9. September 21, 1979
10. General System Purchasers

1. 79–21517
2. 47–021–01246
3. 108
4. Consolidated Gas Supply Corporation
5. Louis Bennett 10305
6. West Virginia Other A–85772
7. Gilmer WV
8. 5.0 million cubic feet
9. September 21, 1979
10. General System Purchasers

1. 79–21518
2. 47–021–00863
3. 108
4. Consolidated Gas Supply Corporation
5. W G Bennett 9641
6. West Virginia Other A–85772
7. Gilmer WV
8. 6.0 million cubic feet
9. September 21, 1979
10. General System Purchasers

1. 79–21519
2. 47–021–00750
3. 108
4. Consolidated Gas Supply Corporation
5. I F Dobbins 9149
6. West Virginia Other A–85772
7. Gilmer WV
8. 3.0 million cubic feet
9. September 21, 1979
10. General System Purchasers

1. 79–21520
2. 47–021–00659
3. 108
4. Consolidated Gas Supply Corporation
5. A B Meadows 6676
6. West Virginia Other A–85772
7. Gilmer WV
8. 3.0 million cubic feet
9. September 21, 1979
10. General System Purchasers

1. 79–21521
2. 47–021–00599
3. 108
4. Consolidated Gas Supply Corporation
5. F Snodgrass 8800
6. West Virginia Other A–85772
7. Gilmer WV
8. 7.0 million cubic feet
9. September 21, 1979
10. General System Purchasers

1. 79–21522
2. 47–067–00024
3. 108
4. Cities Service Company
5. Dickinson B #3
6. Gauley
7. Nicholas WV
8. 17.5 million cubic feet
9. September 21, 1979
10. Equitable Gas Company

1. 79–21523
2. 47–067–00023
3. 108
4. Cities Service Company
5. Dickinson B #2

6. Gauley
7. Nicholas WV
8. 7.6 million cubic feet
9. September 21, 1979
10. Equitable Gas Company

1. 79–21524
2. 47–019–00084
3. 108
4. Cities Service Company
5. Elliot A #1
6. Gauley
7. Fayette WV
8. 11.1 million cubic feet
9. September 21, 1979
10. Equitable Gas Company

1. 79–21525
2. 47–019–00073
3. 108
4. Cities Service Company
5. Gauley Mountain Coal Co A #17
6. Gauley
7. Fayette WV
8. 8.6 million cubic feet
9. September 21, 1979
10. Equitable Gas Company

1. 79–21526
2. 47–067–00030
3. 108
4. Cities Service Company
5. Dickinson B #8
6. Gauley
7. Nicholas WV
8. 6.0 million cubic feet
9. September 21, 1979
10. Equitable Gas Company

1. 79–21527
2. 47–067–00028
3. 108
4. Cities Service Company
5. Dickinson B #7
6. Gauley
7. Nicholas WV
8. 10.7 million cubic feet
9. September 21, 1979
10. Equitable Gas Company

1. 79–21528
2. 47–067–00027
3. 108
4. Cities Service Company
5. Dickinson B–6
6. Gauley
7. Nicholas WV
8. 7.1 million cubic feet
9. September 21, 1979
10. Equitable Gas Company

1. 79–21529
2. 47–067–00026
3. 108
4. Cities Service Company
5. Dickinson B #5
6. Gauley
7. Nicholas WV
8. 12.0 million cubic feet
9. September 21, 1979
10. Equitable Gas Company

1. 79–21530
2. 47–067–00057
3. 108
4. Cities Service Company
5. Bennett A #2
6. Gauley
7. Nicholas WV
8. 13.7 million cubic feet
9. September 21, 1979
10. Equitable Gas Company

1. 79–21531
2. 47–067–00056
3. 108
4. Cities Service Company
5. Flynn Coal & Lumb A #2
6. Gauley
7. Nicholas WV
8. 5.3 million cubic feet
9. September 21, 1979
10. Equitable Gas Company

1. 79–21532
2. 47–067–00047
3. 108
4. Cities Service Company
5. Bennett A #1
6. Gauley
7. Nicholas WV
8. 12.7 million cubic feet
9. September 21, 1979
10. Equitable Gas Company

1. 79–21533
2. 47–067–00033
3. 108
4. Cities Service Company
5. Dickinson B #11
6. Gauley
7. Nicholas WV
8. 13.1 million cubic feet
9. September 21, 1979
10. Equitable Gas Company

1. 79–21534
2. 47–067–00078
3. 108
4. Cities Service Company
5. Dickinson B #13
6. Gauley
7. Nicholas WV
8. 13.6 million cubic feet
9. September 21, 1979
10. Equitable Gas Company

1. 79–21535
2. 47–047–00769
3. 103
4. Ray Resources Div of Flying Diamond
5. G P Smith #807
6. Adkin Dist
7. McDowell WV
8. 26.2 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply

1. 79–21536
2. 47–047–00781
3. 103
4. Ray Resources Div of Flying Diamond
5. Poca Land #812
6. Elkhorn Dist
7. McDowell WV
8. 19.4 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply

1. 79–21537
2. 47–047–00780
3. 103
4. Ray Resources Div of Flying Diamond
5. Poca Land No. 810
6. Adkin Dist
7. McDowell WV
8. 35.4 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply

1. 79–21538
2. 47–047–00784
3. 103
4. Ray Resources Div of Flying Diamond
5. Poca Land No. 811
6. Adkin Dist
7. McDowell WV
8. 17.7 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply

1. 79–21539
2. 47–047–00786
3. 103
4. Ray Resources Div of Flying Diamond
5. Poca Land No. 811
6. Elkhorn Dist
7. McDowell WV
8. 12.6 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply

1. 79–21540
2. 47–105–00747
3. 103
4. Ray Resources Div of Flying Diamond
5. Harry Belt Unit No. 684
6. Burning Springs
7. Wirt WV
8. 4.8 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21541
2. 47–105–00752
3. 102
4. Ray Resources Div of Flying Diamond
5. Hunter No. 813
6. Tucker
7. Wirt WV
8. 180.0 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21542
2. 47–035–01419
3. 103
4. Ray Resources Div of Flying Diamond
5. Hutchinson Hrs No. 796
6. Ravenswood
7. Jackson WV
8. 1.6 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21543
2. 47–047–00787
3. 103
4. Ray Resources Div of Flying Diamond
5. Poca Land No. 811
6. Elkhorn Dist
7. McDowell WV
8. 47.5 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply

1. 79–21544
2. 47–047–00761
3. 103
4. Ray Resources Div of Flying Diamond
5. Poca Land No. 802
6. Elkhorn Dist
7. McDowell WV
8. 50.0 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply

1. 79–21545
2. 47–047–00768
3. 103
4. Ray Resources Div of Flying Diamond
5. Poca Land No. 805
6. Adkin Dist
7. McDowell WV
8. 36.5 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply

1. 79–21546
2. 47–047–00767
3. 103
4. Ray Resources Div of Flying Diamond
5. G P Smith No. 806
6. Adkin Dist
7. McDowell WV
8. 15.0 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply

1. 79–21547
2. 47–043–01586
3. 108 denied
4. Ray Resources Div of Flying Diamond
5. D J Craddock No. 485
6. Washington Dist
7. Lincoln WV
8. .6 million cubic feet
9. September 21, 1979
10. Industrial Gas

1. 79–21548
2. 47–039–02729
3. 108
4. Ray Resources Div of Flying Diamond
5. Blue Ck Coal No. 562
6. Elk Dist
7. Kanawha WV
8. 14.5 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21549
2. 47–043–01611
3. 108
4. Ray Resources Div of Flying Diamond
5. James Berry No. 523
6. Duval Dist
7. Lincoln WV
8. .2 million cubic feet
9. September 21, 1979
10. Industrial Gas

1. 79–21550
2. 47–039–02710
3. 108
4. Ray Resources Div of Flying Diamond
5. Union Carbide No. 522
6. Elk Dist
7. Kanawha WV
8. 2.4 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21551
2. 47–039–02713
3. 108
4. Ray Resources Div of Flying Diamond
5. Union Carbide No. 521
6. Elk Dist
7. Kanawha WV
8. 1.9 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21552
2. 47–039–02716
3. 108
4. Ray Resources Div of Flying Diamond
5. Louisa Updiscraft No. 535
6. Elk Dist
7. Kanawha WV
8. 1.0 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21553
2. 47–039–02714
3. 108
4. Ray Resources Div of Flying Diamond
5. Louisa Updegraft No. 529
6. Big Sandy
7. Kanawha WV
8. .9 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21554
2. 47–039–02724
3. 108
4. Ray Resources Div of Flying Diamond
5. Lovell Carnes No. 555
6. Elk Dist
7. Kanawha WV
8. 2.8 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21555
2. 47–039–02702
3. 108
4. Ray Resources Div of Flying Diamond
5. Reamer & Brown No. 517
6. Big Sandy Dist
7. Kanawha WV
8. 1.8 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21556
2. 47–039–02701
3. 108
4. Ray Resources Div of Flying Diamond
5. Reamer & Brown No. 516
6. Big Sandy Dist
7. Kanawha WV
8. 1.8 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21557
2. 47–041–00796
3. 108
4. Consolidated Gas Supply Corp
5. G L White 10337
6. West Virginia other A–85772
7. Lewis WV
8. 6.0 million cubic feet
9. September 21, 1979
10. General system purchasers

1. 79–21558
2. 47–041–01108
3. 108
4. Consolidated Gas Supply Corp
5. Brannon Hardman 10434
6. West Virginia other A–85772
7. Lewis WV
8. 4.0 million cubic feet
9. September 21, 1979
10. General system purchasers

1. 79–21559
2. 47–033–00578
3. 108 denied
4. Consolidated Gas Supply Corp
5. Minerva F Yerkey 1146
6. West Virginia other A–85772
7. Harrison WV
8. 14.0 million cubic feet
9. September 21, 1979
10. General system purchasers

1. 79–21560
2. 47–033–00655
3. 108
4. Consolidated Gas Supply Corp
5. L F Hickman 8094
6. West Virginia other A–85772
7. Harrison WV
8. 5.0 million cubic feet
9. September 21, 1979
10. General system purchasers

1. 79–21561
2. 47–033–00696
3. 108
4. Consolidated Gas Supply Corp
5. Enoch Post 8065
6. West Virginia other A–85772
7. Harrison WV
8. 5.0 million cubic feet
9. September 21, 1979
10. General system purchasers

1. 79–21562
2. 47–033–00745
3. 108
4. Consolidated Gas Supply Corp
5. G W Washburn 8117
6. West Virginia other A–85772
7. Harrison WV
8. 3.0 million cubic feet
9. September 21, 1979
10. General system purchasers

1. 79–21563
2. 47–033–0070
3. 108
4. Consolidated Gas Supply Corp
5. G P McConkey 8143
6. West Virginia other A–85772
7. Harrison WV
8. 5.0 million cubic feet
9. September 21, 1979
10. General system purchasers

1. 79–21564
2. 47–033–00745
3. 108
4. Consolidated Gas Supply Corp
5. G W Washburn 8117
6. West Virgina other A–85772
7. Harrison WV
8. 3.0 million cubic feet
9. September 21, 1979
10. General system purchasers

1. 79–21565
2. 47–021–00686
3. 108
4. Consolidated Gas Supply Corp
5. C M Bennett 8956
6. West Virginia other A–85772
7. Gilmer WV
8. 8.0 million cubic feet
9. September 21, 1979
10. General system purchasers

1. 79–21566
2. 47–021–01111
3. 108
4. Consolidated Gas Supply Corp
5. W G Bennett 10205
6. West Virginia other A–85772
7. Gilmer WV
8. 6.0 million cubic feet
9. September 21, 1979
10. General system purchasers

1. 79–21567
2. 47–021–01999
3. 108
4. Consolidated Gas Supply Corp
5. C O Rafferty 11113
6. West Virginia other A–85772
7. Gilmer WV
8. 6.0 million cubic feet
9. September 21, 1979
10. General System Purchasers

1. 79–21568
2. 47–033–00139
3. 108 denied
4. Consolidated Gas Supply Corp
5. J J Strother 6149

6. West Virginia other A-85772
7. Harrison VA
8. 5.0 million cubic feet
9. September 21, 1979
10. General System Purchasers

1. 79-21569
2. 47-033-00219
3. 108 denied
4. Consolidated Gas Supply Corp
5. Henrietta Ward 8105
6. West Virginia other A-85772
7. Harrison WV
8. 18.0 million cubic feet
9. September 21, 1979
10. General System Purchasers

1. 79-21570
2. 47-005-00249
3. 108
4. Cities Service Company
5. Wood A #7
6. Seth
7. Boone WV
8. 5.3 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply Co

1. 79-21571
2. 47-005-00222
3. 108
4. Cities Service Company
5. Wood A #5
6. Seth
7. Boone WV
8. 2.8 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply Co

1. 79-21572
2. 47-005-00409
3. 108
4. Cities Service Company
5. Wood A #3
6. Seth
7. Boone WV
8. 3.5 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply Co

1. 79-21573
2. 47-005-00410
3. 108
4. Cities Service Company
5. Wood A #4
6. Seth
7. Boone WV
8. 3.3 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply Co

1. 79-21574
2. 47-017-00079
3. 108
4. Cities Service Company
5. Maxwell A #41
6. Smithburg
7. Doddridge WV
8. 3.3 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply Co

1. 79-21575
2. 47-017-00070
3. 108
4. Cities Service Company
5. Bland B #1
6. Smithburg
7. Doddridge WV
8. 8.8 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply Co

1. 79-21576
2. 47-017-00069
3. 108
4. Cities Service Company
5. Maxwell A #33
6. Smithburg
7. Doddridge WV
8. .7 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply Co

1. 79-21577
2. 47-017-00044
3. 108
4. Cities Service Company
5. Maxwell B #19
6. Smithburg
7. Doddridge WV
8. 17.8 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply Co

1. 79-21578
2. 47-017-00036
3. 108
4. Cities Service Company
5. Maxwell A #61
6. Smithburg
7. Doddridge WV
8. 8.2 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply Co

1. 79-21579
2. 47-005-00873
3. 108
4. Cities Service Company
5. Wood A #1
6. Seth
7. Boone WV
8. 2.7 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply Co

1. 79-21580
2. 47-017-00720
3. 108
4. Cities Service Company
5. Maxwell C #15
6. Smithburg
7. Doddridge WV
8. 13.7 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply Co

1. 79-21581
2. 47-017-00321
3. 108
4. Cities Service Company
5. Maxwell C #14
6. Smithburg
7. Doddridge WV
8. 3.2 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply Co

1. 79-21582
2. 47-017-00088
3. 108
4. Cities Service Company
5. Maxwell A #55
6. Smithburg
7. Doddridge WV
8. 2.3 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply Co

1. 79-21583
2. 47-017-00085
3. 108
4. Cities Service Company
5. Maxwell A #43
6. Smithburg
7. Doddridge WV
8. 1.3 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply Co

1. 79-21584
2. 47-017-00080
3. 108
4. Cities Service Company
5. Maxwell A #42
6. Smithburg
7. Doddridge WV
8. 4.2 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply Co

1. 79-21585
2. 47-039-02700
3. 108
4. Ray Resources Div of Flying Diamond
5. Union Carbide #508
6. Elk Dist
7. Kanawha WV
8. 14.5 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79-21586
2. 47-105-00672
3. 108
4. Ray Resources Div of Flying Diamond
5. West Aco-Wilson
6. Burning Springs
7. Wirt WV
8. 1.3 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79-21587
2. 47-043-01631
3. 108
4. Ray Resources Div of Flying Diamond
5. Opal Gilley #554
6. Washington Dist
7. Lincoln WV
8. .3 million cubic feet
9. September 21, 1979
10. Industrial Gas

1. 79-21588
2. 47-039-02699
3. 108
4. Ray Resources Div of Flying Diamond
5. Union Carbide #501
6. Elk Dist
7. Kanawha WV
8. 14.5 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79-21589
2. 47-039-02691
3. 108
4. Ray Resources Div of Flying Diamond
5. Union Carbide #500
6. Elk Dist
7. Kanawha WV
8. 14.5 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79-21590
2. 47-039-02693
3. 108
4. Ray Resources Div of Flying Diamond
5. Union Carbide #507
6. Elk Dist
7. Kanawha WV
8. 14.5 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21591
2. 47–039–02694
3. 108
4. Ray Resources Div of Flying Diamond
5. Union Carbide #503
6. Elk Dist
7. Kanawha WV
8. 14.5 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21592
2. 47–039–02698
3. 108
4. Ray Resources Div of Flying Diamond
5. Union Carbide #512
6. Elk Dist
7. Kanawha WV
8. 14.5 million cubic feet
9. September 21, 1979
10. Columbia Gas Trans

1. 79–21593
2. 47–039–02725
3. 108
4. Ray Resources Div of Flying Diamond
5. Lester Cecil #557
6. Jefferson Dist
7. Kanawha WV
8. .3 million cubic feet
9. September 21, 1979
10. Industrial Gas

1. 79–21594
2. 47–043–01680
3. 108
4. Ray Resources Div of Flying Diamond
5. J V Alford #708
6. Duval Dist
7. Lincoln WV
8. 2.0 million cubic feet
9. September 21, 1979
10. Industrial Gas

1. 79–21595
2. 47–043–01663
3. 108
4. Ray Resources Div of Flying Diamond
5. J V Alford
6. Duval Dist
7. Lincoln WV
8. 2.0 million cubic feet
9. September 21, 1979
10. Industrial Gas

1. 79–21596
2. 47–043–01653
3. 108
4. Ray Resources Div of Flying Diamond
5. James Berry #558
6. Duval Dist
7. Lincoln WV
8. .2 million cubic feet
9. September 21, 1979
10. Industrial Gas

1. 79–21597
2. 47–109–00627
3. 108
4. Cities Service Company
5. Cub Creek Coal Co A–5
6. Bradshaw
7. Wyoming, WV
8. 3.6 million cubic feet
9. September 21, 1979
10. Columbia Gas Transmission Corp

1. 79–21598
2. 47–109–00626
3. 108
4. Cities Service Company
5. Cub Creek Coal Co A–4
6. Bradshaw
7. Wyoming, WV
8. 9.2 million cubic feet
9. September 21, 1979
10. Columbia Gas Transmission Corp

1. 79–21599
2. 47–109–00618
3. 108
4. Cities Service Company
5. Cub Creek Co A–3
6. Bradshaw
7. Wyoming, WV
8. 13.4 million cubic feet
9. September 21, 1979
10. Columbia Gas Transmission Corp

1. 79–21600
2. 47–109–00617
3. 108
4. Cities Service Company
5. Cub Creek Coal Co A–2
6. Bradshaw
7. Wyoming, WV
8. 15.8 million cubic feet
9. September 21, 1979
10. Columbia Gas Transmission Corp

1. 79–21601
2. 47–109–00638
3. 108
4. Cities Service Company
5. Cub Creek Coal Co A–6
6. Bradshaw
7. Wyoming, WV
8. 8.8 million cubic feet
9. September 21, 1979
10. Columbia Gas Transmission Corp

1. 79–21602
2. 47–109–00637
3. 108
4. Cities Service Company
5. Ramsay Coal Co A–3
6. Bradshaw
7. Wyoming, WV
8. 7.8 million cubic feet
9. September 21, 1979
10. Columbia Gas Transmission Corp

1. 79–21603
2. 47–109–00635
3. 108
4. Cities Service Company
5. Bailey A–2
6. Bradshaw
7. Wyoming, WV
8. 17.4 million cubic feet
9. September 21, 1979
10. Columbia Gas Transmission Corp

1. 79–21604
2. 47–109–00629
3. 108
4. Cities Service Company
5. Ramsay Coal Co A–2
6. Bradshaw
7. Wyoming, WV
8. 13.9 million cubic feet
9. September 21, 1979
10. Columbia Gas Transmission Corp

1. 79–21605
2. 47–039–00201
3. 108
4. Cities Service Company
5. Copenhaver Heirs A #4
6. Colbon 6
7. Kanawha, WV
8. 5.1 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply Co

1. 79–21606
2. 47–109–00202
3. 108
4. Cities Service Company
5. Copenhaver Heirs A #3
6. Colbon 6
7. Kanawha, WV
8. 4.3 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply Co

1. 79–21607
2. 47–039–00273
3. 108
4. Cities Service Company
5. Minsker A #1
6. Colbon 6
7. Kanawha, WV
8. 3.5 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply Co

1. 79–21608
2. 47–017–02124
3. 108
4. Cities Service Company
5. Longacre A #2
6. Smithburg
7. Doddridge, WV
8. 6.6 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply Co

1. 79–21609
2. 47–017–02156
3. 108
4. Cities Service Company
5. Maxwell D #11
6. Smithburg
7. Doddridge, WV
8. 4.8 million cubic feet
9. September 21, 1979
10. Consoliated Gas Supply Co

1. 79–21610
2. 47–035–00058
3. 108
4. Cities Service Company
5. Putnam Co A #1
6. Colbon 6
7. Jackson, WV
8. 4.5 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply Co

1. 79–21611
2. 47–035–00147
3. 108
4. Cities Service Company
5. Putnam Co A #8
6. Colbon 6
7. Jackson, WV
8. 11.3 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply Co

1. 79–21612
2. 47–017–01793
3. 108
4. Cities Service Company
5. Sherwood A–3
6. Smithburg
7. Doddridge, WV
8. 8.4 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply Co

1. 79–21613
2. 47–017–02120
3. 108
4. Cities Service Company
5. Bland B #3

6. Smithburg
7. Doddridge, WV
8. 4.9 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply Co

1. 79–21614
2. 47–017–01234
3. 108
4. Cities Service Company
5. Chapman A #4
6. Smithburg
7. Doddridge, WV
8. 11.8 million cubic feet.
9. September 21, 1979
10. Consolidated Gas Supply Co

1. 79–21615
2. 47–017–01398
3. 108
4. Cities Service Company
5. Maxwell B #25
6. Smithburg
7. Doddridge, WV
8. 3.6 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply Co

1. 79–21616
2. 47–017–01230
3. 108
4. Cities Service Company
5. Maxwell C #20
6. Smithburg
7. Doddridge, WV
8. 4.4 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply Co

1. 79–21617
2. 47–109–01231
3. 108
4. Cities Service Company
5. Maxwell B #24
6. Smithburg
7. Doddridge, WV
8. 7.8 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply Co

1. 79–21618
2. 47–017–01127
3. 108
4. Cities Service Company
5. Maxwell C #18
6. Smithburg
7. Doddridge, WV
8. 4.8 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply Co

1. 79–21619
2. 47–017–01159
3. 108
4. Cities Service Company
5. Maxwell B #23
6. Smithburg
7. Doddridge, WV
8. 7.2 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply Co

1. 79–21620
2. 47–017–01105
3. 108
4. Cities Service Company
5. Maxwell D #24
6. Smithburg
7. Doddridge, WV
8. 14.8 million cubic feet
9. September 21, 1979
10. Consoliated Gas Supply Co

1. 79–21621
2. 47–017–01011
3. 108
4. Cities Service Company
5. Maxwell C #17
6. Smithburg
7. Doddridge, WV
8. 7.3 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply Co

1. 79–21622
2. 47–017–00988
3. 108
4. Cities Service Company
5. Maxwell D #21
6. Smithburg
7. Doddridge, WV
8. 12.1 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply Co

1. 79–21623
2. 47–017–00940
3. 108
4. Cities Service Company
5. Maxwell B #22
6. Smithburg
7. Doddridge, WV
8. 10.7 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply Co

1. 79–21624
2. 47–017–00829
3. 108
4. Cities Service Company
5. Maxwell B #21
6. Smithburg
7. Doddridge, WV
8. 11.9 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply Co

1. 79–21625
2. 47–017–00721
3. 108
4. Cities Service Company
5. Maxwell C #16
6. Smithburg
7. Doddridge, WV
8. 8.0 million cubic feet
9. September 21, 1979
10. Consolidated Gas Supply Co

1. 79–21626
2. 47–039–00334
3. 108
4. Cities Service Company
5. Wolfe A #1
6. Colbon 6
7. Kanawha, WV
8. 6.1 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Co

1. 79–21627
2. 47–039–00348
3. 108
4. Cities Service Company
5. Jones B No. 1
6. Colbon 6
7. Kanawha WV
8. 6.0 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Co.

1. 79–21628
2. 47–039–00384
3. 108
4. Cities Service Company
5. Young Heirs A No. 1
6. Colbon 6
7. Kanawha WV
8. 5.1 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Co.

1. 79–21629
2. 47–017–00845
3. 108 Denied
4. Cities Service Company
5. Sherwood A–4
6. Smithburg
7. Doddridge WV
8. 8.0 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Co.

1. 79–21630
2. 47–017–00949
3. 108 Denied
4. Cities Service Company
5. Maxwell D No. 20
6. Smithburg
7. Doddridge WV
8. 16.8 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Co.

1. 79–21631
2. 47–017–01104
3. 108 Denied
4. Cities Service Company
5. Maxwell D No. 23
6. Smithburg
7. Doddridge WV
8. 20.1 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Co.

1. 79–21632
2. 47–017–01062
3. 108 Denied
4. Cities Service Company
5. Maxwell D No. 22
6. Smithburg
7. Doddridge WV
8. 14.2 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Co.

1. 79–21633
2. 47–035–00132
3. 108 Denied
4. Cities Service Company
5. Fisher A No. 1
6. Colbon 6
7. Kanawha WV
8. 11.9 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Co.

1. 79–21634
2. 47–039–02408
3. 108 Denied
4. Cities Service Company
5. Hanna D–1
6. Kaput
7. Kanawha WV
8. 14.0 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Corp

1. 79–21635
2. 47–013–00002
3. 108
4. Pennzoil Company
5. J B Bennett No. 2
6. Sherman District
7. Calhoun WV
8. 1.5 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Corp

1. 79–21636
2. 47–021–03340
3. 108 Denied
4. Pennzoil Company
5. Pinkard Brannon No. 6
6. Troy
7. Gilmer WV
8. .0 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Corp

1. 79–21637
2. 47–013–00042
3. 108
4. Pennzoil Company
5. L G Garrett No. 2
6. Lee
7. Calhoun WV
8. 2.0 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Corp

1. 79–21638
2. 47–013–00036
3. 108
4. Pennzoil Company
5. Creed Yoak No. 1
6. Lee
7. Calhoun WV
8. 2.0 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Corp

1. 79–21639
2. 47–013–00017
3. 108
4. Pennzoil Company
5. W T Rafferty No. 9
6. Sherman District
7. Calhoun WV
8. 1.5 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Corp

1. 79–21640
2. 47–013–00006
3. 108
4. Pennzoil Company
5. W T Rafferty No. 4
6. Sherman District
7. Calhoun WV
8. 1.5 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Corp

1. 79–21641
2. 47–013–00005
3. 108
4. Pennzoil Company
5. W T Rafferty No. 3
6. Sherman District
7. Calhoun WV
8. 1.5 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Corp

1. 79–21642
2. 47–039–00302
3. 108
4. Cities Service Company
5. Hughart A No. 1
6. Colbon 6
7. Kanawha WV
8. 6.3 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Co.

1. 79–21643
2. 47–039–00537
3. 108
4. Cities Service Company
5. Vickers A No. 12
6. Colbon 6
7. Kanawha WV
8. 4.4 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Co.

1. 79–21644
2. 47–039–00555
3. 108
4. Cities Service Company
5. Hanna A No. 1
6. Colbon 6
7. Kanawha WV
8. 9.0 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Co.

1. 79–21645
2. 47–039–00773
3. 108
4. Cities Service Company
5. Robinson A No. 1
6. Colbon 6
7. Kanawha WV
8. 7.3 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Co.

1. 79–21646
2. 47–039–00785
3. 108
4. Cities Service Company
5. Jones H No. 1
6. Colbon 6
7. Kanawha WV
8. 7.3 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Co.

1. 79–21647
2. 47–039–00406
3. 108
4. Cities Service Company
5. Fogarty A No. 1
6. Colbon 6
7. Kanawha WV
8. 4.8 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Co.

1. 79–21648
2. 47–039–00475
3. 108
4. Cities Service Company
5. Cavender A No. 1
6. Colbon 6
7. Kanawha WV
8. 4.8 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Co.

1. 79–21649
2. 47–039–00532
3. 108
4. Cities Service Company
5. Johnson Gibson A No. 1
6. Colbon 6
7. Kanawha WV
8. 10.9 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Co.

1. 79–21650
2. 47–013–01860
3. 108
4. Pennzoil Company
5. Hagan-Barr No. 2
6. Sherman District
7. Calhoun WV
8. 1.0 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Corp

1. 79–21651
2. 47–013–01812
3. 108
4. Pennzoil Company
5. A & N Hardman No. 3
6. Lee & Sherman Districts
7. Calhoun WV
8. .8 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Corp

1. 79–21652
2. 47–013–01922
3. 108
4. Pennzoil Company
5. Hagan-Barr No. 1
6. Sherman District
7. Calhoun WV
8. 1.0 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Corp

1. 79–21653
2. 47–013–01768
3. 108
4. Pennzoil Company
5. M W Shaffer No. 2
6. Lee
7. Calhoun WV
8. 1.8 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Corp

1. 79–21654
2. 47–013–01607
3. 108
4. Pennzoil Company
5. Laura V Ash No. 6 (PZL)
6. Sherman District
7. Calhoun WV
8. 2.3 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Corp

1. 79–21655
2. 47–067–00095
3. 108
4. Cities Service Company
5. Federal Coal Co A No. 1
6. Gauley
7. Nicholas WV
8. 10.6 million cubic feet
9. September 24, 1979
10. Equitable Gas Company

1. 79–21656
2. 47–067–00077
3. 108
4. Cities Service Company
5. Summers B No. 1
6. Gauley
7. Nicholas WV
8. 7.2 million cubic feet
9. September 24, 1979
10. Equitable Gas Company

1. 79–21657
2. 47–067–00070
3. 108
4. Cities Service Company
5. Grose A #1
6. Gauley
7. Nicholas WV
8. 8.4 million cubic feet
9. September 24, 1979
10. Equitable Gas Company

1. 79–21658
2. 47–067–00066
3. 108
4. Cities Service Company
5. Flynn Coal & Lumber A #3

6. Gauley
7. Nicholas WV
8. 10.4 million cubic feet
9. September 24, 1979
10. Equitable Gas Company

1. 79–21659
2. 47–067–00092
3. 108
4. Cities Service Company
5. Payne A #3
6. Gauley
7. Nicholas WV
8. 9.9 million cubic feet
9. September 24, 1979
10. Equitable Gas Company

1. 79–21660
2. 47–067–00085
3. 108
4. Cities Service Company
5. Frank A–1
6. Gauley
7. Nicholas WV
8. 2.5 million cubic feet
9. September 24, 1979
10. Equitable Gas Company

1. 79–21661
2. 47–067–03179
3. 108 Denied
4. Pennzoil Company
5. A. L. Rymer #7
6. Troy
7. Gilmer WV
8. 0.0 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Corp.

1. 79–21662
2. 47–067–03182
3. 108 Denied
4. Pennzoil Company
5. W. W. Rymer #4
6. Troy
7. Gilmer WV
8. 0.0 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Corp.

1. 79–21663
2. 47–021–01755
3. 108
4. Pennzoil Company
5. Helmick-Moore #1
6. Glenville
7. Gilmer WV
8. .0 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Corp.

1. 79–21664
2. 47–013–00538
3. 108
4. Pennzoil Company
5. L G Garrett #3
6. Lee
7. Calhoun WV
8. 2.0 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Corp.

1. 79–21665
2. 47–067–00055
3. 108
4. Pennzoil Company
5. W. T. Rafferty #7
6. Sherman District
7. Calhoun WV
8. 1.5 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Corp.

1. 79–21666
2. 47–067–03341
3. 108 Denied
4. Pennzoil Company
5. Pinkard Brannon #9
6. Troy
7. Calhoun WV
8. 0.0 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Corp.

1. 79–21667
2. 47–067–00083
3. 108
4. Cities Service Company
5. Payne A #2
6. Gauley
7. Nicholas WV
8. 2.6 million cubic feet
9. September 24, 1979
10. Equitable Gas Company

1. 79–21668
2. 47–067–00081
3. 108
4. Cities Service Company
5. Payne A #1
6. Gauley
7. Nicholas WV
8. 4.5 million cubic feet
9. September 24, 1979
10. Equitable Gas Company

1. 79–21669
2. 47–067–00518
3. 108
4. Cities Service Company
5. Carter Land Co. A #5
6. Bradshaw
7. McDowell WV
8. 15.6 million cubic feet
9. September 24, 1979
10. Columbia Gas Transmission Corp.

1. 79–21670
2. 47–067–00242
3. 108
4. Cities Service Company
5. Dickinson B–22
6. Gauley
7. Nicholas WV
8. 11.3 million cubic feet
9. September 24, 1979
10. Equitable Gas Company

1. 79–21671
2. 47–067–00241
3. 108
4. Cities Service Company
5. Dickinson B–21
6. Gauley
7. Nicholas WV
8. 9.4 million cubic feet
9. September 24, 1979
10. Equitable Gas Company

1. 79–21672
2. 47–067–00236
3. 108
4. Cities Service Company
5. Dickinson B–18
6. Gauley
7. Nicholas WV
8. 4.2 million cubic feet
9. September 24, 1979
10. Equitable Gas Company

1. 79–21673
2. 47–067–00235
3. 108
4. Cities Service Company
5. Dickinson B–17
6. Gauley
7. Nicholas WV
8. 10.7 million cubic feet
9. September 24, 1979
10. Equitable Gas Company

1. 79–21674
2. 47–067–00222
3. 108
4. Cities Service Company
5. Dickinson B #15
6. Gauley
7. Nicholas WV
8. 10.1 million cubic feet
9. September 24, 1979
10. Equitable Gas Company

1. 79–21675
2. 47–067–00107
3. 108
4. Cities Service Company
5. Johnson B #2
6. Gauley
7. Nicholas WV
8. 10.2 million cubic feet
9. September 24, 1979
10. Equitable Gas Company

1. 79–21676
2. 47–067–00032
3. 108 denied
4. Cities Service Company
5. Dickinson B #10
6. Gauley
7. Nicholas WV
8. 20.7 million cubic feet
9. September 24, 1979
10. Equitable Gas Company

1. 79–21677
2. 47–067–00067
3. 108 denied
4. Cities Service Company
5. Flynn Coal & Lumber A #4
6. Gauley
7. Nicholas WV
8. 17.1 million cubic feet
9. September 24, 1979
10. Equitable Gas Company

1. 79–21678
2. 47–067–00125
3. 108
4. Cities Service Company
5. Federal Coal Co. A #5
6. Gauley
7. Nicholas WV
8. 5.6 million cubic feet
9. September 24, 1979
10. Equitable Gas Company

1. 79–21679
2. 47–067–01557
3. 108
4. Pennzoil Company
5. Laura V Ash #5 (PZL)
6. Sherman District
7. Calhoun WV
8. 2.3 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Corp.

1. 79–21680
2. 47–067–01537
3. 108
4. Pennzoil Company
5. Creed Yoak #3
6. Lee
7. Calhoun WV
8. 2.0 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Corp.

1. 79–21681
2. 47–067–00826
3. 108
4. Pennzoil Company
5. A. & N. Hardman #2
6. Lee & Sherman Districts
7. Calhoun WV
8. 0.8 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Corp.

1. 79–21682
2. 47–067–00794
3. 108
4. Pennzoil Company
5. A. & N. Hardman #1
6. Lee & Sherman Districts
7. Calhoun WV
8. 0.8 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Corp.

1. 79–21683
2. 47–067–00540
3. 108
4. Pennzoil Company
5. Henry Grogg #1
6. Sheridan District
7. Calhoun WV
8. 4.5 million cubic feet
9. September 24, 1979
10. Consolidated Gas Supply Corp.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which 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 within fifteen (15) days of the date of publication of this notice in the Federal Register.

Please reference the FERC control number in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79–33738 Filed 10–30–79; 8:45 am]

BILLING CODE 6450–01–M

[Dockets Nos. E–8187, E–8700, ER76–203, ER76–238 and ER78–516]

Boston Edison Co.; Order Approving Settlement Agreement Suspending Tariff, Vacating Ordering Paragraphs, Ordering Refunds, and Consolidating Proceedings

Issued: October 19, 1979.

This order concerns a settlement agreement entered into between Boston Edison Company (Edison) and New England Power Company (NEPCO) and a tariff filed concurrently with the settlement. The agreement resolves the parties' differences in the captioned proceedings involving the rates paid by NEPCO to Edison for firm transmission service and firm subtransmission service to NEPCO's Quincy-Weymouth service area. The settlement cancels the prevailing rate charged NEPCO by Edison and substitutes the proposed rate schedule in Appendix A of the agreement. For the reasons discussed below, the Commission [1] approves the settlement agreement proposed by Edison and NEPCO.

Background

The settlement in Docket Nos. E–8187, *et al.*, principally involves a rate charged NEPCO by Edison pursuant to a ten-year agreement dated November 1, 1972 for firm transmission service to NEPCO's Quincy-Weymouth area. After the contract was filed with the Commission in that docket, Edison attempted to increase the transmission rate fixed by the contract. The Commission, however, by orders issued December 1, 1976, [2] and April 4, 1977, [3] denied the increase, citing the *Mobile-Sierra* [4] doctrine, and ruled that "Edison shall not be permitted to increase its transmission rate to NEPCO over the ten year term of this contract, except as a result of arbitration between the parties. . . ." [5] The Town of Norwood appealed the Commission's order and the proceeding is now on remand from the court of appeals. [6]

While seeking to increase the transmission rate in Docket No. E–8187, Edison also instituted the arbitration procedures discussed in the Commission's order of December 7, 1976, *supra* note 2, at 11. Edison and NEPCO continued discussions without an arbitrator present. Edison and NEPCO have agreed that if the Commission approves this settlement by a final order which is sustained upon judicial review or which is no longer subject to judicial review, the arbitration proceedings will be abandoned. They have further agreed on a moratorium. Edison will not increase the rates set in Appendix A of the settlement for one year.

The settlement in Docket No. ER78–516 involves a change in rate for subtransmission service furnished by Edison for a portion of NEPCO's Quincy-Weymouth load. The rate for subtransmission service is not fixed by contract. The prior rate for that service was established by a settlement agreement approved by the Commission on November 6, 1975 in Docket No. E–9037. The present Docket No. ER78–516 subtransmission rate has been in effect, subject to refund, since November 1, 1978. The settlement would require refund of amounts collected in excess of the settlement rate.

The parties have stipulated that the conditions set forth in their accord are nonseverable. They offer the settlement for acceptance in its entirety, without change by the Commission, and with the understanding that each term of the package is consideration in support of every other term.

Opposition to the Settlement

The arbitration process has produced the settlement now before the Commission. The document contains four articles: firm transmission, arbitration, subtransmission service and miscellaneous provisions. On May 17, 1979, Edison and NEPCO filed a joint motion urging the Commission to accept their agreement. Since they both agree to the new proposed rates, no *Mobile-Sierra* problem is created.

The only opposition is raised by one of Edison's wholesale customers, the Town of Norwood, Massachusetts (Norwood). Norwood is of the opinion that the proposed settlement should be rejected. Norwood wants the Commission to rule that should Edison and NEPCO desire to alter the rates, terms and conditions of service for firm power transmissions, they do so in accordance with the Federal Power Act by filing a rate change. Norwood argues that the settlement, as it now stands, constitutes a whole new rate schedule developed by Edison for firm power transmission service which Edison has not filed in accordance with the Commission's rules with the required supporting testimony and exhibits.

In other words, Norwood sees the settlement as more than a simple resolution of matters in controversy between Edison and NEPCO. Norwood claims it is the victim of discrimination.

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[1] This proceeding was commenced before the Federal Power Commission (FPC). By the joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the FERC. The term "Commission", when used in context of action prior to October 1, 1977, refers to the FPC; when used otherwise, the reference is to the FERC.

[2] *Boston Edison Company*, Order Reversing in Part, Modifying in Part, and Affirming in Part Initial Decision Resolving Investigation and Petition for Declaratory Order, Docket Nos. E–8187 and E–8700, issued December 7, 1976.

[3] *Boston Edison Company*, Order Denying Rehearing, Docket Nos. E–8187 and E–8700, issued April 4, 1977.

[4] *F.P.C.* v. *Sierra Pacific Power Company*, 350 U.S. 348 (1956); and *United Gas Pipe Line Company* v. *Mobile Gas Service Corporation*, 350 U.S. 332 (1956).

[5] December 7, 1976 order at 11.

[6] *Town of Norwood* v. *F.E.R.C.*, 587 F.2d 1306 (D.C. Cir. 1978). Norwood complained that Edison discriminatorily refused to offer it the lower NEPCO contract rate.

Norwood accuses Edison and NEPCO of attempting to make arrangements detrimental to the interests of Norwood and other small systems.

Norwood feels most strongly that the proposed settlement constitutes an improper attempt to limit or even circumvent the remand proceeding ordered by the United States Court of Appeals in *Town of Norwood* v. *F.E.R.C., supra* note 6. Norwood sees the settlement as impairing its entitlement to a low transmission rate. Norwood believes that the $14.13 per kW settlement transmission rate is too high. Finally, Norwood contends that the package should be rejected because Norwood was excluded from any meaningful participation in the settlement negotiations and therefore was denied the opportunity to present its views or comments.

Discussion and Comments

Norwood alleges that the proposed settlement should be rejected because Norwood was not invited to participate in the negotiations that produced the document. Edison and NEPCO dispute this contention. NEPCO believes Norwood was by no means a necessary party to a settlement agreement resolving matters in controversy solely as between Edison and NEPCO. The record indicates that Norwood had participated in early proceedings. NEPCO believed it appropriate to invite Norwood to participate in negotiations. Norwood accepted the invitations.

Edison tells more of the background. Edison notes that a settlement in principle was reached on March 19, 1979, at negotiations conducted at the offices of the Commission in the presence of the members of the Commission staff and representatives of Norwood. In addition, after the settlement in principle was reached, Edison unilaterally prepared the terms and conditions to be associated with the settlement rate and provided them to NEPCO employees and to Norwood at the same time. NEPCO accepted the terms and conditions virtually as proposed without a further meeting. Norwood was asked three times, once by telephone and twice by letter, for a meeting at which Edison would explain the terms and conditions and Norwood might propose changes. Norwood declined Edison's offer. We therefore find Norwood was accorded ample opportunity to participate in the settlement discussions.

In their filed responses, dated July 10, 1979, Edison and NEPCO reply to Norwood's other arguments. Besides asserting that Norwood's procedural objection is without merit, Edison and NEPCO argue that the terms of the proposed settlement do not prejudice Norwood's rights. They cite Article 4.1 of the settlement which specifically states that nothing in the settlement shall affect the rights of Edison, NEPCO, Norwood or the Commission staff to continue other aspects of the litigation in Docket Nos. E–8187 and E–8700. Both Edison and NEPCO profess a willingness to resolve all pending disputes with Norwood.

In this dispute the staff sides with Edison and NEPCO. In its comments the staff reviews the procedural history and then recommends that the Commissioner approve the settlement proposal.

Norwood's chief claim that the proposed accord is an improper attempt to circumscribe the remand proceedings does not withstand scrutiny. The settlement rate on which NEPCO and Edison have agreed is in the form of a transmission tariff available "to any other electric utility including any municipal light department. . . ." [7] The general applicability of this tariff obligates Edison to wheel firm power to NEPCO and Norwood alike at the same rate.[8] The tariff constitutes Edison's filed rate applicable to Norwood by its expenses terms.

The filing and acceptance of Edison's generally applicable transmission rate moots the issue of undue discrimination on remand from the court of appeals. However, this is not an adverse result, because Norwood is now clearly entitled to the same wheeling rate as NEPCO through remedial action contemplated by the court. The court recognized that one of the ways to undo the discrimination alleged was to raise the NEPCO contract rate. *Town of Norwood* v. *FERC, supra,* 587 F.2d at 1311, 1315.[9] Edison and NEPCO have now agreed to do that, so no rate discrepancy remains. Neither do the other terms and conditions of the ten-year fixed-rate, fixed-term contract survive the settlement, nor is there any remedy under the Federal Power Act that we might grant Norwood for any harm it may have suffered during the locked-in period.[10]

Norwood would have us reject the settlement. Because of the nonseverability clause in the settlement, rejection of the settlement in full would have the legal effect of keeping in effect the original fixed-rate, fixed-term contract between Edison and NEPCO and according to the parties, arbitration would then resume. But this would have the effect of perpetuating the very discrimination of which Norwood complains. Norwood would also have us consider why NEPCO may have surrendered some of the benefits secured to it by the original contract. However, Norwood points to no sinister purpose served by rescission of the contract, and no such purpose is apparent.

We recognize our approval of the agreement is only a partial settlement of the proceeding with the rights of nonsettling litigants fully preserved, and we shall provide Norwood a forum to resolve its allegations regarding the justness and reasonableness of the tariff.[11] Most of the issues involved in this further inquiry are also involved in Edison's pending general rate cases. Indeed, it appears that virtually every issue but the appropriate method of allocating costs to firm wheeling customers is already being investigated in the proceeding concerning Edison's most recent general rate filings, Docket Nos. ER79–216 and ER79–217. The cost support already submitted by Edison in this proceeding is not so stale as to be useless in evaluating the justness and reasonableness of the proposed firm wheeling rate. Therefore, we shall waive

[7] Boston Edison Co., FERC Electric Tariff Original Volume No. 4, sheet No. 2. The submission which is described as a tariff of general applicability is designated as shown in the attachment to this order.

[8] We note that the one-year moratorium during which Edison may not collect a higher firm wheeling rate than that proposed in the settlement is not made a part of the tariff. At first glance, this may be viewed as discriminatory. However, this will have no practical effect. First, NEPCO is the only customer presently taking firm wheeling service. Second, even if Edison wished to increase its rate immediately to a new wheeling customer (and we have no reason to believe that this is so), it would be hard pressed to do so before expiration of the NEPCO moratorium in light of the notice provision of section 205(d) and the suspension provisions of 205(e) of the Federal Power Act. In any event, we regard it as within our authority to reject such a rate as being in violation of section 205(b) of the Act.

[9] The Towns did not purchase wheeling service from Edison while the superseded contract wheeling rate applied to NEPCO. Thus, no monies were collected from Norwood which might be refunded to undo past discrimination.

[10] In these respects we disagree with Edison's assertions that the settlement does not affect the remand proceeding or any claim of Norwood, or any remedy Norwood seeks in that proceeding. Nevertheless, below, we provide a forum for Norwood to litigate the justness and reasonableness of the tariff filed pursuant to the settlement which will provide Norwood an opportunity to litigate any claim of undue discrimination under the new tariff.

[11] In a recent order, based upon an analogous fact situation, involving both Edison and Norwood as well as several other similarly situated small wholesale customers, we approved a contested settlement stating, "We find nothing in the Federal Power Act which precludes a settlement by one party, while the others continue to litigate. Any other conclusion would effectively discourage settlements in multi-party suits." *Boston Edison Company,* Order Denying Motion for Reconsideration, Docket Nos. E–8855, *et al.,* issued January 30, 1979, at 5. The original order accepting the settlement was issued April 28, 1978.

the requirements of Section 35.13 of our Regulations to the extent necessary to permit Edison to rely on cost data already developed for Docket Nos. ER79–216 and ER79–217 to support the proposed wheeling rate;[12] consolidate the instant proceeding with the latter; and direct Edison to identify the material submitted therein on which it will rely to support the proposed firm wheeling rate and to submit such additional testimony and exhibits as it deems necessary to show that the proposed rate is just and reasonable.

We note that the presiding administrative law judge has already set procedural dates in Docket Nos. ER79–216 and ER79–217. We observe that the participants may need more time than is permitted by the present schedule to make the submissions called for here and prepare for hearings on this matter. We leave it to the sound discretion of the Judge to accommodate these needs with the least disruption to the ongoing proceedings.

Finally, we should address the other issues before the court, but left undecided, in *Town of Norwood,* v. *F.E.R.C., supra,* 587 F.2d at 1308. The issues which the court declined to consider in the opinion because of the possibility that they would be altered or made moot by the result on remand were the following:

. . . (1) Edison's computation of the adverse impacts that would flow from termination of its contract to supply the Town; (2) the Commission's finding that the Town would be accountable to Edison for these adverse impacts; and (3) Edison's method of calculating wheeling rates.

Nor did the court consider the Commission's finding that Edison was willing to wheel for Norwood. This latter matter is put to rest by Edison's filing of a tariff of general applicability.

We disturb none of the FPC's findings as they pertain to the situation at the time of the FPC's orders (with the obvious exception of the FPC's determination that it could do nothing about any discrimination where a *Mobile-Sierra* contract was involved). The reserved issues need not be reached in the hearing which is to follow, unless specifically raised once again by a party with reference to a new plan by Norwood to terminate wholesale requirements service.

Taking the last issue first, the Phase II inquiry will consider whether Edison's proposed rate for firm wheeling service is just and reasonable as applied to Norwood (or any other nonsettling customer). We will consider whether the cost allocation embodied in the cost support we are directing Edison to file or identify is appropriate under present circumstances. We shall subject the filing to the same scrutiny and evaluation as any other rate change filing, giving consideration to precedent but not being bound by it.

As to the first issue above, there are three Boston Edison general rate increase applications underway before the Commission at this time. All of these proceedings involve questions as to how the costs of Edison's facilities used jointly by a number of different customers for a number of different services should be allocated among those customers and services. The adverse impacts that would flow from termination of Edison's contract to supply Norwood with full requirements service will have changed since the time of the FPC proceeding, due to inflation and other cost increases. In addition, the several ongoing Edison rate proceedings may result in a different cost allocation methodology, and this would indicate a different method of computing these adverse impacts if they were to be measured today.

The second issue on which the court of appeals expressed no opinion was the FPC's computation of adverse impact and its finding that the Town would be accountable to Edison for these adverse impacts. The same notice and damages provisions that were in effect at the time of the FPC's consideration remain in effect today. And we see no reason to disturb the FPC's finding as to the Town's liability for damages calculated in accordance with these provisions. (It is noteworthy that the provisions first arose as terms of a negotiated settlement.) However, we do not know at this time what the Town's prospects are for securing alternative bulk power supplies, and thus we cannot know at this time whether Norwood will now or in the future give less than the required notice to Edison of the Town's desire to discontinue taking full requirements service from Edison.

The Commission concludes on the basis of the entire record that the proposed settlement establishes a reasonable rate as between Edison and NEPCO and is equitable and reasonable in the public interest. Although it resolves the dispute between Edison and NEPCO, it does not prejudice Norwood's rights. Norwood remains free to pursue remedies in the appropriate forum. The Settlement Agreement filed on May 17, 1979, between Edison and NEPCO in Docket Nos. E–8187, E–8700, ER76–203, ER76–238 and ER78–516 is just and reasonable and should be approved.

The Commission orders: (A) The settlement agreement discussed herein and filed on May 17, 1979, is hereby approved, designated and made effective as shown on the Attachment.

(B) Within 45 days of this order Edison shall refund to NEPCO all amounts collected in excess of the settlement rates together with interest at the rate provided in the Commission's regulations. Within 15 days thereafter Edison shall file with this Commission and all interested state commissions a report setting forth the calculation of refunds and interest paid.

(C) Within 30 days of the date of this order Edison shall specify the exhibits and cost data already filed in Docket Nos. ER79–216 and ER79–217 on which it relies in support of its transmission tariff. The Presiding Administrative Law Judge shall fix dates for the filing of any additional testimony and exhibits Edison may wish to submit.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the DOE Act and by the Federal Power Act, particularly Sections 205, 206, 301, 307, 308, and 309 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the Regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of the firm power transmission tariff proposed by Edison.

(E) Pending the hearing ordered in Paragraph (D) and the decision thereon, Edison's tariff filing, as applied to all potential customers except NEPCO, is accepted for filing and suspended for one day, to become effective August 13, 1979, subject to refund.

(F) Ordering Paragraphs (A), (B), and (C) of the order on remand in these proceedings, issued August 27, 1979, are hereby vacated.

(G) This proceeding is hereby consolidated with Docket Nos. ER79–216 and ER79–217.

(H) Docket Nos. ER76–203, ER76–238 and ER78–516 are hereby terminated.

(I) The Secretary shall promptly publish this order in the **Federal Register.**

[12] In fact, in light of recent inflation, if we were to direct Edison to develop new cost support that strictly complied with Section 35.13, the almost certain result would be to increase the rate which Edison could support.

By the Commission.

Kenneth F. Plumb,

Secretary.

Boston Edison Company—Settlement E–8187, E–8700, ER76–203, ER76–238, ER78–516.

Dated: Undated, (2) August 1, 1979, (3) through (5). Undated, (6) September 1, 1974, (7) May 15, 1979.

Filed: (1) through (5) and (7) May 17, 1979; (6) September 23, 1974.

Effective: (1) through (5) August 1, 1979; (6) November 2, 1974; (7) November 1, 1978.

(1) FERC Electric Tariff, Original Vol. No. IV (Firm Transmission, Original Sheets 1 through 25).

(2) Service Agreement under FERC Electric Tariff, Original Vol. No. IV (New England Power Company), (Supersedes Rate Schedule FPC No. 46, as supplemented).

(3) Supplement to Service Agreement (Exhibit B).

(4) Supplement to Service Agreement (Exhibit C).

(5) Supplement to Service Agreement (Exhibit D).

(6) Rate Schedule FERC No. 124 (Redesignation of Supplement No. 3 to FPC No. 46).

(7) Second Revised Sheet No. 2 under Rate Schedule FERC No. 124 (Supersedes First Revised Sheet No. 2).

[FR Doc. 79-33709 Filed 10-30-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER80–37]

Central Illinois Public Service Co.; Notice of Filing of Wholesale Electric Service Agreement

October 25, 1979.

The filing company submits the following:

Take notice that on October 15, 1979, Central Illinois Public Service Company tendered for filing a proposed new Wholesale Electric Service Agreement with the City of Marshall. The Agreement is proposed to become effective October 27, 1979, and supersedes the previous agreement with the City of Marshall, dated May 12, 1969.

Rate Schedule W–2, under which the City of Marshall will be billed, was previously filed with the Commission and approved in Docket No. ER78–80, to become effective on January 2, 1978, subject to refund.

It is respectfully requested that the Commission accept this Agreement for filing effective October 27, 1979, by waiving the 60-day filing period pursuant to Section 35.3 of the Commission's Rules of Practice and Procedure.

A copy of the filing was sent to the City of Marshall. The new agreement will be filed with the Illinois Commerce Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions should be filed on or before November 13, 1979. Protestants will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33713 Filed 10-30-79; 8:45 am]

BILLING CODE 6450-01-M

[Dockets No. EL79–26 and ER79–600]

Central Power & Light Co.; Declaratory Order Granting Motion To Consolidate, Granting Petition To Intervene and Denying Motion for Summary Disposition and Refund Order, or in the Alternative a Hearing

Issued: October 12, 1979.

On August 16, 1979, Central Power & Light Co. (CPL) petitioned for a declaratory order finding that the manner in which CPL has billed and collected firm power rates, including demand charges, from the Public Utilities Board of the City of Brownsville (PUB or Brownsville) has complied with this Commission's May 9, 1978 order approving such rates [1] and is consistent with the Federal power Act and the Commission's Rules and Regulations.[2] In the alternative, CP&L seeks acceptance of four rate schedule supplements reflecting increases in its demand charges from may, 1976 through April, 1979. In connection with the alternative request, CPL filed the supplemental rate filings on August 17, 1979.[3]

Brownsville petitioned to intervene on September 14, 1979, requesting the Commission to consolidate the proceedings involving CPL's petition for a declaratory order and CPL's supplemental rate filings. In support of its motion, PUB points to the similarily of issues of law and fact in both proceedings—*viz.* The legality of the demand charges in CPL Rate Schedule No. 51. Given this similarity of issues in the two dockets, we find that consolidation is appropriate and will order it. In addition, PUB requests the Commission to reject the supplemental rate filings and issue a summary decision establishing, as a matter of law, that CPL cannot legally raise its rate to PUB retroactively and cannot legally raise its rate without filing proposed changes in accordance with the notice and filing requirements of the Commission's Rules and Regulations.

Background

These proceedings arise from an order issued July 21, 1976, in which the Commission determined, *inter alia,* that CPL was a "public utility" under Section 201 of the Federal Power Act and therefore, subject to the jurisdication of this Commission.[4] In compliance with this order, On April 25, 1977 CPL tendered for filing executed service agreements with all its wholesale customers, including Brownsville. The aggreement with Brownsville is a ten year term agreement due to expire on January 1, 1982. Under the terms of the agreement, the base rate demand charge of $1.80/KW/month is subject to an escalation clause with is designed to reflect additional investment in new steam generating and transmission plant during the preceding year as stated in the company's Form 1. This adjustment factor times the base rate of $1.80 produces the revised demand charge applied to both firm power service and emergency power service.[5] CPL's filing

[1] "Order Accepting Service Agreements For Filing, Granting Intervention, Denying Motion For Consolidation And Waving Notice Requirements," Docket No. ER77–331 (May 9, 1978).

[2] Notice of CPL's Petition for Declaratory Order in Docket No. EL79–26 was issued on August 24, 1979 with protests or petitions to intervene due on or before September 14, 1979.

[3] Notice of CPL's Supplemental Rate Filings to CPL Rate Schedule No. 51 in Docket No. ER79–600 was issued on August 24, 1979 with protests or petitions to intervene due on or before September 14, 1979.

[4] "Order Rejecting In Part And Accepting In Part Application For Action Pursuant to Section 202," Docket No. E–9558 (July 21, 1976).

[5] The Adjustment Clause is described in Article VI Section IE of the Agreement:

Adjustment of Firm Power Rate. The firm power demand rate will be adjusted annually by a factor which is the ratio which the average gross investment in steam generating plant and transmission plant per kilowatt of steam generating plant nameplate rating at December 31, of the most recent year bears to the average investment per kilowatt at December 31, 1970, as shown in the annual report, Form 1, filed by Company with the Federal Power Commission. This adjustment will become effective for the first billing period following the date the report is filed.

Increases as a result of the operation of this adjustment clause were subject to a ceiling o $1.90 for the first five years of the agreement. Brownsville commenced firm power service with CPL on

Footnotes continued on next page

was accepted by the Commission in an order issued May 9, 1978 and the Brownsville/CPL agreement was designated Rate Schedule No. 51 to become effective may 4, 1976, the date CPL commenced interstate operation.[6]

Discussion

Although Brownsville did not protest or petition to intervene in Docket No. ER77–531 and has never protested any of the changes in demand charges pursuant to the escalation clause until July 27, 1979,[7] the PUB now contends that any increases pursuant to the esaclation clause are illegal.[8] In support of this contention, PUB states that CP&L represented that Rate Schedule No. 51 is a fixed-rate contract and that, therefore, any changes in the demand charge as a result of the escalation clause violate the fixed rate. In addition, the City argues that, regardless of whether or not Rate Schedule No. 51 is fixed-rate in nature, under the filed-rate doctrine, changes in the demand charge pursuant to the escalation clause are illegal unless filed. Finally, the PUB urges the Commission to reject CPL's supplemental rate filings because approval of such filings would violate the principle against retroactive ratemaking expressed in Section 205(d) of the Federal Power Act and the relevant case law. Based on these arguments PUB requests that CPL be required to refund to PUB all demand charges in excess of $1.80/KW plus appropriate interest.

While we would agree that CPL's supplemental filings do not comply with the notice requirements in Section 205(d), such filings are unnecessary. CPL's increases in demand charge pursuant to the escalation clause do not violate the fixed rate contract or the filed-rate doctrine because such charges do not constitute "a change in rate." In accepting Rate Schedule No. 51 in its May 9, 1978 order, the Commission made the demand charge escalation clause part of the "filed rate." Thus, while a change in the terms of the demand charge escalation clause would constitute a change in Rate Schedule No. 51 that must be filed, changes in the monetary amounts payable under that schedule as a result of the operation of the clause need not be filed. While it is true that, except for fuel-adjustment clauses, the Commission has limited its acceptance or approval of automatic adjustment clauses to a case-by-case basis, as a result of such acceptance or approval, the clause becomes the "filed rate." Thus, unfiled changes in the monetary amount paid pursuant to the adjustment clause do not change the rate fixed by the contract or violate the filed rate doctrine.[9]

In accepting or approving such clauses the Commission may, of course, impose whatever filing requirements on the filing utility it deems necessary in order to ensure that a clause will continue to produce a just and reasonable rate. Here, at the time CPL filed its rate for service to Brownsville, the rate was recovering less than fully distributed costs. The Commission examined the clause and determined that given economic conditions of rising costs the escalation clause would not result in excess revenues. In view of that determination, the Commission did not impose annual or other filing requirements at the time the clause was approved. However, since Brownsville has now come forward and objected to the escalation clause, we believe it is appropriate to look at CPL's current costs to verify that the escalation clause continues to produce the results anticipated at the time of approval of the clause—*viz.* a just and reasonable rate.

The Commission orders: (A) The Motion to Consolidate, Docket Nos. EL79–26 and ER79–600 filed by Brownsville is hereby granted.

(B) Brownsville is hereby permitted to intervene in this proceeding subject to the Rules and Regulations of the Commission; *Provided, however,* that participation by such intervenors shall be limited to the matters set forth in their petition to intervene; and *Provided, further,* that the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(C) The Motion For Summary Disposition And Refund Order Or, In The Alternative, For A Hearing filed by Brownsville is hereby denied.

(D) The Petition For Declaratory Order filed by Central Power & Light Company is hereby granted.

(E) Within thirty days from the issuance of this order, Central Power & Light Company shall file cost support based on 1978 data in sufficient detail to show Central Power & Light Company's earned rate of return on its service to the City of Brownsville under the presently effective demand charge of $2.20 per kW.

(F) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission. Commissioner Holden, dissenting, will have a separate statement to be issued later.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79–33714 Filed 10–30–79; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. SA79–30]

Cities Service Gas Co.; Notice of Application for Adjustment

October 24, 1979.

Take notice that on September 18, 1979, Cities Service Gas Company (Cities Service), P.O. Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. SA79–30, an application pursuant to Section 1.41 of the Commission's Rules of Practice and Procedure (18 CFR 1.41) for an interim and permanent adjustment granting Cities Service and exception to Section 281.205 of the Commission's Regulations under the Natural Gas Policy Act of 1978 (NGPA) promulgated by Order No. 29, issued May 2, 1979, in Docket No. RM79–15, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Cities Service amended its request for interim relief on October 11, 1979.

Section 281.204 of the Commission's Regulations under the NGPA requires the filing of tariff sheets and an index of entitlements no later than October 1, 1979, with a proposed effective date of November 1, 1979. Section 281.205 requires that such tariff sheets shall amend current priorities by classifying high priority use entitlements in Priority 1 and essential agricultural use requirements in Priority 2. Cities Service

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Footnotes continued from last page

December 14, 1971. Thus, the demand charge could not exceed $1.90/KW until December 15, 1976.

[6] See n. 1.

[7] On July 27, 1979, counsel for PUB wrote the company and raised essentially the same issues that are raised in PUB's petition to intervene in this proceeding.

[8] Since it became jurisdicational, CPL has made the following changes in its demand charge pursuant to the escalation clause: $1.90/KW from May to December, 1976; $2.06/KW from January through March, 1977; $2.11/KW from April, 1977 through March, 1978; $2.16/KW from April, 1978, through March, 1979; and $2.20/KW/ beginning April 1, 1979, to date. These increases above $1.80 per KW have produced approximately $300,000 in additional revenue CP&L.

[9] Of course, the *parties* to a contract may not escape the notice provision of Section 205, simply by filing an escalation clause. *See, e.g. Socony Mobile Oil Co.* v. *Brooklyn Union Gas Co.*, 299 F. 2d 692, 694 (5th Cir. 1962). However, where, as here, the *Commission* has accepted for filing automatic adjustments to a rate according to a fixed formula clearly set forth in the tariff, such adjustments need not be noticed or filed each time they are made in accordance with the formula. If it were demonstrated that CPL improperly calculated the demand charge under the adjustment clause, Brownsville would be entitled to refunds. "Opinion and Order Affirming Initial Decision," Docket No. ER76–285 (Phase II) (issued March 20, 1979).

requests that it be granted an exception from the provisions of Section 281.205 in order to permit (1) the classification of small commercial and industrial requirements (including essential agricultural uses) that utilize less than 3,000 Mcf per month in Priority 2, and (2) the classification of all larger essential agricultural use requirements in Priority 3. In the event that a final decision or a settlement of Cities Service's request for such adjustment does not occur before November 1, 1979, Cities Service requests that an exception be granted on an interim basis permitting Cities Service to continue to operate under the terms of the exisitng curtailment plan, pending final resolution of the request for adjustment.

Cities Service states that since it has assumed the responsibility of providing the additional volumes of gas necessary to meet increases in the space heating requirements of its customers, it must be able to react quickly to meet rapid peaks in such requirements which occur during severe winter weather. In the past, Cities Service subdivided Priority 2 into Priorities 2 and 3, so that large commercial, feedstock and process requirements using more than 3,000 Mcf per month were classified in Priority 3, while small commercial and industrial requirements and plant protection requirements were classsified in Priority 2. Cities Service proposes to continue that subdivision. Cities Service states that the curtailment by its distributors of the small commercial and industrial customers placed in priority 2 could not be performed within the time frame required during peak periods. Furthermore, Cities Service states that the amount of gas which could be diverted from the small commercial and industrial customers through the curtailment of these requirements would not be significant. In contrast, Cities Service alleges that by curtailing the relatively few large process and feedstock consumers it proposes to place in Priority 3, it could divert substantial volumes when needed to meet increases in space heating requirements.

Cities Service submits that (1) the protection accorded essential agricultural use requirements by Section 281.205 if not modified as requested would exceed the maximum extent practicable on Cities Service's system. (2) failure to grant the requested adjustment would impose special hardships on small commercial and industrial customers and extreme hardships on certain communities, and (3) failure to grant the requested adjustment on an interim basis could result in irreparable injury to the well being and health of certain residential consumers and to the property of small commercial and industrial consumers.

The procedures applicable to the conduct of this adjustment proceeding are found in Section 1.41 of the Commission's Rules of Practice and Procedure, Order No. 24, issued March 22, 1979.

Any person desiring to participate in this adjustment proceeding shall file a petition to intervene in accordance with the provisions of Section 1.41. All petitions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33715 Filed 10-30-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP72-122 (PGA79-3)]

Colorado Interstate Gas Co.; Notice of Proposed Change in Rates

October 25, 1979.

Take notice that Colorado Interstate Gas Company (CIG), on October 15, 1979, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1, to be effective December 1, 1979. The filing states that the changes in CIG's tariff result from an increase in the purchased gas costs CIG must pay its supplier Northwest Pipeline Corporation (Northwest) because of increases in the cost of Northwest's Canadian supplies. The increased cost of purchased gas proposed to be recovered amounts to approximately $18.0 million. CIG also requests waiver of the Commission's Regulations and CIG's tariff provisions in order to permit acceptance of the filing.

Copies of CIG's filing have been served upon the Company's jurisdictional customers and other interested persons, including public bodies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before Nov. 8, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33716 Filed 10-30-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. TC80-29]

Consolidated Gas Supply Corp.; Notice of Offer of Settlement

October 24, 1979.

Take notice that on October 17, 1979, Consolidated Supply Corporation (Consolidated), c/o Morgan, Lewis & Bockius, 1800 M Street, N.W., Washington, D.C. 20036, filed in Docket No. TC80-29 a proposed stipulation and agreement with it customers as an offer of settlement providing relief from certain of the requirements of Section 401 of the Natural Gas Policy Act of 1978 (NGPA) and the Commission's Order No. 29 promulgated thereunder.

Section 401 of the NGPA and the Commission's regulations thereunder require that interstate pipeline curtailment plans protect, to the maximum extent practicable, high priority and essential agricultural uses of natural gas during periods of curtailment. The Commission's rules require that interstate pipelines incorporate into their curtailment plan the high priority and essential agricultural uses contemplated by Section 401 of the NGPA and that such pipelines undertake to compile the end-use data attributable to those uses and to prepare and file tariff sheets implementing the Section 401 requirements. Consolidated states that Consolidated and its customers have concluded that under the present and foreseeable gas supply and requirements conditions, the protections from curtailment for high priority and essential agricultural uses contemplated by Section 401 of the NGPA will be provided, to the maximum extent practicable, without making the extensive modifications to Consolidated's currently-effective curtailment procedures which would be required by Order No. 29, *et seq.*, so long as Section 11.05 of the General Terms and Conditions of Consolidated's FERC tariff is extended for the term of the stipulation and agreement.

The proposed stipulation and agreement further provides that if Consolidated's FERC Form No. 16 indicates a projected annual supply of less than its projected annual requirements for firm service, then Consolidated will so notify the Commission and its customers, and

request that a settlement conference be convened to determine whether changes in Consolidated's curtailment procedures are necessary.

Any person desiring to be heard or to make any comment with respect to the offer of settlement should within 20 days from the date of filing of said offer file with the Federal Energy Regulatory Commission, Washington, DC 20426, its request for hearing or comments in accordance with the Commission's Rules of Practice and Procedure. Reply comments may be filed within 30 days from the date of filing of the offer of settlement.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33718 Filed 10-30-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-441]

Consolidated Gas Supply Corp.; Notice of Application

August 31, 1979.

Take notice that on August 14, 1979, Consolidated Gas Supply Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP79-441 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to render a one-year storage and transportation service for New Jersey Natural Gas Company (NJN), all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant proposes to render the storage service for NJN commencing during the present storage injection season and ending with the 1970-80 withdrawal season. Applicant states that the proposed storage service would consist of a total storage capacity quantity of 1,000,000 dekatherms (dt) equivalent of natural gas and a daily storage demand quantity of 6,625 dt.[1] Applicant proposes to render such service for NJN in accordance with its GSS and T Rate Schedules contained in its effective FERC Gas Tariff, Third Revised Volume No. 1 or any effective superseding rate schedule.

It is stated that NJN has made arrangements with North Penn Gas Company (from which NJN would purchase the subject gas supplies) to deliver the gas to Consolidated for storage at an existing interconnection between the facilities of Applicant and North Penn Gas Company in Tioga County, Pennsylvania, at Tioga Storage Pool (jointly owned by Applicant and North Penn Gas Company). Upon withdrawal from storage during the 1979-80 withdrawal season, Applicant indicates that it would deliver equivalent volumes of gas for NJN's account to Texas Eastern Transmission Corporation (Texas Eastern), at an existing connection between the facilities of Applicant and Texas Eastern in Potter County, Pennsylvania.

Applicant asserts that the proposed service would enable NJN to serve better the needs of its essential high-priority customers during the upcoming 1979-80 winter heating season.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 16, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33719 Filed 10-30-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. SA80-9]

Consolidated Gas Supply Corp.; Notice of Motion for Adjustment

October 24, 1979.

Take notice that on October 17, 1979, Consolidated Gas Supply Corporation (Consolidated), c/o Morgan, Lewis & Bockius, 1800 M Street, N.W., Washington, D.C. 20036, filed in Docket No. TC80-6 a motion for adjustment and interim relief from filing requirements of Order No. 29, *et seq.* This matter has been redocketed as Docket No. SA80-9. Interim relief from the filing requirements has been requested until such time as the Commission rules on the settlement proposal filed in Docket No. TC80-29 concurrently with the motion.

Section 401 of the Natural Gas Policy Act of 1978 (NGPA) and the Commission's regulations thereunder require that interstate pipeline curtailment plans protect, to the maximum extent practicable, high priority and essential agricultural uses of natural gas during periods of curtailment. The Commission's rules require that interstate pipelines incorporate into their curtailment plan the high priority and essential agricultural uses contemplated by Section 401 of the NGPA and that such pipelines undertake to compile the end-use data attributable to those uses and to prepare and file tariff sheets implementing the Section 401 requirements. Consolidated's motion states that Consolidated and its customers have concluded that under the present and foreseeable gas supply and requirements conditions, the protections from curtailment for high priority and essential agricultural uses contemplated by Section 401 of the NGPA will be provided, to the maximum extent practicable, without making the extensive modifications to Consolidated's currently-effective curtailment procedures which would be required by Order No. 29, *et seq.*, so long as Section 11.05 of the General Terms and Conditions of Consolidated's FERC tariff is extended for the term of the stipulation and agreement submitted as the offer of settlement.

Consolidated states the proposed stipulation and agreement further provides that if Consolidated's FERC

[1] Upon issuance of the requested authorization, Applicant would receive for storage for NJN's account up to 1,000,000 dt of gas, and during the period November 1, 1979, through March 31, 1980, Applicant would withdraw from storage, and deliver for NJN's account up to 6,625 dt of gas per day on a best efforts basis.

Form No. 16 indicates a projected annual supply of less than its projected annual requirements for firm service, then Consolidated will so notify the Commission and its customers and request that a settlement conference be convened to determine whether changes in Consolidated's curtailment procedures are necessary.

Consolidated states that literal compliance with the provisions of Order No. 29, *et seq.*, would work a special hardship and place undue burdens on Consolidated and its customers and that no purpose would be served by requiring Consolidated to file tariff sheets until the Commission rules on the stipulation and agreement.

The procedures applicable to the conduct of this adjustment proceeding are found in Section 1.41 of the Commission's Rules of Practice and Procedure, Order No. 24, March 22, 1979.

Any person desiring to participate in this adjustment proceeding shall file a petition to intervene in accordance with the provisions of Section 1.41. All petitions to intervene must be filed on or before November 15, 1979.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33720 Filed 10-30-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP72-134]

Eastern Shore Natural Gas Co.; Notice of Tariff Filing

October 25, 1979.

Take notice that Eastern Shore Natuarl Gas Company (Eastern Shore) tendered for filing the following corrected tariff sheets to Original Volume No. 1 of Eastern Shore's FERC Gas Tariff.

To be Effective September 1, 1979

Corrected Substitute Eleventh Revised Sheet No. 5
Corrected Substitute Eleventh Revised Sheet No. 10
Corrected Substitute Eleventh Revised Sheet No. 11
Corrected Substitute Eleventh Revised Sheet No. 12

These tariff sheets are being filed to correct certain clerical errors only and do not constitute a rate increase, according to the Company.

The Company states that copies of the filing have been mailed to each of its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 C.F.R. 1.8, 1.10). All such petitions or protests should be filed on or before Nov. 8, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33721 Filed 10-30-79; 8:45 am]

BILLING CODE 6450-01-M

[Dockets Nos. RP72-155, RP79-12 (PGA79-2) (AP79-2) and RP79-37]

El Paso Natural Gas Co.; Notice of Revised Purchased Gas Cost Adjustment Filing

October 25, 1979.

Take notice that on October 15, 1979, El Paso Natural Gas Company ("El Paso") tendered for filing, pursuant to Part 154 of the Commission's Regulations Under the Natural Gas Act, the following revised tariff sheets to become effective October 1, 1979:

Original Volume No. 1

Twenty-sixth Revised Sheet No. 3-B

Third Revised Volume No. 2

Seventeenth Revised Sheet No. 1-D

Original Volume No. 2A

Eighteenth Revised Sheet No. 1-C

El Paso states that the Commission's order issued September 28, 1979, in the captioned proceeding, *inter alia*, conditionally accepted effective October 1, 1979, subject to refund, certain revised tariff sheets to El Paso's FERC Gas Tariff which were tendered as a part of El Paso's August 31, 1979, notice of change in rates for jurisdictional gas service.[1] El Paso states that said August 31, 1979, PGAC filing reflected changes in rates based upon (i) the currently effective PGAC and PGAC-CHPG provisions contained in El Paso's FERC Gas Tariff, and (ii) the adjustment mechanisms designed to track variations in El Paso's costs attributable to advance payments, transportation costs, gas well royalty and production tax costs, as provided for in El Paso's Stipulation and Agreement, dated May 31, 1979, approved and accepted by the Commission's letter order dated July 20, 1979, at Docket No. RP79-12. The proposed net overall PGAC rate increases of 3.76¢ per Mcf applicable to El Paso's east-of-California customers and 11.95¢ per Mcf applicable to El Paso's California customers resulted from the above described adjustment.

El Paso further states that the rates contained on the revised tariff sheets tendered on August 31, 1979, reflected the uniform increase in the settlement rates approved at Docket No. RP79-12 of 0.04¢ per Mcf attributable to the Louisiana First-Use Tax ("LFUT") Tracking Provision contained in El Paso's FERC Gas Tariff, Original Volume No. 1. El Paso's LFUT rate increase filing was tendered on August 29, 1979, at Docket No. RP79-37. Inasmuch as the revised tariff sheets tendered as a part of said August 29, 1979, LFUT filing were superseded by their counterpart sheets tendered in the August 31, 1979, PGAC filing, and therefore, reflected the same LFUT adjustment as was contained in the PGAC filing, the Commission, in its September 28, 1979, order accepting the PGAC filing, rendered the August 29, 1979, LFUT filing moot and of no effect.

El Paso states that the Commission's acceptance of such revised sheets was conditioned upon El Paso filing revised tariff sheets reflecting the elimination of costs from producer-suppliers which those suppliers are not authorized to charge El Paso on or before October 1, 1979, pursuant to applicable Commission orders, the Natural Gas Policy Act of 1978, the Natural Gas Act and the Regulations thereunder.

In accordance with the directives set forth in the Commission's September 28, 1979, order, El Paso has recalculated its October 1, 1979, PGAC rates in the instant filing, so as to eliminate those gas costs which El Paso's producer-suppliers were not authorized to charge El Paso as of October 1, 1979. El Paso states, however, that inasmuch as such recalculation results in an adjustment that amounts to a reduction in El Paso's October 1, 1979, conditionally accepted rates of only 0.01¢ per Mcf, El Paso believes that from a standpoint of administrative convenience to and cost effect on El Paso's customers such a minimal change in the initially filed October 1, 1979, PGAC rates is not desirable and El Paso's customers will not incur a measurable monetary loss as

[1] Such service is rendered under rate schedules affected by and subject to Section 19, Purchased Gas Cost Adjustment Provision ("PGAC"), contained in the General Terms and Conditions applicable to El Paso's FERC Gas Tariff, Original Volume No. 1, Third Revised Volume No. 2 and Original Volume No. 2A, and under rate schedules affected by and subject to the PGAC-Clean High Pressure Gas Provision ("PGAC-CHPG") contained in El Paso's FERC Gas Tariff, Original Volume No. 2A.

a result of El Paso not reducing its rates by 0.01¢ per Mcf.

Accordingly, El Paso requested that the increased rates reflected in its August 31, 1979, PGAC filing, and conditionally accepted for filing and made effective as of October 1, 1979, by the Commission's order issued September 28, 1979, in this proceeding, continue in effect and that no adjustment be made thereto as a result of the instant filing.

El Paso states that although it does not, for the reasons stated, proposed to revise its rates, it is tendering the redesignated tariff sheets identified above containing such rates, without change, inasmuch as the Commission's rejection of the revised tariff sheets tendered in El Paso's August 29, 1979, LFUT filing, requires El Paso to revise certain tariff sheets to reflect the appropriate pagination and superseding tariff sheet designations. However, in the event that El Paso's proposal is not acceptable to the Commission, El Paso tendered "Alternative Tariff Sheets" [2] which reflect the revision in rates resulting from the decrease in the gas purchase cost adjustment of 0.01¢ per Mcf.

El Paso further states that the net increase in PGAC–CHPG rates of 12.3339¢ per Mcf proposed and accepted as a part of El Paso's August 31, 1979, PGAC filing remains unchanged inasmuch as no adjustment in such rate is required to be made.

El Paso requested that the tendered redesignated tariff sheets be substituted for their respective counterparts tendered by El Paso on August 31, 1979, at Docket Nos. RP72–155, RP79–12, (PGA79–2) (AP79–2) and RP79–37. El Paso also requested that waiver be granted of all applicable rules, orders and regulations of the Commission, as may be deemed necessary, to permit the revised tariff sheets under the Tab designated "Tariff Sheets" to become effective as of October 1, 1979, the effective date provided by the Commission in said order issued September 28, 1979, in this proceeding. However, if the Commission should not permit El Paso's tendered tariff sheets under the Tab designated "Tariff Sheets" to become effective as requested by El Paso, El Paso requested that the tendered tariff sheets under the Tab designated "Alternative Tariff Sheets" be made effective as of October 1, 1979.

[2] Such sheets are Twenty-sixth Revised Sheet No. 3–B to El Paso's Original Volume No. 1 Tariff, Seventeenth Revised Sheet No. 1–D to El Paso's Third Revised Volume No. 2 Tariff and Eighteenth Revised Sheet No. 1–C to El Paso's Original Volume No. 2A Tariff.

El Paso also states that it submitted under Enclosure No. 4 to the instant filing the detailed information required by Appendix A of the Commission's September 28, 1979, order and El Paso states that copies of the instant tender have been served upon all parties of record in Docket Nos. RP72–155, RP79–12 (PGA79–2) (AP79–2) and RP79–37, and, otherwise, upon all affected customers and interested state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said tariff filing should, on or before Nov. 8, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations Under the Natural Gas Act (18 CFR 157.10). Protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make any protestants parties to the proceeding. Any person wishing to become a party to a proceeding must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79–33722 Filed 10–30–79; 8:45 am]

BILLING CODE 6450–01–M

[Dockets Nos. ER78–19 and ER78–81]

Florida Power & Light Co.; Notice of Compliance Filing

October 25, 1979.

Take notice that on October 12, 1979, Florida Power & Light Company (FPL) tendered for filing revisions to the Availability and Applicability clauses of Rate Schedules SR–2 and PR to its FERC Electric Tariff.

This filing is being made in compliance with Opinion Nos. 57 and 57–A, and the Commission's Order of October 3, 1979, in the above case.

In making this filing, FPL does not waive its right to apply to the Commission to limit the availability of service in the event a new customer makes a request for service. This compliance filing is also being made without prejudice to FPL's right to seek appellate review of the Commission's Opinions and to make any changes to its Tariff which may be authorized in any such appellate review.

A copy of this filing has been sent to FPL's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 C.F.R. 1.8 and 1.10). All such protests should be filed on or before November 13, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79–33723 Filed 10–30–79; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. RP79–10]

Great Lakes Gas Transmission Co.; Notice of Informal Settlement Conference

October 25, 1979.

Take notice that on November 8 and 9, 1979, at 9:30 A.M., an informal conference of all interested persons will be convened for the purpose of discussions in this proceeding relating to the proposed settlement submitted to Staff for its review on October 4, 1979. The conference will be held at a meeting room of the Federal Energy Regulatory Commission at 825 North Capitol Street, N.E., Washington, D.C. 20426.

Customers and other interested persons will be permitted to attend, but if such persons have not previously been permitted to intervene by order of the Commission, attendance will not be deemed to authorize intervention as a party in this proceeding.

All parties will be expected to come fully prepared to discuss the merits of the issues arising in this proceeding and to make commitments with respect to such issues and any offers of settlement or stipulation discussed at the conference.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79–33724 Filed 10–30–79; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. RP76–91]

Montana-Dakota Utilities Co.; Notice of Stipulation and Agreement

October 18, 1979.

Take Notice that on October 10, 1979, Montana-Dakota Utilities Co. ("MDU") filed with the Commission for its consideration and approval, pursuant to Section 1.18(e) of the Commission's

Rules of Practice and Procedure, a Stipulation and Agreement in Settlement of Remaining Issues. The Settlement asserts that it provides a resolution of all remaining issues concerning MDU's curtailment plan, except for matters related to Staff's investigation of environmental matters, and impacts in part on matters otherwise subject to sections 401 and 402 of the Natual Gas Policy Act.

The proposed Settlement would allow MDU to make up to 5,000 new high priority connections in 1979 and up to 7,500 new high priority connections in each of the calendar years 1980 through 1983. The connection of customers in 1980 through 1983 is subject to reduction, however, in the event that MDU is not successful in attaching sufficient reserves to support the permissible growth as provided by a performance standard formula. Conservation realized by MDU's residential and commercial customers would accrue to its annual reserve additions.

The proposed Settlement provides for new priorities of service under MDU's curtailment plan, as follows:

Priority 1—Residential, small commercial (less than 50 Mcf on a peak day) schools, hospitals and similar institutions, and any other requirements the curtailment of which the Secretary of Energy determines would endanger life, health or maintenance of physical property.

Priority 2(a)—Essential agricultural use requirements of less than 300 Mcf on a peak day at a single location and essential agricultural use requirements at locations using 300 Mcf or more on a peak day for non-boiler fuel purposes.

Priority 2(b)—Large commercial requirements (50 Mcf or more on a peak day); industrial requirements for plant protection; essential industrial process or feedstock use; small industrial requirements (less than 50 Mcf on a peak day); and requirements of the U.S. Government for national defense purposes.

Priority 2(c)—Essential agricultural use requirements at locations using 300 Mcf or more on a peak day for boiler fuel purposes.

Priority 3—All industrial requirements now specified in Priorities 2(a), 2(b), or 2(c) where the total annual industrial requirements at a single location are 36,720 Mcf or less.

Priority 4—All large industrial requirements not specified in Priorities 2(a), 2(b), 2(c), or 3.

The proposed Settlement provides that MDU will offer its essential agricultural users annual contracts for 100% of their essential agricultural uses (including boiler fuel) through June 30, 1983, and will offer its large industrial customers annual contracts for 100% of the Priority 2(b) or 3 base period requirements and for at least 20% of their Priority 4 base period requirements through June 30, 1983.

The proposed Settlement provides for plant protection service to those customers without alternate fuel capability and establishes the interruption priority for those customers who have converted to coal under Section 2.6(c) of MDU's curtailment plan.

The proposed Settlement further provides that MDU shall not have the unilateral right to file any tariff changes inconsistent with the Settlement during the period of its effectiveness. The appeal of the Commission orders of February 14 and June 11, 1979, allowing MDU's January 15, 1979, tariff sheet filing to become effective shall be held in abeyance pending Commission consideration of the Settlement and upon Commission approval of the Settlement, shall be the subject of a motion to dismiss.

The proposed Settlement would be effective as among the parties ratifying it as of the date of filing the Settlement with the Secretary of the Commission. This effectiveness is subject to the right to withdraw within 15 days after issuance of a final Commission order that conditions or substantially modifies the Settlement to the detriment of the party withdrawing. The article also provides that the Settlement shall terminate as of 12:00 a.m. on January 1, 1984.

The proposed settlement provides that MDU shall apply for an adjustment under Section 502(c) of the NGPA so as to allow the Settlement to become effective pending Commission action thereon, if the Commission has not acted in time for the Settlement to become effective on December 1, 1979.

The proposed Settlement contains the standard reservation provisions, and Article XVI provides that upon issuance of a final and non-appealable Commission order approving the Settlement the proceedings in Docket No. RP76-91 shall be terminated as to all issues except those related to the Staff's investigation of environmental matters.

Any person desiring to be heard or to make any protest with reference to said filing should file with the Federal Energy Regulatory Commission, Washington, D.C. a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). Comments on the settlement may be filed with the Commission on or before October 30, 1979 with reply comments due on or before November 9, 1979.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33726 Filed 10-30-79; 8:45 am]

BILLING CODE 6450-01-M

[Dockets Nos. ER79-92 and ER79-93]

New England Power Co., Notice of Compliance Filing

October 25, 1979.

The filing company submits the following:

Take notice that New England Power Company ("NEP") on October 15, 1979, tendered for filing a Compliance Report of refunds made in conjunction with NEP's W-1 Settlement Agreement. Said Settlement Agreement was accepted for filing by this Commission by its Letter Order issued September 16, 1979.

NEP states that the refunds under the Settlement Agreement were made to all affected Customers on September 28, 1979.

Copies of the filing were served upon all Customers, the affected State Regulatory Commissions and the Service List compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 13, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33727 Filed 10-30-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. TC80-5 etc.]

Northern National Gas Co. et al.; Notice of Election to Defer Filing of Tariff Sheets and Notice of Tariff Sheet Filings

October 24, 1979.

In the matter of Northern Natural Gas Co., Docket No. TC80-5, Mid Louisiana Gas Co., Docket No. TC79-44, Cities Service Gas Co., Docket No. TC79-150, Consolidated Gas Supply Corp., Docket No. TC80-6, Transwestern Gas Pipeline Co., Docket No. TC80-8, Texas Eastern Transmission Corp., Docket No. TC80-9, United Gas Pipe Line Co., Docket No. TC80-19, Lawrenceburg Gas Transmission Corp., Docket No. TC80-23, Florida Gas Transmission Co., Docket No. TC80-27.

Section 281.204(a)(1) of the Commission's Regulations under the Natural Gas Policy Act of 1978 (NGPA) provides that interstate pipelines must file tariff sheets, including an index of entitlement, by October 1, 1979, to become effective November 1, 1979, implementing the final regulations promulgated by the Commission pursuant to Section 401 of the NGPA requiring the amendment of the curtailment plans of interstate pipelines to give preference to the service of high priority and essential agricultural requirements. Section 281.204(a)(2) of the Regulations under the NGPA provides that an interstate pipeline may elect to defer the filing of the required tariff sheets until November 1, 1979, to become effective December 1, 1979, provided the pipeline files written notice of its election with the Commission and the pipeline continues its interim curtailment rule in effect until December 1, 1979.

Take notice that Northern Natural Gas Company, 2223 Dodge Street, Omaha, Nebraska 68102, has filed in Docket No, TC80-5, a notice pursuant to Section 281.204(a)(2) of the Regulations under the NGPA of its election to defer the filing of the required tariff sheets until November 1, 1979.

Take further notice that the following pipelines have filed revised tariff sheets to become effective November 1, 1979, to continue the interim curtailment plans in effect until December 1, 1979:

Pipeline and Tariff Sheets

Mid Louisiana Gas Company—Second Revised Sheet No. 23I First Revised Sheet No. 23J, FERC Gas Tariff, First Volume No. 1

Cities Service Gas Company—Substitute First Revised Sheet No. 54, FERC Gas Tariff, Original Volume No. 1

Consolidated Gas Supply Corporation—Third Revision Sheet No. 61, FERC Gas Tariff, Third Revised Volume No. 1

Transwestern Gas Pipeline Company—Second Revised Sheet No. 68, FERC Gas Tariff, Second Revised Volume No. 1

Texas Eastern Transmission Corporation—Second Revised Sheet No. 102B, FERC Gas Tariff, Fourth Revised Volume No. 1

United Gas Pipe Line Company—Eleventh Revised Sheet No. 72, FERC Gas Tariff, First Revised Volume No. 1

Lawrenceburg Gas Transmission Corporation—First Revised Sheet No. 11A, FERC Gas Tariff, First Revised Volume No. 1

Florida Gas Transmission Company—Third Revised Sheet No. 20, FERC Gas Tariff, Original Volume No. 1

It should be noted that the revised tariff sheets set forth above were filed only to continue the respective pipelines' interim curtailment plans in effect during the elected deferred period and their submittal should not be construed as compliance with the filing requirements of Section 281.204(a)(1) of the Regulations under the NGPA implementing the final regulations promulgated pursuant to Section 401 of the NGPA.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filings should on or before October 29, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33728 Filed 10-30-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-616]

Northern States Power Co. (Minnesota and Wisconsin); Order Accepting for Filing and Suspending Proposed Amendment to Coordinating Agreement, Granting Interventions, Waiving Notice Requirements and Establishing Procedures

Issued: October 22, 1979.

On August 24, 1979, Northern States Power Company of Minnesota (NSP-M) and the Northern States Power Company of Wisconsin (NSP-W) filed an Amendment to their Coordinating Agreement of October 12, 1970.[1] NSP-W is a wholly-owned subsidiary of NSP-M. Under the Coordinating Agreement, NSP-M and NSP-W coordinate as a single system the development and operation of their generation and EHV (extra high voltage) transmission facilities. In addition, the companies share in the costs of ownership of production, EHV transmission, and related dispatching facilities. They also share operation and maintenance costs and benefits deriving from power transactions with other utilities.

The Amendment would provide for a sharing by NSP-M of costs incurred by NSP-W in connection with the planned construction of a nuclear generating project, the Tyrone Energy Park (Tyrone Project), which was cancelled after the denial of a certificate of public convenience and necessity by the Wisconsin Public Service Commission on March 6, 1979. NSP-W states that actual expenditures to date total $40 million in pre-construction siting and engineering costs. Another $40 million in estimated expenses will be incurred by NSP-W due to termination of contracts for equipment and services.

Initially, each company had an ownership interest in the Tyrone Project; however, on February 24, 1978, the Wisconsin Commission ruled that NSP-M, which is not incorporated in Wisconsin, could not own an interest in a nuclear plant sited in the state. Thereafter, the share of NSP-M was transferred to NSP-W. Applicants state that this transfer was simply to comply with the Wisconsin Commission order and did not reflect any change in the planned use of project power to serve their integrated system loads.

The proposed amendment to the coordinating agreement proposes that NSP-W's annual fixed charges on generating facilities for calculating payments by NSP-M for the period March 6, 1979, through March 5, 1984, include provision for amortization of the total expenditures on the Tyrone Project. Such payments will be reflected as purchase power expense in any NSP-M cost-of-service. The parties commit themselves to not pass through to their ratepayers any capital costs associated with the unamortized balance of the Tyrone property loss.[2] Until the total amount of cancellation costs is

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[1] *See* Appendix A for rate schedule designations.

[2] The companies wish, nonetheless, to apportion such unamortized balances for book purposes so as to avoid distortion of the financial statements of the respective companies—there would be no effect on the consolidated income statement.

determined, payments are to be based on estimates subject to prospective adjustment to reflect actual costs. Based on the projected participation ratios through 1983, NSP–M will be responsible for about 86% of the Tyrone property loss while NSP–W will be responsible for the remaining 14%. The parties estimate that the amortization will increase total annual resale revenue requirements from 1.8% to 2.5% for NSP–M and from 2.3% to 2.8% for NSP–W. The parties propose to book the estimated $80 million loss to Account 182—extraordinary property losses—and to amortize the loss over a sixty month period by debits to Account 407—amortization of property losses. Additionally, the parties propose to defer the tax effect of the loss (approximately $37.5 million) to Account 283—Accumulated Deferred Income Taxes—and to flow such tax savings back ratably over the 60 month amortization period.

Notices of intervention were filed by the Minnesota Public Service Commission, the Public Service Commission of Wisconsin, the Public Utilities Commission of the State of South Dakota, and the Department of Public Service of the State of Minnesota on September 21, 1979. Also on September 21, 1979, the Minnesota Cities [3] and Wisconsin Cities [4] filed petitions to intervene, stating that they have not had an opportunity for a comprehensive analysis of the August 24, 1979 filing. The Wisconsin Cities request an investigation and hearing under Section 205 and Section 206 of the Federal Power Act concerning the justness and reasonablenesss of the filing. On September 26, 1979, North Dakota Public Service Commission filed a notice of intervention.

Our review of the submittal indicates that the proposed Amendment has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or otherwise unlawful. Therefore, we shall accept the Amendment for filing, grant the Northern States Power Companies' request for waiver, and suspend the Amendment for one day to become effective as of March 7, 1979, subject to refund at the conclusion of this proceeding.

Participation in this proceeding by the Wisconsin Cities and the Minnesota Cities may be in the public interest and we shall grant their petitions to intervene.

The Commission orders:

(A) Waiver of the Commission's notice requirements is hereby granted.

(B) The Amendment to the Coordinating Agreement of Northern States Power Company (Wisconsin) and Northern States Power Company (Minnesota) is hereby accepted for filing and suspended for one day, to become effective as of March 7, 1979, subject to refund.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Organization Act and by the Federal Power Act and pursuant to the Commission's Rules of Practice and Procedure and the Regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of the amendment of Coordinating Agreement proposed in this docket by the Northern States Power Companies.

(D) The Minnesota Cities and Wisconsin Cities are hereby permitted to intervene in this proceeding subject to the Rules and Regulations of the Commission; *Provided, however,* That participation by the intervenors shall be limited to matters set forth in their petitions to intervene; and *Provided further,* That the admission of the intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders entered by the Commission in this proceeding.

(E) An Administrative Law Judge to be designated by the Chief Administrative Law Judge shall convene a prehearing conference in this proceeding within 30 days from the issuance of this order in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. This conference will be held for the purpose of entertaining settlement discussions regarding the issues in this proceeding. The Presiding Judge is authorized to establish procedural dates and to rule upon all motions (except motions to consolidate or sever and motions to dismiss), as provided for in the Commission's Rules of Practice and Procedure.

(F) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

Appendix A

Northern States Power Co.—Docket No. ER79–616

Designations:

Filed: August 24, 1979.

Effective: March 7, 1979, subject to refund.

Northern States Power Compay—Minnesota

Supplement No. 1 to Rate Schedule FERC No. 374.

Northern States Power Co.—Wisconsin

Supplement No. 1 to Rate Schedule FERC No. 53.

[FR Doc. 79–33729 Filed 10–30–79; 8:45 am]

BILLING CODE 6450–01–M

[3] The Minnesota Cities are Anoka, Arlington, Brownton, Buffalo, Chaska, Granite Falls, Kasota, Kasson, Lake City, North Saint Paul, Saint Peter, Shakopee, Waseca, and Winthrop.

[4] The Wisconsin Cities are Black River Falls, Bloomer, Cornell, New Richmond, Rice Lake, Westby and Whitehall.

[Docket No. RP72–154]

Northwest Pipeline Corp.; Notice of Proposed Change in Rates Pursuant to Purchased Gas Cost Adjustment

October 25, 1979.

Take notice that on October 15, 1979, Northwest Pipeline Corporation ("Northwest") tendered for filing a proposed change in rates applicable to service rendered under rate schedules affected by and subject to Article 16, Purchased Gas Cost Adjustment Provision ("PGAC") contained in its FERC Gas Tariff, Original Volume No. 1. The proposed change is for the purpose of recovering increases in the cost of purchased gas of $149.2 million resulting from an increase in the Canadian export price to $3.45 per MMBtu. Said price was established by Order in Council P. C. 1979–2710 dated October 4, 1979 to be effective November 3, 1979. The impact of the new export price is more fully detailed and explained in the instant filing.

Northwest requests waiver of its PGA Provision referenced above and applicable Commission Regulations in order to receive an effective date for Twenty-fourth Revised Sheet No. 10, tendered herein, of November 15, 1979.

Copies of this filing have been served on Northwest's jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 8, 1979. Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33730 Filed 10-30-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. TC79-137]

Northwest Pipeline Corp.; Order Approving Settlement

Issued: October 19, 1979.

The settlement we approve here (by granting a partial exemption from Order No. 29) implements Section 401(a) of the Natural Gas Policy Act of 1978 (the "NGPA") for the system of Northwest Pipeline Corporation (Northwest). We briefly summarize this new Act and the administrative actions taken to implement it, including Order No. 29, before turning to consideration of the settlement.

I

Section 401(a) [1] of the NGPA introduced a new term into the lexicon of curtailments—the essential agricultural use.[2] In general, the statute accords this use a priority in interstate pipeline curtailment plans second only to high priority users.[3]

Section 401(a) assigned to the Secretary of Energy the responsibility for prescribing the general rule under that section. The statute also requires the Secretary of Agriculture to certify the natural gas requirements for essential agricultural uses.[4] Following action by the Secretaries (or their delegates), we then issued Order No. 29.[5]

In brief, Order No. 29 [6] requires interstate pipelines subject to it to establish two priority classifications in their curtailment plans conforming to the statutory definitions of high priority and essential agricultural users.[7] Volumes attributable to these uses are to be determined based on data provided by the pipeline customer or the end-user and, ultimately, are to be reflected in the pipeline's tariff in the form of an index of entitlements.[8] Order No. 29 provides for the establishment by the pipeline of a Data Verification Committee (DVC) as an adjunct to the data collection process to aid in resolving any data management problems that might arise. The culmination of this process—the tariff filing by the pipeline—was set for this Fall.

At the time of promulgation of Order No. 29, the Commission expressed its willingness to consider settlements at variance with the rule: "In past curtailment proceedings the parties have often arrived at a settlement of all issues without resort to adjudicatory proceedings before the Commission. . . . [N]othing in the rule precludes any interstate pipeline and its customers from proposing, as a settlement, a curtailment plan that differs from that set out in our rule. Such a settlement will be evaluated by the Commission in light of its responsibility to meet the statutory goal of protecting, to the maximum extent practicable, high priority users and essential agricultural uses." Final Rule, pp. 10–11.

We have had occasion recently to again emphasize that rigid adherence to Order No. 29 will not be required where a suitable alternative is proposed. In *Arkansas Louisiana Gas Company,*[9] we said: "The Commission wishes to emphasize its flexibility under Section 401 and its willingness to exercise its flexible authority thereunder, in the forum of an adjustment proceeding or in the context of a settlement. To this end, the Commission has openly encouraged the entry into settlements which meet the requirements of Section 401 even though the settlement may deviate from Order No. 29. 'We are particularly mindful of the Statement of Managers which expresses a clear desire to avoid disruption of existing curtailment plans upon implementation of Section 401.' " Final Rule pp. 16–17.

We turn now to the Northwest settlement which, for the most part, is unopposed. It merits our approval as a reasonable means of implementing Section 401(a) of the NGPA for that system.

II

Northwest's curtailment plan in effect at the time of passage of the NGPA was essentially a pro rata plan. It, however, incorporated an end-use feature designed to protect high priority end-uses as necessary on any given day.[10] The settlement proposes to continue the existing plan but conform it to NGPA requirements by expanding the current end-use feature to encompass the priority classifications stipulated by the statute and implemented by Order No. 29. The settlement thus incorporates the

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[1] Section 401(a) reads: "GENERAL RULE.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Energy shall prescribe and make effective a rule, which may be amended from time to time, which provides that, notwithstanding any other provision of law (other than subsection (b)) and to the maximum extent practicable, no curtailment plan of an interstate pipeline may provide for curtailment of deliveries of natural gas for any essential agricultural use, unless such curtailment—

"(1) does not reduce the quantity of natural gas delivered for such use below the use requirement specified in subsection (c); or

"(2) is necessary in order to meet the requirements of high-priority users."

[2] Section 401(f) defines "essential agricultural use" and "high priority user" as follows: "(1) ESSENTIAL AGRICULTURAL USE.—The term "essential agricultural use", when used with respect to natural gas, means any use of natural gas—

"(A) for agricultural production, natural fiber production, natural fiber processing, food processing, food quality maintenance, irrigation pumping, crop drying, or

"(B) as a process fuel or feedstock in the production of fertilizer, agricultural chemicals, animal feed, or food," which the Secretary of Agriculture determines is necessary for full food and fiber production.

(2) High-Priority User.—The term "high-priority user" means any person who—

"(A) uses natural gas in a residence;

"(B) uses natural gas in a commercial establishment in amounts of less than 50 Mcf on a peak day;

"(C) uses natural gas in any school, hospital, or similar institution; or

"(D) uses natural gas in any other use the curtailment of which the Secretary of Energy determines would endanger life, health, or maintenance of physical property."

[3] See notes 1 and 2 *supra.*

[4] Section 401(c) provides: "DETERMINATION OF ESSENTIAL AGRICULTURAL USE REQUIREMENTS.—The Secretary of Agriculture shall certify to the Secretary of Energy and the Commission the natural gas requirements (expressed either as volumes or percentages of use) of persons (or classes thereof) for essential agricultural uses in order to meet the requirements of full food and fiber production."

[5] Section 403 of the NGPA allocates responsibilities between the Secretary of Energy and the Commission as follows:

"(a) Establishment of Priorities.—The Secretary of Energy shall prescribe the rules under sections 401 and 402 pursuant to his authority under the Department of Energy Organization Act to establish and review priorities for curtailments under the Natural Gas Act.

"(b) Implementation of Priorities.—The Commission shall implement the rules prescribed under sections 401 and 402 pursuant to its authority under the Department of Energy Organization Act to establish, review, and enforce curtailments under the Natural Gas Act.

[6] Final Regulation for the Implementation of Section 401 of the Natural Gas Policy Act, Order No. 29, Final Rule, Docket No. RM79-15, 18 CFR Part 281 (Issued May 2, 1979). Order No. 29 was preceded by an interim rule. See Interim Regulation for the Implementation of Section 401 of the Natural Gas Policy Act of 1978, Interim Curtailment Rule, Docket No. RM79-13 (issued March 6, 1979).

[7] Order No. 29, *supra,* note 6) Preamble at pp. 4–5).

[8] 18 CFR § 281.204(a).

[9] *Arkansas Louisiana Gas Company,* Order Denying Rehearing and Request for Stay of Order No. 29 and Granting Intervention, Docket No. TC79-134 (Related to Docket No. RP71-122) (issued September 10, 1979) at p. 2.

[10] See Motion of Northwest Pipeline Corporation For Approval of Settlement and Requests for Waiver, July 27, 1979, at p. 6, referencing Commission orders of January 18, 1974 and January 23, 1975 in Docket No. RP74-49.

central feature of Order No. 29.[11] Its variance from Order No. 29 is as to the methodology use for determining qualifying members of the new priority classes. Rather than following a data collection and aggregation process which will lead to an index of entitlements, Northwest proposes to use a certification procedure permitting essential agricultural users to establish the eligibility of their uses for protection in the new Priority 2 classification.[12] Also, a DVC would not be established. Northwest requests waiver of Order No. 29 to the extent necessary to permit these variances.[13]

We find that the settlement and the procedures therein specified provide the requisite measure of protection for high priority and essential agricultural uses mandated by the NGPA. Moreover, the agreement promises to achieve these NGPA objectives with economy and with minimum disruption of the existing plan.[14] Accordingly, we grant the requested waiver of Order No. 29 and approve the settlement.

III

No one contended that the Commission should reject the proferred settlement. Southwest Gas Corporation, however, urges that the Commission's approval be conditioned "to require Northwest to use a 467–B type curtailment plan by a data certain, as soon as practicable, and that the date collection necessary therefor be commenced immediately."[15] We will reject this proposed condition. Southwest has provided no basis for its imposition. The condition has much broader import than the NGPA alone and cannot therefore rest on Order No. 29.[16]

The Commission finds and orders:

(1) The July 27, 1979, Stipulation and Agreement constitutes a reasonable means of implementing Section 401(a) of the Natural Gas Policy Act and is consistent with the objectives of Commission Orders Nos. 29, 29–A and 29–B. Northwest is hereby granted an adjustment in accordance with Section 502(c) of the NGPA exempting it from the application of Commission Order Nos. 29, 29–A and 29–B to the extent that said orders require preparation of a draft index of entitlements and the formation of a Data Verification Committee.

(2) The July 27, 1979 Stipulation and Agreement is hereby approved. Northwest shall file tariff sheets implementing the Stipulation and Agreement within ten days of issuance of this order. The Commission finds it appropriate to waive its regulations to the extent necessary to permit the tariff sheets to become effective as of November 1, 1979.*

(3) The Commission's approval of this settlement shall not constitute approval of or precedent regarding any principle or issue in this proceeding.

(4) Intermountain Gas Company, Southwest Gas Corporation, Northwest Natural Gas Company, Cascade Natural Gas Company and Washington Natural Gas Company are permitted to intervene in this proceeding subject to the rules and regulations of the Commission, *Provided, however,* that their participation shall be limited to matters affecting aserted rights and interests as specifically set forth in their petitions to intervene and *Provided, further,* that the admission of these intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order of the Commission entered in this proceeding.

By the Commission. Chairman Curtis was present for the quorum and not voting.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33731 Filed 10-30-79; 8:45 am]

BILLING CODE 6450-01-M

[11] The Commmission staff's initial comments on the proposed settlement provide the following description of this aspect of the plan: "Northwest and its customers have agreed to modifications in Northwest's existing curtailment plan which would, in substance, continue Northwest's current curtailment procedures, while protecting high priority and essential agricultural uses as required by Section 401 of the NGPA. Effective November 1, 1979, Northwest would modify its existing plan as follows:

"(1) Establish new Priority 1 and 2 to protect high priority and essential agricultural uses, with subordination of all other uses.

"(2) Continue protection in new Priority 3 of all other uses previously protected in Northwest's curtailment plan.

"(3) Establish a new emergency relief provision for protection of life and property.

"(4) Specify Northwest's procedures for protecting high priority uses, including a form of certification required to be submitted to Northwest and signed by customers requesting protection." Comments of the Commission staff, September 5, 1979, at pp. 2–3.

[12] Article III of the proposed settlement describes these procedures as follows:

"In order to protect high priority and essential agricultural uses as required by Order No. 29, Northwest will, consistent with its existing curtailment procedures, provide additional volumes as requested by any customer to serve its Priority 1, 2 or 3 uses on a given day, within firm contract demand. Each week the customer must certify its requirements of the prior week to the extent it obtained additional volumes through this high priority protection procedure to satisfy those requirements. If all uses other than Priority 1, 2, and 3 uses have been curtailed on Northwest's system, Northwest will provide volumes on a pro-rata basis to each customer in the proportion that its Priority 1, 2, and 3 requirements bear to such requirements of all customers; provided that all Priority 3 requirements will be subordinated to Priority 1 and 2 requirements and similarly all Priority 2 requirements will be subordinate to Priority 1.

"In order to provide an opportunity for essential agricultural users to establish the eligibility of their uses for protection in Priority 2, Northwest's customers are entertaining requests by such users as contemplated by 18 CFR Sections 281.207 and 281.208, and are working closely with such users to ensure the completeness and accuracy of such requests. A list summarizing such requests is also being sent to Northwest. Northwest will honor the status of such requests in implementing and monitoring curtailment on its system."

Section 13.4 of the proposed tariff sheets implementing the settlement provides that Northwest will submit to Buyers under the tariff and direct customers a monthly report which summarizes gas provided pursuant to the NGPA certification procedures. Northwest shall also make a copy of this report available to our staff.

[13] Northwest couched its request for permission to file a modified tariff under Order No. 29 in terms of "waiver," citing Section 502(c) of the NGPA. Motion Of Northwest Pipeline Corporation For Approval Of Settlement And Requests For Waiver, July 27, 1979 at 1. We treat this as an adjustment request per the statute and grant the relief requests in the form of an exemption from the Order No. 29 requirements for filing an index of requirements and establishing a DVC.

[14] The staff supports the settlement but suggests that the Order No. 29 requirements for filing an index of requirements and establishing a DVC be maintained. Northwest argues, however, that an index of entitlements is unnecessary in this instance because (a) it implements its curtailment plan on a daily basis rather than utilizing a historical base period and (b) in any event, given its current excess supply situation, it does not expect to curtail in the near future. These circumstances justify waiver but should Northwest's supply situation change significantly or the certification procedure specified for determining essential agricultural use cause difficulties, then resort to full Order No. 29 procedures may be appropriate. We note also that Northwest in its reply addressing staff comments indicated data collection efforts by its distributors directed toward compiling a current Priority 1 profile are ongoing. We endorse this effort and urge that it be continued outside the instant curtailment proceeding, which will be terminated.

[15] Protest and Petition to Intervene by Southwest Gas Corporation, September 5, 1979, at p. 4.

[16] Southwest also argues that the settlement makes a "substantial change" in Northwest's curtailment procedures by limiting its protection of Priority 1, 2, and 3 uses to firm contract demand rather than available supply. As support for its contention that "available supply" rather than "firm contract demand" governs, Southwest cites a January 18, 1974 order. We find this reference unpersuasive since it ignores the context of the earlier statement. Order No. 29, of course, provides no support for Southwest's agrument.

*Our action here in advance of November 1, 1979 makes further consideration of Northwest's October 1, 1979 filings in Docket Nos. TC80–28 and SA80–1 unnecessary.

[Docket No. EL80–3]

Pacific Power & Light Co.; Notice Pursuant to 18 CFR 41.3

October 25, 1979.

An audit of Pacific Power & Light Company's (PP&L) books was conducted by Federal Energy Regulatory Commission Staff (Staff). Staff and PP&L were unable to reach agreement on the account classification of expenditures

for membership dues in social and service clubs. Included among the social and service clubs are Rotary, Kiwanis, Arlington Club, Bonner County Historical Society, Community Concert Association, Coos Bay Shipper's Club, Lake Bond Orville Club, Dude Ranchers Association, and Yakima Valley Visitors and Convention Bureau. PP&L has consented to the use of the shortened procedures specified in Part 41 of the Commission's Rules and Regulations under the Federal Power Act (18 CFR). Therefore, any interested party may file a brief in accordance with 18 CFR 41.3. This brief may be accompanied by a notice of intervention in accordance with 18 CFR 1.08.

The following procedural schedule is esablished:

(1) initial briefs and notices of intervention shall be due no later than 30 days after the date of publication of this notice in the **Federal Register;** AT1and

(2) reply briefs shall be due no later than 20 days thereafter.

All briefs and notices of intervention must be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33732 Filed 10-30-79; 8:45 am]

BILLING CODE 6450-01-M

[Dockets Nos. ER76-149 and E-9537]

Public Service Co. of Indiana; Order Granting Rehearing for the Purpose of Further Consideration

Issued October 19, 1979.

On September 19, 1979, Public Service Company of Indiana (PSCI) applied for rehearing of the Commission's August 27, 1979 Order on Remand in these proceedings. This order dealt with the decision in *Public Service Company of Indiana* v. *FERC,* 584 F.2d 1084 (D.C. Cir. 1978) which (1) held that the Commission's October 1975 rejection of PSCI's proposed rate increase was improper and, accordingly that the effective date must be revised, and (2) remanded the case to determine whether to extend the previously ordered four-month suspension period to five months in light of the revised effective date. The Commission retained the four-month suspension, but ordered that the amount owed by PSCI's customers as a result of the order be offset against the refunds owed to PSCI's customers pursuant to the Commission's final determination in this docket.

In its application, the Company seeks clarification that it is entitled to interest at the rate of 9% on refunds owed by its wholesale customers. PSCI also seeks to establish its right to a surcharge in the event its customers owe some amount after the offset.

On September 26, 1979, the IMEA Cities[1] also filed an application for rehearing of the Commission's order, requesting that the Commission lengthen the suspension period to five months.

In order to afford additional time for consideration of these matters, we shall grant rehearing of the August 27, 1979 Order on Remand for the limited purpose of further considerations of the issues raised by PSCI and the IMEA Cities.

The Commission Orders: (A) The applications for rehearing of the Commission's August 27, 1979 order on Remand are hereby granted for the limited purpose of further consideration.

(B) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33733 Filed 10-30-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RA79-33]

Robert E. Brain and Cooper & Brain, Inc.; Notice of Filing of Petition for Review Under 42 U.S.C. 7194

October 25, 1979.

Take notice that on October 16, 1979, Robert E. Brain and Cooper and Brain, Inc., filed a petition for Review under 42 U.S.C. § 7194(b) (1978 Supp.) from an order of the Secretary of Energy.

Copies of the petition for review have been served on the Secretary, Department of Energy, and all participants in prior proceedings before the Secretary.

Any person desiring to be heard with reference to such filing should, on or before November 12, 1979, file a petition to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the Commission's rules of practice and procedure (18 CFR 1.8). Any person wishing to become a party or to participate as a party must file a petition to intervene. Such petition must also be served on the parties of record in this proceeding and the Secretary of Energy through Gaynell C. Methvin, Deputy General Counsel for Enforcement and Litigation, Department of Energy, 12th and Pennyslvania Ave., N.W., Washington, D.C. 20461. Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33710 Filed 10-30-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER 80-36]

Southern California Edison Co.; Notice of Filing of Rate Schedule Changes

October 25, 1979.

Take notice that on October 12, 1979, Southern California Edison Company ("Edison") tendered for filing, as rate schedule changes, an Agreement, dated January 10, 1979, and an Amendment, dated August 7, 1979, with Pacific Gas & Electric Company ("Pacific"). These documents are entitled:

1. Edison-Pacific Interruptible Transmission Service From Eldorado Agreement.

2. Amendment No. 1 To The Edison-Pacific Interruptible Transmission Service From Eldorado Agreement.

Under the terms of this Agreement, as Amended, Edison will provide interruptible transmission service for energy purchased by PG&E from the Nevada Power Company. Edison will charge PG&E for transmission, dispatching and scheduling services. Transmission losses in delivery of such energy shall be reimbursed by PG&E in kind at times and rates of delivery agreed upon by the Parties.

Edison requests that this filing be permitted to become effective 60 days after acceptance for filing by the Federal Energy Regulatory Commission.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Pacific Gas & Electric Company.

Any person desiring to be heard or to protest this application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 1.8 and § 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such

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[1] The Indiana Municipal Electrical Association and the Cities and Towns of Bainbridge; Town of Bargersville; Town of Centerville; City of Covington; Town of Darlington; Town of Greenfield; Town of Hagerstown; Lawrenceburg Utilities, Lawrenceburg; City of Lebanon; City of Linton; Town of Middletown; Town of Rockville; City of Scottsburg; Town of South Whitley; Town of Thorntown; City of Tipton; Town of Veedersburg; and the Town of Waynetown; all located in the State of Indiana.

petitions or protests should be filed on or before November 13, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary,

[FR Doc. 79-33734 Filed 10-30-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. SA80-6]

Texas Eastern Transmission Corp.; Notice of Motion for Interim Relief

October 18, 1979.

Take notice that on October 11, 1979, Texas Eastern Transmission Corporation (Texas Eastern) filed a motion pursuant to Section 1.41(m) of the Commission's Rules of Practice and Procedure requesting interim relief relieving it of its obligations under Order No. 529, *et seq.* to file revised tariff sheets on November 1, 1979, pending a ruling by the Commission on its proposed settlement and request for adjustment filed by Texas Eastern in Docket No. TC79-139.

On September 10, 1979, Texas Eastern filed with the Commission a proposed settlement which, if approved, would resolve for the near term all issues arising from Order Nos. 29, *et seq.* In addition, Texas Eastern requested that pursuant to Section 502(c) of the Natural Gas Policy Act of 1978 and Section 1.41 of the Commission's Rules of Practice and Procedure, the Commission grant an adjustment to Section 281.204 of the Commission's regulations under the Natural Gas Policy Act and waive the requirements of Order Nos. 29*et seq.* to the extent necessary to effect the proposed settlement.

On September 28, 1979, the Commission noticed Texas Eastern's filing and indicated that it would process the proposed settlement under the procedures prescribed in Section 1.18 of the Commission's Rules of Practice and Procedure, as revised by Order No. 32 issued June 13, 1979 in Docket No. RM79-16. Comments on the proposed settlement are therefore due on October 20, 1979, with reply comments due on October 30, 1979.

On October 1, 1979, Texas Eastern exercised its right to elect under Section 281.204(a)(2) of the Commission's regulations to file the tariff sheets contemplated by Order Nos. 29, *et seq.* on November 1, 1979, to be effective December 1, 1979, and to keep Section 12.7 of the General Terms and Conditions of its current tariff in effect until December 1, 1979. Texas Eastern will soon file a revised tariff sheet reflecting the extension to December 1, 1979, of its current relief provisions for high-priority and essential agricultural uses.

Texas Eastern is now required by Order Nos. 29, *et seq.* to file draft tariff sheets on November 1, 1979. However, it seems likely that since reply comments on the proposed settlement are not due until October 30, 1979, the Commission will be unable to act on the proposed settlement and Texas Eastern's request for waiver of the filing requirements under Order Nos. 29, *et seq.* until after November 1, 1979.

Therefore, Texas Eastern requests interim relief from the November 1, 1979, filing date, pending a ruling on the proposed settlement and request for adjustment.

Any person desiring to comment with respect to said motion should file such comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 on or before October 26, 1979.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33735 Filed 10-30-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. SA80-6]

Texas Eastern Transmission Corp.; Notice of Request for Adjustment

October 18, 1979.

Take notice that on October 11, 1979, Texas Eastern Transmission Corporation (Tetco) filed in Docket No. SA80-6 an application pursuant to Section 502(c) of the Natural Gas Policy Act of 1978 and Section 1.41 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure (18 CFR 1.41), requesting an order extending by one month the time in which Tetco must comply with Section 281.204 of the Commission's Regulations. Tetco also seeks to avoid filing draft tariff sheets until such time as it rules on the propriety of the Settlement proposed herein.

Section 281.204 of said Regulations requires interstate pipelines to file no later than October 1, 1979, tariff sheets containing a curtailment plan and incorporating therein as index of the high-priority and essential agricultural use entitlements of each of their customers. Tetco states that although it is diligently seeking to comply with the Commission Regulation, it requires until December, 1979, to effect the proposed settlement before complying with the applicable provisions of Section 281.204.

On October 1, 1979, Tetco states that it exercised its right to elect under Section 281.204(a)(2) of the Commission's regulations to file the tariff sheets it felt necessary under Order Nos. 29, *et seq.* on November 1, 1979, to be effective December 1, 1979, and to keep Section 12.7 of the General Terms and Conditions of its current tariff in effect until December 1, 1979. Tetco states that it will soon file a revised tariff sheet reflecting the extension to December 1, 1979 of its current relief provisions for high-priority and essential agricultrural uses.

As noted above, following its use of the election procedure, Tetco believes that it is now required by order Nos. 29, *et seq.* to file draft tariff sheets on November 1, 1979. However, if reply comments on the proposed settlement are not due until October 30, 1979, Tetco believes Commission will be unable to act on the proposed settlement and Tetco's request for waiver of the filing requirements under Order Nos. 29, *et seq.* until after November 1, 1979.

Any person desiring to participate in this adjustment proceeding shall file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a petition to intervene in accordance with the provisions of Section 1.41 of the Commission's Rules of Practice and procedure (18 CFR 1.41). All petitions to intervene must be filed on or before November 15, 1979.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33739 Filed 10-30-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. E-9578 (Phase I)]

Texas Power & Light Co.; Order Affirming and Modifying Initial Decision, and Denying Petition for Rehearing

Issued: October 12, 1979.

The Commission [1] has before it exceptions to an initial decision [2] which decides questions of law relating to the issue of whether rates for certain

[1] This proceeding was commenced before the Federal Power Commission (FPC). By the joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the FERC. The term "Commission", when used in the context of action taken prior to October 1, 1977, refers to the FPC; when used otherwise, the reference is to the FERC.

[2] Decision on Phase I issues, dated February 1, 1979.

electric power sales by the Texas Power and Light Company (Texas Power) [3] are subject to the jurisdiction of the Commission.[4]

In this decision we affirm and modify four of the six rulings of the presiding administrative law judge (judge) in the initial decision. We decline to pass on the final two rulings. We also deny a petition for rehearing [5], action on which had been deferred [6] pending resolution of the factual issues presented in the initial decision.

I. Background

The Texas-Louisiana Electric Cooperative, Inc. (Tex-La) filed on December 22, 1976, a petition to institute an investigation whether wholesale rates for electric power sales by Texas Power are subject to the jurisdiction of the Commission. In its petition, Tex-La alleged that:

(A) Tex-La purchases power from Texas Power;

(B) Texas Power obtains power from Denison Dam, a hydroelectric project operated by the Corps of Engineers;

(C) Denison Dam is located in Oklahoma and Texas;

(D) The power Texas Power receives from Denison Dam is transmitted across state lines; or,

(E) The power Texas Power receives from Denison Dam is commingled with power generated in Oklahoma.

Texas Power's answer asserted that:

The Commission has "recognized generally" the non-jurisdictional status of Texas Power, particularly in relation to the purchase of power from Denison Dam, in a series of orders over many years.[7]

Subsequent filings in the record [8] indicate that there are two generators at Denison Dam, and that the location of the generators, that is, whether one or both are in the state of Texas or Oklahoma, is in dispute.[9]

By order dated October 31, 1977, the Commission instituted an investigation, set the matter for hearing, and granted two petitions to intervene.[10] At a prehearing conference,[11] agreement was reached that if certain legal questions were answered, the evidentiary hearings might be expedited. Subsequently the Commission ordered [12] that upon briefing of the questions of law by the parties, the judge certify the questions to the Commission with his recommended initial decision.

II. Initial Decision

The initial decision contained a brief introductory statement of facts, as follows:

Tex-La Electric Cooperative, Inc. (Tex-La) purchases electricity for the use of its 14 member cooperative from Texas Power & Light Company (TP&L). TP&L, in turn, purchases electric power generated at the Denison Dam pursuant to an April 4, 1947 contract with the Southwestern Power Administration (SPA), an organizational unit of the Department of Energy. The Dam is owned and operated by the SPA. It spans the Red River, an interstate boundary between Texas and Oklahoma, and forms the eastern end of Lake Texoma. At present, TP&L's sales to Tex-La are subject to the jurisdiction of the Texas Public Utility Commission.

The Denison Dam was authorized by the Flood Control Act of 1938, ch. 795, 52 Stat. 1219. Downstream from the Dam, the Corps of Engineers constructed hydroelectric power facilities including two generating units owned and operated by the SPA. The contract between SPA and TP&L expressly provided that their systems will be operated in such a manner that power and energy will not flow from TP&L's system to points outside Texas or from points outside Texas into TP&L's system. [Footnotes omitted.]

The legal issues and rulings made by the initial decision were as follows:

1. *Where does interstate commerce, if any, commence with respect to the electrical energy sold by Texas Power & Light Company to Tex-La Electric Cooperative?*

Ruling: The generator, on completion of the generation process, is the source of any flow of electrical energy in interstate commerce. In this case, the points at which any interstate flow would commence are the generating units, not the dam structure itself.

2. *To what extent, if any, does the sale become subject to FERC jurisdiction because it "affects" interstate commerce without a showing that there has been interstate movement of the energy that is subject to the sale?*

Ruling: A showing that a sale affects interstate commerce is insufficient for jurisdiction to attach under Section 201 of the Federal Power Act; there must be proof of interstate movement of energy.

3. *Assuming a "Federal enclave" exists, under what statutory authority can the FERC assume jurisdiction over the sale in question?*

Ruling: The FERC has no statutory basis for assertion of jurisdiction over TP&L sales to Tex-La solely on the grounds that the electrical energy is generated and/or transmitted from a "federal enclave." [1] Jurisdiction over the sale or transmission of electrical energy from TP&L to Tex-La exists only if there is a showing that power moved from one state to any point outside the state; for purposes of that showing, a "federal enclave" is not to be given the same status as a state.

4. *Whether the diversion or alteration of the Red River between Texas and Oklahoma by the Corps of Engineers during the Construction of the Denison Dam changes, as a matter of law, the boundary line between Texas and Oklahoma?*

Ruling: A diversion or alteration of the Red River, as a matter of law, could have changed the Texas-Oklahoma boundary even though caused by the construction of the Denison Dam. Whether there has been a boundary change depends on resolution of the factual question as to whether the diversion or alteration was gradual and imperceptible.

5. *Whether electrical energy from a single Denison Dam generator which is transmitted simultaneously to Texas and Oklahoma is, as a matter of law, electrical energy generated in interstate commerce?*

6. *Whether electrical energy from the north and south units at Denison Dam*

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[3] Texas Power renders electric service to a population of approximately 2,264,000 in north central and east Texas. Its assets are approximately $2 billion.

[4] Following issuance of this opinion and order, the presiding judge will commence evidentiary hearings to resolve all remaining issues.

[5] Petition for rehearing of the Commission's order of October 31, 1977. The petition for rehearing was filed November 30, 1977.

[6] Commission Order, issued November 15, 1978.

[7] Citing: *Texas Power & Light Co.*, 4 F.P.C. 615 (1944); *U.S. Dept. of Interior, Southwestern Power Administration*, 39 F.P.C. 928 (1968); *Central Power & Light Co.* Docket No. E-9558, order dated July 21, 1976, order denying rehearing, dated September 17, 1976.

[8] See Initial Comments of Tex-La, filed March 4, 1977, and Answer of Texas Power, filed March 29, 1977.

[9] The Denison Dam lies on the Red River, whose south bank is the border between Texas and Oklahoma. Only one of the cases cited by Texas Power as recognizing its non-jurisdictional status (see footnote 7, *supra*) mentioned Denison Dam, *i.e.*, the Commission's 1968 decision. Implicit in that decision is the *assumption* that at least the south generator of Denison Dam is in Texas. However, the question whether both Denison Dam generators may be in Oklahoma has not been raised before as a grounds for assertion of Commission jurisdiction over Texas Power.

[10] One petition was filed by the Central and South West companies. The other petition was filed by the Cities of Altus, *et al.*

[11] On July 31, 1978.

[12] Order dated November 15, 1978.

[1] While it is outside the scope of this initial Decision to determine whether Denison Dam is a "federal enclave," it should be noted that the Constitution provides that a federal enclave will exist when Congress exercises federal sovereignty over land obtained from a state for purposes of erecting "Forts, Magazines, Arsenal, dock-yards, and other needful Buildings." U.S. CONST. art. 1, § 8, c. 17.

which is being transmitted simultaneously to Texas and Oklahoma is, as a matter of law, electrical energy generated in interstate commerce?

Ruling: Electrical energy from Denison Dam generator(s), which is transmitted simultaneously to Texas and Oklahoma, does not as a matter of law, constitute electrical energy generated in interstate commerce.

Jurisdiction will attach, however, on the basis of interstate transmission if there is a showing that electrical energy to the Texas and Oklahoma systems flowed into a bus between the two systems and then left the bus for an out-of-state destination as part of a channel of constant flow.

In addition, the judge made a ruling concerning the Flood Control Act of 1944. Tex-La maintained in its briefs on questions of law that the act should be the basis for voiding a provision of the contract between the Texas Power and the Southwest Power Administration. The contract provision[13] forbade the Southwest Power Administration from making any interconnections which would allow power from outside Texas to flow into the Texas Power System, or the reverse. The judge concluded that "consideration of matters arising out of Section 5 of the Flood Control Act of 1944 has been vested by statute in the Secretary of Energy,"[14] and that he was without authority to rule on the claim.

III. Discussion

A. Rulings No. 1–3

Texas Power, Tex-La, the Commission staff (staff), and intervenors Central and South West Companies (Central)[15] filed exceptions.

Tex-La and Central except to the first three rulings. However, the exceptions to these rulings do not raise issues which were not adequately discussed and disposed of in the initial decision. We therefore affirm and adopt the rulings of the judge as to these issues.

[13] Section 32 of April 4, 1947, contract.

[14] This function was later delegated first to the Administrator of the Economic Regulatory Administration, and then to the Assistant Secretary of Resource Applications in the Department of Energy. (Secretary of Energy delegation orders No. 0204–4, of October 1, 1977, and No. 0204–33 of December 21, 1978, respectively.)

[15] Central and South West Corporation is a registered holding company which controls West Texas Utilities Company, Central Power & Light Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company. The estimated population served is 3.5 million, roughly half of which is in Texas, while the remainder is in Oklahoma, Arkansas and Louisiana. The Texas population is mostly in the west central and southern portions of the state, with some in east Texas. Total assets are approximately $2.6 billion.

B. Ruling No. 4

No party excepts to the conclusion of the judge as to the fourth question, *i.e.*, that resolution of the boundary issue depends on determination of a factual question. However, the staff and Central[16] suggest that the judge's statement of the question should be modified.

The initial decision states that the factual question to be resolved is whether the diversion of alteration of the Red River during construction of the Denison Dam "was gradual and imperceptible."

As the staff points out,[17] the Supreme Court set forth the applicable guidelines for a determination of the boundary at the Red River, as follows:[18]

The boundary as it was in 1821, when the treaty became effective, is the boundary of today, subject to the right application of the doctrines of erosion and accretion and of avulsion to any intervening changes. Of those doctrines this Court recently said:

"It is settled beyond the possibility of dispute that where running streams are the boundaries between States, the same rule applies as between private proprietors, namely, that when the bed and channel are changed by the natural and gradual processes known as erosion and accretion, the boundary follows the varying course of the stream; while if the stream from any cause, natural or artificial, suddenly leaves its old bed and forms a new one, by the process known as an avulsion, the resulting change of channel works no change of boundary, which remains in the middle of the old channel." *Arkansas* v. *Tennessee*, 246 U.S. 158, 173.

Thus, the proper statement of the second sentence of the ruling of the initial decision as to the fourth question of law is as follows: "Whether there has been a boundary change depends on resolution of the factual question as to whether the diversion or alteration was as a result of erosion and accretion, or as a result of an avulsion." We affirm and adopt the ruling as modified.

Texas Power did not dispute the judge's conclusion that whether the boundary changed was a factual question. However, Texas Power did file an exception as to this issue. Texas Power claims that "that facts already available show" that the diversion in the river was an avulsion. Texas Power implies that a hearing is therefore unnecessary.

[16] See Central's Brief Opposing Exceptions, p. 5.

[17] Staff Initial Brief, p. 12.

[18] *Oklahoma* v. *Texas*, 260 U.S. 606, 636 (1923).

What the facts show is a question to be decided on the basis of the ensuing evidentiary hearing in this docket. The Texas Power exception is therefore denied.

C. Rulings No. 5 and 6

Questions 5 and 6 raise difficult issues. All parties excepted to some portion of the judge's ruling or discussion as to these questions.[19] The judge's discussion centers on complex issues concerning application of the Supreme Court's *Florida Power & Light* decision[20] to the facts in this case. The *Florida Power & Light* case dealt with Commission jurisdiction over transmission of electric energy in interstate commerce pursuant to section 201 of the Federal Power Act, as amended.[21]

Upon review of this portion of the initial decision, we conclude that consideration of these issues prior to determinations of fact requires ruling on several hypothetical alternatives, and is not appropriate. For example, the answers to both questions may vary, depending on whether either or both of the Denison Dam generators are in Oklahoma or Texas. Responding to questions 6 also may vary depending on whether or how the two generators are interconnected. There are neither findings nor stipulations as to these factual questions.

The appropriate procedure, at this point, is for the judge to proceed with evidentiary hearings, and then to deal with the specific legal questions which are raised in the context of his determinations of fact. We therefore decline to pass on the rulings in the initial decision as to questions 5 and 6.

D. Flood Control Act

Central filed a cursory exception to the judge's conclusion that the Commission is without authority to rule on issues arising under the provisions of the Flood Control Act of 1944. However, Central provided no substantiation for its contention. The judge's conclusion is properly substantiated, and we therefore reject Central's exception to it.[22]

[19] The discussion extended beyond explanation of the rationale for the ruling as to questions 5 and 6, and in effect dealt with two additional issues. The first of these was whether, once service commences which could be considered jurisdictional, passage of time affects subsequent assertion of regulatory authority. The other issue concerned whether an interstate flow of electric energy was required to be part of a "channel of constant flow" in order for jurisdiction to attach.

[20] *F.P.C.* v. *Florida Power & Light Co.*, 404 U.S. 453 (1972).

[21] 16 U.S.C. § 824.

[22] The judge, in passing, recommended that the Commission refer this matter to the Department of

Footnotes continued on next page

IV. Petition for Rehearing

Tex-La filed a petition for rehearing of the Commission's order which initiated these proceedings.[23] The petition contended that the Commission's order erred in concluding that an engineering and scientific test is the proper means of determining Commission jurisdiction under section 201 of the Federal Power Act. The chief argument made in support of its contention was that under section 201 a showing that a sale of electric energy affects interstate commerce is sufficient to establish jurisdiction.

The judge's ruling and discussion of question 2 disposes of this argument.[24]

We find nothing in Tex-La's remaining arguments for rehearing which warrants modification of our order of October 31, 1977. We will therefore deny Tex-La's petition for rehearing.

The Commission Orders: (A) The initial decision of February 1, 1979, in this docket is affirmed, except as modified in this order, and all exceptions thereto not granted by this order are denied.

(B) The Secretary shall cause this order to be published in the **Federal Register** to give all interested persons notice that the location of the boundary between Texas and Oklahoma in the vicinity of Denison Dam has been brough into issue, and to give any persons interested in the outcome of that issue an opportunity to participate in the proceeding as intervenors.

(C) The Texas-Louisiana Electric Cooperative, Inc., Motion for Rehearing, in this docket, filed November 30, 1977, is denied.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33736 Filed 10-30-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. SA80-4]

United Gas Pipe Line Co.; Notice of Application for Adjustment

October 18, 1979.

Take notice that on October 9, 1979, United Gas Pipe Line Company (United) filed in Docket No. SA80-4 an application for an adjustment pursuant to Section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) and Section 1.41 of the Commission's Rules of Practice and Procedure (18 CFR § 1.41), requesting that the deadlines applicable to United under Section 281.204 of the Commission's Regulations under the NGPA be extended until such time as the Commission has considered and taken action on United's proposed curtailment settlement plan filed on August 31, 1979, in United's curtailment proceeding in Docket Nos. RP71-29 and RP71-120 (Phase II). United also requests interim relief pursuant to Section 1.41(m) of the Commission's Rules of Practice and Procedure (18 CFR § 1.41(m)) deferring the same dates pending final determination of this application.

Section 281.204 of the Commission's Regulations requires the filing of tariff sheets regarding curtailment plans, the filing of idices of entitlements regarding high-priority and essential agricultural users and the establishment of a Data Verification Committee. United states that it is currently operating under a curtailment plan which it was directed to use by the United States Court of Appeals for the Fifth Circuit, *Southern Natural Gas Co.* v. *FPC*, 543 F.2d 530 (5th Cir. 1976). United states that on August 31, 1979, it filed with the Commission a proposed curtailment plan which is supported by the majority of its customers and is designed, *inter alia,* to protect high-priority and essential agricultural users consistent with Section 401 of the NGPA. United also states that if the requested relief is granted, high-priority users and essential agricultural users would be fully protected by the curtailment tariff currently in effect of United's system during the Commission's consideration of the proposed settlement and that no opponents of the proposed settlement would be disadvantaged by the requested relief.

United states that meeting the time limits set in Section 281.204 would work a substantial hardship on United and an inequity on United and its customers. United alleges that it has not yet received the materials from a number of its customers necessary for compilation of the filings required under such regulation, that the analysis of the submissions received to date is extremely difficult and time-consuming and that the construction of an index of entitlements based on the data which have been received would seriously interfere with, or make entirely impossible, United's compliance with the schedule set for consideration of the proposed settlement.

Any person desiring to participate in this adjustment proceeding shall file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a petition to intervene in accordance with the provisions of Section 1.41 of the Commission's Rules of Practice and Procedure (18 CFR § 1.41). All petitions to intervene must be filed by November 15, 1979.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-33737 Filed 10-30-79; 8:45 am]

BILLING CODE 6450-01-M

Southeastern Power Administration

Intent To Formulate Power Marketing Policy; Kerr-Philpott System of Projects

AGENCY: Southeastern Power Administration (SEPA), Department of Energy.

ACTION: Intent to formulate policy for Kerr-Philpott System of Projects.

SUMMARY: Pursuant to Procedure for Public Participation in the Formulation of Marketing Policy published in the **Federal Register** of July 6, 1978, 43 FR 29186, SEPA intends to develop new written marketing policy for future disposition of power from its Kerr-Philpott System of Projects.

Existing power marketing policy for SEPA's Kerr-Philpott System is reflected in contracts involving such system power maintained in its headquarters offices. Such policy will be completely reviewed.

The proposal will address to the extent feasible those policy elements necessary to carry out the provisions of Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s. Proposals and recommendations for consideration in formulating the proposed new written marketing policy are hereby solicited as are requests for further information or consultation.

DATES: All submissions or requests should be made as soon as possible but not later than January 5, 1980.

ADDRESSES: Five copies of written proposals or recommendations should be submitted to the Administrator, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635, (404) 283-3261. Further inquiries should be made to the same official.

SUPPLEMENTARY INFORMATION: The Kerr-Philpott System consists of the John H. Kerr and Philpott projects which are integrated through the facilities of the Virginia Electric and Power

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Footnotes continued from last page

Energy for such action as might be deemed appropriate. The parties are free to raise the issue before the Assistant Secretary of Resource Applications in the Department of Energy (see footnote 14 *supra*) if they desire, and are the appropriate agents for such an initiative.

[23] See footnote 5, *supra.*

[24] Action on the petition for rehearing was deferred specifically because this argument was under consideration by the judge in the phase I proceeding herein.

Company (VEPCO). Power is presently sold in the VEPCO area within a radius of 150 miles of the Kerr power station and in the Carolina Power & Light Company (CP&L) area within a radius of 165 miles of a point on the Va.-N.C. state line where CP&L's Kerr Dam-Henderson line interconnects with the VEPCO System. Contracts involving the power will terminate on June 30, 1980.

SEPA presently markets power from the Kerr-Philpott System to 33 preference customers and the two Companies. Other preferred agencies both within and without the presently established marketing area have expressed interest in purchasing power from SEPA.

Issues which SEPA expects to consider in developing the system policy include, but are not limited to, the following: (1) determination of marketing area, (2) allocation of power among area customers, (3) utilization of area utility systems for power integration, firming, wheeling, and other essential relationships, (4) handling of resale rates and (5) conservation measures.

Following development of SEPA's proposed marketing policy for the Kerr-Philpott System, further public participation as provided in the Procedure referenced in the Summary section of this Notice will be invited and resulting comments will be fully considered prior to issuance of the final marketing policy.

Issued in Elberton, Georgia, October 19, 1979.

Harry F. Wright,

Administrator.

[FR Doc. 79-33693 Filed 10-30-79; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 78-32]

Pacific Westbound Conference—Equalization and Absorption Rules and Practices; Notice of Availability of Draft Environmental Impact Statement

Upon completion of a Draft Environmental Impact Statement (DEIS), the Federal Maritime Commission's Office of Environmental Analysis (OEA) has identified the environmental consequences of the Commission's final resolution in this proceeding. The DEIS indicates that approval of PWC's substituted service would use less fuel and produce less air pollution than if the service were disapproved. The Environmental analysis is required by section 102(2)(C) of the National environmental Policy Act of 1969.

Docket No. 78-32 is an investigation to determine whether Article 3 of PWC's basic agreement No. 57 permits equalization and absorption of motor carrier inland freight rates and charges; whether the alleged equalization and absorption practices of PWC members violate section 205 of the Merchant Marine Act, 1936, and sections 15, 16 and 17 of the Shipping Act, 1916; whether PWC Freight Tariff No. 3, Rule 16, violates section 205 of the Merchant Marine Act, 1936, and sections 15, 16 and 17 of the Shipping Act, 1916, by permitting equalization and absorption of cargo away from the Port of Portland; and whether PWC Freight Tariff No. 3, Rule 16 permits cargo being equalized and absorbed to move on Interstate Commerce Commission exempt carriers.

The OEA's conclusion is contained in the DEIS which is available on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725. Interested parties may comment on the DEIS within 45 days following publication in the **Federal Register** of the Environmental Protection Agency's notice of availability. Such comments are to be filed with the Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573. If a party fails to comment within this period, it will be presumed that the party has no comment to make. Comments on the DEIS should be limited to discussion of the environmental impact of the action and the alternative actions.

Copies of comments or exceptions to the DEIS and copies of all future exhibits, briefs, exceptions, correspondence and pleadings filed in this proceeding shall be served on Chief, Office of Environmental Analysis, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573.

Francis C. Hurney,

Secretary.

[FR Doc. 33614 Filed 10-30-79 8:45 am]

BILLING CODE 6730-01-M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on October 25, 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 the 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 FTC request 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 request, comments (in triplicate) must be received on or before November 19, 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.

The FTC requests clearance of a new, single-time, letter questionnaire which will be used to identify recent buyers and sellers of homes. The questionnaire will be sent to consumers who are mail panel members of the National Family Opinion, Inc. and who have reported a change of address within the past three months. The FTC estimates that potential respondents will number approximately 4,200 and that response time will average 6 minutes per questionnaire.

Norman F. Heyl,

Regulatory Reports, Review Officer.

[FR Doc. 79-33612 Filed 10-30-79; 8:45 am]

BILLING CODE 1610-01-M

GENERAL SERVICES ADMINISTRATION

[E-79-19]

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 Georgia Public Service Commission 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

Georgia Public Service Commission involving the application of the Atlanta Gas Light 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: October 18, 1979.

R.G. Freeman III,

Administrator of General Services.

[FR Doc. 79-33603 Filed 10-30-79; 8:45 am]

BILLING CODE 6820-AM-M

[E-79-18]

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 Kansas Corporation 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 Kansas Corporation Commission involving the application of the Kansas Gas Electric 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: October 17, 1979.

R. G. Freeman III,

Administrator of General Services.

[FR Doc. 79-33604 Filed 10-30-79; 8:45 am]

BILLING CODE 6820-AM-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Services Administration

National Advisory Council of Migrant Health; Rechartering

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463 (5 U.S.C. Appendix I), the Health Services Administration announces the rechartering by the Secretary, HEW, on September 18, 1979, of the following advisory Council:

Council and Termination Date

National Advisory Council on Migrant Health.—Continuing.

Authority for this Council is continuing and a Charter will be filed no later than October 31, 1981, in accordance with section 14(b)(2) of Pub. L. 92-463.

Dated: October 22, 1979.

William H. Aspden, Jr.,

Associate Administrator for Management.

[FR Doc. 79-33602 Filed 10-30-79; 8:45 am]

BILLING CODE 4110-84-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-79-956]

Announcement of Fund Disbursement for the Congregate Housing Services Program for the Elderly and Non-Elderly Handicapped; Fiscal Year 1979

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of fund disbursement.

SUMMARY: HUD is announcing the disbursement of Fiscal year (FY) 1979 funds for the Congregate Housing Services Program, authorized under Title IV of the Housing and Community Development Amendments of 1978 (92 Stat. 2104, 42 USC 8001). Grant assistance will be made available for use by local Public Housing Agencies (PHAs) and nonprofit Section 202 borrowers to provide meals and other services to elderly and non-elderly handicapped project residents who require such services to remain independent. Potential awardees were chosen from a list of nominees made by HUD Regional Office staff.

FOR FURTHER INFORMATION CONTACT: The HUD Housing Management Officer or the Neighborhood and Community Affairs Representative in the Area Office in your jurisdiction. To determine the office which serves your jurisdiction, write or telephone the Office of Public Housing and Indian Programs, Department of Housing and Urban Development, 451-7th Street S.W., Washington, D.C. 20410; telephone (202) 755-2257. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Congress has appropriated $10 million for a three-year pilot program. Ten percent (10 percent) of this amount is being reserved by headquarters for any necessary adjustments of grant awards made from FY 1979 funds due to inflationary impact or other factors. Therefore, $9 million is available to applicants to be spent at an approximate rate of $3 million per year in FYs 1980, 1981 and 1982, allocated as follows:

1. About $7.2 million (80 percent) for services in existing housing projects and $1.8 million (20 percent) for service commitments in FY 1979 new construction: and

2. About $7.65 million (85 percent) for services to the elderly handicapped and $1.35 million (15 percent) for the non-elderly handicapped.

The overall division of available FY 1979 funding will be about $4.5 million for PHAs and $4.5 million for nonprofit Section 202 borrowers. Headquarters has invited 140 PHAs and nonprofit Section 202 borrowers to apply for CHSP funds in a limited competition. The selection of the 140 applicants was based on nominations from each Regional Office of 12 existing projects and two FY 1979 new construction projects. Criteria for nomination were: past experience and demonstrated competence in providing housing and services to the elderly and non-elderly handicapped.

Applications from selected existing projects are due at HUD Headquarters on or before October 19, 1979. Applications from selected new construction applicants are due on or before October 31, 1979. Selection by HUD headquarters of approximately 50-70 grantees is based on the allocation formulas indicated above, plus a judgment of the applicants' ability to carry out the program promptly and successfully. The awards will be announced by the Secretary of HUD by November 30, 1979.

Issued at Washington, D.C., October 24, 1979.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 79-33618 Filed 10-30-79; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Nisqually Indian Reservation, Wash.; Proclaiming Certain Lands as Part of Indian Reservation

October 23, 1979.

This notice is published in the exercise of authority delegated to the Assistant Secretary—Indian Affairs under 209 DM 8. On July 10, 1979, pursuant to authority contained in Section 7 of the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467) which was delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1, the following described lands located in Thurston County, Washington, were added to and made a part of the Nisqually Indian Reservation.

Parcel No. I

That portion of Government Lots 5 and 6 of section 34, Township 18 North, Range 1 East, W. M., lying east of the west 1,620 ft. (as measured at right angles to the west line of Government Lot 5) and northerly of the north right-of-way line of Secondary State Highway No. 5–1. 13.25 acres, more or less.

Parcel No. II

The east 220 feet of the west 1,320 feet (as measured at right angles to the west line of Government Lot 5), of the following described property:

That portion of Government Lot 5 (outside the Nisqually Indian Reservation), and the northwest quarter of the southwest quarter of Section 34, Township 18 North, Range 1 East, W. M., situated northerly of the north right-of-way line of Secondary State Highway No. 5–1, and

That portion of the east 220 feet of the west 1,100 feet (as measured at right angles to the west line of Government Lot 5), of Government Lot 5 (outside the Nisqually Indian Reservation), and the northwest quarter of the southwest quarter of Section 34 of Township 18 North, Range 1 East, W. M., situated northerly of north right-of-way line of Secondary State No. 5–1, described as follows:

Beginning at a point on the northerly right-of-way line of said Highway that is south 60°51'97" east 1055.40 feet along said right-of-way line from the west line of said Government Lot 5; thence north 29°08'53" east 353.65 feet to the easterly line of the above described tract; thence south 01°50'21" west along said easterly line 398.01 feet to the northerly line of said right-of-way; thence north 60°51'97" west 182.60 feet to the point of beginning. 8.05 acres, more or less.

Parcel No. III

The east 300 feet of the west 1,620 feet (as measured at right angle to the west line of Government Lot 5), of the following described property:

That portion of Government Lots 5 and 6 (outside the Nisqually Indian Reservation), and the northwest quarter of the southwest quarter of section 34, Township 18 North, Range 1 East of the Willamette Meridian, situated northerly of the north right-of-way line of Secondary State Highway No. 5–1. 7.90 acres, more or less.

Parcel No. IV

Parcel A

The east 220 feet of the west 1,100 feet (as measured at right angles to the west line of Government Lot 5) of the following described property:

That portion of Government Lot 5 (outside the Nisqually Indian Reservation), and the northwest quarter of the southwest quarter of Section 34 of Township 18 North, Range 1 East, W. M., situated northerly of the north right-of-way line of Secondary State Highway No. 5–1; except the following described property:

Beginning at a point on the northerly right-of-way line of said highway that is south 60°51'07" east 1055.40 feet along said right-of-way line from the west line of said Government Lot 5; thence north 29°08'53" east 353.65 feet to the easterly line of the above described main tract; thence south 01°50'21" west along said east line 398.01 feet to the northerly line of said right-of-way; thence north 60°51'07" west 182.60 feet to the point of beginning.

Parcel B

The east 220 feet of the west 880 feet (as measured at right angles to the west line of Government Lot 5), of the following described property:

That portion of Government Lot 5 (outside the Nisqually Indian Reservation), and the northwest quarter of the southwest quarter of Section 34, Township 19 North, Range 1 East of the Willamette Meridian, Thurston County, Washington, situated northerly of the north right-of-way line of Secondary State Highway No. 5–1. 15.51 acres, more or less.

Rick Lavis,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 79–33665 Filed 10–30–79; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

Colorado and Wyoming; Intent To Rank Tracts for the Proposed Leasing of Federal Coal in the Green River-Hams Fork Coal Production Region

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Ranking of Tracts for Proposed Leasing of Federal Coal.

SUMMARY: This notice advises the public that, pursuant to 43 CFR 3420.4–4, the regional coal team intends to rank Federal coal tracts in the Green River-Hams Fork Coal Production Region of Colorado and Wyoming for possible leasing beginning in January 1981 and for other coal management purposes.

Based upon the expressions of interest received from industry, 11 tracts in Colorado, and five tracts in Wyoming were delineated. All 16 tracts have been analyzed on a site-specific basis.

The regional coal team will rank these tracts on the basis of high, medium, and low desirability based upon three categories of considerations. These categories include coal economics, impacts upon the natural environment, and socio-economic impacts. The regional coal team will determine the emphasis to be placed on each of these components and sub-components.

After the tracts have been ranked, the regional coal team will select, on a preliminary basis, tracts for possible leasing to meet the federal coal leasing target which will be decided by the Secretary of the Interior.

The preliminary selected tracts will then be analyzed on a cumulative basis. This will be followed by final selection of the tracts to be offered for competitive sale. These final selections and the accompanying analysis will be considered in a regional coal environmental impact statement (EIS).

The public is invited to participate in the ranking process by providing written comments as to which factors should be considered by the regional coal team in their ranking of the tracts.

DATES: Written comments must be received at the address given below by 12:00 noon on November 13, 1979. The regional coal team will convene to rank the tracts on November 14, 1979.

ADDRESSES: Comments should be addresssed to: Gary J. Wicks, Utah State Director, Bureau of Land Management, Chairman, Regional Coal Team, University Club Building, 136 South Temple, Salt Lake City, Utah 84111.

FOR FURTHER INFORMATION CONTACT: Gary J. Wicks (801) 524–5311.

SUPPLEMENTAL INFORMATION: A call for expressions of leasing interest in coal in the Green River-Hams Fork Region was published in the **Federal Register** on July 20, 1979 (44 FR 42788 and 44 FR 42790). Tracts were delineated on the basis of a presumed annual production rate and the coal reserves at the approximate locations of the expressions of interest.

The following preliminary tracts that have been delineated will be ranked and considered for possible leasing in 1981. All acreages and tonnages are preliminary and are subject to change.

Tract name	General location	Approximate acreage	Million tons of coal in-place
COLORADO			
1. Bell rock	About 8 miles southwest of Craig, CO., adjacent to the existing Empire Energy underground mine.	434	42.00
2. Danforth Hills I	About 13 miles north-northeast of Meeker, CO., adjacent to the Colowymo mine.	876	51.60
3. Danforth Hills II	Along the Moffat-Rio Blanco County line, 13 miles north-northeast of Meeker, CO.	2,455	151.71
4. Danforth Hills III	Along the Moffat-Rio Blanco County line, 13 miles North-Northeast of Meeker, CO.	2,107	125.53
5. Grassy Creek III	About 10 miles southeast of Hayden, CO., southwest of Grassy Gap.	580	9.00
6. Hayden Gulch	West of Hayden Gulch about 10 miles south-southwest of Hayden, CO.	5,860	97.27
7. Horse Gulch	About 15 miles west-southwest of Craig, CO, north of the Yampa River.	4,400	4.00
8. Iles Mountain	On the north slope of Iles Mountain about 12 miles southwest of Craig, CO.	5,240	94.33
9. Lay	About 20 miles west of Craig, CO and 4 miles north of Lay	12,920	90.50
10. Pinnacle	About 15 miles southwest of Steamboat Springs, CO adjacent to the Energy Fuels mine.	350	1.10
11. Williams Fork Mountains	In the Williams Fork Mountains about 15 miles southeast of Craig, CO.	15,893	46.46
WYOMING			
1. China	25 to 31 miles southwest of Rawlins, WY, 4 to 9 miles east of highway 789, north of Doty Mountain.	3,270	139.30
2. Medicine Bow	10 to 16 miles northwest of Hanna, WY, east of Seminoe Reservoir.	15,200	80.70
3. Red Rim	Extends from south of I-80 about 8 miles west of Rawlins for about 18 miles southwest.	14,000	50.90
4. Rosebud	About 6 to 8 miles northeast of Hanna, WY	4,960	18.26
5. Seminoe II	Extends due north of Hanna, WY, over a distance of 7 miles and is 2 to 4 miles wide.	10,840	29.30

The regional coal team will rank the tracts based upon the data contained in the tract delineation report, the social-economic profile, and the site-specific environmental analysis report, which will have been prepared for each tract prior to the ranking process, together with other considerations. These reports can be reviewed in the Colorado and Wyoming State Offices of the BLM in Denver and Cheyenne, respectively.

The three ranking classes will be those of high, medium, and low desirability for leasing. The three major categories of consideration for the ranking of the tracts will be coal economics, impacts upon the natural environment, and the social and economic impacts that would be generated if the tracts were leased and mined.

These major categories may be further divided into subfactors such as air quality, tons of coal mined, population increases, etc. These subfactors and their relative emphasis or importance will be identified by the regional coal team as part of their deliberations.

The recommendations of the regional coal team in ranking these tracts will be based upon consultation with Federal and state agencies, the views of the public as voiced at the EIS scoping meetings, comments received in answer to this announcement, and other considerations such as Department of the Interior and Bureau of Land Management guidance.

During the ranking process, the regional coal team may modify the tract boundaries to reflect identified concerns. They may also defer the ranking of one or more tracts if they determine that generally insufficient data are available.

Upon the completion of the ranking process, the regional coal team will select tracts for possible competitive lease sale beginning in 1981 and will develop a lease sale schedule for the selected tracts. Generally, the tracts would be selected from those in the high desirability range, followed by those in the medium desirability group. The low desirability tracts would be the least likely to be selected, based upon the categories considered. Special conditions or factors may exist, however, that would warrant the selection of a tract that was considered to be of medium or even low desirability.

Tracts will be selected to meet or exceed the regional Federal coal leasing target set by the Secretary of the Interior.

Once the tracts have been selected and one or more acceptable tract combinations have been identified, the selected tracts and alternate combinations will be analyzed for their individual and cumulative impacts as part of an environmental impact statement.

DATE, TIME AND LOCATION OF SESSIONS: The regional coal team will convene for the purpose of ranking the tracts previously identified on November 14, 1979, at 9:00 a.m. in the Geological Survey's room 412, Building 85, Denver Federal Center, West 6th Avenue and Kipling, Denver, Colorado. An additional ranking meeting will be held November 28, 1979, and, if needed, on November 29, 1979, at the same location.

The meeting may be observed by the public but no public participation will be permitted.

Written comments concerning factors to be considered in the ranking process will be accepted until 12 noon on November 13, 1979.

Dated: October 25, 1979.

Arnold E. Petty,

Acting Associate Director.

[FR Doc. 79-33650 Filed 10-30-79; 8:45 am]

BILLING CODE 4310-84-M

[OR 7546]

Oregon; Order Providing for Opening of Public Lands

1. By order dated July 18, 1972, the Federal Energy Regulatory Commission vacated the land withdrawal in its entirety for Power Project No. 470 of January 4, 1924, as to the following described lands:

Willamette Meridian, Oregon

Deschutes National Forest

T. 22 S., R. 8 E.,
Sec. 11, SE¼NE¼ and NE¼SE¼;
Sec. 12, S½NW¼, N½SW¼, N½SE¼, W½SW¼SE¼, and NE¼SE¼SE¼.
T. 21 S., R. 9 E.,
Sec. 23, N½SE¼, N½SW¼, and SW¼SW¼;
Sec. 26, NW¼NW¼;
Sec. 27, NE¼, E½SW¼, and NW¼SE¼;
Sec. 33, E½SE¼ and SW¼SE¼;
Sec. 34, W½NE¼, NW¼, and NW¼SW¼.
T. 22, S., R. 9 E.,
Sec. 4, Lots 1, 2, 3, SW¼NE¼, SE¼NW¼, and N½SW¼;
Sec. 7, Lots 2, 3, 5, SE¼NW¼, NE¼SW¼, and W½E½SW¼SW¼.

The areas described aggregate 1,737.72 acres in Deschutes County.

2. The SW¼NE¼ of Sec. 4, T. 22, S., R. 9 E., is withdrawn for the Deschutes Reclamation Project by Secretary's Order of February 17, 1939, and remains segregated from all forms of appropriations under the public laws, including the United States mining laws.

3. Lots 2, 3, and 5, SE¼NW¼, NE¼SW¼, and W½E½SW¼SW¼ of Sec. 7, T. 22 S., R. 9 E., are withdrawn for the Deschutes Reclamation Project by Secretary's Order of February 13, 1936, and remain segregated from all forms of appropriation under the public land laws, including the United States mining laws.

4. Under the authority delegated by Bureau of Land Management Order No. 701 dated July 23, 1964 (29 FR 10526), as amended, it is ordered that at 10:00 a.m. on November 28, 1979, the lands described in paragraph 1 (except as provided in paragraphs 2 and 3 hereof) shall be open to such forms of appropriation as may be made of national forest lands, including the United States mining laws, subject to valid existing rights, the provision of existing withdrawals, and the requirements of applicable law.

5. The lands described in paragraph 1 have been and remain open to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Dated: October 23, 1979.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-33666 Filed 10-30-79; 8:45 am]

BILLING CODE 4310-84-M

[U-44143]

Utah; Application

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), Mountain Fuel Supply Company has applied for a 2⅞" natural gas pipeline right-of-way across the following lands:

Salt Lake Meridian, Utah

T. 7 S., R. 24 E.,
Sec. 25.

The needed right-of-way is a portion of applicant's gas gathering system located in Uintah 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 Vernal District Manager, Bureau of Land Management, P.O. Box F, Vernal, Utah 84078.

Dell T. Waddoups,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-33667 Filed 10-30-79; 8:45 am]

BILLING CODE 4310-84-M

Beaufort Sea Outer Continental Shelf (Tentative Sale No. 71); Call for Nominations of and Comments on Areas for Oil and Gas Leasing

Purpose of Call

Section 102 of the Outer Continental Shelf Lands Act Amendments of 1978 describes the purposes of that Act. One of the purposes is to establish policies and procedures intended to expedite exploration and development of the Outer Continental Shelf (OCS) in order to achieve national economic and energy policy goals, assure national security, reduce dependence on foreign sources, and maintain a favorable balance of payments in world trade. Equally important purposes include balancing energy resources development with the protection of the human, marine, and coastal environments, as well as, assuring State and local governments the opportunity to review and comment on decisions relating to OCS activities. To assist the Secretary of the Interior in carrying out these purposes, and pursuant to 43 CFR 3313.1, nominations are hereby requested for areas on the Beaufort Sea for possible oil and gas leasing under the Outer Continental Shelf Lands Act, (43 U.S.C. 1331–1343), as amended. Pursuant to 43 CFR 3314.1, the Secretary is also requesting comments on the possible environmental impacts and potential use conflicts in specified areas.

These comments will be part of an information gathering process to assemble current information on local environmental conditions within the call area that other impacts besides the realization of hydrocarbon potential can be assessed.

Description of the Area

The area of the Call for Nominations and Comments for the Beaufort Sea extends from 3 miles north of Point Barrow eastward to a line east of longitude 141° W. The area extends from the 3-mile territorial waters out to approximately 200 meters.

OCS Official Protraction Diagram

1. NR 4–2: Barrow
2. NR 5–1: Dease Inlet
3. NR 5–2:
4. NR 5–3: Teshekpuk
5. NR 5–4: Harrison Bay
6. NR 6–1:
7. NR 6–2:
8. NR 6–3: Beechey Point
9. NR 6–4: Flaxman Island
10. NR 7–3: Barter Island
11. NR 7–4:
12. NR 7–5: Demarcation Point
13. NR 7–6:
14. NS 5–7:

These blocks may be found on the above Outer Continental Shelf Official Protraction Diagrams, which may be purchased for $2.00 each from the Manager, Alaska OCS Office, Bureau of Land Management, P.O. Box 1159, Anchorage, Alaska 99510. The street address is 620 East 10th Avenue, Anchorage, Alaska. Notice is hereby given that, effective with this publication, OCS Official Protraction Diagrams, NR 7–4, NR 7–5, and NR 7–6 are available, for information only, in the Outer Continental Shelf Office, Bureau of Land Management, Anchorage, Alaska. In accordance with Title 43, Code of Federal Regulations, these protraction diagrams are the basic record for the description of mineral and oil and gas lease offers in the geographic area they represent.

Nominations will be considered for any or all of that part of the following blocks located in the OCS mapped areas listed below.

1. NR 4–2, Barrow: All blocks seaward of the three geographical mile line east of a line beginning at the southwest corner of block 547 (the intersection of x coordinate 586 400 with the three geographical mile line), thence northward to the northwest corner of block 19.

2. NS 5–7: All blocks south and west of a line beginning at the northwest corner of block 661, thence eastward to the northwest corner of block 662, thence southward to the northeast corner of block 838, thence eastward to the northeast corner of block 839, thence southward to the northeast corner of block 883, thence eastward to the northeast corner of block 884, thence southward to the southeast corner of block 972.

3. NR 5–1, Dease Inlet: All blocks seaward of the three geographical mile line.

4. NR 5–3, Teshekpuk: All blocks seaward of the three geographical mile line.

5. NR 5–2: All blocks south and west of a line beginning at the northwest corner of block 133, thence eastward to the northeast corner of block 136, thence southward to the northeast corner of block 400, thence eastward to the northeast corner of block 411, thence southward to the northeast corner of block 675, thence eastward to northeast corner of block 683.

6. NR 5–4, Harrison Bay: All blocks seaward of the three geographical mile line.

7. NR 6–1: All blocks south and west of a line beginning at the northwest corner of block 726, thence eastward to the northeast corner of block 737, thence southward to the northeast corner of

block 869, thence eastward to the northeast corner of block 880.

8. NR 6–3, Beechey Point: All blocks seaward of the three geographical mile line and excluding those blocks in the Federal/State Joint Beaufort Sea oil and gas lease sale.

9. NR 6–2: blocks 969, 970, and 971.

10. NR 6–4, Flaxman Island: All blocks seaward of the three geographical mile line and excluding those blocks in the Federal/State Joint Beaufort Sea oil and gas lease sale.

11. NR 7–3, Barter Island: All blocks south of a line beginning at the northwest corner of block 329, thence eastward to the northeast corner of block 352.

12. NR 7–5, Demarcation Point: All blocks seaward of the three geographical mile line.

13. NR 7–4: All blocks south of a line beginning at the northwest corner of blocks 309, thence eastward to the northeast corner of block 316.

14. NR 7–6: All blocks seaward of the three geographical mile line.

Instructions on Call

Nominations must be described in reference to the Outer Continental Shelf Leasing Maps or Official Protraction Diagrams prepared by the Bureau of Land Management (BLM), Department of the Interior and referred to above. Only whole blocks or properly described subdivisions thereof, not less than one-quarter of a block, may be nominated. Although individual company nominations are considered to be privileged and confidential information, the names of persons or entities submitting nominations or comments will be of public record.

Those nominating twelve blocks or more are requested to arrange their nominations into three groups according to the priority of their interest.

In addition to nominations, we are seeking comments about particular geoligical, environmental, biological, archaeological, socioeconomic conditions or problems, or other information which might bear upon potential leasing and development of particular blocks where available.

Comments should be as specific as possible in identifying specific blocks or areas which should receive special concern and analysis in any leasing decision.

Nominations and comments must be submitted not later than December 31, 1979, in envelopes labeled "Nominations of Tracts for Leasing in the Outer Continential Shelf—Beaufort Sea" or "Comments on Leasing in the Outer Continental Shelf—Beaufort Sea" as appropriate. They must be submitted to the Director, Attention 540, Bureau of Land Management, Department of the Interior, Washington, D.C. 20240. Copies must be sent to the Assistant Conservation Manager, U.S. Geological Survey, P.O. Box 259, Anchorage, Alaska 99510, and to the Manager, Alaska Outer Continental Shelf Office, Bureau of Land Management, at the address cited above.

Use of Information From Call

Nominations will be evaluated and used along with other biological and geophysical information to determine what, if any, tracts should be tentatively selected for further environmental analysis pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and the OCS Lands Act, as amended. Generally, because of limits on the geographical scope of areas which can be successfully planned for a single sale, only a portion of the tracts nominated are selected for further environmental analysis and possible leasing.

Comments will be considered along with other relevant information available to the Secretary to determine what tracts should be designated for further environmental analysis and study. As a general rule, tracts which are believed to have potential for the production of hydrocarbons are not excluded from further environmental study unless the Secretary has sufficient information to conclude that it is not possible for those tracts to be developed in an environmentally safe manner.

In any event, selection of tracts for further environmental anaylses does not insure that the tracts will be subsequently offered for lease or that they will be deleted for environmental or use conflicts. It simply insures that more information will be available when that decision is made. In performing additional environmental analyses leading to a sale decision, the Department will take into account comments received as it determines particular areas and issues for attention.

Final selection of tracts for competitive bidding will be made only at a later date after compliance with established Departmental procedures and all requirements of the National Environmental Policy Act of 1969. Notice of any tracts finally selected for competitive bidding will be published in the **Federal Register** stating the conditions and terms for leasing and the place, date, and hour at which bids will be received and opened.

Ed Hastey,

Associate Director, Bureau of Land Management.

Approved: October 26, 1979.

Larry E. Meierotto,

Assistant Secretary of the Interior.

[FR Doc. 79-33741 Filed 10-30-79; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF THE INTERIOR

National Park Service

National Seashore; Publication of a Revised Boundary Map, Cape Cod National Seashore, Wellfleet, Mass.

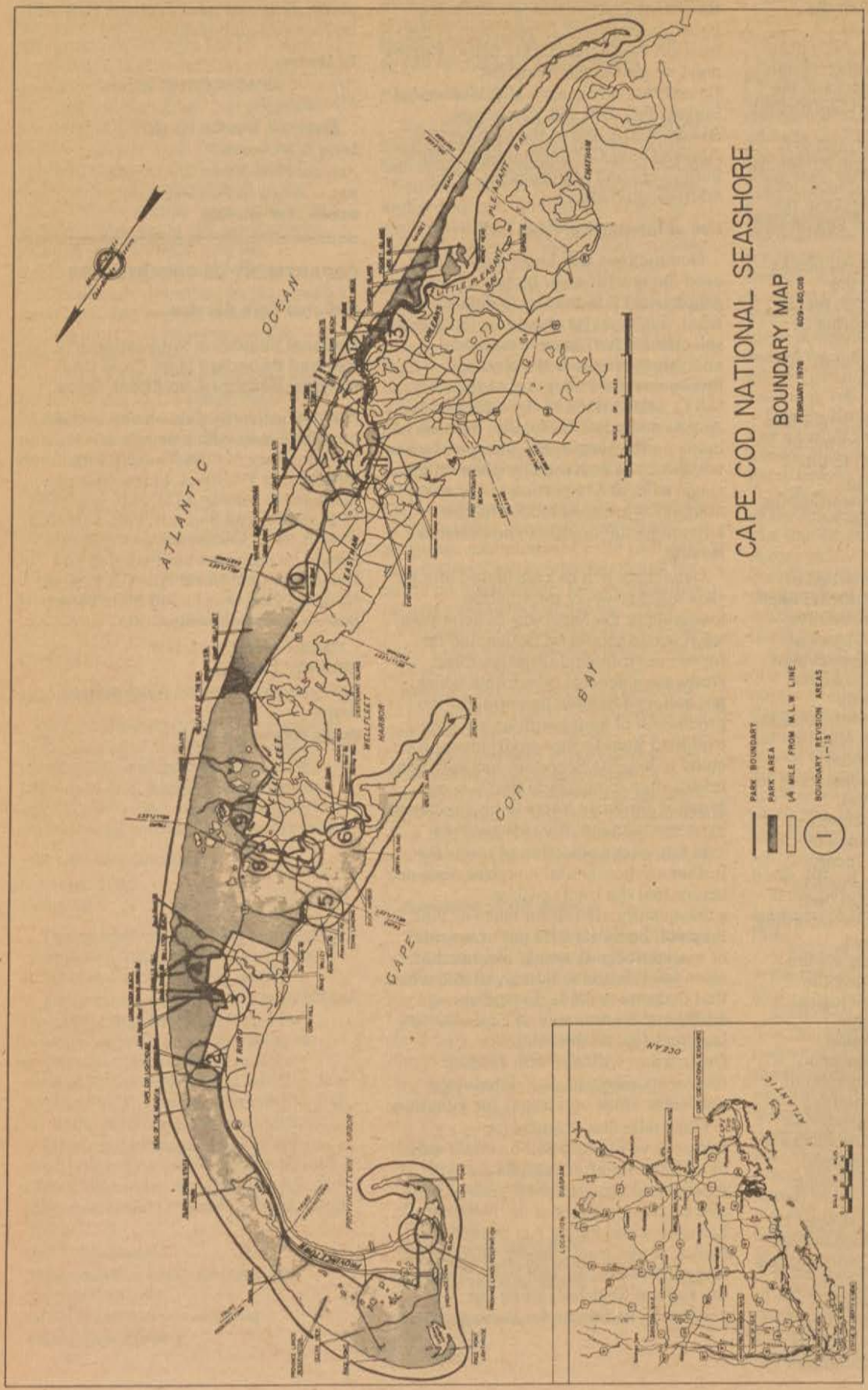
There is hereby published a revised boundary map which details revisions to the boundary of Cape Cod National Seashore in Wellfleet, Massachusetts, pursuant to section 3 (b), Pub. L. 87–126, 75 Stat. 284, and Sec. 301, Pub. L. 95–625, 92 Stat. 3467. Comments on the map should be addressed to Planning and Design Section, North Atlantic Region, National Park Service, 15 State Street, Boston, Massachusetts 02109.

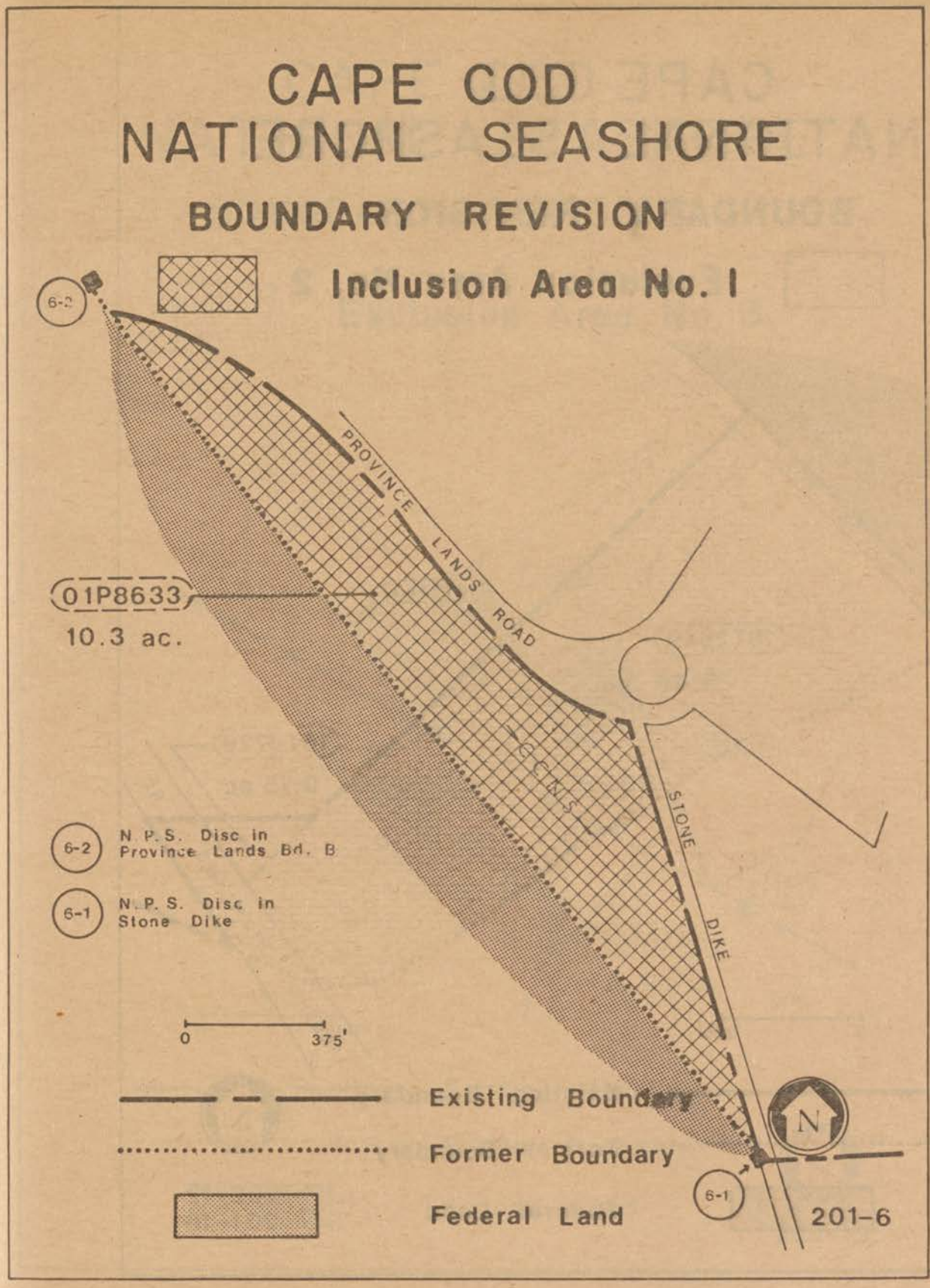
Dated: September 24, 1979

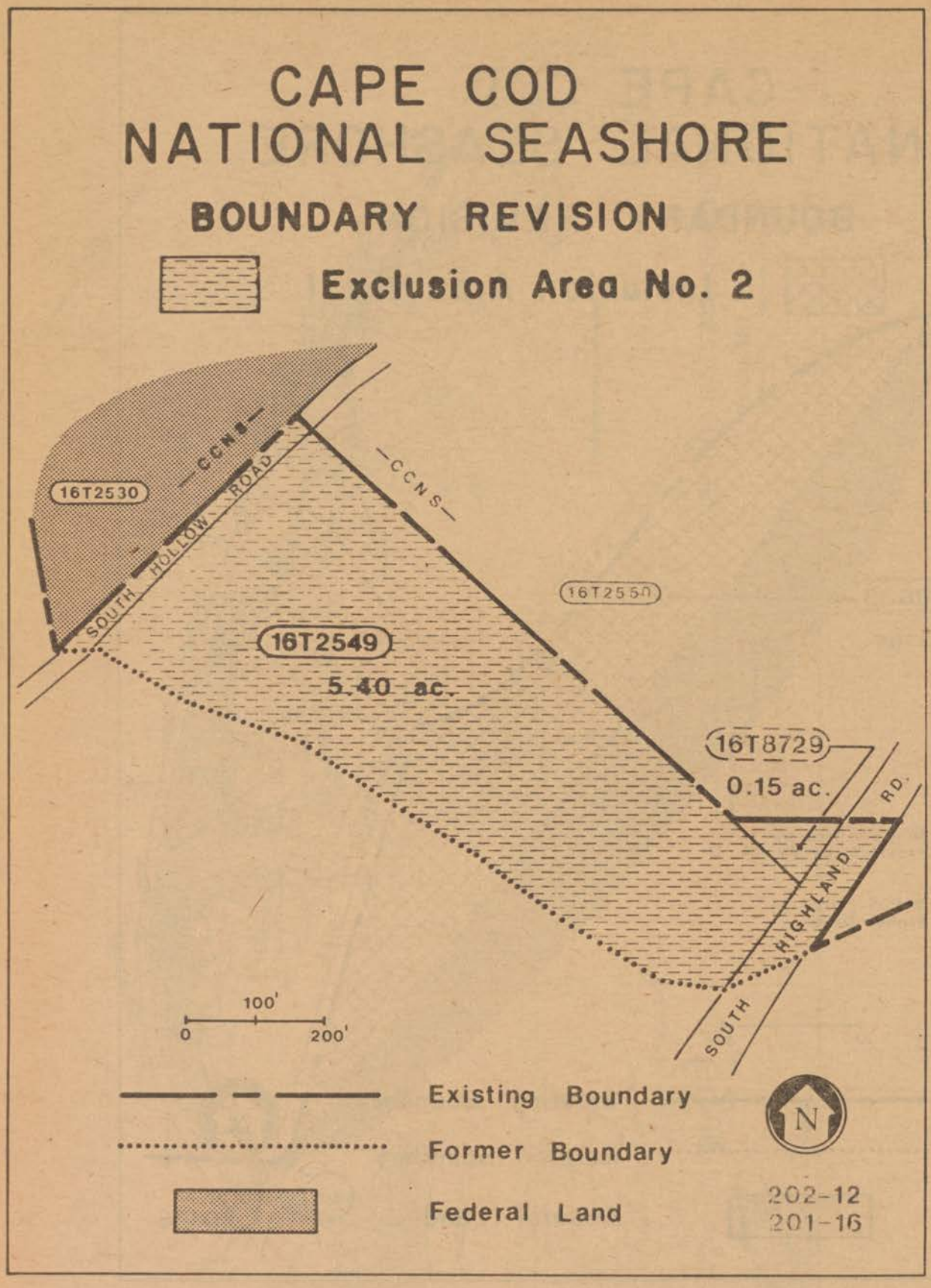
Gilbert W. Calhoun,

Acting Regional Director, North Atlantic Region.

BILLING CODE 4310-70-M


CAPE COD NATIONAL SEASHORE
BOUNDARY MAP
ATLANTIC
OCEAN
CAPE
COD
BAY
PROVINCETOWN
WELLFLEET
HARBOR
CHATHAM
PARK BOUNDARY
PARK AREA
1/4 MILE FROM M.L.W. LINE
BOUNDARY REVISION AREAS
1-13
LOCATION DIAGRAM

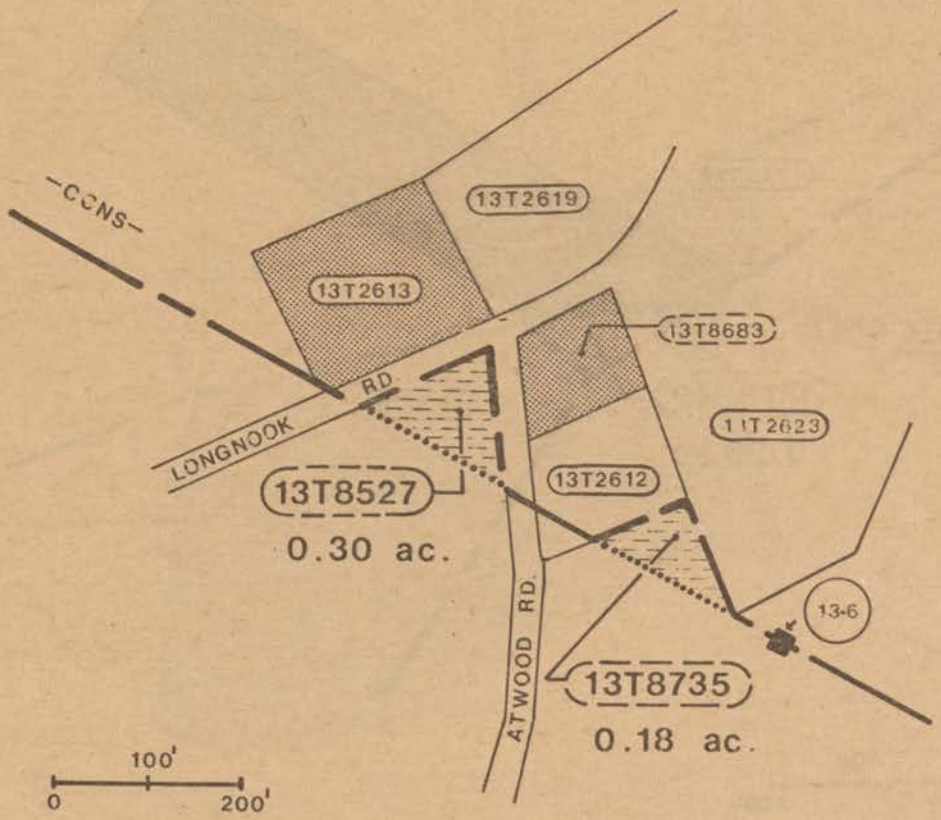

CAPE COD
NATIONAL SEASHORE
BOUNDARY REVISION
Inclusion Area No. 1
6-2
PROVINCE LANDS ROAD
01P8633
10.3 ac.
STONE DIKE
6-2 N.P.S. Disc in Province Lands Bd. B
6-1 N.P.S. Disc in Stone Dike
0
375'
Existing Boundary
Former Boundary
Federal Land
N
6-1
201-6


CAPE COD
NATIONAL SEASHORE
BOUNDARY REVISION
Exclusion Area No. 2
16T2530
CCNS
SOUTH HOLLOW ROAD
CCNS
16T2550
16T2549
5.40 ac.
16T8729
0.15 ac.
RD.
HIGHLAND
SOUTH
100'
0
200'
Existing Boundary
Former Boundary
Federal Land
N
202-12
201-16

CAPE COD NATIONAL SEASHORE

BOUNDARY REVISION

Exclusion Area No. 3



Existing Boundary

Former Boundary

Federal Land

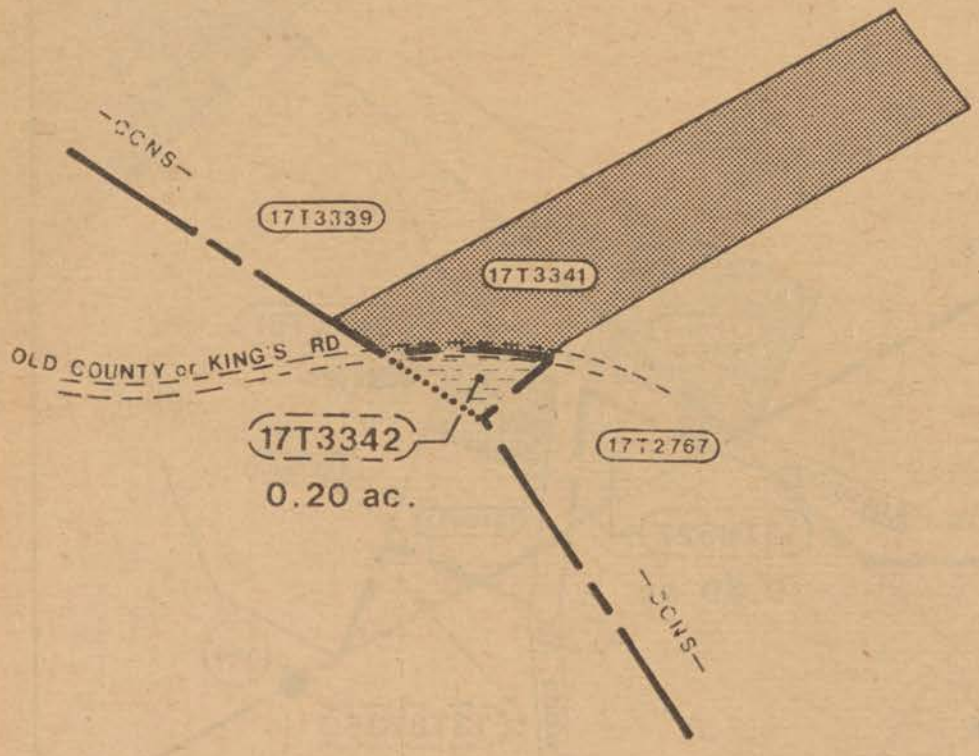
N

202-13

CAPE COD NATIONAL SEASHORE

BOUNDARY REVISION

Exclusion Area No. 4



100'
0 200'

Existing Boundary

Former Boundary

Federal Land

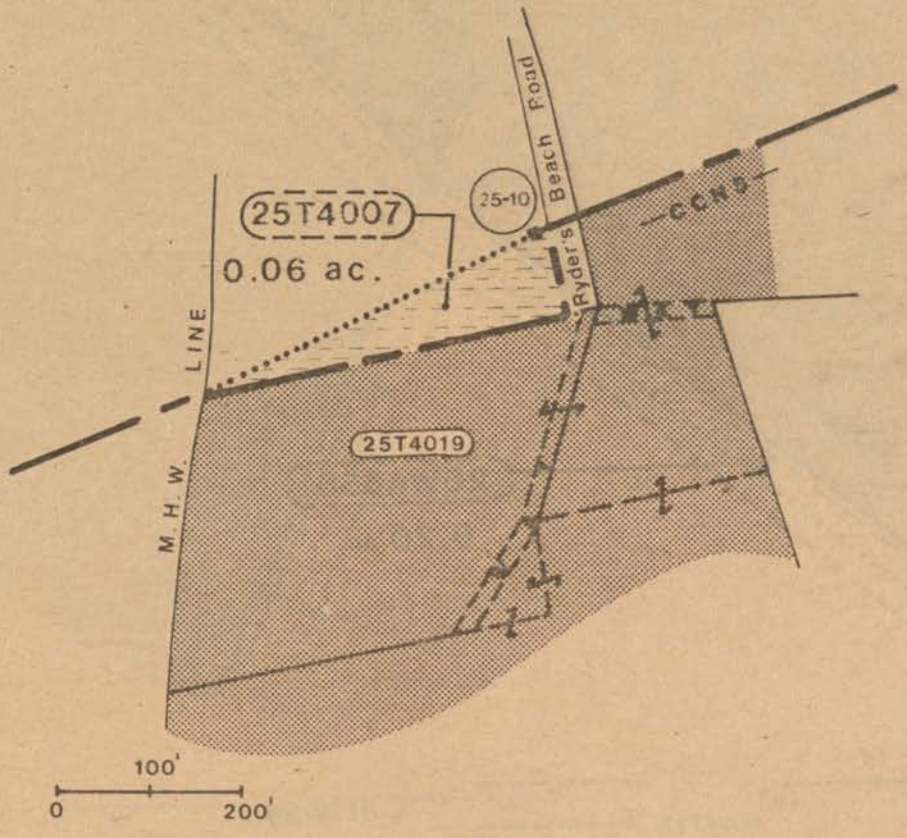
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201-17

CAPE COD NATIONAL SEASHORE

BOUNDARY REVISION

Exclusion Area No. 5



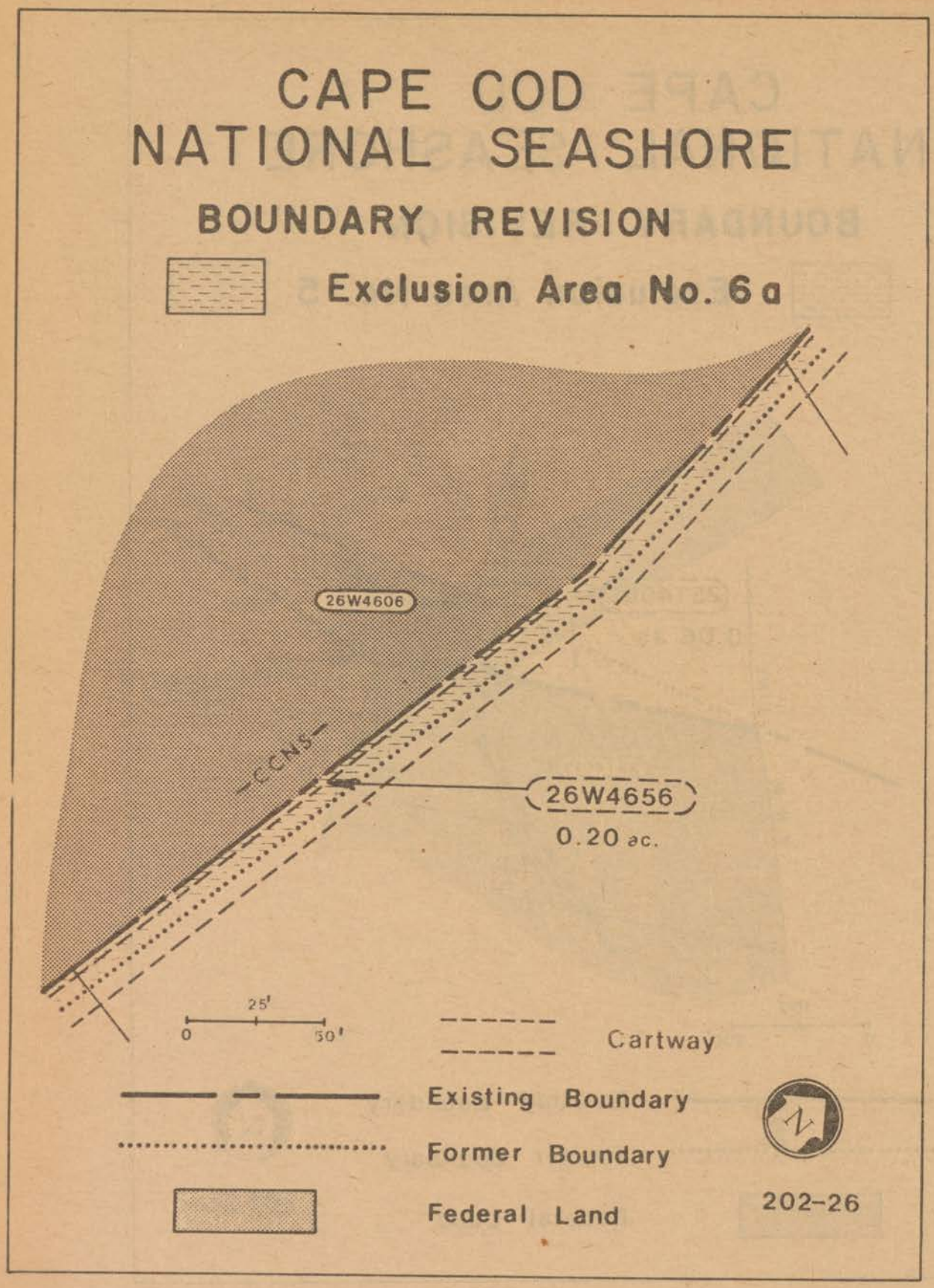
Existing Boundary

Former Boundary

Federal Land

N

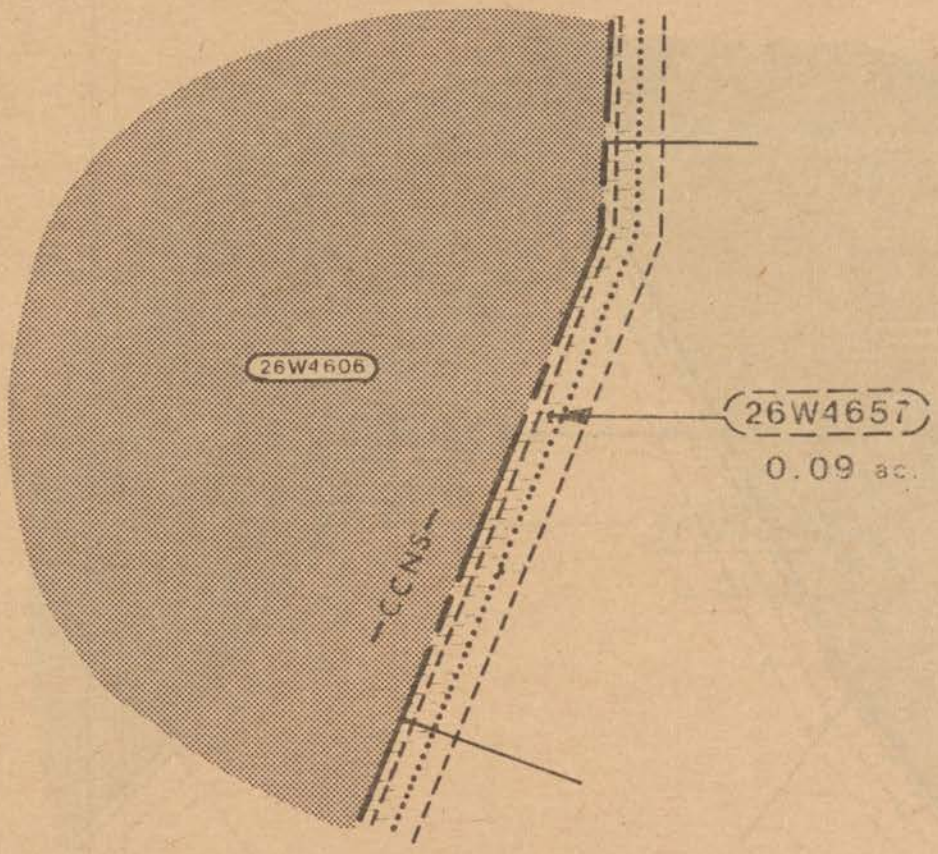
201-25


CAPE COD
NATIONAL SEASHORE
BOUNDARY REVISION
Exclusion Area No. 6a
26W4606
CCNS
26W4656
0.20 ac.
25'
0
50'
Cartway
Existing Boundary
Former Boundary
Federal Land
202-26

CAPE COD NATIONAL SEASHORE

BOUNDARY REVISION

Exclusion Area No. 6b



25'
0 50'

Cartway

Existing Boundary

Former Boundary

Federal Land

N

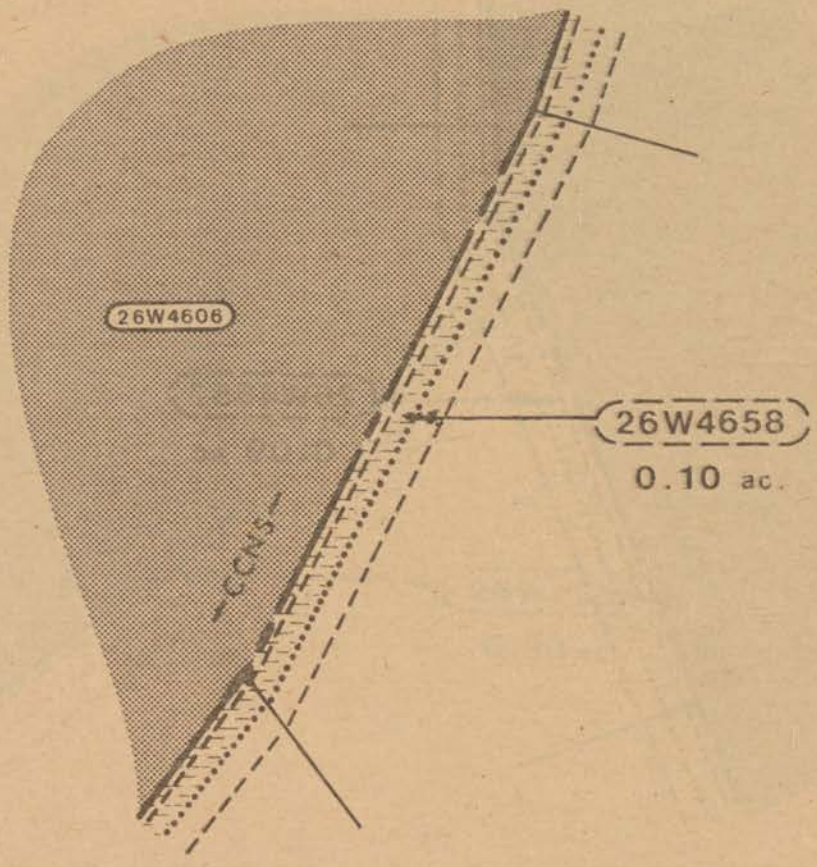
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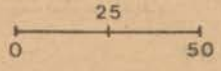
CAPE COD NATIONAL SEASHORE

BOUNDARY REVISION



Exclusion Area No. 6c





Cartway

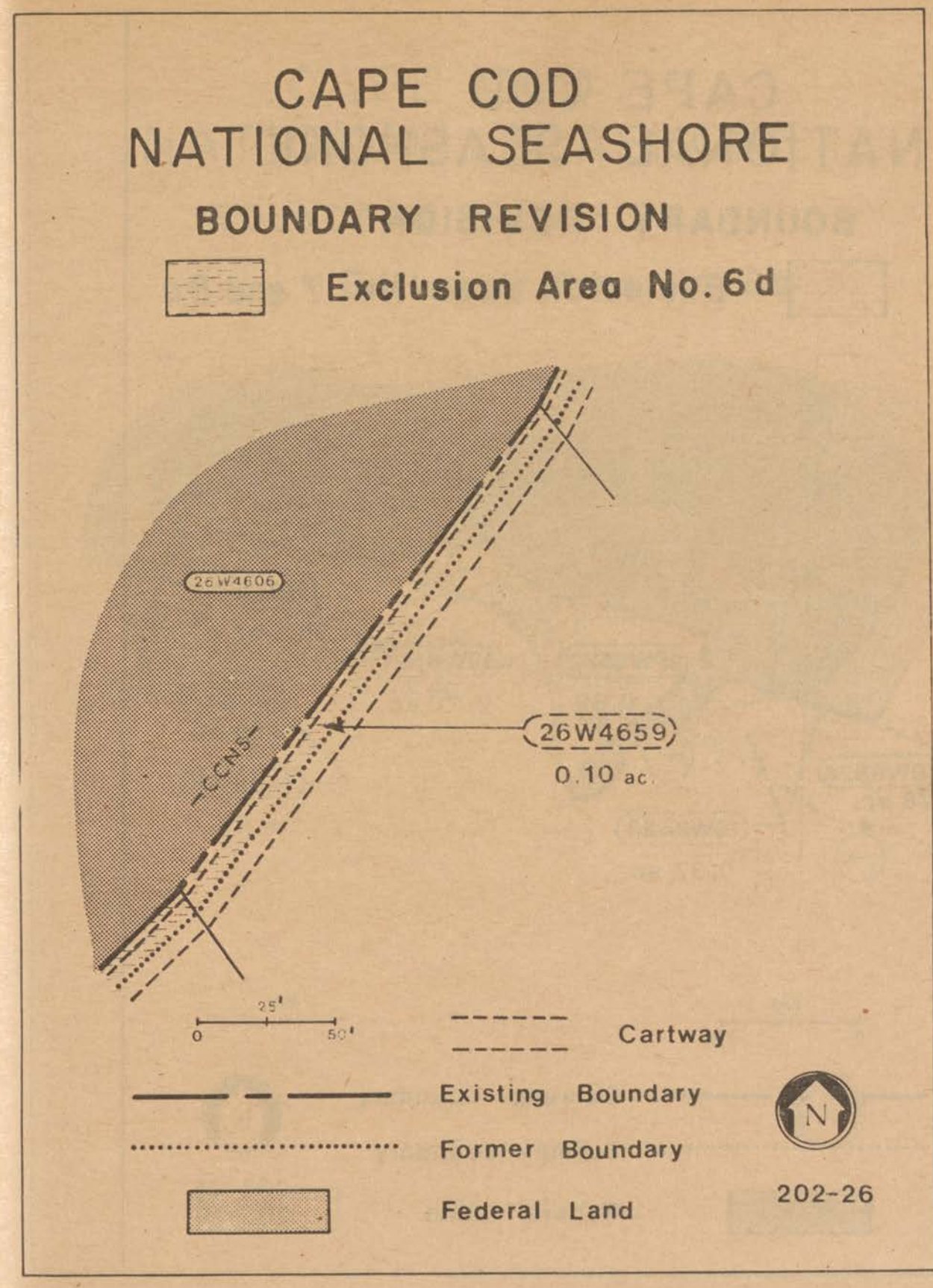
Existing Boundary

Former Boundary

Federal Land



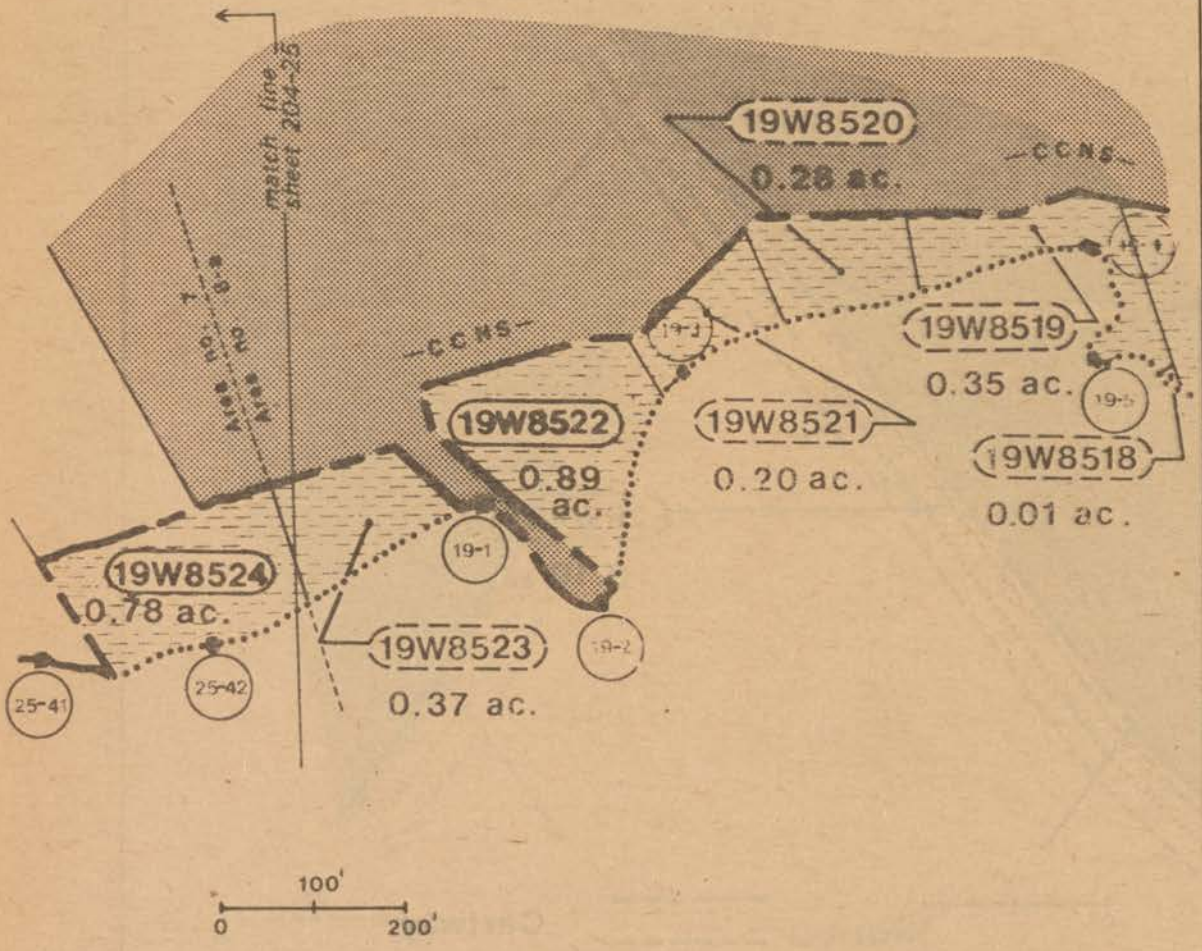
202-26


CAPE COD
NATIONAL SEASHORE
BOUNDARY REVISION
Exclusion Area No. 6d
26W4606
26W4659
0.10 ac.
CCNS
25'
0
50'
Cartway
Existing Boundary
Former Boundary
Federal Land
N
202-26

CAPE COD NATIONAL SEASHORE

BOUNDARY REVISION

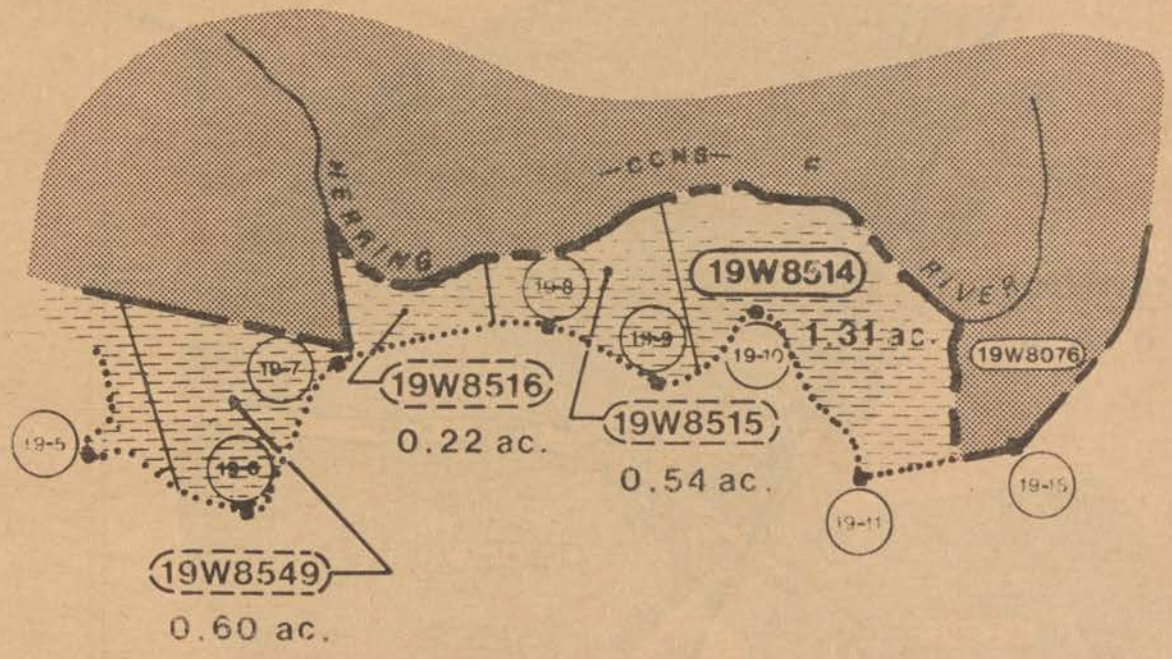
Exclusion Area No. 7 and 8a



CAPE COD NATIONAL SEASHORE

BOUNDARY REVISION

Exclusion Area No. 8b



100'
0 200'

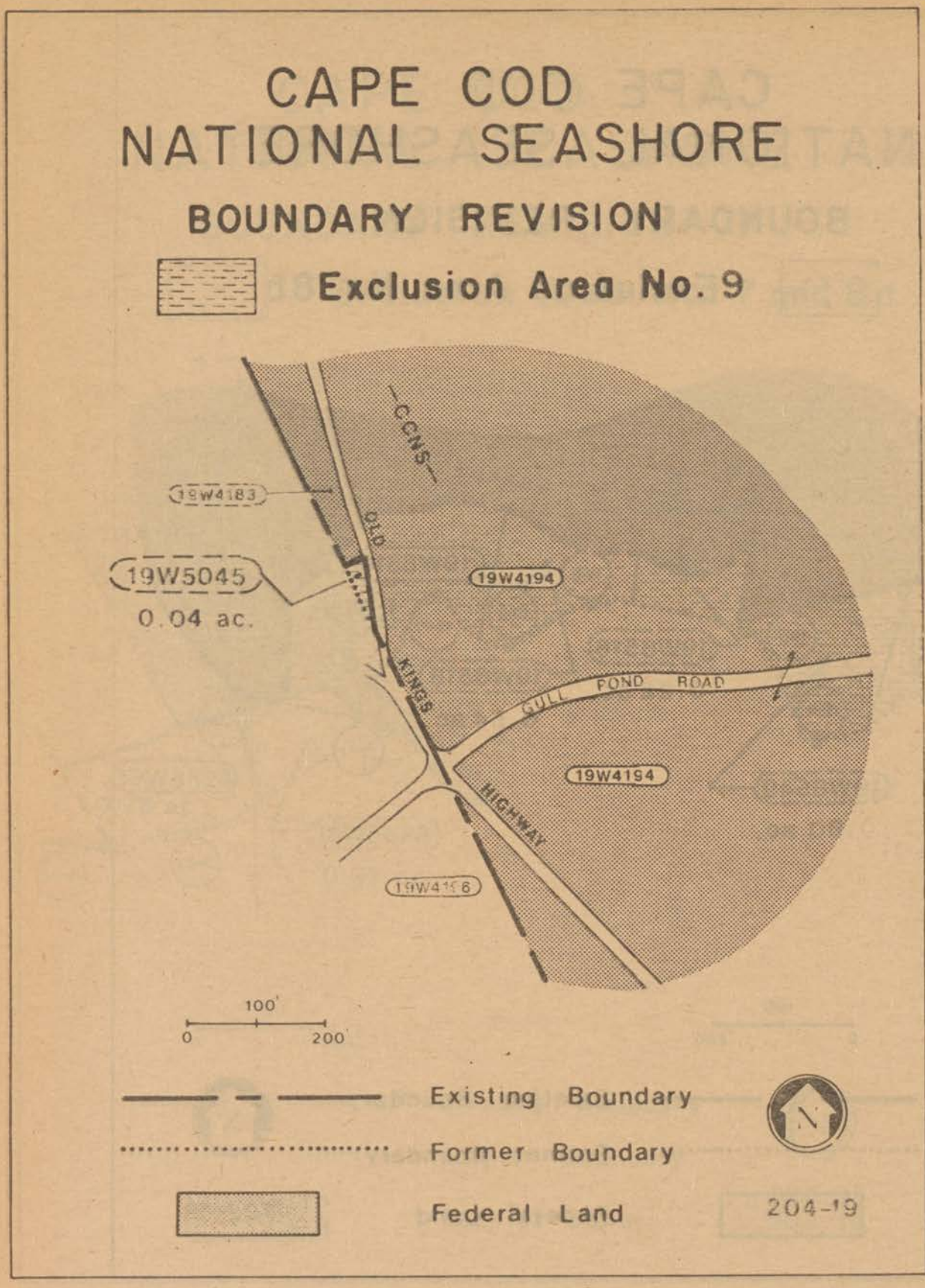
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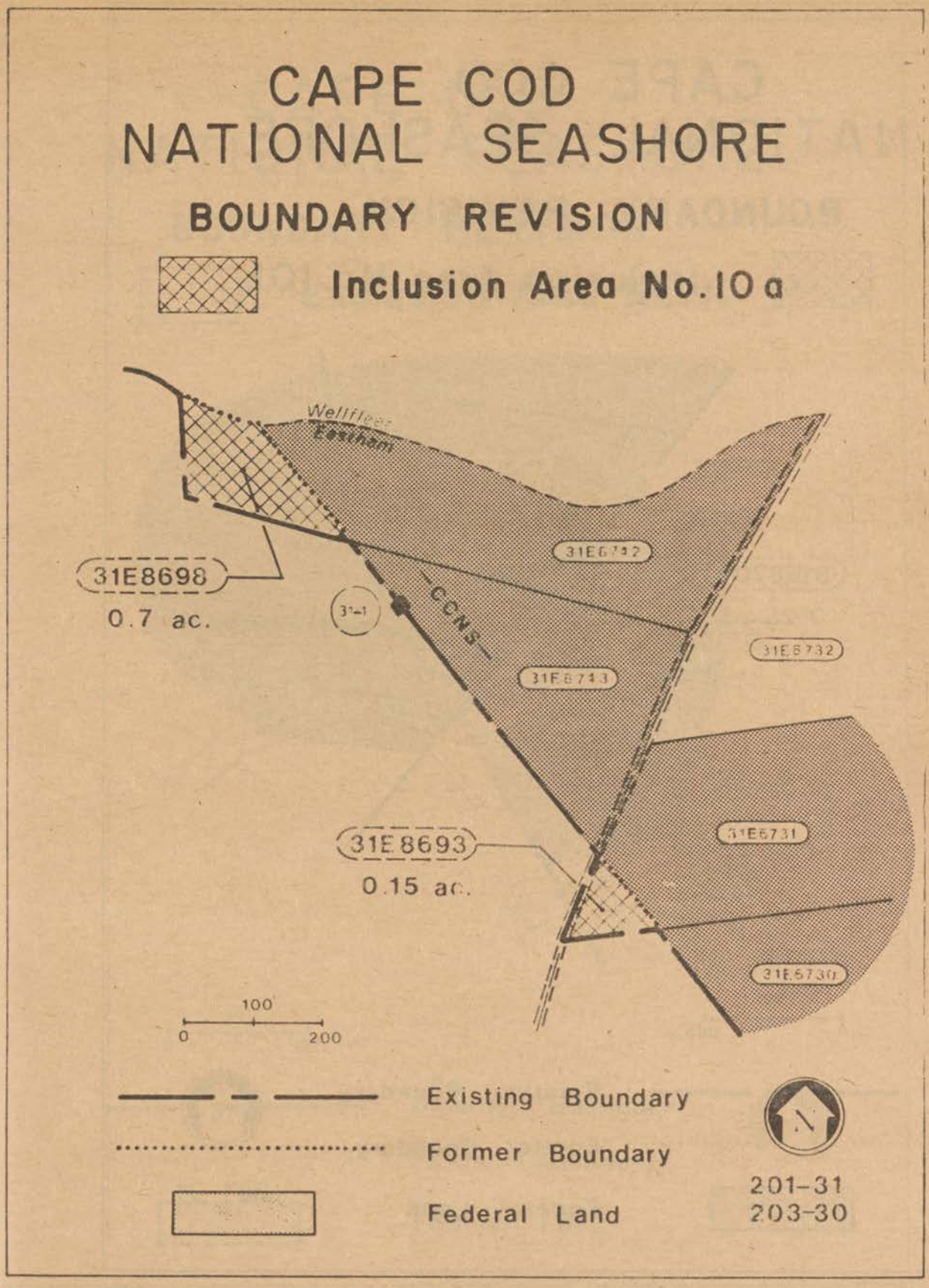
Former Boundary

Federal Land

N

203-19

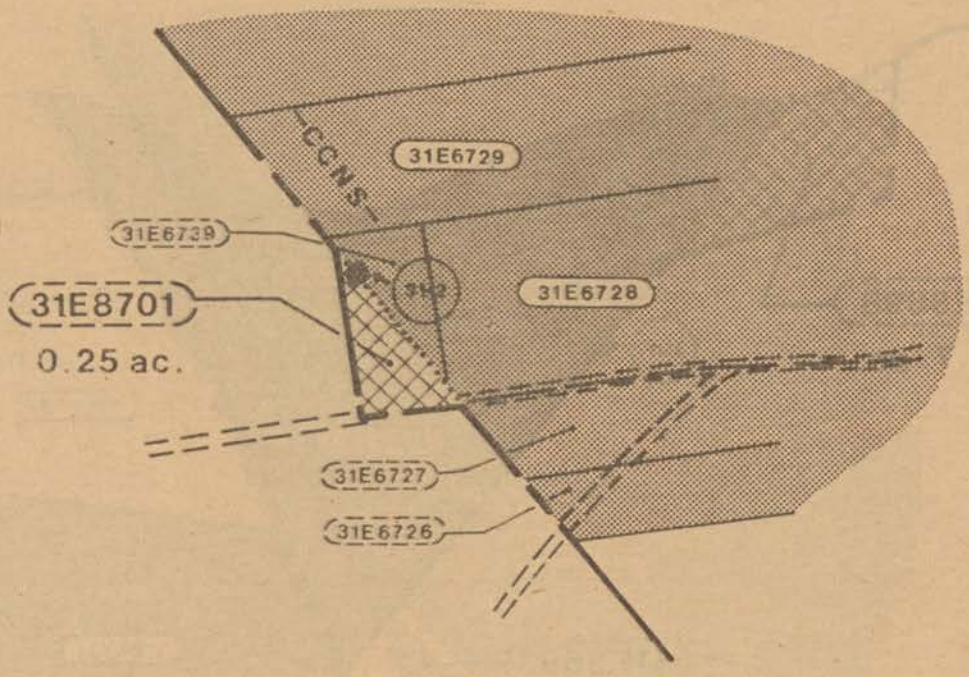

CAPE COD
NATIONAL SEASHORE
BOUNDARY REVISION
Exclusion Area No. 9
CCNS
19W4183
OLD
19W5045
0.04 ac.
19W4194
KINGS
GULL POND ROAD
19W4194
HIGHWAY
19W4196
100'
0
200'
Existing Boundary
Former Boundary
Federal Land
204-19


CAPE COD
NATIONAL SEASHORE
BOUNDARY REVISION
Inclusion Area No. 10 a
Wellfleet
Eastham
31E8698
0.7 ac.
31-1
CONS
31E8693
0.15 ac.
31E8732
31E8731
31E8730
100
0
200
Existing Boundary
Former Boundary
Federal Land
N
201-31
203-30

CAPE COD NATIONAL SEASHORE

BOUNDARY REVISION

Inclusion Area No. 10b



100'
0 200'

Existing Boundary

Former Boundary

Federal Land

N

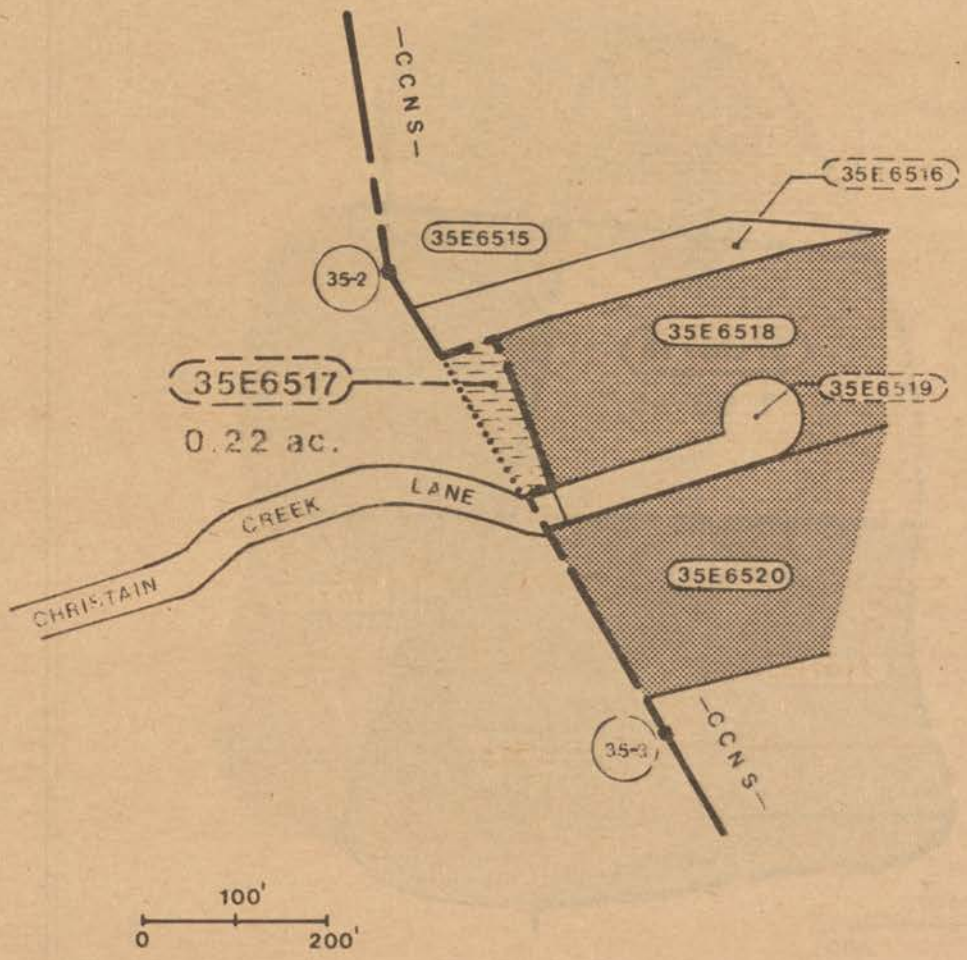
201-31

CAPE COD NATIONAL SEASHORE

BOUNDARY REVISION



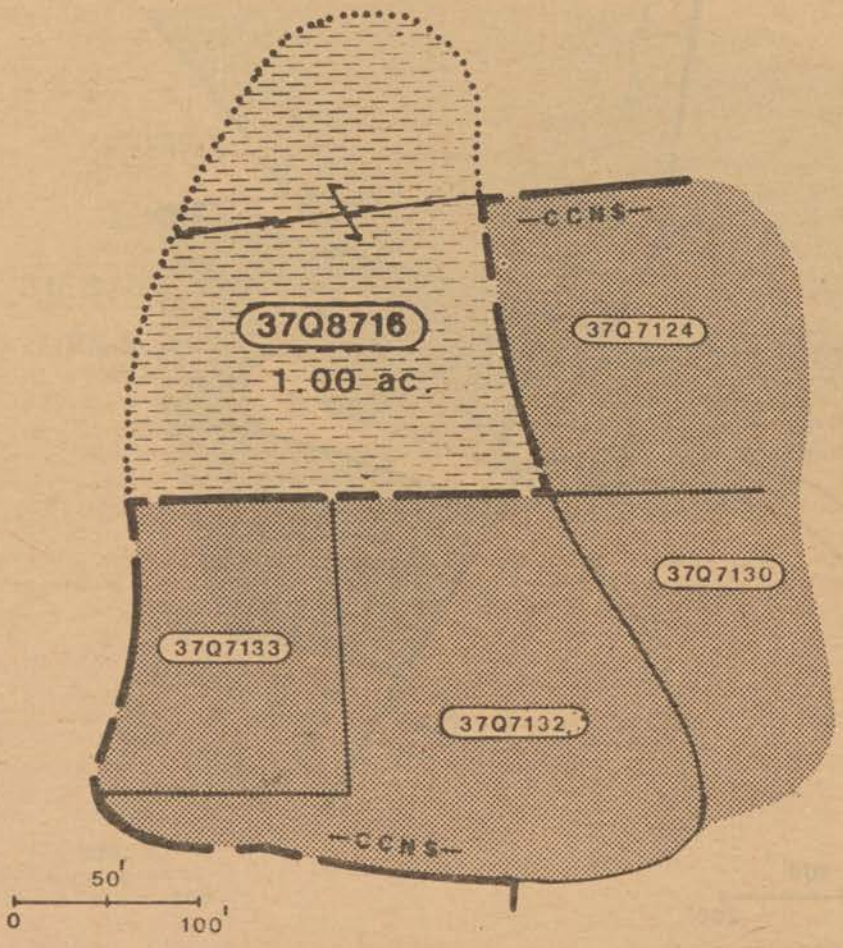
Exclusion Area No. II



CAPE COD NATIONAL SEASHORE

BOUNDARY REVISION

Exclusion Area No. 12a



Existing Boundary

Former Boundary

Federal Land

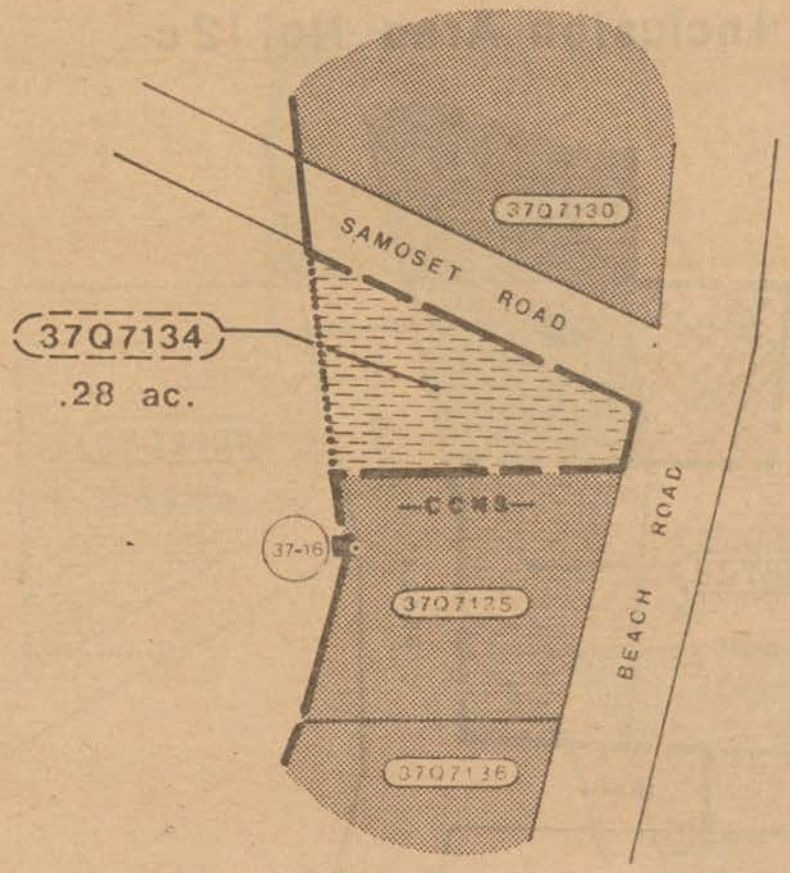
N

110-37

CAPE COD NATIONAL SEASHORE

BOUNDARY REVISION

Exclusion Area No. 12b



50'
0 100'

Existing Boundary

Former Boundary

Federal Land

N

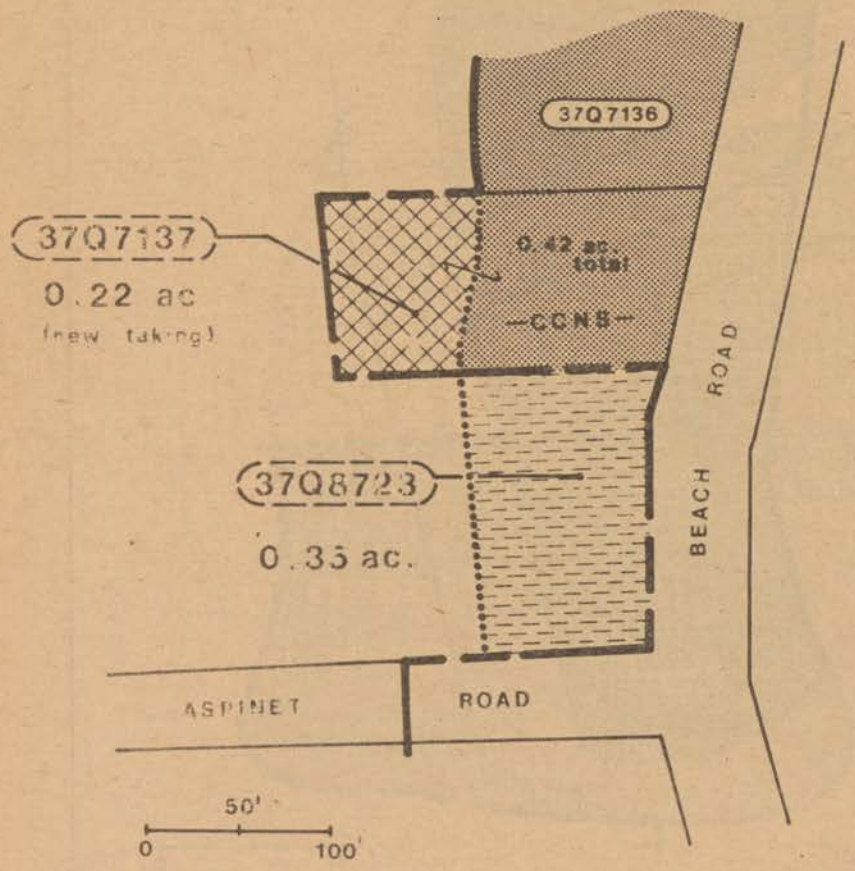
110-37

CAPE COD NATIONAL SEASHORE

BOUNDARY REVISION

Exclusion Area No. 12c

Inclusion Area No. 12c



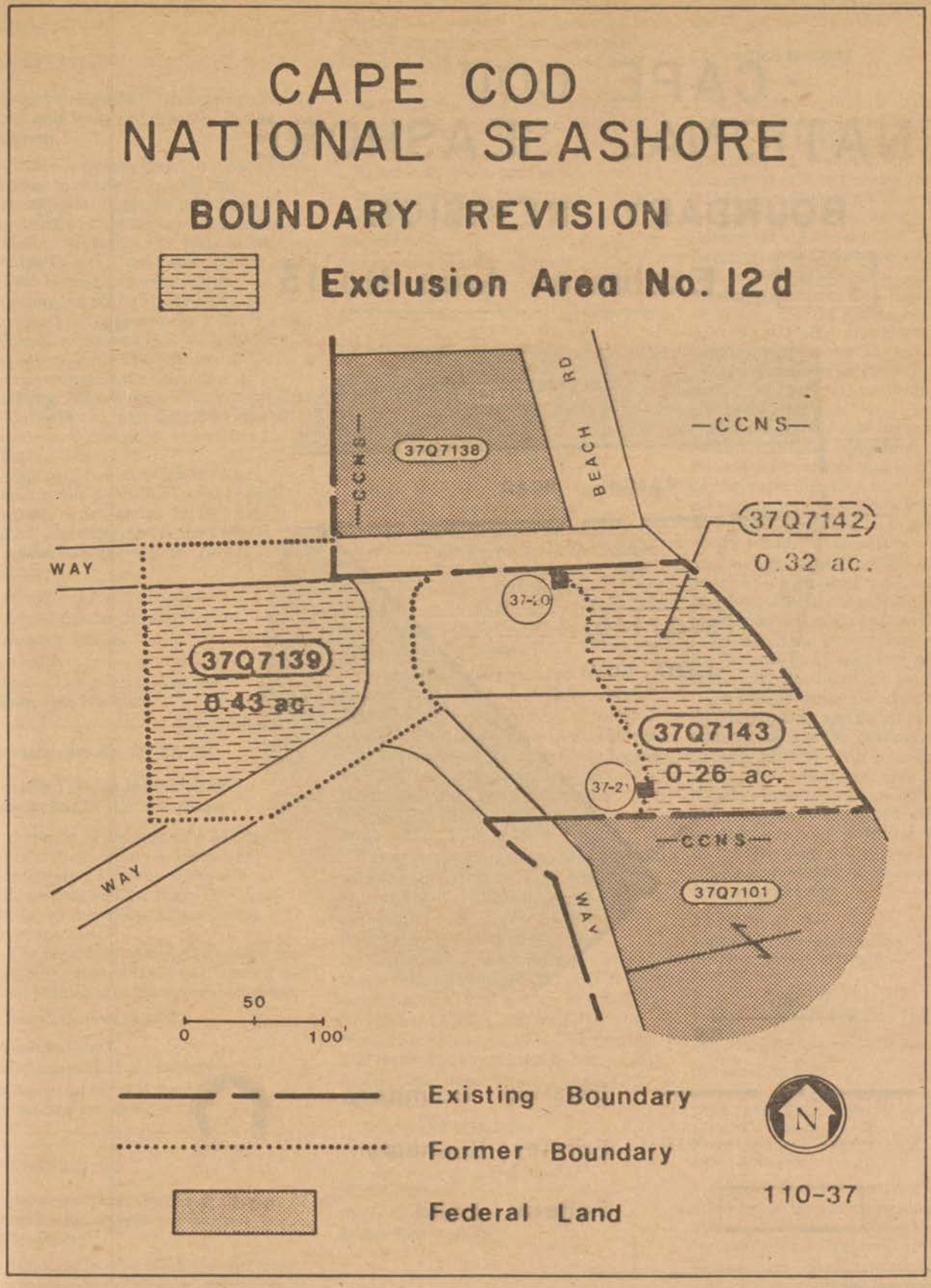
Existing Boundary

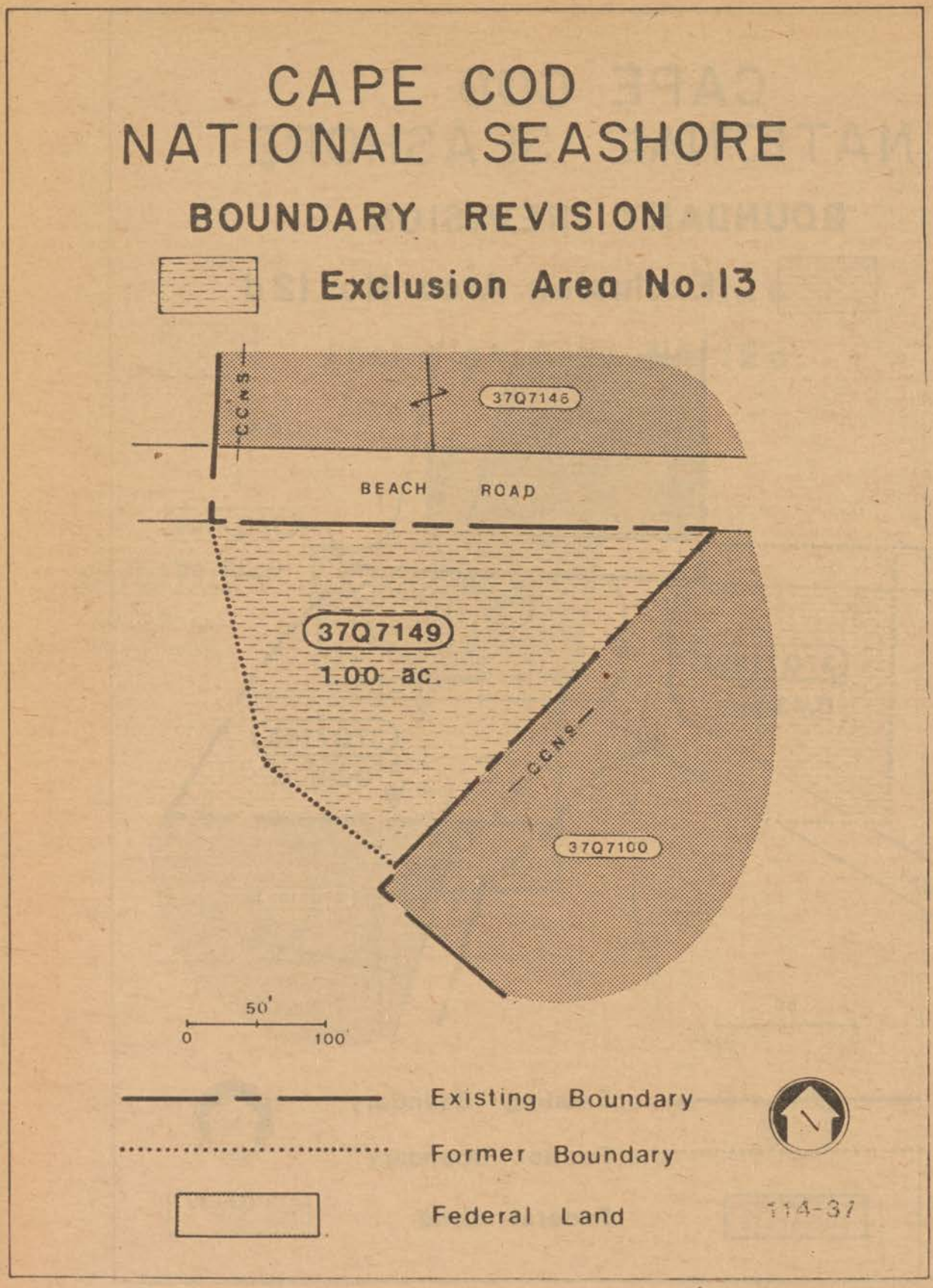
Former Boundary

Federal Land

N

110-37


CAPE COD
NATIONAL SEASHORE
BOUNDARY REVISION
Exclusion Area No. 12d
37Q7138
—CCNS—
BEACH
RD
37Q7142
0.32 ac.
WAY
37Q7139
0.43 ac.
37Q7143
0.26 ac.
—CCNS—
37Q7101
WAY
WAY
50
0
100'
Existing Boundary
Former Boundary
Federal Land
N
110-37



[FR Doc. 79-33570 Filed 10-30-79; 8:45 am]

BILLING CODE 4310-70-C

INTERNATIONAL TRADE COMMISSION

[TA-201-41]

Certain Groundfish; Change of Hearing Date and Time and Place of Public Hearing

Notice is hereby given that the public hearing in connection with this investigation originally scheduled for November 14, 1979, is rescheduled for Tuesday, November 13, 1979, in the Seattle Center, Conference Room Center A, 305 Harrison Street, Seattle, Washington 98109 at 10:00 a.m., P.s.t. Requests for appearances at the hearing should be received in writing by the Secretary to the Commission, U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. 20436, not later than the close of business, Wednesday, November 7, 1979.

Notice of the investigation and hearing was published in the **Federal Register** of September 12, 1979 (44 FR 53112) and corrected in the **Federal Register** of September 26, 1979 (44 FR 55442).

By order of the Commission.

Issued: October 24, 1979.

Kenneth R. Mason,

Secretary.

[FR Doc. 79-33746 Filed 10-30-79; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-72]

Certain Turning Machines and Components Thereof; Order

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative 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: October 23, 1979.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 79-33745 Filed 10-30-79; 8:45 am]

BILLING CODE 7020-02-M

[AA1921-Inq. 29]

Coke From West Germany; Change of Date for Submission of Written Statements

Notice is hereby given that the date for submission of written statements by interested parties in this inquiry is changed from November 7, 1979, as originally scheduled, to November 2, 1979. A signed original and nineteen true copies of such statements should be submitted.

Notice of the inquiry and hearing was issued by the Commission on October 22, 1979.

By order of the Commission.

Issued: October 30, 1979.

Kenneth R. Mason,

Secretary.

[FR Doc. 79-29286 Filed 10-30-79; 11:10 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 79-18]

Francis J. Jones, D. O.; Hearing

Notice is hereby given that on August 15, 1979, the Drug Enforcement Administration, Department of Justice, issued to Francis J. Jones, D. O., Kansas City, Kansas, an Order to Show Cause as to why the Drug Enforcement Administration should not revoke Respondent's DEA Certificate of Registration, AJ7996640.

Notice is also hereby given that on August 15, 1979, the Drug Enforcement Administration, Department of Justice, issued to Francis J. Jones, D. O., Kansas City, Missouri, an Order to Show Cause as to why the Drug Enforcement Administration should not revoke Respondent's DEA Certificate of Registration, AJ3779432.

Thirty days having elapsed since the said Orders to Show Cause were received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m. on Wednesday, November 14, 1979, and continuing on November 15 and 16, 1979. The hearing will be held in Courtroom B, Municipal Court, 1101 Locust Street, Kansas City, Missouri.

Dated: October 25, 1979.

Peter B. Bensinger,

Administrator, Drug Enforcement Administration.

[FR Doc. 79-33668 Filed 10-30-79; 8:45 am]

BILLING CODE 4110-09-M

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

Committee Meeting

October 25, 1979.

Pursuant to section 10(a)(2), of the Federal Advisory Committee Act, 5 U.S.C. (App. 1976), notice is hereby given that the National Advisory Committee on Oceans and Atmosphere (NACOA) will meet on Thursday and Friday, November 15–16, 1979. The Committee will meet in Rm. 4830, Main Department of Commerce Bldg., 14th & E Streets NW., Washington, D.C. The first session will convene on Thursday at 10:00 a.m., and the second session will convene on Friday at 8:00 a.m. All sessions will be open to the public. The Thursday session will adjourn at 5:00 p.m., and the session on Friday will adjourn at 3:30 p.m.

The Committee, consisting of 18 non-Federal members, appointed by the President from State and local government, industry, academia, and other appropriate areas, was established by Public Law 95-63, on July 5, 1977. Its duties are to: (1) Undertake a continuing review, on a selective basis, of national ocean policy, coastal zone management, and the status of the marine and atmospheric science and service programs of the United States; (2) advise the Secretary of Commerce with respect to the carrying out of the programs of the National Oceanic and Atmospheric Administration; and (3) submit an annual report to the President and to Congress setting forth an assessment, on a selective basis, of the status of the Nation's marine and atmospheric activities, and submit such other reports as may from time to time be requested by the President or Congress.

The general agenda includes the following topices:

November 15, 1979

10:00–12:00—Plenary Session
Steering Committee Report
Panel Reports
1:00–3:30—Panel Meeting
Decade of Ocean Resource Use and Management
3:30–5:00—Weather and Climate

November 16, 1979

8:00–10:00—Ocean Dumping Panel
10:00–12:00—NOAA Organic Act Panel
1:00–3:30—Plenary Meeting
Panel Reports
Other Business

Persons desiring to attend will be admitted to the extent seating is available. Persons wishing to make formal statements should notify the Chairman in advance of the meeting. The Chairman retains the prerogative to impose limits on the duration of oral

statements and discussions. Written statements may be submitted before or after each session.

Additional information concerning this meeting may be obtained through the Committee's Executive Director, Mr. John W. Connolly, whose mailing address is: National Advisory Committee on Oceans and Atmosphere, 3300 Whitehaven Street NW. (Suite 438, Page Building No. 1), Washington, D.C., 20235. The telephone number is (202) 254–8418.

Dated: October 29, 1979.

John W. Connolly,

Executive Director.

[FR Doc. 79-33699 Filed 10-30-79; 8:45 am]

BILLING CODE 3510-12-M

NATIONAL COMMISSION ON THE INTERNATIONAL YEAR OF THE CHILD, 1979

Meeting

AGENCY: National Commission on the International Year of the Child, 1979.

ACTION: Notice of meeting.

SUMMARY: This notice announces the forthcoming meeting of the National Commission on the International Year of the Child, 1979. The meeting is being held to discuss substantive issues, leading to the development of recommendations to be included in the report to the President. This document is intended to notify the general public of its opportunity to attend:

DATES: November 12–13, 1979.

ADDRESS: Wingspread Conference Center, Racine, Wisconsin.

FOR FURTHER INFORMATION CONTACT: James B. Roberts, Executive Officer, 600 "E" Street, N.W., Suite 505, Washington, D.C. 20471, (202) 376–2435.

Since conference facilities are in great demand, we must know the number of general public who plan to attend in order to allocate adequate space for the meeting. Notice of persons from the general public who plan to attend must be in writing and be received by the Executive Officer of the National Commission (at the above address) by *close of business November 5, 1979.* Such notice of intent to attend should include the address and telephone number of the person.

James B. Roberts,

Executive Officer, National Commission on the International Year of the Child.

[FR Doc. 79-33661 Filed 10-30-79; 8:45 am]

BILLING CODE 6820-49-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Extreme External Phenomena; Meeting

The ACRS Subcommittee on Extreme External Phenomena will hold a meeting on November 15–16, 1979 at the Best Western Airport Park Hotel, 600 Avenue of Champions, Inglewood, CA to discuss the NRC-sponsored General Reactor Safety Research Programs with the emphasis on the Seismic Safety Margins Research Program. Notice of this meeting was published October 18, 1979 (44 FR 60178).

In accordance with the procedures outlined in the **Federal Register** on October 1, 1979 (44 FR 56408), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows: *Thursday and Friday, November 15 and 16, 1979, 8:30 a.m. until the conclusion of business each day.*

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full Committee.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff, and their consultants, pertinent to the above topics.

The Subcommittee will be considering portions of the budget and program of the Office of Nuclear Regulatory Research. Since the NRC budget proposals are now part of the President's budget—not yet submitted to Congress—public disclosure of budgetary information is not permitted. See OMB Circular #A–10. The ACRS, however, is required by Section 5 of the 1978 NRC Authorization Act to review the NRC research program and budget and report the results of the review to Congress. in order to perform this review, the ACRS must be able to engage in frank discussion with members of the NRC Staff. For the reason just stated, a discussion would not be possible if held in public session.

I have determined, therefore, that it is necessary to close portions of this meeting to prevent frustration of this aspect of the ACRS' statutory responsibilities, in accordance with Exemption 9(b) to the Government in the Sunshine Act (552b(c)(9)(B)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Dr. Richard P. Savio (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., EST.

Dated: October 25, 1979.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 79-33670 Filed 10-30-79; 8:45 am]

BILLING CODE 7590-01-M

Financial Protection Requirements and Indemnity Agreements; Determination of Extraordinary Nuclear Occurrence

The Commission recently extended the period for its "extraordinary nuclear occurrence" (ENO) determination in regard to the accident at Three Mile Island until January 31, 1980. The period is hereby extended to February 15, 1980.

Dated at Washington, D.C. this 24th day of October, 1979.

For the Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 79-33698 Filed 10-30-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–155]

Consumers Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 29 to Facility Operating License No. DPR–6, issued to Consumers Power Company (the licensee), which revised Technical Specifications for operation of the Big Rock Point Plant (the facility) located in Charlevoix County, Michigan. The amendment is effective as of its date of issuance.

The amendment modifies the technical Specifications to incorporate a procedure for reactor startup in the event neutron source strength is below that which provides the currently

specified minimum count rate on out-of-core nuclear instrumentation.

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 September 7, 1979, (2) Amendment No. 29 to License No. DPR-6, 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 Charlevoix Public Library, 107 Clinton Street, Charlevoix, Michigan 49720. 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 18th day of October, 1979.

For the Nuclear Regulatory Commission.

Dennis L. Ziemann,

Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 79-33672 Filed 10-30-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-255]

Consumers Power Co.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 52 to Provisional Operating License No. DPR-20, issued to Consumers Power Company (the licensee), which revised the Technical Specifications for operation of the Palisades Plant (the facility) located in Covert Township, Van Buren County, Michigan. The amendment is effective as of its date of issuance.

The amendment changes the provisions of the Technical Specifications relating to steam generator tube surveillance.

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 action 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 26, 1979, and a supplement thereto dated September 11, 1979, (2) Amendment No. 52 to License No. DPR-20, 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 Kalamazoo Public Library, 315 South Rose Street, Kalamazoo, Michigan 49006. 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 15th day of October, 1979.

For the Nuclear Regulatory Commission.

Dennis L. Ziemann,

Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 79-33673 Filed 10-30-79; 8:45 am]

BILLING CODE 7510-01-M

[Docket No. 50-255]

Consumers Power Co.; Issuance of Amendment to Provisional Operating License and Granting of Relief From ASME Section XI Inservice Inspection (Testing) Requirements

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 53 to Provisional Operating License No. DPR-20, issued to Consumers Power Company (the licensee), which revised the Technical Specifications for operation of the Palisades Plant (the facility) located in Covert Township, Van Buren County, Michigan. The amendment is effective as of its date of issuance.

The amendment revises the Technical Specifications to replace the current inservice inspection and pump testing Technical Specifications with an inservice inspection and pump testing program that meets the requirements of 10 CFR 50.55a.

By letter dated October 15, 1979, as supported by the related Safety Evaluation, the Commission has also granted relief from certain requirements of the ASME Code, Section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components" to the licensee. The relief relates to inservice inspection and pump testing program for the facility. The ASME Code requirements are incorporated by reference into the Commission's rules and regulations in 10 CFR Part 50. The relief is effective as of its date of issuance.

The application for the amendment and request for the relief comply 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, and letter and Safety Evaluation granting relief. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment and granting of the relief 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 these actions.

For further details with respect to these actions, see (1) the application for amendment dated June 13, 1978, as revised by the licensee's letter dated March 6, 1979, (2) Amendment No. 53 to License No DPR-20, (3) the Commission's related Safety Evaluation, and (4) the Commission's letter to the licensee dated October 15, 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 Kalamazoo Public Library, 315 South Rose Street, Kalamazoo, Michigan 49006. A copy of items (2), (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 15th day of October, 1979.

For the Nuclear Regulatory Commission.

Dennis L. Ziemann,

Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 79-33674 Filed 10-30-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

Jersey Central Power & Light Co.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 42 to Provisional Operating License No. DPR-16, issued to Jersey Central Power & Light Company (the licensee), which revised the Technical Specifications for operation of the Oyster Creek Nuclear Generating Station (the facility) located in Ocean County, New Jersey. The amendment is effective as of its date of issuance.

The amendment modifies the provisions of the Appendix A Technical Specifications to assure that the pressure-temperature limits of the reactor coolant system are in conformance with 10 CFR Part 50, Appendix G, "Fracture Toughness Requirements".

The application for amendment complies with the standards and requirments 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 applications for amendment dated January 9, 1975 and October 3, 1979, (2) Amendment No. 42 to License No. DPR-16, and (3) the Commission's related Safety Evaluation. All of these are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Ocean County Library, Brick Township Branch, 401 Chambers, Bridge Road, Brick Town, New Jersey 08723. 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 16th day of October, 1979.

For the Nuclear Regulatory Commission.

Dennis L. Ziemann,

Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 79-33675 Filed 10-30-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-309]

Maine Yankee Atomic Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 46 to Facility Operating License No. DPR-36, issued to Maine Yankee Atomic Power Company (the licensee), which revised the Technical Specifications for operation of the Maine Yankee Atomic Power Station (the facility) located in Lincoln County, Maine. The amendment becomes effective 90 days after issuance to provide time to train additional fire brigade members.

The amendment modifies the Technical Specifications to require a five man fire brigade. The Safety Evaluation relating to this change was issued on November 25, 1977, by letter from the Commission to Yankee Atomic Electric Company.

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 August 7, 1979, (2) Amendment No. 46 to License No. DPR-36, (3) the Commission's letter to the licensee dated November 25, 1977, and (4) the Commission's letter to the licensee dated October 24, 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 Wiscasset Public Library Association, High Street, Wiscasset, Maine.

A copy of items (2), (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 October, 1979.

For the Nuclear Regulatory Commission.

Robert W. Reid,

Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc. 79-33676 Filed 10-30-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. STN 50-437 CP]

Offshore Power Systems (Manufacturing License for Floating Nuclear Power Plants); Order

October 24, 1979.

1. The public hearing will be resumed on November 2, 1979 at 9:30 a.m. at the following location: NRC Public Hearing Room, 5th Floor, East/West Towers Building, 4350 East/West Highway, Bethesda, Maryland 20014.

This one day hearing is scheduled in order that the Board can question the Staff with regard to the submission of July 13, 1979, wherein the Staff had responded to questions posed by the Board in its letter of March 29, 1979. Further, the Staff should be prepared to advise when it expects to issue Supplement 3 to the Safety Evaluation Report.

It is so ordered.

Dated at Bethesda, Maryland this 24th day of October, 1979.

For the Atomic Safety and Licensing Board.[1]

Sheldon J. Wolfe,

Chairman.

[FR Doc. 79-33677 Filed 10-30-79; 8:45 am]

BILLING CODE 7590-01-M

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[1] The Atomic Safety and Licensing Board: Sheldon J. Wolfe, Esq., Chairman, Dr. David R. Schink, Member, Mr. Glenn O. Bright, Member.

[Dockets Nos. 50-277 and 50-278]

Philadelphia Electric Co., et al.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 63 and 62 to Facility Operating License Nos. DPR-44 and DPR-56, issued to Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, which revised Technical Specifications for operation of the Peach Bottom Atomic Power Station, Units Nos. 2 and 3 (the facility) located in York County, Pennsylvania. The amendments are effective as of the date of issuance.

The amendment for Peach Bottom Unit 3 (DPR-56) involves:

(1) Use of pre-pressurized fuel for Cycle 4 operation;

(2) Modification of the APRM and RBM setpoint equations;

(3) Deletion of the fuel densification power spiking penalty for 8x8 fuel;

(4) Deletion of the reactor vessel pressure operating limit;

(5) Continued use of the fast scram control rod drive during Cycle 4;

(6) Increase of the standby liquid control system capacity;

(7) Addition of a license condition which governs operation during any coastdown after end-of-cycle;

(8) Revision of the withdrawal schedule for the reactor vessel material surveillance program, and

(9) Administrative changes relating to reporting of primary and secondary leak rate results, members of the Operation and Safety Review Committee, the table specifying fire detectors and correction of typographical errors.

The amendment for Peach Bottom Unit 2 (DPR-44) involves the reactor vessel material surveillance program and administrative changes (items 8 and 9 above).

The applications for the amendments comply with the standards and requirments 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. Notice of Proposed Issuance of an Amendment to Facility Operating License No. DPR-56 was published in the **Federal Register** on August 16, 1979 (44 FR 48000). The proposed action so noticed included items (1) through (6) above. No request for a hearing or petition for leave to intervene was filed following notice of the proposed action. Prior public notice of items (7) through (9) and the amendment to Operating License No. DPR-44 was not required since these items do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments 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 these amendments.

For further details with respect to this action, see (1) the applications for amendment dated May 8 and August 2, 1979, as supplemented by information contained in letter dated October 2, 1979, (2) Amendment Nos. 63 and 62 to License Nos. DPR-44 and DPR-56, 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 Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania. 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 24th day of October, 1979.

For the Nuclear Regulatory Commission.

Thomas A. Ippolito,

Chief Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 79-33678 Filed 10-30-79; 8:45 am]

BILLING CODE 7590-01-M

Public Service Electric & Gas Co., et al., Salem Nuclear Generating Station, Unit No. 2; Order Extending Construction Completion Date

Public Service Electric & Gas Company, Philadelphia Electric Company, Delmarva Power and Light Company, and Atlantic City Electric Company are holders of Construction Permit No. CPPR-53 issued by the Atomic Energy Commission[1] on September 25, 1968, for construction of the Salem Nuclear Generating Station, Unit No. 2, presently under construction at a site in Salem County, New Jersey.

On March 30, 1979, Public Service Electric & Gas Company filed a request for an extension of the construction completion date for Salem Nuclear Generating Station, Unit No. 2 to August 1, 1979. The basis for this request was that Public Service Electric & Gas Company thought it prudent to extend the construction completion date so as to avoid the remote possibility of delay of issuance of an operating license. In a June 28, 1979 letter, Public Service Electric & Gas Company further requested that the construction completion date be extended to October 31, 1979. The basis for the subsequent request was the impact due to the occurrence at Three Mile Island. Since the Three Mile Island accident, personnel at both the NRC and Public Service Electric & Gas Company have been diverted to investigate and evaluate the accident delaying the licensing review process. In addition, Commission review of the results of other investigations, including the Presidential Commission and NRC's Special Inquiry Group, can be expected to lead to additional requirements. To cover any uncertainties related to the issuance of operating licenses due to the Three Mile Island accident, the NRC staff is extending the completion date to May 1, 1980.

This action involves no significant hazards consideration; good cause has been shown for the delay; and the requested extension is for a reasonable period, the bases for which are set forth in the staff evaluation, dated October 18, 1979.

An environmental Impact appraisal and negative declaration have been prepared which conclude that the preparation of an environmental impact statement for this particular action is not warranted because there will be no environmental impact attributable to the Order other than that which has already been predicted and described in the Commission's Final Environmental Statement for the Salem Nuclear Generating Station, Unit No. 2, published in April 1973.

All of the above documents are available for public inspection at the Commission's Public Document Room, located at 1717 H Street, N.W., Washington, D.C. 20555 and at the local public document room located in the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

In accordance with Section 185 of the Atomic Energy Act of 1954, as amended, and the Commission's rules and

[1] Effective January 20, 1975 the Atomic Energy Commission became the Nuclear Regulatory Commission and permits in effect on that day continued under the authority of the Nuclear Regulatory Commission.

regulations, including 10 CFR § 50.55(b), it is Hereby Ordered that the latest completion date for CPPR–53 be extended from May 1, 1979 to May 1, 1980.

Date of Issuance: October 23, 1979.

For the Nuclear Regulatory Commission.

Domenic B. Vassallo,

Acting Director, Division of Project Management Office of Nuclear Reactor Regulation.

[FR Doc. 79–33679 Filed 10–30–79; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–311]

Public Service Electric & Gas Co.; Negative Declaration Supporting Order Relating to Extension of Construction Completion Date for Salem Nuclear Generating Station, Unit No. 2 (CPPR–53)

The U.S. Nuclear Regulatory Commission (The Commission) has reviewed the Order relating to the construction permit for Salem Nuclear Generating Station, Unit No. 2 (CPPR–53), located in Salem County, New Jersey, issued to Public Service Electric and Gas Company. The ORDER would authorize the extension of the construction completion of Unit No. 2 to May 1, 1980.

The Commission's Division of Site Safety and Environmental Analysis has prepared an environmental impact appraisal (EIA) for the ORDER, and has concluded that an environmental impact statement for this action is not warranted because there will be no environmental impact attributable to the action other than that which has already been predicted and described in the Commission's Final Environmental Statement for the Salem Station issued April 1973. No additional impacts are expected to occur by extending this construction completion date.

The environmental impact appraisal is available for public inspection at the Commission's Public Document Room, 1717 H Street, N. W., Washington, D. C. and at the local public document room located in the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079. A copy of the EIA may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D. C. 20555, Attention: Director, Division of Site Safety and Environmental Analysis.

Dated at Bethesda, Maryland this 4th day of October 1979.

For the Nuclear Regulatory Commission.

Richard W. Froelich,

Acting Branch Chief, Environmental Projects Branch 1, Division of Site Safety and Environmental Analysis.

[FR Doc. 79–33680 Filed 10–30–79; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–312]

Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station); Supplemental Notice of Hearing

Please take notice that the prehearing conference scheduled in this proceeding for November 7, 1979, and the evidentiary hearing in this proceeding scheduled for November 27, 1979, will be at 10:00 a.m. at:

Conference Room, West 1140, U.S. Federal Building, 2800 Cottage Way, Sacramento, California.

Dated at Bethesda, Maryland on October 23, 1979.

So Ordered,

Atomic Safety and Licensing Board.

Michael L. Glaser,

Chairman.

[FR Doc. 79–33681 Filed 10–30–79; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–346]

Toledo Edison Co. and Cleveland Electric Illuminating Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 21 to Facility Operating License No. NPF–3, issued to The Toledo Edison Company and The Cleveland Electic Illuminating Company (the licensees), which revised the Technical Specifications for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility) located in Ottawa County, Ohio. The amendment is effective as of its date of issuance.

The amendment changes the Technical Specifications by (1) extension of the calendar time to perform the first inservice inspections (ISI) of steam generator tubes after initial criticality, (2) special provisions for certain categorization of degraded and/or defective steam generator tubes in various defined groups, and (3) inspection interval requirements based on the categorization of the results of inspections of steam generator tubes.

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 27, 1979, as supplemented August 17, 1979, (2) Amendment No. 21 to License No. NPF–3, 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 Ida Rupp Public Library, 310 Madison Street, Port Clinton, Ohio. 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 2nd day of October, 1979.

For the Nuclear Regulatory Commission.

Robert W. Reid,

Chief, Operating Reactors Branch #4, Division of Operating Reactors.

[FR Doc. 79–33682 Filed 10–30–79; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–346]

Toledo Edison Co. and Cleveland Electric Illuminating Co., Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 20 to Facility Operating License No. NPF–3, issued to The Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), which revised Technical Specifications for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility) located in Ottawa County, Ohio. The amendment is effective as of its date of issuance.

The amendment modifies the Technical Specifications to incorporate surveillance requirements for throttle valves used in the low pressure injection system.

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 January 13, 1978, (2) Amendment No. 20 to License No. NPF-3, 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 Ida Rupp Public Library, 310 Madison Street, Port Clinton, Ohio.

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 2nd day of October 1979.

For the Nuclear Regulatory Commission.

Robert W. Reid,

Chief, Operating Reactors Branch #4, Division of Operating Reactors.

[FR Doc. 79-33683 Filed 10-30-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-320]

Metropolitan Edison Co., et al. (Three Mile Island Nuclear Station, Unit 2); Clarifying Amendment to Order for Modification of License

By Order dated October 18, 1979, the NRC Staff proposed to amend Facility Operating License No. DPR-73 for the Three Mile Island Nuclear Station, Unit 2 to provide identified license conditions and Technical Specifications relating to the operation of EPICOR-II to decontaminate intermediate-level waste water presently being stored at the facility. The Order made clear that the license amendment would not become effective until the expiration of the period during which the licensee or other person whose interest may be affected may request a hearing, or, in the event a hearing is ordered, on the dated specified in an order made following such hearing. It should be clarified, however, that a *hearing is not necessary prior to operation* of EPICOR-II even though the *amendment will not be effective* until after a hearing, if one is requested and ordered, as discussed in the Memorandum and Order issued by the Commission on October 16, 1979.

Accordingly, the Order for Modification of License issued on October 18, 1979, is amended to clarify the foregoing by adding the following as the last sentence to the first paragraph of section IV:

"Even though the above amendment will not become effective immediately, a hearing is not necessary prior to operation of EPICOR-II."

Dated at Bethesda, Maryland this 26th day of October, 1979.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 79-33820 Filed 10-30-79; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Docket No. A80-1; Order No. 300]

Glenwood Landing, Order of Filing Appeal

In the Matter of Glenwood Landing, NY 11547 (George Seaman, et al., Petitioners); Appeal.

Issued October 26, 1979

On October 23, 1979, the Commission received a mailgram from George Seaman, Neil Caggiano, and Dean Scheu (individually and as President of Glenwood Landing Improvement Association) (hereinafter "Petitioners"), concerning alleged United States Postal Service plans to consolidate the Glenwood Landing, NY, post office. Although the mailgram makes no explicit reference to the Postal Reorganization Act, we believe it should be construed as a petition for review pursuant to § 404(b) of the Act [39 U.S.C. § 404(b)], so as to preserve Petitioners' right to appeal which is subject to a 30-day time limit.[1] The petition does not conform perfectly with the Commission's rules of practice which also require a petitioner to attach a copy of the Postal Service's Final Determination to the petition.[2] However, § 1 of the Commission's rules of practice calls for a liberal construction of the rules to secure just and speedy determination of issues.[3]

The Act requires that the Postal Service provide the affected Community with at least 60 days' notice of a proposed post office closing so as to ". . . ensure that such persons will have an opportunity to present their views."[4] The petition requests that the decision to consolidate the Glenwood Landing post office be reversed. From the face of the petiiton it is unclear whether the Postal Service provided 60 days' notice, whether any hearings were held, and whether a detrminaiton has been made under 39 U.S.C. 403(b)(3). (Petitioner failed to supply a copy of the Postal Service's Final Determination, if one is in existence.) The Commission's rules of practice require the Postal Service to file the administrative record of the case within 15 days after the date on which the petition for review is filed with the Commission.[5]

The Postal Reorganization Act states:

> The Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. No small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities.[6]

Section 404(b)(2)(C) of the Act specifically includes consideration of this goal in determinations by the Postal Service to consolidate post offices. The effect on the community is also a mandatory consideration under § 404(b)(2)(A) of the Act.

The petition appears to set forth the Postal Service action complained of in sufficient detail to warrant further inquiry to determine whether the Postal Service complied with its regulations for the discontinuance of post offices.[7]

The issues of law involved in this case are not apparent from the petition, but may become apparent when the parties and the Commission have had the opportunity to examine the Postal Service's administrative record. The issues may emerge when the parties and the Commission review the Service's determination for consistency with the principles announced in *Lone Grove,*

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[1] 39 U.S.C. § 404(b)(5). 39 U.S.C. § 404(b) was added to title 39 by Pub. L. 94-421 (September 24, 1976), 90 Stat. 1310-1311. Our rules of practice governing these cases appear at 39 C.F.R. § 3001.110 *et seq.*

[2] 39 CFR 3001.111(a).

[3] 39 CFR 3001.1.

[4] 39 U.S.C. 404(b)(1).

[5] 39 CFR 3001.113(a). The Postal Rate Commission informs the Postal Service of its receipt of such an appeal by issuing PRC Form No. 56 to the Postal Service upon receipt of each appeal.

[6] 39 USC 101(b).

[7] 42 FR 59079-59085 (11/17/77); the Commission's standard of review is set forth at 39 U.S.C. § 404(b)(5).

Texas, et al., Dockets Nos. A79–1, et al. (May 7, 1979), and the Commission's subsequent decisions on appeals of post office closings and consolidations. The determination may be found to resolve adequately one or more of the issues involved in the case.

In view of the above, and in the interest of expedition of this proceeding under the 120-day decisional deadline imposed by § 404(b)(5), the Postal Service is advised that the Commission reserves the right to request a legal memorandum from the Service on one or more of the issues disclosed by the determination made in this case or timely raised by the Petitioners. In the event that the Commission finds such memorandum necessary to explain or clarify the Service's legal position or interpretation on any such issue, it will, within 20 days of receiving the determination and record pursuant to § 113 of the rules of practice [39 CFR § 3001.113), make the request therefor by order, specifying the issues to be addressed.

When such a request is issued, the memorandum shall be due within 20 days of its issuance, and a copy of the memorandum shall be served on Petitioners by the Service.

In briefing the case, or in filing any motion to dismiss for want of prosecution, in appropriate circumstances the Service may incorporate by reference all or any portion of a legal memorandum filed pursuant to such an order.

The Act does not contemplate appointment of an Officer of the Commission in section 404(b) cases, and none is being appointed.[8] The Commission orders:

(A) The mailgram of October 23, 1979, from George Seaman, *et al.*, be construed as a petition for review pursuant to section 404(b) of the Act [39 U.S.C. § 404(b)].

(b) The Secretary of the Commission shall publish this Notice and Order in the **Federal Register.**

(C) The Postal Service shall file the administrative record in this case on or before November 7, 1979, pursuant to the Commission's rules of practice [39 CFR § 3001.113(a)]

By the Commission.

David F. Harris,

Secretary.

Appendix

October 23, 1979—Filing of Petition. Notice and Order of Filing of Appeal.
November 7, 1979—Filing of Record by Postal Service [*see* 39 CFR § 3001.113(a)].
November 12, 1979—Last day for filing of petitions to intervene [*see 39 CFR § 3001.111(b)].*
November 23, 1979—Petitioners' initial brief [*see* 39 CFR § 3001.115(a)].
December 10, 1979—Postal Service answering brief [*see* 39 CFR § 3001.115(b)].
December 26, 1979—(1) Petitioners' reply brief, should petitioner choose to file such brief [*see* 39 CFR § 3001.115(c)].
(2) Deadline for motions by any party requesting oral agrument. The Commission will exercise its discretion, as the interests of prompt and just decision may require, in scheduling or dispensing with oral argument.
February 20, 1980—Expiration of 120-day decisional schedule [*see* 39 CFR § 404(b)(5)].

[FR Doc. 79-33747 Filed 10-30-79; 8:45 am]

BILLING CODE 7715-01-M

[8] In the Matter of Gresham, S.C., Route #1, Docket No. A78–1 (May 11, 1978).

SECURITIES AND EXCHANGE COMMISSION

[812–4521; Release No. 10905]

AMCAP Fund, Inc. et al.; Notice of Application for an Order Exempting Applicants and Certain Transactions From Rule 22d–1 and Approving an Offer of Exchange

October 18, 1979.

In the matter of AMCAP Fund, Inc., American Balanced Fund, Inc., American Fund of Government Securities, Inc., American Mutual Fund, Inc., Anchor Growth Fund, Inc., The Bond Fund of America, Inc., Fundamental Investors, Inc., The Growth Fund of America, Inc., The Income Fund of America, Inc., The investment Company of America, New Perspective Fund, Inc., The Tax-Exempt Bond Fund of America, Inc., Washington Mutual Investors Fund, Inc., and American Funds Distributors, Inc., 333 South Hope Street, Los Angeles, California 90071

Notice is hereby given, That AMCAP Fund, Inc., American Balanced Fund, Inc., American Mutual Fund, Inc., Anchor Growth Fund, Inc., The Bond Fund of America, Inc., Fundamental Investors, Inc., The Growth Fund of America, Inc., The Income Fund of America, Inc., The Investment Company of America, New Perspective Fund, Inc. and Washington Mutual Investors Fund, Inc., (collectively referred to as the "High Load Funds" and each individually as a "High Load Fund") and American Fund of Government Securities, Inc. ("Government Fund"), The Tax-Exempt Bond Fund of America, Inc., ("Tax-Exempt Fund") and American Funds Distributors, Inc. ("Distributor") (collectively referred to with the High Load Funds, Government Fund and Tax-Exempt Fund as "Applicants"), filed an application on September 19, 1979, for an order pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicants and certain transactions from the provisions of Section 22(d) of the Act and Rule 22d–1 thereunder, and approving under the provisions of Section 11(a) of the Act certain offers of exchange. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Each of the High Load Funds, Government Fund and Tax-Exempt Fund is registered under the Act as an open-end management investment company. Distributor, as principal underwriter for each High Load Fund, Government Fund, and Tax-Exempt Fund, maintains a continuous public offering of the shares of each at their respective net asset values, plus a sales charge. Applicants state that the maximum sales charge for each of the High Load Funds is 8.5% of the offering price per share on purchases of less than $15,000 and that the sales charge is reduced on larger purchases. Applicants further state that shares of each of the High Load Funds may be exchanged for shares of any of the other High Load Funds on the basis of relative net asset values per share at the time of exchange, without a sales or other charge. Applicants represent that, pursuant to the underwriting agreement between Government Fund and Distributor, the maximum sales charge for shares of Government Fund is 1.75% of the offering price per share, reduced on sales in excess of $15,000, and that under the proposed underwriting agreement between Tax-Exempt Fund and Distributor the maximum sales charge for shares of Tax-Exempt Fund is 4.75% of the offering price per share, reduced on sales in excess of $25,000. According to Applicants, shares of each of the High Load Funds, Government Fund and Tax-Exempt Fund may be acquired through reinvestment of dividends and distributions at net asset value.

Applicants state that each of the High Load Funds, Government Fund and Tax-Exempt Fund proposes to offer its shares to shareholders of each of the others in exchange for shares of the other fund on the following Bases: (1) Shares of Government and Tax-Exempt Fund which were acquired through a share exchange from one of the High Load Funds or acquired as a result of the reinvestment of dividends or distributions can be exchanged for

shares of any of the High Load Funds on the basis of their relative net asset value per share at the time of the excange; (2) Shares of Government Fund and Tax-Exempt Fund acquired other than through a share exchange from one of the High Load Funds or reinvestment of dividends or distributions can be exchanged for shares of any of the High Load Funds on the basis of their relative net asset value per share at the time of the exchange, plus the sales charge described in the prospectus of each of the High Load Funds whose shares will be acquired in the exchange, less an amount equal to the sales charge previously paid on the Government Fund or Tax-Exempt Fund shares being exchanged; (3) Shares of Government Fund acquired other than through a share exchange from Tax-Exempt Fund or one of the High Load Funds or as a result of the reinvestment of dividends or distributions can be exchanged for shares of Tax-Exempt Fund on the basis of their relative net asset value per share at the time of the exchange, plus the sales charge described in the prospectus of Tax-Exempt Fund less an amount equal to the sales charge previously paid on the Government Fund shares being exchanged; and (4) Shares of Government Fund acquired through a share exchange from Tax-Exempt Fund can be exchanged for shares of Tax-Exempt Fund on the basis of their relative net asset value, or exchanged for shares of any of the High Load Funds on the same basis as an exchange originating from Tax-Exempt Fund. Applicants assert that, as a result of the above terms of exchanges, shareholders of Government Fund or Tax-Exempt Fund who exchange their shares for shares of the High Load Funds and shareholders of Government Fund who exchange their shares for shares of Tax-Exempt Fund would pay approximately the same overall sales charge that they would have paid had they directly purchased the same number of shares of the High Load Fund or of Tax-Exempt Fund.

According to the application, shareholders of the High Load Funds have the right to exchange their share for shares of Government Fund and Tax-Exempt Fund, and shareholders of Tax-Exempt Fund have the right to exchange their shares for shares of Government Fund, without payment of any sales changes. A shareholder who acquired shares of Government Fund or Tax-Exempt Fund by way of an exchange of shares of one of the High Load Funds, would be able to re-exchange the shares of Goverment Fund or Tax-Exempt Fund for shares of any of the High Load Funds, or shares of Government for shares of Tax-Exempt Fund at net asset value since such shareholder already would have paid a full sales charge on his original purchase of shares of such High Load Fund. No further sales charge would be assessed on any future exchange of the shares so acquired. No refund of sales charges will be made on any of the exchanges permitted hereunder.

Applicants state that in the event shareholders desire to exchange only a portion of their shares of Government Fund or Tax-Exempt Fund for one of the High Load Funds, or a portion of their shares of Government Fund for shares of Tax-Exempt Fund, those shares which may be exchanged at relative net asset value without sales charge will be exchanged first. The remaining shares to be exchanged will be selected from those shares which are entitled to be exchanged upon payment of the lowest additional sales charge. For example, if a shareholder owned 2,000 shares of Government Fund on which a sales charge of 1.75% had been paid, and 250 shares of which had been acquired upon the reinvestment of dividends, and desired to exchange 1,000 shares of Government Fund for one of the High Load Funds, the shares to be exchanged and the sales charge due would be as follows: 250 shares of Government Fund would be exchanged at net asset value and the remaining 750 shares would be exchanged upon the payment of sales charge of 8.5% of the offering price per share less the sales charge paid on the 750 shares at the time they were acquired. If, because of rights of accumulation at the time of the exchange, the shareholder would be entitled to make direct purchase of shares of the High Load Fund to be acquired at a lower sales charge, the lower sales charge less the sales charge previously paid would be assessed.

Section 11(a) of the Act provides, in part, that it shall be unlawful for any registered open-end company or any principal underwriter for such a company to make or cause to be made an offer to the holder of a security of such company or any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company or principal underwriter thereof shall sell any redeemable security issued by such company to any person except at a current offering price described in the prospectus. Rule 22d–1 provides for certain variations in and elimination of sales load, none of which are applicable to the proposed exchange offers.

Applicant represents that the sales charge described in the prospectus of each of the High Load Funds, Government Fund and Tax-Exempt Fund differs from and may be greater than the sales charge which would be applicable to the proposed exchange offer. Applicants state that the purpose of the proposed exchange offer is to permit a shareholder of any of the High Load Funds, Government Fund or Tax-Exempt Fund whose investment objective changes to change that investment to a different investment company within the same group. Applicants assert that the exchange offer to shareholders of Government Fund or Tax-Exempt Fund cannot be made at the relative net asset value of the High Load Fund to be acquired because the shareholders of Government Fund or Tax-Exempt Fund would have paid sales charges on their investments that would be substantially lower than those paid by shareholders of the High Load Fund to be acquired. Further, shareholders of Government Fund cannot exchange their shares for shares of Tax-Exempt Fund on relative net asset basis, because they would have paid lower sales charges on their investments than did other shareholders of Tax-Exempt Fund. Applicants further argue that if shares of the High Load Funds could be acquired by a shareholder of Government Fund or Tax-Exempt Fund at net asset value in an exchange, or if shares of Tax-Exempt Fund could be acquired at net asset value by shareholders of Government Fund, it is possible that the exchange would be in violation of Section 22(d) of the Act, since investors would be able to purchase shares of one of the High Load Funds or Tax-Exempt Fund at a sales charge other than that described in its prospectus merely by exchanging those Government Fund shares at net asset value for shares of one of the High Load Funds or Tax-Exempt Fund.

Section 6(c) provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction or any class of persons, securities, or transactions from any provision or provisions of the Act or of any rule thereunder, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of

investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further give, That any interested person may, not later than November 13, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-33599 Filed 10-30-79; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 21261; (70-5503)]

Appalachian Power Co.; Proposed Issuance of Refunding Bonds by County Authority in Connection with Pollution Control Financing

October 19, 1979.

Notice is hereby given that Appalachian Power Company ("Appalachian"), 40 Franklin Road, Roanoke, Virginia 24009, An electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed with this Commission post-effective amendments to its application-declaration previously filed and amended pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 9(a), 10 and 12(d) of the Act and Rule 44(b)(3) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, as amended by said post-effective amendments, which is summarized below, for a complete statement of the proposed transaction.

By order dated December 10, 1974 (HCAR No. 18703), Appalachian was authorized to enter into an agreement of sale ("Agreement") with the Industrial Development Authority of Russell County, Virginia (the "Authority") concerning the financing of pollution control facilities ("Facilities") at Appalachian's Glen Lyn and Clinch River plants. Under the Agreement the Authority is to issue and sell its pollution control revenue bonds ("Revenue Bonds"), in one or more series, the proceeds from which sales are to be deposited by the Authority with the trustee ("Trustee") under the indenture ("Indenture") entered into between the Authority and Trustee pursuant to which Indenture the Revenue Bonds are issued and secured. The proceeds will then be applied to the payment of the costs of construction of the Facilities, originally estimated at $45,000,000, or, in the case of proceeds from the sale of refunding bonds, to the payment of principal, premium (if any) and interest on Revenue Bonds to be refunded. Appalachian conveyed an undivided interest in a portion of the Facilities to the Authority, which portion the Authority sold to Appalachian under an installment sales arrangement requiring Appalachian to pay as the purchase price semi-annual installments in such an amount (together with other monies held by the Trustee under the Indenture for that purpose) as to enable the Authority to pay, when due, the interest and principal on the Revenue Bonds. Jurisdiction was reserved in the order of December 10, 1974, with respect to the payment of the purchase price of the Facilities by installment payments insofar as such payments were affected by the interest rate or rates of the Revenue Bonds to be issued and sold by the Authority.

By orders dated December 27, 1974, and December 17, 1975 (HCAR Nos. 18736 and 19303), such jurisdiction was released concerning the sales of Revenue Bonds in the principal amounts of $24,000,000 and $17,000,000, respectively, as such sales affected the purchase price to Appalachian. Of the $24,000,000 principal amount of Revenue Bonds sold subsequent to the order of December 27, 1974, $10,500,000 principal amount bearing interest at 8 percent matures December 1, 1979.

By post-effective amendments it is stated that the Authority now proposes to issue and sell a series of refunding bonds ("Refunding Bonds") in the aggregate principal amount of $11,000,000, the net proceeds from the sale of which will be used to provide for principal and interest payments required for the refunding at their stated maturity on December 1, 1979, of $10,500,000 principal amount of Revenue Bonds previously issued by the Authority. The Refunding Bonds will be issued under and secured by the Indenture and a second supplemental indenture, will bear interest and semi-annually, will mature at a date or dates not less than five nor more than thirty years from the date of issuance and will not be redeemable at the option of the Authority within 10 years from the date of issuance except under certain circumstances.

It is contemplated that the Refunding Bonds will be sold by the Authority pursuant to arrangements with E. F. Hutton & Co., Inc., as underwriter.

The fees and expenses to be incurred in connection with the proposed transaction will be supplied by further amendment. It is stated that the State Corporation Commission of Virginia has jurisdiction over the proposed transaction and that no other State commission and no federal commission, other than this Commisison, has jurisdiction therover.

Notice is further given that any interested person may, not later than November 13, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as amended by said post-effective amendments, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended by said post-effective amendments or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will

receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-33600 Filed 10-30-79; 8:45 am]

BILLING CODE 8010-01-M

SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY

Public Hearing; Nonimmigrant Visas

The Select Commission on Immigration and Refugee Policy will hold the second of 12 regional hearings on:

Date: November 19, 1979.
Time: 9:00–5:00; 7:00–9:00 p.m.
Place: Fanueil Hall, Boston, Massachusetts.

The Boston hearing will be chaired by Rev. Theodore M. Hesburgh, President, University of Notre Dame, and chairman of the Select Commission.

The major portion of this hearing will be devoted to testimony from invited witnesses addressing issues relating to non-immigrant visas (students, tourists, etc.) and the criteria for visa issuance or denial.

There will also be an "Open Mike" in the evening from 7:00–9:00 p.m. available to anyone wishing to address any issue before the Commission. Written statements will be accepted for a period of 7 days following the hearing from people unable to appear in person.

The public is cordially invited to attend both the day and evening discussions.

The Select Commission on Immigration and Refugee Policy was created by public law to provide a comprehensive review of U.S. immigration laws, policies, and procedures. The regional hearings are being held to assure that a wide range of views are heard and considered by the Commission. Other hearings will be held in Chicago, Denver, Los Angeles, Miami, New Orleans, New York, Phoenix, San Antonio, and San Francisco.

Members of the Commission include four Cabinet officers, eight members of Congress with four members selected from each Judiciary Committee, and four members appointed by the President.

Anyone wishing more information about the Boston hearing or about testifying at the evening session should contact: John Jones, Select Commission on Immigration and Refugee Policy, Suite 2020, New Executive Office Building, Washington, D.C. 20506. Telephone: (202) 395–5615.

Lawrence H. Fuchs,

Executive Director.

[FR Doc. 79-33860 Filed 10-30-79; 8:45 am]

BILLING CODE 6820-AR-M

DEPARTMENT OF THE TREASURY

Customs Service

[521465]

Decision Denying American Manufacturer's Petition Requesting Reclassification of Plastic Netting; Petitioner's Desire To Contest This Decision

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: Notice of (1) decision of American manufacturer's petition, and (2) receipt of notice of petitioner's desire to contest the decision.

SUMMARY: In response to an American manufacturer's petition requesting the reclassification of plastic netting as textile articles, the Customs Service advised the petitioner that plastic netting of the kind in question, i.e., produced in an extrusion machine process in one single continuous operation, is precluded by Customs administrative rulings from classification as textile articles. Upon being informed that its petition had been denied, the petitioner filed notice of its desire to contest the decision of the Customs Service.

FOR FURTHER INFORMATION CONTACT: Donald F. Cahill, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229 (202–566–8181).

SUPPLEMENTARY INFORMATION:

Background

A petition was filed under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516), by Mr. George S. Nalle, Jr. of Nalle Plastics, Inc., an American manufacturer of plastic netting. The petition requested that plastic netting be reclassified as nonwoven textile articles, i.e., under the provision for other textile articles not specially provided for, of man-made fibers, in item 389.62, Tariff Schedules of the United States (TSUS). The netting in question is a continuously extruded plastic mesh having application in industrial and consumer packaging, and as the support medium for filtering systems such as blood dialysis machines. Notice of receipt of the petition was published in the **Federal Register** on May 10, 1979 (44 FR 27527). This notice advised that importations of platic netting of the kind in question were currently precluded by Customs administrative rulings from classification as textile articles.

Decision on Petition and Receipt of Petitioner's Notice of Desire to Contest

In Headquarters letter dated July 20, 1979, file No. 057964, the petitioner was advised that his petition was denied. On the basis that a textile article must be produced from previously formed filaments, Customs decided to adhere to its practice of precluding from classification as textile articles all plastic netting which is produced in an extrusion machine process in one single continuous operation that forms the completed product.

The petitioner was advised that plastic netting of the kind in question would continue to be classified under the provision for film strips, and sheets, all the foregoing which are flexible, not of cellulosic plastic materials, other, in item 771.42, TSUS, if the netting is flexible and over 15 inches in width and over 18 inches in length, and not process (other than surface-processed), or in item 771.55, TSUS, if the netting is not flexible and meets those dimensional requirements or consists of seamless tubing made or cut into lengths measuring over 15 inches. If the plastic netting is made or cut into non-rectangular shapes, or measures not over 15 inches in width, or measures not over 18 inches in length, or is ground on the edges, drilled, milled, hemmed, or otherwise processed (except surface-processed), it would continue to be classified under the provision for articles not specially provided for, of rubber or plastics, other, in item 774.60, TSUS.

In response to this decision, the petitioner filed his notice of desire to contest, in accordance with section 516(c) of the Tariff Act of 1930, as amended [19 U.S.C. 1516(c)], and section 175.23 of the Customs Regulations [19 CFR 175.23]. However, under section 516(e) of the Tariff Act of 1930, as amended [19 U.S.C. 1516(e)], current Customs practice will continue so long as no decision of the United States Customs Court or the United States Court of Customs and Patent Appeals not in harmony with this practice is published.

Authority

This notice is being published in accordance with section 516(c) of the Tariff Act of 1930, as amended [19 U.S.C. 1516(c)], and § 175.24 of the Customs Regulations [19 CFR 175.24].

Dated: October 22, 1979.

Donald W. Lewis,

Commissioner of Customs.

[FR Doc. 79-33651 Filed 10-30-79; 8:45 am]

BILLING CODE 4810-22-M

VETERANS ADMINISTRATION

60-Bed Nursing Home Care Unit and Underground Drainage Culvert, VAMC, Wichita, Kans.; Proposed Action

The Veterans Administration proposes to locate a 60-Bed Nursing Home Care Unit and a Flood Hazard Elimination Culvert at the Veterans Administration Medical Center, Wichita, Kansas.

Because the nursing home will be located within the 100-year floodplain of Dry Creek, the Veterans Administration has worked in close coordination with the Corps of Engineers and the City of Wichita, Kansas, in defining the limits of the existing flood hazard and determining the impact of placing the proposed projects on the site. Through this coordinated effort, a concept of channeling the flood water through a culvert structure has been developed. This culvert will be constructed prior to completion of the nursing home and will alleviate the flooding conditions on the Veterans Administration property.

The proposed nursing home is to be sited at the east end of several connected buildings existing on the 48 acre facility. The nursing home will not have its own dietetics or clinic capability and therefore must be physically attached to the main medical complex. The proposed site is the best from the standpoint of (1) function with related activities, (2) future clinical or bed expansion to the front (south) of existing buildings and, (3) because the rear (north) of those buildings would involve inadequate functional relationships, relocation of major utilities and exposure of the patient to a "service area" environment. Several site alternatives outside the floodplain were considered but rejected for the above reasons. The drainage culvert project has been included with this action to assure conformance with State and local floodplain protection standards.

The drainage structure is designed to meet runoff requirements of 100-year storm projections for Wichita made in Technical Paper No. 25 of the United States Weather Bureau. A 1976 report by the Corps of Engineers shows that at the intersection of Dry Creek and Edgemoor Drive a 100-year Intermediate Regional Flood is only one foot below the 500-year Standard Project Flood. Therefore, it is very likely that the drainage structure will cause the nursing home to be outside the 500-year flood limit as well.

The Veterans Administration is soliciting comments from the State and local levels. This Notice of Proposed Action is in compliance with the announcement requirements of Executive Order 11988, Floodplain Management Guidelines (February 1978).

Comments on this proposed action should be addressed to:

Mr. V. P. Miller, Assistant Administrator for Construction (08), Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420.

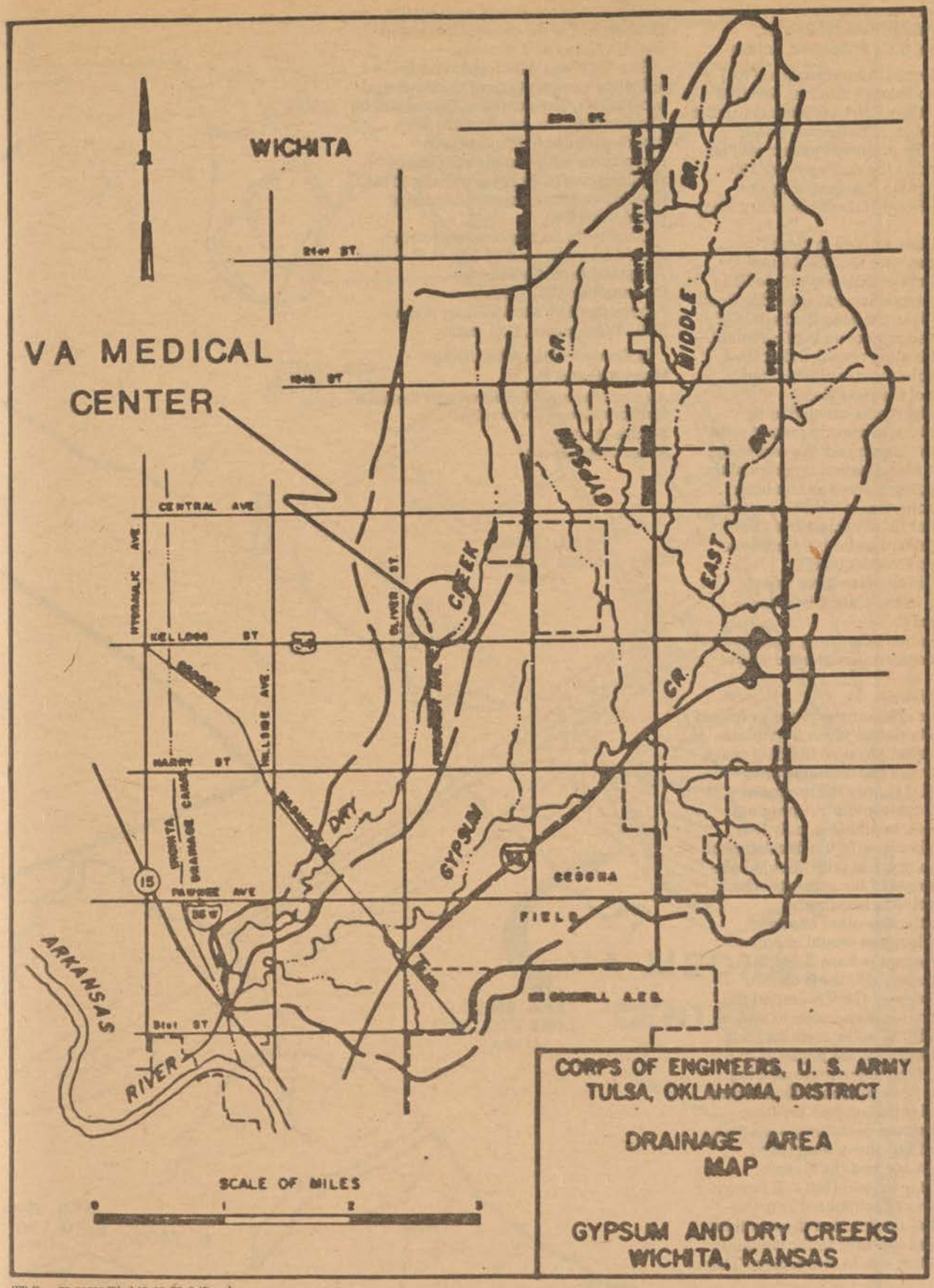
By direction of the Administrator.

Dated: October 22, 1979.

Maury S. Cralle, Jr.,

Assistant Deputy Administrator for Financial Management and Construction.

BILLING CODE 8320-01-M



[FR Doc. 79-33252 Filed 10-30-79; 8:45 am]
BILLING CODE 8320-01-C

Clinical Services Addition, Veterans Administration Medical Center, Charleston, S.C.; Proposed Action

The Veterans Administration (VA) proposes to locate a Clinical Services Addition at the Veterans Administration Medical Center, Charleston, South Carolina. The proposed project will be located within the Ashley River 100-Year Floodplain designated by the HUD–FIA Flood Hazard Boundary Map (FHBM).

The VA has worked in close coordination with the Charleston District Corps of Engineers in defining the limits of existing and probable flood hazard and determining the impact of the proposed project on the floodplain. This coordination revealed that the existing project site is above flood elevations of the base flood. Additionally, it was concluded the project will not adversely impact upon the 100-Year Floodplain. As part of the Floodplain Management Program of the VA facility, consideration has been given to protection of life and property during major flood occurences. The Medical Center has both a Hurricane Plan and an Evacuation Plan.

Project alternatives have been considered in the planning process. These include:

1. Renovation of existing space.
2. New construction at other onsite locations.
3. No action.

No viable alternatives to the proposed action exist relative to the floodplain. This is because physical building space and facility use relationships have determined that only the proposed layout will achieve the VA program requirements. In addition, only the proposed plan locates the development at a maximum grade (elevation) above the lower areas of the property which are susceptible to flooding. Consequently, any other onsite alternative location would impact to some degree on the base floodplain.

To adequately site the proposed action in the area, the VA limited the proposed clinical expansion to a small vertical addition to the main existing building. Moreover, the physical size does not extend beyond the existing dimensions of the main medical center. No physical intrusion into the base floodplain occurs in the proposed plan.

In view of the above mentioned planning actions and the remote location of the project (500+ ft.) away from the river embankment, it is the conclusion of the VA that there will be no significant increase in the elevation of flood waters due to this project. This conclusion is concurred with by the Department of the Army, Charleston District Corps of Engineers.

The Veterans Administration is soliciting comments from the State and local levels. The comment period will be open until November 30, 1979. This Notice of Proposed Action is in compliance with the announcement requirements of Executive Order 11988, Floodplain Management Guidelines (February 1978).

Comments on this proposed action should be addressed to: Mr. V. P. Miller, Assistant Administrator for Construction (08), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420.

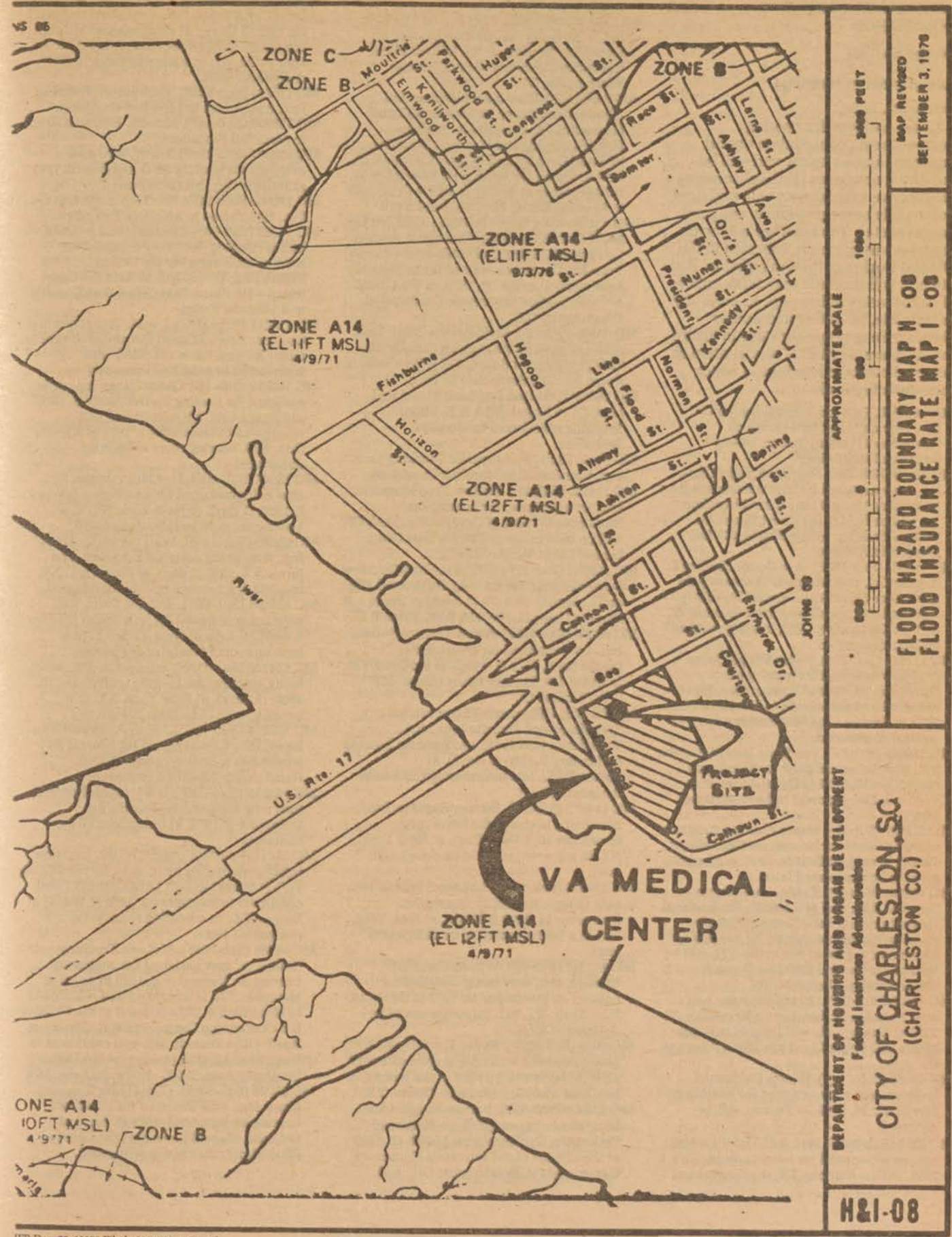
By direction of the Administrator.

Maury S. Cralle, Jr.,

Assistant Deputy Administrator for Financial Management and Construction.

October 25, 1979.

BILLING CODE 8320-01-M



[FR Doc. 79-33669 Filed 10-30-79; 8:45 am]

BILLING CODE 8320-01-C

INTERSTATE COMMERCE COMMISSION

[Notice No. 143]

Assignment of Hearings

October 25, 1979.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 145864F, Paragon Transportation Co., Inc., now assigned for hearing on November 1, 1979 at Boston, MA is postponed indefinitely.

MC 76993 (Sub-28F), Express Freight Lines, Inc., now assigned for continued hearing on November 15, 1979 (days) at Milwaukee, WI will be held in the Court Room 254, Federal Building & Courthouse, 517 East Wisconsin Avenue.

MC 112304 (Sub-169F), Ace Doran Hauling & Rigging Co., now assigned for hearing on November 27, 1979 at Kansas City, KS is canceled and reassigned to Novermber 27, 1979 at Kansas City, MO, hearing room to be later designated.

MC 117815 (Sub-289), Pulley Freight Lines, Inc., now assigned for hearing on November 28, 1979 at Kansas City, KS is canceled and reassigned to November 28, 1979 at Kansas City, MO, hearing room to be later designated.

MC 140818 (Sub-1F), The Gray Line of Seattle, Inc., now being assigned for hearing on November 27, 1979 (4 Days), at Seattle, WA, in a hearing room to be designated later.

MC 138237 (Sub-8F), Metro Hauling, Inc., now being assigned for hearing on December 3, 1979 (1 Week), at Seattle, WA, in a hearing room to be designated later.

MC 135812 (Sub-1F), Professional Driver Services, Inc., and MC 140245, Professional Driver Services, Inc., Contract Carrier Application, now assigned for hearing on November 6, 1979 at Nashville, TN, will be held at the Federal Building, Room No. 615, 801 Broadway, Nashville, TN.

MC 46829 (Sub-12F), Allard Express, Inc., now assigned for hearing on November 27, 1979 at Chicago, IL, will be held in room 3855A, 230 South Dearborn Street, Chicago, IL.

MC 48958 (Sub-171F), Illinois California Express, Inc., now assigned for hearing on November 26, 1979, at Tucson, AZ, is canceled.

MC 2229 (Sub-204F), Red Ball Motor Freight, Inc., now assigned for hearing on January 1, 1980, at San Antonio, TX. is canceled and Application Dismissed.

MC 129032 (Sub-68F), Tom Inman Trucking, Inc., now being assigned for hearing on December 18, 1979, at the Offices of the Interstate Commerce Commission in Washington, DC.

AB-6 (Sub-6F), Burlington Northern Inc. Abandonment near St. Joseph, MO and Humeston, IA, in Buchana, Andrew, DeKalb, Gentry and Harrison Counties, MO and Decatur and Wayne Counties, IA, now assigned for hearing on November 27, 1979 (1 week) at Bethany, MO, will be held in Meeting Room, First National Bank.

66525 (Sub-25F), White Brothers Trucking Co., 56270 (Sub-18F), Leicht Transfer & Storage Co., and MC 62181 (Sub-13F), John Hennes Trucking Co., now assigned for continued hearing on October 30, 1979, at the Office of the Interstate Commerce Commission, Washington, D.C.

MC 65895 (Sub-5F), Reddaway's Truck Line, now assigned for hearing on October 29, 1979 (2 weeks) at Salem, OR will be held in Room No. 354, State Capitol Bldg.

MC 146231F, Seaton Smithson Flegel and Jerry Dean Flegel, DBA S. S. Flegel Trucking transferred to Modified Procedure.

MC 64832 (Sub-7F), Magnolia Trucking Line, Inc., transferred to Modified Procedure.

MC 138100 (Sub-2F), Mellow Truck Express, Inc., now assigned for hearing on November 27, 1979 (2 days) at Portland, OR will be held in Room 103, Pioneer Court House, 555 S. W. Yamhill St.

MC 135524 (Sub-20F), G. F. Trucking Co., now being assigned for hearing at Portland, OR on November 29, 1979 (2 days) in Room 103, Pioneer Court House, 555 S.W. Yamhill St.

MC 83835 (Sub-153F) Wales Transportation, Inc., now assigned for Hearing on December 3, 1979 (1 week) at Portland, OR in Room 103, Pioneer Court House, 555 S.W. Yamhill St.

MC FC 77834, Plymouth Transport, Inc., Transferee and Danella Bros., Inc., Transferor, now being assigned for hearing on January 9, 1980 (3 Days), at Philadelphia, PA. in a hearing room to be designated later.

MC 144672 (Sub-6F), Victory Express, Inc., now being assigned for hearing on December 10, 1979 (1 Day), at New York, NY. in a hearing room to be designated later.

MC 135874 (Sub-147F), LTL Perishables, Inc., now being assigned for hearing on December 11, 1979 (2 Days), at New York, NY. in a hearing room to be designated later.

MC 141641 (Sub-9F), Wilson Certified Express, Inc., now being assigned for hearing on December 13, 1979 (2 Days), at New York, NY. in a hearing room to be designated later.

MC 2900 (Sub-355F), Ryder Truck Lines, Inc., now assigned for hearing on November 27, 1979 (9 Days) will be held at the Executive Inn, 3232 Mockingbird Lane, Dallas, TX.

MC 108633 (Sub-17F), Barnes Freight Line, Inc., now being assigned for continued Prehearing Conference on March 25, 1980 at the Offices of the Interstate Commerce Commission in Washington, DC., and assigned for hearing on April 14, 1980 (5 Days), at Atlanta, GA., continued to April 21, 1980 (5 Days), at Birmingham, AL. and continued to April 28, 1980 (5 Days), at Huntsville, AL. in a hearing room to be designated later.

MC 116763 (Sub-489F), Carl Subler Trucking, Inc., transferred to Modified Procedure.

MC 138890 (Sub-14F), Moodie, Inc., transfered to Modified Procedure.

MC 128007 (Sub-130F), Hofer, Inc., now assigned for hearing on December 10, 1979 at Kansas City, MO is canceled.

MC 138902 (Sub-11F), Erb Transportation Co., Inc., transferred to Modified Procedure.

MC 14252 (Sub-46F), Commercial Lovelace Motor Freights, Inc., now assigned for hearing on November 26, 1979 at Parkerburg, W VA will be held the Court Room—5th Floor, Post Office Building, 5th and Julianna Street.

MC 115311 (Sub-307E), J. & M. Transportation Co., Inc., now assigned December 4, 1979 at New Orleans, LA is canceled, and transferred to Modified Procedure.

MC 146038 (Sub-1F), Quick Silver, Inc., now assigned for hearing on December 3, 1979 at Kansas City, KS is canceled and reassigned to December 3, 1979 at Kansas City, MO, hearing room to be later designated.

MC 78687 (Sub-56F), Lott Motor Lines, Inc., now being assigned for hearing on January 7, 1980, (1 day), at New York, NY, in a hearing room to be later designated.

MC 95540 (Sub-1083), Watkins Motor Lines, Inc., now being assigned for hearing on January 8, 1980 (1 day), at New York, NY, in a hearing room to be later designated.

MC 124004 (Sub-49F), Richard Dahn, Inc., now being assigned for hearing on January 9, 1980, (1 day), at New York NY, in a hearing room to be later designated.

MC 124170 (Sub-113F), Frostways, Inc., now being assigned for hearing on January 10, 1980, (2 days), at New York, NY, in a hearing room to be later designated.

MC 107012 (Sub-336F), North American Van Lines, Inc., now assigned for hearing on November 5, 1979 is cancelled and transfered to Modified Procedure.

MC 123255 (Sub-186F), B & L Motor Freight, Inc., now assigned for hearing on December 3, 1979, at Columbus, OH, is canceled.

MC 33641 (Sub-140F), IML Freight, Inc., now being assigned for hearing on November 26, 1979 (1 Week) at Salt Lake City, UT., and continued to December 3, 1979 (1 Week) at Dallas, TX., in a hearing room to be designated later.

MC 31389 (Sub-269F), McLean Trucking Company, now assigned for continued hearing on November 6, 1979 (9 days) at Memphis, TN, is advanced and reassigned to November 5, 1979 (5 days) at the Holiday Inn Conference Center, 11200 E. Goodman Road, Olive Branch, MS, and continued to November 12, 1979 (4 days) at the Holiday Inn Downtown, 200 E. Amite, Jackson, MS.

MC 25798 (Sub-349F), Clay Hyder Trucking Lines, Inc., now assigned for continued hearing on January 8, 1979 (3 days) at Orlando, FL, will be held at the Court of Flags Hotel, 5715 Major Boulevard.

MC 115357 (Sub-10F), Tat, Inc., now assigned for hearing on December 12, 1979 (3 days), at Kansas City, MO in a hearing room to be later designated.
MC 113666 (Sub-151F), Freeport Transport, Inc, now assigned for hearing on November 28, 1979 (1 day) at Pittsburg, PA will be held in Room No. 2501, Federal Building, 1000 Liberty Avenue.
MC 123091 (Sub-29F), Nick Strimbu, Inc., now assigned for hearing on November 29, 1979 (2 days) at Pittsburg, PA will be held in Room No. 2501, Federal Building, 1000 Liberty Avenue.
MC 120364 (Sub 17F), A & B Freight Line, Inc, now assigned for hearing on November 13, 1979 (4 days) at Chicago, IL will be held in Room 3855A, 230 South Dearborn Street.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-33631 Filed 10-30-79; 8:45 am]

BILLING CODE 7035-01-M

[Notice No. 142]

Assignment of Hearing; Correction

October 25, 1979.

MC C-8619, Transport of New Jersey; Asbury Park-New York Transit Corporation; Decamp Bus Lines; Hudson Bus Transportation Company; Hudson Transit Lines, Inc.; Lakeland Bus Lines, Inc., Maplewood Equipment Company; New York Keansburg-Long Branch Bus Company, Inc.; North Boulevard Transportation Company; Somerset Bus Company, Inc.; Suburban Transit Corporation, and Port Authority, appearing on page 55265, September 25, 1979 is corrected as follows:

MC C-8619, Transport of New Jersey; Asbury Park-New York Transit Corporation; Decamp Bus Lines; Hudson Bus Transportation Company; Hudson Transit Lines, Inc.; Lakeland Bus Lines, Inc., Maplewood Equipment Company; New York Keansburg-Long Branch Bus Company, Inc.; North Boulevard Transportation Company; Somerset Bus Company, Inc.; Suburban Transit Corporation, and Port Authority now being assigned for continued Prehearing Conference on October 30, 1979 (1 week) at New York, NY will be held in Room No. F-2220, Federal Building, 26 Federal Plaza (instead of Hearing).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-33632 Filed 10-30-79; 8:45 am]

BILLING CODE 7035-01-M

[40th Revised Exemption No. 12]

Exemption Under Provision of Rule 19 of the Mandatory Car Service Rules Ordered in Ex Parte No. 241

It appearing, That the railroads named herein own numerous plain boxcars; that under present conditions, there is virtually no demand for these cars on the lines of the car owners; that return of these cars to the car owners would result in their being stored idle on these lines; 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 plain boxcars owned by the railroads listed herein, 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, 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" or "XMI," and bearing reporting marks assigned to the railroads named below, shall be exempt from provisions of Car Service Rules 1(a), 2(a), and 2(b).

Atlantic and Western Railway
Reporting Marks: ATW
Chicago & Illinois Midland Railway Company
Reporting Marks: CIM
***
Fonda, Johnstown and Gloversville Railroad Company
Reporting Marks: FJG
Hartford and Slocum Railroad Company
Reporting Marks: HS
Hillsdale County Railway Company Inc.
Reporting Marks: HCRC
Lackawaxen and Stourbridge Railroad Corporation
Reporting Marks: LASB
Maryland and Pennsylvania Railroad Company
Reporting Marks: MPA
Pickens Railroad Company
Reporting Marks: PICK

Effective October 15, 1979, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., October 11, 1979.

Interstate Commerce Commission.

Joel E. Burns,

Agent.

[FR Doc. 79-33621 Filed 10-30-79; 8:45 am]

BILLING CODE 7035-01-M

[72d 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 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
* * *
Cadiz Railroad 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
Delta Valley & Southern Railway Company
Reporting Marks: DVS
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
Helena Southwestern Railroad Company
Reporting Marks: HSW
Illinois Terminal Railroad Company
Reporting Marks: ITC
Indiana Eastern Railroad and Transportation, Inc. d.b.a. The Hoosier Connection
Reporting Marks: HOSC
Lake Erie, Franklin & Clarion Railroad Company
Reporting Marks: LEF
Lake Superior & Ishpeming Railroad Company
Reporting Marks: LSI
Lenawee County Railroad Company, Inc.

*** Chicago, Rock Island and Pacific Railroad Company deleted.

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
*McCloud River Railroad Company
Reporting Marks: MR
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
* * *
*ERR13*St. Lawrence Railroad
Reporting Marks: NSL
St. Louis Southwestern Railway Company
Reporting Marks: SSW
St. Marys Railway Company
Reporting Marks: SM
Savannah State Docks Railroad Company
Reporting Marks: SSDK
Sierra Railroad Company
Reporting Marks: SERA
Southern Pacific Transportation Company
Reporting Marks: SP
Terminal Railway, Alabama State Docks
Reporting Marks: TASD
The Texas Mexican Railway Company
Reporting Marks: TM
* * *
Toledo, Peoria & Western Railroad Company
Reporting Marks: TPW
Union Railroad of Oregon
Reporting Marks: UO
Vermont Railway, Inc.
Reporting Marks: VTR
Virginia & Maryland Railroad
Reporting Marks: VAMD
Wabash Valley Railroad Company
Reporting Marks: WVRC
WCTU Railway Company
Reporting Marks: WCTR
Youngstown & Southern Railway Company
Reporting Marks: YS
Yreka Western Railroad Company
Reporting Marks: YW

*Addition.
***Berlin Mills Railway Inc., Sacramento Northern Railway; and Tidewater Southern Railway Company deleted.

Effective October 15, 1979, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., October 11, 1979.

Interstate Commerce Commission.

Joel E. Burns,

Agent.

[FR Doc. 79-33622 Filed 10-30-79; 8:45 am]

BILLING CODE 7035-01-M

[No. 37258]

Georgia Intrastate Freight Rates and Charges—1979

October 15, 1979.

By joint petition filed August 23, 1979, Central of Georgia Railroad Company, Southern Railway Company, Seaboard Coast Line Railroad Company, and Louisville & Nashville Railroad Company, (Petitioners), each operating in intrastate commerce in Georgia request that this Commission institute an investigation of their Georgia intrastate freight rates and charges under 49 U.S.C. 11501, 11502, and 10704. Petitioners seek an order authorizing them to increase such rates and charges on sand, gravel, crushed stone, and lightweight aggregates in the same amounts approved for interstate application by this Commission in Ex Parte No. 357, *Nationwide Increased Freight Rates and Charges* 1978. Petitioners have stated grounds sufficient to warrant instituting an investigation. This Commission has jurisdiction to investigate since the Georgia Public Service Commission has acted by denying the sought increases.

It is Ordered:

The petition is granted. An investigation, under 49 U.S.C. 11501, 11502, and 10704 is instituted to determine whether the Georgia interstate rail freight rates on sand, gravel, crushed stone, and lightweight aggregates in any respect cause any unjust discrimination against or any burden on interstate or foreign commerce, or cause undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce and persons or localities in interstate or foreign commerce, or are otherwise unlawful, by reason of the failure of such rates and charges to include the full increases authorized for interstate application by this Commission in Ex Parte No. 357. In the investigation we shall also determine if any rates or charges, or maximum or minimum charges, or both, should be prescribed to remove any unlawful advantage, preference, discrimination, undue burden, or other violation of law, found to exist.

All persons who wish to participate in this proceeding and to file and receive copies of pleadings shall make known that fact by notifying the Office of Proceedings, Room 5356, Interstate Commerce Commission, Washington, DC 20423, on or before 15 days from the **Federal Register** publication date. Although individual participation is not precluded, to conserve time and to avoid unnecessary expense, persons having common interests should endeavor to consolidate their presentations to the greatest extent possible. This Commission desires participation of only those who intend to take an active part in this proceeding.

As soon as possible after the last day possible for indicating a desire to participate in the proceeding, this Commission will serve a list of names and addresses upon all persons upon whom service of all pleadings must be made. Thereafter, this proceeding will be assigned for oral hearing or handling under modified procedure.

A copy of this order shall be served upon each of the petitioners, and copies shall be sent by certified mail to the Governor of Georgia, the Georgia Public Service Commission, and the Georgia Freight Bureau, Inc. Further notice of this proceeding shall be given to the public by depositing a copy of this decision in the office of the Secretary of the Interstate Commerce Commission at Washington, DC and by filing a copy with the Director, Office of the Federal Register, for publication in the **Federal Register.**

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

By the Commission, Alan Fitzwater, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-33630 Filed 10-30-79; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-43 (Sub-No. 52F)]

Illinois Central Gulf Railroad Co. Abandonment Near Walnut Grove and Wells in Leake, Scott, and Rankin Counties, Miss.; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision decided August 2, 1979, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the (1) conditions for the protection of railway employees prescribed by the Commission in AB-36 (Sub-No. 2), *Oregon Short Line Railroad Co.-Abandonment Goshen*, 360 I.C.C. 91 (1979); (2) ICG shall keep in tact all of the right-of-way underlying the track, including all the bridges and culverts for a period of 120 days from the issuance of a certificate to permit any interested party to negotiate the acquisition for public use of all or any portion of the properties; and (3) ICG will continue to use the now existing rail distances between milepost 22.8 near Walnut Grove, MS, and milepost 68.1 near Wells, MS, and intermediate points over the line sought to be abandoned in computing rail distances to and from stations on the line for the purpose of determining freight rates made on shortest distances for the following commodities only: wood chips, pulpwood, sawdust and wood shavings, the present and future public convenience and necessity permit the abandonment by the Illinois Central Gulf Railroad Company of its line of railroad from milepost 22.8 near Walnut Grove, to milepost 68.1 near Wells, a distance of 45.3 miles in Leake, Scott, and Rankin Counties, MS. A certificate of abandonment will be issued to the Illinois Central Gulf Railroad Company based on the above-described finding of abandonment, November 30, 1979, unless within 30 days from the date of publication (November 30, 1979), the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the contined operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the **Federal Register** on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978, at 43 FR 20072.

All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-33625 Filed 10-30-79; 8:45 am]

BILLING CODE 7035-01-M

[Directed Service Order No. 1398; Supplemental Order No.7]

Kansas City Terminal Railway Co. Directed To Operate Over Chicago, Rock Island & Pacific Railroad Co., Debtor (William M. Gibbons, Trustee)

October 24, 1979.

On September 26, 1979, we directed Kansas City Terminal Railway Company (KCT) to provide service as a directed rail carrier (DRC) under 49 U.S.C. § 11125 over the lines of the Chicago, Rock Island & Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) ("RI"). *See* Directed Service Order No. 1398 (decided and served September 26, 1979; published in the **Federal Register** on October 1, 1979 at 44 FR 56343).

This Supplemental Order is being issued to clarify two matters regarding the operation of directed service. The first matter involves the issue of liability for any functions performed for the RI Trustee by persons employed by the DRC during the directed service period. The second issue involves compliance by the DRC with our accounting regulations.

As to the first matter, we believe the proper approach to be one in which the RI Trustee may be billed by the DRC for any functions performed by DRC employees for the RI Trustee. Moreover, in the interest of accounting flexibility, we authorize the DRC to offset such bills against any monetary claims which the RI Trustee may have against the DRC. In this way, we believe the interests of both the DRC and the Trustee are most fairly balanced and preserved.

As for compliance with our accounting regulations, we believe it necessary to clarify the DRC's obligation to comply with 49 CFR § 1126.3(c), regarding interim funding requests. At page 28 [44 FR 56348, 3rd column] of DSO No. 1398, we stated that:

> In preparing * * * the explanation of requests for additional cash (in interim funding requests), the DRC may base its data on estimating methods generally acceptable to DOT, or upon any other fully expositiory methods. [*See* DSO No. 1398, "Accounting and Administration matters—Initial and Interim Funding," page 28 [44 FR 56348, 3rd column]

While we still consider this approach the best method, under the circumstances, for handling urgently needed interim funding requests, we also recognize the need for more detailed information to enable the Commission properly to monitor directed service costs.

Accordingly, while the DRC may still seek interim funding by complying with the liberal language of page 28, we shall also require the DRC to comply with the following accounting requirements for cost-monitoring purposes.

Page 28 [44 FR 56349, top of column] After the third paragraph, add the following new paragraph to the section entitled "Accounting and Adminsitrative Matters—Initial and Interim Funding";

Further, to enable the Commission properly to monitor directed service costs, the DRC shall submit all the information required by 49 CFR § 1126.3(c), and the related "Cost Form," in the form of monthly reports to the Bureau of Accounts. These reports shall be filed monthly, as of the end of each month, and shall contain all the pertinent data covering the calendar month just ended. (Since directed-service operations did not begin until October 5, 1979, the October report covering cost and revenue data shall be only for that portion of October during which directed-service operations were conducted.)

We find: (1) This action will not significantly affect either the quality of the human environment or the conservation of energy resources. *See* 49 CFR Parts 1106, 1108 (1978).

It is ordered: (1) DSO No. 1398 is modified accordingly.

(2) This decision shall be effective on its service date.

By the Commission. Chairman O'Neal, Vice Chairman Stafford, Commissioners Gresham,

Clapp, Christian, Trantum, Gaskins, and Alexis. Commissioner Gresham concurs.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-33634 Filed 10-30-79; 8:45 am]

BILLING CODE 7035-01-M

[Directed Service Order No. 1398; Supplemental Order No. 8]

Kansas City Terminal Railway Co. Directed To Operate Over Chicago, Rock Island & Pacific Railroad Co., Debtor (William M. Gibbons, Trustee)

October 24, 1979.

On September 26, 1979, the Commission directed Kansas City Terminal Railway Company (KCT) to provide service as a directed rail carrier (DRC) under 49 U.S.C. § 11125 over the lines of the Chicago, Rock Island & Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) ("RI"). *See* Directed Service Order No. 1398 (decided and served September 26, 1979; published in the **Federal Register** on October 1, 1979 at 44 FR 56343).

This Supplemental Order is being issued to amend the portion of DSO No. 1398 dealing with vacation pay. *See* DSO No. 1398, at pages 23–24 [44 FR 56347–56348]. Our original language on this subject was as follows:

> To the extent that RI employees earn vacation benefits during the directed-service period which will fall due after directed service has ceased, the DRC shall provide appropriate compensation. However, wages, salaries, and vacation benefits earned prior to the commencement of directed service—even those which fall due during the directed-service—even those which fall due during the directed-service period—constitute existing debts of RI for which we cannot make the DRC responsible. See *Regional Rail Reorg. Act—Submission of Cost Data*, 348 I.C.C. 320, 325 (1975) (*Submission of Cost Data II*), *accord* 48 U.S.C. § 11125(b)(3).

We have recently received requests from several RI unions [1] requesting that we modify the foregoing language to authorize the DRC to allow all RI employees to take vacation due them in accordance with existing agreements and practices, with the associated costs to be borne by the DRC as a reimbursable cost of directed service. The DRC joins in this request.

To grant the instant request would constitute a departure from our prior practice regarding vacation pay in directed-service settings. In *Submission of Cost Data II, supra* (see above quote), we decided to take the following approach to vacation pay in Directed Service Order No. 1207 (dated January 17, 1975, as supplemented), in which we had directed the Lehigh Valley Company (LV) and Reading Company (Reading) to operate a portion of the Lehigh & New England Railroad Company (L&NE):

> * * * (L)eave earned prior to the commencement of directed operations * * * constitute[s] an existing debt of L&NE * * * and L&NE accordingly remains liable for [its] payment.
>
> * * * To the extent that L&NE employees earn leave during the period of directed service which will fall due in 1976, LV and Reading should be required to compensate L&NE employees. [*Id.*, 384 I.C.C. at 325.]

The original "vacation pay" language in DSO No. 1398 attempted to follow the pattern established in the L&NE directed-service case. However, we must recognize the situation in DSO No. 1398 is different from that in the L&NE case, and may require different measures.

Perhaps the major distinction between the two cases is that—without the modification requested here—it is highly unlikely that directed operations could continue for the remainder of the directed-service period. Unlike the situation in *Submission of Cost Data II*, the requested modification is vital to the continued performance of essential rail services over the RI system during the directed-service period. We have been informed by the RI unions that the requested amendment is necessary, in the present circumstances, to permit an "orderly exercise of earned vacation benefits now and after the period of directed service is over." Further, the DRC believes the requested amendment to be necessary "in order to avoid disruptions to directed service operations caused by threatened labor strife."

Accordingly, we shall amend the "vacation pay" language contained in DSO No. 1398 as follows:

Page 22 (last ¶)—Substitute the following for the last paragraph on page 22 [44 FR 56347, 3rd column, 3rd paragraph]:

> The DRC is authorized to allow all employees to take vacation due them in accordance with existing agreements and practices, except to the extent this may be modified by supplement orders to, and interpretations of, this Directed Service Order.
>
> Payments made by the DRC for such vacations shall be considered as a reimbursable cost of directed service, and employees taking vacations which are the responsibility of the RI Trustee shall be required to assign their claims for vacation pay to the United States Government.

We find:

(1) This action will not significantly affect either the quality of the human environment or the conservation of energy resources. *See* 49 CFR Parts 1106, 1108 (1979).

It is ordered:

(1) DSO No. 1398 is modified to the extent indicated above.

(2) This decision shall be effective on its service date.

By the Commission. Chairman O'Neal, Vice Chairman Stafford, Commissioners Gresham, Clapp, Christian, Trantum, Gaskins, and Alexis. Commissioner Gresham concurs.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-33633 Filed 10-30-79; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Temporary Authority Applications; Notice

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register**. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

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[1] These unions include: Brotherhood of Locomotive Engineers (BLE); Brotherhood of Railway and Airline Clerks (BRAC); American Train Dispatchers Association (ATDA); American Railway Supervisors Association (ARSA); Railway Employes' Department, AFL–CIO (RED); and United Transportation Union (UTU).

NOTE: All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. 177

MC 115353 (Sub-37TA), filed August 17, 1979. Applicant: LOUIS J. KENNEDY TRUCKING COMPANY, 342 Schuyler Avenue, Kearny, NJ 07032. Representative: Morton E. Kiel, Suite 1832, 2 World Trade Center, New York, NY 10048. Metal and metal articles from Atlanta, GA to Orlando, FL and from Gadsden, AL to Atlanta, GA, for 180 days. *Contract carrier,* irregular routes. Supporting shipper(s): National Steel Service Center, Inc., Subsidiary of National Steel Corporation, 1 Century Drive, Parsippany, NJ 07054. Send protests to: Robert E. Johnston, DS, ICC, 744 Broad Street, Room 522, Newark, NJ 07102.

MC 115793 (Sub-30TA), filed August 9, 1979. Applicant: CALDWELL FREIGHT LINES, INC., P.O. Box 620, Hwy. 321 South, Lenoir, NC 28645. Representative: same as applicant. *New furniture, cartoned and wrapped,* from all points in MO and TN to all points in NC, for 180 days. An underlying ETA seeks 90 days of authority. Supporting shipper(s): There are nine shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: Terrell Price, 800 Briar Creek Rd., Room CC516, Charlotte, NC 28205.

MC 116273 (Sub-244TA), filed July 30, 1979. Applicant: D & L TRANSPORT, INC., 3800 S. Laramie Ave., Cicero, IL 60650. Representative: William R. Lavery (same address as applicant). *Liquid adhesive clues, liquid plastic materials and liquid synthetic resins, in bulk, in tank vehicles,* from Bridgeview, IL to points in the United States except AL, CO, GA, HI, IL, IN, IA, KS, KY, MI, MN, MS, MO, OH, PA, TN, TX, and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Celanese Polymer Specialties Co., #1 Riverfront Plaza, Louisville, KY 40202. Send protests to: David Hunt, TA, Rm. 1386, 219 S. Dearborn St., Chicago, IL 60604.

MC 116273 (Sub-245TA), filed August 3, 1979. Applicant: D & L TRANSPORT, INC., 3800 S. Laramie Ave., Cicero, IL 60650. Representative: William R. Lavery (same address as applicant). *Liquid Industrial Adhesives in bulk, in tank vehicles* from Detroit, MI to Toledo, Mt. Vernon, Massillon and Cleveland, OH for 180 days. An underlying ETA seeking 90 days authority was submitted. Supporting shipper(s): H. B. Fuller Co., 12800 Mt. Elliott, Detroit, MI 48212. Send protests to: Annie Booker, TA, ICC, 219 South Dearborn Street, Chicago, IL 60604.

MC 116763 (Sub-589TA), filed July 12, 1979. Applicant: CARL SUBLER TRUCKING INC., North West St., Versailles, OH 45380. Representative: Gary J. Jira (same address as applicant). *Such commodities as are dealt in by manufacturers and distributors of plastic products (except commodities in bulk, in tank vehicles),* from Nicholasville, KY to Quincy, IL. Restricted to traffic originating at the named origin and destined to the indicated destinations, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Plastic Products Division Hoover Universal, Route #2, Georgetown, KY 40324. Send protests to: D/S, I.C.C., 101 N. 7th St., Philadelphia, PA 19106.

MC 116763 (Sub-590TA), filed August 6, 1979. Applicant: CARL SUBLER TRUCKING INC., North West St., Versailles, OH 45380. Representative: Gary J. Jira (same address as applicant). *Such materials and supplies as are used in the manufacturing, distribution, packaging, warehousing and sale of foodstuffs and foodstuffs (except commodities in bulk, in tank vehicles),* from the facilities of Uncle Ben's Foods located at or near Greenville, MS to the facilities of Uncle Ben's Foods located at or near Houston, TX, for 180 days. Restricted to traffic originating at the named origin and destined to the indicated destination. An underlying ETA seeks 90 days authority. Supporting shipper(s): Uncle Ben's Foods, Division of Uncle Ben's, Inc., P.O. Box 1752, Houston, TX 77001. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm 620, Philadelphia, PA 19106.

MC 116763 (Sub-591TA), filed August 6, 1979. Applicant: CARL SUBLER TRUCKING INC., North West St., Versailles, OH 45380. Representative: Gary J. Jira (same address as applicant). *(1) plastic articles, and such equipment, materials and supplies as are used in the manufacture and distribution of the commodities named in (1) above* (except commodities in bulk and those which because of size or weight require the use of special equipment) between the facilities of Fort Howard Paper Company located at or near Muskogee, OK, on the one hand, and, on the other, points in AL, AR, CO, CT, DE, DC, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, VT, VA, WV and WI, for 180 days. Restricted to traffic originating at the named origins and destined to the indicated destinations. An underlying ETA seeks 90 days authority. Supporting shipper(s): Fort Howard Paper Company, P.O. Box 130, 1919 S. Broadway, Green Bay, WI 54305. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm 620, Philadelphia, PA 19106.

MC 116763 (Sub-592TA), filed August 31, 1979. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380. Representative: Gary J. Jira (same as applicant). *Such commodities as are dealt in by manufacturers, converters and distributors of paper and paper products (except commodities in bulk, in tank vehicles)* from points in MA, to points in AL, AZ, AR, CA, CO, DE, FL, GA, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, NV, NM, NC, OH, OK, SC, TN, TX, UT, VA, WV, WI, and DC, and Harrisburg, PA and points in that part of PA on and west of U.S. Hwy 15, for 180 days. Restricted to traffic originating at the named origin state and destined to the indicated destinations. Supporting shipper(s): There are 8 supporting shippers. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm 620, Phila., PA 19106.

MC 117993 (Sub-17TA), filed August 22, 1979. Applicant: FRUITBELT TRUCKING INC., 12 Smith Street, St. Catharines, Ontario. Representative: Robert D. Gunderman, 710 Statler Bldg., Buffalo, NY 14202. *Chocolate confectionery in temperature-controlled vehicles,* from ports of entry on the International Boundary line between the US and Canada located in NY and MI to points in IL and NJ, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Laura Secord Candy Shops Ltd., 1500 Birchmount Rd., Scarborough, Ontario M1R 4Z2. Send protest to: Anne C. Siler, TA, ICC, 910 Federal Bldg., 111 W. Huron St., Buffalo, NY 14202.

MC 119383 (Sub-7TA), filed August 3, 1979. Applicant: PORTLAND MOTOR TRANSPORT, 2606 N. Newark, Portland, Oregon 97217. Representative: Lawrence V. Smart, Jr., 419 N. W. 23rd Avenue, Portland, OR 97210. *Asphalt and road oil, in tank-type equipment* from Tacoma, WA to points in Marion and Linn Counties, OR for 180 days. Supporting shipper(s): North Santiam Sand and Gravel, P.O. Box 32, Stayton, OR. Send protests to: A. E. Odoms, DS, ICC, 114 Pioneer Courthouse, 555 S.W. Yamhill Street, Portland, OR 97204.

MC 119383 (Sub-8TA), filed August 3, 1979. Applicant: PORTLAND MOTOR TRANSPORT, 2606 N. Newark, Portland, OR 97211. Representative: Lawrence V. Smart, Jr., 419 N. W. 23rd Avenue, Portland, OR 97210. *Asphalt and road*

oil, in tank-type equipment from Tacoma, WA to points in Deschutes, Jefferson, Crook, Gilliam, Harney, Wheeler, Wasco and Sherman Counties, OR for 180 days. Supporting shipper(s): Central Oregon Pavers, P.O. Box 728, Redmond, OR 97756. Send protests to: A.E. Odoms, DS, ICC, 114 Pioneer Courthouse, 555 S.W. Yamhill Street, Portland, Oregon.

MC 123613 (Sub-17TA), filed August 14, 1979. Applicant: CLAREMONT MOTOR LINES, INC., 2800 N. Tryon St., Charlotte, NC 28206. Representative: D. R. Beeler, 9041 Excutive Park Dr., Suite 110, Building 100, Knoxville, TN, 37919. *Foodstuffs (except frozen)* from Mount Dora, FL to points in AL, GA, MS, SC, NC, VA, TN and KY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Doric Foods Corporation, P.O. Box 986, Mount Dora, FL 32757. Send protests to: Sheila Reece, Transportation Assistant, 800 Briar Creek Rd, Room CC516, Charlotte, NC 28205.

MC 123993 (Sub-56TA), filed August 15, 1979. Applicant: FOGLEMAN TRUCK LINE, INC., P.O. Box 1504, Crowley, LA 70526. Representative Byron Fogleman (same address as applicant). *Corn meal, flour or meal prepared edible and flaked potatoes (except in bulk),* (1) From Decatur, LA to AR, LA, and TX; and (2) From Sherman, TX to LA, MS, AL, AR, OK, KS, MO, and CO, for 180 days. Applicant has filed an underlying ETA seeking 90 days. Supporting shipper(s): ConAgra, Inc., 200 Kiewit Plaza, Omaha, NE 68131. Send protests to: Robert J. Kirspel, DS, ICC, T-9038 Federal Bldg., 701 Loyola Ave., New Orleans, LA 70113.

MC 125433 (Sub-314TA), filed August 6, 1979. Applicant: F-B TRUCK LINE CO., 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: John B. Anderson (same address as above). *Metal ductwork, fittings, duct heaters and materials and supplies used in the installation of heating and cooling systems,* from the facilities of the Holbrook Co., Inc., at or near Kaysville, UT to points in the United States (except AK and HI), for 180 days. Supporting shipper(s): Holbrook Co., Inc., 151 N. 600 W., P.O. Box 226, Kaysville, UT 84037. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 126822 (Sub-67TA), filed August 17, 1979. Applicant: WESTPORT TRUCKING CO., 15580 South 169 Hiway, Olathe, KS 66061. Representative: Kenneth E. Smith (same address as applicant). *Blue chrome splits and blue chrome hides,* from the facilities of Armira Corp., at or near Bolivar, TN, to Milwaukee and Sheyboygan WI, for 180 days. An underlying ETA seeks a 90 day authority. Supporting shipper(s): Amira Corp., 1113 Maryland Avenue, Sheboygan, WI 53081. Send protests to: Vernon V. Coble, DS, ICC, 600 Fed. Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 126822 (Sub-68TA), filed August 23, 1979. Applicant: WESTPORT TRUCKING CO., 15580 South 169 Highway, Olathe, KS 66061. Representative: Kenneth E. Smith (same address as above). *Hides,* from Memphis, TN to points in NH, ME, MA, NY, PA, and Milwaukee, WI and Chicago, IL. Supporting shipper(s): Philadelphia Hide Brokerage Corp., 249 South 24th St., Philadelphia, PA 19103. Send protests to: Vernon V. Coble, District Supervisor, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 129032 (Sub-102TA), filed August 6, 1979. Applicant: TOM INMAN TRUCKING, INC., 5656 South 129th East Avenue, Tulsa, OK 74134. Representative: David R. Worthington (same address as applicant). *Malt beverages and related advertising materials,* from the facilities of G. Heileman Brewery, located at or near Evansville, IN and Belleville, IL, to points in OK, restricted to traffic originating at or destined to the above named locations, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Sooner Suds, Inc., 7120 E. 13th Street, Tulsa, OK 74112. Send protests to: Connie Stanley, ICC, Rm. 240, 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 133733 (Sub-3TA), filed July 23, 1979. Applicant: CERTIFIED TRANSFER & STORAGE, INC., 5807 Ybarra Ct., El Paso, TX 79905. Representative: W. G. Waide, Sr., (same address as applicant). *Foodstuffs,* except in bulk, in tank vehicles, between El Paso, TX and White Sands, NM; and between El Paso, TX and Holloman Air Force Base, NM, for 180 days. Supporting shipper(s): U.S. Army Legal Services Agency, Department of the Army (JALS-RL), Room 422, Nassif Bldg., 5611 Columbia Pike, Falls Church, VA 22041. Send protests to: Martha A. Powell, TCS, I.C.C., Room 9A27 Federal Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 133852 (Sub-92TA), filed August 20, 1979. Applicant: DUNLOP TRANSPORT LTD., 21 Highway, Box 359, Petrolia, Ontario, Canada. Representative: Robert Schuler, 100 West Long Lake Road, Suite 102, Bloomfield Hills, MI 48013. *Contract carrier:* irregular routes: *Soybean meal,* in bulk, in dump vehicles; from Fostoria and Bellevue, OH to ports of entry on the International Boundary line between the United States and Canada, that lies in MI and NY. Restricted to shipments under a continuing contract with Pillsbury of Canada Limited of London, Ontario, destined to points in Canada. For 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Pillsbury Canada Ltd., 383 Richmond Street, Suite 1304, London, Ontario, Canada N6A 304. Send protests to: C. R. Flemming, DS, I.C.C., 225 Federal Bldg., Lansing, MI 48933.

MC 135756 (Sub-2TA), filed August 20, 1979. Applicant: WILLIAMS MOVING CO., Harold Williams, d.b.a., P.O. Box 518, Dexter, MO 63841. Representative: Ernest A. Brooks, II, 1301 Ambassador Bldg., St. Louis, MO 63101. *Used household goods* (1) between points in MO on and south of Interstate 70, points in IL on and south of Interstate 70, points in KY on and west of Interstate 24, points in TN on and west of Interstate 24, and points in AR on and north of U.S. Hwy. 64 and (2) between all points named in (1) above, on the one hand, and, on the other, points in IL, MO, KY, IN, IA, OH, WV, PA, NM, TX, KS, WI, OK, TN, MI, NE, CO, AL, AR, and DC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Arvin Automotive, 1207 Arvin Rd., Dexter, MO 63841. Monarch Feed Mills, Inc., Dexter, MO 63841. Stites Concrete, Dexter, MO 63841. IXL Manufacturing Company, Inc., Bernie, MO 63822. Send protests to: P. E. Binder, TS, ICC, Rm. 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 139772 (Sub-3TA), filed August 13, 1979. Applicant: ROBERTS TRUCKING INC., Route 1, Eldorado, WI 54932. Representative: James R. Evans, 145 W. Wisconsin Ave., Neenah, WI 54956. *Contract carrier;* irregular routes; *Cheese,* from facilities of Swift & Co. at Green Bay, Monroe, Marathon and Wausau, WI to points in IN, MI, NJ, NY, OH and PA under continuing contracts(s) with Swift & Co., Chicago, IL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Swift & Co., 15 W. Jackson Blvd., Chicago, IL 60604. Send protests to: John E. Ryden, DS, ICC, 517 E. Wisconsin Ave., Rm 619, Milwaukee, WI 53202.

MC 140553 (Sub-14TA), filed April 9, 1979. Applicant: ROGERS TRUCK LINE, INC., 801 Erie Street, Logansport, IN 46957. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. *Meats, meat products, meat by-products, and articles distributed by meat packinghouses except hides and commodities in bulk,* from the facilities

of Geo. A. Hormel & Co. at Mitchell, SD to points in IN, KS, MA, MI, OH and PA for 180 days. Supporting shipper: Geo. A. Hormel & Company, P.O. Box 800, Austin, MN 55912. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 46 E. Ohio St., Rm 429, Indianapolis, IN 46204.

MC 141773 (Sub-13TA), filed April 24, 1979. Applicant: THERMO TRANSPORT, INC., 156 E. Market St., Mezzanine, Indianapolis, IN 46204. Representative: Donald Smith, Suite 945, 9000 Keystone Crossing, Indianapolis, IN 46240. *Contract carrier,* irregular routes, *Saw chain parts and accessories, woodcutting equipment, materials and supplies* from Portland, OR and Los Angeles, CA to all points of the United States except AK and HI, for 180 days. Restricted to service to be performed under a contract or continuing contract with Omark Industries, Inc. Supporting Shipper(s): Omark Inudstries Inc., 9701 S.E. McLoughlin BLvd., Portland, OR 97222. Send protests to: Beverly J. Williams, TA, ICC, 46 E. Ohio Street, Rm 429, Indianapolis, IN 46204.

Mc 143003 (Sub-4TA), filed August 17, 1979. Applicant: GEORGE L. MORROW TRUCKING COMPANY, INC., 429 N. Seventh Street, Raymondville, TX 78580. Representative: Harry F. Horak, Suite 115, 5001 Brentwood Stair Road, Forth Worth, Tx 76112. *Animal feed and ingredients* from Harlingen, TX to Brownsville, TX restricted to the transportation of traffic having a subsequent movement by water in foreign commerce for 180 days. Underlying ETA for 90 days filed. Supporting shipper(s): Valley Coop Oil Mill, P.O. Box 1310, Harlingen, TX 78550, Rio Grande Oil Mill, P.O. Box 351, Harlingen, TX 78550. Send protests to: Opal M. Jones, TCS, ICC, 9A27 Federal Bldg., 819 Taylor St. Fort Worth, TX 76102.

MC 143143 (Sub-2TA), filed August 22, 1979. Applicant: RICHARD L. HODGES, INC., P.O. Box 141, Unity, ME 04988. Representative: John C. Lightbody, 30 Exchange St., Portland, ME 04101. *Contract carrier:* Irregular routes: *Corrugated boxes,* knocked down from Lowell, MA to points in ME. Supporting shipper(s): Interstate Container Corp., Box 271, Lowell, MA 01853. Send protests to: Donald G. Weiler, District Supervisor, ICC, 76 Pearl St., Room 303, Portland, ME 04101.

MC 143593 (Sub.-3TA), filed August 13, 1979. Applicant: ROTA-CONE OILFIELD OPERATING CO., 434 Palmer Drive, Muskogee, OK 74401. Representative: C. L. Phillips, Room 248, Classen Terrace Bldg., 1411 N. Classen, Oklahoma City, OK 73106. *Contract carrier:* Irregular route: *Paper and paper products,* from the facilities of champion International Corporation at or near Ft. Smith, AR, to all points in OK; and (2) *materials, supplies and equipment used in the manufacture and distribution of paper and paper products* (except commodities in bulk), from points in OK, to the facilities of Champion International Corporation at or near Ft. Smith, AR, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Champion International Corporation, Knightsbridge Dr., Hamilton, OH 45020. Send protests to: Connie Stanley, ICC. Room 240, 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 144303 (Sub-11TA), filed August 20, 1979. Applicant: YOUNGBLOOD TRUCK LINES, INC., U.S. Highway 25S, Fletcher, NC 28732. Representative: Charles Ephraim, Suite 600, 1250 Connecticut Ave., NW, Washington, DC 20036. *Contract carrier:* Irregular routes: *Electrical equipment and parts; and materials and supplies used in the manufacture and distribution of electrical equipment and parts (except commodities in bulk, those which require special equipment, and aerospace craft and aerospace craft parts),* between points in the US in TX, AR, MO, LA, and MN and points East thereof, restricted to traffic moving to and from the facilities of the Lighting Business Group of General Electric Company and limited to a transportation service to be performed under a continuing contract(s) with the Lighting Business Group of General Electric Company, for 180 days. Supporting shipper(s): General Electric Company, Nela Park, Noble Road, Cleveland, OH 44112. Send protests to: Sheila Reece, TA, 800 Briar Creek Rd, Room CC 516, Charlotte, NC 28205.

MC 144622 (Sub-97TA), filed August 22, 1979. Applicant: GLENN BROS. TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative Robert D. Gisvold, 1000 First National Bank Bldg., Minneapolis, MN 55402. *Glassware, glass containers, caps, covers, stoppers and tops,* from facilities of Libbey Glass, Division of Owens-Illinois, In Toledo, OH; Shreveport , LA; City of Industry, CA; or Mira Loma, CA; to all points in the U.S. excluding AK and HI, for 180 days. Underlying ETA seeks 90 days authority. Supporting shipper(s): Libby Glass, Div. of Owens-Illinois, P.O. Box 919, Toledo, OH 43693. Send protests to: William H. Land , DS, 3108 Federal Bldg., Little Rock, AR 72201.

MC 144643 (Sub-6TA), filed August 1, 1979. Applicant: VINGI BROTHERS TRUCKING CO., INC., 28 Oakdale Avenue, Johnston, RI 02919. Representative Joseph R. Vingi (same address as applicant). *Contract carrier,* irregular routes, *Plastic* and *paper goods, equipment, parts,* and related *accessory* items, used in the manufacture and distribution thereof (1) from the facilities of Nyman Manufacturing Co., located at or near East Providence, RI, to points in TX, LA, IN, MS, AL, GA, FL, SC, OH and PA, and, (2) *materials, equipment* and *supplies* used in the manufacture or distribution of plastic and paper goods from points in TX, LA, IN, MS, AL, GA, FL, SC, OH and PA to the facilities of Nyman Manufacturing Co., at or near East Providence, RI. limited to a continuing contract or contracts with Nyman Manufacturing Co., for 180 days. An Underlying ETA seeks 90 days authority. Supporting shipper(s): Nyman Manufacturing Co., 275 Ferris Avenue, East Providence, RI 02914. Send protests to: Gerald H. Curry, DS, ICC, 24 Weybosset St., Room 102, Providence, RI 02903.

MC 144643 (Sub-7TA), filed August 1, 1979. Applicant: VINGI BROTHERS TRUCKING CO., INC., 28 Oakdale Avenue, Johnston, RI 02919. Representative Joseph R. Vingi (same address as applicant). *Contract carrier,* irregular routes, *Clay,* crushed or ground, in bags, from the plantsite of Waverly Mineral Products Company, at or near Quality, GA to PA, DE, NJ, NY, ME, NH, VT, MA, CT and RI, restricted to a transportation service to be provided under a continuing contract or contracts with Waverly Mineral Products Company, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Waverly Mineral Products Co., 3018 Market Street, Philadelphia, PA 19204. Send protests to: Gerald H. Curry, DS, ICC, 24 Weybosset St., Room 102, Providence, RI 02903

MC 145432 (Sub-3TA), filed August 29, 1979. Applicant: GEORGE RICHARDS TRANSPORT LIMITED, Box 100, North Street, Arkona, Ontario, Canada NOM 1BO. Representative Robert D. Schuler, 100 West Long Lake Road, Suite 102, Bloomfield Hills, MI 48013. *Contract carrier;* irregular routes; *Soybean meal,* in bulk in dump vehicles, from Fostoria and Bellevue, OH to ports of entry on the International Boundary Line between the United States and Canada in MI and NY. Restricted to shipments destined to points in Canada under a continuing contract with Pillsbury Limited of London, Ontario, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Pillsbury Limited 383 Richmond Street, Suite 1304, London, Ontario, Canada N6A 3C4.

Send protests to: C.R. Flemming, DS, ICC, 225 Federal Building, Lansing, MI 48933.

MC 145702 (Sub-3TA), filed August 27, 1979. Applicant: TRANSURFACE CARRIERS, INC., 6 Thayer Street, Northboro, MA 01532. Representative Bernard P. Rome, Esq., 31 Milk Street, Boston, MA 02109. See attached sheet. Supporting shipper(s): Pfizer, Inc., 235 East 42nd Street, New York, NY 10017. Quigley Company, Inc., 235 East 42nd Street, New York, NY 10017. Send protests to: John B. Thomas, District Supervisor, Interstate Commerce Commission, 150 Causeway Street, Boston, MA 02114.

MC 145703 (Sub-3TA), filed August 15, 1979. Applicant: FRL TRANSPORTATION, INC., 96 Doty St., Fond du Lac, WI 54935. Representative: Michael J. Wyngaard, 150 E. Gilman St., Madison, WI 53703. *Contract carrier;* irregular routes: (1) *Hides, leather and shoes* and (2) *materials, equipment and supplies used in the manufacture, sale and distribution of (1) above* (except in bulk) between Fond du Lac, WI, South St. Paul, MN, Milwaukee, WI, Taunton, MA and Coldwater, MI, on the one hand, and, on the other, points in the US (except AK, CO, HI, IA, KS, MO & NE) under continuing contract(s) with M. T. Shaw, Inc., Thru-Blu, Inc., Rueping, Inc., Rueping East, Inc. and Rueping-Milwaukee, Inc., all of Fond du Lac, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Their are five supporting shippers which can be examined at the field office listed below or Headquarters in DC. Send protests to: John E. Ryden, DS, ICC, 517 E. Wisconsin Ave., Rm 619, Milwaukee, WI 53202.

MC 146032 (Sub-5TA), filed July 19, 1979. Applicant: SKYCAB INC., 137 N. 4th St., Philadelphia, PA 19106. Representative: Steven M. Tannenbaum, 133 N. 4th St., Philadelphia, PA 19106. *Pharmaceuticals, medicines, and materials and supplies used in the distribution and use of such commodities,* except in bulk. Restricted: To such commodities of E. R. Squibb & Sons, Inc., from the facilities of E. R. Squibb & Sones, Inc., at New Brunswick, NJ and its commercial zone, and the facilities of Skycab, Inc. at New Brunswick, NJ to Baltimore, MD, Richmond, VA, New Orleans, LA, Detroit, MI, St. Louis, MO, and Denver, CO and their respective commercial zones, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): E. R. Squibb & Sons, Inc., Georges Road, New Brunswick, NJ 08903. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Room 620, Philadephia, PA 19106.

MC 146343 (Sub-3TA), filed August 17, 1979. Applicant: SOUTHERN EXPRESS CORPORATION, 308 South Ocean Blvd., Pompano Beach, FL 33062. Representative: Bernard A. Jackvony, 4901 North Federal Hwy., Suite 480, Fort Lauderdale, FL 33308. *Glassware, decorations, ornaments, Christmas tree or holiday lights in various packages, material, equipment and supplies* (except in bulk) between Woonsocket, RI and OH, KS, MO, MI, and NY restricted to a transportation service to be performed under a continuing contract or contracts with The Coby Glass Products Company for 180 days. Supporting shipper(s): The Coby Glass Products Company, 42 E. Mill St., Woonsocket, RI. Send protests to: Donna M. Jones, T/A, ICC-BOp, Monterey Bldg., Suite 101, 8410 N.W. 53rd Ter., Miami, FL 33166.

MC 146372 (Sub-2TA), filed August 6, 1979. Applicant: DON'S TRUCKING CO., INC., 4825 Southmoor Rd., Richmond, VA 23234. Representative: Richard J. Lee, Suite 1222, 700 E. Main St., Richmond, VA 23219. *General commodities (except household goods, bulk commodities, A & B explosives and articles of unusual value), restricted to movements having a prior or subsequent movement via water for the account of E. I. du Pont de Nemours & Co.* between points in Milford and Seaford, DE, Norfolk, Newport News, Richmond, Martinsville, and Waynesboro, VA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): E. I. du Pont de Nemours & Co., 1007 Market St., Wilmington, DE 19898. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Room 620, Philadephia, PA 19106.

MC 146643 (Sub-13TA), filed August 8, 1979. Applicant: DAVID CREECH TRANSPORTATION SYSTEMS, INCORPORATED, 3202 State St., South Chicago Heights, IL 60411. Representative: Donald B. Levine, 39 S. LaSalle St., Chicago, IL 60603. *Glass containers,* from Dolton, IL to points in IN, MI and Oh for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Metro Pak Container Corp., 13850 South Cottage Grove, Dolton, IL 60419. Send protests to: Cheryl Livingston, TA, ICC, 219 S. Dearborn, Room 1386, Chicago, IL 60604.

MC 146772 (Sub-1TA), filed August 7, 1979. Applicant: GRINNELL HAULERS, INC., Houses Corner Road, Sparta, NJ 07871. Representative: Thaddeus C. Raczkowski, Esq., Gruber and Raczkowski, 3288 Route No. 27, P.O. Box 9, Kendall Park, NJ 08824. *Contract carrier,* irregular routes for 180 days. *Zinc ore and/or zinc ore concentrate,* no authority requested to transport liquid in bulk between Ogdensburg, NJ and Palmerton, PA. An underlying ETA seeks 90 days authority. Supporting shipper(s): New Jersey Zinc Division, Gulf & Western Industries, Inc., 2200 First American Center, Nashville, TN 37238. Send protests to: Joel Morrows, DS, ICC, 744 Broad Street, Room 522, Newark, NJ 07102.

MC 146782 (Sub-14TA), filed August 22, 1979. Applicant: ROBERTS CONTRACT CARRIER, 300 1st Avenue, South, Nashville, TN 37201. Representative: James Rex Raines (same address as applicant). *Iron & Steel articles* from the facilities of Parker Steel Company at or near Schaumburg and Chicago, IL; Detroit, MI; Pittsburgh, PA; and Andrews, SC to points in the United States in and east of ND, SD, NE, KS, OK, and TX, for 180 days. Supporting shipper(s): Parker Steel Company, 4239–41 Monroe Street, Toledo, OH 43606. Send protests to: Glenda Kuss, TA, ICC, Suite A–422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 146892 (Sub–8TA), filed August 8, 1979. Applicant: R & L TRANSFER, INC., P.O. Box 271, Wilmington, OH 45177. Representative: Boyd B. Ferris, 50 W. Broad St., Columbus, OH 43215. *Paper in rolls* from points in MI to the plantsite of N.A.L. Co., Inc. at or near Mt. Orab, OH for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): N.A.L. Co., Inc., P.O. Box 14, Mt. Orab, OH 45154. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Room 620, Philadelphia, PA 19106.

MC 147003 (Sub-4TA), filed August 20, 1979. Applicant: RAWHIDE CARRIERS, INC., 716 South Elm Street, Grand Island, NE 68801. Representative: Darryl Pauly, P.O. 1171, Grand Island, NE 68801. *Grain bins, grain drying and handling equipment, parts and accessories thereof and parts, materials and supplies used in the manufacture thereof* (1) from Houghton, IA to points in AL, AR, CO, IA, ID, KS, MO, MN, NE, OH, TN and WY (2) from Eufaula, AL to points in CA, FL, KY, LA, MI, NC, SC, IA, TX and TN (3) from points in IA, IL, KS, MO, and NE to Eugaula, AL and Houghton, IA for 180 days. An underlying ETA seeks 90 days authority. Restricted to traffic destined to the plantsites and facilities of Conrad-American, Inc. located at Eufaula, AL and Houghton, IA. Supporting shipper(s): Conrad-American, Inc., Hwy 16 West, Box 88, Houghton, IA 52631. Send protests to: D/S Carroll Russell,

100, Suite 620, 110 North 14th St., Omaha, NE 68102.

MC 147073 (Sub-1TA), filed August 23, 1979. Applicant: KRUCK MOTOR LINE, INC., 52-10 58th Place, Woodside, New York 11377. Representative: William J. Augello, Esq., 120 Main Street, Huntington, NY 11743. *Common Carrier,* irregular routes, General Commodities (except those of unusual value, Class A & B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), restricted to less-than-truckload traffic, from NY, NY Commercial Zone, to FC, TX, LA, IL, WI, MN, IA, KS, MO, and CA; for 90 days; an underlying ETA seeks 90 days authority. Supporting shipper(s): There are nineteen (19) supporting statements attached to this application. Send protests to: Paul W. Assenza, District Supervisor, Interstate Commerce Commission, 26 Federal Plaza, Room 1807, New York, NY 10007.

MC 147152 (Sub-9TA), filed August 2, 1979. Applicant: GENERAL CARRIERS CORPORATION, 12425 East Florence Avenue, Santa Fe Springs, CA 90670. Represenative: Miles L. Kavaller, Mandel & Kavaller, 315 So. Beverly Drive, Suite 315, Beverly Hills, CA 90212. *Materials and supplies used in the manufacture of carpeting, (except in bulk),* from Bainbridge, Dalton, Rome, and Oxford, GA; Turnersburg, NC; and Spartanburg, SC, to the facilities of Ozinte Division, Brunswick Corporation in Anaheim and Culver City, CA, for 180 days. Supporting shipper(s): Brunswick Corporation, Ozite Division, 1515 East Winston Road, Anaheim, CA 92805. Send protests to: Irene Carlos, TA, ICC, P.O. Box 1551, Los Angeles, CA 90053.

MC 147213 (Sub-2TA), filed June 29, 1979. Applicant: T & T TRUCKING, INC., 11603 8th Ave. S., Seattle, WA 98168. Representative: George R. LaBissoniere, 1100 Norton Bldg., Seattle, WA 98168. *Construction machinery and logging equipment,* between the facilities of Dravo-Cal-Ore Machinery Company at Tukwila and Spokane, WA, Redmond and Medford, OR and Redding, CA to points in ID, MT, OR, CA and WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Dravo-Cal-Ore Machinery Company, 16711 West Valley Highway, Tukwila, WA. Send protests to: Shirley M. Holmes, T/A, ICC, 858 Federal Bldg., Seattle, WA 98174.

MC 147373 (Sub-1TA), filed August 2, 1979. Applicant: A. DUANE LARSEN, d.b.a. DUANE TRANSPORT, 38703 21st East, Palmdale, CA 93550. Representative: A. Duane Larsen (same address as applicant). *Contract:* irregular: *Mobile homes,* from Ontario and Woodland, CA to points and places in NV, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Westway Homes Inc., 1610 S. Cucamonga Avenue, Ontario, CA 91761. Send protests to: Irene Carlos, TA, ICC, P.O. Box 1551, Los Angeles, CA 90053.

MC 147423 (Sub-3TA), filed August 7, 1979. Applicant: BOND TRANSFER, INC., P.O. Box 10756, El Paso, TX 79997. Representative: Kenneth R. Hoffman, 801 Vaughn Bldg., Austin, TX 78701. *General commodities (except those of unusual value, Classes A & B explosives, household goods as defined by the Commission, commodities in bulk, and those requireing special equipment),* between El Paso. TX, on the one hand, and, on the other, points in Grant, Hidalgo, Luna, Dona Ana, Otero, Lincoln, Chaves, Eddy and Lea Counties, NM, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): There are 5 shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: Martha A. Powell, TCS, I.C.C., Room 9A27 Federal Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 147503 (Sub-1TA), filed June 12, 1979. Applicant: NORMAN H. DAHLSTEDT, d.b.a. DAHLSTEDT TRUCKING, 1306 Highway 237, Mount Vernon, WA 98277. Representative: Norman H. Dahlstedt, same address as above. *Fertilizer, herbicides, pesticides, insecticides and potting soils,* between points in WA, OR, ID and Ports of Entry on the border between the U.S. and Canada in the States of WA and ID, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Swift Agricultural Chemical, P.O. Box 206, Monroe, WA 98272. Send protests to: Shirley M. Holmes, T/A, ICC, 858 Federal Bldg., Seattle, WA 98174.

MC 147593 (Sub-1TA), filed August 9, 1979. Applicant: HART TRUCKING, INC., P.O. Box 650, Millers Creek, NC 28651. Representative: Paul F. Beery, Beery & Spurlock Co., L.P.A., 275 E. State St., Columbus, OH 43215. Contract carrier—irregular routes, *merchandise, as is dealt in by wholesale, retail, and chain grocery and food business houses,* (1) from Cincinnati, OH to all points in TN, TX, VA, WV, AR, GA, NC, FL, KY, and all points in PA on and west of U.S. Hwy 219, and (2) From Columbus, OH to all points in TN, TX, VA, WV, AR, GA, and KY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The Kroger Co., 1014 Vine Street, Cincinnati, OH 45201. Send protests to: Terrell Price, 800 Briar Creek Rd., Rm. CC516, Charlotte, NC 28205.

MC 147813 (Sub-1TA), filed August 13, 1979. Applicant: SUPERIOR TRUCK LEASING, INC., 4315 South 79th Street, Omaha, NE 68127. Representative: Greg A. Dickinson, Suite 610, 7171 Mercy Road, Omaha, NE 68106. *Meat, meat products, meat by-products and articles distributed by meat packinghouses as described in Sections A & C of Appendix I to the report in Descriptions in Motor Carrier Certificates 61 M.C.C. 209 and 766* from Dakota City, NE and Emporia, KS to Erie and King of Prussia, PA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): North American Provisions Co., 400 Higgins Road, Park Ridge, IL 60068. Send protests to: D/S Carroll Russell, ICC Suite 620, 110 North 14th St., Omaha, NE 68102.

MC 147853 (Sub-1TA), filed August 15, 1979. Applicant: MOYER & SONS, INC., P.O. BOX 733, Gaithersburg, MD 20760. Representative: Dean N. Wolfe, Suite 145, 4 Professional Drive, Gaithersburg, MD 20760. *Household goods as defined by the Commission,* Btn pts. in MD, VA, and DC, on the one hand, and, on the other, points in the U.S. (except AK, and HI), for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): There are 6 supporting shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila, PA 19106.

MC 147963 (Sub-1TA), filed August 30, 1979. Applicant: J. O. N. CORPORATION, 202 94th Street SW, Albuquerque, NM 87105. Representative: James J. Plante (same address as applicant). *Contract:* Irregular: *Lumber and lumber products* between Albuquerque, NM and points in TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Snow Mountain Lumber Company, Inc., P.O. Box 25485, Albuquerque, NM 87125. Send protests to: DS/ICC, Interstate Commerce Commission, 1106 Federal Office Building, 517 Gold Avenue SW, Albuquerque, NM 87101.

MC 148013 (Sub-1TA), filed August 22, 1979. Applicant: MICHAEL McDERMID d.b.a. McDERMID TRUCKING, 563 Green Bay Ave., Oconto Falls, WI 54154. Representative: Norman Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956. *Contract carrier:* irregular routes; *Wooden pallets, dividers, skids, pallet lumber and lumber* from Lakewood & New London, WI to points in IL, under continuing contract(s) with Wolf River Wood Products & Borman Wood Products of Lakewood, Inc., for 180

days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wood River Wood Products, 325½ E. Becker Rd., New London, WI 54961, and Borman Wood Prod. of Lakewood, Inc., P.O. Box 187, Lakewood, WI. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

W-1313 (Sub-1TA). By decision entered October 16, 1979, the Motor Carrier Board granted GRIFFITH MARINE ENGINEERING & MFG., CO., 408 E. Chestnut St, Stillwater, MN, 55082, 180 days temporary authority to engage in the business of transportation of passengers by self-propelled vessels in special and charter operation, from Stillwater, MN, to Minneapolis-St. Paul, MN, on the St. Croix and Mississippi Rivers. Captain A. Carr Griffith, 408 E. Chestnut St., Stillwater, MN, 55082, for applicant. Any interested person may file a petition for reconsideration within 20 days of the date of this publication. Within 20 days after the filing of such petition with the Commission, any intersted person may file and serve a reply thereto.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-33819 Filed 10-30-79; 8:45 am]

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[Volume No. 38]

Petitions, Applications, Finance Matters (Including Temporary Authorities), Alternate Route Deviations, Intrastate Applications, Gateways, and Pack and Crate

October 19, 1979.

Petitions for Modification, Interpretation or Reinstatement of Motor Carrier Operating Rights Authority

The following petitions seek modification or interpretation of existing motor carrier operating rights authority, or reinstatement of terminated motor carrier operating rights authority.

All pleadings and documents must clearly specify the suffix numbers (e.g., M1 F, M2 F) where the docket is so identified in this notice.

The following petitions, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). These rules provide, among other things, that a *petition to intervene either with or without leave* must be filed with the Commission within 30 days after the date of publication in the **Federal Register** with a copy being furnished the applicant. Protests to these applications will be *rejected.*

A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that if (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l). In deciding whether to grant leave to intervene, the Commission considers, among other things, whether petitioner has (a) solicited the traffic or business of those persons supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. Another factor considered is the effects of any decision on petition's interests.

Samples of petitions and the text and explanation of the intervention rules can be found at 43 FR 50908, as modified at 43 FR 60277. Petitions not in reasonable compliance with these rules may be rejected. Note that Rule 247(e), where not inconsistent with the intervention rules, still applies. Especially refer to Rule 247(e) for requirements as to supplying a copy of conflicting authority, serving the petition on applicant's representative, and oral hearing requests.

MC 14214 (Sub-20) (M1) F, filed May 22, 1979, notice of filing of petition to delete restrictions. Petitioner: DUFF TRUCK LINE, INC., Broadway & Vine Streets, P.O. Box 359, Lima, OH 45802. Representative: Paul F. Beery, 275 E. State Street, Columbus, OH 43215. Petitioner holds a *common carrier* certificate in MC-14314 (Sub 20), issued April 22, 1977, authorizing transportation, as pertinent, over regular routes, transporting general commodities, (except classes A and B explosives, household goods as defined by the Commission, articles of unusual value, commodities in bulk, and commodities which require special equipment), (1) between Evansville, IN, and Greenville, KY, serving all intermediate points (except points between Evensville, IN, and Anthoston, KY): from Evansville over U.S. Hwy 41 to junction U.S. Hwy 62, then over U.S. Hwy 62 to Greenville, and return over the same route; (2) between junction U.S. Hwys 41 and 62 and Princeton, KY, serving all intermediate points: from junction U.S. Hwys 41 and 62 over U.S. Hwy 62 to Princeton, and return over the same route; (3) between Princeton, KY, and Evansville, IN, for operating convenience only, serving no intermediate points: from Princeton over KY Hwy 293 to Providence, KY, then over KY Hwy 120 to junction alternate U.S. Hwy 41, then over alternate U.S. Hwy 41 to junction U.S. Hwy 60, then over U.S. Hwy 60 to junction U.S. Hwy 41, then over U.S. Hwy 41 to Evansville, and return over the same route. Restriction: Service authorized under the commodity description immediately above is subject to the following conditions: (a) Said operations are restricted against the handling of traffic originating at or destined to points east of the OH-PA state line, east of the OH-WV state line, east of the KY-WV state line, east of the KY-VA state line, and north of the VA-NC state line; and (b) Service at Dawson Springs, Madisonville, and Princeton, KY, and their respective commercial zones, as defined by the Commission is restricted against the handling of traffic originating at, destined to, or interchanged at Evansville, IN, or Louisville, KY, and their respective commercial zones, as defined by the Commission. By the instant petition, petitioners seeks to remove the following restrictions: (i) in paragraph (1) above, delete "(except points between Evansville, IN, and Anthoston, KY)", and (ii) delete both parts, (a) and (b), of the above-stated restriction.

MC 90373 (Sub-31(M1F), (Notice of filing of petition to modify permit), filed June 20, 1979. Petitioner: R L S TRUCKING CORP., Inman Avenue, Avenel, NJ 07001. Representative: Robert B. Pepper, Forrest Park Building, 168 Woodbridge Avenue, Highland Park, NJ 08904. Petitioner holds a motor *contract* carrier Permit in MC 90373 Sub 31 issued September 9, 1974, to transport in interstate or foreign commerce, over irregular routes, *Plastic articles,* Between Washington, NJ, on the one hand, and, on the other, points in NY, PA, NJ, DE, MD, CT, MA, and DC. Restriction: The operations authorized herein are limited to a transportation service to be performed, under a continuing contract or contracts, with Mobil Chemical Company, Platics Division, of Macedon, NY. By the instant petition, petitioner seeks to modify the authority as follows: Change the origin point to read "points in NJ" in the territorial description.

Motor Carrier Operating rights Applications

The following applications, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). These rules provide, among other things, that a *petition to intervene either with or without leave* must be filed with the Commission within 30 days after the date of publication in the **Federal Register** with a copy being furnished the applicant. Protests to these applications *will be rejected.*

A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l). In deciding whether to grant leave to intervene, the Commission considers, among other things, whether petitioner has (a) solicited the traffic or business of those persons supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. Another factor considered is the effects of any decision on petitioner's interests.

Samples of petitions and the text and explanation of the intervention rules can be found at 43 FR 50908, as modified at 43 FR 60277. Petitions not in reasonable compliance with these rules may be rejected. Note that Rule 247(e), where not inconsistent with the intervention rules, still applies. Especially refer to Rule 247(e) for requirements as to supplying a copy of conflicting authority, serving the petition on applicant's representative, and oral hearing requests.

MC 94201 (Sub-164F), filed September 11, 1978, previously noticed in the **Federal Register** issue of November 24, 1978. Applicant: BOWMAN TRANSPORTATION, INC., P.O. Box 17744, Atlanta, GA 30316. Representative: Maurice F. Bishop, 601–09 Frank Nelson Building, Birmingham, AL 35203. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment). Restriction: The service herein authorized is restricted to service at termini and intermediate and off-route points in the transportation of traffic moving from, to or through points in TN. Applicant proposes to tack the authority herein granted with applicant's existing authority at points in TN to provide service between applicant's presently authorized regular, intermediate and, off-route points in NC, SC, GA, FL, AL, MS, LA, AR, and TX, and by tacking the authority sought with existing authority at Evansville, Vincennes, Bedford, New Albany, Princeton, Shoals, Sullivan, Jasper, and Terre Haute, IN, which authorizies transportation between points in NC, SC, GA, FL, TN, AL, MS, LA, AR, and TX, on the one hand, and, on the other, Henderson and Louisville, KY, St. Louis, MO, Cincinnati, OH and points in IL under the authority acquired in Bowman Transportation, Inc.—Purchase—Bringwald Transfer, Docket MC–F–12945. Applicant can today provide all of this service, single-line, by operating through its Chattanooga, TN gateway under its Sub-No. 127 or operating through points within a 65 mile radius of Birmingham, AL, including Birmingham, under its lead certificate and Docket MC–F–12945 referenced above. (Hearing site: Atlanta, GA, or Washington, DC.)

Note.—This partial republication includes the restriction and the tacking possibilities. The remainder of the application remains as previously published.

Broker, Water Carrier and Freight Forwarder Operating Rights Applications

The following applications are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date of notice of filing of the application is published in the **Federal Register.** Failure to seasonably file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with section 247(e)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use such an authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues of allegations phrased generally, protests not in reasonable compliance with the requirements of the rules may be rejected.

MC 12133 (Sub-1(M1F)) (notice of filing of petition to modify license), filed May 24, 1979. Petitioner: ALL STATE BUS CORP., 26 Court Street, Brooklyn, NY 11242. Representative: S. Harrison Kahn, Suite 733, Investment Building, 1511 K Street, N.W., Washington, DC 20005. Petitioner holds a motor *common* carrier License in MC 12133 Sub 1 issued December 16, 1976, and is authorized to engage in operations, in interstate or foreign commerce, as a *broker* at New York, NY, and Los Angeles and San Francisco, CA, in arranging for the transportation by motor vehicle, of *passengers and their baggage*, in special and charter operations, between points in the United States (including AK and HI). By the instant petition, petitioner seeks to modify the authority as follows: Add the cities of Boca Raton, FL and Akron, OH as additional offices to engage in broker activities.

Permanent Authority Decisions, Notice

October 17, 1979.

The following broker, freight forwarder or water carrier applications are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the application is published in the **Federal Register.** Failure to file a protest within 30 days will be considered as a waiver of opposition to the application. A protest under these rules shall comply with Rule 247(e)(3) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding, as specifically noted below), and specify with particularity the facts, matters, and things relied upon. The protest shall not include issues or allegations phrased generally. A protestant shall include a copy of the specific portion of its authority which it believes to be in conflict with that sought in the application, and describe in detail the

method—whether by joinder, interline, or other means—by which protestant would use this authority to provide all or part of the service proposed. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission. A copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named. If the protest includes a request for oral hearing, the request shall meet the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service is either (a) required by the public convenience and necessity, or, (b) will be consistent with the public interest and the transportation policy of 49 U.S.C. 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United State Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 2, Members Boyle, Eaton, and Liberman.

Broker

MC 130583F, filed July 5, 1979. Applicant: COLLEEN and WALDO KILLMAN, d.b.a. SENIOR CITIZENS INTERNATIONAL TRAVEL, a partnership, 180 Circle Drive, P.O. Box 195, Herrin, IL 62948. Representative: Paul S. Murphy, 203 North Park Avenue, Herrin, IL 62948. To engage in operations, in interstate or foreign commerce, as a *broker*, at Herrin, IL, in arranging for the transportation by motor vehicle, of *passengers and their baggage*, in the same vehicle as passengers, beginning and ending at points in Williamson, Jackson, Franklin, and Saline Counties, IL, and extending to points in the United States (including AK and HI). (Hearing site: Mt. Vernon or Herrin, IL.)

Note.—Applicant is cautioned that arrangements for charter parties or groups should be made in conformity with the requirements set forth in *Tauck Tours, Inc., Extension—New York, N.Y.*, 54 M.C.C. 291 (1952).

MC 130586F, filed July 16, 1979. Applicant: THERESA WILLIAM'S ABRAM, d.b.a. ABRAM'S MISSIONARY TOURS, 2333 NE 22nd Street, Oklahoma City, OK 73111. Representative: Theresa Williams Abram (same address as applicant). To engage in operations, in interstate or foreign commerce, as a *broker*, at Oklahoma City, OK, in arranging for the transportation, by motor vehicle of *passengers and their baggage*, in the same vehicle with passengers, in charter operations, beginning and ending at Oklahoma City, OK, and extending to points in the United States (including AK and HI). (Hearing site: Oklahoma City or Tulsa, OK.)

Note.—Applicant is cautioned that arrangements for charter parties or groups should be made in conformity with the requirements set forth in *Tauck Tours, Inc., Extension-New York, N.Y., 54 M.C.C. 291 (1952).*

Permanent Authority Decisions, Decision-Notice

Substitution Applications: Single-Line Service for Existing Joint-Line Service

October 17, 1979.

The following applications, filed on or after April 1, 1979, are governed by the special procedures set forth in Part 1062.2 of Title 49 of the Code of Federal Regulations (49 CFR 1062.2).

The rules provide, in part, that carriers may file petitions with this Commission for the purpose of seeking intervention in these proceedings. Such petitions may seek intervention either with or without leave as discussed below. However, all such petitions must be filed in the form of verified statements, and contain all of the information offered by the submitting party in opposition. Petitions must be filed with the Commission within 30 days of publication of this decision-notice.

Petitions for intervention without leave (i.e. automatic intervention), may be filed only by carriers which are, or have been, participating in the Joint-line service sought to be replaced by applicant's single-line proposal, and then only if such participation has occured within the one-year period immediately preceeding the application's filing. Only carriers which fall within this filing category can base their opposition upon the issue of the public need for the proposed service.

Petitions for intervention with leave may be filed by any carrier. The nature of the opposition, however, must be limited to issues other than the public need for the proposed service. The appropriate basis for opposition, i.e. applicant's fitness, may include challenges concerning the veracity of the applicant's supporting information, and the bona-fides of the Joint-line service sought to be replaced (including the issue of its substantiality). Petitions containing only unsupported and undocumented allegations will be rejected.

Petitions not in reasonable compliance with the requirements of the rules may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive

amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings:

With exception of those applications involving duly noted problems (e.gs., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930(a) (formerly section 210 of the Interstate Commerce Act).

In the absence of legally sufficient petitions for intervention, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision/notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 2, Members Boyle, Eaton, and Liberman.

MC 42011 (Sub-55F), filed May 11, 1979. Applicant: D. Q. WISE & CO., INC., P.O. Drawer L, Tulsa, OK 74112. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *machinery, materials, equipment, and supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum, and their products and by-products; and (2) *Machinery, materials, equipment, and supplies* used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipe lines, including the stringing and picking up thereof (except the stringing and picking up of pipe in main lines), between points in OK and TX, on the one hand, and, on the other, points in LA. (Hearing site: Washington, DC.)

Note.—The sole purpose of this application is to substitute single-line for joint-line operations.

MC 99565 (Sub-18F), filed May 22, 1979. Applicant: FORE WAY EXPRESS, INC., 204 S. Bellis Street, Wausau, WI 54401. Representative: Nancy J. Johnson, 103 E. Washington Street, Crandon, WI 54520. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Milwaukee, WI, those points in IN and IL on and north of Interstate Hwy 70 (except those in IL in the St. Louis, MO-East St. Louis, IL, commercial zone), and those in IA on, north, and east of a line beginning at the IL-IA State line and extending along Interstate Hwy 80 to junction Interstate Hwy 35, and then along Interstate Hwy 35 to the IA-MN State line. (Hearing site: Madison or Milwaukee, WI.)

Note.—Applicant intends to tack this authority with its regular-route authority. The sole purpose of this application is to substitute single line for joint-line operations.

Finance Applications

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control through ownership of stock, of rail carriers or motor carriers pursuant to Sections 11343 (formerly Section 5(2)) or 11349 (formerly Section 210a(b)) of the Interstate Commerce Act.

An original and one copy of protests against the granting of the requested authority must be filed with the Commission on or before November 30, 1979. Such protest shall comply with Special Rules 240(c) or 240(d) of the Commission's *General Rules of Practice* (49 CFR 1100.240) and shall include a concise statement of protestant's interest in the proceeding. A copy of the protest shall be served concurrently upon applicant's representative, or applicant, if no representative is named.

Each applicant states that approval of its application will not significantly affect the quality of the human environment nor involve a major regulatory action under the Energy Policy and Conservation Act of 1975.

MC F-13895F. Authority sought for purchase by SCHMIDT TRUCK SERVICE, INC., 1 Clyde Avenue, Litchfield Industrial Park, Litchfield, IL 62056, of the operating rights of Lincoln Express and Freight Lines, Inc., 2100 West 32nd Street, Chicago, IL 60608, and for acquisition of control of such rights by Earl A. Schmidt and Roy L. Schmidt, 1 Clyde Avenue, Litchfield Industrial Park, Litchfield, IL 62056, through the purchase. Applicant's attorneys: Jack Goodman and Allan C. Zuckerman, 39 South LaSalle Street, Chicago, IL 60603. Operating rights sought to be transferred contained in Certificate of Registration authorize the transportation of *Commodities general* within a fifty (50) mile radius of 620 North May Street, Chicago, IL, and to transport such property to or from any point outside of such authorized area of operation for a shipper or shippers within such area. Vendee is authorized to operate as a common carrier in IL and MO. Common control may be involved. A directly related Section 207 application will be filed. Application has not been filed for temporary authority under Section 210a(b).

Note.—MC 87566 (Sub-11F) is a directly related matter.

MC F-14012F. Authority sought for the purchase by Penn Yan Express, Inc., 100 West Lake Road, Penn Yan, NY 14527 of a portion of the operating rights of O.N.C. Freight Systems, P.O. Box 10280, Palo Alto, CA 94003, and for acquisition by Robert L. Hinson, 100 West Lake Road, Penn Yan, NY 14527 of control of such rights through the transaction. Applicant's attorneys: Russell R. Sage, 6121 Lincolnia Road, P.O. Box 11278, Alexandria, VA 22312, Roland Rice, Suite 618, Perpetual Building, 1111 "E" Street, N.W., Washington, D.C. 20004, David G. Macdonald, 502 Solar Building, 1000 16th Street, N.W., Washington, D.C. 20036. Operating rights sought to be

purchased: *General commodities*, with exceptions, as a *common carrier* over irregular routes between Allamuchy and Dover, NJ, New York and Suffern, NY and points in that part of NJ bounded by a line beginning at Raritan Bay and extending along the north bank of the Raritan River to Highland Park, NJ, then along NJ Hwy 27 to New Brunswick, NJ, then along NJ Hwy 514 (formerly unnumbered highway), through Clyde, Middlebush, East Millstone, Millstone, and Hamilton to Woods Tavern, NJ, then north along U.S. Hwy 206 to junction U.S. Hwy 202, then north and northeast along U.S. Hwy 202 to junction U.S. Hwy 46 (west of Parsippany, NJ), then along U.S. Hwy 46 to Paterson, NJ, then along NJ Hwy 4 to the George Washington Bridge, then south along the NJ State line to Raritan Bay, including points on the Hwys named, on the one hand, and, on the other, Baltimore, MD, and points in that part of NY, except New York City, on, south, and east of a line beginning at Granville, NY, and extending along NJ Hwy 149 to Hartford, NY, then along NY Hwy 196 through South Hartford to Hudson Falls, NY, then along NY Hwy 32 (formerly NY Hwy 32B) to Glens Falls, NY, then along U.S. Hwy 9 to Saratoga Springs, NY, then along NY Hwy 50 to Ballston Spa, NY, then along NY Hwy 67 to Amsterdam, NY, then along NY Hwy 5 to Chittenango, NY, then along NY Hwy 13 to Horseheads, NY, then along NY Hwy 14 to the NY–PA State line, those in that part of NJ on, north, and west of a line beginning at Raritan Bay and extending along the north bank of the Raritan River to U.S. Hwy 1 (portion formerly shown as NJ hwy 25), and then along U.S. Hwy 1 to junction U.S. Hwy 130 (portion formerly shown as NJ Hwy 25), then along U.S. Hwy 130 to Camden, NJ, except Allamuchy and Dover, NJ, and points in that part of NJ bounded by a line beginning at Raritan Bay and extending along the north bank of the Raritan River to Highland Park, NJ, then along NJ Hwy 27 to New Brunswick, NJ, then along NJ Hwy 514 (formerly unnumbered highway) through Clyde, Middlebush, East Millstone, Millstone, and Hamilton to Woods Tavern, NJ, then north along U.S. Hwy 206 to junction U.S. Hwy 202, then north and northeast along U.S. Hwy 202 to junction U.S. Hwy 46 (west of Parsippany, NJ), then along U.S. Hwy 46 to Paterson, NJ, then along NJ Hwy 4 to the George Washington Bridge, then south along the NJ State line to Raritan Bay, including points on the Hwys named, points in that part of PA on, south, and east of a line beginning at the Delaware River opposite Hancock, NY, and extending along PA Hwy 370 (portion formerly PA Hwy 570) to junction unnumbered highway (formerly portion PA Hwy 570), then along unnumbered highway to Thompson, PA, then along PA Hwy 171 (formerly PA Hwy 70) to Carbondale, PA, then along U.S. Hwy 6 to Scranton, PA, then along U.S. Hwy 11 to the PA–MD State line, and those in that part of Delaware on and north of U.S. Hwy 40. Penn Yan Express, Inc. is authorized to operate as a *common carrier* in the States of CT, DE, MD, NJ, PA and D of C. Application has been filed for temporary authority under 49 U.S.C. § 11349.

Note.—MC 105902 (Sub-21F) is a directly related matter.

MC F–14130F. Authority sought for purchase by BOSS–LINCO LINES, INC., 3909 Genesee Street, Cheektowaga, NY 14225, of certain authorities held by ONC FREIGHT SYSTEMS, 1703 Embarcadero Road, Palo Alto, CA 94303. Applicants Attorneys are Harold G. Hernly, Jr., Esquire, 110 South Columbus Street, Alexandria, VA 22314; David G. MacDonald, Esquire, Suite 502, Solar Building, 1000 16th Street, N.W., Washington, DC 20036; and Roland Rice, Esquire, Suite 618, Perpetual Building, 1111 E Street, N.W., Washington, DC 20004. Operating rights sought to be transferred are as a *common carrier*, by motor vehicle, over regular and irregular routes, of *General Commodities* (with exceptions), between points in the States of IL and IN, on the one hand, and, on the other, points in NY, NJ, MA, NH and CT. Transferee holds authority from the Commission to serve points in OH, WVA, PA, NY, MD, MA, NJ, CT, DE, VA and the District of Columbia. Application has been filed by Boss-Linco Lines, Inc., for temporary control of ONC Freight Systems under 49 U.S.C.A. 11349(210a(b)). Common control may be involved.

MC–F14178F, filed October 4, 1979, Transferee: DODWORTH, INC., 928 West 19th Street, Erie, PA 16502. Transferor: James H. Beall and Valarie M. Beall, a partnership d.b.a. HENNENOUS MOTOR EXPRESS, 2001 Evanston Avenue, Erie, PA 16506. Applicants Representative: John Guandolo, 1000 16th Street, NW. Washington, DC 20036. Authority sought to be purchased: that portion of certificate MC 40561 auhthorizing the transportation of general commodities, with usual exceptions, over regular routes, between Erie and Corry, PA, serving all intermediate points. It is requested that the remaining ICC authorized be cancelled upon consummation. Transferree is authorized pursuant to MC 135121 (and sub-nos. thereunder) to transport general commodities with usual exceptions, between specified points in OH and PA restricted to shipments having an immediately prior or subsequent movement by air. Application has been filed for TA under 49 U.S.C. 11349.

MC–F14181F. Authority sought for purchase by KSS TRANSPORTATION CORP., P.O. Box 3052, Route 1 and Adams Station, North Brunswick, NJ 08902, of a portion of the operating rights of NATIONWIDE CARRIERS, INC., Maple Plain, MN. Applicant's Attorney: Daniel C. Sullivan, 10 South LaSalle Street, Suite 1600, Chicago, IL 60603. Operating rights sought to be purchased: *Paper and paper products*, from Plymouth, NC, to all points in DE, ME, MD, NH, NY, NJ, PA, and VT, with no transportation for compensation on return except as otherwise authorized; *compressed wood logs*, from Plymouth, NC, to points in DE, MD, NJ, and NY, with no transportation for compensation on return excpet as otherwise authorized. Restriction: The authority granted herein shall be subject to the right of the Commission, which is hereby expressly reserved, to impose such terms, conditions, or limitation in the future as it may find necessary in order to insure that carrier's operations shall conform to the provisions of Section 210 of the Act. Approval of this application will not result in duplication of authority. Approval will result in dual operations. Applications will be filed for temporary authority under Section 210(b).

MC–F141835F. Authority sought for the control by The Power Corporation of Canada Limited, 759 Victoria Square, Montreal, PQ, Canada H2Y 2K4 of Kingsway Freightlines Limited, 123 Rexdale Boulevard, Rexdale, ON, Canada M9W 1P3, Kingsway Transports, Inc., 123 Rexdale Boulevard, Rexdale, ON, Canada M9W 1P3, and Servall Transport Limited, 123 Rexdale Boulevard, Rexdale, ON, Canada M9W 1P3. Applicant's attorney: S. Harrison Kahn, Kahn and Kahn, Suite 733 Investment Building, Washington, DC 20005. The Power Corporation of Canada presently controls, with the approval of the Commission, Kingsway Transports Limited, Voyageur Colonial, Voyageur, Inc., and Provincial Transport Enterprises Limited. Kingsway Transport, Inc., in Certificate of Public Convenience and Necessity issued in Docket No. MC–144991, is authorized to transport general commodities, with the usual exceptions, between Buffalo, NY and New York, NY, over a regular route via Rochester and Elmira, NY; Scranton

and Wilkes-Barre, PA, with service to intermediate and certain off-route points. Servall Transport Limited is authorized in Docket No. MC 146998 (R-1) to transport concrete pipe from ports of entry on the Niagara Frontier between the UInited States and Canada and Amherst, NY and between the same ports of entry between the United States and Canada and Hamburg, NY. An application for transportation of concrete pipe to a defined area in the State of New York is pending for disposition. Kingsway Freightlines Limited is authorized in Certificate No. MC-144221 (Sub No. 2 F) to transport general commodities, with the usual exceptions, between Sweetgrass, MT and junction Interstate Highway 15 and the International boundary line between the United States and Canada, restricted to the transportation of traffic moving in foreign commerce. No application for temporary authority has been filed. Washington, DC has been requested as the hearing site.

MC-F14184F. Applicant: K. L. BREEDEN, JR., P.O. Box 225299, Dallas, TX 75265. Representative: Bernard H. English, 6270 Firth Road, Fort Worth, TX 76116. Authority sought for control by K. L. Breeden, Jr., P.O. Box 225299, Dallas, TX 75265 of K. L. Breeden & Sons, Inc., P.O. Box 207, Ore City, TX 75683. Operating rights sought to be controlled: (1) irregular routes, oilfield commodities, as defined in *Mercer Extension*, 74 M.C.C. 459, between points in LA, KS, OK, TX, and between points in LA, on the one hand, and, on the other, points in CO, UT, MT and WY; between points in OK, on the one hand, and, on the other, points in WY, UT, and MT; between points in LA, on the one hand, and, on the other, points in OK and KS; between a portion of KS, on the one hand, and, on the other, a portion of MT; between points in WY, on the one hand, and, on the other, a portion of KS; between a portion of KS, on the one hand, and, on the other, a portion of CO; between a portion of OK, on the one hand, and, on the other, a portion of CO. Earth drilling commodities, as defined by the Commission, between points in the states described immediately above. (2) irregular routes, iron and steel articles, except pipe as defined in *Mercer Extension*, 74 M.C.C. 459, from Lone Star, TX and 5 miles thereof, on the one hand, and points in the U.S. (except AK and HI); (3) irregular routes, iron and steel articles, from facilities of Lone Star Steel Co., and Gaido-Lingle Company, Fort Collins, CO to points in the U.S. (except AK and HI); (4) cast iron pipe and fittings, from the facilities of U.S. Pipe, American Cast Iron Pipe, Clow Corporation, and McWane Cast Iron Pipe at Birmingham, and Bessemer, AL to points in AR, KS, LA, MS, NM, OK, and TX; (5) iron and steel articles, as defined in 61 M.C.C. 209, from the facilities of Chaparral Steel Company, Midlothian, TX to points in AR, CO, LA, MS, NM, OK and TN, and iron and steel scrap in the reverse direction; (6) irregular routes, iron and steel scrap, from points in AR, LA, MS and OK to facilities of T & N Lone Star Warehouse, at Lone Star, TX; (7) irregular routes, *Pipe*, as described in *Mercer Extension—Oil Field Commodities*, 74 M.C.C. 459, from the facilities of Lone Star Steel Company, Lone Star, TX to points in CT, DE, FL, GA, ME, MD, MA, NH, NJ, NY, NC, RI, SC and VA; (8) irregular routes, cast iron pipe, valves, hydrants, and parts and attachments, from facilities of Mueller Co., Albertsville, AL to points in the US, except AK and HI; (9) irregular routes, steel billets, bars and rods, from facilities of Georgetown Texas Steel Co., Beaumont, TX to points in AL, AR, FL, LA and TN; (10) irregular routes, iron and steel articles, and aluminum tanks, parts and contractors equipment, from Liberty County, TX to points in AL, AR, KS, LA, MS, MO, NM, and OK; (11) irregular routes, cast iron pressure pipe fittings, valves, hydrants, and parts, accessories and supplies therefor from the Mueller Co., Chattanooga, TN to points in AZ, CA, CO, ID, KS, MT, NE, NV, NM, ND, OK, OR, TX, SD, UT, WA and WY; (12) irregular routes, building materials, roofing materials, paper articles, plastic pipe, lumber, particleboard, plywood, steel pipe, and pipe other than oilfield pipe, from various facilities to various states, in No. MC 120257 as described therein. This notice does not purport to be a complete description of all of the operating rights of K. L. Breeden & Sons, Inc., but is believed to be sufficient for purpose of public notice regarding the nature and extent thereof without stating in full the extent thereof. K. L. Breeden, Jr., is president and director, and principal stockholder of Refrigerated Transport, Inc., which holds authority in MC 97998 to transport commodities requiring refrigeration, wholly within the state of Texas. No application for temporary control has been filed.

MC-F14186F. Authority sought for purchase by ROBERT HEATH TRUCKING, INC., 2909 Avenue C, P.O. Box 2501, Lubbock, TX 79408, of a portion of the operating rights of Cox Refrigerated Express, Inc., 10606 Goodnight Lane, Dallas, TX 75245, and for acquisition by Robert Heath and Lila Heath, 2909 Avenue C, P.O. Box 2501, Lubbock, TX 79408, of control of such rights through the purchase. Transferee's Attorney: Charles M. Williams, Kimball, Williams & Wolfe, P.C., 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203, (303) 839-5856. Transferor's Attorney: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245. Operating rights sought to be transferred are authority in Transferor's MC-140033 (Sub-No. 52)F, authorizing operations as a common carrier by motor vehicle over irregular routes transporting: Meats, meat products and meat by-products and articles distributed by meat packinghouses as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk), from the facilities of Armour and Company, at or near Brownsville, TX to points in LA and MS. Robert Heath Trucking, Inc., operates as a common carrier in MC-118089 and Subs thereto and is controlled by Robert and Lila Heath. Robert Heath also controls Direct Service, Inc., which operates as a common carrier in MC-134783 and Subs thereto and as a contract carrier in MC-139309 and Subs thereto. They, collectively, have authority to operate in all states in the U.S. (except AK and HI). An application for temporary authority under 49 U.S.C. § 11349 (formerly Section 210a(b)) has been filed. Hearing site: Dallas, TX.

MC F-14187. Authority sought for control through stock purchase by TYKELY INVESTMENT CORP., 36555 Michigan Avenue, Wayne, MI 48184, of Automobile Transport, Inc., 36555 Michigan Avenue, Wayne, MI 48184, and for acquisition by James P. Byrne, 101 Thorntree Lane, Winnetka, IL 60093, of control of said company through the purchase. Applicants attorney: Daniel C. Sullivan, Esq., Suite 1600, 10 S. LaSalle St., Chicago, IL 60603. Operating rights sought to be controlled in this instance authorize the transportation, as a *common carrier*, of (A) *Automobiles, trucks, bodies, chassis, cabs and parts and accessories* thereof; and automobile show equipment and paraphernalia, in truckaway and/or driveaway service, over irregular route, (1) initial movements generally (a) from points in Wayne County, MI, to points in the United States (except AK and HI); (b) from Cincinnati, OH, to points in IL, IN, KY, MI, NC, OH, PA, SC, TN, VA and WV; (c) from Edison Township, Middlesex Cty., NJ, to points in AL, CT, DE, FL, GA, KY, ME, MD, MA, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV and DC; (d) from the plantsite of the

Lincoln-Mercury Division of the Ford Motor Company at or near the St. Louis-Lambert Municipal Airport, St. Louis City, MO; to points in AL, MS, AR, IL, IN, IA, KS, KY, MO, NE, OK, and TN; (e) from Willow Run, Washtenaw Cty., MI, to Pittsburgh, PA, and points in IL, IN, KY, MI, OH, VA, WV; (f) from Robertson, MO, to points in MI, OH, PA, WI, CO, WY, NM, LA, MS and AL; (g) from Hazelwood, MO, to points in MN, MT, ND, SD, GA, FL, NC and SC; (h) from Dearborn and Detroit, MI, to Quapaw, OK; (i) from Warren Township, Macomb Cty., MI, to Detroit, MI and points in OH, NC, NY, PA, SC and TN; (j) from certain points in Oakland, Cty., MI, to points in the United States (except AK and HI); (k) from Lorain, OH to points in the United States (except AK and HI); (l) from Buffalo, NY, to point in NY, PA, VT, NJ, MA, MD, OH, WV, CT, VA, ME, NH, RI, DE and DC; (m) from Cleveland, OH, to point in Wayne Cty., MI, MD, PA, WV and OH; (n) from Edgewater, NJ, to point in CT, DE, MD, MA, NJ, NY, PA, RI, VT, VA and DC; (o) from Mahwah, NJ, to St. Louis, MO and points in CT, DE, ME, MD, MA, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, DC, AL, FL, GA, IL, IN, KY, LS, MI, MS and WI; and (p) from the facilities of Volvo of America Corporation at Chesapeake, VA, to points in the United States (except AK and HI); (2) in secondary movements (a) between points in CT, MD, MA, NJ, NY, PA, VT, VA, IL, IN, KY, MI, OH, WV, NC, DC, SC, TN, DE and RI; (b) from the plantsite of the Special Products Divisions of the Ford Motor Company in Wayne Cty., MI to points in IA, MN, ND, SD, NE, MT, WY, CO, NM, ID, UT, AZ, WA, OR, NE and CA; (c) from Mahwah, NJ, to points in ME and NH; (d) from points in NY and MA to points in ME and NH; and (e) from the facilities of Volvo of America Corporation at Chesapeake, VA, to points in the United States (except AK and HI). (B) Damaged, defective or returned shipments of the commodities named in (A) above from points in the United States (except AK and HI) to Lorain Cty., OH; (2) from points in CT and MA, to Buffalo, NY; (3) from AL, CT, DE, FL, GA, KY, ME, MD, MA, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV and DC to Edison Township, Middlesex Cty., NJ, and (4) from points in AL, MS, AR, IL, IN, IA, KS, KY, MO, NE, OK and TN to the plantsite of the Lincoln Mercury Division of the Ford Motor Company at or near the St. Louis-Lambert Municipal Airport, St. Louis, Cty., MO. (C) Buses and parts and accessories thereof in truckaway or driveaway service, over irregular routes, (1) in initial movements (a) from points in Lorain, Cty., OH to points in the United States (except AK and HI); and (2) from the plantsite of the Ford Motor Company in Wayne Cty., MI, to points in IA and MN; and (2) in secondary movements from points in NY and MA to point in ME and NH. (D) Damaged or returned shipments of the commodities named in (C) above from points in the United States (except AK and HI) to Lorain Cty., OH. (E) Farm tractors and parts and accessories thereof (1) from Highland Park, MI to points in SC, GA, FL, AL, TX and OK; (2) from points in Wayne Cty., MI to points in DC, DE, ME, VT, NH, MA, CT, RI, NY, IA, MN and NJ; (3) from Buffalo, NY to points in ME, VT, NH, MA, CT, RI, NY, NJ, DE, MO and PA. (4) from the plantsite of the Ford Motor Company in Wayne Cty., MI to points in MO and WI; (4) from points in NY and MA to points in ME, NH, VT, MA, CT, RI, NY, NJ and PA. (F) Damaged or defective shipments of the commodities named in (E) above from DE, MD and PA to Buffalo, NY. (G) Mobile Homes, in secondary movements, in truckaway service, when moving in mixed loads with automobiles and trucks between points in CT, MD, MA, NJ, NY, PA, VT, VA, DC, IL, IN, KY, MI, OH, WV, NC, SC, TN, and RI. The foregoing summary is offered as sufficient public notice of the nature and scope of the operating rights sought to be controlled. It is not intended to be and should not be deemed a complete description of said operating rights, which are contained in Docket No. MC–87928 and Subs thereto. Vendee holds no operating rights issued by this Commission. James P. Byrne controls Clark Transport, Inc., and Car Carriers, Inc. Clark Transport, Inc. is a motor common carrier operating pursuant to authority contained in Docket No. MC–106647 and subs thereto. Car Carriers, Inc., is a motor common carrier operating pursuant to authority contained in Docket No. MC–133324 and subs thereto. Both of these carriers are authorized to serve certain origin and destination points in common with those authorized to be served by Automobile Transport, Inc. Duplicating authority will result from the subject purchase. Approval of the purchase will not result in dual operations. Application has been filed for temporary authority under 49 U.S.C. Sec. 11349.

Operating Rights Application(s) Directly Related to Finance Proceedings

The following operating rights application(s) are filed in connection with pending finance applications under Section 11343 (formerly Section 5(2)) of the Interstate Commerce Act, or seek tacking and/or gateway elimination in connection with transfer applications under Section 10926 (formerly Section 212(b)) of the Interstate Commerce Act.

On applications filed before March 1, 1979, an original and one copy of *protests* to the granting of authorities must be filed with the Commission on or before November 30, 1979. Such protests shall conform with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247) and include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities.

Applications filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's *General Rules of Practice* also but are subject to petitions to intervene either with or without leave. An original and one copy of the petition must be filed with the Commission within 30 days after date of publication. A petition for intervention must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points. Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, the extent to which petitioner's interest will be represented by other parties, the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Verified statements in opposition should not be tendered at this time. A copy of the protest or petition to intervene shall be served concurrently upon applicant's representative or applicant if no representative is named.

Each applicant states that approval of its application will not significantly affect the quality of the human environment nor involve a major regulatory action under the Energy Policy and Conservation Act of 1975.

MC 19311 (Sub-63F), filed May 10, 1979. Applicant: CENTRAL TRANSPORT, INC., 34200 Mound Road, Sterling Heights, MI 48077. Applicant's

representative: James D. Payne, 34200 Mound Road, Sterling Heights, MI 48077. Authority sought to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular and regular routes, transporting: A. Irregular routes: (1) *General commodities*, except Classes A and B explosives, household goods, commodities in bulk, and articles of unusual value, (a) between points in Cook, DeKalb, DuPage, Grundy, Kane, Kankakee, Kendall, Lake, McHenry and Will Counties, IL. (b) Between points in Cook, DeKalb, DuPage, Grundy, Kane, Kankakee, Kendall, Lake, McHenry and Will Counties, IL, on the one hand, and, on the other, points in IL. (2) *Household goods, Pianos, Office Furniture and fixtures*, between points within the State of IL. Or in the alternative—B. Irregular routes: *Household goods, Pianos, Office Furniture and fixtures*, between points within the State of IL. Regular routes: *General Commodities*, except Classes A and B explosives, household goods, commodities in bulk, and articles of unusual value, between Chicago, IL and East Dubuque, IL: From Chicago over Interstate Highway 94 to junction Illinois Highway 194, thence over Illinois Highway 194 to junction Interstate Highway 90, thence over Interstate Highway 90 to junction U.S. Highway 20, thence over U.S. Highway 20 to East Dubuque, IL, and return over the same route. Between Chicago, IL and Moline, IL: From Chicago over Interstate Highway 90 to junction Illinois Highway 5, thence over Illinois Highway 5 to Moline, IL, and return over the same route. Between Chicago, IL and junction Interstate Highway 80 and Illinois Highway 5: From Chicago over Interstate Highway 57 to junction Interstate Highway 80, thence over Interstate Highway 80 to junction Illinois Highway 5, and return over the same route. Between Chicago, IL and East St. Louis, IL: From Chicago over Interstate Highway 55 to East St. Louis, IL, and return over the same route. Between Chicago, IL and Cairo, IL: From Chicago over Interstate Highway 57 to junction U.S. Highway 51, thence over U.S. Highway 51 to Cairo, IL, and return over the same route. Between junction Interstate Highway 57 and Interstate Highway 24 and Metropolis, IL: From junction Interstate Highway 57 and Interstate Highway 24, over Interstate Highway 24 to junction U.S Highway 45, near Metropolis, IL, and return over the same route. Between Chicago, IL and junction U.S. Highway 45 and Interstate Highway 24: From Chicago over Illinois Highway 1 to junction U.S Highway 45, thence over U.S. Highway 45 to junction Interstate Highway 24, and return over the same route. Between junction Interstate Highway 64 and Illinois Highway 1 and East St. Louis, IL: From junction Interstate Highway 64 and Illinois Highway 1, near Calvin, IL, over Interstate Highway 64 to East St. Louis, IL, and return over the same route. Between junction Interstate Highway 70 and U.S. Highway 40, near Weaver, IL and East St. Louis, IL: From junction Interstate Highway 70 and U.S. Highway 40, near Weaver, IL, over Interstate Highway 70 to East St. Louis, IL, and return over the same route. Between junction Interstate Highway 74 and Illinois Highway 1 and Moline, IL: From junction Interstate Highway 74 and Illinois Highway 1, near Danville, IL, over Interstate Highway 74 to Moline, IL, and return over the same route. Between junction Interstate Highway 72 and Interstate Highway 57 and Rock Island, IL: From junction Interstate Highway 72 and Interstate Highway 57, near Champaign, IL, over Interstate Highway 72 to junction U.S. Highway 36, thence over U.S. Highway 36 to junction U.S. Highway 67, thence over U.S. Highway 67 to Rock Island, IL, and return over the same routes. Between Sheldon, IL and Quincy, IL: From Sheldon over U.S. Highway 24 to Quincy, and return over the same route. Between junction Interstate Highway 80 and Illinois Highway 88 and Gulfport, IL: From junction Interstate Highway 80 and Illinois Highway 88 over Illinois Highway 88 to junction U.S. Highway 34, thence over U.S. Highway 34 to Gulfport, IL, and return over the same route. Between East Moline, IL and junction Illinois Highway 84 and U.S. Highway 20: From East Moline over Illinois Highway 84 to junction U.S. Highway 20, and return over the same route. Serving all points in IL as intermediate or off-route points, including the commercial zones of all points. Restriction: The above regular routes are restricted to the transportation of traffic moving from, to, or through points in Cook, DeKalb, Dupage, Grundy, Kane, Kankakee, Kendall, Lake, McHenry or Will Counties, IL.—C. Irregular routes: *General Commodities*, except Classes A and B explosives, household goods, commodities in bulk, and articles of unusual value. Between points on the regular routes described in item I below, on the one hand, and, on the other (1) points on the routes and off route points of the routes described in B above over irregular routes or (2) points in IL over irregular routes.—Item I. Between Chicago, IL and Detroit, Mount Clemens, and Rochester, MI: (a) Over U.S. Highway 20 to Elkhart, IN, thence over Indiana Highway 112 to junction U.S. Highway 12 (formerly U.S. Highway 112), thence over U.S. Highway 12 to Detroit, thence over U.S. Highway 25 to Mount Clemens, serving Rochester from Detroit, over U.S. Highway 10 to junction Michigan Highway 150, thence over Michigan Highway 150 to Rochester, and also serving Jackson, MI, over U.S. Highway 127 from junction U.S. Highway 12, and Ann Arbor, MI, over U.S. Highway 12 (formerly U.S. Highway 23) from junction U.S. Highway 12 (formerly U.S. Highway 112). (b) Over Interstate Highway 94 (formerly U.S. Highway 12) to junction U.S. Highway 12 (formerly U.S. Highway 112), thence over U.S. Highway 12 to Detroit, and further serving Mount Clemens and Rochester, as set forth in route (a) above. (c) Over Interstate Highway 94 (formerly U.S. Highway 12) to Detroit, thence over routes as set forth under route (a) above to Rochester and Mount Clemens, MI, also serving off-route points between St. Joseph, MI, and Niles, MI, over U.S. Highway 31 from junction Interstate Highway 94 (formerly U.S. Highway 12) and off-route points between junction Interstate Highway 94 (formerly U.S. Highway 12), and Michigan Highway 40 and Niles, MI, over Michigan Highway 40. In connection with the above-described route, also serving off-route points along U.S. Highway 31 from junction Interstate Highway 94 (formerly U.S. Highway 12) to Michigan Highway 89 over U.S. Highway 31; thence over Michigan Highway 89 to Fennville, MI; thence in a southerly direction over county roads through Grand Junction, Bangor, and Hartford, MI, to junction Interstate Highway 94 (formerly U.S. Highway 12); also serving Lansing, MI, over U.S. Highway 127 from junction Interstate Highway 94 (formerly U.S. Highway 12); also serving Flint, MI, over U.S. Highway 23 from junction Interstate Highway 94 (formerly U.S. Highway 12). (d) Over Interstate Highway 94 (formerly U.S. Highway 12) to junction Michigan Highway 78, thence over Michigan Highway 78 to junction U.S. Highway 27, thence over U.S. Highway 27 to junction Michigan Highway 43 (formerly portion U.S. Highway 16), thence over Michigan Highway 43 to junction unnumbered highway (formerly portion U.S. Highway 16), thence over unnumbered highway to junction Interstate Highway 96 (formerly portion U.S. Highway 16), thence over Interstate Highway 96 to Detroit, serving Mount Clemens and Rochester from Detroit as described in route (a) above. (e) Over Interstate Highway 94 (formerly U.S.

Highway 12) to junction Michigan Highway 78, thence over Michigan Highway 78 to junction U.S. Highway 27, thence over U.S. Highway 27 to Lansing, MI, thence over Michigan Highway 78 to junction U.S. Highway 10, thence over U.S. Highway 10 to Detroit, serving Rochester over Michigan Highway 150 from junction U.S. Highway 10, and also serving Mount Clemens from Detroit over U.S. Highway 25. (f) Over Interstate Highway 94 (formerly U.S. Highway 12) to junction U.S. Highway 12 (formerly U.S. Highway 112), thence over U.S. Highway 12 to junction U.S. Highway 223, thence over U.S. Highway 223 to Toledo, OH, thence over U.S. Highway 24 to junction U.S. Highway 25 to Detroit, serving Mount Clemens and Rochester from Detroit as set forth in route (a) above; also serving off-route point, Dundee, over county roads from Blissfield, MI. (g) Over Interstate Highway 94 (formerly U.S. Highway 12) to junction U.S. Highway 12 (formerly U.S. Highway 112); thence over U.S. Highway 12 to junction U.S. Highway 23, thence over U.S. Highway 24 or 25 to Detroit, serving Mount Clemens and Rochester from Detroit as set forth in route (a) above; also serving Monroe, MI, over Michigan Highway 50 from its junction with U.S. Highway 23. (h) Over U.S. Highway 41 to junction U.S. Highway 30, thence over U.S. Highway 30, to junction U.S. Highway 30S (formerly portion U.S. Highway 30), thence over U.S. Highway 30S to Lima, OH; thence over U.S. Highway 25 to Toledo, OH, thence over either U.S. Highways 24 or 25 to Detroit, serving Rochester and Mount Clemens from Detroit as set forth in route (a) above. Between Chicago, IL, and Cincinnati, OH: Over U.S. Highway 41 to junction U.S. Highway 52, thence over U.S. Highway 52 to Cincinnati, OH. Over U.S. Highway 41 to junction U.S. Highway 52, thence over U.S. Highway 52 to junction Indiana Highway 44, thence over Indiana Highway 44 to Liberty, IN, thence over U.S. Highway 27, to junction Ohio Highway 73, thence over Ohio Highway 73 to junction U.S. Highway 172, thence over U.S. Highway 127 to Cincinnati, serving Middletown, OH, over Ohio Highway 73 and Ohio Highway 4 from junction U.S. Highway 127. Over Illinois Highway 1 to junction Illinois Highway 17, thence over Illinois Highway 17 to the IN–IL State line, thence over Indiana Highway 2 to junction U.S. Highway 41, thence over U.S. Highway 41 to junction U.S. Highway 52, thence over U.S. Highway 52 to Cincinnati. Over U.S. Highway 41 to junction U.S. Highway 52, thence over U.S. Highway 52 to junction Indiana Highway 28, thence over Indiana Highway 28 to junction U.S. Highway 35, thence over U.S. Highway 35 to junction U.S. Highway 127, thence over U.S. Highway 127 to Cincinnati. Over U.S. Highway 41 to junction U.S. Highway 30, thence over U.S. Highway 30 to junction U.S. Highway 30S (formerly portion U.S. Highway 30), thence over U.S. Highway 30S to Lima, OH, thence over U.S. Highway 25 to Cincinnati. Over U.S. Highway 41 to junction U.S. Highway 30, thence over U.S. Highway 30 to junction U.S. Highway 30S (formerly portion U.S. Highway 30), thence over U.S. Highway 30S to Lima, OH, thence over U.S. Highway 25 to Dayton, OH, thence over Ohio Highway 4 to junction U.S. Highway 127, thence over U.S. Highway 127 to Cincinnati. Between Chicago, IL and Dayton, OH: Over U.S. Highway 41 to junction U.S. Highway 52, thence over U.S. Highway 52 to junction U.S. Highway 40, thence over U.S. Highway 40 to junction Ohio Highway 49, thence over Ohio Highway 49 to Dayton. Over U.S. Highway 41 to junction U.S. Highway 52, thence over U.S. Highway 52 to junction Indiana Highway 28, thence over Indiana Highway 28 to junction U.S. Highway 35, thence over U.S. Highway 35 to Dayton. Between Chicago, IL and Milwaukee, WI: Over U.S. Highway 41, Illinois Highway 42, and Wisconsin Highway 32 to Milwaukee.

Note.—Applicant is presently authorized in MC–67818, Sub No. 3, which it acquired in MC–F–12589 to conduct irregular route operations between points on the above described routes, on the one hand, and, on the other, among other points, Coal City, Illinois. Authority is hereby sought to conduct operations over irregular routes between points on the presently authorized routes described in Item I above, on the one hand, and, on the other, points on the routes and off route points of the regular routes described in B above. However, if said regular routes described in B above are not granted, but the irregular routes described in A above are granted, then applicant seeks authority to conduct irregular route operations between points on the routes described in Item I above, on the one hand, and, on the other, all points in Illinois and in doing so, eliminating the gateway of Coal City, Illinois.

Note.—The purpose of this application is in part to convert a certificate of registration to a certificate of public convenience and necessity in Part A above which is therefore directly related to a section 5 application, MC–F–14026F, published in June 11, 1979, issue of the **Federal Register**; Part C is directly related, if Part A is granted; Part B is not directly related.

MC 70917 (Sub-7F), filed January 16, 1979. Applicant: A.F.D., INC., Route 94, Box 517, Florida, NY 10921. Representative: Arthur J. Piken, 95–25 Queens Blvd., Rego Park, NY 11374. Authority sought to operate as a *common carrier* by motor vehicle, over irregular routes, in the transportation of *General commodities*, between points in the State of NY as follows: From the city of Syracuse to the following cities: Albany, Buffalo, Kingston, Middletown, Newburgh, Poughkeepsie, Rochester, Utica, and New York City; From the village of Solvay and the town of Geddes, both in Onendaga County, to the following cities and return: Buffalo, Kingston, Middletown, Newburgh, Rochester, Poughkeepsie, and New York City; From New York City to the following cities: Buffalo, Rochester, Syracuse and Utica; From the city of Buffalo to the following cities: Syracuse and New York.

Note.—The purpose of this application is to convert a Certificate of Registration to a Certificate of Public Convenience and Necessity. This is a matter directly related to MC–FC–78005, published in the May 4, 1979, issue of the **Federal Register.**

MC 70917 (Sub-8F), filed January 16, 1979. Applicant: A.F.D., INC., Route 94, Box 517, Florida, NY 10921. Representative: Arthur J. Piken, 95–25 Queens Blvd., Rego Park, NY 11374. Authority sought to operate as a *commom carrier* by motor vehicle over irregular routes, in the transportation of *General commodities*, (except commodities in bulk), between Central Valley, NY to points within 15 miles of Central Valley, on the one hand, and, on the other, New York, NY, and points in NJ within 20 miles of Rutherford, NJ. Restriction: The authority granted herein is restricted against the transportation of household goods as defined by the Commission. General commodities, from the city of Syracuse to the following cities: Albany, Buffalo, Kingston, Middletown, Newburgh, Poughkeepsie, Rochester, Utica, New York City; From the village of Solvay and the Town of Geddes, both in Onendaga County, to the following cities and return: Buffalo, Kingston, Middletown, Rochester, Newburgh, New York City, Poughkeepsie; From New York City to the following cities: Buffalo, Rochester, Syracuse, Utica; From the city of Buffalo to the following cities: Syracuse and New York.

Note.—The purpose of this application is to eliminate the Gateway of Newburgh, NY, existing between A.F.D., Inc., Docket No. MC 70917 (Sub-4) and the operating authority of Redner Trucking, Inc., in Docket No. MC 134803. This matter is directly related to MC–FC–78005, published in the May 4, 1979, issue of the **Federal Register.**

MC 87566 (Sub-11F), filed April 20, 1979. Applicant: SCHMIDT TRUCK SERVICE, INC., No. 1 Clyde Avenue, Litchfield, IL 62056. Representatives:

Jack Goodman and Allan C. Zuckerman, 39 South LaSalle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, and explosives, household goods as defined by the Commission, commodities in bulk, requiring special equipment, and those injurious or contaminating to other lading) (1) between points in Cook, DeKalb, Du Page, Grundy, Kane, Kankakee, Kendall, Lake, La Salle, McHenry, and Will Counties, IL, and (2) between points in the above-named Counties, on the one hand, and, on the other, points in IL.

Note.—The purpose of this application is to convert a certificate of registration to a certificate of public convenience and necessity. This application is directly related to MC–F–13895F published in the previous section of the Federal Register issue. Common control may be involved. (Hearing Site: St. Louis, Mo.)

MC 105902 (Sub-21F), filed April 30, 1979. Applicant: PENN YAN EXPRESS, INC., 100 West Lake Road, Penn Yan, NY 14527. Applicant's Representative: Russell R. Sage, P.O. Box 11278, Alexandria, VA 22312. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) between: (1) points in NY, on the one hand, and on the other, points in PA located on, south, and east of a line beginning at the Delaware River opposite Hancock, NY, and extending along PA Hwy 370 to junction PA Hwy 171, then along PA Hwy 171 to Carbondale, PA, then along U.S. Hwy 6 to Scranton, PA, and then along U.S. Hwy 11 to the PA–MD State Line near State Line, PA; (2) Philadelphia, PA, on the one hand, and on the other, points in PA located on, south, and east of a line beginning at the Delaware River opposite Hancock, NY, and extending along PA Hwy 370 to junction PA Hwy 171, then along PA Hwy 171 to Carbondale, PA, then along U.S. Hwy 6 to Scranton, PA, and then along U.S. Hwy 11 to the PA–MD State Line near State Line, PA; and (3) points in Susquehanna, Wayne, Pike, Wyoming, Lackawanna, Luzerne, Columbia, Carbon and Monroe Counties, PA, on the one hand, and, on the other, New York, NY, and points in NJ located on and north of a line extending from Asbury Park, NJ over NJ Hwy 66 to NJ Hwy 33, then over NJ Hwy 33 to U.S. Hwy 130, then over U.S. Hwy 130 to Camden, NJ. (Hearing site: Washington, D.C. or Rochester, NY.)

Note.—This application is directly related to MC–F–14012F published in a previous section of this Federal Register issue and seeks to remove gateways resulting from joinder of applicant's existing irregular-route authority with certain irregular-route operating rights applicant seeks to purchase from O.N.C. Freight Systems. To this extent the application is filed pursuant to the Commission's Policy Statement in Ex Parte No. 55 (Sub-8). Item 3 also seeks to expand applicant's service at points in Susquehanna, Wyoming, Lackawanna, Luzerne and Columbia, PA, located west of U.S. Hwy 11 and PA Hwy 171 to two-way service. Applicant is presently authorized to serve these points on inbound movements only.

MC 120472 (Sub-5F), filed December 8, 1978. GOLLOTT & SONS TRANSFER & STORAGE, INC., P.O. Box 468, Biloxi, Mississippi 39522. Representative: Robert J. Gallagher, 1000 Connecticut Avenue, N.W., Suite 1200, Washington, D.C. 20036. Authority sought to operate as a *common carrier* by motor vehicle, over irregular routes, in the transportation of *Household Goods*, as defined by the Commission: Between points in MO, on and east of U.S. Hwy. 71 to Kansas City, MO, and thence on and west of U.S. Hwy. 69 to the MO–IA State line, on the one hand, and, on the other, points in AL, FL, GA, and MS. The gateway to be eliminated: Points in MS on and north of U.S. Hwy. 90. Between points in AR on and west of U.S. Hwy. 71, on the one hand, and, on the other, points in AL, FL, GA, MS and TN. The gateway to be eliminated: Points in MS on and south of U.S. Hwy. 90. Between points in KS on and west of KS Hwy. 83, on the one hand, and, on the other, points in AL, FL, GA, and MS. The gateway to be eliminated: Points in MS on and north of U.S. Hwy. 90. Between points in OK, on the one hand, and, on the other, points in TN, MS, AL, GA, and FL. Gateway to be eliminated: Points in MS on and South of U.S. Hwy. 90. Combination of the two carriers—Gollott's Sub 2 and Gray's E–24 authorizing operations between points in OK, on the one hand, and, on the other, points in MS on and south of U.S. Hwy. 90. Between points in TX on and north of U.S. Hwy. 66 on the one hand, and, on the other, points in MS, TN, AL, FL, and GA. Gateway to be eliminated: Points in MS on and east of Interstate Hwy. 59 to Junction or U.S. Hwy. 98, thence all points south and west of U.S. Hwy. 98. Combination of authority—Gollott Sub 2 and Gray's E–25. Between points in MO on and east of U.S. Hwy. 71 to Kansas City, MO and thence on and west of U.S. Hwy. 69 to MO–LA State line on the one hand, and, on the other, points in MS, TN, FL, GA, and AL. Gateway to be eliminated: Points in MS, on and north of U.S. Hwy. 90. Joinder—Gollott's Sub 2 and Gray's E–34. Hearing site: Biloxi, MS.)

Note.—This application is directly related to Purchase Application by Gollott & Sons Transfer & Storage, Inc. of the operating authority of Gray Van Lines, Inc., Docket No. MC–FC–77493. The purpose of this application is to eliminate the gateways as specified above.

Motor Carrier Alternate Route Deviations

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Property (49 CFR 1042.4(c)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed on or before November 30, 1979.

Each applicant states that there will be no significant effect on either the quality of the human environment or energy policy and conservation.

Motor Carriers of Property

MC 2202 (Deviation No. 168), ROADWAY EXPRESS, INC., P.O. Box 471, 1077 Gorge Blvd., Akron, OH 44309, filed October 2, 1979. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Kansas City, KS over Interstate Hwy 70 to junction Interstate Hwy 15, then over Interstate Hwy 15 to Barstow, CA, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Kansas City, KS Over U.S. Hwy 40 to Lawrence, KS, then over U.S. Hwy 59 via Ottawa, KS to junction U.S. Hwy 169 near Earlton, KS. then over U.S. Hwy 169 to Tulsa, OK, then over U.S. Hwy 75 to Atoka, OK, then over U.S. Hwy 69 to Denison, TX, then over U.S. Hwy 75 to Dallas, TX, then over TX Hwy 114 to Grapevine, TX, then over TX Hwy 121 to Ft. Worth, TX, then over U.S. Hwy 80 to Las Cruces, NM, then over U.S. Hwy 70 to Mesa, AZ, then over U.S. Hwy 60 to junction U.S. Hwy 93, then over U.S. Hwy 93 to junction U.S. Hwy 66, then over U.S. Hwy 66 to Barstow, CA and return over the same route.

MC 29910 (Deviation No. 44), ARKANSAS-BEST FREIGHT SYSTEM, INC., P.O. Box, 48, Ft. Smith, AR 72902,

filed October 3, 1979. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptioins, over a deviation route as follows: From Los Angeles, CA over Interstate Hwy 10 to junction CA Hwy 177, then over CA Hwy 177 to junction CA Hwy 62, then over CA Hwy 62 to junction U.S. Hwy 95, then over U.S. Hwy 95 to junction U.S. Hwy 66, then over U.S. Hwy 66 to Kingman, AZ and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Los Angeles, CA over U.S. Hwy 66 to junction unnumbered CA Hwy, then over unnumbered CA Hwy Via Oro Grande and Lenwood, CA to Barstow, CA, then over U.S. Hwy 66 to Kingman, AZ and return over the same route.

Motor Carrier Alternate Route Deviations

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Passengers (49 CFR 1042.2(c)(9)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed on or before November 30, 1979.

Each applicant states that there will be no significant effect on either the quality of the human environment or energy policy and conservation.

Motor Carriers of Passengers

MC 1515 (Deviation No. 750), GREYHOUND LINES, INC., Greyhound Tower, Phoenix, AZ 85077, filed October 1, 1979. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage*, and *express*, and *newspapers* in the same vehicle with passengers, over a deviation route as follows: From Sacramento, CA over Interstate Hwy 5 to Stockton, CA and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property over a pertinent service route as follows: From Sacramento, CA over US Hwy 99 and unnumbered hwys to Stockton, CA and return over the same route.

Motor Carrier Intrastate Application(s)

The following application(s) for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to Section 10931 (formerly Section 206(a)(6)) of the Interstate Commerce Act. These applications are governed by Special Rule 245 of the Commission's *General Rules of Practice* (49 CFR 1100.245), which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, and any other related matters shall be directed to the State Commission with which the application is filed and shall *not* be addressed to or filed with the Interstate Commerce Commission.

California Docket No. 59000 (Correction), filed July 17, 1979. Applicant: KERN VALLEY TRUCKING, 1272 Gossage Avenue, Petaluma, CA 94952. Applicant's representative: Martin J. Rosen, Michael S. Rubin, Silver, Rosen, Fischer & Stecher, 256 Montgomery Street, San Francisco, CA 94104. Certificate of Public Convenience and Necessity sought to operate freight service, as follows: Transportation of general commodities, except that pursuant to the authority herein granted carrier shall not transport any shipments of: 1. Used household goods, personal effects and office, store and institution furniture, fixtures and equipment not packed in salesmen's hand sample cases, suitcases, overnight or boston bags, brief cases, hat boxes, valises, traveling bags, trunks, life vans, barrels, boxes, cartons, crates, cases, baskets, pails, kits, tubs, drums, bags (jute, cotton, burlap or gunny) or bundles (completely wrapped in jute, cotton, burlap, gunny, fibreboard, or straw matting). 2. Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis; freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis. 3. Livestock, viz.: barrows, boars, bulls, butcher hogs, calves, cattle, cows, dairy cattle, ewes, feeder pigs, gilts, goats, heifers, hogs, kids, lambs, oxen, pigs, rams (bucks), sheep, sheep camp outfits, sows, steers, stags, swine or wethers. 4. Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles. 5. Commodities when transported in bulk in dump-type trucks or trailers or in hopper-type trucks or trailers. 6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit. 7. Portland or similar cements, in bulk or packages, when loaded substantially to capacity of motor vehicle. 8. Logs. 9. Articles of Extraordinary value. 10. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment. Via the following routes: 1. On and within 20 miles of the following named highways: (1) State Highway 1 between San Francisco and Carmel. (2) U.S. Highway 99 between its junction with Interstate Highway 5 near Roseville and its junction with Interstate Highway 5 near Red Bluff. (3) Interstate Highway 5 between Sacramento and Redding. (4) U.S. Highway 80 between Sacramento and Truckee. (5) State Highway 505 between Vacaville and Dunnigan; and 2. On and within 10 miles of the following named highways: (1) Interstate Highway 5 between Los Angeles and the California-Mexico Boundary Line, including points in the San Diego Territory, as described in Note below. (2) U.S. Highway 395 and Interstate Highway 15 between the San Diego Territory, as described in Note below, and San Bernardino. (3) State Highway 101 between Los Angeles and Ventura. (4) Interstate Highway 10 between Los Angeles and Blythe. (5) U.S. Highway 101 between San Francisco and Salinas. (6) U.S. Highway 17 between San Francisco and Santa Cruz. (7) State Highway 156 between Castroville and Hollister. (8) State Highway 68 between State Highway 1 and Salinas. (9) State Highway 680 between Vallejo and San Jose. (10) Interstate Highway 780 between its junction with Interstate Highway 680 near Benicia and its junction with Interstate Highway 80 near Vallejo. (11) Interstate Highway 8 between the San Diego Territory, as described in Note below, and Winterhaven. (12) State Highway 86 between its junction with Interstate Highway 10 near Indio and its junction with Interstate Highway 8 near El Centro. Intrastate, interstate and foreign commerce authority sought. Applicant also by this application seeks deletion of three exceptions from its present certificate which generally would prohibit applicant from (1) serving specified points north of Los Angeles except under specified conditions; (2) providing a local service within a portion of the Los Angeles Basin territory and within 20 miles of Sacramento and (3) handling most

traffic within a described area in Central California. Hearing: Date, time and place not yet fixed. Requests for procedural information should be addressed to California Public Utilities Commission, State Building, Civic Center, San Francisco, CA 94102, and should not be direct to the Interstate Commerce Commission.

Note.—San Diego Territory is defined as follows: Between points in California within an area bounded by a line beginning at the northerly junction of U.S. Highways Nos. 101–E and 101–W (4 miles north of La Jolla); then easterly to Miramar on U.S. Highway No. 395; then southeasterly to Lakeside on the El Cajon-Ramona Highway (State Highway No. 67); then southerly to Bostonia on U.S. Highway No. 80; then southeasterly to Jamul on State Highway No. 94; then due south to the International Boundary Line, west to the Pacific Ocean and north along the coast to point of beginning, and serving points within 5 miles of the boundaries of the above described area.

California Docket No. 59185. Filed October 5, 2979. Applicant: VIKING FREIGHT SYSTEM, INC., 3415 Victor Street, Santa Clara, CA 95050. Representative: Thomas M. Loughran, Loughran & Hegarty, 100 Bush Street, 21st floor, San Francisco, CA 94104. Certificate of Public Convenience and Necessity sought to operate a freight service, as follows: Transportation of: General commodities as follows: 1. Between all points and places in the San Francisco Territory as described in Note A. 2. Between all points and places in the Los Angeles Basin Territory as described in Note B. 3. Between all points and places in the San Diego Territory as described in Note C. 4. Between all points and places on and within 25 statute miles laterally of the following named highways: a. Interstate Highway 80 between Oakland and Colfax, inclusive. b. State Highway 4 between its intersection with Interstate Highway 80 near Pinole, and Stockton, inclusive. c. Interstate Highway 5 and U.S. Highway 101 between San Diego and Willits, inclusive except that carrier, pursuant to this authority, shall not serve any point more than 5 statute miles laterally of this route between Healdsburg and Willits. d. State Highway 1 between its intersections with U.S. Highway 101 at Montalvo and Interstate Highway 5 at San Juan Capistrano. e. State Highway 118 between its intersection with State Highway 26 near Ventura, and Chatsworth, inclusive. f. State highway 99 between Red Bluff and Wheeler Ridge and Interstate Highway 5 between Wheeler Ridge and San Fernando, inclusive, except that carrier, pursuant to this authority, shall not serve any point more than five statute miles easterly of this route between Bakersfield and San Fernando. g. State Higway 33 between Banta and its junction with State Highway 166 at Maricopa, thence via State Highway 166 to its junction with State Highway 99 at Mettler, inclusive. h. Interstate Highway 15 between Temecula and San Diego, inclusive. i. State Highway 60 between the eastern boundary of the Los Angeles Basin Territory and Beaumont and Interstate Highway 10 between Beaumont and Blythe, inclusive, except that between Indio and Blythe, service on or within 25 statute miles laterally of Interstate Highway 10 is restricted to shipments weighing 20,000 pounds or more (truckload lots). j. Interstate highway 10 between Redlands and Indio and State Highway 86 between Indio and Calexico, inclusive, except that no service is authorized to any point north of the northerly boundary of the Los Angeles Basin Territory. k. Interstate Highway 8 between Bostonia and Winterhaven, inclusive. l. Interstate Highway 40 between Barstow and Needles, inclusive (See restriction below). m. San Bernardino County Road designated "National Trails Highway," from its junction with Interstate Highway 40 at Ludlow to its junction with Interstate Highway 40 at Fenner, via Amboy and Essex. n. U.S. Highway 395 between Independence and its junction with Interstate Highway 14 north of Inyokern, inclusive, restricted to shipments weighing 20,000 pounds or more (truckload lots). (See restriction below.) Restriction: No service is authorized to, from or between intermediate points on interstate Highways 15 and 40 between San Bernardino and Newberry, nor on State Highway 14 between San Fernando and its junction with U.S. Highway 395 north of Inyokern, nor on any other highways not named herein. o. State Highways 33 and 119 between Ventura and Greenfield, inclusive, including the off-route points of Santa Paula and Fillmore. p. State Highway 140 between Merced and Mariposa, inclusive. q. State highway 49 between Mariposa and Grass Valley, inclusive, except that carrier pursuant to this authority shall not serve any point more than five statute miles easterly of this route. r. State highway 20 between its intersection with State Highway 99 at Yuba City and Grass Valley, inclusive. s. State Highway 29 between Vallejo and Upper Lake, inclusive. t. State Highway 20 between its intersection with interstate highway 5 near Williams and its intersection with U.S. Highway 101 near Calpella. u. Interstate highway 5 between Sacramento and Redding, inclusive. In performing the service herein authorized, carrier may make use of any and all streets, roads, highways and bridges necessary or convenient for the performance of said service. Except that pursuant to the authority herein granted carrier shall not transport any shipments of: 1. Used household goods, personal effects and office, store and institution furniture, fixtures and equipment not packed in salesmen's hand sample cases, suitcases, overnight or boston bags, briefcases, hat boxes, valises, traveling bags, trunks, lift vans, barrels, boxes, cartons, crates, cases, baskets, pails, kits, tubs, drums, bags (jute, cotton, burlap or gunny) or bundles (completely wrapped in jute, cotton, burlap, gunny, fibreboard, or straw matting). 2. Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis, freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis. 3. Livestock, viz.: barrows, boars, bulls, butcher hogs, calves, cattle, cows, dairy cattle, ewes, feeder pigs, gilts, goats, heifers, hogs, kids, lambs, oxen, pigs, rams (bucks), sheep, sheep camp outfits, sows, steers stags swine or wethers. 4. Liquids, compressed gases, commodities in semiplastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles. 5. Commodities when transported in bulk in dump-type trucks or trailers or in hopper/type trucks or trailers. 6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit. 7. Logs. 8. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment. 9. Telephone Directories.

Note A

San Francisco Territory

San Francisco Territory includes all the City of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Matego County Line meets the Pacific Ocean; thence easterly along said County Line to a point one mile west of State highway 82; southerly along an imaginary line one mile west of and parlleling State Highway 82 to its intersection with Southern Pacific Company Right-of-way at Arastradero Road; southeasterly along the Southern Pacific Company Right-of/way to Pollard Road, including industries served by the Southern Pacific Company spur line extending approximately two

miles southwest from Simla to Permanente; easterly along Pollard Road to W. Parr. Avenue; easterly along W. Parr Avenue to Capri Drive; southerly along Capri Drive to Division Street; easterly along Division Street to the Southern Pacific Company right-of-way; southerly along the Southern Pacific Company right-of-way to the Campbell-Los Gatos City Limits; easterly along said limits and the prolongation thereof to South Bascom Avenue (formerly San Jose-Los Gatos Road); northeasterly along South Bascom Avenue to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Alamaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to State Highway 82; northwesterly along State Highway 82 to Tully Road; northeasterly along Tully Road and the prolongation thereof to While Road; northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 238 (Oakland Road); northerly along State Highway 238 to Warm Springs; northerly along State Highway 238 (Mission Blvd.) via Mission San Jose and Niles to Hayward; northerly along Foothill Blvd. and MacArthur Blvd. to Seminary Avenue; easterly along Seminary Avenue to Mountain Blvd.; northerly along Mountain Blvd. to Warren Blvd. (State Highway 13); northerly along Warren Blvd. to Broadway Terrace; westerly along Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland Boundary Line; northerly along said boundary line to the campus boundary of the University of California; westerly, northerly and easterly along the campus boundary to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to San Pablo Avenue (State Highway 123); northerly along San Pablo Avenue to and including the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco waterfront at the foot of Market Street; westerly along said waterfront and shoreline to the Pacific Ocean; southerly along the shoreline of the Pacific Ocean to point of beginning.

Note B

Los Angeles Basin Territory

Los Angeles Basin Territory includes that area embraced by the following boundary: Beginning at the point the Ventura County-Los Angeles County Boundary Line intersects the Pacific Ocean; thence northeasterly along said county line to the point it intersects State Highway 118, approximately two miles west of Chatsworth; easterly along State highway 118 to Sepulveda Boulevard; northerly along Sepulveda Boulevard to Chatsworth Drive; northeasterly along Chatsworth Drive to the corporate boundary of the City of San Fernando; westerly and northerly along said corporate boundary of the City of San Fernando to Maclay Avenue; northeasterly along Maclay Avenue and its prolongation to the Angeles National Forest Boundary; southeasterly and easterly along the Angeles National Forest and San Bernardino National Forest Boundary to Mill Creek Road (State Highway 38); westerly along Mill Creek Road to Bryant Street; southerly along Bryant Street to and including the unincorporated community of Yucaipa; westerly along Yucaipa Boulevard to interstate highway 10; northwesterly along Interstate Highway 10 to Redlands Boulevard; northwesterly along Redlands Boulevard to Barton Road; westerly along Barton Road to La Cadena Drive; southerly along La Cadena Drive to Iowa Avenue; southerly along Iowa Avenue to State Highway 60; southeasterly along State Highway 60 and U.S. Highway 395 to Nuevo Road; easterly along Nuevo Road via Nuevo and Lakeview to State Highway 79; southerly along State Highway 79 to State Highway 74; thence westerly to the corporate boundary of the City of Hemet; southerly, westerly and northerly along said corporate boundary to The Atchison, Topeka & Santa Fe right-of-way; southerly along said right-of-way to Washington Road; southerly along Washington Road through and including the unincorporated community of Winchester to Benton Road; westerly along Benton Road to Winchester Road (State Highway 79) to Jefferson Avenue; southerly along Jefferson Avenue to U.S. Highway 395; southerly along U.S. Highway 395 to the Riverside County-San Diego County Boundary Line: westerly along said boundary line to the Orange County-San Diego County Boundary Line; southerly along said boundary line to the Pacific Ocean; northwesterly along the shoreline of the Pacific Ocean to point of beginning, including the point of March Air Force Base.

Note C

San Diego Territory

The San Diego Territory includes that area embraced by following an imaginary line starting at a point approximately four miles noth of La Jolla on the Pacific Coast shoreline running east to Miramar on U.S. Highway 395; thence following an imaginary line running southeasterly to Lakeside on State Highway 67; thence southerly on County Road S–17 (San Diego County) and its prolongation to State Highway 94; easterly on State Highway 94 to Jamul; thence due south following an imaginary line to the California-Mexico Boundary Line; thence westerly along the boundary line to the Pacific Ocean and north along the shoreline to point of beginning. Intrastate, interstate and foreign commerce authority sought. (Hearing: Date, time and place not yet fixed.) Requests for procedural information should be addressed to California Public Utilities Commission, State Building, Civic Center, San Francisco, CA 94102, and should not be directed to the Interstate Commerce Commission.

Montana Docket No. T–4611. Filed October 3, 1979. Applicant: ROBERT L. BELL, Skaar Route, P.O. Box 264, Sidney, MT 59270. Certificate of Public Convenience and Necessity sought to operate a freight service, as follows: Transportation of: *General freight and general commodities,* as a Class B *common carrier,* in intrastate and interstate-operations, within the City of Sidney, MT, and a seventy-five (75) mile radius thereof. Intrastate, interstate and foreign commerce authority sought. (Hearing: Date, time and place not yet fixed.) Requests for procedural information should be addressed to Montana Public Service Commission, Asst. Adminstrator, Transporation Division, 1227 11th Avenue, Helena, MT 59601, and should not be directed to the Interstate Commerce Commission.

New York Docket No. T–3693. (Amendment) Filed December 21, 1978. Applicant: TANNEY'S MOTOR TRANSPORTATION, INC., 10 Northway Lane, P.O. Box 610, Latham, NY 12110. Representative: Herbert M. Canter, 305 Montgomery Street, Syracuse, NY 13202. Certificate of Public Convenience and Necessity sought to operate a freight service, over irregular routes, as follows: Transportation of: *General commodities,* as defined in Section 800.1 of Title 17 of the Official Compilation of Codes, Rules and Regulations of the State of New York, within a territory comprised of the Counties of Albany, Broome, Columbia, Dutchess, Fulton, Greene, Hamilton, Herkimer, Montgomery, Orange, Putnam, Rensselaer, Rockland, Saratoga, Schenectady, Schoharie, Ulster, Washington and Westchester, the Cities of Glen Falls, Oneonta, New York and Utica and the Villages of Stamford and Sidney (Delaware

County). Note: The purposed of this publication is to amend the commodity description. Intrastate, interstate and foreign commerce authority sought. Requests for procedural information should be addressed to New York State Department of Transportation, 1220 Washington Avenue, State Campus Bldg., #4, Room G–21, Albany, NY 12232, and should not be directed to the Interstate Commerce Commission.

Irregular-Route Motor Common Carriers of Property-Elimination of Gateway Letter Notices

Date

The following letter-notices of proposals to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's *Gateway Elimination Rules* (49 CFR 1065), and notice thereof to all interested person is hereby given as provided in such rules.

An original and two copies of protests against the proposed elimination of any gateway herein described may be filed with the Interstate Commerce Commission *within 10 days* from the date of this publication. A copy must also be served upon applicant or its representative. Protests against the elimination of a gateway will *not* operate to stay commencement of the proposed operation.

Successively filed letter-notices of the same carrier under these rules will be numbered consecutively for convenience in identification. Protests, if any, must refer to such letter-notices by number.

The following applicants seek to operate as a *common carrier*, by motor vehicles, over irregular routes.

MC 107012 (Sub-E700), filed May 13, 1974. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Fort Wayne, IN 46801. Applicant's representatives: David D. Bishop and Gary M. Crist (same address as above). *Commercial and Institutional Fixtures and Store and Office Equipment, Crated.* (1) From points in KS to points in AL, FL, GA, NC, SC & TN. (2) From points in Atchison, Brown, Doniphan, Douglas, Franklin, Jackson, Jefferson, Johnson, Leavenworth, Marshall, Miami, Nemaha, Osage, Pottawatomie, Shawnee, Wabaunsee and Wynadotte Counties, KS, to points in Ashley, Bradley, Calhoun, Chicot, Cleveland, Columbia, Dallas, Desha, Drew, Lincoln, Quachita and Union Counties, AR; Bell, Breathitt, Clay, Estill, Floyd, Harlan, Jackson, Knott, Knox, Laurel, Lee, Leslie, Letcher, McCreary, Owsley, Perry, Pike and Whitley Counties, KY; Avoyelles, Catahoula, Concordia, Evangeline, Grant, LaSalle, Rapids, Saint Landry, Vernon, Acadia, Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis, Lafayette, Vermilion, Caldwell, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union, West Carroll, Winn, Ascension, Assumption, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, Saint Bernard, Saint Charles, Saint Helena, Saint James, Saint John the Baptist, Saint Martin, Saint Mary, Saint Tammany, Tangipahoa, Terrebonne, Washington, West Baton Rouge and West Feliciana Parishes, LA; Aroostook, Penobscot, Piscataquis, Somerset, Hancock, Knox, Waldo and Washington Counties, ME; points in MS; Arlington, Caroline, Culpeper, Essex, Fairfax, Fauquier, King, George, Orange, Prince William, Spotsylvania, Stafford and Westmoreland Counties and Independent Cities of: Alexandria, Fairfax, Falls Church and Fredericksburg; Alleghany, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Buchanan, Campbell, Carroll, Charlotte, Craig, Dickenson, Floyd, Franklin, Giles, Grayson, Halifax, Henry, Highland, Lee, Montgomery, Nelson, Patrick, Pittsylvania, Pulaski, Roanoke, Rockbridge, Russell, Scott, Smyth, Tazewell, Washington, Wise and Wythe Counties and Independent Cities of: Bedford, Bristol, Buena Vista, Clifton Forge, Covington, Danville, Galax, Lexington, Lynchburg, Martinsville, Norton, Radford, Roanoke, Salem, So. Boston and Staunton; Accomack, Gloucester, Greensville, Isle of Wight, Lancaster, Mathews, Middlesex, Nansemond, Northampton, Northumberland, Richmond, Southampton, Surry, Sussex and York Counties and Independent Cities of: Chesapeake, Emporia, Franklin, Hampton, Newport News, Norfolk, Portsmouth, Suffolk, Virginia Beach and Williamsburg; Albemarle, Amelia, Brunswick, Buckingham, Charles City, Chesterfield, Cumberland, Dinwiddie, Fluvanna, Goochland, Hanover, Henrico, James City, King and Queen, King William, Louisa, Lunenburg, Mecklenburg, New Kent, Nottoway, Powhatan, Prince Edward and Prince George Counties and Independent Cities of: Charlottesville, Colonial Heights, Hopewell, Petersburg, Richmond and Waynesboro, VA; Greenbrier, McDowell, Mercer, Monroe, Pocahontas, Raleigh, Summers and Wyoming Counties, WV. (3) From points in Clark, Comanche, Edwards, Finney, Ford, Grant, Gray, Hamilton, Haskell, Hodgeman, Kearny, Kiowa, Meade, Morton, Pawnee, Seward, Stanton and Stevens Counties, KS, to points in CT; points in DC; points in DE; Alexander, Clay, Edwards, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jefferson, Johnson, Marion, Massac, Perry, Pope, Pulaski, Randolph, Saline, Union, Washington, Wayne, White and Williamson Counties, IL; Crawford, Clay, Daviess, Dubois, Gibson, Greene, Knox, Lawrence, Martin, Monroe, Orange, Owen, Parke, Perry, Pike, Posey, Putnam, Spender, Sullivan, Vanderburgh, Vermillion, Vigo and Warrick Counties, IN; points in KY; points in ME; points in MD; points in MA; Bay, Clinton, Genesee, Gratiot, Hillsdale, Huron, Ingham, Jackson, Lapeer, Lenawee, Livingston, Macomb, Midland, Monroe, Oakland, Saginaw, Saint Clair, Sanilac, Shiawassee, Tuscola, Washtenaw and Wayne Counties, MI; Bolivar, Carrol, Coahoma, Grenada, Holmes, Humphreys, Issaquena, Leflore, Montgomery, Quitman, Sharkey, Sunflower, Tallahatchie, Warren, Washington, Yazoo, Covington, Forrest, George, Greene, Hancok, Harrison, Jackson, Jones, Lamar, Pearl River, Perry, Stone, Wayne, Attala, Clairborne, Clarke, Copiah, Hinds, Jasper, Kemper, Lauderdale, Leake, Madison, Neshoba, Newton, Noxubee, Rankin, Scott, Simpson, Smith, Winston, Alcorn, Benton, Calhoun, Chickasaw, Choctaw, Clay, Desoto, Itawamba, Lafayette, Lee, Lowndes, Marshall, Monroe, Oktibbeha, Panola, Pontotoc, Prentiss, Tate, Tippah, Tishomingo, Tunila, Union, Webster and Yalobusha Counties, MS; Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Iron, Madison, Mississippi, New Madrid, Oregon, Pemiscot, Perry, Reynolds, Ripley, St. Francois, Ste. Genevieve, Scott, Shannon, Stoddard and Wayne Counties, MO; points in NH; points in NJ; points in NY; points in OH; points in PA; points in RI; points in VT; points in VA; points in WV. (4) From points in Cheyenne, Decatur, Ellis, Graham, Greeley, Gove, Lane, Logan, Ness, Norton, Phillips, Rawlins, Rooks, Rush, Scott, Sheridan, Sherman, Thomas, Trego, Wallace and Wichita Counties, KS, to points in Arkansas, Cleburne, Conway, Faulkner, Garland, Grant, Hot Springs, Jefferson, Lee, Lonoke, Monroe, Perry, Phillips, Prairie, Pulaski, Saline and White Counties, AR; points in CT; points in DC; points in DE; Alexander, Clay, Edwards, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jefferson, Johnson, Marion, Massac, Perry, Pope, Pulaski, Randolph, Saline, Union,

Washington, Wayne, White and Williamson Counties, IL; points in KY; Caldwell, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union, West Carroll, Winn, Ascension, Assumption, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, Saint Bernard, Saint Charles, Saint Helena, Saint James, Saint John the Baptist, Saint Martin, Saint Mary, Saint Tammany, Tangipahoa, Terrebonne, Washington, West Baton Rouge and West Feliciana Parishes, LA; points in ME; Anne Arundel, Calvert, Caroline, Charles, Montgomery, Prince Georges, Queen Annes, St. Marys, Talbot, Baltimore, Baltimore City, Carroll, Cecil, Frederick, Hartford, Howard, Kent, Dorchester, Somerset, Wicomico and Worcester Counties, MD; points in MA; points in MS; Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Iron, Madison, Mississippi, New Madrid, Oregon, Pemiscot, Perry, Reynolds, Ripley, St. Francois, Ste. Genevieve, Scott, Shannon, Stoddard and Wayne Counties, MO; points in NH; points in NJ; Albany, Bronx, Columbia, Dutchess, Greene, Kings, Nassau, New York, Orange, Putnam, Queens, Rensselar, Richmond, Rockland, Sullivan, Ulster, Westchester, Herkimer, Jefferson, Lewis, Oneida, Oswego, St. Lawrence, Clinton, Essex, Franklin, Fulton, Hamilton, Montgomery, Saratoga, Schenectady, Warren, Washington and Suffolk Counties, NY; Athens, Belmont, Gallia, Guernsey, Hocking, Jackson, Lawrence, Meigs, Monroe, Morgan, Muskingum, Noble, Perry, Pike, Ross, Scioto, Vinton and Washington Counties, OH; Berks, Bucks, Chester, Delaware, Lancaster, Lebanon, Lehigh, Montgomery, Northampton, Philadelphia, Schuylkill, York, Bradford, Carbon, Columbia, Lackawanna, Luzerne, Monroe, Pike, Sullivan, Susquehanna, Wayne and Wyoming Counties, PA; points in RI; points in VT; points in VA; Greenbrier, McDowell, Mercer, Monroe, Pocahontas, Raleigh, Summers, Wyoming, Braxton, Clay, Fayette, Kanawha, Nicholas, Webster, Boone, Cabell, Lincoln, Logan, Mingo, Putnam and Wayne Counties, WV. (5) From points in Allen, Anderson, Bourbon, Butler, Chautauqua, Cherokee, Coffey, Cowley, Crawford, Elk, Greenwood, Labette, Linn, Lyon, Montgomery, Neosho, Wilson and Woodson Counties, KS, to points in CT; points in DC; points in DE; Crawford, Clay, Daviess, Dubois, Gibson, Greene, Knox, Lawrence, Martin, Monroe, Orange, Owen, Parke, Perry, Pike, Posey, Putnam, Spender, Sullivan, Vanderburgh, Vermillion, Vigo and Warrick Counties, IN; points in KY; Ascension, Assumption, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, Saint Bernard, Saint Charles, Saint Helena, Saint James, Saint John the Baptist, Saint Martin, Saint Mary, Saint Tammany, Tangipahoa, Terrebonne, Washington, West Baton Rouge and West Feliciana Parishes, LA; points in ME; points in MD; points in MA; points in MS; points in NH; points in NJ; points in NY; Athens, Belmont, Gallia, Guernsey, Hocking, Jackson, Lawrence, Meigs, Monroe, Morgan, Muskingum, Noble, Perry, Pike, Ross, Scioto, Vinton and Washington Counties, OH; points in PA; points in RI; points in VT; points in VA; points in WV. (6) From points in Barber, Barton, Chase, Clay, Cloud, Dickinson, Ellsworth, Geary, Harper, Harvey, Jewell, Kingman, Lincoln, Marion, McPherson, Mitchell, Morris, Osborne, Ottawa, Pratt, Reno, Republic, Rice, Riley, Russell, Saline, Sedgwick, Smith, Stafford, Sumneer and Washington Counties, KS, to points in Hartford, New London, Tolland and Windham Counties, CT; Kent and Sussex Counties, DE; points in DC; Allen, Barren, Breckinridge, Bullitt, Butler, Christian, Edmonson, Grayson, Hardin, Hart, Henry, Jefferson, LaRue, Logan, Meade, Muhlenberg, Nelson, Ohio, Oldham, Sheleby, Simpson, Spencer, Todd, Trimble, Warren, Bell, Breathitt, Clay, Estill, Floyd, Harlan, Jackson, Knott, Knox, Laurel, Lee, Leslie, Letcher, McCreary, Owsley, Perry, Pike, Whitley, Ballard, Caldwell, Calloway, Carlisle, Crittenden, Daviess, Fulton, Graves, Hancock, Henderson, Hickman, Hopkins, Livingston, Lyon, Marshall, McCracken, McLean, Trigg, Union and Webster Counties, KY; Ascension, Assumption, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, Saint Bernard, Saint Charles, Saint Helena, Saint James, Saint John the Baptist, Saint Martin, Saint Mary, Saint Tammany, Tangipahoa, Terrebonne, Washington, West Baton Rouge and West Feliciana Parishes, LA; points in ME; Dorchester, Somerset, Wicomico and Worcester Counties, MD; Essex, Middlesex, Norfolk, Suffolk, Barnstable, Bristol, Dukes, Plymouth and Worcester Counties, MA; points in MS; Coos, Carroll, Grafton, Belknap, Merrimack, Rockingham and Strafford Counties, NH; points in RI; Arlington, Caroline, Culpeper, Essex, Fairfax, Fauquier, King, George, Orange, Prince William, Spotsylvania, Strafford and Westmoreland Counties and Independent Cities of: Alexandria, Fairfax, Falls Church and Fredericksburg; Alleghany, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Buchanan, Campbell, Carroll, Charlotte, Craig, Dickenson, Floyd, Franklin, Giles, Grayson, Halifax, Henry, Highland, Lee, Montgomery, Nelson, Patrick, Pittsylvania, Pulaski, Roanoke, Rockbridge, Russell, Scott, Smyth, Tazewell, Washington, Wise and Wythe Counties and Independent Cities of: Bedford, Bristol, Buena Vista, Clifton Forge, Covington, Danville, Galax, Lexington, Lynchburg, Martinsville, Norton, Radford, Roanoke, Salem, So. Boston and Staunton; Accomack, Gloucester, Greensville, Isle of Wight, Lancaster, Mathews, Middlesex, Nansemond, Northampton, Northumberland, Richmond, Southampton, Surry, Sussex and York Counties and Independent Cities of: Chesapeake, Emporia, Franklin, Hampton, Newport News, Norfolk, Portsmouth, Suffolk, Virginia Beach and Williamsburg, VA; Addison, Orange, Washington, Caledonia, Essex and Orleans Counties, VT; Greenbrier, McDowell, Mercer, Monroe, Pocahontas, Raleigh, Summers and Wyoming Counties, WV. (Gateway eliminated: Greene County, AR.)

MC 107012 (Sub-E701), filed May 13, 1974. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Fort Wayne, IN 46801. Applicant's representatives: David D. Bishop and Gary M. Crist (same address as above). *Commercial and Institutional Fixtures and Store and Office Equipment, Crated.* (1) From points in IL, to points in AZ and LA. (2) From points in Bond, Calhoum, Christian, Clinton, Effingham, Fayette, Greene, Jersey, Macoupin, Madison, Monroe, Montgomery, Morgan, Pike, Saint Clair, Sangamon, Scott and Shelby Counties, IL, to points in Barbour, Bullock, Coffee, Covington, Crenshaw, Dale, Geneva, Henry, Houston, Macon, Montgomery, Pike, Russell, Baldwin, Butler, Choctaw, Clarke, Conecuh, Dallas, Escambia, Greene, Hale, Lawndes, Marengo, Mobile, Monroe, Perry, Sumter, Washington and Wilcox Counties, AL; Clark, Hempstead, Howard, Lafayette, Little River, Miller, Montgomery, Nevada, Pike, Polk, Scott, Sevier, Yell, Ashley, Bradley, Calhoun, Chicot, Cleveland, Columbia, Dallas, Desha, Drew, Lincoln, Quachita, Union, Arkansas, Cleburne, Conway, Faulkner, Garland, Grant, Hot Springs, Jefferson, Lee, Lonoke, Monroe, Perry, Phillips, Prairie, Pulaski, Saline and White Counties, AR; points in CA; points in FL;

Atkinson, Baker, Ben Hill, Berrien, Bibb, Bleckley, Brooks, Calhoun, Chattahoochee, Clay, Clinch, Coffee, Colquitt, Cook, Crawford, Crisp, Decatur, Dodge, Dooly, Dougherty, Early, Echols, Grady, Harris, Houston, Irwin, Jones, Lamar, Lanier, Lee, Lowndes, Macon, Marion, Meriwether, Miller, Mitchell, Monroe, Muscogee, Peach, Pike, Pulaski, Quitman, Randolph, Schley, Seminole, Stewart, Sumter, Talbot, Taylor, Telfair, Terrell, Thomas, Tift, Troup, Turner, Twiggs, Upson, Webster, Wilcox, Worth, Appling, Bacon, Brantley, Camden, Charlton, Glynn, Jeff Davis, Long, McIntosh, Montgomery, Pierce, Tattnall, Tooms, Ware, Wayne, Wheeler, Bryan, Bullock, Candler, Chatham, Effingham, Evans, Liberty and Screven Counties, GA; points in MS; Clark, Lincoln, Esmeralda, Eureka, Lander, Nye, Churchill, Douglas, Humboldt, Lyon, Mineral, Ormsby, Pershing, Storey and Washoe Counties, NV; Bernalillo, Guadalupe, Los Alamos, Sandoval, San Miguel, Santa Fe, Torrance, Valencia, Chaves, Curry, DeBaca, Eddy, Lea, Lincoln, Quay, Roosevelt, Catron, Dona, Ana, Grant, Hidalgo, Luna, Otero, Sierra and Socorro Counties, NM; Atoka, Bryan, Choctaw, Coal, Haskell, Latimer, LeFlore, McCurtain, Pittsburg and Pushmataha Counties, OK; points in OR; Chester, Crockett, Dyer, Fayette, Gibson, Hardeman, Haywood, Lake, Lauderdale, McNairy, Madison, Obion, Shelby and Tipton Counties, TN; Andrews, Archer, Baylor, Blanco, Borden, Bosque, Brown, Burnet, Callahan, Clay, Coke, Coleman, Comanche, Concho, Cooke, Coryell, Crane, Crockett, Crosby, Dawson, Denton, Dickens, Eastland, Ector, Edwards, Erath, Fisher, Gaines, Garza, Gillespie, Glasscock, Hamilton, Haskell, Hill, Hood, Howard, Irion, Jack, Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Knox, Lampasas, Llamo, Lubbock, Lynn, McCulloch, McLennan, Martin, Mason, Menard, Midland, Mills, Mitchell, Montague, Nolan, Palo Pinto, Parker, Reagan, Runnels, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Sutton, Tarrant, Taylor, Terry, Throckmorton, Tom Green, Upton, Val Verde, Wise, Yoakum, Young, Aransas, Atascosa, Bandera, Bee, Bexar, Brooks, Cameron, Dimmit, Duval, Frio, Goliad, Hidalgo, Jim Hogg, Jim Wells, Kaines, Kenedy, Kinney, Kleberg, LaSalle, Live Oak, McMullen, Maverick, Medina, Nueces, Real, Refugio, San Patricio, Starr, Uvalde, Webb, Willacy, Wilson, Zapata, Zavala, Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Loving, Pecos, Presidio, Reeves, Terrell, Ward, Winkler, Austin, Bastrop, Bell, Brazoria, Brazos, Burleson, Caldwell, Calhoun, Chambers, Colorado, Comal, DeWitt, Falls, Fayette, Fort Bend, Galveston, Gonzales, Grimes, Guadalupe, Hardin, Harris, Hays, Houston, Jackson, Jasper, Jefferson, Lavaca, Lee, Leon, Liberty, Limestone, Madison, Matagorda, Milam, Montgomery, Newton, Orange, Polk, Robertson, San Jacinto, Travis, Trinity, Tyler, Victoria, Walker, Waller, Washington, Wharton, Williamson, Anderson, Angelina, Bowie, Camp, Cass, Cherokee, Collin, Dallas, Delta, Ellis, Fannin, Franklin, Freestone, Grayson, Gregg, Harrison, Henderson, Hopkins, Hunt, Kaufman, Lamar, Marion, Morris, Nacogdoches, Navarro, Panola, Rains, Red River, Rockwall, Rusk, Sabine, San Augustine, Shelby, Smith, Titus, Upshur, Van Zandt and Wood Counties, TX; Beaver, Iron and Washington Counties, UT; Clark, Cowlitz, Klickitat, Lewis, Pacific, Pierce, Skamania, Thurston, Wahkiakum, Yakima, Clallam, Grays Harbor, Jefferson, Kitsap, Mason, San Juan, Adams, Asotim, Benton, Columbia, Franklin, Garfield, Walla Walla, Whitman, Chelan, Douglas, Grant, Island, King, Kittitas, Skagit, Snohomish and Whatcom Counties, WA. (3) From points in Alexander, Clay, Edwards, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jefferson, Johnson, Marion, Massac, Perry, Pope, Pulaski, Randolph, Saline, Union, Washington, Wayne, White and Williamson Counties, IL, to points in AR; points in CA; points in CO; Charlotte, De Soto, Glades, Hardee, Hendry, Highlands, Lee, Manatee, Okeechobee, Sarasota, Broward, Collier, Dade, Martin, Monroe, Palm Beach, Saint Lucie, Brevard, Citrus, Hernando, Hillsborough, Indian River, Lake, Orange, Osceola, Pasco, Pinellas, Polk, Seminole, Sumter and Volusia Counties, FL; points in ID; Clark, Comanche, Edwards, Finney, Ford, Grant, Gray, Hamilton, Haskell, Hodgeman, Kearny, Kiowa, Meade, Morton, Pawnee, Seward, Stanton, Stevens, Cheyenne, Decatur, Ellis, Graham, Greeley, Gove, Lane, Logan, Ness, Norton, Phillips, Rawlins, Rooks, Rush, Scott, Sheridan, Sherman, Thomas, Trego, Wallace and Wichita Counties, KS; Aroostook, Penobscot, Piscataquis, Somerset, Hancock, Knox, Waldo and Washington Counties, ME; Covington, Forrest, George, Greene, Hancock, Harrison, Jackson, Jones, Lamar, Pearl River, Perry Stone, Wayne, Adams, Amite, Franklin, Jefferson, Jefferson Davis, Lawrence, Lincoln, Marion, Pike, Walthall and Wilkinson Counties, MS; points in MT; points in NV; points in NM; Adams, Billings, Bowman, Burleigh, Dunn, Emmons, Golden Valley, Grant, Hettinger, Mercer, Morton, Oliver, Sioux, Slope, Stark, Benson, Cavalier, Pembina, Pierce, Ramsey, Rolette, Sheridan, Towner, Walsh, Wells, Bottineau, Burke, McHenry, McLean, Mountrail, Renville, Ward, Divide, McKenzie and Williams Counties, ND; points in OK; points in OR; points in SD; points in TX; points in UT; points in WA; point in WY. (4) From points in Cook, DuPage, Kane, Kendall, Lake and Will Counties, IL, to points in Baldwin, Butler, Choctaw, Clarke, Conecuh, Dallas, Escambia, Greene, Hale, Lawndes, Marengo, Mobile, Monroe, Perry, Sumter, Washington and Wilcox Counties, AL; Clark, Hempstead, Howard, Lafayette, Little River, Miller, Montgomery, Nevada, Pike, Polk, Scott, Sevier, Yell, Ashley, Bradley, Calhoun, Chicot, Cleveland, Columbia, Dallas, Desha, Drew, Lincoln, Quachita, Union, Arkansas, Cleburne, Conway, Faulkner, Garland, Grant, Hot Springs, Jefferson, Lee, Lonoke, Monroe, Perry, Phillips, Prairie, Pulaskie, Saline and White Counties, AR; Kern, Los Angeles, Orange, San Luis Obispo, Santa Barbara, Ventura, San Bernardino, Imperial, Riverside and San Diego Counties, CA; Charlotte, De Soto, Glades, Hardee, Hendry, Highlands, Lee, Manatee, Okeechobee, Sarasota, Broward, Collier, Dade, Martin, Monroe, Palm Beach, Saint Lucie, Bay, Calhoun, Escambia, Gulf, Holmes, Jackson, Okaloosa, Santa Rosa, Walton and Washington Counties, FL; Bolivar, Carrol, Coahoma, Grenada, Holmes, Humphreys, Issaquena, Leflore, Montgomery, Quitman, Sharkey, Sunflower, Tallahatchie, Warren, Washington, Yazoo, Covington, Forrest, George, Greene, Hancok, Harrison, Jackson, Jones, Lamar, Pearl River, Perry, Stone, Wayne, Attala, Clairborne, Clarke, Copiah, Hinds, Jasper, Kemper, Lauderdale, Leake, Madison, Neshoba, Newton, Noxubee, Rankin, Scott, Simpson, Smith, Winston, Adams, Amite, Franklin, Jefferson, Jefferson Davis, Lawrence, Lincoln, Marion, Pike, Walthall, and Wilkinson Counties, MS; Clark and Lincoln Counties, NV; Bernalillo, Guadalupe, Los Alamos, Sandoval, San Miguel, Santa Fe, Torrance, Valencia, Chaves, Curry, DeBaca, Eddy, Lea, Lincoln, Quay, Roosevelt, Catron, Dona Ana, Grant, Hidalgo, Luna, Otero, Sierra and Socorro Counties, NM; Alfalfa, Beckham, Blaine, Caddo, Comanche, Cotton, Custer, Dewey, Ellis, Greer, Harmon, Harper, Jackson, Kiowa, Major, Roger Mills, Tillman, Washita, Woods, Woodward, Atoka, Bryan, Choctaw, Coal, Haskell, Latimer, LeFlore,

McCurtain, Pittsburg and Pushmataha Counties, OK; Chester, Crockett, Dyer, Fayette, Gibson, Hardeman, Haywood, Lake, Lauderdale, McNairy, Madison, Obion, Shelby and Tipton Counties, TN; points in TX. (5) From points in Champaign, Clark, Coles, Crawford, Cumberland, DeWitt, Douglas, Edgar, Ford, Grundy, Iriquois, Jasper, Kankakee, Lawrence, Livingston, Macon, McLean Moultrie, Piatt, Richland, Vermilion and Wabash Counties, IL, to points in Baldwin, Butler, Choctaw, Clarke, Conecuh, Dallas, Escambia, Greene, Hale, Lawndes, Marengo, Mobile, Monroe, Perry, Sumter, Washington and Wilcox Counties, AL; Clark, Hemstead, Howard, Lafayette, Little River, Miller, Montgomery, Nevada, Pike, Polk, Scott, Sevier, Yell, Ashley, Bradley, Calhoun, Chicot, Cleveland, Columbia, Dallas, Desha, Drew, Lincoln, Quachita, Union, Arkansas, Cleburne, Conway, Faulkner, Garland, Grant, Hot Springs, Jefferson, Lee, Lonoke, Monroe, Perry, Phillips, Prairie, Pulaski, Saline and White Counties, AR; points in CA; Alamosa, Archuleta, Conejos, Delta, Dolores, Gunnison, Hinsdale, La Plata, Mineral, Montezuma, Montrose, Quray, Rio Grande, Saguache, San Juan and San Miguel Counties, CO; Bolivar, Carrol, Coahoma, Grenada, Holmes, Humphreys, Issaquena, Leflore, Montgomery, Quitman, Sharkey, Sunflower, Tallahatchie, Warren, Washington, Yazoo, Covington, Forrest, George, Greene, Hancok, Harrison, Jackson, Jones, Lamar, Pearl River, Perry, Stone, Wayne, Attala, Clairborne, Clarke, Copiah, Hinds, Jasper, Kemper, Lauderdale, Leake, Madison, Neshoba, Newton, Noxubee, Rankin, Scott, Simpson, Smith, Winston, Adams, Amite, Franklin, Jefferson, Jefferson Davis, Lawrence, Lincoln, Marion, Pike, Walthall and Wilkinson Counties, MS; Clark, Lincoln, Esmeralda, Eureka, Lander, and Nye Counties, NV; Bernalillo, Guadalupe, Los Alamos, Sandoval, San Miguel, Santa Fe, Torrance, Valencia, McKinley, Rio Arriba, San Juan, Chaves, Curry, DeBaca, Eddy, Lea, Lincoln, Quay, Roosevelt, Catron, Dona Ana, Grant, Hidalgo, Luna, Otero, Sierra and Socorro Counties, NM; Alfalfa, Beckham, Blaine, Caddo, Comanche, Cotton, Custer, Dewey, Ellis, Greer, Harmon, Harper, Jackson, Kiowa, Major, Roger Mills, Tillman, Washita, Woods, Woodward, Atoka, Bryan, Choctaw, Coal, Haskell, Latimer, LeFlore, McCurtain, Pittsburg and Pushmataha Counties, OK; Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, Yamhill, Coos, Curry, Douglas, Jackson and Josephine Counties, OR; points in TX; Beaver, Iron and Washington Counties, UT; Clark, Cowlitz, Klickitat, Lewis, Pacific, Pierce, Skamania, Thurston, Wahkiakum and Yakima Counties, WA. (6) From points in Adams, Brown, Cass, Fulton, Hancock, Henderson, Knox, Logan, Marshall, Mason, McDonough, Menard, Peoria, Schuyler, Stark, Tazewell, Warren and Woodford Counties, IL, to points in Autauga, Bibb, Blount, Calhoun, Chambers, Cherokee, Chilton, Clay, Cleburne, Coosa, Cullman, Elmore, Etowah, Jefferson, Lee, Randolph, St. Clair, Shelby, Talladega, Tallapoosa, Barbour, Bullock, Coffee, Covington, Crenshaw, Dale, Geneva, Henry, Houston, Macon, Montgomery, Pike, Russell, Baldwin, Butler, Choctaw, Clarke, Conecuh, Dallas, Escambia, Greene, Hale, Lawndes, Marengo, Mobile, Monroe, Perry, Sumter, Washington and Wilcox Counties, AL; Clark, Hempstead, Howard, Lafayette, Little River, Miller, Montgomery, Nevada, Pike, Polk, Scott, Sevier, Yell, Ashley, Bradley, Calhoun, Chicot, Cleveland, Columbia, Dallas, Desha, Drew, Lincoln, Quachita Union, Arkansas, Cleburne, Conway, Faulkner, Garland, Grant, Hot Springs, Jefferson, Lee, Lonoke, Monroe, Perry, Phillips, Prairie, Pulaski, Saline and White Counties, AR; Kern, Los Angeles, Orange, San Luis Obispo, Santa Barbara, Ventura, San Bernardino, Imperial, Riverside and San Diego Counties, CA; points in FL; Atkinson, Baker, Ben Hill, Berrien, Bibb, Bleckley, Brooks, Calhoun, Chattahoochee, Clay, Clinch, Coffee, Colquitt, Cook, Crawford, Crisp, Decatur, Dodge, Dooly, Dougherty, Early, Echols, Grady, Harris, Houston, Irwin, Jones, Lamar, Lanier, Lee, Lowndes, Macon, Marion, Meriwether, Miller, Mitchell, Monroe, Muscogee, Peach, Pike, Pulaski, Quitman, Randolph, Schley, Seminole, Stewart, Sumter, Talbot, Taylor, Telfair, Terrell, Thomas, Tift, Troup, Turner, Twiggs, Upson, Webster, Wilcox, Worth, Appling, Bacon, Brantley, Camden, Charlton, Glynn, Jeff Davis, Long, McIntosh, Montgomery, Pierce, Tattnall, Tooms, Ware, Wayne, Wheeler, Bryan, Bullock, Candler, Chatham, Effingham, Evans, Liberty and Screven Counties, GA; points in MS; Clark, and Lincoln Counties, NV; Chaves, Curry, DeBaca, Eddy, Lea, Lincoln, Quay, Roosevelt, Catron, Dona Ana, Grant, Hidalgo, Luna, Otero, Sierra and Socorro Counties, NM; Atoka, Bryan, Choctaw, Coal, Haskell, Latimer, LeFlore, McCurtain, Pittsburg and Pushmataha Counties, OK; Chester, Crockett, Dyer, Fayette, Gibson, Hardeman, Haywood, Lake, Lauderdale, McNairy, Madison, Obion, Shelby and Tipton Counties, TN; Andrews, Archer, Baylor, Blanco, Borden, Bosque, Brown, Burnet, Callahan, Clay, Coke, Coleman, Comanche, Concho, Cooke, Coryell, Crane, Crockett, Crosby, Dawson, Denton, Dickens, Eastland, Ector, Edwards, Erath, Fisher, Gaines, Garza, Gillespie, Glasscock, Hamilton, Haskell, Hill, Hood, Howard, Irion, Jack, Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Knox, Lampasas, Llamo, Lubbock, Lynn, McCulloch, McLennan, Martin, Mason, Menard, Midland, Mills, Mitchell, Montague, Nolan, Palo Pinto, Parker, Reagan, Runnels, San Saba, Schleicher, Scurry, Shackleford, Somervell, Stephens, Sterling, Stonewall, Sutton, Tarrant, Taylor, Terry, Throckmorton, Tom Green, Upton, Val Verde, Wise, Yoakum, Young, Aransas, Atascosa, Bandera, Bee, Bexar, Brooks, Cameron, Dimmit, Duval, Frio, Goliad, Hidalgo, Jim Hogg, Jim Wells, Kaines, Kenedy, Kinney, Kleiberg, LaSalle, Live Oak, McMullen, Maverick, Medina, Nueces, Real, Refugio, San Patricio, Starr, Uvalde, Webb, Willacy, Wilson, Zapata, Zavala, Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Loving, Pecos, Presidio, Reeves, Terrell, Ward, Winkler, Austin, Bastrop, Bell, Brazoria, Brazos, Burleson, Caldwell, Calhoun, Chambers, Colorado, Comal, DeWitt, Falls, Fayette, Fort Bend, Galveston, Gonzales, Grimes, Guadalupe, Hardin, Harris, Hays, Houston, Jackson, Jasper, Jefferson, Lavaca, Lee, Leon, Liberty, Limestone, Madison, Matagorda, Milam, Montgomery, Newton, Orange, Polk, Robertson, San Jacinto, Travis, Trinity, Tyler, Victoria, Walker, Waller, Washington, Wharton, Williamson, Anderson, Angelina, Bowie, Camp, Cass, Cherokee, Collin, Dallas, Delta, Ellis, Fannin, Franklin, Freestone, Grayson, Gregg, Harrison, Henderson, Hopkins, Hunt, Kaufman, Lamar, Marion, Morris, Nacogdoches, Navarro, Panola, Rains, Red River, Rockwall, Rusk, Sabine, San Augustine, Shelby, Smith, Titus, Upshur, Van Zandt and Wood Counties, TX. (7) From points in Boone, Bureau, Carroll, DeKalb, Henry, JoDaviess, LaSalle, Lee, McHenry, Mercer, Ogle, Putnam, Rock Island, Stephenson, Whiteside and Winnebago Counties, IL, to points in Barbour, Bullock, Coffee, Covington, Crenshaw, Dale, Geneva, Henry, Houston, Macon, Montgomery, Pike, Russell, Baldwin, Butler, Choctaw, Clarke, Conecuh, Dallas, Escambia, Greene, Hale, Lawndes, Marengo, Mobile, Monroe, Perry, Sumter, Washington and Wilcox Counties, AL; Clark, Hempstead,

Howard, Lafayette, Little River, Miller, Montgomery, Nevada, Pike, Polk, Scott, Sevier, Yell, Ashley, Bradley, Calhoun, Chicot, Cleveland, Columbia, Dallas, Desha, Drew, Lincoln, Quachita, Union, Arkansas, Cleburne, Conway, Faulkner, Garland, Grant, Hot Springs, Jefferson, Lee, Lonoke, Monroe, Perry, Phillips, Prairie, Pulaski, Saline and White Counties, AR; Kern, Los Angeles, Orange, San Luis Obispo, Santa Barbara, Ventura, San Bernardino, Imperial, Riverside and San Diego Counties, CA; Charlotte, De Soto, Glades, Hardee, Hendry, Highlands, Lee, Manatee, Okeechobee, Sarasota, Broward, Collier, Dade, Martin, Monroe, Palm Beach, Saint Lucie, Brevard, Citrus, Hernando, Hillsborough, Indian River, Lake, Orange, Osceola, Pasco, Pinellas, Polk, Seminole, Sumter, Volusia, Bay, Calhoun, Escambia, Gulf, Holmes, Jackson, Okaloosa, Santa Rosa, Walton, Washington, Columbia, Dixie, Franklin, Gadsen, Gilchrist, Hamilton, Jefferson, Lafayette, Leon, Liberty, Madison, Suwannee, Taylor, and Wakulla Counties, FL; Atkinson, Baker, Ben Hill, Berrien, Bibb, Bleckley, Brooks, Calhoun Chattahoochee, Clay, Clinch, Coffee, Colquitt, Cook, Crawford, Crisp, Decatur, Dodge, Dooly, Dougherty, Early, Echols, Grady, Harris, Houston, Irwin, Jones, Lamar, Lanier, Lee, Lowndes, Macon, Marion, Meriwether, Miller, Mitchell, Monroe, Muscogee, Peach, Pike, Pulaski, Quitman, Randolph, Schley, Seminole, Stewart, Sumter, Talbot, Taylor, Telfair, Terrell, Thomas, Tift, Troup, Turner, Twiggs, Upson, Webster, Wilcox and Worth Counties, GA; points in MS; Clark and Lincoln Counties, NV; Chaves, Curry, DeBaca, Eddy, Lea, Lincoln, Quay, Roosevelt, Catron, Dona Ana, Grant, Hidalgo, Luna, Otero, Sierra and Socorro Counties, NM; Alfalfa, Beckham, Blaine, Caddo, Comanche, Cotton, Custer, Dewey, Ellis, Greer, Harmon, Harper, Jackson, Kiowa, Major, Roger Mills, Tillman, Washita, Woods, Woodward, Atoka, Bryan, Choctaw, Coal, Haskell, Latimer, LeFlore, McCurtain, Pittsburg and Pushmatha Counties, OK; Chester, Crockett, Dyer, Fayette, Gibson, Hardeman, Haywood, Lake, Lauderdale, McNairy, Madison, Obion, Shelby and Tipton Counties, TN; Andrews, Archer, Baylor, Blanco, Borden, Bosque, Brown, Burnet, Callahan, Clay, Coke, Coleman, Comanche, Concho, Cooke, Coryell, Crane, Crockett, Crosby, Dawson, Denton, Dickens, Eastland, Ector, Edwards, Erath, Fisher, Gaines, Garza, Gillepsie, Glasscock, Hamilton, Haskell, Hill, Hood, Howard, Irion, Jack, Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Knox, Lampasas, Llamo, Lubbock, Lynn, McCulloch, McLennan, Martin, Mason, Menard, Midland, Mills, Mitchell, Montague, Nolan, Palo Pinto, Parker, Reagan, Runnels, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Sutton, Tarrant, Taylor, Terry, Throckmorton, Tom Green, Upton, Val Verde, Wise Yoakum, Young, Aransas, Atascosa, Bandera, Bee, Bexar, Brooks, Cameron, Dimmit, Duval, Frio, Goliad, Hidalgo, Jim Hogg, Jim Wells, Kaines, Kenedy, Kinney, Kleberg, LaSalle, Live Oak, McMullen, Maverick, Medina, Nueces, Real, Refugio, San Patricio, Starr, Uvalde, Webb, Willacy, Wilson, Zapata, Zavala, Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Loving, Pecos, Presidio, Reeves, Terrell, Ward, Winkler, Austin, Bastrop, Bell, Brazoria, Brazos, Burleson, Caldwell, Calhoun, Chambers, Colorado, Comal, DeWitt, Falls, Fayette, Fort Bend, Galveston, Gonzales, Grimes, Guadalupe, Hardin, Harris, Hays, Houston, Jackson, Jasper, Jefferson, Lavaca, Lee, Leon, Liberty, Limestone, Madison, Matagorda, Milam, Montgomery, Newton, Orange, Polk, Robertson, San Jacinto, Travis, Trinity, Tyler, Victoria, Walker, Waller, Washington, Wharton, Williamson, Anderson, Angelina, Bowie Camp, Cass, Cherokee, Collin, Dallas, Delta, Ellis, Fannin, Franklin, Freestone, Grayson, Gregg, Harrison, Henderson, Hopkins, Hunt, Kaufman, Lamar, Marion, Morris, Nacogdoches, Navarro, Panola, Rains, Red River, Rockwall, Rusk, Sabine, San Augustine, Shelby, Smith, Titus, Upshur, Van Zandt and Wood Counties, TX. (Gateway Eliminated: Green County, AR.)

MC 107012 (Sub-E702), filed May 13, 1974. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Fort Wayne, IN 46801. Applicant's representatives: David D. Bishop and Gary M. Crist (same address as above). *Commercial and Institutional Fixtures and Store and Office Equipment, Uncrated,* (1) From points in IN, to points in AZ, LA, and TX. (2) From points in Crawford, Clay, Daviess, Dubois, Gibson, Greene, Knox, Lawrence, Martin, Monroe, Orange, Owen, Parke, Perry, Pike, Posey, Putnam, Spender, Sullivan, Vanderburgh, Vermillion, Vigo and Warrick Counties, IN, to points in AR; points in CA; Garfield, Mesa, Moffat, Rio Blanco, Routt, Adams, Arapahoe, Boulder, Cedar Creek, Chaffee, Denver, Douglas, Eagle, Elbert, El Paso, Fremont, Gilpin, Grand, Jackson, Jefferson, Lake, Larimer, Park, Pitkin, Summit, Teller, Alamosa, Archuleta, Conejos, Delta, Dolores, Gunnison, Hinsdale, La Plata, Mineral, Montezuma, Montrose, Quray, Rio Grande, Saguache, San Juan, San Miguel, Baca, Bent, Cheyenne, Costilla, Crowley, Custer, Huerfano, Kiowa, Las Animas, Lincoln, Otero, Prowers and Pueblo Counties, CO; points in ID; Clark, Comanche, Edwards, Finney, Ford, Grant, Gray, Hamilton, Haskell, Hodgeman, Kearny, Kiowa, Meade, Morton, Pawnee, Seward, Stanton, Stevens, Allen, Anderson, Bourbon, Butler, Chautauqua, Cherokee, Coffey, Cowley, Crawford, Elk, Greenwood, Labette, Linn, Lyon, Montgomery, Neosho, Wilson and Woodson Counties, KS; Adams, Amite, Franklin, Jefferson, Jefferson Davis, Lawrence, Lincoln, Marion, Pike, Walthall and Wilkinson Counties, MS; Barry, Barton, Camden, Cedar, Christian, Dade, Dallas, Douglas, Greene, Hickory, Howell, Jasper, Laclede, Lawrence, McDonald, Newton, Ozark, Polk, Stone, Taney, Texas, Vernon and Webster Counties, MO; Beaverhead, Broadwater, Deerlodge, Gallatin, Granite, Jefferson, Madison, Park, Ravalli, Silver Bow, Stillwater, Sweet Grass, Blaine, Cascade, Chouteau, Fergus, Golden Valley, Hill, Judith Basin, Lewis and Clark, Liberty, Meagher, Petroleum, Pondera, Teton, Toole, Wheatland, Flathead, Glacier, Lake, Lincoln, Mineral, Missoula, Powell, Sanders, Bighorn, Carbon, Carter, Custer, Fallon, Musselshell, Powder River, Prairie, Rosebud, Treasure, Wibaux and Yellowstone Counties, MT; points in NV; points in NM; points in OK; points in OR; points in UT; points in WA; Park, Teton, Yellowstone National Park, Lincoln, Sublette, Sweetwater, Uinta, Fremont, Hot Springs, Natrona, Big Horn, Campbell, Crook, Johnson, Sheridan, Washakie and Weston Counties, WY. (3) From points in Adams, Allen, Blackford, DeKalb, Delaware, Elkhart, Grant, Huntington, Jay, Kosciusko, Lagrange, Noble, Randolph, Steuben, Wabash, Wells and Whitley Counties, IN, to points in AR; Inyo, Fresno, Kings, Tulare, Glen, Humboldt, Lake, Mendicino, Tehama, Trinity, Kern, Los Angeles, Orange, San Luis Obispo, Santa Barbara, Ventura, San Bernardino, Imperial, Riverside, San Diego, Alameda, Alpine, Amador, Calaveras, Colusa, Contra Costa, Eldorado, Madera, Marin, Mariposa, Merced, Mono, Monterey, Napa, Placer, San Benito, Sacramento, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Sutter, Tuolumne and Yolo Counties, CA; Alamosa, Archuleta, Conejos, Delta, Dolores, Gunnison, Hinsdale, La Plata, Mineral, Montezuma, Montrose, Quray, Rio Grande, Saguache, San Juan and

San Miguel Counties, CO; Bolivar, Carrol, Coahoma, Grenada, Holmes, Humphreys, Isssaquena, Leflore, Montgomery, Quitman, Sharkey, Sunflower, Tallahatchie, Warren, Washington, Yazoo, Covington, Forrest, George, Greene, Hancok, Harrison, Jackson, Jones, Lamar, Pearl River, Perry, Stone, Wayne, Attala, Clairborne, Clarke, Copiah, Hinds, Jasper, Kemper, Lauderdale, Leake, Madison, Neshoba, Newton, Noxubee, Rankin, Scott, Simpson, Smith, Winston, Adams, Amite, Franklin, Jefferson, Jefferson Davis, Lawrence, Lincoln, Marion, Pike, Walthall and Wilkinson Counties, MS; Clark, Lincoln, Esmeralda, Eureka, Lander and Nye Counties, NV; points in NM; Alfalfa, Beckham, Blaine, Caddo, Comanche, Cotton, Custer, Dewey, Ellis, Greer, Harmon, Harper, Jackson, Kiowa, Major, Roger Mills, Tillman, Washita, Woods, Woodward, Beaver, Cimarron, Texas, Atoka, Bryan, Choctaw, Coal, Haskell, Latimer, LeFlore, McCurtain, Pittsburg, Pushmataha, Canadian, Carter, Cleveland, Creek Garfield, Grady, Grant, Hughes, Jefferson, Johnston, Kay, Kingfisher, Lincoln, Logan, Love, McClain, Marshall, Murray, Noble, Okfuskee, Oklahoma, Osage, Pawnee, Payne, Pontotoc, Pottawatomie, Seminole and Stephens Counties, OK; Coos, Curry, Douglas, Jackson and Josephine Counties, OR; Chester, Crockett, Dyer, Fayette, Gibson, Hardeman, Haywood, Lake, Lauderdale, McNairy, Madison, Obion, Shelby and Tipton Counties, TN; Beaver, Iron, Washington, Garfield, Juab, Kane, Millard, Piute, Sanpete, Sevier and Wayne Counties, UT. (4) From points in Boone, Clinton, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, Shelby and Tipton Counties, IN, to points in AR; points in CA; Alamosa, Archuleta, Conejos, Delta, Dolores, Gunnison, Hinsdale, La Plata, Mineral, Montezuma, Montrose, Quray, Rio Grande, Saguache, San Juan and San Miguel Counties, CO; Ada, Adams, Boise, Camas, Canyon, Custer, Elmore, Gem, Gooding, Lemhi, Owyhee, Payette, Twin Falls, Valley and Washington Counties, ID; Bolivar, Carrol, Coahoma, Grenada, Holmes, Humphreys, Issaquena, Leflore, Montgomery, Quitman, Sharkey, Sunflower, Tallahatchie, Warren, Washington, Yazoo, Covington, Forrest, George, Greene, Hancok, Harrison, Jackson, Jones, Lamar, Pearl River, Perry, Stone, Wayne, Attala, Clairborne, Clarke, Copiah, Hinds, Jasper, Kemper, Lauderdale, Leake, Madison, Neshoba, Newton, Noxubee, Rankin, Scott, Simpson, Smith, Winston, Adams, Amite, Franklin, Jefferson, Jefferson Davis, Lawrence, Lincoln, Marion, Pike, Walthall and Wilkinson Counties, MS; Clark, Lincoln, Esmeralda, Eureka, Lander, Nye, Churchill, Douglas, Humboldt, Lyon, Mineral, Ormsby, Pershing, Storey and Washoe Counties, NV; points in NM; Alfalfa, Beckham, Blaine, Caddo, Comanche, Cotton, Custer, Dewey, Ellis, Greer, Harmon, Harper, Jackson, Kiowa, Major, Roger Mills, Tillman, Washita, Woods, Woodward, Canadian, Carter, Cleveland, Creek, Garfield, Grady, Grant, Hughes, Jefferson, Johnston, Kay, Kingfisher, Lincoln, Logan, Love McClain, Marshall, Murray, Noble, Okfuskee, Oklahoma, Osage, Pawnee, Payne, Pontotoc, Pottawatomie, Seminole, Stephens, Atoka, Bryan, Choctaw, Coal, Haskell, Latimer, LeFlore, McCurtain, Pittsburg and Pushmataha Counties, OK; points in OR; Beaver, Iron, Washington, Carbon, Daggett, Duchesme, Emery, Grand, San Juan, Uimtah, Garfield, Juab, Kane, Millard, Piute, Sanpete, Sevier and Wayne Counties, UT; Clallam, Grays Harbor, Jefferson, Kitsap, Mason, San Juan, Clark, Cowlitz, Klickitat, Lewis, Pacific, Pierce, Skamania, Thurston, Wahkiakum and Yakima Counties, WA. (5) From points in Benton, Carroll, Cass, Fountain, Fulton, Howard, Jasper, Lake, LaPorte, Marshall, Miami, Montgomery, Newton, Porter, Pulaski, Saint Joseph, Starke, Tippecanoe, Warren and White Counties, IN, to points in Baldwin, Butler, Choctaw, Clarke, Conecuh, Dallas, Escambia, Greene, Hale, Lawndes, Marengo, Mobile, Monroe, Perry, Sumter, Washington and Wilcox Counties, AL; Clark, Hempstead, Howard, Lafayette, Little River, Miller, Montgomery, Nevada, Pike, Polk, Scott, Sevier, Yell, Ashley, Bradley, Calhoun, Chicot, Cleveland, Columbia, Dallas, Desha, Drew, Lincoln, Quanchita, Union, Arkansas, Cleburne, Conway, Faulkner, Garland, Grant, Hot Springs, Jefferson, Lee, Lonoke, Monroe, Perry, Phillips, Prairie, Pulaski, Saline and White Counties, AR; Imperial, Riverside, San Diego, Alameda, Alpine, Amador, Calaveras, Colusa, Contra Costa, Eldorado, Madera, Marin, Mariposa, Merced, Mono, Monterey, Napa, Placer, San Benito, Sacramento, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Sutter, Tuolumne, Yolo, Kern, Los Angeles, Orange, San Luis Obispo, Santa Barbara, Ventura and San Bernardino Counties, CA; Bolivar, Carrol, Coahoma, Grenada, Holmes, Humphreys, Issaquena, Leflore, Montgomery, Quitman, Sharkey, Sunflower, Tallahatchie, Warren, Washington, Yazoo, Covington, Forrest, George, Greene, Hancok, Harrison, Jackson, Jones, Lamar, Pearl River, Perry, Stone, Wayne, Attala, Clairborne, Clarke, Copiah, Hinds, Jasper, Kemper, Lauderdale, Leake, Madison, Neshoba, Newton, Noxubee, Rankin, Scott, Simpson, Smith, Winston, Adams, Amite, Franklin, Jefferson, Jefferson Davis, Lawrence, Lincoln, Marion, Pike, Walthall and Wilkinson Counties, MS; Clark and Lincoln Counties, NV; Bernalillo, Guadalupe, Los Alamos, Sandoval, San Miguel, Santa Fe, Torrance, Valencia, Chaves, Curry, DeBaca, Eddy, Lea, Lincoln, Quay, Roosevelt, Catron, Dona Ana, Grant, Hidalgo, Luna, Otero, Sierra and Socorro Counties, NM; Alfalfa, Beckham, Blaine, Caddo, Comanche, Cotton, Custer, Dewey, Ellis, Greer, Harmon, Harper, Jackson, Kiowa, Major, Roger Mills, Tillman, Washita, Woods, Woodward, Atoka, Bryan, Choctaw, Coal, Haskell, Latimer, LeFlore, McCurtain, Pittsburg, Pushmataha, Canadian, Carter, Cleveland, Creek, Garfield, Grady, Grant, Hughes, Jefferson, Johnston, Kay, Kingfisher, Lincoln, Logan, Love, McClain, Marshall, Murray, Noble Okfuskee, Oklahoma, Osage, Pawnee, Payne, Pontotoc, Pottawatomie, Seminole and Stephens Counties, OK; Chester, Crockett, Dyer, Fayette, Gibson, Hardeman, Haywood, Lake, Lauderdale, McNairy, Madison, Obion, Shelby and Tipton Counties, TN. (Gateway Eliminated: Greene County, AR).

MC 107012 (Sub-E703), filed May 13, 1974. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Fort Wayne, IN 46801. Applicant's representatives: David D. Bishop and Gary M. Crist (same address as above). *Commercial and Institutional Fixtures and Store and Office Equipment, Crated;* (1) From points in IN, to points in AZ, LA and TX. (2) From points in Crawford, Clay, Daviess, Dubois, Gibson, Greene, Knox, Lawrence, Martin, Monroe, Orange, Owen, Parke, Perry, Pike, Posey, Putnam, Spender, Sullivan, Vanderburgh, Vermillion, Vigo and Warrick Counties, IN, to points in AR; points in CA; Garfield, Mesa, Moffat, Rio Blanco, Routt, Adams, Arapahoe, Boulder, Ceder Creek, Chaffee, Denver, Douglas, Eagle, Elbert, El Paso, Fremont, Gilpin, Grand, Jackson, Jefferson, Lake, Larimer, Park, Pitkin, Summit, Teller, Alamosa, Archuleta, Conejos, Delta, Dolores, Gunnison, Hinsdale, La Plata, Mineral, Montezuma, Montrose, Quray, Rio Grande, Saguache, San Juan, San Miguel, Baca, Bent, Cheyenne, Costilla, Crowley, Custer, Huerfano, Kiowa, Las Animas, Lincoln, Otero, Prowers and Pueblo Counties, CO; points in ID; Clark,

Comanche, Edwards, Finney, Ford, Grant, Gray, Hamilton, Haskell, Hodgeman, Kearny, Kiowa, Meade, Morton, Pawnee, Seward, Stanton, Stevens, Allen, Anderson, Bourbon, Butler, Chautauqua, Cherokee, Coffey, Cowley, Crawford, Elk, Greenwood, Labette, Linn, lyon, Montgomery, Neosho, Wilson and Woodson Counties, KS; Adams, Amite, Franklin, Jefferson, Jefferson Davis, Lawrence, Lincoln, Marion, Pike, Walthall and Wilkinson Counties, MS; Barry, Barton, Camden, Cedar, Christian, Dade, Dallas, Douglas, Greene, Hickory, Howell, Jasper, Laclede, Lawrence, McDonald, Newton, Ozark, Polk, Stone, Taney, Texas, Vernon and Webster Counties, Mo; Beaverhead, Broadwater, Deerlodge, Gallatin, Granite, Jefferson, Madison, Park, Ravalli, Silver Bow, Stillwater, Sweet Grass, Blaine, Cascade, Chouteau, Fergus, Golden Valley, Hill, Judith Basin, Lewis and Clark, Liberty, Meagher, Petroleum, Pondera, Teton, Toole, Wheatland, Flathead, Glacier, Lake, Lincoln, Mineral, Missoula, Powell, Sanders, Bighorn, Carbon, Carter, Custer, Fallon, Musselshell, Powder River, Prairie, Rosebud, Treasure, Wibaux and Yellowstone Counties, MT; points in NV; points in NM; points in OK; points in OR; points in UT; points in WA; Park, Teton, Yellowstone National Park, Lincoln, Sublette, Sweetwater, Uinta, Fremont, Hot Springs, Natrona, Big Horn, Campbell, Crook, Johnson, Sheridan, Washakie and Weston Counties, WY. (3) From points in Adams, Allen, Blackford, DeKalb, Delaware, Elkhart, Grant, Huntington, Jay, Kosciusko, Lagrange, Noble, Randloph, Steuben, Wabash, Wells and Whitley Counties, IN, to points in AR; Inyo, Fresno, Kings, Tulare, Glenn, Humboldt, Lake, Mendicino, Tehama, Trinity, Kern, Los Angeles, Orange, San Luis Obispo, Santa Barbara, Ventura, San Bernardino, Imperial, Riverside, San Diego, Alameda, Alpine, Amador, Calaveras, Colusa, Contra Costa, eldorado, Madera, Marin, Mariposa, Merced, Mono, Monterey, Napa, Placer, San Benito, Sacramento, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Sutter, Tuolumne and Yolo Counties, CA; Alamosa, Arrchuleta, Conejos, Delta, Dolores, Gunnison, Hinsdale, La Plata, Mineral, Montezuma, Montrose, Quray, Rio Grande, Saguache, san Juan and San Miguel Counties, CO; Bolivar, Carroll,Coahoma, Grenada, Holmes, Humphreys, Issaquena, Leflore, Montgomery, Quitman, Sharkey, Sunflower, Tallahatchie, Warren, Washington, Yazoo, Covington, Forrest, George, Greene, Hancok, Harrison, Jackson, Jones, Lamar, Pearl River, Perry, Stone, Wayne, Attala, Clairborne, Clarke, Copiah, Hinds, Jasper, Kemper, Lauderdale, Leake, Madison, Neshoba, Newton, Noxubee, Rankin, Scott, Simson, Smith, Winston, Adams, Amite, Franklin, Jefferson, Jefferson Davis, Lawrence, Lincoln, Marion, Pike, Walthal and Wilkinson Counties, MS; Clark, Lincoln, Esmeralda, Eureka, Lander and Nye Counties, NV; points in MN; Alfalfa, Beckham, Blaine, Caddo, Comanche, Cotton, Custer, Dewey, Ellis, Greer, Harmon, Harper, Jackson, Kiowa, Major, Roger Mills, Tillman, Washita, Woods, Woodward, Beaver, Ciarron, Texas, Atoka, Bryan, Choctaw, Coal, Haskell, Latimer, LeFlore, McCurtain, Pittsburg, Pushmataha, Canadian, Carter, Cleveland, Creek, Garfield, Grady, Grant, Hughes, Jefferson, Johnston, Kay, Kingfisher, Lincoln, Logan, Love, McClain, Marshall, Murray, Noble Okfuskee, Oklahoma, Osage, Pawnee, Payne, Pontotoc, Pottawatomie, Seminole and Stephens Counties, OK; Coos, Curry, Douglas, Jackson and Josephine Counties, OR; Chester, Crockett, Dyer, Fayette, Gibson, Hardeman, Haywood, Lake, Lauderdale, McNairy, Madson, Obion, Shelby and Tipton Counties, TN; Beaver, Iron, Washington, Garfield, Juab, Kane Millard, Piute, Sanpete, Sevier and Wayne Counties, UT. (4) From points in Boone, Clinton, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, Shelby and Tipton Counties, IN, to points in AR; points in CA; Alamosa, Archuleta, Conejos, Delta, Dolores, Gunnison, Hinsdale, La Plata, Mineral, Montezuma, Montrose, Quray, Rio Grande, Saguache, San Juan and San Miguel Counties, CO; Ada, Adams, Boise, Camas, Canyon, Custer, Elmore, Gem, Gooding, Lemhi, Owyhee, Payette, Twin Falls, Valley and Washington Counties, ID; Bolivar, Carrol, Coahoma, Grenada, Homes, Humphreys, Issaquena, Leflore, Montgomery, Quitman, Sharkey, Sunflower, Tallahatchie; Warren, Washington, Yazoo, Covington, Forest, George, Greene, Hancok, Harrison, Jackson, Jones, Lamar, Pearl River, Perry, Stone, Wayne, Attala, Clairborne, Clarke, Copiah, Hinds, Jasper, Kemper, Lauderdale, Leake, Madison, Neshoba, Newton, Noxubee, Rankin, Scott, Simpson, Smith, Winston, Adams, Amite, Franklin, Jefferson, Jefferson Davis, Lawrence, Lincoln, Marion, Pike, Walthall and Wilinson Counties, MS; Clark, Lincoln, Esmeralda, Eureka, Lander, Nye, Churchill, Douglas, Humboldt, Lyon, Mineral, Ormsby, Pershing, Storey and Washoe Counties, NV; points in NM; Alfalfa, Beckham, Blaine, Caddo, Comanche, Cotton, Custer, Dewey, Ellis, Greer, Harmon, Harper, Jackson, Kiowa, Major, Roger Mills, Tillman, Washita, Woods, Woodward, Canadian, Carter, Cleveland, Creek, Garfield, Grady, Grant, Hughes, Jefferson, Johnston, Kay, Kingfisher, Lincoln, Logan, Love, McClain, Marshall, Murray, Noble Okfuskee, Oklahoma, Osage, Pawnee, Payne, Pontotoc, Pottawatomie, Seminole, Stephens, Atoka, Bryan, Choctaw, Coal, Haskell, Latimer, LeFlore, McCurtain, Pittsburg and Pushmataha Counties, OK; points in OR; Beaver, Iron, Washington, Carbon, Daggett, Duchesme, Emery, Grand, San Juan, Uimtah, Garfield, Juab, Kane, Millard, Piute, Sanpete, Sevier and Wayne Counties, UT; Clallam, Grays Harbor, Jefferson, Kitsap, Mason, San Juan, Clark Cowlitz, Klickitat, Lewis, Pacific, Pierce, Skamania, Thurston, Wahkiakum and Yakima Counties, WA. (5) From points in Benton, Carroll, Cass, Fountain, Fulton, Howard, Jasper, Lake, LaPorte, Marshall, Miami, Montgomery, Newton, Porter, Pulaski, Saint Joseph, Starke, Tippecanoe, Warren and White Counties, IN, to points in Baldwin, Butler, Choctaw, Clarke, Conecuh, Dallas, Escambia, Greene, Hale, Lawndes, Marengo, Mobile, Monroe, Perry, Sumter, Washington and Wilcox Counties, AL; Clark, Hempstead, Howard, Lafayette, Little River, Miller, Montgomery, Nevada, Pike, Polk, Scott, Sevier, Yell, Ashley, Bradley, Calhoun, Chicot, Cleveland, Columbia, Dallas, Desha, Drew, Lincoln, Quachita, Union, Arkansas, Cleburne, Conway, Faulkner, Garland, Grant, Hot Springs, Jefferson, Lee, Lonoke, Monroe, Perry, Phillips, Prairie, Pulaski, Saline and White Counties, AR; Imperial, Riverside, San Digeo, Alameda, Alpine, Amador, Calaveras, Colusa, Contra Costa, Eldorado, Madera, Marin, Mariposa, Merced, Mono, Monterey, Napa, Placer, San Benito, Sacramento, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Sutter, Tuolumne, Yolo, Kern, Los Angeles, Organce, San Luis Obispo, Santa Barbara, Ventura and San Bernardino Counties, CA; Bolivar, Carrol, Coahoma, Grenada, Homes, Humphreys, Issaquena, Leflore, Montgomery, Quitman, Sharkey, Sunflower, Tallahatchie, Warren, Washington, Yazoo, Covington, Forrest, George, Greene, Hancok, Harrison, Jackson, Jones, Lamar, Pearl River, Perry, Stone, Wayne, Attala, Clairbrone, Clarke, Copiah, Hinds, Jasper, Kemper, Lauderdale, Leake, Madison, Neshoba, Newton, Noxubee, Rankin, Scott,

Simpson, Smith, Winston, Adams, Amite, Franklin, Jefferson, Jefferson Davis, Lawrence, Lincoln, Marion, Pike, Walthall and Wilkinson Counties, MS; Clark and Lincoln Counties, NV; Bernalillo, Guadalupe, Los Alamos, Sandoval, San Miguel, Santa Fe, Torrance, Valencia, Chaves, Curry, Debaca, Eddy, Lea, Lincoln, Quay, Roosevelt, Catron, Dona Ana, Grant, Hidelgo, Luna, Otero, Sierra and Socorro Counties, NM; Alfalfa, Beckham, Blaine, Caddo, Comanche, Cotton, Custer, Dewey, Ellis, Greer, Harmon, Harper, Jackson, Kiwoa, Major, Roger Mills, Tillman, Washita, Woods, Woodward, Atoka, Bryan, Choctaw, Coal, Haskell, Latimer, LeFlore, McCurtain, Pittsburg, Pushmataha, Canadian, Carter, Cleveland, Creek, Garfield, Grady, Grant, Hughes, Jefferson, Johnston, Kay, Kingfisher, Lincoln, Logan, Love, McClain, Marshall, Murray, Noble Okfuskee, Oklahoma, Osage, Pawnee, Payne, Pontotoc, Pottawatomie, Seminole and Stephens Counties, OK; Chester, Crockett, Dyer, Fayette, Gibson, Hardeman, Haywood, Lake, Lauderdale, McNairy, Madison, Obion, Shelby and Tipton Counties, TN. (Gateway eliminated: Green County, AR.)

MC 107012 (Sub-E704), filed May 16, 1974. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Fort Wayne, IN 46801. Applicant's representatives: David D. Bishop and Gary M. Crist (same address as above). *Commercial and Institutional Fixtures and Store and Office Equipment, Crated.* (1) From points in ID, to points in AL, FL, GA, KY, LA, MS, NC, SC and TN. (2) From points in Ada, Adams, Boise, Camas, Canyon, Custer, Elmore, Gem, Gooding, Lemhi, Owyhee, Payette, Twin Falls, Valley and Washington Counties, ID, to points in Ashley, Bradley, Calhoun, Chicot, Cleveland, Columbia, Dallas, Desha, Drew, Lincoln, Quachita, Union, Arkansas, Cleburne, Conway, Faulkner, Garland, Grant, Hot Springs, Jefferson, Lee, Lonoke, Monroe, Perry, Phillips, Prairie, Pulaski, Saline and White Counties, AR; points in CT; points in DE; points in DC; Alexander, Clay, Edwards, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jefferson, Johnson, Marion, Massac, Perry, Pope, Pulaski, Randolph, Saline, Union, Washington, Wayne, White and Williamson Counties, IL; Crawford, Clay, Daviess, Dubois, Gibson, Greene, Knox, Lawrence, Martin, Monroe, Orange, Owen, Parke, Perry, Pike, Posey, Putnam, Spender, Sullivan, Vanderburgh, Vermillion, Vigo, Warrick, Boone, Clinton, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, Shelby and Tipton Counties, IN; points in ME; points in MD; points in MA; Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Iron, Madison, Mississippi, New Madrid, Oregon, Pemiscot, Perry, Reynolds, Ripley, St. Francois, Ste. Genevieve, Scott, Shannon, Stoddard and Wayne Counties, MO; points in NH; points in NJ; Broome, Cayuga, Chemung, Chenango, Courtland, Delaware, Madison, Onondaga, Ontario, Otsego, Schoharie, Schuyler, Seneca, Tioga, Tompkins, Wayne, Yates, Albany, Bronx, Columbia, Dutchess, Greene, Kings, Nassau, New York, Orange, Putnam, Queens, Rensselar, Richmond, Rockland, Sullivan, Ulster, Westchester, Herkimer, Jefferson, Lewis, Oneida, Oswego, St. Lawrence, Clinton, Essex, Franklin, Fulton, Hamilton, Montgomery, Saratoga, Schenectady, Warren, Washington, and Suffolk Counties, NY; Adams, Brown, Butler, Champaign, Clark, Clermont, Clinton, Darke, Green, Hamilton, Highland, Miami, Montgomery, Preble, Shelby, Warren, Coshocton, Crawford, Delaware, Fairfield, Fayette, Franklin, Knox, Licking, Logan, Madison, Marion, Morrow, Pickaway, Richlands, Union, Athens, Belmont, Gallia, Guernsey, Hocking, Jackson, Lawrence, Meigs, Monroe, Morgan, Muskingum, Noble, Perry, Pike, Ross, Scioto, Vinton and Washington Counties, OH; Adams, Bedford, Blair, Cambria, Centre, Clearfield, Clinton, Cumberland, Dauphin, Franklin, Fulton, Huntingdon, Juniata, Lycoming, Mifflin, Montour, Northumberland, Perry, Snyder, Tioga, Union, Berks, Bucks, Chester, Delaware, Lancaster, Lebanon, Lehigh, Montgomery, Northampton, Philadelphia, Schuylkill, York, Bradford, Carbon, Columbia, Lackawanna, Luzerne, Monroe, Pike, Sullivan, Susquehanna, Wayne, Wyoming, Allegheny, Armstrong, Beaver, Butler, Fayette, Greene, Indiana, Lawrence, Somerset, Washington and Westmoreland Counties, PA; points in RI; Anderson, Angelina, Bowie, Camp, Cass, Cherokee, Collin, Dallas, Delta, Ellis, Fannin, Franklin, Freestone, Grayson, Gregg, Harrison, Henderson, Hopkins, Hunt, Kaufman, Lamar, Marion, Morris, Nacogdoches, Navarro, Panola, Rains, Red River, Rockwall, Rusk, Sabine, San Augustine, Shelby, Smith, Titus, Upshur, Van Zandt and Wood Counties, TX; points in VT; points in VA; points in WV. (3) From points in Benewah, Bonner, Boundry, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties, ID, to points in Clark, Hempstead, Howard, Lafayette, Little River, Miller, Montgomery, Nevada, Pike, Polk, Scott, Sevier, Yell, Ashley, Bradley, Calhoun, Chicot, Cleveland, Columbia, Dallas, Desha, Drew, Lincoln, Quachita, Union, Arkansas, Cleburne, Conway, Faulkner, Garland, Grant, Hot Springs, Jefferson, Lee, Lonoke, Monroe, Perry, Phillips, Prairie, Pulaski, Saline and White Counties, AR; New London County, CT; Kent and Sussex Counties, DE; District of Columbia; Alexander, Clay, Edwards, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jefferson, Johnson, Marion, Massac, Perry, Pope, Pulaski, Randolph, Saline, Union, Washington, Wayne, White and Williamson Counties, IL; Crawford, Clay, Daviess, Dubois, Gibson, Greene, Knox, Lawrence, Martin, Monroe, Orange, Owen, Parke, Perry, Pike, Posey, Putnam, Spender, Sullivan, Vanderburgh, Vermillion, Vigo and Warrick Counties, IN; Aroostook, Penobscot, Piscataquis, Somerset, Hancock, Knox, Waldo and Washington Counties, ME; Anne Arundel, Calvert, Caroline, Charles, Montgomery, Prince Georges, Queen Annes, St. Marys, Talbot, Dorchester, Somerset, Wicomico and Worcester Counties, MD; Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Iron, Madison, Mississippi, New Madrid, Oregon, Pemiscot, Perry, Reynolds, Ripley, St. Francois, Ste. Genevieve, Scott, Shannon, Stoddard and Wayne Counties, MO; Athens, Belmont, Gallia, Guernsey, Hocking, Jackson, Lawrenece, Meigs, Monroe, Morgan, Muskingum, Noble, Perry, Pike, Ross, Scioto, Vinton and Washington Counties, OH; Austin, Bastrop, Bell, Brazoria, Brazos, Burleson, Caldwell, Calhoun, Chambers, Colorado, Comal, DeWitt, Falls, Fayette, Fort Bend, Galveston, Gonzales, Grimes, Guadalupe, Hardin, Harris, Hays, Houston, Jackson, Jasper, Jefferson, Lavaca, Lee, Leon, Liberty, Limestone, Madison, Matagorda, Milam, Montgomery, Newton, Orange, Polk, Robertson, San Jacinto, Travis, Trinity, Tyler, Victoria, Walker, Waller, Washington, Wharton, Williamson, Anderson, Angelina, Bowie, Camp, Cass, Cherokee, Collin, Dallas, Delta, Ellis, Fannin, Franklin, Freestone, Grayson, Gregg, Harrison, Henderson, Hopkins, Hunt, Kaufman, Lamar, Marion, Morris, Nacogdoches, Navarro, Panola, Rains, Red River, Rockwall, Rusk, Sabine, San Augustine, Shelby, Smith, Titus, Upshur, Van Zandt and Wood Counties, TX; Arlington, Caroline, Culpeper, Essex, Fairfax, Fauquier, King George, Orange, Prince William, Spotsylvania, Stafford and Westmoreland Counties and Independent Cities of: Alexandria, Fairfax, Falls Church and Fredericksburg; Alleghany, Amherst,

Appomattox, Augusta, Bath, Bedford, Bland, Botecourt, Buchanan, Campbell, Carroll, Charlotte, Craig, Dickenson, Floyd, Franklin, Giles, Grayson, Halifax, Henry, Highland, Lee, Montgomery, Nelson, Patrick, Pittsylvania, Pulaski, Roanoke, Rockbridge, Russell, Scott, Smyth, Tazewell, Washington, Wise and Wythe Counties and Independent Cities of: Bedford, Bristol, Buena Vista, Clifton Forge, Covington, Danville, Galax, Lexington, Lynchburg, Martinsville, Norton, Radford, Roanoke, Salem, So. Boston and Staunton; Accomack, Gloucester, Greensville, Isle of Wight, Lancaster, Mathews, Middlesex, Nansemond, Northampton, Northumberland, Richmond, Southampton, Surry, Sussex and York Counties and Independent Cities of: Chesapeake, Emporia, Franklin, Hampton, Newport News, Norfolk, Portsmouth, Suffolk, Virginia Beach and Williamsburg; Accomack, Gloucester, Greensville, Isle of Wight, Lancaster, Mathews, Middlesex, Nansemond, Northampton, Northumberland, Richmond, Southampton, Surry, Sussex and York Counties and Independent Cities of: Chesapeake, Emporia, Franklin, Hampton, Newport News, Norfolk, Portsmouth, Suffolk, Virginia Beach and Williamsburg; Albemarle, Amelia, Brunswick, Buckingham, Charles City, Chesterfield, Cumberland, Dinwiddie, Fluvanna, Goochland, Hanover, Henrico, James City, King and Queen, King William, Louisa, Lunenburg, Mecklenburg, New Kent, Nottoway, Powhatan, Prince Edward and Prince George Counties and Independent Cities of: Charlottesville, Colonial Heights, Hopewell, Petersburg, Richmond and Waynesboro, VA; Greenbrier, McDowell, Mercer, Monroe, Pocahontas, Raleigh, Summers, Wyoming, Braxton, Clay, Fayette, Kanawha, Nicholas, Webster, Boone, Cabell, Lincoln, Logan, Mingo, Putnam and Wayne Counties, WV. (4) From points in Bannock, Bear Lake, Bingham, Blaine, Bonneville, Butte, Caribou, Cassia, Clark, Franklin, Fremont, Jefferson, Jerome, Lincoln, Madison, Minidoka, Oneida and Power Counties, ID, to points in Ashley, Bradley, Calhoun, Chicot, Cleveland, Columbia, Dallas, Desha, Drew, Lincoln, Quachita, Union, Arkansas, Cleburne, Conway, Faulkner, Garland, Grant, Hot Springs, Jefferson, Lee, Lonoke, Monroe, Perry, Phillips, Prairie, Pulaski, Saline and White Counties, AR; points in CT; points in DE; Alexander, Clay, Edwards, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jefferson, Johnson, Marion, Massac, Perry, Pope, Pulaski, Randolph, Saline, Union, Washington, Wayne, White and Williamson Counties, IL; Crawford, Clay, Daviess, Dubois, Gibson, Greene, Knox, Lawrence, Martin, Monroe, Orange, Owens, Parke, Perry, Pike, Posey, Putnam, Spender, Sullivan, Vanderburgh, Vermillion, Vigo and Warrick Counties, IN; points in ME; points in MD; points in MA; Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Iron, Madison, Mississippi, New Madrid, Oregon, Pemiscot, Perry, Reynolds, Ripley, St. Francois, Ste. Genevieve, Scott, Shannon, Stoddard and Wayne Counties, MO; points in NH; points in NJ; Albany, Bronx, Columbia, Dutchess, Greene, Kings; Nassau, New York, Orange, Putnam, Queens, Rensselar, Richmond, Rockland, Sullivan, Ulster, Westchester, Clinton, Essex, Franklin, Fulton, Hamilton, Montgomery, Saratoga, Schenectady, Warren, Washington, and Suffolk Counties, NY; Adams, Brown, Butler, Champaign, Clark, Clermont, Clinton, Darke, Greene, Hamilton, Highland, Miami, Montgomery, Preble, Shelby, Warren, Athens, Belmont, Gallia, Guernsey, Hocking, Jackson, Lawrence, Meigs, Monroe, Morgan, Muskingum, Noble, Perry, Pike, Ross, Scioto, Vinton and Washington Counties, OH; Adams, Bedford, Blair, Cambria, Centre, Clearfield, Clinton, Cumberland, Dauphin, Franklin, Fulton, Huntingdon, Juniata, Lycoming, Mifflin, Montour, Northumberland, Perry, Snyder, Tioga, Union, Berks, Bucks, Chester, Delaware, Lancaster, Lebanon, Lehigh, Montgomery, Northampton, Philadelphia, Schuylkill, York, Bradford, Carbon, Columbia, Lackawanna, Luzerne, Monroe, Pike, Sullivan, Susquehanna, Wayne, Wyoming, Allegheny, Armstrong, Beaver, Butler, Fayette, Greene, Indiana, Lawrence, Somerset, Washington and Westmoreland Counties, PA; points in RI; Anderson, Angelina, Bowie, Camp, Cass, Cherokee, Collin, Dallas, Delta, Ellis, Fannin, Franklin, Freestone, Grayson, Gregg, Harrison, Henderson, Hopkins, Hunt, Kaufman, Lamar, Marion, Morris, Nacogdoches, Navarro, Panola, Rains, Red River, Rockwall, Rusk, Sabine, San Augustine, Shelby, Smith, Titus, Upshur, Van Zandt and Wood Counties, TX; points in VT; points in VA; points in WV. (Gateway eliminated: Greene County, AR.)

MC 107012 (Sub-E 705), filed May 16, 1974. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Fort Wayne, IN 46801. Applicant's representatives: David D. Bishop and Gary M. Crist (same address as above). *Commercial and Institutional fixtures and Store and Office Equipment, Uncrated.* (1) From points in IL, to points in AZ and LA. (2) From points in Bond, Calhoum, Christian, Clinton, Effingham, Fayette, Greene, Jersey, Macoupin, Madison, Monroe, Montgomery, Morgan, Pike, Saint Clair, Sangamon, Scott and Shelby Counties, IL, to points in Barbour, Bullock, Coffee, Covington, Crenshaw, Dale, Geneva, Henry, Houston, Macon, Montgomery, Pike, Russell, Baldwin, Butler, Choctaw, Clarke, Conecuh, Dallas, Escambia, Greene, Hale, Lawndes, Marengo, Mobile, Monroe, Perry, Sumter, Washington and Wilcox Counties, AL; Clark, Hempstead, Howard, Lafayette, Little River, Miller, Montgomery, Nevada, Pike, Polk, Scott, Sevier, Yell, Ashley, Bradley, Calhoun, Chicot, Cleveland, Columbia, Dallas, Desha, Drew, Lincoln, Quachita, Union, Arkansas, Cleburne, Conway, Faulkner, Garland, Grant, Hot Springs, Jefferson, Lee, Lonoke, Monroe, Perry, Phillips, Prairie, Pulaski, Saline and White Counties, AR; points in CA; points in FL; Atkinson, Baker, Ben Hill, Berrien, Bibb, Bleckley, Brooks, Calhoun, Chattahoochee, Clay, Clinch, Coffee, Colquitt, Cook, Crawford, Crisp, Decatur, Dodge, Dooly, Dougherty, Early, Echols, Grady, Harris, Houston, Irwin, Jones, Lamar, Lanier, Lee, Lowdes, Macon, Marion, Meriwether, Miller, Mitchell, Monroe, Muscogee, Peach, Pike, Pulaski, Quitman, Randolph, Schley, Seminole, Stewart, Sumter, Talbot, Taylor, Telfair, Terrell, Thomas, Tift, Troup, Turner, Twiggs, Upson, Webster, Wilcox, Worth, Appling, Bacon, Brantley, Camden, Charlton, Glynn, Jeff Davis, Long, McIntosh, Montgomery, Pierce, Tattnall, Toombs, Ware, Wayne, Wheeler, Bryan, Bullock, Candler, Chatham, Effingham, Evans, Liberty and Screven Counties, GA; points in MS; Clark, Lincoln, Esmeralda, Eureka, Lander, Nye, Churchill, Douglas, Humboldt, Lyon, Mineral, Ormsby, Pershing, Storey and Washoe Counties, NV; Bernalillo, Guadalupe, Los Alamos, Sandoval, San Miguel, Santa Fe, Torrance, Valencia, Chaves, Curry, DeBaca, Eddy, Lea, Lincoln, Quay, Roosevelt, Catron, Dona Ana, Grant, Hidalgo, Luna, Otero, Sierra and Socorro Counties, NM; Atoka, Bryan, Choctaw, Coal, Haskell, Latimer, LeFlore, McCurtain, Pittsburg and Pushmataha Counties, OK; points in OR; Chester, Crockett, Dyer, Fayette, Gibson, Hardeman, Haywood, Lake, Lauderdale, McNairy, Madison, Obion, Shelby and Tipton Counties, TN; Andrews, Archer, Baylor, Blanco, Borden, Bosque, Brown, Burnet, Callahan, Clay, Coke, Coleman, Comanche, Concho, Cooke, Coryell, Crane, Crockett, Crosby, Dawson,

Denton, Dickens, Eastland, Ector, Edwards, Erath, Fisher, Gaines, Garza, Gillespie, Glasscock, Hamilton, Haskell, Hill, Hood, Howard, Irion, Jack, Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Knox, Lampasas, Llamo, Lubbock, Lynn, McCulloch, McLennan, Martin, Mason, Menard, Midland, Mills, Mitchell, Montague, Nolan, Palo Pinto, Parker, Reagan, Runnels, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Sutton, Tarrant, Taylor, Terry, Throckmorton, Tom Green, Upton, Val Verde, Wise, Yoakum, Young, Aransas, Atascosa, Bandera, Bee, Bexar, Brooks, Cameron, Dimmit, DuVal, Frio, Goliad, Hidalgo, Jim Hogg, Jim Wells, Kaines, Kenedy, Kinney, Kleberg, LaSalle, Live Oak, McMullen, Maverick, Medina, Nueces, Real, Refugio, San Patricio, Starr, Uvalde, Webb, Willacy, Wilson, Zapata, Zavala, Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Loving, Pecos, Presidio, Reeves, Terrell, Ward, Winkler, Austin, Bastrop, Bell, Brazoria, Brazos, Burleson, Caldwell, Calhoun, Chambers, Colorado, Comal, DeWitt, Falls, Fayette, Fort Bend, Galveston, Gonzales, Grimes, Guadalupe, Hardin, Harris, Hays, Houston, Jackson, Jasper, Jefferson, Lavaca, Lee, Leon, Liberty, Limestone, Madison, Matagorda, Milam, Montgomery, Newton, Orange, Polk, Robertson, San Jacinto, Travis, Trinity, Tyler, Victoria, Walker, Waller, Washington, Wharton, Williamson, Anderson, Angelina, Bowie, Camp, Cass, Cherokee, Collin, Dallas, Delta, Ellis, Fannin, Franklin, Freestone, Grayson, Gregg, Harrison, Henderson, Hopkins, Hunt, Kaufman, Lamar, Marion, Morris, Nacogdoches, Navarro, Panola, Rains, Red River, Rockwall, Rusk, Sabine, San Augustine, Shelby, Smith, Titus, Upshur, Van Zandt and Wood Counties, TX; Beaver, Iron and Washington Counties, UT; Clark, Cowlitz, Klickitat, Lewis, Pacific, Pierce, Skamania, Thurston, Wahkiakum, Yakima, Clallam, Grays Harbor, Jefferson, Kitsap, Mason, San Juan, Adams, Asotim, Benton, Columbia, Franklin, Garfield, Walla Walla, Whitman, Chelan, Douglas, Grant, Island, King, Kittitas, Skagit, Snohomish and Whatcom Counties, WA. (3) From points in Alexander, Clay, Edwards, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jefferson, Johnson, Marion, Massac, Perry, Pope, Pulaski, Randolph, Saline, Union, Washington, Wayne, White and Williamson Counties, IL, to points in AR; points in CA; points in CO; Charlotte, De Soto, Glades, Hardee, Hendry, Highlands, Lee, Manatee, Okeechobee, Sarasota, Broward, Collier, Dade, Martin, Monroe, Palm Beach, Saint Lucie, Brevard, Citrus, Hernando, Hillsborough, Indian River, Lake, Orange, Osceola, Pasco, Pinellas, Polk, Seminole, Sumter and Volusia Counties, FL; points in ID; Clark, Comanche, Edwards, Finney, Ford, Grant, Gray, Hamilton, Haskell, Hodgeman, Kearny, Kiowa, Meade, Morton, Pawnee, Seward, Stanton, Stevens, Cheyenne, Decatur, Ellis, Graham, Greeley, Gove, Lane, Logan, Ness, Norton, Phillips, Rawlins, Rooks, Rush, Scott, Sheridan, Sherman, Thomas, Trego, Wallace and Wichita Counties, KS; Aroostook, Penobscot, Piscataquis, Somerset, Hancock, Knox, Waldo and Washington Counties, ME; Covington, Forrest, George, Greene, Hancok, Harrison, Jackson, Jones, Lamar, Pearl River, Perry, Stone, Wayne, Adams, Amite, Franklin, Jefferson, Jefferson Davis, Lawrence, Lincoln, Marion, Pike, Walthall and Wilkinson Counties, MS; points in MT; points in NV; points in NM; Adams, Billings, Bowman, Burleigh, Dunn, Emmons, Golden Valley, Grant, Hettinger, Mercer, Morton, Oliver, Sioux, Slope, Stark, Benson, Cavalier, Pembina, Pierce, Ramsey, Rolette, Sheridan, Towner, Walsh, Wells, Bottineau, Burke, McHenry, McLean, Mount Rail, Renville, Ward, Divide, McKenzie and Williams Counties, ND; points in OK; points in OR; points in SD; points in TX; points in UT; points in WA; points in WY. (4) From points in Cook, DuPage, Kane, Kendall, Lake and Will Counties, IL, to points in Baldwin, Butler, Choctaw, Clarke, Conecuh, Dallas, Escambia, Greene, Hale, Lawndes, Marengo, Mobile, Monroe, Perry, Sumter, Washington and Wilcox Counties, AL; Clark, Hempstead, Howard, Lafayette, Little River, Miller, Montgomery, Nevada, Pike, Polk, Scott, Sevier, Yell, Ashley, Bradley, Calhoun, Chicot, Cleveland, Columbia, Dallas, Desha, Drew, Lincoln, Quachita, Union, Arkansas, Cleburne, Conway, Faulkner, Garland, Grant, Hot Springs, Jefferson, Lee, Lonoke, Monroe, Perry, Phillips, Prairie, Pulaski, Saline and White Counties, AR; Kern, Los Angeles, Orange, San Luis Obispo, Santa Barabas, Ventura, San Bernardino, Imperial, Riverside and San Diego Counties, CA; Charlotte, De Soto, Glades, Hardee, Hendry, Highlands, Lee, Manatee, Okeechobee, Sarasota, Broward, Collier, Dade, Martin, Monroe, Palm Beach, Saint Lucie, Bay, Calhoun, Escambia, Gulf, Holmes, Jackson, Okaloosa, Santa Rosa, Walton and Washington Counties, FL; Bolivar, Carrol, Coahoma, Grenada, Holmes, Humphreys, Issaquena, Leflore, Montgomery, Quitman, Sharkey, Sunflower, Tallahatchie, Warren, Washington, Yazoo, Covington, Forrest, George, Greene, Hancok, Harrison, Jackson, Jones, Lamar, Pearl River, Perry, Stone, Wayne, Attala, Clairborne, Clarke, Copiah, Hinds, Jasper, Kemper, Lauderdale, Leake, Madison, Neshoba, Newton, Noxubee, Rankin, Scott, Simpson, Smith, Winston, Adams, Amite, Franklin, Jefferson, Jefferson Davis, Lawrence, Lincoln, Marion, Pike, Walthall and Wilkinson Counties, MS; Clark and Lincoln Counties, NV; Bernalillo, Guadalupe, Los Alamos, Sandoval, San Miguel, Santa Fe, Torrance, Valencia, Chaves, Curry, DeBaca, Eddy, Lea, Lincoln, Quay, Roosevelt, Catron, Dona Ana, Grant, Hidalgo, Luna, Otero, Sierra and Socorro Counties, NM; Alfalfa, Beckham, Blaine, Caddo, Comanche, Cotton, Custer, Dewey, Ellis, Greer, Harmon, Harper, Jackson, Kiowa, Major, Roger Mills, Tillman, Washita, Woods, Woodward, Atoka, Bryan, Choctaw, Coal, Haskell, Latimer, LeFlore, McCurtain, Pittsburg and Pushmataha Counties, OK; Chester, Crockett, Dyer, Fayette, Gibson, Hardeman, Haywood, Lake, Lauderdale, McNairy, Madison, Obion, Shelby and Tipton Counties, TN: points in TX. (5) From points in Champaign, Clark, Coles, Crawford, Cumberland, DeWitt, Douglas, Edgar, Ford, Grundy, Iriquois, Jasper, Kankakee, Lawrence, Livingston, Macon, McLean, Moultrie, Piatt, Richland, Vermilion and Wabash Counties, IL, to points in Baldwin, Butler, Choctaw, Clarke, Conecuh, Dallas, Escambia, Greene, Hale, Lawndes, Marengo, Mobile, Monroe, Perry, Sumter, Washington and Wilcox Counties, AL; Clark, Hempstead, Howard, Lafayette, Little River, Miller, Montgomery, Nevada, Pike, Polk, Scott, Sevier, Yell, Ashley, Bradley, Calhoun, Chicot, Cleveland, Columbia, Dallas, Desha, Drew, Lincoln, Quachita, Union, Arkansas, Cleburne, Conway, Faulkner, Garland, Grant, Hot Springs, Jefferson, Lee, Lonoke, Monroe, Perry, Phillips, Prairie, Pulaski, Saline and White Counties, AR; points in CA; Alamosa, Archuleta, Conejos, Delta, Dolores, Gunnison, Hinsdale, La Plata, Mineral, Montezuma, Montrose, Quray, Rio Grande, Saguache, San Juan and San Miguel Counties, CO; Bolivar, Carrol, Coahoma, Grenada, Holmes, Humphreys, Issaquena, Leflore, Montgomery, Quitman, Sharkey, Sunflower, Tallahatchie, Warren, Washington, Yazoo, Covington, Forrest, George, Greene, Hancok, Harrison, Jackson, Jones, Lamar, Pearl River, Perry, Stone, Wayne, Attala, Clairborne, Clarke, Copiah, Hinds, Jasper, Kemper, Lauderdale, Leake, Madison, Neshoba,

Newton, Noxubee, Rankin, Scott, Simpson, Smith, Winston, Adams, Amite, Franklin, Jefferson, Jefferson Davis, Lawrence, Lincoln, Marion, Pike, Walthall and Wilkinson Counties, MS; Clark, Lincoln, Esmeralda, Eureka, Lander and Nye Counties, NV; Bernalillo, Guadalupe, Los Alamos, Sandoval, San Miguel, Santa Fe, Torrance, Valencia, McKinley, Rio Arriba, San Juan, Chaves, Curry, DeBaca, Eddy, Lea, Lincoln, Quay, Roosevelt, Catron, Dona Ana, Grant, Hidalgo, Luna, Otero, Sierra and Socorro Counties, NM; Alfalfa, Beckham, Blaine, Caddo, Comanche, Cotton, Custer, Dewey, Ellis, Greer, Harmon, Harper, Jackson, Kiowa, Major, Roger Mills, Tillman, Washita, Woods, Woodward, Atoka, Bryan, Choctaw, Coal, Haskell, Latimer, LeFlore, McCurtain, Pittsburg and Pushmataha Counties, OK; Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, Yamhill, Coos, Curry, Douglas, Jackson and Josephine Counties, OR; points in TX; Beaver, Iron and Washington Counties, UT; Clark, Cowlitz, Klickitat, Lewis, Pacific, Pierce, Skamania, Thurston, Wahkiakum and Yakima Counties, WA. (6) From points in Adams, Brown, Cass, Fulton, Hancock, Henderson, Knox, Logan, Marshall, Mason, McDonough, Menard, Peoria, Schuyler, Stark, Tazewell, Warren and Woodford Counties, IL, to points in Autauga, Bidd, Blount, Calhoun, Chambers, Cherokee, Chilton, Clay, Cleburne, Coosa, Cullman, Elmore, Etowah, Jefferson, Lee, Randolph, St. Clair, Shelby, Talladega, Tallapoosa, Barbour, Bullock, Coffee, Covington, Crenshaw, Dale, Geneva, Henry, Houston, Macon, Montgomery, Pike, Russell, Baldwin, Butler, Choctaw, Clarke, Conecuh, Dallas, Escambia, Greene, Hale, Lawndes, Marengo, Mobile, Monroe, Perry, Sumter, Washington and Wilcox Counties, AL; Clark, Hempstead, Howard, Lafayette, Little River, Miller, Montgomery, Nevada, Pike, Polk, Scott, Sevier, Yell, Ashley, Bradley, Calhoun, Chicot, Cleveland, Columbia, Dallas, Desha, Drew, Lincoln, Quachita Union, Arkansas, Cleburne, Conway, Faulkner, Garland, Grant, Hot Springs, Jefferson, Lee, Lonoke, Monroe, Perry, Phillips, Prairie, Pulaski, Saline and White Counties, AR; Kern, Los Angeles, Orange, San Luis Obispo, Santa Barbara, Ventura, San Bernardino, Imperial, Riverside and San Diego Counties, CA; points in FL; Atkinson, Baker, Ben Hill, Berrien, Bibb, Bleckley, Brooks, Calhoun, Chattahoochee, Clay, Clinch, Coffee, Colquitt, Cook, Crawford, Crisp, Decatur, Dodge, Dooly, Dougherty, Early, Echols, Grady, Harris, Houston, Irwin, Jones, Lamar, Lanier, Lee, Lowndes, Macon, Marion, Meriwether, Miller, Mitchell, Monroe, Muscogee, Peach, Pike, Pulaski, Quitman, Randolph, Schley, Seminole, Stewart, Sumter, Talbot, Taylor, Telfair, Terrell, Thomas, Tift, Troup, Turner, Twiggs, Upson, Webster, Wilcox, Worth, Appling, Bacon, Brantley, Camden, Charlton, Glynn, Jeff Davis, Long, McIntosh, Montgomery, Pierce, Tattnall, Toombs, Ware, Wayne, Wheeler, Bryan, Bullock, Candler, Chatham, Effingham, Evans, Liberty and Screven Counties, GA; points in MS; Clark and Lincoln Counties, NV; Chaves, Curry, DeBaca, Eddy, Lea, Lincoln, Quay, Roosevelt, Catron, Dona Ana, Grant, Hidalgo, Luna, Otero, Sierra and Socorro Counties, NM; Atoka, Bryan, Choctaw, Coal, Haskell, Latimer, LeFlore, McCurtain, Pittsburg and Pushmataha Counties, OK; Chester, Crockett, Dyer, Fayette, Gibson, Hardeman, Haywood, Lake, Lauderdale, McNairy, Madison, Obion, Shelby, and Tipton Counties, TN; Andrews, Archer, Baylor, Blanco, Borden, Bosque, Brown, Burnet, Callahan, Clay, Coke, Coleman, Comanche, Concho, Cooke, Coryell, Crane, Crockett, Crosby, Dawson, Denton, Dickens, Eastland, Ector, Edwards, Erath, Fisher, Gaines, Garza, Gillespie, Glasscock, Hamilton, Haskell, Hill, Hood, Howard, Irion, Jack, Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Knox, Lampasas, Llamo, Lubbock, Lynn, McCulloch, McLennan, Martin, Mason, Menard, Midland, Mills, Mitchell, Montague, Nolan, Palo Pinto, Parker, Reagan, Runnels, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Sutton, Tarrant, Taylor, Terry, Throckmorton, Tom Green, Upton, Val Verde, Wise, Yoakum, Young, Arkansas, Atascosa, Bandera, Bee, Bexar, Brooks, Cameron, Dimmit, Duval, Frio, Goliad, Hidalgo, Jim Hogg, Jim Wells, Kaines, Kenedy, Kinney, Kleberg, LaSalle, Live Oak, McMullen, Maverick, Medina, Nueces, Real, Refugio, San Patricio, Starr, Uvalde, Webb, Willacy, Wilson, Zapata, Zavala, Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Loving, Pecos, Presidio, Reeves, Terrell, Ward, Winkler, Austin, Bastrop, Bell, Brazoria, Brazos, Burleson, Caldwell, Calhoun, Chambers, Colorado, Comal, DeWitt, Falls, Fayette, Fort Bend, Galveston, Gonzales, Grimes, Guadalupe, Hardin, Harris, Hays, Houston, Jackson, Jasper, Jefferson, Lavaca, Lee, Leon, Liberty, Limestone, Madison, Matagorda, Milam, Montgomery, Newton, Orange, Polk, Robertson, San Jacinto, Travis, Trinity, Tyler, Victoria, Walker, Waller, Washington, Wharton, Williamson, Anderson, Angelina, Bowie, Camp, Cass, Cherokee, Collin, Dallas, Delta, Ellis, Fannin, Franklin, Freestone, Grayson, Gregg, Harrison, Henderson, Hopkins, Hunt, Kaufman, Lamar, Marion, Morris, Nacogdoches, Navarro, Panola, Rains, Red River, Rockwall, Rusk, Sabine, San Augustine, Shelby, Smith, Titus, Upshur, Van Zandt and Wood Counties, TX. (7) From points in Boone, Bureau, Carroll, DeKalb, Henry, JoDaviess, LaSalle, Lee, McHenry, Mercer, Ogle, Putnam, Rock Island, Stephenson, Whiteside and Winnebago Counties, IL, to points in Barbour, Bullock, Coffee, Covington, Crenshaw, Dale, Geneva, Henry, Houston, Macon, Montgomery, Pike, Russell, Baldwin, Butler, Choctaw, Clarke, Conecuh, Dallas, Escambia, Greene, Hale, Lawndes, Marengo, Mobile, Monroe, Perry, Sumter, Washington and Wilcox Counties, AL; Clark, Hempstead, Howard, Lafayette, Little River, Miller, Montgomery, Nevada, Pike, Polk, Scott, Sevier, Yell, Ashley, Bradley, Calhoun, Chicot, Cleveland, Columbia, Dallas, Desha, Drew, Lincoln, Quachita, Union, Arkansas, Cleburne, Conway, Faulkner, Garland, Grant, Hot Springs, Jefferson, Lee, Lonoke, Monroe, Perry, Phillips, Prairie, Pulaski, Saline and White Counties, AR; Kern, Los Angeles, Orange, San Luis Obispo, Santa Barbara, Ventura, San Bernardino, Imperial, Riverside and San Diego Counties, CA; Charlotte, De Soto, Glades, Hardee, Hendry, Highlands, Lee, Manatee, Okeechobee, Sarasota, Broward, Collier, Dade, Martin, Monroe, Palm Beach, Saint Lucie, Brevard, Citrus, Hernando, Hillsborough, Indian River, Lake, Orange, Osceola, Pasco, Pinellas, Polk, Seminole, Sumter, Volusia, Bay, Calhoun, Escambia, Gulf, Holmes, Jackson, Okaloosa, Santa Rosa, Walton, Washington, Columbia, Dixie, Franklin, Gadsen, Gilchrist, Hamilton, Jefferson, Lafayette, Leon, Liberty, Madison, Suwannee, Taylor and Wakulla Counties, FL; Atkinson, Baker, Ben Hill, Berrien, Bibb, Bleckley, Brooks, Calhoun, Chattahoochee, Clay, Clinch, Coffee, Colquitt, Cook, Crawford, Crisp, Decatur, Dodge, Dooly, Dougherty, Early, Echols, Grady, Harris, Houston, Irwin, Jones, Lamar, Lanier, Lee, Lowndes, Macon, Marion, Meriwether, Miller, Mitchell, Monroe, Muscogee, Peach, Pike, Pulaski, Quitman, Randolph, Schley, Seminole, Stewart, Sumter, Talbot, Taylor, Telfair, Terrell, Thomas, Tift, Troup, Turner, Twiggs, Upson, Webster, Wilcox and Worth Counties, GA; points in MS; Clark and Lincoln Counties, NV; Chaves, Curry,

DeBaca, Eddy, Lea, Lincoln, Quay, Roosevelt, Catron, Dona Ana, Grant, Hidalgo, Luna, Otero, Sierra and Socorro Counties, NM; Alfalfa, Beckham, Blaine, Caddo, Comanche, Cotton, Custer, Dewey, Ellis, Greer, Harmon, Harper, Jackson, Kiowa, Major, Roger Mills, Tillman, Washita, Woods, Woodward, Atoka, Bryan, Choctaw, Coal, Haskell, Latimer, LeFlore, McCurtain, Pittsburg and Pushmataha Counties, OK; Chester, Crockett, Dyer, Fayette, Gibson, Hardeman, Haywood, Lake, Lauderdale, McNairy, Madison, Obion, Shelby and Tipton Counties, TN; Andrews, Archer, Baylor, Blanco, Borden, Bosque, Brown, Burnet, Callahan, Clay, Coke, Coleman, Comanche, Concho, Cooke, Coryell, Crane, Crockett, Crosby, Dawson, Denton, Dickens, Eastland, Ector, Edwards, Erath, Fisher, Gaines, Garza, Gillespie, Glasscock, Hamilton, Haskell, Hill, Hood, Howard, Irion, Jack, Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Knox, Lampasas, Llamo, Lubbock, Lynn, McCulloch, McLennan, Martin, Mason, Menard, Midland, Mills, Mitchell, Montague, Nolan, Palo Pinto, Parker, Reagan, Runnels, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Sutton, Tarrant, Taylor, Terry, Throckmorton, Tom Green, Upton, Val Verde, Wise, Yoakum, Young, Aransas, Atascosa, Bandera, Bee, Bexar, Brooks, Cameron, Dimmit, Duval, Frio, Goliad, Hidalgo, Jim Hogg, Jim Wells, Kaines, Kenedy, Kinney, Kleberg, LaSalle, Live Oak, McMullen, Maverick, Medina, Nueces, Real, Refugio, San Patricio, Starr, Uvalde, Webb, Willacy, Wilson, Zapata, Zavala, Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Loving, Pecos, Presidio, Reeves, Terrell, Ward, Winkler, Austin, Bastrop, Bell, Brazoria, Brazos, Burleson, Caldwell, Calhoun, Chambers, Colorado, Comal, DeWitt, Falls, Fayette, Fort Bend, Galveston, Gonzales, Grimes, Guadalupe, Hardin, Harris, Hays, Houston, Jackson, Jasper, Jefferson, Lavaca, Lee, Leon, Liberty, Limestone, Madison, Matagorda, Milam, Montgomery, Newton, Orange, Polk, Robertson, San Jacinto, Travis, Trinity, Tyler, Victoria, Walker, Waller, Washington, Wharton, Williamson, Anderson, Angelina, Bowie, Camp, Cass, Cherokee, Collin, Dallas, Delta, Ellis, Fannin, Franklin, Freestone, Grayson, Gregg, Harrison, Henderson, Hopkins, Hunt, Kaufman, Lamar, Marion, Morris, Nacogdoches, Navarro, Panola, Rains, Red River, Rockwall, Rusk, Sabine, San Augustine, Shelby, Smith, Titus, Upshur, Van Zandt and Wood Counties, TX. Gateway eliminated: Green County, AR.)

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-33620 Filed 10-30-79; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 23F)]

Seaboard Coast Line Railroad Com. Abandonment Near Cane and Duda in Palm Beach County, Fla.; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision decided August 27, 1979, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in AB-36 (Sub-No. 2), *Oregon Short Line Railroad Co.-Abandonment Goshen*, 360 I.C.C. 91 (1979), the present and future public convenience and necessity permits the abandonment by the Seaboard Coast Line Railroad Company of its line of railroad between milepost AVF 972.16 near Cane, FL, and milepost AVF 978.10 near Duda, FL, a distance of 5.96 miles in Palm Beach County, FL. A certificate of abandonment will be issued to the Seaboard Coast Line Railroad Company based on the above-described finding of abandonment, November 30, 1979, unless within 30 days from the date of publication (November 30, 1979), the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the **Federal Register** on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978, at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-33623 Filed 10-30-79; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-7 (Sub-No. 60F)]

Stanley E. G. Hillman, Trustee, of the Property of Chicago, Milwaukee, St. Paul & Pacific Railroad Co., Debtor, Abandonment Near Iron Ridge and Fond du Lac, in Dodge and Fond du Lac Counties, Wis.; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision decided August 31, 1979, which is administratively final, was made by the Administrative Law Judge, stating that, the present and future public convenience and necessity permit abandonment by the present trustee of the property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, debtor, of that portions of its lines of railroad, and operation thereof, between milepost 136.7 located between Iron Ridge and Mayville in Dodge County, WI, and Junction A, in or near Fond du Lac in Fond du Lac County, WI, also known as milepost 157.4, between Junction B, milepost 158.9, and engineer's station 1481+78, both in Fond du Lac, WI, and between mileposts 161.03 and 161.2, both in Fond du Lac, WI; and abandonment of operations by applicant over the lines of Chicago and North Western Transportation Company between Junction A, milepost 157.4, and milepost 161.03, in or near Fond du Lac, WI; a total distance of 23.4 miles of line and operations, plus 4.13 miles of operations; subject to conditions for the protection of employees set forth in the *Oregon Short Line R. Co.—Abandonment Goshen*, 360 I.C.C. 91 (1979); *Provided, however*, That applicant shall not sell, lease, or otherwise dispose of the right-of-way underlying the track or any track, bridges, or culverts on the line for a period of 180 days following issuance of a certificate of abandonment in this

proceeding, (a) to permit any State or local government agency or other interested party to negotiate for acquisition for public use of all or any portion of the described portions of the line, and (b) to permit negotiations by Fond du Lac Midland Cooperative Association and Brunswick Corporation, jointly, or by either of them if the other does not wish to participate in negotiations, for the acquisition by them, jointly or one of them, of all or any part of the line for private use as a spur or side track, with respect to the line and trackage between Junction B at milepost 158.9 and engineering station 1461+94 at or near Forest Avenue, both in Fond du Lac, WI, at a price and in a manner described in the above decision, *Provided further,* That negotiations and acquisition under (a) shall take procedure as to any consummation of an acquisition contemplated under (b), but that all such negotiations may progress simultaneously within the six-month period. Any party entering into negotiations under condition (a) of the preceding sentence, shall advise parties named in (b) of its intentions and the progress of such negotiations, and vice versa. A certificate of abandonment will be issued to Stanley E. G. Hillman, Trustee of the Property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, based on the above-described finding of abandonment, November 30, 1979, unless within 30 days from the date of publication (November 30, 1979), the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(b) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the **Federal Register** on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978, at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-33624 Filed 10-30-79; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-7 (Sub-No. 63F)]

Stanley E. G. Hillman, Trustee of the Property of Chicago, Milwaukee, St. Paul & Pacific Railroad Co., Debtor, Abandonment Near Tomahawk and Heafford Junction, in Lincoln County, Wis.; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision decided July 30, 1979, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the (1) conditions for the protection of employees, as discussed in AB-36 (Sub-No. 2), *Oregon Short Line R. Co.-Abandonment Goshen,* 360 I.C.C. 91 (1979); (2) applicant shall keep intact all of the right-of-way underlying the track, including all of the bridges and culverts, for a period of 120 days from the issuance of a certificate to permit any state or local government agency or other interested party to negotiate the acquisition for public use of all or any portion of the right-of-way; (3) applicant give not less than 60 nor more than 90 days written notice to the County Clerk of Lincoln County prior to commencement of removal of any of the involved trackage; and (4) within the period stated in (3) above, applicant permit the Wisconsin Society of Land Surveyors to conduct a survey of the line for purpose of monumentation, at the Society's expense, prior to removal of any of the involved trackage, the present and future public convenience and necessity permit the abandonment by Stanley E. G. Hillman, Trustee of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, of its line of railroad from railroad milepost 133.4 near Tomahawk, WI, to railroad milepost 139.1 near Heafford Junction, WI, a distance of 5.7 miles, in Lincoln County, WI. A certificate of abandonment will be issued to Stanley E. G. Hillman, Trustee of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company based on the above-described finding of abandonment, November 30, 1979, unless with 30 days from the date of publication (November 30, 1979), the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the **Federal Register** on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978, at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-33626 Filed 10-29-79; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-7 (Sub-No. 54F)]

Stanley E. G. Hillman, Trustee of the Property of Chicago, Milwaukee, St. Paul & Pacific Railroad Co., Debtor, Abandonment near Amana and Rutledge, in Iowa, Keokuk, and Wapello Counties, IA; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision decided July 6, 1979, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in AB-36 (Sub-No. 2), *Oregon Short Line Railroad Co.—Abandonment Goshen,* 360 ICC 91 (1979), the present and future public convenience and necessity permit abandonment by Stanley E. G. Hillman, Trustee of the Property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, of the line of railroad extending from milepost 65.2 near Amana, IA, to milepost 00.0 near Rutledge, IA, a distance of 65.2 miles in Iowa, Keokuk and Wapello Counties, IA, *provided,* that applicant shall keep intact all of the right-of-way underlying the track, including all of the bridges and culverts, for a period of 120 days following issuance of a certificate to permit any state or local government agency or other interested party to negotiate the acquisition for public use of all or any portion of the right-of-way. A certificate of abandonment will be issued to the Chicago, Milwaukee, St. Paul and Pacific Railroad Company based on the above-described finding of abandonment, November 30, 1979, unless within 30 days from the date of publication (November 30, 1979), the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the **Federal Register** on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978, at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-33627 Filed 10-30-79; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-7 (Sub-No. 69F)]

Stanley E. G. Hillman, Trustee of the Property of Chicago, Milwaukee, St. Paul Pacific Railroad Co., Debtor, Abandonment Near Winifred Junction and Winifred, in Fergus County, MT; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision decided July 30, 1979, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to (1) the conditions for the protection of railway employees prescribed by the Commission in AB-36 (Sub-No. 2), *Oregon Short Line Railroad Co.—Abandonment Goshen,* 360 ICC 91 (1979); (2) to the condition that the Milwaukee Road provide substituted motor for rail service for 1 year from the date of consummation of the abandonment and (3) to the condition that Milwaukee not perform salvage operations near spawning streams between July 15 and September 15, the present and future public convenience and necessity permit the abandonment by Stanley E.G. Hillman, Trustee of the Property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, of a line of railroad known as the Winifred Branch extending from railroad milepost 0.0 near Winifred Junction to railroad milepost 43.4 near Winifred, a distance of 43.4 miles, in Fergus County, MT. A certificate of abandonment will be issued to Stanley E. G. Hillman, Trustee of the Property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company based on the above-described finding of abandonment, November 30, 1979, unless within 30 days from the date of publication (November 30, 1979), the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquistion and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the **Federal Register** on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978, at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-33628 Filed 10-30-79; 8:45 am]

BILLING CODE 7035-01-M

Transportation of Used Household Goods in Connection With a Pack-and-Crate Operation on Behalf of the Department of Defense; Special Certificate Letter Notice(s)

The following letter notices request participation in a Special Certificate of Public Convenience and Necessity for the transportation of used household

goods, for the account of the United States Government, incident to the performance of a pack-and-crate service on behalf of the Department of Defense under the Direct Procurement Method or the Through Government Bill of Lading Method under the Commission's regulations (49 CFR 1056.40) promulgated in "Pack-and-Crate" operations in Ex Parte No. MC–115, 131 M.C.C. 20 (1978).

An original and one copy of verified statement in opposition (limited to argument and evidence concerning applicant's fitness) may be filed with the Interstate Commerce Commission on or before November 20, 1979. A copy must also be served upon applicant or its representative. Opposition to the applicant's participation will not operate to stay commencement of the proposed operation.

If applicant is not otherwise informed by the Commission, operations may commence *within 30 days* of the date of its notice in the **Federal Register**, subject to its tariff publication effective date.

HG 28–79 (Special Certificate—Used Household Goods), filed October 17, 1979. Applicant: DON R. EMERSON, d.b.a. EMERSON MOVING AND STORAGE, 615 South "E" Street, Ft. Smith, AR 72901. Representative: Troy R. Douglas, 15 Court Street, Ft. Smith, AR 72901. Authority sought: Between the following points or described areas: Benton, Boone, Carroll, Crawford, Franklin, Johnson, Logan, Madison, Montgomery, Newton, Polk, Pope, Scott, Sebastian, Washington, and Yell Counties, AR, and Adair, Cherokee, Craig, Delaware Le Flore, Mayes, Nowata, Ottawa, Rogers and Sequoyah counties, OK, Fort Chaffee, Arkansas.

HG 29–79 (Special Certificate—Used Household Goods), filed October 22, 1979. Applicant: RED CARPET MOVING & STORAGE CO., 1106 S. Dixon Road, Kokomo, IN 46901. Representative: William H. Kirk, Ace Quality Movers, Inc. d.b.a., Red Carpet Moving & Storage Co., 1106 S. Dixon Road, P.O. Box 1248, Kokomo, IN 46901. Authority sought: Between all counties in the State of Indiana serving Grisson Air Force Base and Fort Benjamin Harrison, IN.

HG 30–79 (Special Certificate—Use Household Goods), filed October 17, 1979. Applicant: RALPH A. LALONDE INC., 220 No. Rosseel St., Ogdensburg, NY 13669. Representative: Jewel C. Brown, 1215 State Fair Boulevard, Syracuse, NY 13209. Authority sought: Between points in St. Lawrence, Jefferson, Lewis, Franklin, Clinton, Essex, Hamilton, Herkimer, and Warren Counties, NY, serving Griffiss Air Force Base, NY and Plattsburg Air Force Base, NY.

HG 31–79 (Special Certificate—Used Household Goods), filed October 2, 1979. Applicant: F. J. RODERICK & SON, INC., Coffeen Street Road, Watertown, NY 13601. Representative: Richard F. Roderick (address same as applicant). Authority sought: Between points in Jefferson County, NY, serving Griffis Air Force Base, NY.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79–33629 Filed 10–30–79; 8:45 am]

BILLING CODE 7035–01–M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 212
Wednesday, October 31, 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).

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[M-253, Amdt. 1; Oct. 26, 1979]

CIVIL AERONAUTICS BOARD.

Notice of addition of item to the November 1, 1979, meeting agenda.

TIME AND DATE: 9:30 a.m., November 1, 1979.

PLACE: Room 1027 (Open), Room 1011 (Closed), 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

SUBJECT: 5a. Docket 32934: *Improving Government Regulations.* Policy statement implementing Executive Order 12044 and semiannual regulatory agenda. (OGC).

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

SUPPLEMENTARY INFORMATION: Item 5a was inadvertently omitted from the original meeting announcement. Because the status statements in the semiannual agenda of significant regulations are tied to the expected status of rulemaking activity on November 1, this item needs to be considered by the Board on that date. Accordingly, the following Members have voted that Item 5a be added to the November 1, 1979, agenda and that no earlier announcement was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer.

[S-2122-79 Filed 10-29-79; 3:38 pm]

BILLING CODE 6320-01-M

2

[M-253, Amdt. 2; Oct. 26, 1979]

CIVIL AERONAUTICS BOARD.

Notice of addition of items to the November 1, 1979, meeting agenda.

TIME AND DATE: 9:30 a.m., November 1, 1979.

PLACE: Room 1027 (Open), Room 1011 (Closed), 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

SUBJECT:

23a. Docket 34774: Petitions for reconsideration of Order 79-8-53 filed by the Texas Aeronautics Commission, the Chamber of Commerce of Lamar County, Texas, and the City of Paris, Texas, and the appeal to this order filed by Ponca City, Oklahoma. (BDA, OCCR)

25a. Docket 35361: Postponement of Effective Date of Order 79-9-129, Cancelling Rule 380(H) of CAB No. 142. (BCP)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

SUPPLEMENTARY INFORMATION: Item 23a is being added to provide sufficient time to answer the petitions before the staff issues a final determination of essential air transportation for these points. Item 25a is a draft order that would postpone for 120 days the effectiveness of a previous Board order cancelling a tariff rule; the order is now scheduled to go into effect November 9, 1979. The short notice is necessary because the carriers should have as early notice as possible of the Board's action. The petitions seeking postponement were not filed until last week, and as a result both of delay in interoffice delivery of the petitions and heavy staff workloads, it was not possible to have a draft order prepared before today. Accordingly, the following Members have voted that Items 23a and 25a be added to the November 1, 1979, agenda and that no earlier announcement of these additions was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-2123-79 Filed 10-29-79; 3:38 pm]

BILLING CODE 6320-01-M

3

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11:00 a.m., Friday, November 9, 1979.

PLACE: 2033 K Street, N.W., Washington, D.C., 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance briefing.

CONTACT PERSON FOR INFORMATION: Jane Stuckey, 254-6314

[S-2117-79 Filed 10-29-79; 11:22 am]

BILLING CODE 6351-01-M

4

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 10:00 a.m., November 1, 1979.

PLACE: 1700 G Street, N.W., sixth floor, Washington, D.C.

STATUS: Open Meeting.

CONTACT PERSON FOR MORE INFORMATION: Franklin O. Bolling (202-377-6677).

MATTERS TO BE CONSIDERED: Regulation regarding sale of mortgages and participations in mortgages.

Announcment is being made at the earliest practicable time.

No. 285, October 29, 1979

[S-2121-79 Filed 10-29-79; 3:38 pm]

BILLING CODE 6720-01-M

5

FEDERAL RESERVE SYSTEM (BOARD OF GOVERNORS).

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT; 44 FR 61154, October 23, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Friday, October 26, 1979.

CHANGES IN THE MEETING: One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such closed item(s) was added:

Federal Reserve Bank officer salary administration. (This matter was

originally announced for a meeting on October 19, 1979.)

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board: (202) 452-3204.

Dated: October 26, 1979.

Theodore E. Allison,

Secretary of the Board.

[S-2114-79 Filed 10-26-79; 4:13 pm]

BILLING CODE 6210-01-M

6

FEDERAL RESERVE SYSTEM (BOARD OF GOVERNORS).

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 59338, October 15, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Friday, October 19, 1979.

CHANGES IN THE MEETING: One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such closed item(s) was added:

Issues related to employee compensation. (This matter was originally announced for a meeting on Friday, September 28, 1979.)

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: October 19, 1979.

Theodore E. Allison,

Secretary of the Board.

[S-2120-79 Filed 10-29-79; 2:54 pm]

BILLING CODE 6210-01-M

7

FEDERAL TRADE COMMISSION.

TIME AND DATE: 4:30 p.m., Monday, October 29, 1979.

PLACE: Room 332, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

STATUS: Open.

MATTERS TO BE CONSIDERED: Swearing in ceremony of Patricia Price Bailey as Commissioner of the Federal Trade Commission.

CONTACT PERSON FOR MORE INFORMATION: Ira J. Furman, Office of Public Information: (202) 523-3830; Recorded Message: (202) 523-3806.

[S-2116-79 Filed 10-29-79; 11:22 am]

BILLING CODE 6750-01-M

8

[FCSC Meeting Notice No. 10-79]

FOREIGN CLAIMS SETTLEMENT COMMISSION.

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date, Time, and Subject Matter

Wed., Nov. 7, 1979 at 10:30 a.m.—Cancelled.
Wed., Nov. 14, 1979 at 10:30 a.m.—Cancelled.
Wed., Nov. 21, 1979 at 10:30 a.m.—Cancelled.
Wed., Nov. 28, 1979 at 10:30 a.m.—Cancelled.

Dated at Washington, D.C. on October 25, 1979.

Francis T. Masterson,

Executive Director.

[S-2119-79 Filed 10-29-79; 2:54 pm]

BILLING CODE 6770-01-M

9

NATIONAL MEDIATION BOARD.

TIME AND DATE: 2:00 p.m., Wednesday, November 7, 1979.

PLACE: Board Hearing Room, 8th floor, 1425 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of Board actions taken by notation voting during the month of October, 1979.
2. Review of current fee schedules for NMB issuances and publications.
3. Other priority matters which may come before the Board for which notice will be given at the earliest practical time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Secretary's Office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rowland K. Quinn, Jr., Executive Secretary, telephone (202) 523-5920.

Date of notice: October 26, 1979.

[S-2118-79 Filed 10-29-79; 12:53 pm]

BILLING CODE 7550-01-M

10

NATIONAL TRANSPORTATION SAFETY BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 61514, October 25, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m., Thursday, November 1, 1979, [NM-79-39].

CHANGE IN MEETING: A majority of the Board has determined by recorded vote that the business of the Board requires revising the agenda of this meeting and that no earlier announcement was possible. The agenda as now revised is set forth below.

STATUS: The item on the agenda will be closed under Exemption 10 of the Government in the Sunshine Act.

MATTER TO BE CONSIDERED: *Opinion and Order*—Petition of McHenry, Dkt. SM-2310; disposition of respondent's appeal.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming, 202-472-6022.

October 29, 1979.

[S-2125-79 Filed 10-29-79; 3:53 pm]

BILLING CODE 4910-58-M

11

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 60468, October 19, 1979.

STATUS: Closed Meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Tuesday, October 16, 1979.

CHANGES IN THE MEETING: Additional item. The following additional item was considerd at a closed meeting scheduled on Tuesday, October 23, 1979, immediately following the 10:00 a.m. open meeting.

Regulatory matter regarding financial institution.

Chairman Williams and Commissioners Loomis, Evans, and Pollack determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Mike Rogan at (202) 272-2091.

October 26, 1979.

[S-2115-79 Filed 10-29-79; 9:23 am]

BILLING CODE 8010-01-M

federal register

Wednesday
October 31, 1979

Part II

Department of Commerce

Office of the Secretary

Model Uniform Product Liability Act

DEPARTMENT OF COMMERCE

Office of the Secretary

Model Uniform Product Liability Act

Introduction

The Department of Commerce publishes herein its "Model Uniform Product Liability Act." It is offered for voluntary use by the states.

This Model Law will help to assure that persons injured by unreasonably unsafe products receive reasonable compensation for their injuries. It should also help to stabilize product liability insurance rates.

The Model Law, if enacted by the states, would introduce uniformity and stability into the law of product liability. This, in turn, would help stabilize product liability insurance rates. Uniformity and stability in this area are needed because product liability insurance rates are set on a countrywide basis. Thus, product liability law differs from medical malpractice, automobile, and other standard lines of liability.

The current system of having individual state courts develop product liability law on a case-by-case basis is not consistent with commercial necessity. Product sellers and insurers need uniformity in product liability law so they will know the rules by which they are to be judged. At the same time, product users are entitled to the assurance that their rights will be protected and will not be restricted by "reform" legislation formulated in a crisis atmosphere. Thus, the Model Law meets the needs of product users, sellers, and insurers.

Background of the Act

The Department of Commerce chaired an 18-month interagency study on the topic of product liability and published its final report [1] on November 1, 1977.

The genesis of the "Uniform Product Liability Act" can be traced directly to the Task Force study. The Task Force found that uncertainties in the tort-litigation system were a principal cause of the product liability problem. The "Task Force Report" noted that a few courts had come

> very close to holding that the tort-litigation system should provide a recovery for persons who merely proved that they were injured by a product [and that] while these cases appear to be relatively few in number, insurers have regarded them as quite important in their pricing practices.[2]

[1] The "Final Report (cited as the "Task Force Report") of the Federal Interagency Task Force on Product Liability" (cited as the "Task Force").

[2] "Task Force Report" at p. I-27.

The "Task Force Report" called for improvement in insurer ratemaking practices but indicated that even if this were done, "the specter of these cases could still serve as an arguable justification for increasing premiums." [3] Decisions supporting this view continue to appear.

On the basis of the "Task Force Report," representatives from the Office of Management and Budget and the Domestic Policy Staff of the White House asked Commerce to prepare an options paper regarding what action, if any, the Federal Government should take to address the product liability problem. That paper was published in the **Federal Register** on April 6, 1978. 43 FR 14612 (1978).[4]

One of Commerce's recommendations was that a uniform product liability law be prepared. The overwhelming majority of public comment received in response to the "Options Paper" supported this recommendation.[5]

On July 20, 1978, the Administration announced its program to address the product liability problem. Included in that program as the principal long-range measure was the drafting of a model uniform product liability law.

On January 12, 1979, Commerce's "Draft Uniform Product Liability Law" was published in the **Federal Register** for public comment.[6] The written commentary received by Commerce regarding the Draft Law totals approximately 1500 pages, representing 240 separate communications.[7] The Department also made a special effort to bring the Draft Law to the attention of consumers. Working with its Director of Consumer Affairs and the Office of the Special Assistant to the President for Consumer Affairs, Commerce conducted consumer forums in Washington, D.C., Detroit, Los Angeles, and Atlanta.

In addition to meeting with consumer groups, the drafters of this Act met with representatives of product seller and insurer groups which expressed an interest in the proposal. The Draft Law was also reviewed at hearings before the Subcommittee on Oversight and Minority Enterprises of the House Committee on Small Business, and before the Subcommittee on Consumer Protection and Finance of the House Committee on Interstate and Foreign Commerce.

[3] *Id.*

[4] Public comment on the "Options Paper" was later published in the **Federal Register** on September 11, 1978. 43 FR 40438 (1978).

[5] 43 FR 40443.

[6] 44 FR 2996.

[7] On file, Law Library, U.S. Department of Commerce.

The final version of the "Uniform Product Liability Act" has benefited substantially from its review by, and input from, the various groups affected by the product liability problem.

Other Sources of the Act

Apart from the public comment, this Act is based on the work products of the Interagency Task Force on Product Liability, including its "Final Report," its "Legal Study," its "Industry Study," and its "Insurance Study." [8] Also, a thorough review was conducted of all major case law and law review literature that had been published since the time of the Task Force's "Legal Study."

As will be apparent from the Act's section-by-section analysis, attention was given to:

(1) The findings of the extensive "Product Liability Closed Claims Survey" conducted by the Insurance Services Office in 1976–77;

(2) All product liability legislation enacted at the state level, plus major proposals introduced in state legislatures in the past two years;

(3) Congressional hearings on product liability and the Report of the House Subcommittee on Capital, Investment and Business Opportunities of the Committee on Small Business. *See* H.R. Report No. 95–997, 95th Cong., 2d Sess. (1978) (Honorable John J. LaFalce, Chairman); and

(4) Privately drafted model product liability legislation.

A bibliography of some of the major resources considered by the Department is set forth in Appendix A.

Criteria for the Act

The criteria [9] utilized in evaluating the provisions of the Model Law were:

(1) *To ensure that persons injured by unreasonably unsafe products receive reasonable compensation for their injuries.*

[8] The Task Force's reports are available from the National Technical Information Service, Springfield, Virginia 22161 (Attention: Sales Desk). Reference should be made to the appropriate accession number, and a check made payable to NTIS in the proper amount should be enclosed:

Final Report—PB 273–220, $20.00 (1 vol.) (1977).

Selected Papers—PB 278–625, $17.50 (1 vol.) (1978).

Legal Study—PB 263–601, $31.25 (7 vol.) (1977) (The Research Group, Inc.).

Legal Study:

Executive Summary—PB 265–450, $6.00 (first of 7 vol.) (1977).

Industry Study—PB 265–542, $21.25 (2 vol.) (1977) (Gordon Associates, Inc.).

Insurance Study—PB 263–600, $9.00 (1 vol.) (1977) (McKinsey, Inc.).

[9] A more extensive discussion of these criteria appears in the "Task Force Report" at VII–29. The criteria are also set forth in Subsection 103(C) of the Act and are discussed in the corresponding section-by-section analysis.

Many proposed alternatives in product liability law are primarily justified by the fact that they contain "cost-saving devices" for product liability insurers or their insureds. However, these projected "cost savings" must be balanced against the responsibility of a product seller to provide reasonable compensation to persons harmed by unreasonably unsafe products. The cost of an accident should be shifted from a claimant to a product seller when there is a logical and articulated rationale for deeming it (as compared with the injured individual or society at large) "responsible" for the claimant's injuries.

(2) *To ensure the availability of affordable product liability insurance with adequate coverage to product sellers that engage in reasonably safe manufacturing practices.*

Product liability law should attempt to create a situation in which affordable product liability insurance is available to manufacturers that follow reasonably safe manufacturing practices. The law should not, however, be modified in order to provide such insurance to manufacturers who are unwilling or unable to follow reasonably safe manufacturing practices.

(3) *To place the incentive for loss prevention on the party or parties who are best able to accomplish that goal.*

Part of the product liability problem has been caused by unsafe manufacturing practices. Obviously, it is in the interest of all groups affected by the product liability problem to reduce the number of accidents caused by products. The Task Force study showed that product liability law can help bring about this goal. The threat of tort liability and product liability judgments has prompted manufacturers to make a greater effort to produce safe products. Nevertheless, existing state product liability law does not always place the incentive for loss prevention on the party or parties who can best achieve that goal.

The decision of where to place the incentive for loss prevention was not an easy one, and at least two factors helped determine the drafters' decision. One was based on pure economics—which party can prevent the loss at lowest cost? Economic analysis of preliminary drafts of this Act were helpful in this consideration.

A second factor focused on the question of who is in the best practical position to prevent a product-related harm. This consideration may be at counterpoint with pure economic analysis. Sometimes a product seller may be in a better practical position to implement a loss prevention technique although a product user could theoretically do so at a lesser cost.

(4) *To expedite the reparations process from the time of injury to the time the claim is paid.*

Delays in the reparations process do not serve any social interest. Seriously injured claimants can ill afford to endure long delays between the time of their injury and the time they are paid. Therefore, the Act has placed emphasis on arbitration and other means that will help expedite the reparations process.

(5) *To minimize the sum of accident costs, prevention costs, and transaction costs.*

The goal of minimizing accident, prevention, and transaction costs, while worthwhile, is not easy to fulfill within the tort-litigation system. For example, one can minimize "transaction costs" by abolishing trial by jury. However, this would be at the expense of other societal values which are particularly important in product liability cases, such as the need for the individualized judgment of cases and the experience of ordinary persons in making those judgments. Nevertheless, this consideration was significant enough to weigh in formulating the Act.

(6) *To use language that is comparatively clear and concise.*

Many product liability proposals that appear sound when stated in a broad and general manner break down when one focuses on the practicality of their implementation. In drafting the Act, practicality, together with conciseness and clarity of language, were important goals. The Act was drafted as a guideline for courts, not as a detailed legal contract between product seller and user.

Other considerations were utilized in the process of formulating each of the provisions. They are highlighted in the section-by-section analysis that accompanies the Act. Again, permeating the discussion of each provision is the concern that it is fair to all groups having an interest in the product liability problem.

It is important to understand the basic philosophy that underlies the Act. Product liability law is a branch of the law of torts. Its function is to shift the cost of an accident from a claimant to a defendant when the latter is deemed "responsible" for the claimant's injuries. This "responsibility" should be defined in terms that everyone can understand. Product liability law should indicate why a particular individual product seller was sufficiently blameworthy that it should bear the cost of that injury.

Tort law is not a compensation system similar to Social Security or Worker Compensation. A product seller should not, through the medium of tort law, be asked to pay merely because its product caused an injury. If a social judgment is made that product sellers are to bear the costs of all injuries caused by their products, it would be far more efficient to make purchasers of products third-party beneficiaries of product sellers' insurance policies as is the case with other compensation systems. Such systems also utilize cost-saving devices such as limiting recovery for lost earnings, eliminating recovery for pain and suffering, and abolishing the collateral source rule. In contrast, product liability law, with its full tort law recovery, reflects the social judgment that liability should be imposed only when it is fair to hold the individual product seller responsible for an injury.

This proposal is offered in the hope that it will stabilize product liability law and benefit product sellers and users alike.

C. L. Haslam,
General Counsel, Department of Commerce..
Victor E. Schwartz,
Chairman, Task Force on Product Liability and Accident Compensation.

Outline: Uniform Product Liability Act

Introduction.
Preamble.
Sec. 100. Short Title.
Sec. 101. Findings.
Sec. 102. Definitions.
(A) Product Seller.
(B) Manufacturer.
(C) Product.
(D) Product Liability Claim.
(E) Claimant.
(F) Harm.
(G) Reasonably Anticipated Conduct.
(H) Preponderance of the Evidence.
(I) Clear and Convincing Evidence.
(J) Reckless Disregard.
(K) Express Warranty.
Sec. 103. Scope of this Act.
Sec. 104. Basic Standards of Responsibility for Manufacturers.
(A) Unsafe in Construction.
(B) Unsafe in Design.
(C) Warnings or Instructions.
(D) Express Warranty.
Sec. 105. Basic Standards of Responsibility for Product Sellers Other Than Manufacturers.
Sec. 106. Unavoidably Dangerous Aspects of Products.
Sec. 107. Relevance of Industry Custom, Safety or Performance Standards, and Practical Technological Feasibility.
Sec. 108. Relevance of Legislative or Administrative Regulatory Standards and Mandatory Government Contract Specifications.
Sec. 109. Notice of Possible Claim Required.
Sec. 110. Length of Time Product Sellers Are Subject to Liability.
(A) Useful Safe Life.

(B) Statute of Repose.
(C) Statute of Limitation.
Sec. 111. Comparative Responsibility and Apportionment of Damages.
(A) Comparative Responsibility.
(B) Apportionment of Damages.
Sec. 112. Conduct Affecting Comparative Responsibility.
(A) Failure to Discover a Defective Condition.
(B) Use of a Product With a Known Defective Condition.
(C) Misuse of a Product.
(D) Alteration or Modification of a Product.
Sec. 113. Multiple Defendants: Contribution and Implied Indemnity.
Sec. 114. Relationship Between Product Liability and Worker Compensation.
Sec. 115. Sanctions Against the Bringing of Frivolous Claims and Defenses.
Sec. 116. Arbitration.
(A) Applicability.
(B) Rules Governing.
(C) Arbitrators.
(D) Arbitrators' Powers.
(E) Commencement.
(F) Evidence.
(G) Transcript of Proceeding.
(H) Arbitration Decision and Judgment.
(I) Trial Following Arbitration.
Sec. 117. Expert Testimony.
(A) Appointment of Experts.
(B) Compensation.
(C) Disclosure of Appointment.
(D) Parties' Selection of Own Experts.
(E) Pre-Trial Evaluation of Experts.
Sec. 118. Non-Pecuniary Damages.
Sec. 119. The Collateral Source Rule.
Sec. 120. Punitive Damages.
Sec. 121. Severance Clause.
Sec. 122. Effective Date.

Uniform Product Liability Act

Code

Preamble

This Act sets forth uniform standards for state product liability tort law. It does not cover all issues that may be litigated in product liability cases; rather, it focuses on those where the need for uniform rules is the greatest. The principal purposes of the Act are to provide a fair balance of the interests of both product users and sellers and to eliminate existing confusion and uncertainty about their respective legal rights and obligations. The fulfillment of these goals should help, first, to assure that persons injured by unreasonably unsafe products will be adequately compensated for their injuries and, second, to make product liability insurance more widely available and affordable, with greater stability in rates and premiums.

* * * * *

Analysis

Preamble

The importance this Act places on increasing the degree of certainty in the product liability litigation process is tempered by the recognition that, even with nationwide adoption of a uniform code, its application may vary from state to state on some issues. One of the Act's goals, the development of a fair balance of interests, has been achieved by applying the general criteria set forth in Subsection 103(C) of the Act and by revising the first draft of the Act (*see* 44 FR 2996 (1979)) in light of the public comment it generated. A second goal is to promote a greater degree of certainty than exists under the present system. This can be achieved if the Act is adopted by the states in which a substantial majority of product liability claims are brought.

* * * * *

Code

Sec. 100. Short Title

This Act shall be known and may be cited as the "Uniform Product Liability Act."

* * * * *

Analysis

Sec. 100. Short Title

This is the customary "short title" provision. It may be placed wherever state legislative practice dictates. If a state legislature introduces parts of the "Uniform Product Liability Act" as separate measures, the short title should be adjusted accordingly.

* * * * *

Code

Sec. 101. Findings

(A) Sharply rising product liability insurance premiums have created serious problems in commerce resulting in:

(1) Increased prices of consumer and industrial products;

(2) Disincentives for innovation and for the development of high-risk but potentially beneficial products;

(3) An increase in the number of product sellers attempting to do business without product liability insurance coverage, thus jeopardizing both their continued existence and the availability of compensation to injured persons; and

(4) Legislative initiatives enacted in a crisis atmosphere that may, as a result, unreasonably curtail the rights of product liability claimants.

(B) One cause of these problems is that product liability law is fraught with uncertainty and sometimes reflects an imbalanced consideration of the interests it affects. The rules vary from jurisdiction to jurisdiction and are subject to rapid and substantial change. These facts militate against predictability of litigation outcome.

(C) Insurers have cited this uncertainty and imbalance as justifications for setting rates and premiums that, in fact, may not reflect actual product risk or liability losses.

(D) Product liability insurance rates are set on the basis of countrywide, rather than individual state, experience. Insurers utilize countrywide experience because a product manufactured in one state can readily cause injury in any one of the other states, the District of Columbia, or the Commonwealth of Puerto Rico. One ramification of this practice is that there is little an individual state can do to solve the problems caused by product liability.

(E) Uncertainty in product liability law and litigation outcome has added to litigation costs and may put an additional strain on the judicial system.

(F) Recently enacted state product liability legislation has widened existing disparities in the law.

* * * * *

Analysis

Sec. 101. Findings

Chapters VI and VII of the "Final Report of the Interagency Task Force on Product Liability" (hereinafter cited as "Task Force Report") provide support for most of the findings made here. Additional support comes from the Report of the Subcommittee on Capital, Investment, and Business Opportunities, "Product Liability Insurance," H.R. Rep. No. 95–997, 95th Cong., 2d Sess. (1978) (Honorable John J. LaFalce, Chairman) (hereinafter cited as "LaFalce Subcommittee Report"). Among other things, the "LaFalce Subcommittee Report" called for clarification and simplification of "present tort law relating to product liability by formulating Federal standards to be adopted by the States. . . ." *Id.* at 76

Individual state studies on product liability conducted in Missouri (Report of the Senate Select Committee on Product Liability, 1977), Illinois (Judiciary I Subcommittee on Product Liability: Report and Recommendations—Part 1, undated), Georgia (Report of the Senate Products Liability Study Committee, 1978), Maine (Governor's Task Force, 1978), Michigan (Department of Commerce Task Force on Product Liability Insurance, 1978), and Wisconsin (Product Liability: An Overview, Wisconsin Legislative Council Staff, 1978) provide additional support for individual findings.

The Maine and Georgia reports emphasize that individual state tort reforms can do little to affect the

product liability problem. This conclusion was reaffirmed in Governor Grasso's message vetoing a product liability tort bill passed by the Connecticut legislature in 1978, and Governor Brown's message vetoing a product liability tort bill passed by the California legislature in 1979. Both messages stressed that uncoordinated, individual state tort action will not stabilize product liability insurance rates.

More specific references to the findings of this Section appear in the following citations keyed to the various findings in each Subsection:

101 (A) (1) "Task Force Report" at V–19, VI–27–28.

(2) "Task Force Report" at VI–28–32.

(3) "Task Force Report" at VI–2–26.

(4) "Options Paper on Product Liability and Accident Compensation Issues," 43 FR 14612–14 (1978); "Georgia Report", Appendix B; Johnson, "Products Liability 'Reform': A Hazard to Consumers," 56 "N.C. L. Rev." 677 (1978); Phillips, "A Synopsis of the Developing Law of Products Liability," 28 "Drake L. Rev." 317, 388 (1979); Comment, "State Legislative Restrictions on Product Liability Actions," 29 "Mercer L. Rev." 619 (1978). *See also* "Federal-State Product Liability Legislation for Client and Counsel," Federal-State Reports, Inc. (1977–79).

101(B) "Task Force Report" at I–26–28, VII–15–17; "LaFalce Subcommittee Report" at 72; "Michigan Department of Commerce Task Force on Product Liability Insurance Report" at 6 (1978).

(C) Task Force "Insurance Study" at IV–88 (citing uncertainty); "Task Force Report" at V–48–49 (relationship of premium to risk).

(D) "Task Force Report" at I–28; "Maine Report" at 23.

(E) "Task Force Report" at VII–214–16; *see also* Insurance Services Office, "Product Liability Closed Claims Survey" (hereinafter cited as "ISO Closed Claims Survey") at 118–30 (1977).

(F) *See* "Federal-State Product Liability Legislation for Client and Counsel," Federal-State Reports, Inc. (1977–79); "Product Liability Trends," at 97–98, 104–05, 157–58 (The Research Group, Inc., 1978); "Business Insurance," July 23, 1979 at 31; *see also* "Wisconsin Report" at 29–37 (describing 25 separate bills on product liability introduced in one legislative session).

Code

Sec. 102. Definitions

(A) *Product Seller.* "Product seller" means any person or entity that is engaged in the business of selling products, whether the sale is for resale, or for use or consumption. The term includes a manufacturer, wholesaler, distributor, or retailer of the relevant product. The term also includes a party who is in the business of leasing or bailing such products.

The term "product seller" does not include:

(1) A seller of real property, unless that person is engaged in the mass production and sale of standardized dwellings or is otherwise a product seller;

(2) A provider of professional services who utilizes or sells products within the legally authorized scope of its professional practice. A non-professional provider of services is not included unless the sale or use of a product is the principal part of the transaction, and the essence of the relationship between the seller and purchaser is not the furnishing of judgment, skill, or services;

(3) A commercial seller of used products who resells a product after use by a consumer or other product user, provided the used product is in essentially the same condition as when it was acquired for resale; and

(4) A finance lessor who is not otherwise a product seller. A "finance lessor" is one who acts in a financial capacity, who is not a manufacturer, wholesaler, distributor, or retailer, and who leases a product without having a reasonable opportunity to inspect and discover defects in the product, under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor.

(B) *Manufacturer.* "Manufacturer" includes a product seller who designs, produces, makes, fabricates, constructs, or remanufactures the relevant product or component part of a product before its sale to a user or consumer. It includes a product seller or entity not otherwise a manufacturer that holds itself out as a manufacturer.

A product seller acting primarily as a wholesaler, distributor, or retailer of a product may be a "manufacturer" but only to the extent that it designs, produces, makes, fabricates, constructs, or remanufactures the product before its sale.

(C) *Product.* "Product" means any object possessing intrinsic value, capable of delivery either as an assembled whole or as a component part or parts, and produced for introduction into trade or commerce. Human tissue and organs, including human blood and its components, are excluded from this term.

The "relevant product" under this Act is that product, or its component part or parts, which gave rise to the product liability claim.

(D) *Product Liability Claim.* "Product liability claim" includes any claim or action brought for harm caused by the manufacture, production, making, construction, fabrication, design, formula, preparation, assembly, installation, testing, warnings, instructions, marketing, packaging, storage, or labeling of the relevant product. It includes, but is not limited to, any action previously based on: strict liability in tort; negligence; breach of express or implied warranty; breach of, or failure to, discharge a duty to warn or instruct, whether negligent or innocent; misrepresentation, concealment, or nondisclosure, whether negligent or innocent; or under any other substantive legal theory.

(E) *Claimant.* "Claimant" means a person or entity asserting a product liability claim, including a wrongful death action, and, if the claim is asserted through or on behalf of an estate, the term includes claimant's decedent. "Claimant" includes any person or entity that suffers harm.

(F) *Harm.* "Harm" includes: (1) damage to property; (2) personal physical injuries, illness and death; (3) mental anguish or emotional harm attendant to such personal physical injuries, illness or death; and (4) mental anguish or emotional harm caused by the claimant's being placed in direct personal physical danger and manifested by a substantial objective symptom. The term "harm" does not include direct or consequential economic loss.

(G) *Reasonably Anticipated Conduct.* "Reasonably anticipated conduct" means the conduct which would be expected of an ordinary reasonably prudent person who is likely to use the product in the same or similar circumstances.

(H) *Preponderance of the Evidence.* "A preponderance of the evidence" is that measure or degree of proof which, by the weight, credit, and value of the aggregate evidence on either side, establishes that it is more probable than not that a fact occurred or did not occur.

(I) *Clear and Convincing Evidence.* "Clear and convincing evidence" is that measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the allegations sought to be established. This level of proof is greater than mere "preponderance of the evidence," but less than proof beyond a reasonable doubt.

(J) *Reckless Disregard.* "Reckless disregard" means a conscious indifference to the safety of persons or

entities that might be harmed by a product.

(K) *Express Warranty.* "Express warranty" means any positive statement, affirmation of fact, promise, description, sample, or model relating to the product.

Analysis

Sec. 102. Definitions

(A) *Product Seller.* "Product seller" includes any party in the regular commercial distribution chain. It does not include the occasional private seller. This is in accord with the "Restatement (Second) of Torts" Section 402A, Comment f (1965). The term also includes lessors (except finance lessors) and bailors of products, in accord with the majority of decisions that have addressed the issue. *See* Annot., 52 "A.L.R.3d" 121 (1973); "Francioni v. Gibsonia Truck Corp.," 472 Pa. 362, 372 A.2d 736 (1977) (finance lessor); Fraser, "Application of Strict Tort Liability to the Leasing Industry," 34 "Bus. Law." 605 (1979).

The Act excludes the seller of real property from its coverage, except for a builder-vendor engaged in the mass production and sale of standardized dwellings, including modular homes. *See* "Schipper v. Levitt & Sons," 44 N.J. 70, 207 A.2d 314 (1965); "Berman v. Watergate West, Inc.," 391 A.2d 1351 (D.C. 1978) (extending "Schipper" to cooperative apartments); "Fuqua Homes, Inc. v. Evanston Bldg. & Loan Co.," 52 Ohio App. 2d 399, 370 N.E.2d 780 (1977) (modular homes). *But see* "Wright v. Creative Corp.," 30 Colo. App. 575, 498 P.2d 1179 (1972) (rejecting "Schipper"). The potential liability of sellers of real property not engaged in such large-scale operations is left to each state's laws governing real property transactions. However, all sellers of building materials, furnishings, appliances, and other products made part of improvements to real property are not exempted from the coverage of the Act. *See* Maldonado, "Builder Beware: Strict Tort Liability for Mass Produced Housing, 7 Real Estate L. J." 283 (1979).

The Act also excludes from its coverage the provider of professional services when a product is utilized or sold as part of the rendition of such services. *Compare* "Barbee v. Rogers," 425 S.W.2d 342 (Tex. 1968), *with* "Newmark v. Gimbel's, Inc.," 54 N.J. 585, 258 A.2d 697 (1969) (differentiating "sales-service hybrid transaction" of a beautician from "professional ministration" of a physician or dentist). The majority of current decisions look to the factual circumstances of each case and generally exclude persons exercising professional judgment within their legally authorized scope of practice. Thus, in the absence of any product preparation or modification, of any representation by service providers that the products are their own, or of warranty, the courts have generally not applied product liability doctrines where the provider is called upon to exercise such professional judgment. However, appropriate remedies may be available to injured parties under other theories of law, including malpractice. *See* "Batiste v. American Home Prods. Corp.," 32 N.C. App. 1, 231 S.E.2d 269 (1977).

Consequently, it is the intent of the drafters of this Act that professionals, such as pharmacists, physicians, optometrists, and opticians, should *not* be considered product sellers in those circumstances where they are selling a product while acting within their legally authorized scope of professional practice. *See* "Bichler v. Willing," 5 App. Div. 2d 331, 397 N.Y.S.2d 57 (1977); "Batiste v. American Home Prods. Corp.," *supra*. In addition, pharmacists or other professionals, employed by and working within the scope of their employment for a hospital or other health-related facility, would *not* be considered product sellers within this context since they would be rendering a part of the overall services of such facilities.

On the other hand, a pharamcist or other professional who is engaged in a commercial, non-professional sales transaction, such as the sale of perfume or photographic film, *would* be considered a product seller. Thus, the Act states that a party shall be considered a product seller when the sale of a product is the principal part of the transaction and when the essence of the relationship between the buyer and seller is *not* the furnishing of a professional skill or service. *See* Annot., 2 "A.L.R. 3d" 1425 (1970).

With respect to non-professional services, when the sale of a product is the principal part of the transaction, and the essence of the relationship is not the furnishing of judgment, skill, or services, the non-manufacturer product seller is responsible under Section 105 of this Act. Therefore, when a non-professional service, such as application, installation, or dealer preparation, is an incidental part of the overall transaction of sale of a product, the provisions of Section 105 govern the entire transaction. *See* "Newmark v. Gimbel's, Inc.," 54 N.J. 585, 258 A.2d 697 (1969); "Winters v. Sears, Roebuck & Co.," 89 "A.L.R.3d" 196, 554 S.W.2d 656 (Mo. 1977). However, when the non-professional service is the predominant element of the transaction, or when the service and sale elements are clearly distinguishable or contracted for separately, the Act does not apply to such non-professional service. Instead, it is governed by other applicable law of the state. *See* "Nickel v. Hyster Co.," 97 Misc. 2d 770, 412 N.Y.S.2d 273 (1978). *See also* Brook, "Sales-Service Hybrid Transactions: A Policy Approach," 28 Sw. L.J. 575 (1975); and Greenfield, "Consumer Protection in Service Transactions—Implied Warranties and Strict Liability in Tort," 1974 "Utah L. Rev." 661.

It is also the intent of the drafters that this Act include manufacturers and other product sellers of new or remanufactured products, but not ordinary commercial sellers of used products. In this context, the commercial seller of used products is one who resells a product after it has been used by a consumer or other product user and is in essentially the same condition as when it was acquired for resale. Thus, the commercial seller of used products may be differentiated from sellers of fully rebuilt or remanufactured products that are included within the definition of "manufacturer" under Subsection (B). The slight majority of decisions indicate that product liability law does apply to sellers of used products; however, such sellers are not held to the same standards as are sellers of new products, due to the different nature and condition of the used product at the time of sale. Therefore, the issue of the potential liability of sellers of used products is left for resolution not under this Act, but rather under the other law of the state. *See* "Tillman v. Vance Equip. Co.," 596 P. 2d 1299, 286 Or. 747 (1979); "Mickle v. Blackmon," 252 S.C. 202, 166 S.E.2d 173 (1969) (manufacturer); "Peterson v. Lou Bachrodt Chevrolet Co.," 61 Ill. 2d 17, 329 N.E. 2d 785 (1975) ("as is" sale by dealer).

(B) *Manufacturer.* The term encompasses those product sellers who initiate and carry out the process of production. It also includes manufacturers of component parts, "private labelers" who hold themselves out to the public as manufacturers, and those product sellers who rebuild or remanufacture products for resale in "like new" condition. It does not include independent product designers whose services are contracted for by product sellers, if such designers are not otherwise engaged in the business of selling products. *See* Subsection (A) (definition of "product seller"). Unless they actually engage in some element of manufacture, traditional wholesalers,

distributors, and retailers are excluded from the definition. However, if they do participate in the actual manufacturing process, they are deemed manufacturers, but only to the extent that they engage in such activity. They do not become manufacturers of the product as a whole.

This definition is drawn in part from Arizona's product liability law. *See* "Ariz. Rev. Stat. Ann." Section 12–681 (1) (Supp. 1978). Its greatest import within this Act is in regard to the responsibility of a manufacturer for defective products, as contrasted with that of other product sellers. *See* Section 105, "The Basic Standards of Responsibility for Product Sellers Other Than Manufacturers."

(C) *Product.* "Product" means property which, as a component part or an assembled whole, is movable, and possesses intrinsic value. Therefore, included are all goods, wares, merchandise, and their components, as well as articles and commodities capable of delivery for introduction into trade or commerce.

The definition follows existing case law by including movable dwellings, such as mobile homes, campers and similar vehicles. *See* "Morrow v. New Moon Homes, Inc.," 548 P.2d 279 (Alaska 1976) (mobile home). Also included are water, natural gas, and electrical energy provided by public utilities or other product sellers. *See* "Moody v. City of Galveston," 524 S.W.2d 583 (Tex. Civ. App. 1975) (water); "Harris v. Northwest Natural Gas Co.," 284 Or. 571, 588 P.2d 18 (1978) (warnings regarding gas); "Ransome v. Wisconsin Elec. Power Co.," 87 Wis. 2d 605, 275 N.W.2d 641 (1979) (electricity). However, human biologicals, such as blood and other bodily tissues or organs, are expressly excluded from the definition. In addition, representations of value, such as money or choses in action, are excluded, although the physical document and the ink or any other material used in printing the document do fall within the definition. *See* 72 *C.J.S.* "Product" (1951), and Sections 85–92 (Supp. 1975); 63 "Am. Jur. 2d" "Products Liability" Section 5 (1972).

In a specific case, the particular product with which this Act is concerned is the "relevant product" which actually gave rise to the product liability claim. The "relevent product" may be the product as a whole or the particular component part or parts which gave rise to the product liability claim.

(D) *Product Liability Claim.* An important purpose of this Act is to consolidate product liability actions that have, at times, been separated under theories of negligence, warranty, and strict liability. This approach was suggested by the Task Force's "Legal Study" as well as by the "LaFalce Subcommittee Report." While an argument may be made that negligence theory is qualitatively different from strict liability and, therefore, should be preserved, product liability theory and practice have merged into a single entity and can only be stabilized if there is one, and not a multiplicity of, causes of action.

"Product liability claim" embraces express as well as implied warranty actions.

(E) *Claimant.* Living persons and those claiming through or on behalf of an estate in wrongful death or survival actions are both included within the meaning of the word "claimant."

Although the "Restatement (Second) of Torts" leaves open the question of whether persons other than product users should be included within the compass of product liability claims, subsequent case law has been almost uniform in ruling that such persons should be included. *See* "Giberson v. Ford Motor Co.," 504 S.W.2d 8 (Mo. 1974) (collecting cases). *See also* Annot., 33 "A.L.R. 3d" 415 (1970). The definition follows this line of decisions. *See* "Guarino v. Mine Safety Appliance Co.," 25 N.Y.2d 460, 255 N.E.2d 173, 306 N.Y.S.2d 942 (1969) (rescuer).

(F) *Harm.* Section 402A of the "Restatement" includes physical harm to persons and property. This Act provides that harm may manifest itself as damage to property, disability, including personal physical injuries and illness, death, and mental anguish or emotional harm attendant to such disability or death. It also includes mental anguish or emotional harm in circumstances in which the claimant is actually placed in personal danger, and the mental anguish or emotional harm is accompanied by substantial objective symptomatology. *See* "Wallace v. Coca-Cola Bottling Plants, Inc.," 269 A.2d 117 (Me. 1970).

The term also includes damage to the product itself. There is strong case law support for leaving direct economic loss cases to the field of commercial law. "Hawkins Constr. Co. v. Matthews Co., Inc." 190 Neb. 546, 209 N.W.2d 643 (1973); "Dennis v. Willys-Overland Motors, Inc.," 111 F. Supp. 875 (W.D. Mo. 1958); "Price v. Gatlin," 241 Or. 315, 405 P.2d 502 (1965). Courts that have allowed recovery in tort where the purchased property is "destroyed," but not where there is "mere loss of the bargain," have had difficulty applying this distinction where the product is wholly ineffective. *See* "Anthony v. Kelsey-Hayes Co.," 25 Cal. App. 3d 442, 102 Cal. Rptr. 113 (1972); "States Steamship Co. v. Stone Manganese Marine Ltd.," 371 F. Supp. 500, 504–505 (D.N.J. 1973) (collecting cases). For this reason and the fact that loss of the bargain damages are in essence a part of commercial law, claims for direct economic harm have been left to the "Uniform Commercial Code" ("U.C.C.").

The Act also does not include damages for consequential economic losses. Almost all courts have been in accord with "Seely v. White Motor Co.," 63 Cal. 2d 9, 403 P.2d 145, 45 Cal. Rptr. 17 (1965), on this issue and have left claimants with whatever rights they have under the "U.C.C." Pursuant to Section 103, the Act follows the weight of authority in this regard, and does not preempt such recovery under the "U.C.C." *See* "Brown v. Western Farmers Ass'n.," 268 Or. 470, 521 P.2d 537 (1974); "Eli Lilly & Co. v. Casey," 472 S.W.2d 598 (Tex. Civ. App. 1971); "Paul O'Leary Lumber Corp. V. Mill Equip., Inc.," 448 F.2d 536 (5th Cir. 1971).

The insurance costs of extending consequential economic losses beyond parties to a contract would be enormous. It is much less expensive and more efficient for the product purchaser to obtain insurance against consequential economic losses caused by business stoppage. Also, most courts believe that a commercial purchaser should be charged with the risk that the purchased product will not match its economic expectations unless the manufacturer agrees that it will. *See* Note, "Economic Loss in Products Liability Jurisprudence," 66 "Colum. L. Rev." 917 (1966).

(G) *Reasonably Anticipated Conduct.* The definition is based in part on Arizona product liability law. *See* "Ariz. Rev. Stat. Ann." Section 12–681(4) (Supp. 1978). "Anticipated" conduct includes occurrences which are expected, ordinary, usual, and familiar. The definition focuses on the class of persons which the product seller knows is likely to use the product. *See* "Thibault v. Sears, Roebuck & Co.", 395 A. 2d 843 (N.H. 1978). The concept of "reasonably anticipated conduct" should be contrasted with "foreseeable conduct." Almost any kind of misconduct with regard to products can be "foreseeable"—especially if the trier of fact is permitted to use hindsight, *e.g.*, that a soda bottle will be used for a hammer, that someone will attempt to drive a land vehicle on water, that perfume will be poured on a candle in order to scent it. *See* "Moran v. Faberge, Inc.," 273 Md. 538, 332 A. 2d 11 (1975). This same conduct may not be

reasonably anticipated by a potential product litigant, or by the trier of fact.

The Act's reliance on the concept of "reasonably anticipated conduct" places incentives for loss prevention on both product sellers and product users. It also helps to ensure that the price of products is not affected by the liability insurance costs that would spring from providing coverage for abnormal product use.

(H) *Preponderance of the Evidence.* Unless otherwise stated, the standard of evidence under this Act is the standard utilized in most civil litigation—a preponderance of the evidence. This standard requires a showing that it is more probable than not that a fact occurred or did not occur. *See* 30 "Am. Jur. 2d" "Evidence" Section 1164 (1967).

(I) *Clear and Convincing Evidence.* Proof that is "clear and convincing" not only carries with it the power to persuade the mind as to its probable truth or correctness of fact, but also has an additional element of clinching such truth. The term is best understood in context. It requires more proof than does the preponderance of the evidence standard (the ordinary standard under this Act), but does not require proof beyond a reasonable doubt. *See, e.g.,* "Aiello v. Knoll Golf Club," 64 N.J. Super. 156, 165 A. 2d 531 (1960); "Cross v. Ledford," 161 Ohio St. 469, 120 N.E. 2d 118 (1954); "Brown v. Warner," 78 S.D. 647, 107 N.W. 2d 1 (1961).

(J) *Reckless Disregard.* As Prosser has indicated, "reckless disregard" occurs where the actor

> has intentionally done an act of an unreasonable character in disregard of a risk known to him or [one that was] so obvious that he must be taken to have been aware of it, and so great as to make it highly probable that harm would follow.

W. Prosser, "Torts" 185 (4th ed. 1971).

The term denotes aggravated conduct which represents a major departure from ordinary negligence.

(K) *Express Warranty.* This definition is based on its counterpart in the "Uniform Commercial Code" and includes any positive statement, affirmation of fact, promise, description, sample, or model relating to the product. *See* "U.C.C." Section 2–313; 63 "Am. Jur. 2d" "Products Liability" Section 93 (1972). The product seller may give an express warranty orally or in writing, or through any other actions intended as a communication. *See* "Alan Wood Steel Co. v. Capital Equip. Enterprises, Inc.," 39 Ill. App. 3d 48, 349 N.E. 2d 627 (1976); "Larutan Corp. v. Magnolia Homes Mfg. Co.," 190 Neb. 425, 209 N.W. 2d 177 (1973). It should be noted that an action based on a violation of an express warranty must include the element of reliance, and the breach must relate to a misrepresentation of material facts. *See* Subsection 104(D).

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Code

Sec. 103. Scope of This Act

(A) This Act is in lieu of and preempts all existing law governing matters within its coverage, including the "Uniform Commercial Code" and similar laws; however, nothing in this Act shall prevent the recovery, under the "Uniform Commercial Code" or similar laws, of direct or consequential economic losses.

(B) A claim may be asserted under this Act even though the claimant did not buy the product from, or enter into any contractual relationship with, the product seller.

(C) Whenever this Act does not provide a rule of decision, reference may be made to other sources of law, provided that such reference conforms to the intent and spirit of this Act as set forth in the following criteria used as guidelines for its development:

(1) To ensure that persons injured by unreasonably unsafe products receive reasonable compensation for their injuries;

(2) To ensure the availability of affordable product liability insurance with adequate coverage to product sellers that engage in reasonably safe manufacturing practices;

(3) To place the incentive for loss prevention on the party or parties who are best able to accomplish that goal;

(4) To expedite the reparations process from the time of injury to the time the claim is paid;

(5) To minimize the sum of accident costs, prevention costs, and transaction costs; and

(6) To use language that is comparatively clear and concise.

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Analysis

Sec. 103. Scope of This Act

(A) The Act consolidates all product liability recovery theories into one. The approach taken is in accord with the Task Force's "Legal Study." While some have argued that for trial tactics purposes, it is useful to retain the negligence and breach of warranty causes of action as distinct from strict tort liability, a claimant's attorney can retain the essence of this utility by showing the basic wrongfulness of the product seller's conduct under Sections 104 or 105.

The Act explicitly preempts the "Uniform Commercial Code" ("U.C.C.") and similar laws in instances where such laws have governed matters within the Act's coverage. The purpose of this provision is to prevent conflicting product liability rules and remedies. *See, e.g.,* "Swartz v. General Motors Corp.," 378 N.E.2d 61 (Mass. 1978). Although the Act eliminates breach of warranty as a separate cause of action in product liability cases, express warranties continue to play an important role in the Act. *See, e.g.,* Subsections 102(K), 104(D), 105(B), 106(B)(4), 107(E)(4), 110(A)(2), 110(B)(2)(a).

Because the Act does not provide remedies for purely economic losses, Subsection (A) ensures that the Act does not prevent recovery under commercial law for loss of the use of a product. Thus, product liability actions for personal injury, illness, death, or damage to property (other than the product itself) are governed by this Act. On the other hand, recovery under the "U.C.C." or similar law for economic losses is not precluded by this Act.

(B) The Act is in accord with the "Restatement (Second) of Torts" in that it is unnecessary for the claimant to be in contractual privity with the product seller in order to recover for harm. *See* "Restatement (Second) of Torts" Section 402A, Comment l.

(C) The Act and its accompanying commentary do not purport to be an exhaustive compilation of the entire subject of product liability law. Rather, they focus on subject matter areas that the "Task Force Report" suggested have created the most problems and are of major importance.

The interstices of the Act will be filled by statutory or common law additions of the individual states. Some of these interstitial issues will be pointed out in the section-by-section analysis. Others will be discovered in the course of litigation under the Act.

It is the intent of Subsection (C) that these additions of statutory or common law should enhance, rather than conflict with, the basic purposes of this Act. Those courts or legislatures that make such additions should keep in mind the "Criteria for the Act" set forth in this Subsection. A full explanation of the criteria is set forth in the Introduction to the Act. In regard to these criteria, it is essential to note that this Act does not intend to set up a compensation system similar to Worker Compensation. Rather, the purpose of the Act is to impose liability "only where it is fair to deem the product seller responsible for an injury." "Introduction," p. 14, *supra.*

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Code

Sec. 104. Basic Standards of Responsibility for Manufacturers

A product manufacturer is subject to liability to a claimant who proves by a preponderance of the evidence that the claimant's harm was proximately caused because the product was defective.

A product may be proven to be defective if, and only if:

(1) It was unreasonably unsafe in construction (Subsection A);

(2) It was unreasonably unsafe in design (Subsection B);

(3) It was unreasonably unsafe because adequate warnings or instructions were not provided (Subsection C); or

(4) It was unreasonably unsafe because it did not conform to the product seller's express warranty (Subsection D).

Before submitting the case to the trier of fact, the court shall determine that the claimant has introduced sufficient evidence to allow a reasonable person to find, by a preponderance of the evidence, that one or more of the above conditions existed and was a proximate cause of the claimant's harm.

(A) *The Product Was Unreasonably Unsafe in Construction.* In order to determine that the product was unreasonably unsafe in construction, the trier of fact must find that, when the product left the control of the manufacturer, the product deviated in some material way from the manufacturer's design specifications or performance standards, or from otherwise identical units of the same product line.

(B) *The Product Was Unreasonably Unsafe in Design.*

(1) In order to determine that the product was unreasonably unsafe in design, the trier of fact must find that, at the time of manufacture, the likelihood that the product would cause the claimant's harm or similar harms, and the seriousness of those harms outweighed the burden on the manufacturer to design a product that would have prevented those harms, and the adverse effect that alternative design would have on the usefulness of the product.

(2) Examples of evidence that is especially probative in making this evaluation include:

(a) Any warnings and instructions provided with the product;

(b) The technological and practical feasibility of a product designed and manufactured so as to have prevented claimant's harm while substantially serving the likely user's expected needs;

(c) The effect of any proposed alternative design on the usefulness of the product;

(d) The comparative costs of producing, distributing, selling, using, and maintaining the product as designed and as alternatively designed; and

(e) The new or additional harms that might have resulted if the product had been so alternatively designed.

(C) *The Product Was Unreasonably Unsafe Because Adequate Warnings or Instructions Were Not Provided.*

(1) In order to determine that the product was unreasonably unsafe because adequate warnings or instructions were not provided about a danger connected with the product or its proper use, the trier of fact must find that, at the time of manufacture, the likelihood that the product would cause the claimant's harm or similar harms and the seriousness of those harms rendered the manufacturer's instructions inadequate and that the manufacturer should and could have provided the instructions or warnings which claimant alleges would have been adequate.

(2) Examples of evidence that is especially probative in making this evaluation include:

(a) The manufacturer's ability, at the time of manufacture, to be aware of the product's danger and the nature of the potential harm;

(b) The manufacturer's ability to anticipate that the likely product user would be aware of the product's danger and the nature of the potential harm;

(c) The technological and practical feasibility of providing adequate warnings and instructions;

(d) The clarity and conspicuousness of the warnings or instructions that were provided; and

(e) The adequacy of the warnings or instructions that were provided.

(3) In any claim under this Subsection, the claimant must prove by a preponderance of the evidence that if adequate warnings or instructions had been provided, they would have been effective because a reasonably prudent product user would have either declined to use the product or would have used the product in a manner so as to have avoided the harm.

(4) A manufacturer shall not be liable for its failure to warn or instruct about dangers that are obvious; for "product misuse" as defined in Subsection 112(C)(1); or for alterations or modifications of the product which do not constitute "reasonably anticipated conduct" under Subsection 102(G).

(5) A manufacturer is under an obligation to provide adequate warnings or instructions to the actual product user unless the manufacturer provided such warnings to a person who may be reasonably expected to assure that action is taken to avoid the harm, or that the risk of the harm is explained to the actual product user.

For products that may be legally used only by or under the supervision of a class of experts, warnings or instructions may be provided to the using or supervisory expert.

For products that are tangible goods sold or handled only in bulk or other workplace products, warnings or instructions may be provided to the employer of the employee-claimant if there is no practical and feasible means of transmitting them to the employee-claimant.

(6) *Post-Manufacture Duty to Warn.* In addition to the claim provided in Subsection (C)(1), a claim may arise under this Subsection where a reasonably prudent manufacturer should have learned about a danger connected with the product after it was manufactured. In such a case, the manufacturer is under an obligation to act with regard to the danger as a reasonably prudent manufacturer in the same or similar circumstances. This obligation is satisfied if the manufacturer makes reasonable efforts to inform product users or a person who may be reasonably expected to assure that action is taken to avoid the harm, or that the risk of harm is explained to the actual product user.

(D) *The Product Was Unreasonably Unsafe Because It Did Not Conform to an Express Warranty.* In order to determine that the product was unreasonably unsafe because it did not conform to an express warranty, the trier of fact must find that the claimant, or one acting on the claimant's behalf, relied on an express warranty made by the manufacturer or its agent about a material fact or facts concerning the product and this express warranty proved to be untrue.

A "material fact" is any specific characteristic or quality of the product. It does not include a general opinion about, or praise of, the product.

The product seller may be subject to liability under Subsection (D) although it did not engage in negligent or fraudulent conduct in making the express warranty.

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Analysis

Sec. 104. Basic Standards of Responsibility for Manufacturers

No single product liability issue has generated more controversy than the question of defining the basic standards of responsibility to which product manufacturers are to be held. *See, e.g.,*

Epstein, "Products Liability: The Search for the Middle Ground," 56 "N.C. L. Rev." 643 (1978); *see also* Vetri, "Products Liability: Developing a Framework for Analysis," 54 "Or. L. Rev." 293, 310 (1975); Henderson, "Judicial Review of Manufacturers' Conscious Design Choice: The Limits of Adjudication," 73 "Colum. L. Rev." 1531 (1973); Keeton, "Product Liability and the Meaning of Defect," 5 "St. Mary's L. J." 30 (1973); Wade, "On the Nature of Strict Tort Liability for Products," 44 "Miss. L. J." 825 (1973); Walkowiak, "Product Liability Litigation and the Concept of Defective Goods: 'Reasonableness' Revisited," 44 "J. Air Law & Commerce" 705 (1978).

Much of the controversy appears to have sprung from the fact that the authors of Section 402A of the "Restatement (Second) of Torts" were focusing on problems relating to product mismanufacture or defective construction, and not on problems relating to defective design or the duty to warn. *See* "Restatement (Second) of Torts" Section 402A, Appendix (1965) (most cases cited deal with defects in construction cases); Wade, *supra*, 44 "Miss. L. J." at 830–32. In the 15 years following the publication of the "Restatement," courts have struggled to define standards of responsibility with respect to design and the duty to warn. *See, e.g.*, "Barker v. Lull Eng'r. Co.," 20 Cal. 3d 413, 573 P.2d 443, 143 Cal. Rptr. 225 (1978); "Cepeda v. Cumberland Eng'r. Co.," 76 N.J. 152, 386 A.2d 816 (1978); "Phillips v. Kimwood Mach. Co.," 269 Or. 485, 525 P.2d 1033 (1974).

In the course of this struggle, courts appear to have drifted away from rationales for imposing liability and toward verbal formulae that attempt to distinguish between negligence and strict liability.

The drafters of this Act have focused on the basic rationale of product liability and made decisions that should make it easier for courts to decide these cases. It was determined that "strict liability" is justified in two product liability areas—defects in construction and breach of express warranty.

The "Task Force Report" concluded that strict liability for defective construction can be absorbed within the existing liability insurance system. There is a degree of predictability with regard to these defective products that is not found with respect to products that are defective in design or to failure to warn. Strict liability for defective construction has also been predicated on Section 402A of the "Restatement" and implied warranty claims under commercial law. These sources support the position that consumers have the right to expect that products are free from construction defects.

Strict liability cases involving breach of an express warranty can also be justified. If a manufacturer makes a specific representation about its product, it is fair to hold the manufacturer to that promise. Moreover, the consumer has the right to expect that a product will live up to the manufacturer's representations.

While some courts have indicated that strict liability should also be applied in design and duty-to-warn cases, it is difficult to find an adequate rationale to support that result. A few courts have sought to justify the result under a theory of "risk distribution" wherein the product seller distributes the costs of all product-related risks through liability insurance; however, this rationale breaks down in practice. The application of uncertain strict liability principles in the areas of design and duty to warn places a whole product line at risk; therefore, a firmer liability foundation is needed. In terms of creating incentives for loss prevention, the approach of applying strict liability principles to design and duty-to-warn cases represents an "overkill;" a fault system will provide the needed incentive.

If the costs of product-related injuries are always to be distributed through the price of the product, the mechanism to bring about this result should be an appropriate compensation system with limited damages, not the tort-litigation system. The former is the approach taken in Worker Compensation and automobile no-fault reparations systems. While courts that have applied strict liability in design and duty-to-warn cases have often stated that they are not imposing "absolute" insurer liability, they have not been able to articulate why they draw a line short of that particular point. The reason for this is that the risk distribution rationale provides no stopping point short of absolute liability. Thus, a number of courts have plunged into a foggy area that is neither true strict liability nor negligence. The result has been the creation of a wide variety of legal "formulae," unpredictability for consumers, and instability in the insurance market.

In light of these facts, this Act places both design and duty-to-warn cases on a fault basis.

The Act utilizes the word "defective" as a generic term covering all four types of unreasonably unsafe products. A product cannot be proven defective unless the claimant shows that it is unreasonably unsafe under one or more Subsections under Section 104.[10]

This approach should not lead to problems of characterization. The claimant's pleading should indicate the theory on which it is based within the framework of Subsections (A), (B), (C), or (D). Of course, a product may be unreasonably unsafe in more than one way.

The manufacturer of a component part or parts is subject to liability under this Section for harms caused because that component part was defective. The manufacturer of a whole product is subject to liability under this Section for harms caused because the product, or any of its components, was defective.

The following commentary discusses each Subsection in turn.

(A) *The Product Was Unreasonably Unsafe in Construction.* The history of imposing strict liability for products which are unreasonably unsafe in construction goes back as far as 1913 when sellers of foods were first held liable for their failure to produce a product reasonably fit for its intended use. *See* "Mazetti v. Armour & Co.," 75 Wash. 622, 135 P. 633 (1913); Prosser, "The Assault Upon the Citadel (Strict Liability to the Consumer)," 69 "Yale L.J." 1099 (1960).

Subsection (A) imposes pure strict liability on the manufacturer in accordance with Section 402A of the "Restatement (Second) of Torts." *Cf.* "Pabon v. Hackensack Auto Sales, Inc.," 63 N.J. Super. 476, 164 A.2d 773, 783 (1960) (implied warranty for defective ball bearing). The approach is also in accord with the overwhelming trend in case law in the United States. *See* Phillips, "A Synopsis of the Developing Law of Products Liability," 28 "Drake L. Rev." 317, 344–45 (1979).

In the course of its study, the Task Force found that most product sellers can absorb the financial impact of strict liablity for products which are defective in construction. *See* "Task Force Report" at VII–17.

The approach taken here is subject to theoretical criticism because

> [A] standard which judges a manufacturer by his own rather than industry standards could penalize the manufacturer who goes out of his way to build into his product a high safety level not mandated or followed by the industry.

Twerski & Weinstein, "A Critique of the Uniform Product Liability Law—A Rush to Judgment," 28 "Drake L. Rev." 221, 225 (1979).

[10] Liability can be imposed on non-manufacturer product sellers under Section 105 when they have been negligent.

Nevertheless, this criticism overlooks the fact that the manufacturer's self-imposition of a higher standard will function as a shield against claims alleging liability in the more costly area of defective design. By adopting a higher standard, a manufacturer may occasionally be subject to liability under Subsection (A), while another manufacturer may not be, but the first manufacturer does not place its whole product line at risk of being found unreasonably unsafe in design.

Not every minor variation from a standard will result in liability; rather, the variation must be a material one causing the claimant's harm.

In point of fact, there is no practical way to define defective construction except by the manufacturer's own standards. It is an optimal area for strict liability "because societal expectations are fairly well established with regard to such defects, and a ready gauge of acceptability exists by reference to like products that are non-defective." Phillips, "The Standard for Determining Defectiveness in Products Liability," 46 "U. Cin. L. Rev." 101, 104–05 (1977). Moreover, the imposition of strict liability with regard to defective construction is fair to the product user. Under a negligence system, the claimant would have the very difficult burden of showing that a manufacturer knew or should have known about a latent defect in one of thousands of mass-produced products.

(B) *The Product Was Unreasonably Unsafe in Design.* No court, in spite of some loose language that has been used, has imposed true strict or absolute liability on manufacturers for products which are unreasonably unsafe in design. *See* Henderson, "Manufacturers' Liability for Defective Design: A Proposed Statutory Reform," 56 "N.C. L. Rev." 625, 634–35 (1978). This is true because courts have appreciated the liability potential inherent in such cases—it is almost always posible to design a product more safely. Nevertheless, some courts in their instructions to the trier of fact have left juries "at sea." The jury is told to decide design cases by "considering" a number of factors; it is not given a guideline or formula for making the evaluation.

The approach taken here provides such a guideline. The trier of fact is instructed to impose liability if it finds that the product was unreasonably unsafe in design. The trier of fact is also given a formula to assist it in making this determination. The approach has its roots in the law of negligence [11] and has been put into modern and appropriate product liability terminology by some courts in their attempt to resolve the defective design dilemma. *See* "Hagans v. Oliver Mach. Co.," 576 F.2d 97, 99–100 (5th Cir. 1978); "Dreisonstok v. Volkswagenwerk, A.G.," 489 F.2d 1066, 1071 (4th Cir. 1974); "Jeng v. Witters," 452 F. Supp. 1349, 1356 (M.D. Pa. 1978).

Section 104 requires the court to make an initial determination as to whether the claimant has introduced enough evidence for the case to be considered by the jury. This requirement is especially important with respect to conscious design cases under Subsection (B). The dangers of the trier of fact introducing hindsight into the risk-utility analysis make it imperative for the court to apply its screening function carefully. *See* "Owens v. Allis-Chalmers Corp.," 83 Mich. App. 74, 268 N.W.2d 291 (1978); Henderson, *supra*, 73 "Colum. L. Rev." at 1531. *Cf.* Wade, *supra*, 44 "Miss. L. J." at 837–38 (suggesting that such formulae can *only* be applied by the court).

The formula set forth in Subsection (B) requires the trier of fact to balance two pairs of factors existing at the time of manufacture: (1) the likelihood that the product would cause the claimant's harm or similar harms, and the seriousness of those harms; against (2) the manufacturer's burden of designing a product that would have prevented those harms, and the adverse effect that alternative design would have on the usefulness of the product. *See* "Kerns v. Engelke," 390 N.E.2d 859, 865 (1979).

If the case is sent to the jury, the balancing formula should be placed in a jury instruction indicating that the claimant has the burden of showing, in light of the formula, that the product was unreasonably unsafe in design.

The Subsection also sets forth examples of important evidence that may be considered with respect to applying the formula.

First, warnings and instructions are important because, in an appropriate case, a product may be found not to be defective in design if the product seller has given an adequate warning about the product risk. *See, e.g.*, "Wagner v. Larson," 257 Iowa 1202, 136 N.W.2d 312 (1965); "Penn v. Inferno Mfg. Corp.," 199 So.2d 210 (La. App.) *aff'd*, 251 La. 27, 202 So. 2d 649 (1967). There are limits to this possibility, however, since a product seller will not be shielded from liability for an unreasonably unsafe product simply by indicating that the product "may be hazardous." Only a warning or instruction which, at the time of manufacture, substantially reduces the likelihood that the product would cause harm in the manner in which the claimant's harm was caused will affect the question of whether the product was defective in design.

Second, evidence relating to the technological and practical feasibility of designing and manufacturing a product which would have substantially served the expected user's needs, and would have also prevented the claimant's harm, addresses the side of the formula dealing with the manufacturer's burden. If an alternatively designed product which would have prevented the harm while preserving its usefulness could have been produced with a slight increase in cost, it is likely that the product is unreasonably unsafe. On the other hand, the manufacturer need not incorporate safety features that render a product incapable of performing some or all of the very functions that create its public demand. *See* "Hagans v. Oliver Mach., Inc.," 576 F.2d 97 (5th Cir. 1978); "Dreisonstok v. Volkswagenwerk, A.G.," 489 F.2d 1066 (4th Cir. 1974).

Third, it is important to consider evidence relating to the effect of the alternative design on the usefulness of the product. As learned scholars have observed, "it is virtually impossible to [evaluate a design defect case] without balancing risk and utility factors." *See* Twerski & Weinstein, *supra*, 28 "Drake L. Rev." at 229. *See also* "Phillips v. Kimwood Mach. Co.," 269 Or. 485, 525 P.2d 1033, 1038 (1974). It is important to note that this evidence is not directed to the general usefulness of the product in society, *i.e.*, the overall social worth of pharmaceuticals, lawnmowers, or other products.

Fourth, it is essential to consider evidence relating to the comparative costs of producing, distributing, selling, using, and maintaining the product as designed and as alternatively designed. This places the court and the trier of fact in the "real world" of design options.

Finally, if new or additional harms might have resulted if the product had been alternatively designed, the trier of fact should consider this factor in making its evaluation. Since this evidence will probably be introduced by the defendant manufacturer, it may be placed before the court and jury *after* the claimant's case has been presented.

In sum, Subsection (B) places the burden of proof on the claimant to show that in light of a balance of practical, objective factors, the product seller should bear the full cost of the injury and have the responsibility for attempting to distribute that cost

[11] *See* "United States v. Carroll Towing Co.," 159 F.2d 169, 173 (2d Cir. 1947) (the "Learned Hand formula").

through the price of its product. In light of the fact that the judgment is the equivalent of holding that the whole product line is defective, it is important that traditional tort law principles be followed and that the claimant retain the burden of proof. *See* Kalven, "Torts: The Quest for Appropriate Standards," 53 "Cal. L. Rev." 189 (1965). *But see* "Barker v. Lull Engineering, Inc.," 20 Cal. 3d 413, 573 P.2d 443, 143 Cal. Rptr. 225 (1978).

Neither the formula nor the detailed list of the more important evidentiary items includes what has been called the "consumer expectation test." The reasons for not including it are rooted in both economics and practicality. As Professor Wade, Reporter for "The Restatement (Second) of Torts," has stated:

> In many situations, particularly involving design matters, the consumer would not know what to expect, because he would have no idea how safe the product could be made.

Wade, *supra*, "Miss. L. J.," at 829.

The consumer expectation test takes subjectivity to its most extreme end. Each trier of fact is likely to have a different understanding of abstract consumer expectations. Moreover, most consumers are not familiar with the details of the manufacturing process and cannot abstractly evaluate conscious design alternatives. This has been recently recognized by the Supreme Court of Texas. "Turner v. General Motors Corp.," ,———S.W.2d———, No. B–7747 (Tex. June 13, 1979); *see also* Green, "Strict Liability Under Sections 402A and 402B: A Decade of Litigation," 54 "Tex. L. Rev." 1185 (1976).

(C) *The Product Was Unreasonably Unsafe Because Adequate Warnings or Instructions Were Not Provided.* A manufacturer may be held liable under Subsection (C) regardless of whether the product was found to be unreasonably unsafe in construction or design. Even where the lack of scientific knowledge or cost factors preclude the use of an alternative design, the manufacturer may still be required to provide a warning about the product's hazard or to provide adequate instructions about the product's use. *See* "Jacobson v. Colorado Fuel & Iron Corp.," 409 F.2d 1263, 1271 (9th Cir. 1969).

It is important to note that Subsection (C) covers two arguably separate problems. First, was there a duty to warn or instruct about a particular matter? Second, assuming that a warning or instruction was given, was it adequate? While these two problems are theoretically separate, the underlying factors that must be taken into consideration in evaluating a manufacturer's duty with respect to them overlap; therefore, the two issues have been combined in Subsection (C). As will be indicated below, there may be a different evidentiary emphasis in the two types of cases.

The basic standard of responsibility for Subsection (C) is predicated on a fault basis. A "strict liability" base in this area creates unacceptable uncertainty within the tort-litigation system. This has recently been recognized by the Supreme Court of Michigan. "Smith v. E. R. Squibb & Sons," 405 Mich. 79, 273 N.W. 2d 476 (1979).

Under Subsection (C), the trier of fact is to place itself in the manufacturer's position at the time the product was manufactured. In order to impose liability on the manufacturer, the claimant must prove that the probability that the product would cause the claimant's harm and similar harms and the seriousness of those harms rendered the manufacturer's instructions inadequate, and that the manufacturer should and could have provided the warnings or instructions which claimant alleges would have been adequate. Obviously, where harms were likely to occur and unlikely to be recognized by the product user, the necessity of adequate warnings and instructions is correspondingly acute. On the other hand, the duty to provide adequate warnings and instructions cannot go beyond the technological and other information that was reasonably available at the time of manufacture. This concept is in accord with the overwhelming majority of court decisions. *See* "Robbins v. Farmers Union Grain Terminal Ass'n.," 552 F.2d 788 (8th Cir. 1977) (collecting cases).

Unlike the basic formula for design cases, the utility of the product is not a consideration in deciding whether a warning is necessary. The focus is on the likelihood that the product would cause the claimant's harm, and the seriousness of that harm, the adequacy of the warnings that were provided, and the practical need for providing the warnings or instructions which claimant alleges would have been adequate.

Subsection (C)(2) lists examples of some of the more probative evidence that can assist the court and the jury in applying this formula.

Factor (a) focuses on the manufacturer's ability, at the time of manufacture, to be aware of the product's danger and the nature of the potential harm. This factor should not operate through hindsight.

Factor (b) involves evidence relating to the manufacturer's ability to anticipate that the likely product user would be aware of the product risk and the nature of the potential harm. The more serious the anticipated harm, the greater the duty to warn. *See* "Braniff Airways, Inc. v. Curtiss-Wright Corp.," 411 F.2d 451 (2d Cir. 1969), *on rehearing*, 424 F.2d 427 (2d Cir. 1970); "Davis v. Wyeth Laboratories, Inc.," 399 F.2d 121 (9th Cir. 1968).

Factor (c), the technological and practical feasibility of providing effective warnings and instructions, may not be significant in many cases because warnings are often relatively inexpensive to provide. However, in some situations, it may not be feasible as a practical technological matter to provide a warning or the type of warning that the claimant suggests should have been provided.

Factor (d), the clarity and conspicuousness of the warnings or instructions, is material in cases where claimant alleges that the warnings given were not adequate. As Professor Phillips has noted:

> To be adequate, warnings must be reasonably conspicuous, strong and clear. They must describe the danger and, where pertinent, the means of avoiding it.

Phillips, *supra*, 28 "Drake L. Rev." at 351.

Also highly relevant to this issue is Factor (e), evidence relating to the adequacy of the warnings or instructions that were provided. Again, as Professor Phillips has noted:

> The effectiveness of a warning may be diluted by other supplier representations of safety that lull the user into a false sense of security. While little or no warning may have to be given to the expert user, a clear and strong warning is required for dangerous products which the supplier can reasonably expect to be used by inexperienced persons. *Id.* at 351–52.

Subsection (C)(3) sets forth a basic causation link for the Subsection. The claimant must show that if adequate warnings or instructions had been provided, the harm would have been avoided either because a reasonably prudent product user would have declined to use the product (a situation which may be most pertinent with respect to a pharmaceutical with a known risk), or because the product would have been used in a manner so as to have avoided the harm. *See* "Technical Chem. Co. v. Jacobs," 480 S.W. 2d 602 (Tex. 1972); *cf.* "Potthoff v. Alms," —— Colo. App. ——, 583 P.2d 309 (Colo. Ct. App. 1978). While it has been suggested that no causation requirement should be required with respect to unavoidable pharmaceutical risks (*see* Twerski & Weinstein, *supra*, 28 "Drake L. Rev." at 236–37), the Act addresses itself to tort law, not the general public regulation of products. It

is a basic requirement of tort law for the claimant to show that if the defendant had acted in a manner in which the claimant alleges was appropriate, then he or she would not have suffered harm. *See* W. Prosser, "Torts" at 236 (4th ed. 1971).

Subsection (C)(4) recognizes that a manufacturer should be able to assume that the ordinary product user is familiar with obvious hazards—that knives cut, that alcohol burns, that it is dangerous to drive automobiles at high speeds. Thus, the Act states that the manufacturer does not have to warn about dangers that are obvious. *See* "Kimble v. Waste Systems International, Inc.," —— Wash. App. ——, 595 P.2d 569 (1979). While it has been suggested that this approach may encourage the manufacture of "obviously dangerous" products, this is unlikely to occur under this Act, since the manufacturer of an unreasonably unsafe product may be subject to liability under Subsection (B).

Requiring a manufacturer to warn about matters that are obvious would tend to reduce the effectiveness of warnings. As experts in the field have observed, "Warnings, in order to be effective, must be selective." Twerski, Weinstein, Donaher, & Piehler, "The Use and Abuse of Warnings in Products Liability—Design Defect Litigation Comes of Age," 61 "Cornell L. Rev." 495, 514 (1976). It is recognized that, in some jurisdictions, there is an open-ended duty to warn about obvious dangers when they are highly likely to cause very serious injuries. *See* Marschall, "An Obvious Wrong Does Not Make a Right: Manufacturers' Liability for Patently Dangerous Products," 48 "N.Y.U. L. Rev." 1065 (1973) (collecting cases). Again, the Act approaches this problem by potentially subjecting a manufacturer of a patently dangerous product to liability for an unreasonably unsafe design.

Similarly, the product manufacturer is not under an obligation to warn about misuses or alterations of products that would not be expected by an ordinary reasonably prudent person who is likely to use the product in the same or similar circumstances. *See also* Section 112(C).

Subsection (C)(5) indicates that in the normal course of events, a manufacturer should place its warning or instruction in a place or in a form where it can be communicated to the actual product user. On the other hand, there are some situations in which this is impossible or impracticable. *See* "Bryant v. Hercules, Inc.," 325 F. Supp. 241 (W.D. Ky. 1970). Therefore, the Subsection indicates that a warning or instruction may be given to a person who may be reasonably expected to assure that action is taken to avoid the harm, or that the risk of the harm is explained to the actual product user. By way of example, the Act sets forth situations where such a process is appropriate. Thus, communication to a using or supervising expert is explicitly stated to be adequate when the product—such as a prescription drug or a radioactive material—is one which may be legally used only by, or under, the supervision of such an expert. *See* "Carmichael v. Reitz," 17 Cal. App. 3d 958, 95 Cal. Rptr. 381 (Dist. Ct. App. 1971); "Terhune v. A. H. Robbins Co.," 90 Wash. 2d 9, 577 P.2d 975 (1978).

The manufacturer of tangible goods sold or handled only in bulk or of other workplace products may communicate warnings or instructions to the employer of the claimant when that is the only practical and feasible avenue for making a warning. *See* "Reed v. Pennwalt Corp.," 22 Wash. App. 718, 591 P.2d 478 (1979).

Other situations not specifically pointed out in the Act may arise where it is permissible for the manufacturer to convey warnings to persons other than a product user, *e.g.*, warnings to the parent of a young child with respect to a food product. *Cf.* "Spruill v. Boyle-Midway Inc.," 308 F.2d 79 (4th Cir. 1962).

Post-Manufacture Duty to Warn. Subsection (C)(6) recognizes a manufacturer's duty to warn after its product has been produced. The Subsection places an obligation on a manufacturer to act with reasonable prudence to learn about serious risks connected with products after they are manufactured. When it learns of such a risk, it is to act as a reasonably prudent manufacturer in the same or similar situation. This obligation is satisfied if the manufacturer makes reasonable efforts to inform product users or appropriate persons about the risk. The Subsection is in accord with basic negligence case law. *See* "Comstock v. General Motors Corp." 358 Mich. 163, 99 N.W.2d 627 (1959); "Schenebeck v. Sterling Drug, Inc.," 423 F.2d 919 (8th Cir. 1970). The Subsection recognizes that in some situations, a general warning through an advertising medium may be all a manufacturer can provide. The standard is reasonableness, not absolute or strict liability.

(D) *The Product Was Unreasonably Unsafe Because It Did Not Conform to an Express Warranty.* When there has been an express warranty concerning the product, strict liability can readily be justified. The product seller has used specific words to induce the purchase of the product, and the Act indicates that it must be accountable for its representations. The term "express warranty" is separately defined in the Act in Subsection 102(K).

Since the case of "Baxter v. Ford Motor Co.," 179 Wash. 123, 35 P.2d 1090 (1934), courts have been virtually unanimous in imposing strict liability on product sellers when their statements about their products prove to be untrue. *See* W. Prosser, "Torts" at 652 (4th ed. 1971) ("decisions to the contrary have been amazingly few").

Thus, where a product seller advertised that its pharmaceutical was "free and safe from all dangers of addiction" and claimant, because of a rare and totally unforeseeable susceptibility, became physically dependent on the drug, strict liability was imposed. "Crocker v. Winthrop Lab., Div. of Sterling Drug, Inc.," 514 S.W.2d 429 (Tex. 1974); "Spiegel v. Saks 34th Street," 43 Misc. 2d 1065, 252 N.Y.S. 2d 852 (App. Term 1964), *aff'd*, 272 N.Y.S.2d 972 (App. Div. 1966) (perfume advertised as "non-allergenic").

While many courts use the term "express warranty" to describe the cause of action set forth in Subsection (D), "warranty" is a term of commercial law which is appropriate in the ordinary sale of goods from an immediate buyer to an immediate seller. Here, the focus is solely on tort claims for personal injury and damage to property. In order to convey the tort basis of this cause of action, Section 402B of the "Restatement (Second) of Torts" (1965), utilized the term "misrepresentation" in place of the term "express warranty." Nevertheless, this parlance has not been generally accepted by courts, although they do appreciate the distinction between the tort action and commercial law. *See* "Drayton v. Jiffee Chem. Corp.," 591 F.2d 352, 359 (6th Cir. 1978) ("sounds distinctly in tort"). In deference to this common usage, the term "express warranty," as defined in Subsection 102(K), has been utilized.

Subsection (D) applies only to representations or warranties made by the manufacturer or by a person for whom it is legally responsible. In general, the representation must have been made to the claimant, who must have relied on the warranty, and the harm must have resulted because of that reliance and because of the fact which was misrepresented. However, Subsection (D) does permit reliance by "one acting on behalf" of the claimant. Thus, if a wife purchases an automobile in reliance on a statement concerning its brakes and permits her husband to drive the car, this supplies the element of reliance although the husband, in fact, never learned of the statement. Otherwise, the Section is limited to consumers of products. *See*

"Restatement (Second) of Torts" Section 402B, Comment j (1965).

The statement made by the product seller must be about a material fact or facts concerning the product. This does not include mere "puffing" or sales talk. Thus, the manufacturer of a grinding disk that broke was not deemed liable for a breach of an express warranty after stating that the product was "stronger, sharper, and longer lived than ever before available anywhere." "Jakubowski v. Minnesota Mining & Mfg.," 80 N.J. Super. 184, 193 A.2d 275 (1963), *rev'd on other grounds*, 42 N.J. 177, 199 A.2d 826 (1964); *cf.* "Berkebile v. Brantly Helicopter Corp.," 462 Pa. 83, 337 A.2d 893 (1975) (helicopter "easy to operate"). In contrast, a manufacturer was deemed strictly liable when it advertised that a golf traninig device could be operated and the "ball will not hit player." A player of limited golfing ability was indeed hit by the ball, and the defendant was held liable. "Hauter v. Zogarts," 14 Cal. 3d 104, 120 Cal. Rptr. 681, 534 P.2d 377 (1975).

* * * * *

Code

Sec. 105. Basic Standards of Responsibility for Product Sellers Other Than Manufacturers

(A) A product seller, other than a manufacturer, is subject to liability to a claimant who proves by a preponderance of the evidence that claimant's harm was proximately caused by such product seller's failure to use reasonable care with respect to the product.

Before submitting the case to the trier of fact, the court shall determine that the claimant has introduced sufficient evidence to allow a reasonable person to find by a preponderance of the evidence that such product seller has failed to exercise reasonable care and that this failure was a proximate cause of the claimant's harm.

In determining whether a product seller, other than a manufacturer, is subject to liability under Subsection (A), the trier of fact shall consider the effect of such product seller's own conduct with respect to the design, construction, inspection, or condition of the product, and any failure of such product seller to transmit adequate warnings or instructions about the dangers and proper use of the product.

Unless Subsection (B) or (C) is applicable, product sellers shall not be subject to liability in circumstances in which they did not have a reasonable opportunity to inspect the product in a manner which would or should, in the exercise of reasonable care, reveal the existence of the defective condition.

(B) A product seller, other than a manufacturer, who makes an express warranty about a material fact or facts concerning a product is subject to the standards of liability set forth in Subsection 104(D).

(C) A product seller, other than a manufacturer, is also subject to the liability of manufacturer under Section 104 if:

(1) The manufacturer is not subject to service of process under the laws of the claimant's domicile; or

(2) The manufacturer has been judicially declared insolvent in that the manufacturer is unable to pay its debts as they become due in the ordinary course of business; or

(3) The court determines that it is highly probable that the claimant would be unable to enforce a judgment against the product manufacturer.

(D) Except as provided in Subsections (A), (B), and (C), a product seller, other than a manufacturer, shall not otherwise be subject to liability under this Act.

Analysis

Sec. 105. Basic Standards of Responsibility for Product Sellers Other Than Manufacturers

Section 105 is derived in part from Tennessee law. "Tenn. Code Ann." Section 23–3706 (Supp. 1978). The Section addresses the problem of excessive product liability costs for parties other than manufacturers in the distribution chain in a way that does not compromise incentives for loss prevention. It also leaves the claimant with a viable defendant whenever a defective product has caused harm.

The "ISO Closed Claims Survey" shows that manufacturers account for 87 percent of the total amount of product liability payments, while distributors, wholesalers, and retailers account for 4.6 percent. "ISO Closed Claims Survey," Report 3, at 35 (1977). Case law suggests that these non-manufacturer product sellers can usually shift their costs to the manufacturer through an indemnity suit. *See, e.g.*, "Hales v. Monroe," 544 F. 2d 331, 332 (8th Cir. 1976); "Anderson v. Somberg," 158 N.J. Super. 384, 386 A. 2d 413, 419–20 (1978); "Litton Systems, Inc. v. Shaw's Sales & Serv., Ltd.," 119 Ariz. 10, 579 P. 2d 48, 50 (1978).

Despite their relatively small role vis-a-vis manufacturers as product liability defendants, wholesalers, retailers, and distributors are frequently brought into a product liability suit. *See, e.g.*, "Tucson Indus., Inc. v. Schwartz," 108 Ariz. 464, 501 P. 2d 936 (1972); "Vergott v. Deseret Pharmaceutical Co.," 463 F. 2d 12 (5th Cir. 1972); "Duckworth v. Ford Motor Co.," 320 F. 2d 130 (3d Cir. 1963). In light of ISO data showing that for every dollar of claims paid, at least 35 cents is spent in defense costs,[12] the net result is that wholesalers, retailers, and distributors are subject to substantial product liability costs in terms of both premiums and defense costs. These costs are added to the price of products and waste legal resources. *See* "Pender v. Skillcraft Indus., Inc.," 358 So. 2d 45 (Fla. Dist. Ct. App. 1978).

Under Section 105, product sellers other than manufacturers must exercise reasonable care in their handling of products. This obligation includes inspecting for hazards which a reasonably prudent product seller would have reason to discover. The focus of judicial inquiry will be on the opportunity the non-manufacturer product seller had to discover the hazard and on whether circumstances would permit a reasonable product seller to take corrective action. *See* "Edwards v. E. I. DuPont de Nemours & Co.," 183 F. 2d 165, 167 (5th Cir. 1950).

On the other hand, product sellers other than manufacturers are not liable for harms caused by products which are defective in construction or design, if those products were defective when they were received and the product seller had no reasonable opportunity to discover the defective condition. In addition, such product sellers are generally not liable for harms caused by breaches of the duty to warn or an express warranty unless the product seller's own conduct gave rise to the claim.

Subsection (A) provides that non-manufacturer product sellers are not subject to liability when they had no reasonable opportunity for product inspection which, in the exercise of reasonable care, would or should have revealed the existence of the defective condition. For example, if a retailer receives a defective product in a sealed container and there is no way for the retailer to be aware of the condition, the retailer will not be held liable. In general, Section 105 does not impose liability on non-manufacturer product sellers where there are defects in construction or defects in design that a reasonably prudent product seller would have had no opportunity to discover. The manufacturer can avoid many of these defects; the distributor or retailer cannot. However, a non-manufacturer product seller can waive the benefits of Subsection (A) through an express

[12] *See* "ISO Closed Claims Survey," Report 14, at 118.

warranty that it makes or transmits to the product user. *Cf.* "Ky. Rev. Stat. Ann." Section 411.340 (Supp. 1978). The term "manufacturer" is defined in Subsection 102(B).

Under Subsection (A), non-manufacturer product sellers are required to exercise reasonable care in their handling and storage of products and to pass along warnings from the manufacturer. Non-manufacturer product sellers are also responsible for defects introduced into the product by virtue of their own negligent conduct (*e.g.*, faulty product preparation or storage). Failure to fulfill their responsibilities will subject non-manufacturer product sellers to liability for their contribution to the harm which results.

Under Subsection (B), the non-manufacturer product seller is subject to the same liability as a manufacturer if the non-manufacturer product seller makes an express warranty. In these situations, such product seller has induced the purchase of the product by these specific words, and courts have been virtually unanimous in holding them responsible if the words prove to be untrue. *See* W. Prosser, "Torts" at 652 (4th ed. 1971).

Subsection (C) addresses the justifiable concern of Justice Traynor in "Vandermark v. Ford Motor Co.," 61 Cal. 2d 256, 391 P. 2d 168, 171, 37 Cal. Rptr. 896, 899 (1964), that:

> In some cases the retailer may be the only member of that enterprise reasonably available to the injured plaintiff. In other cases the retailer himself may play a substantial part in ensuring that the product is safe or may be in a position to exert pressure on the manufacturer to that end.

A majority of courts have followed the "Vandermark" case and have extended strict liability to retailers. *See, e.g.*, "McKisson v. Sales Affiliates, Inc.," 416 S.W. 2d 787 (Tex. 1967); "Housman v. C. A. Dawson & Co.," 106 Ill. App. 2d 225, 245 N.E. 2d 886 (1969). *See also* "U.C.C." Section 2-314.

Section 105 responds to Justice Traynor's concern in cases in which it is necessary to do so. If the manufacturer is not subject to service of process or has been judicially declared insolvent, or if a court determines that it would be highly likely that the claimant would be unable to enforce a judgment against the product manufacturer, the retailer, wholesaler, or distributor has the same strict liability obligations as a manufacturer. Thus, the limited liability shield set forth in Subsection (D) only operates when the product manufacturer is reasonably available for suit by the injured claimant.

Some economists may criticize the exception to the general rule set forth in Section 105. Another approach is that of a recently enacted Nebraska statute which flatly exempts non-manufacturer product sellers from liability unless they have been negligent. *See* "Neb. Rev. Stat." Section 25-21, 181 (Supp. 1978). *See also* "Shainberg v. Barlow," 258 So.2d 242, 244 (Miss. 1972) (same result under case law). However, the Nebraska approach can leave a person injured by a *defective* product (as defined in Section 104) without compensation. The Act makes clear that in these situations, the party who actually sold or commercially leased the defective product should bear the loss.

Procedurally, if the claimant commences an action against the retailer, wholesaler, or distributor, and the action is based upon a theory other than the retailer's, wholesaler's, or distributor's own negligence—such as Subsection 104(A)—the defendant would make a motion for dismissal. At that time, the claimant must show that the manufacturer is unavailable under the provisions of Subsection (C). The court would then consider and make a determination regarding the three conditions listed in Subsection (C) concerning the manufacturer. If the claimant commences an action against the retailer, wholesaler, or distributor, and one of the claimant's theories is the negligent conduct of the defendant, the defendant may move to dismiss on the other theory, but the negligence theory will be litigated. If the action is dismissed against the retailer, wholesaler, or distributor under Section 105, the claimant retains the option to proceed against the manufacturer.

Subsection (D) makes clear that the Section sets forth the entire scope of liability of non-manufacturer product sellers.

However, it should be noted that retailers, wholesalers, distributors, or others can become manufacturers for the purposes of this Act to the extent that they design, produce, make, fabricate, construct, or remanufacture a product or component part of a product prior to sale. Such parties can also become manufacturers for the purposes of this Act if they hold themselves out as a manufacturer. *See* Section 102(B) ("manufacturer") and accompanying analysis.

In order for Section 105 to operate fairly toward claimants as well as non-manufacturer product sellers, it is suggested that:

(1) The non-manufacturer product seller be treated as a party for the purposes of discovery under the applicable procedural code. If this step is not taken, the Act may place an undue burden on the claimant in his or her attempt to prove the case; and

(2) The statute of limitation vis-a-vis the non-manufacturer product seller be deemed to have tolled in case the claimant is unable to enforce his or her product liability judgment against the manufacturer.

* * * * *

Code

Sec. 106. Unavoidably Dangerous Aspects of Products

(A) An unavoidably dangerous aspect of a product is that aspect incapable, in light of the state of scientific and technological knowledge at the time of manufacture, of being made safe without seriously impairing the product's usefulness.

(B) A product seller shall not be subject to liability for harm caused by an unavoidably dangerous aspect of a product unless:

(1) The product seller knew or had reason to know of the aspect and with that knowledge acted unreasonably in selling the product at all;

(2) The aspect was a defect in construction under Subsection 104(A);

(3) The product seller knew or had reason to know of the aspect and failed to meet a duty to instruct or warn under Subsection 104(C), or to transmit warnings or instructions under Subsection 105(A); or

(4) The product seller expressly warranted that the product was free of the unavoidably dangerous aspect under Subsection 104(D) or 105(B).

* * * * *

Analysis

Sec. 106. Unavoidably Dangerous Aspects of Products

Section 106 provides that, in general, a product seller will not be subject to liability for a product which is defective in design when a harm stems from an aspect of the product that is incapable of being made safe in light of the state of scientific and technical knowledge at the time of manufacture. The term "incapable" is meaningless unless it is placed in context. Therefore, Subsection (A) indicates that it applies when the danger cannot be avoided without seriously impairing the product's usefulness.

The approach taken in Section (A) recognizes that there may be circumstances in which a seriously injured person is left without compensation for an injury caused by an unavoidably dangerous aspect of a product; however, for reasons of policy

that consumers can appreciate, Section 106 proposes that a product seller not be held responsible for harms that are simply unavoidable. *See* Johnson, "Products Liability 'Reform': A Hazard to Consumers," 56 "N.C. L. Rev." 676, 690 (1978). If the costs of unavoidable harms are to be shifted from the individual, they should be borne by society at large. The policy predicate underlying Section 106 is that it should help encourage research and development without unleashing unreasonably unsafe products on the public. It also makes clear to policymakers that the tort-litigation system is not the means for addressing injuries caused by all product hazards.

Section 106 is based on the "Restatement (Second) of Torts" Section 402A, Comment k (1965). *See also* "N.H. Rev. Stat. Ann." Section 507–D:4 (Supp. 1978).

With the exception of one Illinois decision, "Cunningham v. MacNeal Memorial Hosp.," 47 Ill. 2d 443, 266 N.E.2d 897 (1970), *subsequently overruled by* "Ill. Ann. Stat." ch. 91, Sections 181–84 (Supp. 1979), this approach has been followed by the common law courts throughout the United States. *See, e.g.,* "Moore v. Underwood Memorial Hosp.," 147 N.J. Super. 252, 371 A.2d 105 (1977) (serum hepatitis contracted from blood supplied); "Dalke v. Upjohn Co.," 555 F.2d 245 (9th Cir. 1977) (tooth discoloration from tetracycline); "Chambers v. G.D. Searle & Co.," 441 F. Sup. 377 (D. Md. 1975) (stroke allegedly from birth control pills); "Coffer v. Standard Brands, Inc.," 30 N.C. App. 134, 226 S.E.2d 534 (1976) (shell in nuts); "Hines v. St. Joseph's Hospital," 86 N.M. 763, 527 P.2d 1075 (1974) (blood transfusion).

Subsection (A) indicates that the time from which to judge the state of scientific and technological knowledge is the time of manufacture. *See* "Cochran v. Brooke," 243 Or. 89, 409 P.2d 904 (1966).

Subsection (B) indicates that the product seller shall not be subject to liability for harms caused by unavoidably dangerous aspects of products unless the claimant proves that one of four circumstances occurred.

The first circumstance involves the unusual situation in which the product seller knew or had reason to know of the unavoidably dangerous aspect and, with that knowledge, acted unreasonably in selling the product at all. An example is a product seller who markets a toy that is highly dangerous to children. This example can be contrasted with a pharmaceutical approved by the Food and Drug Administration, when both the government and the manufacturer know of the dangers connected with that product. In that situation, it is clear that this exception should not apply because it would not be unreasonable to sell the product.

The second circumstance deals with defects in construction. It is arguable that, even with the finest quality control, a product that is defective in construction can slip by inspection. Nevertheless, a judgment has been made by a majority of courts to impose strict liability on manufacturers for defects in construction. That judgment is preserved in this Act.

The third circumstance deals with the situation in which the product seller has failed to provide an adequate warning about an unavoidably dangerous aspect of a product. Section 106 is in accord with Subsections 104(C) and 105(A) and is predicated on a fault base—it is only to apply with respect to dangers which were known or could be discovered through the exercise of reasonable care. *See* "Dalke v. Upjohn," *supra;* "Chambers v. G.D. Searle & Co.," *supra;* "Toole v. Richardson-Merrell, Inc.," 251 Cal. App. 2d 689, 60 Cal. Rptr. 398 (1967). As these cases reflect, the factual question underlying the legal issue of whether warnings or instructions were adequate is whether a product seller has met its duty to promulgate warnings and instructions commensurate with its actual knowledge gained from research and adverse reaction reports, and its constructive knowledge as measured by scientific literature and other available means of communication. *See* "Dalke v. Upjohn Co.," *supra,* 555 F.2d, at 248; "McEwen v. Ortho Pharmaceutical Corp.," 270 Or. 375, 528 P.2d 522, 528–29 (1974). *Contra,* "Bruce v. Martin-Marietta Corp.," 544 F.2d 442 (10th Cir. 1976).

The Section's cross-reference to Subsections 104(C) and 105(A) makes clear that the product seller must meet its obligation to warn, instruct, or transmit warnings or instructions based on new information about an unavoidably dangerous aspect of a product that is discovered *after* the product has been manufactured. *See* "Love v. Wolf," 226 Cal. App. 2d 378, 38 Cal. Rptr. 183 (1964); "Sterling Drug, Inc. v. Yarrow," 408 F. 2d 1978 (8th Cir. 1969). Only those harmed after the duty to warn arose would be entitled to a claim.

Finally, Section 106 makes clear that a product seller can be liable for an unavoidably dangerous aspect of a product if the product seller expressly warranted that the product was free from such aspect. *See* Subsections 104(D) and 105(B).

* * * * *

Code

Sec. 107. Relevance of Industry Custom, Safety or Performance Standards, and Practical Technological Feasibility

(A) Evidence of changes in (1) a product's design, (2) warnings or instructions concerning the product, (3) technological feasibility, (4) "state of the art", or (5) the custom of the product seller's industry or business, occurring after the product was manufactured, is not admissible for the purpose of proving that the product was defective in design under Subsection 104(B) or that a warning or instruction should have accompanied the product at the time of manufacture under Subsection 104(C).

If the court finds that the probative value of such evidence substantially outweighs its prejudicial effect and that there is no other proof available, this evidence may be admitted for other relevant purposes if confined to those purposes in a specific court instruction. Examples of "other relevant purposes" include proving ownership or control, or impeachment.

(B) For the purposes of Section 107, "custom" refers to the practices followed by an ordinary product seller in the product seller's industry or business.

(C) Evidence of custom in the product seller's industry or business or of the product seller's compliance or non-compliance with a non-governmental safety or performance standard, existing at the time of manufacture, may be considered by the trier of fact in determining whether a product was defective in design under Subsection 104(B), or whether there was a failure to warn or instruct under Subsection 104(C) or to transmit warnings or instructions under Subsection 105(A).

(D) For the purposes of Section 107, "practical technological feasibility" means the technological, mechanical, and scientific knowledge relating to product safety that was reasonably feasible for use, in light of economic practicality, at the time of manufacture.

(E) If the product seller proves, by a preponderance of the evidence, that it was not within practical technological feasibility for it to make the product safer with respect to design and warnings or instructions at the time of manufacture so as to have prevented claimant's harm, the product seller shall not be subject to liability for harm caused by the product unless the trier of fact determines that:

(1) The product seller knew or had reason to know of the danger and, with that knowledge, acted unreasonably in selling the product at all;

(2) The product was defective in construction under Subsection 104(A);

(3) The product seller failed to meet the post-manufacture duty to warn or instruct under Subsection 104(C)(6); or

(4) The product seller was subject to liability for express warranty under Subsection 104(D) or 105(B).

Analysis

Sec. 107—Relevance of Industry Custom, Safety or Performance Standards, and Practical Technological Feasibility

Subsection (A) adopts a fundamental principle of evidence law for the purposes of product liability cases. It excludes the showing of post-manufacture changes in the design of or warnings about a product, technological feasibility, "state of the art," or industry custom when evidence of those changes is offered to show that the product was defective at the time of manufacture. *See* Fed. R. Evid. 407 and Advisory Committee Commentary. The term "state of the art," as used in the listing of evidentiary items in Subsection 107(A), is a general, commonly used phrase whose meaning may include industry custom or the most scientifically advanced developments in the field. As will be indicated in the discussion of Subsections (B) through (E), the Act has generally eschewed the phrase because of its ambiguity. Nevertheless, it has been utilized in Subsection (A) in order to assure that all post-manufacture change is excluded from evidence.

The reasons underlying the rule on which Subsection 107(A) is based are twofold: first, subsequent changes are deemed irrelevant (all they show is that "as one gets older, one may get wiser"); and second, admission of such evidence may discourage the making of improvements or repairs. While the latter rationale has been challenged (*see* "Ault v. International Harvester Co.," 13 Cal. 3d 113, 528 P.2d 1148, 117 Cal. Rptr. 812 (1975); Schwartz, "The Exclusionary Rule on Evidence of Repair—A Rule in Need of Repair," 7 "The Forum" 1 (1971)), the relevance of such evidence on the issue of defectiveness is of very limited value. On the other hand, the prejudicial effect of showing the subsequent change or repair—particularly one undertaken by the product seller itself—is quite substantial. *See* "LaMonica v. Outboard Marine Corp.," 48 Ohio App. 2d 43, 355 N.E.2d 533 (1976); "Haysom v. Coleman Lantern Co.," 89 Wash. 2d 474, 573 P.2d 785 (1978).

Subsection (A) permits the introduction of evidence which would otherwise be excluded under the Subsection, if that evidence is highly probative and necessary to prove a relevant matter other than the fact that the product was defective at the time of manufacture. Thus, evidence of such changes may be admissible to show that the product seller knew of the defect at a certain point in time after manufacture. In appropriate circumstances, this evidence may suggest that the product seller had a duty to take reasonable steps to warn product users about a newly discovered hazard. It may also be admissible when the product seller claims the product hazard was impossible to avoid. In cases of this kind, the court should make a finding that the probative value of the evidence substantially outweighs its prejudicial nature and that there is no other equally probative proof available. Allowing the introduction of evidence in these cases should *not* become a vehicle for avoiding the basic purpose of the rule.

Subsections (B), (C), (D), and (E) address one of the major issues that has divided product sellers and consumer groups concerned about product liability. Product sellers have vigorously argued that when their products comply with the "state of the art," it is unfair to deem them defective. Further, they contend that industry custom is likely to incorporate all cost-justified product safety features. They have received some support for this contention from members of the academic community, at least in regard to purchasers, as contrasted with nonpurchaser product users, of the product. *See* R. Posner, "Economic Analysis of Law" 71 (1972).

Consumer groups respond that it is inappropriate to allow product sellers to fix indirectly their own standard of liability. *See* Johnson, "Products Liability 'Reform': A Hazard to Consumers," 56 "N.C. L. Rev." 677, 680–81 (1978).

When the issue is carefully analyzed, there is less dispute between product sellers and consumer groups than appears on the surface. Part of the sound and fury is a debate over the ambiguous term "state of the art." The approach taken in Subsections (B), (C), (D), and (E) of not using the term "state of the art" eliminates that ambiguity and focuses on what is fair to each party.

Subsection (B) defines "custom" as the "practices followed by the ordinary product seller in the defendant product seller's industry or business." *See* W. Prosser, "Torts" at 166 (4th ed. 1971).

Subsection (C) indicates that compliance with industry custom is merely evidence that the trier of fact may consider in determining whether a product was defective under Subsections 104 (B) and (C). There is strong support in the case law for this approach. *See. e.g.,* "Bruce v. Martin-Marietta Corp.," 544 F.2d. 442 (10th Cir. 1976); "Baker v. Chrysler Corp.," 55 Cal. App. 3d 710, 127 Cal. Rptr. 745 (1976); "Maxted v. Pacific Car & Foundry Co., 527 P.2d 832 (Wyo. 1974); "Roach v. Kononen," 269 Or. 457, 525 P.2d 125 (1974); "Olson v. Arctic Enterprises, Inc." 349 F. Supp. 761 (D. N.D. 1972).

Subsection (C) also permits introduction of evidence of non-compliance with custom—evidence likely to be introduced by a product liability claimant. While it might be argued that non-compliance with custom should indicate that the product was defective, situations may arise where a product seller followed an alternative procedure that was no less safe (perhaps even safer) than the custom in the industry. For that reason, non-compliance with custom does not create a situation where the trier of fact should consider the product defective *per se.*

Subsection (C) treats compliance or non-compliance with non-governmental product standards in the same manner as custom. Compliance or non-compliance with such standards is admissible in evidence when relevant to the issue before the court. Privately developed standards—for both design and performance—vary widely in their nature and quality. While almost all privately developed standards are labeled "minimum" (suggesting a standard below that which a product seller could reasonably achieve), some standards reach the best level that can be obtained as a practical technological matter. *See* "Task Force Report" at IV–13–17. On the other hand, some are clearly below the level of safety appropriate as a defense in a product liability case. *See* "Report of the National Commission on Product Safety" at 48 (1978) ("chronically inadequate both in scope and permissible level of risk").

Compliance with standards that are rigorous and objective (in that they were developed through careful, thorough product testing and a formal product safety evaluation, and up-to-date in light of the technological and scientific knowledge reasonably available at the time the product was manufactured) suggests that a product was not defective. Failure to comply with such standards, especially performance standards, suggests that it was

defective. Nevertheless, because of the variance in the nature and quality of privately developed safety standards, the Act has eschewed *per se* rules in this area. *See* "Poches v. J. J. Newberry Co.," 549 F.2d 1166 (8th Cir. 1977).

Subsection (D), defining "practical technological feasibility," should be contrasted with Subsection (B)'s definition of "custom." The Subsection (D) definition contemplates a level of safety that was feasible, as a practical matter, at the time of manufacture. "Feasibility" includes economic considerations such as the ability of a product seller to price a product so that it is competitive, but excludes financial considerations peculiar to a particular product seller, such as its cash flow at the relevant time.

The definition's emphasis on *feasibility* addresses consumer concerns with "state-of-the-art" or "custom" defenses that could allow an industry or business to be shielded from liability when it has "negligently" lagged behind in both developing and utilizing safety technology.

Subsection (E) indicates that when a product seller proves by a preponderance of the evidence that it was not within practical technological feasibility to make the product safer, the product seller shall not be subject to liability. This is in accord with the great majority of case law. *See, e.g.,* "Olson v. Arctic Enterprises, Inc.," *supra;* "Wilson v. Piper Aircraft Corp.," 282 Or. 61, 577 P.2d 1322, 1326 (1978) (". . . plaintiff's *prima facie* case of a defect must show more than the technical possibility of a safe design"); "Bruce v. Martin-Marietta Corp.," *supra;* "Maxted v. Pacific Car & Foundry Co.," *supra;* "Roach v. Kononen," *supra. Cf.* "Ky. Rev. Stat. Ann." Section 411.310(2) (Supp. 1978) (includes custom). *But cf.* "Colo. Rev. Stat." Section 13–21–403 (Supp. 1978) ("state of the art" presumption only).

Significantly, only a few intermediate appellate court decisions, primarily from one state, impose liability if the product was in accord with the technological, mechanical, and scientific knowledge reasonably feasible for use at the time of manufacture. *See, e.g.,* "Gelsumino v. E.W. Bliss Co.," 10 Ill. App. 3d 604, 295 N.E. 2d 110 (1973), and its progeny. *But see* "McClellan v. Chicago Transit Authority," 34 Ill. App. 3d 151, 340 N.E.2d 61 (1975). *Compare* "Olson v. A. W. Chesterton Co.," 256 N.W. 2d 530 (N.D. 1977).

In order to meet appropriate consumer group concerns, Subsection (E) provides four exceptions to the defense. First, the defense will not apply if the product seller knew or had reason to know of the danger and, with that knowledge, acted unreasonably in selling the product at all. *See also* Subsection 106(B)(1) and analysis. This exception would only apply in very unusual situations. For example, a child's toy might comply with what was technologically feasible but, because of its danger, it would be unreasonable behavior to market the product for young children. Similarly, it would be unreasonable to manufacture a home heating unit with a radium core unless technology had reached a point at which the inhabitants of the home (and others) would be protected from radiation.

Second, although the product was in accord with the "practical technological feasibility," it may be defective in construction. It is a basic principle of this Act to apply strict liability against the manufacturer in that case. *See* Subsection 104(A) and analysis.

Third, although the product complied with the "practical technological feasibility" at the time of manufacture, the product seller may have failed to meet its post-manufacture duty to warn or instruct under Subsection 104(C)(6).

Finally, although its product was in accord with "practical technological feasibility," a product seller cannot escape strict liability for express warranty under Subsection 104(D) or 105(B).

* * * * *

Code

Sec. 108. Relevance of Legislative or Administrative Regulatory Standards and Mandatory Government Contract Specifications

(A) When the injury-causing aspect of the product was, at the time of manufacture, in compliance with legislative regulatory standards or administrative regulatory safety standards relating to design or performance, the product shall be deemed not defective under Subsection 104(B), or, if the standard addressed warnings or instructions, under Subsection 104(C) or 105(A), unless the claimant proves by a preponderance of the evidence that a reasonably prudent product seller could and would have taken additional precautions.

(B) When the injury-causing aspect of the product was not, at the time of manufacture, in compliance with legislative regulatory standards or administrative regulatory safety standards relating to design or performance, the product shall be deemed defective under Subsection 104(B), or, if the standard addressed warnings or instructions, under Subsection 104(C) or 105(A), unless the product seller proves by a preponderance of the evidence that its failure to comply was a reasonably prudent course of conduct under the circumstances.

(C) When the injury-causing aspect of the product was, at the time of manufacture, in compliance with a mandatory government contract specification relating to design, this shall be an absolute defense and the product shall be deemed not defective under Subsection 104(B), or, if the specification related to warnings or instructions, under Subsection 104(C) or 105(A).

(D) When the injury-causing aspect of the product was not, at the time of manufacture, in compliance with a mandatory government contract specification relating to design, the product shall be deemed defective under Subsection 104(B), or, if the specification related to warnings or instructions, under Subsection 104(C) or 105(A).

Analysis

Sec. 108. Relevance of Legislative or Administrative Regulatory Standards and Mandatory Government Contract Specifications

Product sellers have contended that it is unfair to deem a product defective when the challenged aspect of that product conformed to an applicable administrative or legislative regulatory standard. They note that considerable time and thought are spent in the development of such standards and that the standards are frequently subject to intense public scrutiny prior to the time of their official adoption. Product sellers point to legislative and administrative standards as a resource to provide some predictability within the scope of product liability law. They contend that it is unfair to allow lay jurors to reevaluate a standard that has presumably been drafted by government experts. Furthermore, some product liability loss prevention experts suggest that a defense based on compliance with standards will create incentives for manufacturers to comply with such standards. *See* Task Force "Selected Papers" at 266 (Remarks of Professor Alvin S. Weinstein).

On the other hand, some consumer groups maintain that government standards are often the result of compromise decisions—decisions that are sometimes unduly influenced by industry. These consumer groups point out that some government regulatory bodies may have insufficient personnel or expertise to make independent judgments. The general approach of courts, as well as that embodied in the "Consumer Product Safety Act," 15

"U.S.C." Section 2074(A) (1976) and the "National Traffic and Motor Vehicle Safety Act," 15 "U.S.C." Section 1391 (2) (1976), is that government standards are only minimum standards, and that compliance should not be deemed an absolute defense in product liability actions. *See* "Roberts v. May,"——Colo. App.——, 583 P. 2d 305, 308 (1978). In spite of this, some states have enacted statutes that grant this effect to such compliance. *See* "N.D. Cent. Code" Section 28–01.1–05(3) (Supp. 1979); "Utah Code Ann." Section 78–15–6 (1977); "Colo. Rev. Stat." Section 13–21–403 (Supp. 1978).

Nevertheless, case law also suggests that government safety standards are often deemed sound and appropriate for application to tort law clains. *See* "Jones v. Hittle Serv., Inc.," 219 Kan. 627, 549 P. 2d 1383 (1976) (universally accepted standards for odorizing LP gas outweigh expert opinion); "McDaniel v. McNeil Laboratories, Inc.," 196 Neb. 190, 241 N.W. 2d 822 (1976) (determination of the FDA prevails in absence of proof that the manufacturer furnished incomplete, misleading, or fraudulent information); "Simien v. S.S. Kresge Co.," 566 F. 2d 551 (5th Cir. 1978) (compliance with flammability standard); "Bruce v. Martin-Marietta Corp.," 544 F. 2d 442, 446 (10th Cir. 1976) (claimants did "not present any more stringent standards which might have been applicable at the time of manufacture").

The approach taken in Subsection (A) is based on these cases and on the "Restatement (Second) of Torts" Section 288C (1965). When the specific injury-causing aspect of the product conformed to or was in compliance with the legislative or administrative regulatory standard, the product is deemed not defective under Subsection 104(B) when design is relevant, or under Subsection 104(C) or 105(A) when the duty to warn or instruct is relevant, unless the claimant proves by a preponderance of the evidence that a reasonably prudent product seller could and would have taken additional precautions.

This approach has enabled claimants to prevail when legislative or administrative standards did not meet an appropriate level of safety. For example, in "Raymond v. Riegel Textile Corp.," 484 F. 2d 1025 (1st Cir. 1973), the claimant was able to show that a standard promulgated under the "Flammable Fabrics Act" was outdated. *See also* "Burch v. Amsterdam Corp.," 366 A. 2d 1079 (D.C. 1976) (when manufacturer knows of greater dangers not included in a statutorily mandated warning, it should bring those precautions to the attention of product users). On the other hand, it recognizes that government safety standards *may* provide an adequate basis for evaluating safety in tort law.

Subsection (B) makes it clear that when the injury-causing aspect of the product did not conform or was not in compliance with a legislative or administrative regulatory standard, the product shall be deemed defective under Subsection 104(B), when design is relevant, or Subsection 104(C), when duty to warn is relevant, unless the product seller shows by a preponderance of the evidence that its failure to comply amounted to reasonably prudent conduct under the circumstances. *See* "Restatement (Second) of Torts" Section 286 (1965). A product seller may be able to prevail under Subsection (B) by showing that compliance would have created greater dangers than non-compliance would have. *Cf.* "Davison v. Williams," 251 Ind. 448, 242 N.E. 2d 101 (1968) (violation of safety regulation may be justified in circumstances).

Subsection (C) addresses a highly specialized problem with respect to a product that had been manufactured strictly in accordance with mandatory specifications set forth in a government contract. When compliance with such a standard leads to an injury, the government, not the product seller, is the appropriate defendant. As the court in "Hunt v. Blasius," 55 Ill. App. 3d 14, 370 N.E. 2d 617, 621–22 (1977), indicated, "public policy dictates that bidders who comply strictly with governmental specifications should be shielded from liability in any respect in which the product complies." When enacting this provision, a legislature should ensure that its own state government bears financial responsibility (either through tort law or through a compensation system) for the harm it has caused by directing that the product conform to contract specifications.

Subsection (D) provides a counterweight to Subsection (C). If the bidder fails to comply with a mandatory government contract specification, and this failure to comply caused the claimant's injury, the product seller will deemed liable under Subsection 104(B) if the specification related to design, or under Subsection 104(C) or 105(A) of the specification related to instruction or warnings. If the manufacturer's compliance exceeded the government regulation and the product failed, liability should not be imposed under this Section—in that case, the technical "failure to comply" would not be the proximate cause of the injury that befell claimant.

* * * * *

Code

Sec. 109. Notice of Possible Claim Required

(A) An attorney who anticipates filing a claim shall notify all product sellers against whom the claim is likely to be made. The notice of claim shall:

(1) Identify the product as specifically as possible;

(2) State the time, place, circumstances, and events giving rise to the claim;

(3) Give an estimate of compensation or other relief to be sought.

(B) The attorney shall give notice of claim within six (6) months of the date of entering into an attorney-client relationship with the claimant in regard to the claim. For the purposes of Section 109, such a relationship arises when the attorney, or any member or associate of the attorney's firm, agrees to serve the claimant's interests in regard to the anticipated claim.

(C) If the claimant's attorney requests the information at the time the notice of claim is given, the product seller receiving the notice of claim shall promptly furnish the claimant's attorney with the names and addresses of each person whom the product seller knows to be in the chain of manufacture and distribution of the product, and who is likely to be subject to liability under Sections 104 or 105. Any product seller who fails to furnish such information may be subject to liability as provided in Subsection (E).

(D) A claimant who delays entering into an attorney-client relationship so as to delay unreasonably the notice of claim required by Subsection (A) may be subject to liability as provided in Subsection (E).

(E) Any party to the product liability claim or any attorney representing such a party who suffers a monetary loss associated with the litigation of the claim caused by the failure of a claimant or a claimant's attorney, or of a product seller or its attorney, to comply with the requirements of this Section may recover pecuniary damages, costs, and reasonable attorneys' fees from that party. Failure to comply with the requirements of Section 109 does not affect the validity of any claim or defense under this Act.

Analysis

Sec. 109. Notice of Possible Claim Required

The purpose of Section 109 is to inform product sellers at an early date

that the products they produce may be defective. Under present law, a claimant can delay informing a product seller of a claim until the statute of limitation has nearly expired. In most jurisdictions, this period is two or three years. Although 77.8 percent of all bodily injury claims are reported within six months, the 22.2 percent that are not reported during this period are of concern because they represent about 68 percent of the claim payments. "ISO Closed Claims Survey" at 100 (1977).

A reasonable notice of claim requirement in product liability law promotes the interests of consumers and product users because it is a low-cost means of helping to assure product safety. Presumably, if informed about defective conditions at an early stage, a product seller is likely to take action to correct such conditions and thus prevent future injuries. This is why notice-of-claim provisions have been utilized in other contexts. *See, e.g.,* "U.C.C." Section 2–607 (warranty breaches); 18 E. McQuillan, "Municipal Corporations" Section 53.154 (3d ed. 1977) (suits against municipalities for injuries); 3 A. Larson, "Workmen's Compensation Law" Section 78.00 *et seq.* (1976) (notice of injury to employer). *See also* Comment, "Notice Requirement in Warranty Actions Involving Personal Injury," 51 "Calif. L. Rev." 586 (1963); Phillips, "Notice of Breach in Sales and Strict Tort Liability Law: Should There Be a Difference?," 47 "Ind. L. J." 457, 468–69 (1972) (observing that requiring notice of claim may encourage defendants to make reasonable settlements).

This Section is adapted from the recently enacted "Minn. Stat. Ann." Section 604.04 (Supp. 1978). It differs from analogous notice-of-claim provisions in that it does not provide that a claim or defense will be barred by the failure of the injured party to meet its conditions. As the court noted in "Greenman v. Yuba Power Prods., Inc.," 59 Cal. 2d 57, 377 P.2d 897, 27 Cal. Rptr. 697, 700 (1963), such a provision may

> become a booby trap for the unwary. The injured consumer is seldom 'steeped in the business practice which justifies the rule,' [James, "Products Liability" (pt.2), 34 "Tex. L. Rev. 192, 197 (1955)] and at least until he has had legal advice it will not occur to him to give notice . . . .

Instead, Section 109 places a duty on the attorney to give the notice of claim. It imposes on the attorney the costs of investigation and other litigation expenses which stem from the failure to give notice.

Section 109 also places a burden on the product seller who is notified of an anticipated claim to provide the claimant's attorney with the names and addresses of others whom the product seller knows to be in the chain of manufacture and distribution of the product, and who are likely to be subject to liability under Sections 104 or 105. The product seller is not obligated, however, to supply long lists of every supplier of a component part of its product or every possible wholesale and retain purchaser of it. Product sellers may also be held liable under this Section for litigation costs that stem from the failure to provide the required names.

Subsection 109(E) is limited to losses associated directly with the litigation of the claim in issue and does not apply to possible losses suffered by persons other than a party to the product liability claim or any attorney representing such a party.

Claims arising under Section 109 can be consolidated with the principal product liability claim brought under this Act.

* * * * *

Code

Sec. 110. Length of Time Product Sellers are Subject to Liability

(A) *Useful Safe Life.*

(1) Except as provided in Subsection (A)(2), a product seller shall not be subject to liability to a claimant for harm under this Act if the product seller proves by a preponderance of the evidence that the harm was caused after the product's "useful safe life" had expired.

"Useful safe life" begins at the time of delivery of the product and extends for the time during which the product would normally be likely to perform or be stored in a safe manner. For the purposes of Section 110, "time of delivery" means the time of delivery of a product to its first purchaser or lessee who was not engaged in the business of either selling such products or using them as component parts of another product to be sold.

Examples of evidence that is especially probative in determining whether a product's useful safe life had expired include:

(a) The amount of wear and tear to which the product had been subject;

(b) The effect of deterioration from natural causes, and from climate and other conditions under which the product was used or stored;

(c) The normal practices of the user, similar users, and the product seller with respect to the circumstances, frequency, and purposes of the product's use, and with respect to repairs, renewals, and replacements;

(d) Any representations, instructions, or warnings made by the product seller concerning proper maintenance, storage, and use of the product or the expected useful safe life of the product; and

(e) Any modification or alteration of the product by a user or third party.

(2) A product seller may be subject to liability for harm caused by a product used beyond its useful safe life to the extent that the product seller has expressly warranted the product for a longer period.

(B) *Statute of Repose.*

(1) *Generally.* In claims that involve harm caused more than ten (10) years after time of delivery, a presumption arises that the harm was caused after the useful safe life had expired. This presumption may only be rebutted by clear and convincing evidence.

(2) *Limitations on Statute of Repose.* (a) If a product seller expressly warrants that its product can be utilized safely for a period longer than ten (10) years, the period of repose, after which the presumption created in Subsection (B)(1) arises, shall be extended according to that warranty or promise.

(b) The ten- (10-) year period of repose established in Subsection (B)(1) does not apply if the product seller intentionally misrepresents facts about its product, or fraudulently conceals information about it, and that conduct was a substantial cause of the claimant's harm.

(c) Nothing contained in Subsection (B) shall affect the right of any person found liable under this Act to seek and obtain contribution or indemnity from any other person who is responsible for harm under this Act.

(d) The ten- (10-) year period of repose established in Subsection (B)(1) shall not apply if the harm was caused by prolonged exposure to a defective product, or if the injury-causing aspect of the product that existed at the time of delivery was not discoverable by an ordinary reasonably prudent person until more than ten (10) years after the time of delivery, or if the harm, caused within ten (10) years after the time of delivery, did not manifest itself until after that time.

(C) *Statute of Limitation.* No claim under this Act may be brought more than two (2) years from the time the claimant discovered, or in the exercise of due diligence should have discovered, the harm and the cause thereof.

* * * * *

Analysis

Sec. 110. Length of Time Product Sellers are Subject to Liability

Perhaps more significant than any other single factor alleged to be the cause of the nationwide product liability insurance problem are the rules governing the responsibility of product sellers for older products. Most product liability policies include claims based not only on products manufactured or sold during the given policy year, but also on products manufactured or sold in the past. In the case of sellers of durable goods, this creates an "open-ended" liability situation.

The Supreme Court of Oregon summarized the general common law rule for products with the statement: "[P]rolonged use of a manufactured article is but one factor, albeit an important one, in the determination of whether a defect in the product made it unsafe. . . ." "Tucker v. Unit Crane & Shovel Corp.," 256 Or. 318, 473 P.2d 862 (1970) (boom crane manufactured in 1956, collapsed in 1965). *See also* "Gates v. Ford Motor Company," 494 F. 2d 458 (10th Cir. 1974) (24-year-old tractor); "Kaczmarek v. Mesta Machinery Co.," 463 F.2d 675 (3d Cir. 1972) (30-year-old pickling machine); "Mondshour v. General Motors Corp.," 298 F. Supp. 111 (D. Md. 1969) (bus designed 17 years prior to accident).

Partly in response to this open-ended liability potential, a number of states have enacted statutes of repose that begin at the time a product is first sold and distributed. *See, e.g.*, "1979 Ala. Acts" No. 79–468 Section 3(b) ("10 years after the manufactured product is first put to use"); "Ariz. Rev. Stat. Ann." Section 12–551 (Supp. 1978) ("12 years after the product was first sold for use or consumption. . ."); "Fla. Stat. Ann." Section 95.031(2) (Supp. 1979) ("12 years after the date of delivery of the completed product"); "Ill. Ann. Stat." ch. 83, Section 22.2(b) (Supp. 1979) (12 years from date of first sale or 10 years from sale to actual user-claimant—strict liability); "Ind. Code Ann." Section 33–1–1.5–5 (Supp. 1978) ("10 years after the delivery . . . to the initial user"); "Neb. Rev. Stat." Section 25–224 (Supp. 1978) (10 years after first sale); "Utah Code Ann." Section 78–15–3(1) (1977) (6 years after date of initial purchase; 10 years after date of manufacture).

The advantages of these statutes are that they: (1) establish an actuarially certain date after which no liability can be assessed; and (2) eliminate tenuous claims involving older products for which evidence of defective conditions may be difficult to produce. *See* "Order of Railroad Telegraphers v. Railway Express Agency," 321 U.S. 342, 348–49 (1944).

On the other hand, a fundamental problem with these statutes is that they *may* deprive a person injured by a product of the right to bring a claim based on a defective product before the injury has actually occurred. *See* Johnson, "Products Liability 'Reform': A Hazard to Consumers," 56 "N.C. L. Rev." 677, 689–90 (1978); "Victorson v. Bock Laundry Mach. Co.," 37 N.Y.2d 395, 335 N.E.2d 275, 373 N.Y.S.2d 39 (1975).

The limited available data show that insurers' apprehension about older products may be exaggerated. *See* "ISO Closed Claims Survey" at 105–08 (indicating that over 97 percent of product-related accidents occur within six years of the time the product was purchased and, in the capital goods area, 83.5 percent of all bodily injury accidents occur within ten years of manufacture). Nevertheless, as the "Task Force Report" indicated, the underwriters' concern about *potential* losses associated with older products may be an important factor in the recent increase in liability insurance premiums for manufacturers of durable goods. *See* "Task Force Report" at VII–21.

Section 110 attempts to provide insurers and product sellers with some security against stale claims, while preserving the claimant's right to obtain damages for injuries caused by defective products. It accomplishes this result through provisions on useful safe life, a statute of repose, and a statute of limitation.

(A) *Useful Safe Life.* The common law in most states is that "[t]he age of an allegedly defective product must be considered in light of its expected useful life and the stress to which it has been subjected." "Kuisis v. Baldwin-Lima-Hamilton Corp.," 457 Pa. 321, 319 A.2d 914, 923 (1974) (brake-locking mechanism on a crane failed after more than 20 years of use). The "Kuisis" court noted further that "in certain situations the prolonged use factor may loom so large as to obscure all others in a case." *Id.*

The basic problem has been the vagueness of the concept. Thus, while the "Task Force Report" noted that "if a useful life limitation were identified in statutory form, it might be expected that it would be given more serious attention by both judge and jury" ("Task Force Report" at VII–27), it also observed that "the concept would still lack specificity." *Id.* Subsection (A) is designed to define the concept with as much specificity as possible.

The Subsection was derived from "Minn. Stat. Ann." Section 604.03 (Supp. 1978). It serves to remind the court and the trier of fact that a product seller may be held liable only for harms caused during the useful *safe* life of the product. It does not attempt to apply fixed useful safe life standards for all products. Such an approach is not possible as a practical matter. *See* Phillips, "An Analysis of Proposed Reform of Products Liability Statutes of Limitations," 56 "N.C. L. Rev." 663, 673 (1978). Rather, it identifies factors that will assist the court and the trier of fact in determining how long a product can reasonably be expected to perform or be stored in a safe manner.

Section 110 uses the term "useful safe life" (not "useful life," a term which has already acquired a meaning in the law of taxation), because the period in which the product can have some "utility" may be well beyond the period in which the product is "safe." For example, a driver may continue to "use" tires that lack sufficient treads for safety.

A product seller may raise the "useful safe life" of a product as an affirmative defense in a product liability claim. The period of time begins at the time of delivery of the product and extends through the time during which the product would normally be likely to perform in a safe manner.

"Time of delivery" is defined as the time of delivery of a product to its first purchaser or lessee not engaged in the business of either selling such products or using them as component parts of another product to be sold. "Time of delivery" is an important concept in the Act because it marks the last time a product seller has physical control of the product and the first time that the product is in the hands of someone other than a product seller. The useful safe life and repose periods of Section 110 begin to run from this point in time.

The Section then sets forth a series of factors that will be of assistance to the court and jury in determining whether the period of time has expired. The product seller need not introduce evidence with respect to each of the listed factors. Rather, each of the litigants in a product liability claim may introduce evidence on those factors listed which, they believe, will support their respective contentions. In some cases, evidence on one or a few of the factors may be regarded as dispositive of the "useful safe life" issue and, when this occurs, the lack of evidence on one of the other factors normally will not affect the outcome of the case. The product seller has the burden of proof upon the issue.

Factors (a) through (c) under Subsection (A) are basically self-explanatory. Factor (d) refers to the

useful safe life stated *by the product seller.* A product seller can place some reliance on this provision when it has indicated that a product should not be used beyond a certain period of time. However, Subsection (A) does not give the product seller absolute power to limit a product's useful safe life. While this was suggested in "Velez v. Craine & Clark Lumber Corp.," 33 N.Y.2d 117, 305 N.E.2d 750, 350 N.Y.S.2d 617 (1973), almost all courts would insist on retaining judicial power to determine whether the product seller's limitation was a reasonable one. *Cf.* "Henningsen v. Bloomfield Motors, Inc.," 32 N.J. 358, 161 A.2d 69 (1960). Further, even the "Velez" court indicated that a product seller's limitation on useful life could not bind the rights of a non-purchaser claimant. Nevertheless, where the product seller imposes a reasonable limitation, made in good faith to protect the user, the trier of fact shoud give very serious consideration to this fact in determining whether the product was used beyond its useful safe life.

Factor (e), dealing with modifications of the product by users or third parties, relates to conduct that might shorten or lengthen the useful life of the product. While the Act treats product modifications in Section 112, they are also factors in determining whether a product has been used beyond its useful safe life.

(B) *Statute of Repose.*

(1) *Generally.* Statutes of repose differ from statutes of limitation in that they set a fixed limit after the time of the product's manufacture, sale, or delivery beyond which the product seller will not be held liable. The rationale of such statutes is threefold. First, the fact that a product has been used safely for a substantial period of time is some indication that it was not defective at the time of delivery. Second, if a product seller is not aware of a claim, the passing of time may make it extremely difficult to construct a good defense because of the obstacle of securing evidence. Although the burden of proof on the issue of defectiveness remains on the claimant under the Act, a jury, as a practical matter, may demand an explanation from a product seller when the claimant has suffered a severe injury. The third rationale is that persons ought to be allowed, as a matter of policy, to plan their affairs with a reasonable degree of certainty. This goes to the heart of the product liability insurance rate-setting problem. Even though past data show that 83.5 percent of bodily injury claims arise within a ten-year period,[13] there is no safeguard in the existing law that the past will portend the future. There is always the possibility that the number of claims for older products will increase. *See* "ISO Closed Claims Survey" at 107.

On the other hand, consumers are justifiably concerned about overly broad absolute cut-offs of their right to sue. This provision recognizes consumer concerns in three basic ways:

(1) The term of the statute is ten years—beyond the term enacted or proposed in a number of states;

(2) The statute begins to run at the time of delivery, not the time of manufacture; and

(3) The statute does not contain an absolute cut-off, but rather a presumption that the product has been used beyond its useful safe life. Colorado law utilizes this approach. "Colo. Rev. Stat." Section 13–21–403(3) (Supp. 1978). Most other state product liability statutes do not.

Consumer concerns are also addressed by three of the four additional restrictions contained in Subsection (B)(2).

(2) *Limitations on Statute of Repose.* This Subsection contains four key limitations on its scope of operation.

First, Subsection (B) does not apply when a product seller has expressly warranted or promised that a product can be used safety for a period longer than ten years. *See* Subsection 102(K) (definition of "express warranty").

Second, the statute of repose provisions do not apply when a product seller intentionally misrepresented facts about its product and this misrepresentation was a substantial cause of claimant's harm.

Third, Subsection (B) does not affect contribution and indemnity claims. Thus, an intermediate product seller will not have to absorb a liability loss that was the true responsibility of the original manufacturer. *See* Defense Research Institute, "Products Liability Position Paper" at 22 (monograph 1976); *see also* Phillips, *supra*, 56 "N.C. L. Rev." at 670–71 (1978).

Fourth, there is an exception for products that cause perceptible harm only through prolonged exposure (*see, e.g.*, "Michie v. Great Lakes Steel Div., National Steel Corp.," 495 F.2d 213 (6th Cir. 1974)), or that cause harms that take many years to manifest themselves. *See* "Sindell v. Abbott Laboratories," 85 Cal. App. 3d 1, 149 Cal. Rptr. 138 (1978). An exception is also made for the unusual situation in which a product contains, at the time of delivery, a hidden defect that is not discoverable by a reasonably prudent product user and does not manifest itself until after a ten-year period has expired. *See* "Mickel v. Blackmon," 252 S.C. 202, 166 S.E.2d 173 (1969) (plastic used on gearshift lost its resiliency when exposed to sunlight).

If the ten-year presumption does not apply, a product seller can still prove that the product has been utilized beyond its useful safe life under Subsection (A).

(C) *Statute of Limitation.* Tort statutes of limitation traditionally begin at the time a person is injured. This Subsection follows that approach. Nevertheless, in accord with justified consumer concerns, Subsection (C) extends the limitation period beyond the time of harm in situations where the claimant would have no reason to know about the harm or the causal connection to a defective product (*e.g.*, the case of long-term pharmaceutical harms). This reflects a general trend in both statutory and case law. *See* Birnbaum, " 'First Breath's' Last Gasp: The Discovery Rule in Products Liability Cases," 13 "Forum" 279 (1977); and Annot., 91 "A.L.R.3d" 991 (1979). The two-year period represents the length of the traditional state statute of limitation based on claims for negligence. In light of the Act's adoption of the discovery rule, this is the maximum period that seemed to be appropriate.

The underlying philosophy of this Section is congruent with Sections 105 and 106, which shield product sellers from liability for risks that they would have no reason to discover at the time of manufacture.

* * * * *

Code

Sec. 111. Comparative Responsibility and Apportionment of Damages

(A) *Comparative Responsibility.* All claims under this Act shall be governed by the principles of comparative responsibility. In any claim under this Act, the comparative responsibility of, or attributed to, the claimant shall not bar recovery but shall diminish the award of compensatory damages proportionately, according to the measure of responsibility attributed to the claimant.

(B) *Apportionment of Damages.*

(1) In all claims involving comparative responsibility, the court, unless otherwise agreed by all parties, shall instruct the jury to answer special interrogatories or, if there is no jury, the court shall make findings, indicating:

(a) The amount of damages each claimant would be entitled to recover if the comparative responsibility of each party were disregarded; and

(b) The percentage of the total responsibility of all parties to each claim that is to be allocated to each claimant;

[13] Figure for capital goods.

defendant; third-party defendant; person or entity who misused, modified, or altered a product under Subsection 112 (C) or (D), [or who voluntarily and unreasonably used or stored a product with a known defective condition under Subsection 112(B)]; and person released from liability under Subsection 113(E). Under this Subsection, the court may determine that two or more persons are to be treated as a single party.

(2) When the claimant's employer's or co-employee's fault is considered, damages shall be reduced in accordance with Subsection 114(A), if applicable, or by the percentage of responsibility apportioned to such employer or co-employee, if that amount is greater. When a person released from liability under Subsection 113(E) would otherwise be liable under this Act, damages shall be reduced by the percentage of responsibility apportioned to such person.

(3) In determining the percentages of responsibility, the trier of fact shall consider, on a comparative basis, both the nature of the conduct of each person or entity responsible and the extent of the proximate causal relation between the conduct and the damages claimed.

(4) The court shall determine the award of damages to each claimant in accordance with the findings and enter judgment against each party liable. For purposes of contribution under Section 113, the court shall also determine and state in the judgment each party's equitable share of the obligation to each claimant in accordance with the respective percentages of responsibility.

(5) Damages are to be apportioned severally, and not jointly, when a party is responsible for a distinct harm, or when there is some other reasonable basis for apportioning that party's responsibility for the harm. Otherwise, judgment shall be entered against each party liable on the basis of the rules of joint and several liability.

(6) When one or more parties made a substantial contribution to an indivisible harm, or for other reasons under the common law of the state is a joint tortfeasor, upon motion made not later than one (1) year after judgment is entered, the court shall determine whether all or part of a joint tortfeasor's share of the obligation is uncollectible from that joint tortfeasor.

If the court's finding is in the affirmative, the court shall reallocate any uncollectible amount among a claimant found to be responsible and other parties who are joint tortfeasors with the party whose share is uncollectible. The reallocation shall be made according to the respective percentages of responsibility of each party.

* * * * *

Analysis

Sec. 111. Comparative Responsibility and Apportionment of Damages

(A) *Comparative Responsibility.* Subsection (A) attempts to resolve existing legal uncertainty about the relevance of a claimant's conduct and the comparative responsibility of others who contributed to the claimant's harm. It applies principles of comparative responsibility to situations where more than one person has some responsibility for the product-related incident. *Cf.* "Uniform Comparative Fault Act" ("UCFA") Section 1. The consumer-oriented fairness of pure comparative responsibility is adopted, as compared with the "non-discriminating rough justice of the modified type. . . ." "Prefatory Note," "UCFA".

Although there is no assurance that the use of comparative responsibility principles will lower the cost of product liability claims, the inherent fairness of such principles has led to their inclusion in the "UCFA" by the National Conference of Commissioners of Uniform State Laws. Section 111 borrows extensively from the"UCFA" and its accompanying commentary.

Some courts and commentators have voiced concern about the semantic and theoretical difficulties of mixing the "apples" of negligence with the "oranges" of strict liability. *See, e.g.,* "Kirkland v. General Motors Corp.," 521 P.2d 1353 (Okla. 1974); Robinson, "Square Pegs (Products Liability) in Round Holes (Comparative Negligence)," 52 "Cal. St. B.J." 16 (1977). Nevertheless, these concerns appear to be more theoretical than real.

The utility of comparative responsibility for product liability cases has been appreciated both by state legislatures[14] and courts.[15] It has also been recommended by a congressional subcommittee. "LaFalce Subcommittee Report,"*supra* at 76.

Section 111 places a strong incentive for loss prevention on the party who is best able to accomplish that goal. It also avoids burdening the careful product user with liability insurance costs assessed to persons who misuse or are otherwise at fault in their handling of products. While some economic analyses indicate that a comparative responsibility system creates a risk of economic inefficiency because of an overinvestment in safety, the drafters of the Act have made a value judgment that such an "overinvestment" is worth making.

(B) *Apportionment of Damages.* In order to apply comparative responsibility principles under this Act, it is necessary for the trier of fact to supply certain information in special interrogatories. Subsection (B)(1)(a), which is based on "UCFA" Subsection 2(A)(1), indicates that the trier of fact should set forth the amount of damages a claimant would receive if each party's comparative responsibility were disregarded. This helps assure that the trier of fact does not inflate or deflate the amount of damages claimant would receive if the claimant were free from responsibility.

Subsection (B)(1)(b), which is based on "UCFA" Subsection 2(a)(2), requires the trier of fact to indicate the percentage of responsibility allocated to each claimant; defendant; third-party defendant; and person or entity who has misused, altered, or modified products under Subsections 112 (C) or (D). It also includes persons or entities who voluntarily and unreasonably used or stored a product with a known defective condition under Subsection 112(B)(2). As is noted in the analysis to that Subsection, this is an optional provision.

Although it is difficult to apportion the responsibility of an absent employer or co-employee who is immune from tort liability due to Worker Compensation laws, such an approach is necessary to ensure fairness to product sellers. It is also fair to employees because they have given up their right to sue in tort for harms caused by their employers' or co-employees' fault in exchange for their Worker Compensation benefits.

Subsection 111(B)(2) indicates that in cases of product misuse or alteration where an employer's or co-employee's fault is considered, damages should be reduced by the amount of Worker Compensation benefits the worker received or will receive in accordance with Subsection 114(A), or by the percentage of responsibility apportioned to such employer or co-employee, whichever is greater.

Thus, for example, in a case in which a manufacturer is found to have been 40 percent responsible, the injured employee's employer was 60 percent responsible, and Worker Compensation

[14] *E.g.*, "Ark. Stat. Ann." Section 27–1763–1765 (Supp. 1977); "Me. Rev. Stat." tit. 14 Section 156 (Supp. 1978); "Mich. Comp. Laws Ann." Section 600.2949 (Supp. 1978), "Mich. Stat. Ann." Section 27A.2949; Conn. (1979 Conn. Pub. Acts 79–483, Section 4).

[15] *E.g.*, "Thibault v. Sears, Roebuck & Co.," 395 A.2d 843 (N.H. 1978); "Daly v. General Motors Corp.," 20 Cal. 3d 725, 575 P.2d 1162, 144 Cal. Rptr. 380 (1978); "Busch v. Busch Constr., Inc.," 262 N.W.2d 377 (Minn. 1977); "Butaud v. Suburban Marine & Sport. Goods, Inc.," 555 P.2d 42 (Alaska 1976).

benefits constituted 15 percent of the damages, then the claimant's damages would be reduced by 60 percent, not 85 percent. On the other hand, if the manufacturer had been 80 percent responsible, the employer was 20 percent responsible, and Worker Compensation benefits constituted 30 percent of the damages, then the claimant's damages would be reduced by 30 percent, which was the amount of the Worker Compensation benefits and was greater than the employer's percentage (20 percent) of responsibility.

When a released party's fault is considered, the process is simpler. Damages are reduced according to the percentage of fault which the trier of fact attributes to that person or entity.

Subsection (B)(1)(b) also indicates that persons who have been released under Subsection 113(E) shall be included in the apportionment of responsibility. This approach is in accord with the "UCFA" and the majority of cases that have addressed this issue. Again, while it is difficult to apportion an absent person's fault, the approach helps to ensure that all releases are executed in good faith. *See* "Frey v. Snelgrove," ——— Minn. ———, 269 N.W.2d 918 (1978); "Bartels v. City of Williston," 276 N.W.2d 113 (N.D. 1979); "Pierringer v. Hoger," 21 Wis. 2d 182, 124 N.W.2d 106 (1963).

Subsection (B)(3), which is based on "UCFA" Subsection 2(b), provides a general guideline to assist the trier of fact in comparing responsibility among the parties. The "UCFA" comments (Section 2) indicate that in appropriate cases, the trier of fact may also consider:

(1) Whether the conduct was mere inadvertence or engaged in with an awareness of the danger involved;

(2) The magnitude of the risk created by the conduct, including the number of persons endangered and the potential seriousness of the injury;

(3) The significance of what the actor was seeking to attain by his conduct;

(4) The actor's superior or inferior capacities; and

(5) The particular circumstances, such as the existence of an emergency requiring a hasty decision.

"UCFA Comment" Section 2 ("percentages of fault").

"The extent of the proximate causal relation between the conduct and the damages claimed" refers to proximate cause as opposed to cause-in-fact. While, at times, the distinction may be a difficult one to draw, this Act is premised on apportioning responsibility only—pure causation in terms of cause-in-fact is irrelevant to that concept. *See* Malone, "Ruminations on Cause-in-Fact," 9 "Stan. L. Rev." 60 (1956). Proximate cause, on the other hand, is an important concept in this Section. In order for the product user's conduct to bring about a reduction or apportionment of damages, it must be a proximate cause of the harm.

The importance of the distinction between cause-in-fact and proximate cause as applied to this Section may be illustrated by the so-called "second collision case" in which the claimant sues the manufacturer for enhanced injuries due to an alleged defect in the automobile, although the initial impact of the accident was caused by the claimant's or another person's negligent driving. When the enhanced injuries caused by the "second collision" within the automobile can be reasonably separated from those injuries caused by the initial collision, damages should be approximately divided. Nevertheless, the negligent driving should not be compared with the manufacturer's conduct because it is not the proximate cause of the enhanced injuries, even though it is clearly a cause-in-fact. *See* "Austin v. Ford Motor Co.," 86 Wis. 2d 628, 273 N.W. 2d 233, 239 (1979).

On the other hand, there may be "second collision cases" in which the enhanced injuries and the initial impact injuries cannot be reasonably separated. Such a case might arise when an allegedly defective automobile was hit at high speed. *See* "Fietzer v. Ford Motor Co.," 590 F. 2d 215 (7th Cir. 1978). In such a case, the driver's conduct is considered a proximate cause of the harm for purposes of comparative responsibility.

Subsection (B)(3), which is based on "UCFA" Subsection 2(c), helps to assure that the mathematics of comparative responsibility will be correctly determined. The court must determine the award for each claimant according to the findings made under this Subsection.

Subsections (B) (4) and (5) indicate that the common law rules of joint and several liability continue to apply under this Act. In this connection, it is important for the court to determine whether the defendant *is* a joint tortfeasor, *i.e.*, if its tortious conduct was a substantial cause of an indivisible injury, or it is otherwise deemed to have that status (*e.g.*, persons acting in concert, express or implied; persons vicariously liable for the torts of another). *See* W. Prosser, "Torts" at 297–99 (4th ed. 1971). A defendant who caused only a divisible part of the claimant's harm is only severally liable for that portion. *See* "UCFA Comment" Section 4, and "Restatement (Second) of Torts" Section 433A (1965).

As with "UCFA" Subsection 2(c), the judgment for each claimant will also show the share of each party's total obligation to the claimant. This should save litigation costs and avoid the need for a special motion or a separate action on the issue.

Subsection (B)(5) follows "UCFA" Subsection 2(d) in providing for the reallocation of damages among the parties responsible when one of the parties' share is uncollectible. The reallocation procedure applies to claimants who are contributorily at fault and joint tortfeasors who have made a substantial contribution to claimant's harm.

* * * * *

Code

Sec. 112. Conduct Affecting Comparative Responsibility

(A) *Failure to Discover a Defective Condition.*

(1) *Claimant's Failure to Inspect.* A claimant is not required to have inspected the product for a defective condition. Failure to have done so does not render the claimant responsible for the harm caused or reduce the claimant's damages.

(2) *Claimant's Failure to Observe an Apparent Defective Condition.* When the product seller proves by a preponderance of the evidence that the claimant, while using the product, was injured by a defective condition that would have been apparent, without inspection, to an ordinary reasonably prudent person, the claimant's damages shall be subject to reduction. The procedural principles governing reduction of damages are set forth in Section 111.

(3) *A Non-Claimant's Failure to Inspect for Defects or to Observe an Apparent Defective Condition.* A non-claimant's failure to inspect for a defective condition or to observe an apparent defective condition that would have been obvious, without inspection, to an ordinary reasonably prudent person, shall not reduce claimant's damages.

(B) *Use of a Product With a Known Defective Condition.*

(1) *By a Claimant.* When the product seller proves, by a preponderance of the evidence, that the claimant knew about the product's defective condition, and voluntarily used the product or voluntarily assumed the risk of harm from the product, the claimant's damages shall be subject to reduction to the extent that the claimant did not act as an ordinary reasonably prudent person under the circumstances. Under this Subsection, the trier of fact may

determine that the claimant should bear sole responsibility for harm caused by a defective product. The procedural principles governing reduction of damages are set forth in Section 111.

*Optional Section

[(2) *By a Non-Claimant Product User.* If the product seller proves by a preponderance of the evidence that a product user, other than the claimant, knew about a product's defective condition, but voluntarily and unreasonably used or stored the product and thereby caused claimant's harm, the claimant's damages shall be subject to apportionment. The procedural principles governing apportionment of damages are set forth in Section 111.]

(C) *Misuse of a Product.*

(1) "Misuse" occurs when the product user does not act in a manner that would be expected of an ordinary reasonably prudent person who is likely to use the product in the same or similar circumstances.

(2) When the product seller proves, by a preponderance of the evidence, that product misuse by a claimant, or by a party other than the claimant or the product seller, has caused the claimant's harm, the claimant's damages shall be subject to reduction or apportionment to the extent that the misuse was a cause of the harm. Under this Subsection, the trier of fact may determine that the harm arose solely because of product misuse. The procedural principles governing reduction or apportionment of damages are set forth in Section 111.

(3) Under this Subsection, subject to state and federal law regarding immunity in tort, the trier of fact may determine that a party or parties who misused the product and thereby caused claimant's harm should bear partial or sole responsibility for harm caused by the product and are subject to liability to the claimant.

(D) *Alteration or Modification of a Product.*

(1) "Alteration or modification" occurs when a person or entity other than the product seller changes the design, construction, or formula of the product, or changes or removes warnings or instructions that accompanied or were displayed on the product. "Alteration or modification" of a product includes the failure to observe routine care and maintenance, but does not include ordinary wear and tear.

(2) When the product seller proves, by a preponderance of the evidence, that an alteration or modification of the product by the claimant, or by a party other than the claimant or the product seller, has caused the claimant's harm, the claimant's damages shall be subject to reduction or apportionment to the extent that the alteration or modification was a cause of the harm. Under this Subsection, the trier of fact may determine that the harm arose solely because of the product alteration or modification.

This Subsection shall not be applicable if:

(a) The alteration or modification was in accord with the product seller's instructions or specifications;

(b) The alteration or modification was made with the express or implied consent of the product seller; or

(c) The alteration or modification was reasonably anticipated conduct under Subsection 102(G), and the product was defective under Subsection 104(C) because of the product seller's failure to provide adequate warnings or instructions with respect to the alteration or modification.

The procedural principles governing reduction or apportionment of damages are set forth in Section 111.

(3) Under this Subsection, subject to state and federal law regarding immunity in tort, the trier of fact may determine that a party or parties who altered or modified the product and thereby caused claimant's harm should bear partial or sole responsibility for harm caused by the product and are subject to liability to the claimant.

* * * * *

Analysis

Sec. 112. Conduct Affecting Comparative Responsibility

(A) *Failure to Discover a Defective Condition.*

(1) *Claimant's Failure to Inspect.* Under common law, the product user had an obligation to inspect for defects; failure to do so could bar a claim. *See* "Palmer v. Massey-Ferguson, Inc." 3 Wash. App. 508, 476 P. 2d 713 (1970). However, under modern tort law, the product user is entitled to assume that the product is reasonably safe for its ordinary use. *See* "Restatement (Second) of Torts" Section 402A (1965); "Cepeda v. Cumberland Eng'r. Co.," 76 N.J. 152, 386 A. 2d 816 (1978). Subsection (A) follows these cases and does not require the product user or consumer to inspect a product for a defect. *See* "Kassouf v. Lee Bros.," 209 Cal. App. 2d 568, 26 Cal. Rptr. 276 (1962) (plaintiff, without inspection, ate a chocolate bar containing worms and maggots).

(2) *Claimant's Failure to Observe an Apparent Defective Condition.* Cases can arise where a defect would be apparent, without inspection, to an ordinary reasonably prudent person. Subsection (A)(2) incorporates the Task Force's views in this area, permitting the trier of fact to consider this conduct and reduce claimant's damages. Under Comment n to the "Restatement (Second) of Torts" Section 402A, an individual who failed to discover an apparent defective condition would, theoretically, still be allowed a full claim. On the other hand, if that person knew about the defect and proceeded anyway, the claim would be totally barred. This approach has led to considerable litigation and expense over the issue of whether a claimant knew or did not know about a particular defect. *See* "Task Force Report" at VII–51–53; *see also* "Karabatsos v. Spivey Co.," 49 Ill. App. 3d 317, 364 N.E. 2d 319 (1977); "Teagle v. Fischer & Porter Co.," 89 Wash. 2d 149, 570 P. 2d 438 (1977); "Poches v. J.J. Newberry Co.," 549 F. 2d 1166 (8th Cir. 1977). The Act eliminates this distinction and focuses on the true responsibility of the product user.

Thus, if a claimant with good eyesight ate a candy bar that had bright green worms crawling over it, Subsection (A)(2) permits the trier of fact to find that the claimant should bear some responsibility for any ill effects suffered. This example involves a defective condition that can be discovered without inspection. *Cf.* "Auburn Mach. Works Co. v. Jones," 366 So. 2d 1167 (Fla. 1979).

Subsection (A)(2) will not promote misconduct by product sellers. If they were aware of the defect in the goods at the time of sale, the punitive damages section of the Act (Section 120) would provide a strong incentive not to sell such a product.

(3) *A Non-Claimant's Failure to Inspect for Defects or to Observe an Apparent Defective Condition.* When a product seller has sold a defective product and an intervening product user negligently fails to discover the defect or to take precautions against the possible harm, case law is uniform that the product user's conduct does not relieve the product seller of liability. *See* "Ford Motor Co. v. Matthews," 291 So. 3d 169 (Miss. 1974); "Boeing Airplane Co. v. Brown," 291 F.2d 310 (9th Cir. 1961); "Comstock v. General Motors Corp.," 358 Mich. 163, 99 N.W.2d 627 (1959). In this instance, the product seller is required to bear responsibility for the defective product it placed on the market.

(B) *Use of a Product With a Known Defective Condition.*

(1) *By a Claimant.* When it is clear that a claimant voluntarily and unreasonably used a product with a known defective condition, the claimant's damages are subject to reduction. Care must be taken not to

allow recovery of a claim in a situation where individuals, in effect, have created their own product liability claim. In that regard, it should be noted that consent is a defense even to intentional wrongs. *See* W. Prossser, "Torts" at 101 (4th ed. 1971).

However, there may be cases where an individual voluntarily uses a product with a known defective condition, but the reasonableness of this conduct becomes a matter of dispute. For example, if a person discovers a welt in a tire, should that person be required to stop immediately and call for assistance, or is it reasonable to proceed to a nearby gasoline station to have the tire repaired? The answer depends on the particular fact situation. Many cases arise in this shadowy zone. *See* "Henderson v. Ford Motor Co.," 519 S.W.2d 87 (Tex. 1974); "Ford Motor Co. v. Lee," 237 Ga. 554, 229 S.E.2d 379 (1976). Subsection (B)(1) allows the trier of fact to consider the claimant's conduct in the particular fact situation and to reduce damages to the extent that it is appropriate to do so. From both the claimant's and the product seller's perspective, this mitigates the "all-or-nothing" approach that has arisen as a result of some court interpretations of Comment to Section 402A of the "Restatement (Second) of Torts."

(2) *By a Non-Claimant Product User.* Subsection (B)(2) is placed in brackets as an optional section. It would apportion responsibility for injuries caused by a defective product between the product seller and a product user who voluntarily and unreasonably exposed the claimant to the product risk. Some case law and, perhaps, proper placement of incentives for loss prevention support this result. *Cf.* "Aetna Ins. Co. v. Loveland Gas & Elec. Co.," 369 F.2d 648 (6th Cir. 1966); "Drazen v. Otis Elevator Co.," 96 R.I. 114, 189 A.2d 693 (1963). On the other hand, case law will not shift responsibility where the product was entirely unfit for its intended use,[16] and Subsection (B)(2) may create a situation in which a claimant injured by a defective product cannot bring a successful suit against anyone. This could occur when the Subsection shields the seller of the defective product, and an immunity (*e.g.*, Worker Compensation) shields the negligent third-party actor. Moreover, as Professor Phillips has observed,

> The third party rarely intends to cause the plaintiff injury. Where there is no such intent, the third party's failure to prevent the injury is attributable to his inadvertence, regardless of whether he actually knew or merely should have known of the danger.

Phillips, supra, 28 "Drake L. Rev." at 372.

In light of the very close balance of equities with regard to this Section, it has been bracketed and should be regarded as optional.

(C) *Misuse of a Product.* Subsection (C) provides for a reduction or apportionment of the liability of the product seller when an injury occurs, in whole or in part, because the product user misused the product in some way that the product seller could not reasonably anticipate. *See* "Netzel v. State Sand & Gravel Co.," 51 Wis. 2d 1, 186 N.W.2d 258 (1971); "General Motors Corp. v. Hopkins," 548 S.W.2d 344 (Tex. 1977). The definition of "misuse" is based on the Act's concept of "reasonably anticipated conduct." *See* Subsection 102(G) and analysis.

Damages are reduced or apportioned "to the extent" that the misuse caused the harm and, under Subsection (C)(2), the trier of fact may determine that the harm arose *solely* because of product misuse. "Helene Curtis Indus. v. Pruitt," 385 F.2d 841 (5th Cir. 1967).

Subsection (C)(3) indicates that a third party who is not immune under state or federal law and who has misused a product may be subject to liability to the claimant.

(D) *Alteration or Modification of a Product.* Subsection (D) deals with the situation in which a person or entity other than the product seller has altered or modified the product and this has led to the claimant's harm. Alteration or modification (as contrasted with misuse) occurs when a claimant or third-party product user changes the product's design, construction, or formula, or modifies or removes instructions that accompanied or were displayed on the product.

Some courts have imposed liability on the product seller in this situation if the alteration or modification was in some manner "foreseeable." *See, e.g.*, "Blim v. Newbury Indus., Inc.," 443 F.2d 1126 (10th Cir. 1971) (machine safety guard removed by co-worker). Courts that have held the original product seller responsible in these instances have bordered on imposing absolute liability. Thus, insurers have a just concern about the broad-scale imposition of liability where intervention by another party was the principal cause of the accident. As the American Insurance Association has noted:

> It is difficult enough to calculate the risk associated with a given product even where there is access to knowledge about its basic inherent characteristics. . . . The task becomes impossible if the premium calculations must take into account not only the inherent properties of the machine, but also its transformation in the hands of others, and their neglect of repair and maintenance.

AIA, "Product Liability Legislative Package" at 16 (monograph 1977).

Moreover, if the law ignores alterations and modifications or products, it fails to place an incentive for loss prevention on those who might engage in such conduct.

The authors of the "Restatement (Second) of Torts" Section 402A, Subsection 1(b), recognized this fact and subjected the product seller to liability only when the seller's product reached "the user or consumer without substantial change in the condition in which it was sold." Comment g to that Section stated the matter more firmly:

> The seller is not liable when he delivers the product in a safe condition, and subsequent mishandling or other causes make it harmful by the time it is consumed. The burden of proof that the product was in a defective condition at the time that it left the hands of the particular seller is upon the injured plaintiff; and unless evidence can be produced which will support the conclusion that it was then defective, the burden is not sustained.

Recently, a number of state legislatures have enacted the essence of this comment into law. "Ariz. Rev. Stat. Ann." Section 12–683(2) (Supp. 1978); "Ind. Code Ann." 33–1–1.5 Section 4(b)(3) (Supp. 1978); "Ky. Rev. Stat. Ann." Section 411–320 (1978); "N.H. Rev. Stat. Ann." Section 507–D:3 (Supp. 1978); "R.I. Gen. Laws" Section 9–1–32 (1978); "Tenn. Code Ann." Section 23–3708 (1978); "Utah Code Ann." Section 78–15–5 (1977).

According to the statistics of the Insurance Services Office, product modification only occurs in approximately 13 percent of product liability cases. Of these cases, the largest number of the product modifications (39 percent) result from the conduct of employers. *See* "ISO Closed Claims Survey" at 140–41. This raises the main problem with rules that limit a product seller's responsibility for subsequent product alterations or modifications—often the injured worker cannot sue the one who is really at fault because of the "exclusive remedy" provisions of Worker Compensation statutes. However, it is fair to state that the destruction of a tort remedy against the employer

> should not of itself create a third-party remedy against the manufacturer or distributor of the product in question. If Worker Compensation is regarded as a proper remedy in other cases of an exclusive employer's wrong, then so too should it be

[16] *See, e.g.*, "Clement v. Crosby & Co.," 148 Mich. 293, 111 N.W. 745 (1907); "Farley v. Edward E. Tower & Co.," 271 Mass. 230, 171 N.E. 639 (1930).

where that wrong involves the product acquired from third-party defendants.

AIA, "Product Liability Legislative Package," *supra* at 15–16.

Nevertheless, Subsection (D) takes account of the hardship that can result from an overly broad liability limitation in cases of product modification or alteration. Thus, the provision is very narrowly drawn.

Subsection (D)(2) ensures that the principles of comparative responsibility are correctly applied by reference to Section 111. If an alteration or modification was made by the claimant, damages are subject to reduction in accordance with the claimant's percentage of responsibility. If a party other than the claimant is responsible for the modification or alteration, damages are to be apportioned in accordance with the parties' percentages of responsibility.

In the case of an employer or co-employee immune from tort liability or a released party under Subsection 113(E), the rules set forth in Subsection 112(B)(2) would apply with regard to reduction of damages.

Under Subsection (D)(2), a product seller may avoid liability to the extent it proves that claimant's harm was proximately caused by the alteration or modification. If the harm arose solely because of the product alteration or modification, the product seller will not be liable at all. On the other hand, the rule adopted ensures that the product seller will remain liable to the extent that it is responsible for the harm. *See* "Fincher v. Surrette," 365 So. 2d 860, 863 (La. Ct. App. 1979). Subsection (D)(2) applies the comparative responsibility procedural principles set forth in Section 111.

As Subsections (D)(2) (a) and (b) indicate, the product seller cannot avoid responsibility for product alterations or modifications which the seller suggested (per instructions) or to which the seller expressly consented.

Subsection (D)(2)(c) indicates that the product seller may have a duty to warn against modifications or alterations of its product when it may reasonably anticipate that such conduct will occur on the part of persons who are likely to use the product. As Subsection 102(G) (definition of "reasonably anticipated conduct") indicates, this refers to conduct that would be engaged in by an ordinary reasonably prudent person.

Subsection (D)(2)(c) is not intended to encompass every type of act foreseeable by virtue of hindsight or otherwise. If alterations or modifications involve conduct which should have been reasonably anticipated by the product seller, such product seller will be responsible for harms that result if the failure to provide warnings against the type of alteration or modification at issue renders the product defective under Subsection 104(C). A general warning against any alterations or modifications will not suffice.

Subsection (D)(3) indicates that a third party who is not immune under state or federal law and who has negligently altered or modified a product may be subject to liability to the claimant.

* * * * *

Code

Sec. 113. Multiple Defendants: Contribution and Implied Indemnity

(A) A right of contribution exists under this Act between or among two or more persons who are jointly and severally liable, whether or not judgment has been recovered against all or any of them. It may be enforced either in the original action or by a separate action brought for that purpose. The basis for contribution is each person's equitable share of the obligation, including the equitable share of a claimant, as determined in accordance with the provisions of Section 111. For the purposes of this Act, contribution and implied indemnity are merged.

(B) If the proportionate responsibility of the parties to a claim for contribution has been established previously by the court, as provided in Section 111, a party paying more than its equitable share of the obligation may, upon motion, recover judgment for contribution.

(C) If the proportionate responsibility of the parties to the claim for contribution has not been established by the court, contribution may be enforced in a separate action, whether or not a judgment has been rendered against either the person seeking contribution or the person from whom contribution is being sought.

(D) Contribution is available to a person who enters into a settlement with a claimant only (1) if the liability of the person against whom contribution is sought has been extinguished by the settlement, and (2) to the extent that the amount paid in settlement was reasonable.

(E) A release, covenant not to sue, or similar agreement entered into by a claimant and a person liable discharges that person from all liability for contribution, but it does not discharge any other persons liable upon the same claim unless it so provides. However, the claim of the releasing claimant against the other parties is reduced by the amount of the released party's equitable share of the obligation, determined in accordance with the provisions of Section 111.

(F) If a judgment has been rendered, the action for contribution must be commenced within one year after the judgment becomes final. If no judgment has been rendered, the person bringing the action for contribution must have (1) discharged by payment the common liability within the period of the statute of limitation or repose applicable to the claimant's right of action against him and commenced the action for contribution within one year after payment, or (2) agreed while action was pending to discharge the common liability and, within one year after the agreement, have paid the liability and brought an action for contribution.

* * * * *

Analysis

Sec. 113. Multiple Defendants: Contribution and Implied Indemnity

Section 113 is based on Sections 4, 5, and 6 of the "Uniform Comparative Fault Act" ("UCFA"). Here, however, contribution and implied indemnity are merged in one section. Express indemnity—where one party has agreed to hold the other harmless for damages arising out of product liability actions—is left to commercial and common law. *See* "Task Force Report" at VII–99–103.

There is clear precedent for the merger of contribution and implied indemnity. *See* "Safeway Stores, Inc. v. Nest-Kart," 21 Cal. 3d 322, 579 P.2d 441, 146 Cal. Rptr. 550 (1978); "Skinner v. Reed-Prentice Division, Etc.," 70 Ill. 2d 1, 374 N.E.2d 437 (1977), *cert. denied,* 436 U.S. 946 (1978); "Busch v. Busch Constr., Inc.," ——— Minn. ———, 262 N.W.2d 377 (1977); "Dole v. Dow Chemical Co.," 30 N.Y.2d 143, 282 N.E.2d 288, 331 N.Y.S.2d 382 (1972); *see also* "N.Y. Civ. Prac. Law" Section 1402 (1976). This approach avoids the "all-or-nothing" aspect of implied indemnity law. In most situations, fault will be apportioned among product seller defendants. However, a situation could arise where the trier of fact could find that one product seller in the distribution chain was entirely responsible for a product harm. In that regard, this Section should be read in conjunction with Sections 111 and 112.

Subsection (A), which is based on "UCFA" Subsection 4(a), establishes a right of contribution which may be enforced in the original action or in a separate action and provides that contribution will be determined by the proportionate responsibility of the defendants. The Subsection outlines the

procedure for the trier of fact to make the appropriate determination.

Subsection (B), which is based on "UCFA" Subsection 5(a), outlines a simplified procedure whereby a party adjudged liable who has paid more than its proportionate share can recover from one who has paid less.

Subsection (C), which is based on "UCFA" Subsection 5(b), provides a mechanism for apportioning responsibility when all potential defendants were not parties to the original action. It indicates that if the court has not determined the proportionate responsibility of all parties in the original action, contribution may be obtained in a separate action.

Subsection (D), which is based on "UCFA" Subsection 4(b), makes it clear that a person who has settled a claim may seek contribution from another person. However, this Subsection limits the right of contribution in such a situation by requiring that the amount paid in settlement be reasonable and that the claimant's right to recover from the other person be extinguished by the settlement.

Subsection (E), which is based on "UCFA" Section 6, deals with the effect of the release of one or more, but not all, tortfeasors. Under this Subsection, a released person is free from liability for contribution, and the liability of other persons to the claimant is reduced by the released person's equitable share of the responsibility as determined in accordance with the provisions of Section 111. Although this provision "may have some tendency to discourage a claimant from entering into a settlement, this solution is fairly based on the proportionate-fault principle." "UCFA Comment" Section 6. Furthermore, the provision that the liability of the non-settling persons is reduced by the settling person's percentage of the responsibility should discourage claimants from entering into collusive settlements with one defendant at the expense of the other parties.

The Act does not directly address the validity of "Mary Carter agreements." Such agreements are typically entered into between a claimant and one or more, but not all, of the product sellers. They are usually made in secret, and the agreeing product sellers remain as parties to the action. The agreeing product sellers' liability is decreased in direct proportion to the nonagreeing product sellers' increase in liability, and, in return, the agreeing product sellers guarantee the claimant a certain amount of money if the claimant does not obtain a judgment, or if it is less than a specified amount. While such an agreement appears collusive, some state courts currently regard "Mary Carter agreements" as valid. *See, e.g.*, Frier's, Inc. v. Seaboard Coastline Ry.," 355 So. 2d 208 (Fla. Dist. Ct. App. 1978). However, to the extent that a court chooses to regard a "Mary Carter agreement" as a *settlement*, Subsection (E) is intended to discourage such agreements.

Subsection (F) is based on "UCFA" Section 5 and sets forth the period of time in which an action for contribution may be brought.

* * * * *

Code

Sec. 114. Relationship Between Product Liability and Worker Compensation

(A) In the case of any product liability claim brought by or on behalf of an injured person entitled to compensation under a state Worker Compensation statute, damages shall be reduced by the amount paid as Worker Compensation benefits for the same injury plus the present value of all future Worker Compensation benefits payable for the same injury under the Worker Compensation statute.

(B) Unless the product seller has expressly agreed to indemnify or hold an employer harmless for harm caused to the employer's employee by a product, the employer shall have no right of subrogation, contribution, or indemnity against the product seller when the harm to the employee constitutes a product liability claim under this Act. Also, the employer's Worker Compensation insurance carrier shall have no right of subrogation against the product seller.

(C) When final judgment in an action brought under this Act has been entered prior to the determination of Worker Compensation benefits, the product seller may bring a subsequent action for reduction of the judgment by the amount of the Worker Compensation benefits, or for recoupment from the employee if the product seller has paid a judgement which includes the amount of such benefits.

* * * * *

Analysis

Sec. 114. Relationship Between Product Liability and Worker Compensation

The relationship between product liability and Worker Compensation is a major topic covered in depth in the "Task Force Report" at VII–85–113. Under current law in a number of states, the interaction of product liability and Worker Compensation law results in the manufacturer of a workplace product paying the entire out-of-pocket cost of a product-related workplace injury, plus damages for pain and suffering. This result occurs because the product manufacturer is unable to place a portion of the cost of that injury on an employer whose **negligence** may have helped bring about the claimant's injury. *See* "Seaboard Coast Line R.R. v. Smith," 359 So. 2d 427 (Fla. 1978); "Task Force Report" at VII–89–99.

After weighing many considerations, the Task Force and the United States Department of Commerce concluded that the development of Worker Compensation as a sole source of recovery in product-related workplace accidents would be the best solution to the problem, but only if the worker received additional benefits in the course of overall Worker Compensation reform. A model product liability law, however, is an inappropriate vehicle for making alterations of that dimension in Worker Compensation law.

The search for the next best solution is not an easy one. One approach is to permit a full contribution claim in all cases in which the employer is at fault. *See* "Dow v. Dole Chem. Co.," 30 N.Y. 2d 1, 282 N.E. 2d 288, 331 N.Y.S. 2d 382 (1972); "Skinner v. Reed-Prentice Division, Inc.," 70 Ill. 2d 1, 374 N.E.2d 437 (1977). This approach is in accordance with the principle of comparative responsibility, and it places strong incentives for loss prevention on the employer.

However, if full contribution or indemnity by the product manufacturer against the employer is permitted, the employer may be forced to pay an employee—through the conduit of the third-party tortfeasor—an amount in excess of the employer's statutory Worker Compensation liability. This thwarts a central concept behind Worker Compensation, *i.e.*, that the employer and employee receive the benefits of a guaranteed, fixed-schedule, no-fault recovery system, which constitutes the *exclusive* liability of the employer. The approach also increases transaction costs.

On the other hand, if contribution or indemnity is not allowed, the product seller might have to bear the burden of a full common law judgment, despite the possibly greater responsibility of the employer. As the Supreme Court of Minnesota recently noted, "[t]his obvious inequity is further exacerbated by the right of the employer to recover directly or indirectly from the third party the amount he has paid in compensation regardless of the employer's own negligence." "Lambertson v. Cincinnati

Corp.," ——— Minn. ———, 257 N.W. 2d 679, 684 (1977).

Equally troublesome is the fact that the present system dulls employer incentives to keep workplace products safe. The "ISO Closed Claims Survey" suggests that employer negligence is involved in 56 percent of product liability workplace cases. "ISO Closed Claims Survey," Report 10 at 81 (1978).

The purpose of the solution adopted in Section 114 is to sharpen employer incentives to keep workplace products safe without undermining the limited-liability concept that is central to the Worker Compensation system. The approach is based, in substantial part, on a proposal developed by the American Insurance Association (AIA). *See* AIA, "Product Liability Legislative Package" at 75–76 (1977). This approach has also been incorporated in the "National Workers' Compensation Standards Act of 1979," S. 420, 96th Cong., 1st Sess. (1979) and "Standards for State Product Liability Tort Litigation Act," H.R. 1675, 96th Cong., 1st Sess. (1979), and recommended by the "LaFalce Subcommittee Report" at 74.

Subsection (A) reduces the liability of a product seller by the total amount that has been or will be awarded in a state Worker Compensation proceeding. This Subsection operates regardless of whether the employer was, in fact, at fault. *See also* Subsection 112(B)(4) and accompanying analysis.

Subsection (B) abolishes the subrogation lien of the Worker Compensation carrier, or the right of a self-insuring employer to contribution or indemnity, in all workplace harm cases which are covered by this Act, except where the product seller has expressly agreed to indemnify or hold the employer harmless for harm caused by the product. As with Subsection (A), Subsection (B) operates regardless of the employer's fault or lack thereof.

Subsection (C) provides a procedural mechanism for reducing the product seller's liability when final judgment has been entered before the amount of Worker Compensation benefits has been determined.

The principal benefit of the approach adopted in Subsections (A) and (B) is a reduction in litigation transaction costs. Subrogation actions are not allowed. Furthermore, proceedings under this Act will be streamlined because in cases of employer negligence, there will be no three-party litigation as to the relative percentages of fault of employers and manufacturers. *See* AIA, "Legislative Package" at 67–68.

An additional benefit of the approach in Subsections (A) and (B) is that an injured employee will recover the same benefits received under the present system. At the same time, Section 114 cuts off the ability of the Worker Compensation carrier or self-insuring employer to shift its liability to the manufacturer. The employer, therefore, will have a greater incentive to provide a safe workplace than it has under the present system.

A third benefit is that the approach will also, to some degree, eliminate the harshness of the present system as it applies to manufacturers, by allowing product sellers to reduce their liability for workplace injuries. It will do this in all cases, even where the employer was not at fault.

While cases may arise where a product seller may pay more than its fair share under a comparative fault system, they are likely to be few in number under this Act. This is because an employer's misuse, or improper alteration or modification of the product, will in turn reduce the employee's award under Subsection 112(C). As the analysis to that Subsection indicates, this is also fair to employees because they agreed, within the context of their Worker Compensation system, to forego their right to sue when it is based on their employers' or co-employees' fault.

A closely related alternative approach to Section 114 was advanced by the Supreme Court of Minnesota in "Lambertson v. Cincinnati Corp.," *supra.* The court in that case held that the product manufacturer would be allowed limited contribution up to the amount of the Worker Compensation lien. This reduces the inequity against the product manufacturer, but preserves the employer's interest in not paying more than its Worker Compensation liability. The principal disadvantage of the "Lambertson" approach, as compared with Section 114, is that "Lambertson" does not reduce transaction costs.

Finally, it should be noted that any modification of the present tort and Worker Compensation systems, short of a sole source remedy, retains the multiple transaction costs of having two separate proceedings—the Worker Compensation proceeding and then the product liability claim—address a single injury. However, considering all the equities involved, Section 114 appears to offer the soundest solution apart from modifying Worker Compensation law to create a sole source remedy.

* * * * *

Code

Sec. 115. Sanctions Against the Bringing of Frivolous Claims and Defenses

(A) After final judgment has been entered under this Act, any party may, by motion, seek reimbursement for reasonable attorneys' fees and other costs that would not have been expended but for the fact that the opposing party pursued a claim or defense that was frivolous. A claim or defense is considered frivolous if the court determines that it was without any reasonable legal or factual basis.

(B) If the court decides in favor of a party seeking redress under this Section, it shall do so on the basis of clear and convincing evidence. In all motions under this Section, the court shall make written findings of fact.

(C) The motion provided for in Subsection (A) may be filed and the claim assessed against a party or a party's attorney or both, depending on which person or persons were responsible for the assertion of the frivolous claim or defense.

(D) Claims for damages under this Section shall be limited to expenses incurred by parties to the action or persons under a legal or contractual duty to bear the expenses of the action.

* * * * *

Analysis

Sec. 115. Sanctions Against the Bringing of Frivolous Claims and Defenses

The ISO data indicate that substantial product liability costs are incurred in the defense of product liability claims and lawsuits. "ISO Closed Claims Survey," Report No. 14 (1977) (defense costs equal about 35 percent of claim payments). Some have placed the blame for unnecessary defense costs and needless litigation on the contingent fee system. Nevertheless, as the plaintiffs' bar properly observes, the contingent fee brings no return to a claimant's attorney when the claimant is unsuccessful. On the other hand, some have argued that the contingent fee system has a negative impact on certain product liability cases to the extent that it causes insurers to settle non-meritorious claims because the cost of defending such cases may be greater than the amount of settlement.

Analysis of the countervailing arguments suggests that the best solution to reducing unnecessary litigation costs is to address the heart of the problem by discouraging frivolous claims and defenses.

Section 115 is based, in part, on "Ill. Ann. Stat." ch. 110, Section 41 (Supp. 1979). It is also predicated on a proposal of the California Citizens Commission on Tort Reform advocating sanctions against "frivolous" claims or defenses. Report of the California Citizens' Commission on Tort Reform, "Righting

the Liability Balance" at 146–47, 153–54 (1977).

The underlying purpose of Section 115 has broad support in existing statutes and court rules. For example, Rule 11 of the Federal Rules of Civil Procedure subjects an attorney to disciplinary action if the attorney knowingly files a pleading or defense where no grounds support it. *See* "Barnett v. Laborers' Int'l Union of N. Am.," 75 F.R.D. 544 (W.D. Pa. 1977). Similarly, Federal Rule of Appellate Procedure 38 permits a court to award "just damages and single or double costs" to a party who has been subject to a "frivolous" appeal.

Additionally, Federal Rule of Civil Procedure 37(c) provides sanctions for an unreasonable failure to admit averments of fact or the genuineness of documents. In the federal courts, the above rules are supplemented by 28 "U.S.C." Section 1927 (1976) (imposing costs on an attorney who "multiplies the proceedings . . . to increase costs . . ."). *See* Annot., 68 "A.L.R.3d" 209 (1976).

The Section is not intended to affect the law relating to malicious prosecution.

Under Subsection (A), the statute may be invoked by either a product liability claimant or a product seller. Recovery is limited to reasonable attorneys' fees and other costs that would not have been expended but for the fact that the opposing party pursued a claim or defense that was frivolous.

In order to make a finding that the claim was frivolous, the court must conclude that the claim was without *any* reasonable legal or factual basis. Thus, this standard allows full room for bringing claims under novel legal theories.

Subsection (B) provides additional assurances that only those who bring frivolous claims will be penalized. First, the court may only impose damages under Section 115 on the basis of clear and convincing evidence, not merely a preponderance of the evidence. *See* "State of West Virginia v. Charles Pfizer & Co.," 440 F.2d 1079, 1092 (2d Cir. 1971) ("clear showing of bad faith"). Second, the court must set forth its findings of fact in writing.

Subsection (C) gives the court latitude to impose costs on either attorney or client. As the "Task Force Report" noted, it is unlikely that many claimants will be financially able to respond to such a claim. "Task Force Report" at VII–62. It must be remembered that the attorney is in the best position to make a judgment about the reasonableness of bringing a claim or raising a defense. *See* "ABA Code of Professional Responsibility," DR 7–102(A)(1)(2); *cf.* "Acevedo v. Immigration & Naturalization Serv.," 538 F.2d 918, 921 (2d Cir. 1976).

Subsection (D) makes clear that recovery under this Section is limited to expenses incurred by claimant or defendant or persons under a legal or contractual duty to bear the expenses of the action.

* * * * *

Code

Sec. 116. Arbitration

(A) *Applicability.*

(1) Any party may by a motion institute a pre-trial arbitration proceeding in any claim brought under this Act, if the court determines that:

(a) It is reasonably probable that the amount in dispute is less than $50,000, exclusive of interest and costs; and

(b) Any non-monetary claims are insubstantial.

(2) Arbitration may not be used if both the claimant and one or more defendants state that they do not want an arbitration proceeding.

(B) *Rules Governing.*

(1) *Substantive Rules.* The substantive rules of an arbitration proceeding under this Section are those contained in this Act as well as those in applicable state law.

(2) *Procedural Rules.* These are the procedural rules of an arbitration proceeding under this Section. If this Section does not provide a rule of procedure, reference may be made to the "Uniform Arbitration Act" or other sources of law. Any reference to other sources of law must conform to the intent and spirit of this Section.

***Optional Subsection**

[(3) *Additional Rules and Administration.*

(i) The ———— (legislature to specify appropriate state agency or administrative body) is empowered to promulgate additional procedural rules for this Section.

(ii) The ———— (legislature to specify American Arbitration Association or similar organization) shall carry out the day-to-day administration of arbitration under this Section.]

(C) *Arbitrators.*

(1) Unless the parties agree otherwise, the arbitration shall be conducted by three persons: an active member of the state bar or a retired judge of a court of record in the state; an individual who possesses expertise in the subject matter area that is in dispute; and a layperson.

(2) Arbitrators shall be selected in accordance with applicable state law in a manner which will assure fairness and lack of bias.

(D) *Arbitrators' Powers.*

(1) Each arbitrator to whom a claim is referred has the power, within the territorial jurisdiction of the court, to conduct arbitration hearings and make awards consistent with the provisions of this Act.

(2) State laws applicable to subpoenas for attendance of witnesses and the production of documentary evidence apply in proceedings conducted under this Section. Arbitrators shall have the power to administer oaths and affirmations.

(E) *Commencement.* Arbitration hearings shall commence not later than thirty (30) days after the claim is referred to arbitration unless, for good cause shown, the court shall extend the period. Hearings shall be concluded promptly. The court may order the time and place of the arbitration.

(F) *Evidence.*

(1) The Federal Rules of Evidence [or designated state evidence code] may be used as a guide to the admissibility of evidence in an arbitration hearing.

(2) Strict adherence to the rules of evidence, apart from relevant state rules of privilege, is not required.

(G) *Transcript of Proceeding.* A party may have a transcript or recording made of the arbitration hearing at its own expense. A party who has had a transcript or recording made shall furnish a copy of the transcript or recording at cost to any other party upon request.

(H) *Arbitration Decision and Judgment.* The arbitration decision and award, if any, shall be filed with the court promptly after the hearing is concluded. Unless a party demands a trial pursuant to Subsection (I), the decision and award shall be entered as the judgment of the court. The judgment entered shall be subject to the same provisions of law, and shall have the same force and effect as a judgment of the court in a civil action, except that it shall not be subject to appeal.

(I) *Trial Following Arbitration.*

(1) Within twenty (20) days after the filing of an arbitration decision with the court, any party may demand a trial of fact or a hearing on an issue of law in that court.

(2) Upon such a demand, the action shall be placed on the calendar of the court. Except for the provisions of Subsection (3), any right of trial by jury that a party would otherwise have shall be preserved inviolate.

(3) At trial, the court shall admit evidence that there has been an arbitration proceeding, the decision of the arbitration panel, and the nature and

amount of the award, if any. The trier of fact shall give such evidence whatever weight it deems appropriate.

(4) A party who has demanded a trial but fails to obtain a judgment in the trial court which is more favorable than the arbitration award, exclusive of interest and costs, shall be assessed the cost of the arbitration proceeding, including the amount of the arbitration fees, and—

(i) If this party is a claimant and the arbitration award is in its favor, the party shall pay the court an amount equivalent to interest on the arbitration award from the time it was filed; or

(ii) If this party is a product seller, it shall pay interest to the claimant on the arbitration award from the time it was filed.

* * * * *

Analysis

Sec. 116. Arbitration

The "Task Force Report" suggested that mandatory non-binding arbitration may result in more accurate decisions, reduce overall litigation costs, and expedite the decision process in product liability cases. *See* "Task Force Report" at VII–229–39.

A synopsis of the basis for these conclusions is that: (1) cases will be decided more accurately because a small group, with a member who is an expert in the field, should be able to comprehend the esoteric details of product liability cases; (2) over time, the process will develop a resource bank of relatively neutral experts less easily misled in technical areas than a jury of laypersons; (3) arbitrators will be less affected by the emotional aspects of the case or by the artistry of counsel; and (4) the privacy of arbitration proceedings (as compared to judicial proceedings) will prompt more complete revelation of special manufacturing designs or processes. This, in turn, will permit more accurate judgments. *See* "Task Force Report" at VII–235.

The "ISO Closed Claims Survey" suggests further that arbitration will reduce accident reparation transaction costs. Even allowing for the fact that more substantial product liability claims are litigated to a verdict than are handled by arbitration, ISO data indicate that the average expense for attorneys and other allocated loss adjustment costs are considerably lower when the case is handled by arbitration as compared with a court verdict. *See* "ISO Closed Claims Survey," Report 14 at 120.

On the other hand, costs may increase under arbitration if there are numerous demands for trial following arbitration. This potential problem may not be as serious, however, as was once thought. Data collected by the Department of Justice show that appeal rates at the state level for a trial following arbitration have ranged from 5 to no more than 15 percent of all cases arbitrated. Hearings before the Subcommittee on Improvements in Judicial Machinery of the Senate Committee on the Judiciary, 95th Cong., 2d Sess. 22 (1978) (Statement of Former Attorney General Griffin B. Bell). *See also* report of the California Citizens' Commission on Tort Reform, "Righting the Liability Balance" at 143 (1977).

Broader use of arbitration should expedite the reparations process. The "Task Force Report" showed that in the medical malpractice area, for example, the arbitration process had achieved a more expeditious resolution of claims than the jury system. *See* "Task Force Report" at VII–238.

Indeed, the benefits of arbitration have prompted the Department of Justice to recommend that mandatory non-binding arbitration be used in federal courts in all tort and contract cases. The Department of Justice reached this conclusion after its Office of Judicial Improvements made a thorough analysis of the matter in a study conducted wholly independently of the "Task Force Report."

Section 116 draws on portions of the Department of Justice's proposed bill on mandatory non-binding arbitration. *See* S. 373, 96th Cong., 1st Sess. (1979); H.R. 2699, 96th Cong., 1st Sess. (1979); the Statement of Former Attorney General Griffin B. Bell, *supra;* as well as state legislation on the topic of arbitration.

(A) *Applicability.* The Act provides for arbitration when the amount in dispute is less than $50,000. This figure is to be determined by the court under a standard of reasonable probability. In this context, note that the sanctions imposed by Section 115 will apply to any party who delays the proceedings by making a frivolous assertion that the amount in dispute is above or below $50,000. Also, the proceeding is not mandatory if both the claimant and at least one defendant state that they do not want it.

The $50,000 figure is the same as that in the Department of Justice bill, and it should cover the bulk of product liability claims. In that regard, the ISO closed claims data, trended for severity, show that the average paid claim in bodily injury cases is $26,004. While some have suggested limiting arbitration to smaller claims, it is the larger claims that have been the greater transaction cost items in product liability cases. *See* "ISO Closed Claims Survey" at 113.

While there has been no state experience with cases at the $50,000 level, Former Attorney General Bell has noted that when Pennsylvania increased the jurisdictional amount for the state's arbitration program from $3,000 to $10,000, there was no increase in the appeal rate. Statement of Former Attorney General Griffin B. Bell, *supra* at 20.

It seems relatively certain that an arbitration procedure will help expedite and reduce costs connected with smaller claims. ISO closed claims data show that the large majority of product liability payments are relatively small (more than two-thirds are under $1,000—even when trended for severity). *See* "ISO Closed Claims Survey" at 113.

(B) *Rules Governing.* Subsection (B)(1) indicates that arbitrators shall apply the product liability substantive law rules of this Act. Where the Act does not provide a rule of decision, relevant state law should be applied.

Subsection (B)(2) indicates that where a procedure is not provided in Section 116—*e.g.,* when a court can vacate a judgment—the "Uniform Arbitration Act" (enacted in a number of states), or another appropriate source of law, is to be used as a resource.

Subsection (B)(3), an optional section, permits the state to designate a supplemental source of procedural rules and to empower the American Arbitration Association or similar organizations to carry out the day-to-day administration of arbitration.

This Subsection leaves a great deal of room for the states to develop their own arbitration systems. The drafters of the Act have chosen to include only the most important procedural points concerning arbitration. The goal of substantive uniformity in product liability law will not be compromised by allowing individual states the freedom to choose the arbitration procedures that they find are the most efficient and workable.

(C) *Arbitrators.* The rules under Subsection (C) provide latitude for the parties to select a single arbitrator. Otherwise, the arbitration is to be conducted by three persons, one who is an active member of the state bar or a retired judge, one who has expertise in the subject matter area that is in dispute, and one who is a layperson. This provision differs slightly from the Department of Justice proposal in light of the needs of product liability. Having an individual who is familiar with the scientific nature of the subject matter involved will help expedite the case and serve as a deterrent to the presentation of biased expert testimony.

In addition, Subsection (C) provides for a layperson to be included to help assure that the consumer perspective regarding product safety is represented. The process of selecting a layperson should not be complicated. It is suggested that either normal jury rolls be utilized or that a list of laypersons be compiled for this purpose.

Aside from general guidelines regarding fairness and lack of bias, the Act does not outline the method of choosing arbitrators, but leaves that matter to the individual states. A state can help implement the general guidelines by requiring each arbitration panel candidate to disclose any personal acquaintance with the parties or their counsel and allow a *voir dire* examination. *See* "Mich. Comp. Laws Ann." Section 600.5045(1)(2) (Supp. 1978). Some of the better procedures include:

(1) Having the American Arbitration Association select a pool of candidates according to its established selection procedures. Each party is allowed to reject certain candidates and rate the remainder in order of preference. Additional provisions take effect if this procedure fails to produce a panel. *See* "Mich. Comp. Laws Ann." Section 600.5044(4)(5) (Supp. 1978);

(2) Having the court appoint arbitrators. "Mass. Ann. Laws" ch. 231, Section 60(B) (Supp. 1978);

(3) Having an arbitration administrator appoint arbitrators. "Wis. Stat. Ann." Section 655.02 (Supp. 1979); and

(4) Having the parties and court combine to appoint arbitrators. "Neb. Rev. Stat." Sections 44–2840, 2841 (Supp. 1978); "Ohio Rev. Code Ann." Section 2711.21(A) (Supp. 1979).

(D) *Arbitrators' Powers.* These provisions are taken from the Department of Justice proposal on arbitration. They grant the arbitrators jurisdiction and also give them powers of subpoena.

(E) *Commencement.* This provision is also derived from the Department of Justice proposal. Its purpose is to help expedite the proceeding. The Act contains a slight modification of the Justice proposal in order to allow an extension for "good cause shown." This seems appropriate in light of the fact that some product liability cases are very complex. *Cf.* "Ariz. Rev. Stat. Ann." Section 12–567(C) (Supp. 1978) (medical malpractice).

(F) *Evidence.* One method of expediting the process is to use informal means of proof. Nevertheless, some guidelines are needed. The Act follows the Department of Justice proposal in referring to the Federal Rules of Evidence as general guidelines. Strict adherence to rules of evidence is not required. *See* "Ariz. Rev. Stat. Ann." Section 12–567(D) (Supp. 1978).

(G) *Transcript of Proceeding.* With respect to the provision of a transcript of proceeding, the Act generally follows the Department of Justice draft.

(H) *Arbitration Decision and Judgment.* The Act follows the Department of Justice proposal's provisions on decisions and judgment. The parties may request a trial on issues of law or fact. If they do not so request in a timely manner, the action is at an end—there is no appeal.

(I) *Trial Following Arbitration.* The Act follows the approach taken by a number of state medical malpractice arbitration statutes. It admits the results of the arbitration proceeding into evidence before the jury. This should act as a deterrent against seeking unnecessary trials. *See, e.g.,* "Ariz. Rev. Stat. Ann." Section 12–567(M) (Supp. 1978); "Mass. Ann. Laws" ch. 231, Section 60(B) (Supp. 1978). *Cf.* "Wis. Stat. Ann." Section 655.19 (Supp. 1979) (excluding findings and order of arbitration panel).

The approach of Section 116 appears to be in accord with the Federal Constitition. *Cf.* "*Ex parte* Peterson," 253 U.S. 300, 309 (1920). Moreover, with the exception of two Ohio lower court decisions, state courts have upheld the constitutionality of provisions that do admit panel findings before the jury. *See* "Eastin v. Broomfield," 116 Ariz. 576, 570 P.2d 744, 750 (1977); "Attorney General v. Johnson," 282 Md. 168, 385 A.2d 57, 67–68 (1978)" "Paro v. Longwood Hosp.," Mass. Adv. Sh. (1977) 2353, 369 N.E.2d 985 (1977); "Prendergast v. Nelson," 199 Neb. 97, 256 N.W.2d 657 (1977); "Strykowski v. Wilkie," 81 Wis. 2d 491, 261 N.W.2d 434 (1978). *contra* "Simon v. St. Elizabeth Medical Center," 3 Ohio Op. 3d 164, 355 N.E.2d 903, 907–09 (C.P. 1976); "Graley v. Satayatham," 74 Ohio Op. 2d 316, 343 N.E.2d 832 (C.P. 1976). *See generally* Reddish, "Legislative Response to the Medical Malpractice Insurance Crisis: Constitutional Implications," 55 "Tex. L. Rev." 759, 793 (1977); Lenore, "Mandatory Medical Malpractice Mediation Panels—A Constitutional Examination," 44 "Ins. Counsel J." 416, 422 (1977).

A possible drawback of this Section's approach is that a jury may have difficulty evaluating the conclusions of the panel where the jury is not privy to the prior fact-finder's qualifications and method of operation. Also, the jury may get sidetracked from the actual evidence in the case. *See* the observations of Judge Hinton in a classic comment, 27 "Ill. L. Rev." 195 (1932); Annot., 18 "A.L.R.2d" 1287 (1951). *But see* Fed. R. Evid. 803 (22) (admitting felony convictions in a cognate civil case). Nevertheless, the benefits to be gained by a reduction in transaction costs outweigh these concerns and support the admission of the results of the arbitration proceeding into evidence at trial.

Subsection (I)(4) provides an additional deterrent against ill-considered appeals for trials following arbitration. If a party fails to obtain a judgment more favorable than the arbitration award, the court will assess the cost of the arbitration proceeding, including the amount of arbitration fees, plus interest, against that party.

In light of the fact that the present product liability system has created serious problems and the fact that mandatory non-binding arbitration has the potential for dealing with some of those problems, this slight incentive for retaining a sound arbitration award should not run afoul of constitutions in most states. *See* "Task Force Report" at VII–233. The Act does not enumerate grounds upon which a court may vacate an arbitration award. Guidance on this issue may be obtained from Section 12 of the "Uniform Arbitration Act."

* * * * *

Code

Sec. 117. Expert Testimony

(A) *Appointment of Experts.* The court may, on its own motion or on the motion of any party, enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witness agreed upon by the parties, and may appoint witnesses of its own selection. The court may consult with knowledgeable individuals or with professional, academic, consumer, or business organizations and institutions to assist with the selection process. An expert witness shall not be appointed by the court unless the expert consents to serve. An expert witness appointed by the court shall be informed of his or her duties in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have an opportunity to participate. An expert witness so appointed shall advise the parties of any findings; shall be available for deposition by any party; and may be called to testify by the court or any party. The court-appointed expert witness shall be subject to cross-examination by each party, including the party calling that expert as a witness.

(B) *Compensation.*

(1) Expert witnesses appointed by the court are entitled to reasonable compensation for their services in an amount to be determined by the court. The court, in its discretion, may tax the costs of such expert on one party or apportion them among parties in the same manner as other costs.

(2) In exercising this discretion, the court may consider:

(a) Which party, if any, requested the court appointment of the expert;

(b) Which party had judgment entered in its favor; and

(c) Whether the amount of damages recovered in the action bore a reasonable relationship to the amount sought by the claimant or conceded to be appropriate by the product seller or other defendant.

(C) *Disclosure of Appointment.* In the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court has appointed the expert witness.

(D) *Parties' Selection of Own Experts.* Nothing in this Section shall limit the parties in calling expert witnesses of their own selection.

(E) *Pre-Trial Evaluation of Experts.* The court in its discretion may conduct a hearing to determine the qualifications of all proposed expert witnesses. The court may order a hearing on its own motion or on the motion of any party.

(1) *Need for Pre-Trial Evaluation.* In determining whether to grant such a motion, the court shall consider:

(a) The complexity of the issues in the case; and

(b) Whether the hearing would deter the presentation of witnesses who are not qualified as experts on the specific issues.

(2) *Factors in Evaluation.* If the court decides to hold such a hearing, it shall consider;

(a) The background and skills of the proposed witness;

(b) The formal and self-education the proposed witness has undertaken relevant to the case or to similar cases; and

(c) The potential bias of the proposed witness.

(3) *Findings of Fact.* In making a determination as to whether a proposed expert witness is qualified, the court shall state its findings of fact to the parties.

(4) *Determination.* Based upon its findings of fact regarding the qualifications of any proposed expert witness, the court, in its discretion, may limit the scope of the witness' testimony, or may refuse to permit such witness to testify as an expert.

* * * * *

Analysis

Sec. 117. Expert Testimony

In General. The Task Force's "Legal Study" demonstrated that product liability cases are often compromised because of the lack of standards with regard to selecting and presenting expert testimony. *See* Volume IV, "Legal Study" at 153–155. One part of the problem is the biased expert; another is the unqualified expert.

Even if experts are properly qualified and objective, a jury of laypersons is often in a poor position to determine which expert is correct. For this reason, this Act gives the court power to make greater use of pre-trial arbitration where an unbiased, qualified expert will serve on the panel. *See* Section 116. Where arbitration is not used, however, this Section should promote the goal of presenting objective and sound expert testimony to the jury.

(A) *Appointment of Experts.* Subsection (A) is based on Rule 706 of the Federal Rules of Evidence and similar state rules. It indicates that courts have the power to appoint experts on their own authority. A number of courts have utilized this power even without the benefit of Fed. R. Evid. 706 or a similar state rule. *See* Annot., 95 "A.L.R.2d" 390 (1964). As the "Task Force Report" noted, the presence of a court-appointed expert "has a cautionary impact on the expert for hire whose theories at trial are subject to dispute not only by an adversary expert, but also by a neutral court-appointed one." "Task Force Report" at VII–43, *citing* Mitchell, "The Proposed Federal Rules of Evidence: How They Affect Product Liability Practice," 12 "Duquesne L. Rev." 551, 557–58 (1974). *See also* 2 J. Wigmore, "Evidence" Section 563, at 648 (3d ed. 1940) (". . . this expedient would remove most . . . abuses").

Subsection (A) also encourages the court to seek the assistance of various individuals, organizations, or institutions in making the selection of a court-appointed expert. The court may wish to utilize this opportunity to establish a panel of independent experts, recognized as such by their peers, from which selections for individual cases may be made. The court may also seek the assistance of these organizations to evaluate the credentials of expert witnesses nominated by the parties.

One problem with court-appointed experts is that the trier of fact may give them an aura of infallibility which they do not deserve. Under Subsection (A), this possibility is diminished because the experts are subject to cross-examination by *each* party. Also, Subsection (C) allows the court in its discretion to decline to disclose to the jury that the expert witness is, in fact, court-appointed.

(B) *Compensation.* Under Fed. R. Evid. 706 and similar state rules, compensation of experts is left to the judge's discretion. Subsection (B) goes a step farther and provides three guidelines for compensating experts. These guidelines should serve as an added inducement for attorneys to present objective expert testimony. The guidelines suggest that the court may impose the cost of the court-appointed expert on losing parties as well as on parties whom the court finds were substantially inaccurate in their estimation of damages.

(C) *Disclosure of Appointment.* Subsection (C) follows Fed. R. Evid. 706. In most instances, it is important for the trier of fact to appreciate that the witness is court-appointed. However, circumstances may arise in which the court believes disclosure of that fact will give the witness too much credence with the jury. Therefore, the court has the discretion to withhold the information when it is appropriate to do so.

(D) *Parties' Selection of Own Experts.* Subsection (D) also follows Fed. R. Evid. 706. Precluding the parties from introducing their own experts would vest too much power in court-appointed experts.

(E) *Pre-Trial Evaluation of Experts.* A rule authorizing a court-appointed expert does not, in and of itself, provide guidance about who is properly qualified to testify in product liability cases. There are many approaches to that issue. One approach, used in some medical malpractice statutes, would require that an expert witness spend a substantial portion of his or her professional time in the actual practice of his or her area of expertise. While this approach may be appropriate in the area of medical malpractice, it was not followed here because a person may be well-versed in technical product liability matters even if he or she does devote substantial time to research or other endeavors other than actual practice. *See* "Task Force Report" at VII–44. Unfortunately, it is impractical to utilize a "standard test" for all experts in product liability cases. *See* Donaher, Piehler, Twerski & Weinstein, "The Technological Expert in Products Liability Litigation," 52 "Tex. L. Rev." 1303, 1325 (1974).

(1) *Need for Pre-Trial Evaluation.* This rule gives some guidance to the trial court in deciding whether to conduct a pre-trial hearing on the qualifications of expert witnesses. It is not necessary or

cost-efficient to utilize the procedure in *all* cases. It is appropriate to do so in more complex cases and also where the pre-trial hearings would serve as a deterrent to the presentation of witnesses who were not qualified. Such a deterrent should discourage parties from prolonging the litigation needlessly and, thus, encourage the expeditious resolution of claims under this Act. Either party may bring this matter before the court by motion.

(2) *Factors in Evaluation.* The factors in evaluation are drawn from Donaher *et al., supra,* 52 "Tex. L. Rev." 1303.

The court should examine the expert witness' background and skills and determine whether they are appropriate for the purposes of the case. The court should not only review the witness' formal education, but also whether the witness had undertaken specific preparation for the litigation before the court. Finally, the court should examine a witness for bias. A witness with marginal expert skills and a strong bias should be considered unqualified.

(3) *Findings of Fact.* If it seems clear to the court that the expert's background and experience do not qualify the expert to testify, it should state this conclusion in its findings of fact to the parties.

(4) *Determination.* This provision empowers the court to limit the scope of an expert's testimony to the witness' specific area of expertise. It also allows the court to refuse to permit the witness to testify as an expert when that individual is not qualified to do so.

* * * * *

Code

Sec. 118. Non-Pecuniary Damages

(A) For the purposes of this Section, "non-pecuniary damages" are those which have no market value and do not represent a monetary loss to claimant.

(B) When sufficient evidence has been introduced, the amount of non-pecuniary damages shall be determined by the trier of fact. However, the court shall have and shall exercise the power to review such damage awards for excessiveness.

***Optional Subsection**

[(c) Non-pecuniary damages under this Act shall not exceed $25,000, or twice the amount of the pecuniary damages, whichever is less, unless the claimant proves by a preponderance of the evidence that the product caused claimant to suffer serious and permanent or prolonged (1) disfigurement, (2) impaired of bodily function, (3) pain and discomfort, or (4) mental illness.]

***Optional Subsection**

[(D) Every third year following the effective date of this Act as stated in Section 122, the ———— Committee(s) of [each House of] the Legislature of this State shall review the monetary limitations contained in Subsection (C) to determine whether such limitations should be changed in view of the economic conditions existing at that time. Upon a finding that such change is warranted, said Committee(s) shall introduce legislation to amend the monetary limitations contained in Subsection (C).]

* * * * *

Analysis

Sec. 118. Non-Pecuniary Damages

Claimant's "non-pecuniary damages" include awards for pain and mental suffering. They have no market value and, thus, are to be contrasted with pecuniary damages which compensate victims for lost wages, medical and rehabilitation costs, and other actual expenditures brought about by an unreasonably unsafe product.

According to the "ISO Closed Claims Survey," 70 percent of claims closed with payment include amounts in addition to a claimant's pecuniary loss. *See* "ISO Closed Claims Survey" at 54. Moreover, the average amount of payment above pecuniary loss increases significantly in the higher payment range. *Id.* at 54–55. A most important reason for the difficulty in setting product liability rates is the "open-endedness" of damages for pain and suffering. *See* "Task Force Report" at VII–64–65. These escalating premiums have an inflationary impact on consumer prices as the product seller's insurance costs are passed on to the public. Damages that go beyond the amount necessary to ensure that the claimant receives reasonable compensation for the harm suffered represent an unwarranted cost.

The "Task Force Report" suggested that limits on awards for pain and suffering "would reduce uncertainty and thereby mitigate the 'apprehension factor' that has contributed to the rise in product liability insurance rates." *Id.* at VII–65. Nevertheless, such awards have deep historical roots and should not be limited in a manner that unreasonably curtails the rights of injured parties. Section 118 takes the position that a fixed limit on the amount of non-pecuniary damages is appropriate where claimant's harm is only temporary.

Section 118 is predicated on an examination of the weaknesses in the major rationales offered in support of awards for non-pecuniary damages. The award for non-pecuniary damages arose in early common law cases as a substitute for an injured claimant seeking personal "vengeful retaliation." *See* "Task Force Report," *id.* In those cases, the defendant usually committed an intentional wrong. This rationale has little application to cases arising under product liability. Under this Act, a product seller may be held liable for harm caused by products found to be defective in construction regardless of fault. The same result occurs when an express warranty is not true. In cases of harm caused by products found to be defective in design, or defective because of the absence of adequate warnings, the trier of fact must consider more sophisticated matters than would be applied under a general negligence standard.

A second rationale to support the award of damages for pain and suffering is that they have an important deterrent function. The "Task Force Report" found evidence that the general product liability problem caused manufacturers to devote more attention to product liability loss prevention techniques. *See* "Task Force Report" at VI–50. The approach taken in Section 118 retains this deterrent function while placing some reasonable limits on awards for pain and suffering.

A third rationale, supported by members of the plaintiffs' bar and some economic legal scholars, is that awards for pain and suffering are a reasonable attempt to reduce the serious discomfort endured by a claimant. *See* R. Posner, "Economic Analysis of Law" 82 (1972). On the other hand, studies have questioned whether monetary awards for pain and suffering do anything to alleviate the symptoms they are alleged to address. *See* J. O'Connell & R. Simon, "Payment for Pain & Suffering: Who Wants What, When & Why" (1972); Peck, "Compensation for Pain: A Reappraisal in Light of New Medical Evidence," 72 "Mich. L. Rev." 1355 (1974). This Section adheres to the former assumption to the extent that when a claimant suffers serious and permanent or prolonged (1) disfigurement, (2) impairment of bodily function, (3) pain and discomfort, or (4) serious mental illness, the amount of non-pecuniary damages is left to the sound discretion of the trier of fact with appropriate review by the court in cases of abuse of that discretion.

However, when the claimant has not suffered such serious and permanent or prolonged harms,[17] non-pecuniary

[17] The Section does not address the question of whether non-pecuniary damages should be allowed or limited in wrongful death or survival actions.

damages are limited to $25,000 or twice the amount of pecuniary damages, whichever is less.

An ample body of case law in the area of Worker Compensation and, more recently, automobile injury reparation statutes, provides guidance for the court to determine whether a harm is permanent or prolonged. *See, e.g.,* "Falcone v. Branker," 135 N.J. Super. 137, 342 A.2d 875 (1975) (collecting cases); "Vitale v. Danylak," 74 Mich. App. 615, 254 N.W.2d 593 (1977) (summary judgment under automobile no-fault act); "*In re* Requests of Governor and Senate, Etc.," 389 Mich. 411, 208 N.W.2d 469, 480 (1973) (term "permanent" supplies basis for legal interpretation).

Courts also have defined and explained the term "mental illness" in a number of contexts. "Carroll v. Cobb," 139 N.J. Super. 439, 354 A.2d 355 (1976) (voter registration requirements); "Sachs v. Commercial Ins. Co.," 119 N.J. Super. 226, 290 A.2d 760 (1972) (insurance policy); "*In re* Humphrey," 236 N.C. 141, 71 S.E.2d 915 (1952) (incompetency proceedings); "Commonwealth v. Moon," 383 Pa. 18, 117 A.2d 96 (1955) (committal proceedings); "Interstate Life & Accident Ins. Co. v. Houston," 50 Tenn. App. 172, 360 S.W.2d 71 (1962) (insanity exclusion provision).

Objections to limits on awards for non-pecuniary damages take several forms. One is that such limits may violate due process or equal protection clauses of some state constitutions. *Cf.* "Wright v. Central Du Page Hosp. Ass'n.," 63 Ill. 2d 313, 347 N.E.2d 736, 743 (1976) (restriction on amount of general damages in medical malpractice); "Graley v. Satayatham," 74 Ohio Op.2d 316, 343 N.E.2d 832, 836 (C. P. 1976) (requiring list of collateral source benefits in medical malpractice). Another objection involves state constitutional prohibitions on damage limitations. *E.g.,* "Ariz. Rev. Stat. Ann.," Const. Art. 18, Section 6 (1956); "Ky. Rev. Stat. Ann.," Const. Section 54 (1891); "Penn. Stat. Ann.," Const. Art. 3, Section 18 (1969). An argument that Section 118 does not violate such prohibitions is that a strict product liability cause of action did not exist at the time the state constitution was adopted and is therefore exempt from its interdictions. *See* "Rail N Ranch Corp. v. State," 7 Ariz. App. 558, 441 P.2d 786, 788 (1968).

These objections notwithstanding, Section 118 can be supported. First, the common law rule will continue to operate where injuries are serious. *Cf.* "Rybeck v. Rybeck," 141 N.J. Super. 481, 358 A.2d 828, 836 (1976), *appeal dismissed,* 150 N.J. Super. 151, 375 A.2d 269 (1977) (limited court access for pain and suffering in no-fault—"the law is permitted to treat large problems differently from small problems if there is a rational basis for the difference"). Second, some ceiling or limit on damages for pain and suffering will reduce uncertainty in one of the greatest liability insurance ratemaking problem areas. Third, the limit will help assure that there is adequate insurance capacity to provide compensation for pecuniary losses caused by unsafe products.

Subsection (D) provides a mechanism for review and evaluation of the $25,000 limitation contained in Subsection (C). It is anticipated that the legislature may wish periodically to modify this limitation in light of significant changes in economic conditions.

Because of the facts that (1) the topic of pain and suffering goes beyond product liability and is applicable to all of tort law, (2) the limitation as drafted may raise transaction costs in regard to the issue of whether a harm is "serious, permanent, or prolonged," and (3) constitutional problems that may arise in some states, Subsections (C) and (D) are placed in brackets as optional sections.

* * * * *

Code

Sec. 119. The Collateral Source Rule

In any claim brought under this Act, the claimant's recovery, or that of any party who may be subrogated to the claimant's rights under this Act, shall be reduced by any compensation from a public source which the claimant has received or will receive for the same damages. For the purposes of this Section, "public source" means a fund more than half of which is derived from general tax revenues.

* * * * *

Analysis

Sec. 119. The Collateral Source Rule

The collateral source rule is a principle of tort law under which the defendant is not permitted to take "credit" for any money that an injured claimant received from another (collateral) source. The rule embraces both payments for loss of wages and medical expenditures.

The rule may permit double recovery by the claimant and may increase transaction costs. This Section recognizes these possibilities and provides for a limited modification of the collateral source rule when the claimant has received compensation from a public source for the same damages. Its approach is similar to that followed in medical malpractice by the states of Tennessee and Pennsylvania. *See* Volume V, "Legal Study" at 146.

There are two significant arguments against proposals to modify the existing rule. The first is that the "wrongdoer" should not have the benefit of a windfall. Proponents contend that it is better that the claimant have the benefit of a windfall than the defendant.

This argument can be rebutted in the context of product liability. Under Section 104 of this Act, a manufacturer may be held liable for defects in construction or breach of an express warranty on a strict liability basis. In other cases, a product seller's liability is based on fault, but not on gross negligence or intentionally wrongful conduct. Therefore, a selective modification of the collateral source rule in the context of product liability may be justified. Indeed, some states have upheld such selective abolition or modification where liability was predicated solely on a fault basis. *See* "Eastin v. Broomfield," 116 Ariz. 576, 570 P.2d 744, 751–52 (1977); *But see* "Graley v. Satayatham," 74 Ohio Op. 2d 316, 343 N.E. 2d 832 (C.P. 1976) (holding unconstitutional selective abolition in medical malpractice context).

The second argument against modifying the collateral source rule is that a product seller should not be permitted to "externalize" the cost of an injury caused by its products. This argument is very strong when the injured claimant has purchased health and accident coverage. In that instance, the defendant product seller should not be able to benefit from the claimant's prior prudence. Nevertheless, some proposals have modified the rule in that situation. *See* "Neb. Rev. Stat." Section 44–2819 (Supp. 1978); "Prendergast v. Nelson," 199 Neb. 97, 256 N.W. 2d 657, 669 (1977); National Product Liability Council, "Proposed Uniform State Product Liability Act" Section 207 (undated). *See also* Comment, "An Analysis of State Legislative Responses to the Medical Malpractice Crisis," 1975 "Duke L.J." 1417, 1447–50. The argument is less persuasive when the claimant has not directly contributed to the insurance fund as is the case with Worker Compensation.

When the claimant has received damages from a public source, the argument loses all of its force. The benefits received were not through the claimant's pre-accident financial planning or made a part of the claimant's remuneration as a condition of employment. Rather, they were derived from public tax funds that accumulated in part by contributions

from the product seller. Since the product seller would be able to distribute the cost of a judgment that included this amount among consumers through product pricing, the public may be subjected to excessive, duplicative costs.

Section 119 defines a "public source" as a fund more than half of which is derived from general tax revenues. This would include welfare benefits and other forms of medical, hospitalization, and disability benefits which are funded by state or federal tax funds. It does not include Worker Compensation payments (which are specifically dealt with in Section 114), employee group insurance plans, or other similar sources. It also does not presently include payments received pursuant to the "United States Social Security Act." Although Social Security contributions are withheld from an employee's pay, they are not "general tax revenues." However, if the method of funding the Social Security system is changed, such payments might then come within the operation of this Section. *Compare* the approach taken in Section 119 *with* the various approaches taken in state medical malpractice statutes. *See, e.g.,* "Tenn. Code Ann." Section 23–3418 (Supp. 1978) (complete abrogation of collateral source rule expressly includes Social Security benefits); "Neb. Rev. Stat." Section 44–2819 (Supp. 1978) (partial abrogation of collateral source rule does not include Social Security benefits).

A probable effect of Section 119 will be to reduce double expenditures for medical costs. The "ISO Closed Claims Survey" suggests that medical costs represent approximately 19.7 percent of product liability claims. "ISO Closed Claims Survey" at 57. Nevertheless, the cost savings generated by this Section will probably be modest. The ISO closed claims data, which were quite limited on this point, show that approximately 6.4 percent of claimants have been reimbursed by public collateral sources. *See* "ISO Closed Claims Survey" at 181. Collateral sources paid for 19.8 percent of the claims in those cases (this closely parallels the general percentage of medical benefits). Nonetheless, this Section should help reduce overall insurance costs. Liability insurers should take this matter into account when they formulate rates and premiums.

Section 119 also takes account of existing legislation that may authorize subrogation by public collateral sources. In order to reduce transaction costs and duplicative distribution costs, this Section prohibits such subrogation.

Finally, Section 119 does not alter existing law that prohibits the defendant from introducing into evidence the fact that the claimant has been indemnified by a collateral source. That alternative approach was rejected because it would leave the trier of fact in the role of balancing the delicate policy elements that surround proposals calling for abolition of the collateral source rule. This should be an issue of law for state legislatures or courts. Also, that approach would reduce the potential benefit of collateral source rule modifications in that it would increase transaction costs and lower predicatability and consistency in the allocation of collateral benefits. *See* "Task Force Report" at VII–74–75. *Cf.* Defense Research Institute, "Products Liability Position Paper" at 44–45 (1976) (advocating modification of evidentiary rules to allow trier of fact to consider all collateral benefits).

* * * * *

Code

Sec. 120. Punitive Damages

(A) Punitive damages may be awarded to the claimant if the claimant proves by clear and convincing evidence that the harm suffered was the result of the product seller's reckless disregard for the safety of product users, consumers, or others who might be harmed by the product.

(B) If the trier of fact determines that punitive damages should be awarded, the court shall determine the amount of those damages. In making this determination, the court shall consider:

(1) The likelihood at the relevant time that serious harm would arise from the product seller's misconduct;

(2) The degree of the product seller's awareness of that likelihood;

(3) The profitability of the misconduct to the product seller;

(4) The duration of the misconduct and any concealment of it by the product seller;

(5) The attitude and conduct of the product seller upon discovery of the misconduct and whether the conduct has been terminated;

(6) The financial condition of the product seller;

(7) The total effect of other punishment imposed or likely to be imposed upon the product seller as a result of the misconduct, including punitive damage awards to persons similarly situated to the claimant and the severity of criminal penalties to which the product seller has been or may be subjected; and

(8) Whether the harm suffered by the claimant was also the result of the claimant's own reckless disregard for personal safety.

* * * * *

Analysis

Sec. 120. Punitive Damages

Some product sellers and others have called for the abolition of punitive damages on the grounds that they serve no proper "tort law" purpose,[18] and at least one court has accepted these arguments in the area of product liability. *See* "Walbrun v. Berkel, Inc.," 433 F. Supp. 384–85 (E.D. Wis. 1976); "Roginsky v. Richardson-Merrell, Inc.," 378 F.2d 832 (2d Cir. 1967) (dictum).

Nevertheless, as Section 120 acknowledges, punitive damages serve an important function in deterring product sellers from reckless disregard for safety in the production, distribution, or sale of dangerous products. *See* "Toole v. Richardson-Merrell, Inc.," 251 Cal. App. 2d 689, 60 Cal. Rptr. 398 (1967); "Gillham v. Admiral Corp.," 523 F.2d 102 (6th Cir. 1975). At the same time, Section 120 recognizes and addresses punitive damages problems in the specific context of product liability.

While many product sellers have expressed great concern about the economic impact of punitive damages, the "ISO Closed Claims Survey" suggests that the number of cases in which such damages are imposed is insubstantial. "ISO Closed Claims Survey" at 183. Nevertheless, concern about punitive damages has caused some insurers to decline to provide insurance coverage for these damages. Also, a number of states and some insurers have declined to permit such coverage. They contend that a product seller should not be allowed to pass this cost on to an insurer. Transcending all of these concerns is the total lack of legal structure surrounding punitive damages. The approach taken in Section 120 is to provide such a structure, so as to reduce product sellers' reasonable concerns about punitive damages, while at the same time retaining the important deterrent function of punitive damages.

Subsection (A) addresses a basic argument against punitive damages—specifically that they apply a criminal law sanction to a civil law case, even though the defendant does not have the benefit of the constitutional protections that would be available under criminal law. Subsection (A) moves away from the ordinary "preponderance of evidence" test of civil cases and toward

[18] *See* "Proposed Uniform State Product Liability Act" Section 206 (National Product Liability Council) (undated); *see generally* Defense Research Institute, "The Case Against Punitive Damages" (monograph 1969) (marshalling arguments).

the criminal standard, but does not turn completely to a pure criminal standard of proof "beyond a reasonable doubt." Because the defendant is not subject to incarceration, and the "punishment" is more in the nature of a civil fine than a criminal sanction, the Act requires the claimant to prove by "clear and convincing" evidence that punitive damages are justified. *See* Subsections 102 (H) and (I) (definitions of "preponderance of evidence" and "clear and convincing evidence").

Subsection (A) also requires that the claimant prove that the product seller's conduct demonstrated reckless disregard for the safety of others. The phrase "reckless disregard"—the traditional barrier that the plaintiff must cross in order to obtain punitive damages—means a conscious indifference to the safety of persons who might be injured by the product. *See* Subsection 102(J) (definition of "reckless disregard"); *cf.* W. Prosser, "Torts" at 9–10 (4th ed. 1971). The "reckless disregard" standard is identified in statutory form to avoid any possible misinterpretation of this basic area of law. Thus, it should be clear that a product seller does *not* have to pay punitive damages under ordinary strict liability or negligence standards which fall short of reckless disregard.

Subsection (B) follows the current common law system in allowing the trier of fact to determine at its discretion whether punitive damages should be awarded. *See* Prosser, *supra* at 9. On the other hand, this Subsection draws upon a newly enacted Minnesota statute in having the court, rather than the jury, determine the amount of those damages. "Minn. Stat. Ann." Section 549.21 (Supp. 1978). This approach is in accord with the general pattern of criminal law where the jury determines "guilt or innocence" and the court imposes the sentence. This is particularly appropriate in product liability cases where, under current law, product sellers are potentially subject to repeated imposition of punitive damages for harm caused by a particular product.

Subsection (B) provides guidelines for the court in determining the amount of punitive damages. The eight factors are derived from "Minn. Stat. Ann." Section 549.20(3) (Supp. 1978). The drafters of that statute relied on a very thorough analysis of product liability punitive damages. *See* Owen, "Punitive Damages in Products Liability Litigation," 74 "Mich. L. Rev." 1257, 1299–319 (1976).

Factors (1) and (2) are self-evident. If the facts show that the product seller was actually aware of the specific hazard *and* its seriousness, *and* marketed it anyway, a higher award is in order.

Factor (3), profitability, recognizes that punitive damages may be used to attack directly the profit incentive that generated the misconduct.

Factor (4) is important regardless of the basic requirement that the product seller must have reckless disregard for the safety of others. If the product seller consciously concealed its activities, this fact argues for a higher award.

Factor (5) acknowledges that the product seller who was reckless in producing the product, but who acted quickly to remove the product from the market upon discovery of the hazard, should not be subject to as harsh a sanction as one who failed to act. Some have suggested that punitive damages should be awarded only where corporate management has either authorized, participated in, or ratified conduct that shows a conscious or reckless disregard for public safety. *See* "Task Force Report" at VII–79. Section 120 rejects that approach because it could foster legal disputes as to whether an individual stood "high enough" in the corporate structure to bear responsibility for punitive damages. Nevertheless, in circumstances where a non-management employee caused the harm and management acted quickly to mitigate that harm once it was discovered, a lower award is appropriate.

Factor (6) permits the court to consider the impact of the award on the product seller in light of its financial condition. This consideration has deep roots in common law. It is one that has been subject to criticism from product sellers and economists. Nevertheless, in light of the fact that the deterrence of wrongful conduct is the principal rationale for punitive damages, it is appropriate to consider the impact an award will have on a particular product seller.

Factor (7) is more important in product liability cases than in other liability cases because it addresses the problem of multiple exposure to punitive damages. This factor directs the court to consider both criminal and civil liability to which the product seller has been or may be subjected.

Factor (8) recognizes that the injury may also be attributable in part to the claimant's reckless disregard for personal safety. In such instances where the defendant can show such reckless disregard on the part of the claimant, punitive damages may be diminished proportionately according to the comparative responsibility according to the comparative responsibility of that claimant. The comparison, therefore, is between the reckless disregard on the part of the product seller and that of the claimant, and *not* between the reckless disregard of the product seller and mere negligence of the claimant. *See also* Section 111.

The Act indicates that the award of punitive damages goes to the claimant and not to the state. While the argument that "since the damages are non-compensatory, they should go to the state" has some merit, the approach was rejected because of constitutional problems and the fact that it might place a claimant's attorney in a potential conflict of interest situation by forçing the attorney to represent both the claimant and the state. *See* "Task Force Report" at VII–79.

When the trier of fact determines that punitive damages should be awarded, one option available to the court is to limit the award to a multiple of the compensatory damages as is done in antitrust actions. While this approach has appeal, it is not appropriate in the case of product liability because this area of the law addresses a multiplicity of different kinds of wrongful acts. Antitrust law, on the other hand, addresses one basic kind of wrongful act: an antitrust violation. Under this Section, the defendant's wrongful conduct could range from that which merely could cause damage to property to conduct which could result in the deaths of many people. Antitrust law violations involve economic injury only, and rarely, if ever, result in serious physical injury or death. Thus, the punitive damages in product liability actions do not lend themselves to quantification in the same manner as do such damages in antitrust cases.

* * * * *

Code

Sec. 121. Severance Clause

If any part of this Act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its effect to that part of this Act declared to be invalid.

* * * * *

Analysis

Sec. 121. Severance Clause

This Section makes clear that in the event any court of competent jurisdiction declares any part of this Act to be invalid, such action shall be confined to that part alone, and shall not affect the validity of the remainder of the Act. The source of this Section is "1976 N.Y. Laws," ch. 955 (12)

(McKinney), which concerns medical malpractice.

* * * * *

Code

Sec. 122. Effective Date

This Act shall be effective with regard to all product liability claims filed on or after ————, 19——.

*** Alternative Section**

[This Act shall be effective with regard to all claims accruing on or after ————, 19——. It shall be prospective in operation, and shall only apply to a product-related harm occurring on or after this date. When the facts giving rise to a claim are discovered or should have been discovered after this date, this Act shall govern the claimant's action. When the facts giving rise to a product-related harm are discovered or should have been discovered prior to the effective date of this Act, the law of this State which was applicable at the time of such discovery shall govern the claimant's action.]

* * * * *

Analysis

Sec. 122. Effective Date

The issue of the effective date of a tort-related statute has not been given intense analysis in legal periodicals—perhaps because there have been relatively few legislative initiatives in the tort area. In an attempt to balance fairness to all parties against procedural convenience, the drafters of this Act have chosen to apply the statute to all claims *filed* after the effective date.

The shortcoming of this approach is that it may create a rush to the courthouse—or, conversely, a delay—by claimants' attorneys. Also, the new law will apply to some injuries that occurred *before* the effective date.

On the other hand, since the Act does not create new causes of action, but condenses, clarifies, and balances common law development, the approach taken is a fair one. Also, it allows claimants, product sellers, and insurers to know, with precision, what law will be applied to a claim. *See* "1979 Minn. Laws" ch. 81, Section 3; "Conn. Gen. Stat." Section 52–572 1 (rev. 1979); *cf.* "Peterson v. City of Minneapolis," 285 Minn. 282, 173 N.W.2d 353 (1969); "Godfrey v. State," 84 Wash. 2d 959, 530 P.2d 630 (1975); *see also* Annot., 37 "A.L.R.3d" 1438 (1971).

Because state legislatures are likely to differ about the issue of effective date, an alternative approach has been drafted. The alternative provision would have the Act apply only to a harm actually sustained or causes of action discovered, or which should have been discovered (*e.g.*, latent disease) on or after the effective date. This approach makes the Act fully prospective in nature and recognizes that certain illnesses, such as malignancies, only become discoverable some time after the actual contact with the product. In the case of disease or other illness with delayed effects, the Act would apply if the harm or the cause thereof were discovered on or after the effective date. *See* Section 109(C); *see also* 73 "Am. Jur. 2d" "Statutes" Sections 385 *et seq.* (1974).

A significant shortcoming of this alternative approach is that for many years it will leave claimants, product sellers, and insurance ratemakers with two potential sources of product liability law—existing common law and this Act. It should be noted that the phrase "the law of this State," as used in the alternative, includes a state's conflict of law rules as well as its substantive product liability law.

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Appendix A—A Bibliography of Major Compendium Sources Reviewed in Connection With the Model Code

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American Insurance Association, Product Liability Legislative Package (1977).

The California Citizens' Commission on Tort Reform, Righting the Liability Balance (1977).

A review was also conducted of all enacted state product liability laws, all proposed federal product liability laws, and major proposed state product liability laws, as well as all law review and other related literature and major case law reported or published since the completion of the Interagency Task Force's seven-volume Legal Study in December 1976. That study reviewed case law and literature published prior to that date. Consideration was also given to pre-1976 sources that were not reviewed by the Legal Study.

[FR Doc. 79–33253 Filed 10–30–79; 8:45 am]

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October 31, 1979

Part III

Department of Housing and Urban Development

Office of Assistant Secretary for Housing—Federal Housing Commissioner

Schedule A—Fair Market Rents for New Construction and Substantial Rehabilitation, All Market Areas, Section 8 Projects

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

[Docket No. R-79-721]

Schedule A—Fair Market Rents for New Constuction and Substantial Rehabilitation, All Market Areas, Section 8 Projects

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Proposed rule.

SUMMARY: This Proposed Rule would amend the Section 8 Fair Market Rents for New Construction and Substantial Rehabilitation for all market areas. The proposed Fair Market Rents are intended to reflect changes which have occurred in the general levels of market rents for recently completed or newly constucted dwelling units in each market area since their last annual revision which was published on July 13, 1979 and made effective as of April 1, 1979.

ADDRESS: Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. (202) 755–7603. This is not a toll-free number.

COMMENT DUE DATE: November 15, 1979. Comments should be filed by this deadline with the Rules Docket Clerk at the above addess.

FOR FUTHER INFORMATION CONTACT: Edward M. Winiarski, Supervisory Appraiser, Valuation Branch, Technical Support Division, Office of Multifamily Housing Development, 451 Seventh Street, SW., Washington, D.C. 20410. (202) 755–5743. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: This year HUD is proposing to change the effective date of the Fair Market Rent schedules from April 1, 1979 to October 1, 1979 to coincide with the fiscal year. Thereafter, each proposed Annual Revision to the Fair Market Rents will be published effective October 1.

The Schedule A rents are proposed to be updated to reflect changes resulting from the six month interval between April 1, 1979, the effective date of the last general revision of the published rents, and October 1, 1979, the anticipated effective date of these proposed Fair Market Rents, for all market areas.

These proposed rents also reflect comments received after the July 3, 1979, deadline for comments on the proposed rents which were the basis for the last general revision published on July 13, 1979. The Schedule A rents for the following 13 market areas reflect these comments: California, San Francisco market area; Illinois, Chicago market area; Maryland, Garrett and Howard Counties market areas; New York Poughkeepsie, and Westchester County market areas; Pennsylvania, Philadelphia, Pittsburgh, New Castle, Sharon, Erie, Altoona, and Johnstown market areas.

Fair Market Rents are based primarily on the levels of rental paid for recently completed or newly-constructed dwelling units of modest design within each market area as determined by HUD Field Office staff. They are estimates of the rentals that prospective tenants who have incomes above 80 percent of the median income would be willing and able to pay for recently completed or newly-constructed dwelling units of modest design.

The Proposed Rule includes Fair Market Rents for 0, 1, 2, 3, and 4 or more bedroom units in five structural categories (Detached, Semi-Detached/Row, Walkup, Elevator 2–4 Story, and Elevator 5+ Story). Construction of elevator projects for families with children is legally prohibited unless there is no practical alternative.

Proposals involving combinations of structural types and unit sizes for which Fair Market Rents have not been published for effect may not be approved until publication of the applicable Fair Market Rents, first for comment and afterwards for effect.

Interested parties may submit information with adequate documentation on Fair Market Rents at any time. This data will be considered in initiating interim revisions to Fair Market Rent schedules. In order to expedite consideration of comments, please send an information copy of your comment to the Area Office having jurisdiction for the market area involved. Because of the immediate need to publish revised Fair Market Rents to meet fiscal year 1980 Departmental production goals, a 15-day comment period is reasonable and in the public interest.

HUD has made a Finding of Inapplicability regarding requirements under the National Environmental Policy Act of 1969 in accordance with HUD procedures. A copy of this Finding of Inapplicability is available for public inspection during regular business hours at the Office of the Rules Docket Clerk at the address set forth above.

Accordingly, Schedule A of Part 888 is proposed to be amended as set forth below: Authority: Sec. 7(d) Department of HUD Act (42 U.S.C. 3535(d).)

Issued at Washington, D.C., October 2, 1979.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

Schedule A—Fair Market Rents for New Construction and Substantial Rehabilitation (Including Housing Finance and Development Agencies Program)

These Fair Market Rents have been tended ahead to October 1, 1981 to allow time for processing and construction of proposed new construction and substantial rehabilitation rental projects.

Note.—The Fair Market Rents for (1) dwelling units designed for the elderly or handicapped are those for the approporiate size units, not to exceed 2-bedrooms for the elderly, multiplied by 1.05 rounded to the nearest whole dollar. (2) congregate housing dwelling units are the same as for noncongregate units, and (3) single room occupancy dwelling units are those for zero bedroom units of the same type.

BILLING CODE 4210-01-M

AREA OFFICE HARTFORD, CONN. REGION I - BOSTON

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
HARTFORD/NEW HAVEN *	DETACHED			537	599	645
	SEMI-DETACHED/ROW		438	509	570	615
	WALKUP	371	432	504	566	608
	ELEVATOR-2-4 Sty	389	451	523		
	5 + Sty	400	464	537		
BRIDGEPORT/ DANBURY *	DETACHED			561	627	674
	SEMI-DETACHED/ROW		461	534	602	648
	WALKUP	392	454	530	591	638
	ELEVATOR-2-4 Sty	407	474	548		
	5 + Sty	421	487	561		
NEW MILFORD	DETACHED			529	586	632
	SEMI-DETACHED/ROW		421	501	557	602
	WALKUP	361	416	495	550	595
	ELEVATOR-2-4 Sty	377	432	516		
	5 + Sty	390	445	529		
RIDGEFIELD/ STAMFORD *	DETACHED			577	641	685
	SEMI-DETACHED/ROW		571	544	609	652
	WALKUP	401	465	539	603	652
	ELEVATOR-2-4 Sty	420	485	562		
	5 + Sty	432	495	573		
WINDHAM	DETACHED			498	563	609
	SEMI-DETACHED/ROW		402	474	534	577
	WALKUP	336	397	466	529	572
	ELEVATOR-2-4 Sty	349	409	480		
	5 + Sty	363	427	498		
NORWICH/NEW * LONDON	DETACHED			528	590	636
	SEMI-DETACHED/ROW		433	502	560	605
	WALKUP	363	423	494	555	600
	ELEVATOR-2-4 Sty	379	438	514		
	5 + Sty	392	454	528		

* Market areas are not combined. FMRs are identical for these market areas.

SERVICE OFFICE MANCHESTER, N.H. REGION I - BOSTON

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
MAINE STATEWIDE	DETACHED		386	441	499	567
	SEMI-DETACHED/ROW	325	372	425	480	543
	WALKUP	298	340	391	439	499
	ELEVATOR-2-4 Sty	355	390	476		
	5 + Sty	393	433	528		
VERMONT STATEWIDE	DETACHED			431	501	586
	SEMI-DETACHED/ROW		366	420	478	549
	WALKUP	308	357	409	460	516
	ELEVATOR-2-4 Sty	336	376	451		
	5 + Sty	373	419	501		
NEW HAMPSHIRE STATEWIDE	DETACHED		412	484	558	652
	SEMI-DETACHED/ROW	328	373	441	502	581
	WALKUP	313	358	424	479	544
	ELEVATOR-2-4 Sty	339	397	495		
	5 + Sty	370	435	529		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE BOSTON, MASS. REGION I - BOSTON

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
BOSTON	DETACHED			---	---	---
	SEMI-DETACHED/ROW		443	501	629	713
	WALKUP	357	442	488	570	686
	ELEVATOR-2-4 Sty	371	478	540	718	787
	5 + Sty	371	478	540	718	787
CAPE COD	DETACHED			561	600	705
	SEMI-DETACHED/ROW			441	495	567
	WALKUP	310	384	404	489	562
	ELEVATOR-2-4 Sty	321	418	451		
	5 + Sty	338	440	474		
PITTSFIELD	DETACHED			---	---	---
	SEMI-DETACHED/ROW		385	465	587	643
	WALKUP	320	366	413	509	613
	ELEVATOR-2-4 Sty	324	370	459		
	5 + Sty	341	390	483		
SPRINGFIELD	DETACHED			---	---	---
	SEMI-DETACHED/ROW		363	428	576	656
	WALKUP	241	356	402	509	625
	ELEVATOR-2-4 Sty	287	370	437		
	5 + Sty	303	390	460		
WORCHESTER	DETACHED			---	---	---
	SEMI-DETACHED/ROW		394	465	577	678
	WALKUP	349	384	451	530	647
	ELEVATOR-2-4 Sty	352	409	478		
	5 + Sty	352	430	504		
FALL RIVER	DETACHED			---	---	---
	SEMI-DETACHED/ROW		391	476	614	623
	WALKUP	352	366	451	534	594
	ELEVATOR-2-4 Sty	354	389	460		
	5 + Sty	354	409	484		

AREA OFFICE BOSTON, MASS. REGION I - BOSTON

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
LOWELL	DETACHED			723	826	873
	SEMI-DETACHED/ROW		434	493	586	700
	WALKUP	359	412	477	558	667
	ELEVATOR-2-4 Sty	364	444	502		
	5 + Sty	364	467	529		
SALEM	DETACHED			---	---	---
	SEMI-DETACHED/ROW		413	482	541	668
	WALKUP	329	402	451	528	635
	ELEVATOR-2-4 Sty	353	454	508		
	5 + Sty	371	478	534		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

SERVICE OFFICE PROVIDENCE, R.I. REGION I - BOSTON

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
PROVIDENCE *	DETACHED			470	531	567
	SEMI-DETACHED/ROW		383	460	526	567
	WALKUP	281	373	444	501	541
	ELEVATOR-2-4 Sty	286	393	506		
	5 + Sty	291	398	510		
NEWPORT *	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
WESTERLY *	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
PAWTUCKET *	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
WOONSOCKET *	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

*Market Areas are not combined. FMRs are identical for these market areas.

AREA OFFICE NEWARK, N.J. REGION II - NEW YORK

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
NEWARK	DETACHED			755	837	877
	SEMI-DETACHED/ROW	488	531	675	773	840
	WALKUP	428	466	599	686	749
	ELEVATOR-2-4 Sty	493	524	654	729	797
	5 + Sty	541	579	711	799	861
ATLANTIC CITY	DETACHED			677	751	777
	SEMI-DETACHED/ROW	410	447	522	606	669
	WALKUP	378	413	479	556	616
	ELEVATOR-2-4 Sty	450	487	560	649	706
	5 + Sty	520	570	669	779	849
ASBURY PARK	DETACHED			668	754	799
	SEMI-DETACHED/ROW	454	502	589	692	763
	WALKUP	395	438	516	607	674
	ELEVATOR-2-4 Sty	444	500	605	688	769
	5 + Sty	493	556	663	758	832
CAMDEN/ BURLINGTON/ GLOUCESTER *	DETACHED			665	742	783
	SEMI-DETACHED/ROW	411	451	547	633	698
	WALKUP	374	409	498	575	635
	ELEVATOR-2-4 Sty	445	483	585	674	738
	5 + Sty	491	538	654	758	828
FREEHOLD	DETACHED			732	817	861
	SEMI-DETACHED/ROW	462	510	652	753	824
	WALKUP	403	445	577	667	732
	ELEVATOR-2-4 Sty	444	500	636	729	809
	5 + Sty	493	556	693	799	872
NORTH BERGAN	DETACHED			758	843	887
	SEMI-DETACHED/ROW	501	549	678	779	833
	WALKUP	441	483	602	692	757
	ELEVATOR-2-4 Sty	502	560	723	794	852
	5 + Sty	550	616	780	864	916

* Market areas are not combined. FMRs are identical for these market areas.

AREA OFFICE NEWARK, N.J. REGION II - NEW YORK

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
TRENTON	DETACHED			684	762	802
	SEMI-DETACHED/ROW	455	695	566	652	716
	WALKUP	417	452	516	593	653
	ELEVATOR-2-4 Sty	492	530	605	694	757
	5 + Sty	538	586	675	779	847
VINELAND	DETACHED			571	648	689
	SEMI-DETACHED/ROW	353	394	455	541	605
	WALKUP	318	354	409	486	545
	ELEVATOR-2-4 Sty	387	426	490	579	642
	5 + Sty	432	480	558	664	732
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE BUFFALO, N.Y. REGION II - NEW YORK

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
ALBANY/ GLEN FALLS/ MASSENA/ * SYRACUSE	DETACHED			432	521	576
	SEMI-DETACHED/ROW		320	379	462	512
	WALKUP	251	311	364	427	483
	ELEVATOR-2-4 Sty	275	342	429		
	5 + Sty	296	363	451		
ITHACA/ WATERTOWN/ SCHNECTADY/ BINGHAMTON *	DETACHED			432	521	576
	SEMI-DETACHED/ROW		320	379	462	512
	WALKUP	251	311	364	427	483
	ELEVATOR-2-4 Sty	275	342	429		
	5 + Sty	296	363	451		
PLATTSBURGH	DETACHED			442	521	576
	SEMI-DETACHED/ROW		373	407	470	530
	WALKUP	294	322	373	435	496
	ELEVATOR-2-4 Sty	372	399	459		
	5 + Sty	385	420	502		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

* Market areas are not combined. FMRs are identical for these market areas.

AREA OFFICE BUFFALO, N.Y. REGION II - NEW YORK

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
BUFFALO	DETACHED			452	509	573
	SEMI-DETACHED/ROW		358	395	463	536
	WALKUP	284	317	366	431	457
	ELEVATOR-2-4 Sty	356	377	448		
	5 + Sty	412	436	510		
ELMIRA	DETACHED			444	514	570
	SEMI-DETACHED/ROW		386	425	479	534
	WALKUP	301	332	392	453	514
	ELEVATOR-2-4 Sty	361	404	483		
	5 + Sty	386	428	509		
JAMESTOWN	DETACHED			452	508	571
	SEMI-DETACHED/ROW		378	412	472	539
	WALKUP	310	337	382	438	505
	ELEVATOR-2-4 Sty	373	399	464		
	5 + Sty	393	433	519		
ROCHESTER	DETACHED			439	491	543
	SEMI-DETACHED/ROW		356	404	469	528
	WALKUP	277	303	359	422	475
	ELEVATOR-2-4 Sty	371	396	471		
	5 + Sty	392	429	514		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE NEW YORK, N. Y. REGION II - NEW YORK

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
NEW YORK CITY	DETACHED	---	---	---	---	---
	SEMI-DETACHED/ROW	---	518	618	719	839
	WALKUP	403	476	573	673	777
	ELEVATOR-2-4 Sty	462	540	643	733	827
	5 + Sty	578	667	804	929	1022
SUFFOLK	DETACHED	---	---	566	696	788
	SEMI-DETACHED/ROW	419	443	523	567	678
	WALKUP	339	410	486	524	586
	ELEVATOR-2-4 Sty	421	517	611	---	---
	5 + Sty	444	529	649	---	---
WESTCHESTER COUNTY	DETACHED	---	---	696	791	841
	SEMI-DETACHED/ROW	---	492	581	695	776
	WALKUP	383	449	539	657	742
	ELEVATOR-2-4 Sty	409	470	584	684	---
	5 + Sty	468	535	653	---	---
ORANGE	DETACHED	---	---	522	601	648
	SEMI-DETACHED/ROW	---	356	427	504	581
	WALKUP	255	335	400	491	532
	ELEVATOR-2-4 Sty	378	484	573	---	---
	5 + Sty	388	493	582	---	---
ROCKLAND	DETACHED	---	---	669	759	804
	SEMI-DETACHED/ROW	---	434	540	637	683
	WALKUP	339	410	516	614	661
	ELEVATOR-2-4 Sty	361	442	562	---	---
	5 + Sty	397	479	605	---	---
NASSAU	DETACHED	---	---	736	782	902
	SEMI-DETACHED/ROW	---	532	639	737	838
	WALKUP	392	490	599	698	774
	ELEVATOR-2-4 Sty	398	525	621	---	---
	5 + Sty	406	532	665	---	---

AREA OFFICE NEW YORK, N.Y. REGION II - NEW YORK

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
PUTNAM	DETACHED	---	---	657	746	794
	SEMI-DETACHED/ROW	---	465	548	655	732
	WALKUP	361	423	508	619	700
	ELEVATOR-2-4 Sty	386	443	551	645	---
	5 + Sty	441	505	616	---	---
POUGHKEEPSIE	DETACHED	---	---	489	547	600
	SEMI-DETACHED/ROW	---	340	423	498	548
	WALKUP	268	319	387	470	522
	ELEVATOR-2-4 Sty	332	383	462		
	5 + Sty	352	407	490	---	---
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE CARIBBEAN REGION II - NEW YORK

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SAN JUAN	DETACHED			380	447	486
	SEMI-DETACHED/ROW		358	380	447	486
	WALKUP	284	358	380	447	486
	ELEVATOR-2-4 Sty	-	-	-	-	-
	5 + Sty	333	409	433	503	542
PONCE	DETACHED			401	472	512
	SEMI-DETACHED/ROW		377	401	472	512
	WALKUP	302	377	401	472	512
	ELEVATOR-2-4 Sty	-	-	-	-	-
	5 + Sty	350	428	455	528	637
MAYAGUEZ	DETACHED			392	462	504
	SEMI-DETACHED/ROW		369	392	462	504
	WALKUP	294	369	392	462	504
	ELEVATOR-2-4 Sty	-	-	-	-	-
	5 + Sty	344	421	446	519	559
ARECIBO	DETACHED			392	462	504
	SEMI-DETACHED/ROW		369	392	462	504
	WALKUP	294	369	392	462	504
	ELEVATOR-2-4 Sty	-	-	-	-	-
	5 + Sty	344	421	446	519	559
ST. CROIX	DETACHED			438	504	524
	SEMI-DETACHED/ROW		289	422	485	505
	WALKUP	253	286	382	397	449
	ELEVATOR-2-4 Sty	-	-	-	-	-
	5 + Sty	-	-	-	-	-
ST. THOMAS	DETACHED			438	504	524
	SEMI-DETACHED/ROW		289	422	485	505
	WALKUP	253	286	382	397	449
	ELEVATOR-2-4 Sty	316	405	483		
	5 + Sty	-	-	-	-	-

AREA OFFICE PHILADELPHIA, PA. REGION III - PHILADELPHIA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
WILMINGTON, DEL.	DETACHED	-	-	-	-	-
	SEMI-DETACHED/ROW	-	301	402	566	
	WALKUP	267	298	374	454	
	ELEVATOR-2-4 Sty	283	351	429	481	
	5 + Sty	314	392	458	523	
DOVER, DEL.	DETACHED	-	-	-	-	-
	SEMI-DETACHED/ROW	-	278	372	523	
	WALKUP	247	276	345	420	
	ELEVATOR-2-4 Sty	262	324	397	446	
	5 + Sty	291	373	422	485	
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE WASHINGTON, D.C. REGION III - PHILADELPHIA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
WASHINGTON, DC	DETACHED					
	SEMI-DETACHED/ROW		444	527	574	649
	WALKUP	308	405	488	564	624
	ELEVATOR-2-4 Sty	340	438	523		
	5 + Sty	350	447	600		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE BALTIMORE, MD REGION III - PHILADELPHIA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
BALTIMORE/ WALDORF *	DETACHED			555	652	706
	SEMI-DETACHED/ROW		347	389	478	611
	WALKUP	288	332	374	466	548
	ELEVATOR-2-4 Sty	302	365	429		
	5 + Sty	313	371	471		
HAGERSTOWN	DETACHED			482	567	642
	SEMI-DETACHED/ROW		338	365	447	574
	WALKUP	287	322	358	429	536
	ELEVATOR-2-4 Sty	297	343	408		
	5 + Sty	302	353	415		
SALISBURY	DETACHED			467	538	639
	SEMI-DETACHED/ROW		311	354	431	573
	WALKUP	258	290	348	414	542
	ELEVATOR-2-4 Sty	268	310	399		
	5 + Sty	273	319	406		
GARRETT CY.	MOBILE HOMES			371	395	
HOWARD CY.	MOBILE HOMES			429	449	
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

*Market areas are not combined. FMRs are identical for these market areas.

AREA OFFICE PHILADELPHIA, PA REGION III - PHILADELPHIA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
PHILADELPHIA	DETACHED			527	576	633
	SEMI-DETACHED/ROW		385	479	527	580
	WALKUP	296	352	442	511	554
	ELEVATOR-2-4 Sty	321	390	465		
	5 + Sty	373	419	486		
ALLENTOWN/ BETHLEHEM *	DETACHED	---	---	---	---	---
	SEMI-DETACHED/ROW		335	414	497	548
	WALKUP	290	325	409	490	535
	ELEVATOR-2-4 Sty	344	363	426		
	5 + Sty	353	388	477		
BELLEFONTE	DETACHED	---	---	---	---	---
	SEMI-DETACHED/ROW		321	432	487	533
	WALKUP	271	312	397	478	520
	ELEVATOR-2-4 Sty	311	345	441		
	5 + Sty	339	378	480		
HARRISBURG	DETACHED	---	---	---	---	---
	SEMI-DETACHED/ROW		338	424	542	599
	WALKUP	290	333	409	528	585
	ELEVATOR-2-4 Sty	318	370	421		
	5 + Sty	357	400	455		
LANCASTER/ YORK*	DETACHED	---	---	---	---	---
	SEMI-DETACHED/ROW		329	404	480	516
	WALKUP	272	323	391	469	503
	ELEVATOR-2-4 Sty	306	359	453		
	5 + Sty	337	388	492		
READING/ POTTSTOWN *	DETACHED	---	---	---	---	---
	SEMI-DETACHED/ROW		334	395	494	541
	WALKUP	275	318	368	458	501
	ELEVATOR-2-4 Sty	310	367	417		
	5 + Sty	336	402	471		

* Market areas are not combined. FMRs are identical for these market areas.

AREA OFFICE PHILADELPHIA, PA REGION III - PHILADELPHIA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SCRANTON	DETACHED	---	---	---	---	---
	SEMI-DETACHED/ROW		373	437	500	565
	WALKUP	288	347	421	495	546
	ELEVATOR-2-4 Sty	316	380	443		
	5 + Sty	368	436	489		
WELLSBORO	DETACHED	---	---	---	---	---
	SEMI-DETACHED/ROW		321	432	487	533
	WALKUP	271	312	397	478	520
	ELEVATOR-2-4 Sty	311	345	441		
	5 + Sty	339	378	480		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE PITTSBURGH, PA REGION III - PHILADELPHIA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
PITTSBURGH	DETACHED		447	481	563	648
	SEMI-DETACHED/ROW		418	458	523	603
	WALKUP	302	376	433	491	568
	ELEVATOR-2-4 Sty	327	392	459		
	5 + Sty	336	406	488		
NEW CASTLE/ SHARON *	DETACHED		373	436	515	618
	SEMI-DETACHED/ROW		363	405	477	573
	WALKUP	267	330	378	446	517
	ELEVATOR-2-4 Sty	311	368	431		
	5 + Sty	319	382	458		
ERIE	DETACHED		418	460	514	602
	SEMI-DETACHED/ROW		388	426	463	558
	WALKUP	280	346	401	458	531
	ELEVATOR-2-4 Sty	324	384	452		
	5 + Sty	333	398	480		
ALTOONA/ JOHNSTON *	DETACHED		395	454	530	618
	SEMI-DETACHED/ROW		395	433	495	579
	WALKUP	280	346	419	472	543
	ELEVATOR-2-4 Sty	307	364	428		
	5 + Sty	315	377	454		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

* Market areas are not combined. FMRs are identical for these market areas.

AREA OFFICE RICHMOND, VA REGION III - PHILADELPHIA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
RICHMOND	DETACHED			402	466	551
	SEMI-DETACHED/ROW		313	358	431	482
	WALKUP	251	288	355	428	478
	ELEVATOR-2-4 Sty	251	319	408		
	5 + Sty	253	340	426		
NEWPORT NEWS/ HAMPTON *	DETACHED			386	469	514
	SEMI-DETACHED/ROW		313	354	440	490
	WALKUP	240	267	313	401	448
	ELEVATOR-2-4 Sty	254	287	351		
	5 + Sty	268	293	364		
FREDERICKSBURG/ CHARLOTTESVILLE *	DETACHED			416	481	549
	SEMI-DETACHED/ROW		302	357	430	485
	WALKUP	246	293	352	426	476
	ELEVATOR-2-4 Sty	246	312	400		
	5 + Sty	247	334	419		
ROANOKE/ LYNCHBURG/ DANVILLE/ *	DETACHED			378	444	500
	SEMI-DETACHED/ROW		278	340	428	473
	WALKUP	225	263	322	404	448
	ELEVATOR-2-4 Sty	239	304	397		
	5 + Sty	242	327	409		
HARRISONBURG/ WARRENTON/ *	DETACHED			359	401	488
	SEMI-DETACHED/ROW		278	336	401	454
	WALKUP	224	263	313	394	452
	ELEVATOR-2-4 Sty	231	290	377		
	5 + Sty	251	312	393		
CHESAPEAKE/ NORFOLK/ PORTSMOUTH/ VIRGINIA BEACH/ SUFFOLK *	DETACHED			400	473	533
	SEMI-DETACHED/ROW		304	355	443	485
	WALKUP	251	302	352	438	484
	ELEVATOR-2-4 Sty	268	302	364		
	5 + Sty	281	306	384		

*Market areas are not combined. FMRs are identical for these market areas.

AREA OFFICE RICHMOND, VA REGION III - PHILADELPHIA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
BRISTOL	DETACHED			394	434	472
	SEMI-DETACHED/ROW		281	342	399	443
	WALKUP	240	276	342	399	443
	ELEVATOR-2-4 Sty	258	306	390		
	5 + Sty	260	342	422		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

SERVICE OFFICE CHARLESTON, WEST VA. REGION III - PHILADELPHIA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
CHARLESTON	DETACHED			441	485	540
	SEMI-DETACHED/ROW		348	416	464	520
	WALKUP	239	304	353	416	469
	ELEVATOR-2-4 Sty	353	408	460		
	5 + Sty	358	414	465		
BECKLEY/ BLUEFIELD *	DETACHED			397	436	487
	SEMI-DETACHED/ROW		294	374	408	460
	WALKUP	257	294	332	370	407
	ELEVATOR-2-4 Sty	312	370	415		
	5 + Sty	317	376	420		
HUNTINGTON	DETACHED			400	481	523
	SEMI-DETACHED/ROW		294	381	455	501
	WALKUP	206	273	359	434	475
	ELEVATOR-2-4 Sty	312	370	443		
	5 + Sty	317	376	448		
PARKERSBURG	DETACHED			354	408	448
	SEMI-DETACHED/ROW		294	333	385	424
	WALKUP	240	274	325	365	403
	ELEVATOR-2-4 Sty	304	365	443		
	5 + Sty	310	370	448		
WHEELING	DETACHED			356	441	499
	SEMI-DETACHED/ROW		286	337	422	481
	WALKUP	241	279	328	411	447
	ELEVATOR-2-4 Sty	308	368	446		
	5 + Sty	313	374	451		
MARTINSBURG/ FAIRMONT *	DETACHED			411	455	509
	SEMI-DETACHED/ROW		342	387	436	488
	WALKUP	262	319	372	411	463
	ELEVATOR-2-4 Sty	349	383	426		
	5 + Sty	355	388	432		

* Market areas are not combined. FMRs are identical for these market areas.

SERVICE OFFICE CHARLESTON, WEST VA. REGION III - PHILADELPHIA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
POINT PLEASANT	DETACHED			353	406	444
	SEMI-DETACHED/ROW		282	332	383	421
	WALKUP	239	273	324	361	400
	ELEVATOR-2-4 Sty	302	361	404		
	5 + Sty	307	367	410		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE BIRMINGHAM, ALA. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
BIRMINGHAM/ TUSCALOOSA *	DETACHED			527	594	627
	SEMI-DETACHED/ROW		333	383	449	483
	WALKUP	288	322	377	438	477
	ELEVATOR-2-4 Sty	344	383	444		
	5 + Sty	361	394	460		
DOTHAN	DETACHED			466	521	549
	SEMI-DETACHED/ROW		316	372	438	483
	WALKUP	277	311	355	438	477
	ELEVATOR-2-4 Sty	344	383	444		
	5 + Sty	361	394	460		
FLORENCE	DETACHED			488	555	582
	SEMI-DETACHED/ROW		316	377	444	483
	WALKUP	288	316	372	438	477
	ELEVATOR-2-4 Sty	344	383	444		
	5 + Sty	361	394	460		
HUNTSVILLE	DETACHED			499	571	599
	SEMI-DETACHED/ROW		316	377	444	483
	WALKUP	261	311	372	433	477
	ELEVATOR-2-4 Sty	344	383	444		
	5 + Sty	361	394	460		
MOBILE	DETACHED			499	571	605
	SEMI-DETACHED/ROW		311	377	449	483
	WALKUP	261	311	361	438	477
	ELEVATOR-2-4 Sty	344	383	444		
	5 + Sty	361	394	460		
MONTGOMERY	DETACHED			494	560	588
	SEMI-DETACHED/ROW		322	372	438	483
	WALKUP	283	322	372	433	477
	ELEVATOR-2-4 Sty	344	383	444		
	5 + Sty	361	394	460		

*Market areas are not combined. FMRs are identical for these market areas.

AREA OFFICE JACKSONVILLE, FLA REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
JACKSONVILLE	DETACHED			355	427	480
	SEMI-DETACHED/ROW		322	346	412	450
	WALKUP	242	272	335	401	438
	ELEVATOR-2-4 Sty	319	359	482		
	5 + Sty	331	374	502		
FT. WALTON BEACH PENSACOLA *	DETACHED			405	442	493
	SEMI-DETACHED/ROW		255	332	422	440
	WALKUP	235	252	305	395	427
	ELEVATOR-2-4 Sty	278	348	467		
	5 + Sty	311	353	474		
GAINESVILLE	DETACHED			369	491	519
	SEMI-DETACHED/ROW		326	362	453	480
	WALKUP	263	286	362	427	468
	ELEVATOR-2-4 Sty	307	348	467		
	5 + Sty	320	363	486		
PANAMA CITY	DETACHED			396	442	480
	SEMI-DETACHED/ROW		256	322	416	440
	WALKUP	235	252	305	405	427
	ELEVATOR-2-4 Sty	303	343	461		
	5 + Sty	316	357	480		
TALLAHASSEE	DETACHED			400	455	491
	SEMI-DETACHED/ROW		318	352	445	461
	WALKUP	242	275	327	413	429
	ELEVATOR-2-4 Sty	314	355	476		
	5 + Sty	326	370	496		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

* Market areas are not combined. FMRs are identical for these market areas.

AREA OFFICE JACKSONVILLE, FLA. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
MIAMI	DETACHED			484	509	577
	SEMI-DETACHED/ROW		360	433	500	555
	WALKUP	287	326	412	493	539
	ELEVATOR-2-4 Sty	294	332	442		
	5 + Sty	354	381	531		
FT. LAUDERDALE	DETACHED			539	560	608
	SEMI-DETACHED/ROW		346	443	523	571
	WALKUP	293	317	431	487	532
	ELEVATOR-2-4 Sty	300	350	436		
	5 + Sty	347	414	524		
FT. MYERS	DETACHED			389	469	512
	SEMI-DETACHED/ROW		323	379	459	503
	WALKUP	262	315	368	452	493
	ELEVATOR-2-4 Sty	269	322	374		
	5 + Sty	309	352	412		
KEY WEST	DETACHED			524	657	721
	SEMI-DETACHED/ROW		400	506	629	681
	WALKUP	327	369	472	566	609
	ELEVATOR-2-4 Sty	340	379	472		
	5 + Sty	367	403	513		
W. PALM BEACH	DETACHED			494	571	606
	SEMI-DETACHED/ROW		341	456	540	586
	WALKUP	304	340	423	533	579
	ELEVATOR-2-4 Sty	318	370	442		
	5 + Sty	354	379	498		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE JACKSONVILLE, FLA. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
TAMPA	DETACHED			373	438	476
	SEMI-DETACHED/ROW		280	320	391	445
	WALKUP	242	263	307	369	416
	ELEVATOR-2-4 Sty	293	328	430		
	5 + Sty	309	347	453		
COCOA	DETACHED			370	431	471
	SEMI-DETACHED/ROW		292	359	420	461
	WALKUP	237	255	308	348	369
	ELEVATOR-2-4 Sty	293	328	430		
	5 + Sty	309	347	453		
DAYTONA BEACH FT. PIERCE *	DETACHED			366	428	451
	SEMI-DETACHED/ROW		300	366	411	449
	WALKUP	242	261	318	357	379
	ELEVATOR-2-4 Sty	293	328	430		
	5 + Sty	309	347	453		
LAKELAND	DETACHED			364	405	429
	SEMI-DETACHED/ROW		311	364	390	427
	WALKUP	256	274	318	369	389
	ELEVATOR-2-4 Sty	293	328	430		
	5 + Sty	309	347	453		
ORLANDO	DETACHED			378	429	466
	SEMI-DETACHED/ROW		298	367	418	455
	WALKUP	219	257	318	378	399
	ELEVATOR-2-4 Sty	293	328	430		
	5 + Sty	309	347	453		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

*Market areas are not combined. FMRs are identical for these market areas.

AREA OFFICE JACKSONVILLE, FLA. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SARASOTA	DETACHED			415	470	498
	SEMI-DETACHED/ROW		346	402	439	481
	WALKUP	278	298	344	417	440
	ELEVATOR-2-4 Sty	293	328	430		
	5 + Sty	309	347	453		
ST. PETERSBURG	DETACHED			403	440	464
	SEMI-DETACHED/ROW		285	355	426	459
	WALKUP	260	284	339	432	454
	ELEVATOR-2-4 Sty	293	328	430		
	5 + Sty	309	347	453		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE ATLANTA, GA. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
ATLANTA	DETACHED			393	454	497
	SEMI-DETACHED/ROW		309	361	432	474
	WALKUP	278	301	356	419	459
	ELEVATOR-2-4 Sty	304	325	381		
	5 + Sty	314	350	420		
ALBANY	DETACHED			338	434	465
	SEMI-DETACHED/ROW		260	320	415	442
	WALKUP	235	253	314	409	437
	ELEVATOR-2-4 Sty	260	279	340		
	5 + Sty	310	330	412		
AUGUSTA	DETACHED			341	407	456
	SEMI-DETACHED/ROW		269	317	389	434
	WALKUP	237	263	308	377	422
	ELEVATOR-2-4 Sty	263	287	333		
	5 + Sty	310	338	403		
BRUNSWICK	DETACHED			356	415	447
	SEMI-DETACHED/ROW		281	333	396	425
	WALKUP	243	269	320	383	413
	ELEVATOR-2-4 Sty	269	294	346		
	5 + Sty	326	358	431		
COLUMBUS	DETACHED			343	400	441
	SEMI-DETACHED/ROW		286	329	385	435
	WALKUP	246	268	318	379	418
	ELEVATOR-2-4 Sty	271	292	343		
	5 + Sty	318	344	412		
MACON	DETACHED			358	387	438
	SEMI-DETACHED/ROW		258	329	383	435
	WALKUP	226	245	325	357	403
	ELEVATOR-2-4 Sty	251	270	350		
	5 + Sty	302	324	435		

AREA OFFICE ATLANTA, GA. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
ROME	DETACHED			337	399	442
	SEMI-DETACHED/ROW		265	310	375	420
	WALKUP	231	252	305	368	408
	ELEVATOR-2-4 Sty	255	278	330		
	5 + Sty	309	337	409		
SAVANNAH	DETACHED			393	454	501
	SEMI-DETACHED/ROW		305	379	443	482
	WALKUP	261	293	358	422	466
	ELEVATOR-2-4 Sty	286	318	383		
	5 + Sty	342	380	466		
VALDOSTA	DETACHED			331	378	432
	SEMI-DETACHED/ROW		261	312	373	424
	WALKUP	229	248	305	354	405
	ELEVATOR-2-4 Sty	252	273	329		
	5 + Sty	299	323	398		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE LOUISVILLE, KY. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
ASHLAND	DETACHED			427	485	549
	SEMI-DETACHED/ROW		345	402	458	514
	WALKUP	282	318	372	419	463
	ELEVATOR-2-4 Sty	301	336	387		
	5 + Sty	374	417	491		
BOWLING GREEN	DETACHED			401	461	547
	SEMI-DETACHED/ROW		319	384	436	515
	WALKUP	251	285	351	424	465
	ELEVATOR-2-4 Sty	263	302	367		
	5 + Sty	325	377	462		
CORBIN	DETACHED			446	535	600
	SEMI-DETACHED/ROW		341	425	506	564
	WALKUP	272	309	393	464	510
	ELEVATOR-2-4 Sty	291	325	409		
	5 + Sty	363	405	510		
COVINGTON	DETACHED			434	518	596
	SEMI-DETACHED/ROW		354	407	475	545
	WALKUP	276	318	372	432	486
	ELEVATOR-2-4 Sty	290	336	387		
	5 + Sty	362	412	486		
FRANKFORT	DETACHED			441	525	593
	SEMI-DETACHED/ROW		334	419	496	557
	WALKUP	273	309	394	464	512
	ELEVATOR-2-4 Sty	292	325	409		
	5 + Sty	352	389	494		
HOPKINSVILLE	DETACHED			394	443	500
	SEMI-DETACHED/ROW		326	379	422	474
	WALKUP	262	293	342	388	446
	ELEVATOR-2-4 Sty	279	309	356		
	5 + Sty	325	380	448		

AREA OFFICE LOUISVILLE, KY. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
LEXINGTON	DETACHED			441	502	566
	SEMI-DETACHED/ROW		369	422	476	534
	WALKUP	273	309	394	464	503
	ELEVATOR-2-4 Sty	288	321	409		
	5 + Sty	354	401	503		
LOUISVILLE	DETACHED			403	516	579
	SEMI-DETACHED/ROW		327	381	483	540
	WALKUP	280	317	374	448	492
	ELEVATOR-2-4 Sty	294	331	387		
	5 + Sty	364	412	484		
MIDDLESBORO	DETACHED			457	532	580
	SEMI-DETACHED/ROW		352	434	504	546
	WALKUP	274	309	394	464	510
	ELEVATOR-2-4 Sty	287	325	409		
	5 + Sty	358	403	509		
MURRAY	DETACHED			403	460	508
	SEMI-DETACHED/ROW		337	384	433	486
	WALKUP	268	304	348	393	466
	ELEVATOR-2-4 Sty	283	321	367		
	5 + Sty	346	396	462		
NEWPORT	DETACHED			445	523	592
	SEMI-DETACHED/ROW		359	416	478	540
	WALKUP	276	318	372	429	474
	ELEVATOR-2-4 Sty	295	336	388		
	5 + Sty	368	416	492		
OWENSBORO	DETACHED			430	475	527
	SEMI-DETACHED/ROW		361	411	451	502
	WALKUP	240	268	387	416	454
	ELEVATOR-2-4 Sty	253	283	400		
	5 + Sty	320	352	495		

AREA OFFICE LOUISVILLE, KY. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
PADUCAH	DETACHED			369	459	518
	SEMI-DETACHED/ROW		311	353	434	483
	WALKUP	255	288	331	407	444
	ELEVATOR-2-4 Sty	272	303	344		
	5 + Sty	333	366	426		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE JACKSON, MISSISSIPPI REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
JACKSON	DETACHED			384	472	524
	SEMI-DETACHED/ROW	297	322	369	456	504
	WALKUP	287	314	368	452	493
	ELEVATOR-2-4 Sty	349	381	451		
	5 + Sty	358	389	461		
CORINTH	DETACHED			314	400	450
	SEMI-DETACHED/ROW	233	259	299	379	424
	WALKUP	223	257	299	379	421
	ELEVATOR-2-4 Sty	291	326	392		
	5 + Sty	299	336	404		
GREENVILLE	DETACHED			366	387	430
	SEMI-DETACHED/ROW		283	342	363	409
	WALKUP	241	273	341	360	398
	ELEVATOR-2-4 Sty	311	346	432		
	5 + Sty	318	356	443		
GREENWOOD	DETACHED			326	359	411
	SEMI-DETACHED/ROW		277	326	350	391
	WALKUP	242	275	326	350	388
	ELEVATOR-2-4 Sty	311	347	418		
	5 + Sty	319	357	429		
GULFPORT	DETACHED			322	383	434
	SEMI-DETACHED/ROW	237	267	312	374	419
	WALKUP	237	266	312	374	416
	ELEVATOR-2-4 Sty	312	336	401		
	5 + Sty	324	346	413		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE JACKSON, MISS. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
HATTIESBURG	DETACHED			321	379	424
	SEMI-DETACHED/ROW	211	244	297	355	401
	WALKUP	199	237	296	352	390
	ELEVATOR-2-4 Sty	281	315	399		
	5 + Sty	289	324	411		
SOUTHAVEN	DETACHED		279	364	381	429
	SEMI-DETACHED/ROW	234	270	364	370	410
	WALKUP	230	268	330	370	410
	ELEVATOR-2-4 Sty	290	341	415		
	5 + Sty	297	351	426		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE GREENSBORO, N.C. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
GREENSBORO	DETACHED			391	469	531
	SEMI-DETACHED/ROW		312	357	436	503
	WALKUP	277	312	357	436	503
	ELEVATOR-2-4 Sty	302	338	381		
	5 + Sty	325	369	422		
ASHEVILLE	DETACHED			356	446	511
	SEMI-DETACHED/ROW		301	343	422	487
	WALKUP	259	301	343	422	487
	ELEVATOR-2-4 Sty	284	326	367		
	5 + Sty	319	362	413		
CHARLOTTE	DETACHED			385	454	518
	SEMI-DETACHED/ROW		305	349	424	487
	WALKUP	268	305	349	424	487
	ELEVATOR-2-4 Sty	295	330	375		
	5 + Sty	331	376	429		
DURHAM	DETACHED			360	432	498
	SEMI-DETACHED/ROW		294	343	411	471
	WALKUP	257	294	343	411	471
	ELEVATOR-2-4 Sty	283	319	368		
	5 + Sty	325	369	422		
GREENVILLE	DETACHED			357	417	479
	SEMI-DETACHED/ROW		294	338	399	460
	WALKUP	257	294	338	399	460
	ELEVATOR-2-4 Sty	283	319	362		
	5 + Sty	325	369	422		
RALEIGH	DETACHED			404	500	562
	SEMI-DETACHED/ROW		327	371	453	523
	WALKUP	290	327	371	453	523
	ELEVATOR-2-4 Sty	317	352	397		
	5 + Sty	333	379	433		

AREA OFFICE GREENSBORO, N.C. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
WINSTON-SALEM	DETACHED			365	444	507
	SEMI-DETACHED/ROW		310	353	426	486
	WALKUP	267	310	353	426	486
	ELEVATOR-2-4 Sty	292	335	378		
	5 + Sty	322	366	418		
FAYETTEVILLE	DETACHED			350	413	471
	SEMI-DETACHED/ROW		286	333	387	445
	WALKUP	252	286	333	387	445
	ELEVATOR-2-4 Sty	277	310	357		
	5 + Sty	317	352	403		
WILMINGTON	DETACHED			372	445	506
	SEMI-DETACHED/ROW		285	335	400	466
	WALKUP	257	285	335	400	466
	ELEVATOR-2-4 Sty	282	310	358		
	5 + Sty	322	359	410		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE COLUMBIA, S.C. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
GREENVILLE	DETACHED	303	333	368	439	505
	SEMI-DETACHED/ROW	297	326	363	434	498
	WALKUP	285	315	350	422	487
	ELEVATOR-2-4 Sty	297	345	409		
	5 + Sty	308	356	422		
GREENWOOD	DETACHED	315	326	363	422	469
	SEMI-DETACHED/ROW	297	320	356	416	463
	WALKUP	285	308	345	404	452
	ELEVATOR-2-4 Sty	297	345	409		
	5 + Sty	308	356	422		
MYRTLE BEACH	DETACHED	303	333	374	439	523
	SEMI-DETACHED/ROW	297	326	368	434	516
	WALKUP	285	315	356	422	505
	ELEVATOR-2-4 Sty	297	345	409		
	5 + Sty	308	356	422		
NORTH AUGUSTA	DETACHED	303	326	368	422	481
	SEMI-DETACHED/ROW	297	320	363	416	475
	WALKUP	285	308	350	404	463
	ELEVATOR-2-4 Sty	297	345	409		
	5 + Sty	308	356	422		
ORANGEBURG	DETACHED	303	326	368	422	475
	SEMI-DETACHED/ROW	297	320	363	416	469
	WALKUP	285	308	350	404	457
	ELEVATOR-2-4 Sty	297	345	409		
	5 + Sty	308	356	422		
ROCKHILL	DETACHED	303	326	368	422	481
	SEMI-DETACHED/ROW	297	320	363	416	475
	WALKUP	285	308	350	404	463
	ELEVATOR-2-4 Sty	297	345	409		
	5 + Sty	308	356	422		

AREA OFFICE COLUMBIA, S.C. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SPARTANBURG	DETACHED	303	333	368	439	505
	SEMI-DETACHED/ROW	297	326	363	434	498
	WALKUP	285	315	350	422	487
	ELEVATOR-2-4 Sty	297	345	409		
	5 + Sty	308	356	422		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE COLUMBIA, S.C. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
COLUMBIA	DETACHED	303	326	368	427	481
	SEMI-DETACHED/ROW	297	320	363	422	475
	WALKUP	285	308	350	409	463
	ELEVATOR-2-4 Sty	297	345	409		
	5 + Sty	308	356	422		
AIKEN	DETACHED	303	326	368	422	481
	SEMI-DETACHED/ROW	297	320	363	416	475
	WALKUP	285	308	350	404	463
	ELEVATOR-2-4 Sty	297	345	409		
	5 + Sty	308	356	422		
ANDERSON	DETACHED	315	326	363	422	469
	SEMI-DETACHED/ROW	297	320	356	416	463
	WALKUP	285	308	343	404	452
	ELEVATOR-2-4 Sty	297	345	409		
	5 + Sty	308	356	422		
BEAUFORT	DETACHED	303	333	374	439	523
	SEMI-DETACHED/ROW	297	326	368	434	516
	WALKUP	285	315	356	422	505
	ELEVATOR-2-4 Sty	297	345	409		
	5 + Sty	308	356	422		
CHARLESTON	DETACHED	303	333	374	439	523
	SEMI-DETACHED/ROW	297	326	368	434	516
	WALKUP	285	315	356	422	505
	ELEVATOR-2-4 Sty	297	345	409		
	5 + Sty	308	356	422		
FLORENCE	DETACHED	303	326	368	422	475
	SEMI-DETACHED/ROW	297	320	363	416	469
	WALKUP	285	308	350	404	457
	ELEVATOR-2-4 Sty	297	345	409		
	5 + Sty	308	356	422		

AREA OFFICE KNOXVILLE, TENN REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
KNOXVILLE	DETACHED			366	433	467
	SEMI-DETACHED/ROW		283	350	422	456
	WALKUP	250	273	339	405	439
	ELEVATOR-2-4 Sty	278	300	361		
	5 + Sty	300	333	389		
CHATTANOOGA	DETACHED			345	412	445
	SEMI-DETACHED/ROW		300	339	405	439
	WALKUP	267	289	322	389	422
	ELEVATOR-2-4 Sty	294	317	366		
	5 + Sty	322	345	389		
JOHNSON CITY	DETACHED			322	384	412
	SEMI-DETACHED/ROW		267	311	372	400
	WALKUP	234	255	294	356	384
	ELEVATOR-2-4 Sty	255	283	322		
	5 + Sty	283	311	350		
KINGSPORT	DETACHED			322	384	412
	SEMI-DETACHED/ROW		267	311	372	400
	WALKUP	234	255	294	356	384
	ELEVATOR-2-4 Sty	255	283	322		
	5 + Sty	283	311	350		
OAKRIDGE	DETACHED			366	433	467
	SEMI-DETACHED/ROW		283	350	422	456
	WALKUP	250	273	339	405	439
	ELEVATOR-2-4 Sty	278	300	361		
	5 + Sty	300	333	389		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

SERVICE OFFICE NASHVILLE, TENN. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
MEMPHIS	DETACHED			360	411	470
	SEMI-DETACHED/ROW	294	321	360	404	438
	WALKUP	215	241	292	343	375
	ELEVATOR-2-4 Sty	269	306	365		
	5 + Sty	301	340	407		
JACKSON	DETACHED			293	331	379
	SEMI-DETACHED/ROW	208	237	278	325	369
	WALKUP	199	226	274	313	353
	ELEVATOR-2-4 Sty	246	284	338		
	5 + Sty	272	311	369		
UNION CITY	DETACHED			292	324	361
	SEMI-DETACHED/ROW	214	243	291	324	361
	WALKUP	204	239	286	322	358
	ELEVATOR-2-4 Sty	267	299	353		
	5 + Sty	308	350	409		
NASHVILLE	DETACHED			387	441	483
	SEMI-DETACHED/ROW		278	320	420	467
	WALKUP	234	267	314	420	460
	ELEVATOR-2-4 Sty	250	300	350		
	5 + Sty	267	333	384		
CLARKSVILLE	DETACHED			366	419	458
	SEMI-DETACHED/ROW		240	320	409	434
	WALKUP	194	240	293	366	397
	ELEVATOR-2-4 Sty	217	267	317		
	5 + Sty	240	300	345		
COLUMBIA	DETACHED			366	419	458
	SEMI-DETACHED/ROW		241	320	412	439
	WALKUP	194	241	289	387	422
	ELEVATOR-2-4 Sty	217	267	317		
	5 + Sty	240	300	345		

AREA OFFICE CHICAGO, ILLINOIS REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
CHICAGO	DETACHED			740	799	864
	SEMI-DETACHED/ROW		530	577	636	697
	WALKUP	370	434	511	610	640
	ELEVATOR-2-4 Sty	395	463	546	650	686
	5 + Sty	427	534	642	691	727
MOLINE	DETACHED			568	622	675
	SEMI-DETACHED/ROW		460	487	549	579
	WALKUP	344	381	443	531	561
	ELEVATOR-2-4 Sty	377	412	476		
	5 + Sty	390	428	545		
ROCK ISLAND	DETACHED			568	622	675
	SEMI-DETACHED/ROW		460	487	549	579
	WALKUP	344	381	443	531	561
	ELEVATOR-2-4 Sty	377	412	476		
	5 + Sty	390	428	545		
ROCKFORD	DETACHED			637	692	756
	SEMI-DETACHED/ROW		419	449	511	549
	WALKUP	330	377	428	490	523
	ELEVATOR-2-4 Sty	368	403	478		
	5 + Sty	381	432	525		
STERLING	DETACHED			497	563	628
	SEMI-DETACHED/ROW		404	428	532	597
	WALKUP	313	352	396	451	473
	ELEVATOR-2-4 Sty	346	381	431		
	5 + Sty	359	397	449		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE CHICAGO, ILLINOIS REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SPRINGFIELD	DETACHED			450	509	573
	SEMI-DETACHED/ROW		375	427	486	544
	WALKUP	321	351	422	480	535
	ELEVATOR-2-4 Sty	332	371	441		
	5 + Sty	383	424	498		
BELLEVILLE	DETACHED			406	467	537
	SEMI-DETACHED/ROW		316	381	441	507
	WALKUP	265	305	376	435	492
	ELEVATOR-2-4 Sty	285	324	395		
	5 + Sty	323	363	448		
CARBONDALE	DETACHED			431	493	560
	SEMI-DETACHED/ROW		334	408	466	531
	WALKUP	281	324	402	458	510
	ELEVATOR-2-4 Sty	306	345	423		
	5 + Sty	350	387	480		
CHAMPAIGN	DETACHED			428	488	552
	SEMI-DETACHED/ROW		338	403	463	524
	WALKUP	287	326	399	457	510
	ELEVATOR-2-4 Sty	307	345	417		
	5 + Sty	348	385	474		
DANVILLE	DETACHED			462	524	591
	SEMI-DETACHED/ROW		375	439	497	559
	WALKUP	320	360	433	492	548
	ELEVATOR-2-4 Sty	346	384	458		
	5 + Sty	382	423	511		
EAST ST. LOUIS	DETACHED			396	459	528
	SEMI-DETACHED/ROW		312	371	432	497
	WALKUP	259	301	367	427	483
	ELEVATOR-2-4 Sty	282	323	389		
	5 + Sty	331	374	457		

AREA OFFICE CHICAGO, ILLINOIS REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
LA SALLE	DETACHED			438	504	573
	SEMI-DETACHED/ROW		346	413	476	543
	WALKUP	285	326	396	456	510
	ELEVATOR-2-4 Sty	306	346	415		
	5 + Sty	354	396	483		
QUINCY	DETACHED			389	450	513
	SEMI-DETACHED/ROW		312	366	425	485
	WALKUP	261	300	360	417	471
	ELEVATOR-2-4 Sty	282	323	380		
	5 + Sty	321	360	434		
PEORIA	DETACHED			485	548	614
	SEMI-DETACHED/ROW		396	461	520	586
	WALKUP	346	386	456	515	570
	ELEVATOR-2-4 Sty	369	408	477		
	5 + Sty	410	451	535		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE INDIANAPOLIS, INDIANA REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
BLOOMINGTON	DETACHED			457	494	543
	SEMI-DETACHED/ROW		284	370	404	439
	WALKUP	246	278	359	396	439
	ELEVATOR-2-4 Sty	268	300	404		
	5 + Sty	320	358	463		
INDIANAPOLIS	DETACHED			474	563	607
	SEMI-DETACHED/ROW		307	376	459	501
	WALKUP	267	301	366	454	490
	ELEVATOR-2-4 Sty	289	324	410		
	5 + Sty	342	379	473		
EVANSVILLE	DETACHED			466	507	555
	SEMI-DETACHED/ROW		305	392	426	461
	WALKUP	267	294	370	409	457
	ELEVATOR-2-4 Sty	290	317	417		
	5 + Sty	337	373	473		
FORT WAYNE	DETACHED			476	516	565
	SEMI-DETACHED/ROW		314	382	422	462
	WALKUP	269	304	359	401	461
	ELEVATOR-2-4 Sty	292	326	405		
	5 + Sty	346	381	471		
GARY	DETACHED			504	552	594
	SEMI-DETACHED/ROW		350	422	471	502
	WALKUP	311	341	406	451	494
	ELEVATOR-2-4 Sty	332	365	451		
	5 + Sty	387	428	518		
HAMMOND	DETACHED			504	562	609
	SEMI-DETACHED/ROW		353	419	467	508
	WALKUP	307	341	406	451	487
	ELEVATOR-2-4 Sty	330	365	451		
	5 + Sty	379	417	508		

AREA OFFICE INDIANAPOLIS, INDIANA REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
LAFAYETTE	DETACHED			467	516	560
	SEMI-DETACHED/ROW		319	373	419	451
	WALKUP	280	315	369	409	450
	ELEVATOR-2-4 Sty	303	339	416		
	5 + Sty	356	394	466		
SOUTH BEND	DETACHED			513	562	607
	SEMI-DETACHED/ROW		348	422	460	500
	WALKUP	307	342	417	457	499
	ELEVATOR-2-4 Sty	330	366	462		
	5 + Sty	381	421	514		
TERRE HAUTE	DETACHED			465	515	561
	SEMI-DETACHED/ROW		320	369	414	450
	WALKUP	276	311	365	409	449
	ELEVATOR-2-4 Sty	299	334	410		
	5 + Sty	354	391	464		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE DETROIT, MICH. REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
DETROIT/ANN ARBOR/ YPSILANTI *	DETACHED			538	577	607
	SEMI-DETACHED/ROW		463	497	528	577
	WALKUP	319	367	443	488	521
	ELEVATOR-2-4 Sty	345	410	459		
	5 + Sty	370	447	551		
FLINT/ SAGINAW *	DETACHED			494	532	562
	SEMI-DETACHED/ROW		375	449	500	537
	WALKUP	290	346	406	457	487
	ELEVATOR-2-4 Sty	328	391	436		
	5 + Sty	352	424	524		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

*Market areas are not combined. FMRs are identical for these market areas.

SERVICE OFFICE GRAND RAPIDS, MICH. REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
GRAND RAPIDS	DETACHED					
	SEMI-DETACHED/ROW		383	437	491	547
	WALKUP	260	315	383	431	485
	ELEVATOR-2-4 Sty	314	371	415		
	5 + Sty	329	405	435		
BATTLE CREEK-KALAMAZOO	DETACHED					
	SEMI-DETACHED/ROW		393	451	508	559
	WALKUP	265	325	395	441	497
	ELEVATOR-2-4 Sty	320	379	423		
	5 + Sty	336	414	445		
BENTON HARBOR	DETACHED					
	SEMI-DETACHED/ROW		393	451	508	559
	WALKUP	265	325	395	441	497
	ELEVATOR-2-4 Sty	320	379	423		
	5 + Sty	336	414	445		
JACKSON/LANSING *	DETACHED					
	SEMI-DETACHED/ROW		401	456	514	570
	WALKUP	271	330	399	449	507
	ELEVATOR-2-4 Sty	328	382	433		
	5 + Sty	343	422	455		
MUSKEGON	DETACHED					
	SEMI-DETACHED/ROW		393	451	508	559
	WALKUP	265	325	395	441	497
	ELEVATOR-2-4 Sty	320	379	423		
	5 + Sty	336	414	445		
MARQUETTE/ TRAVERSE CITY *	DETACHED					
	SEMI-DETACHED/ROW		409	468	526	586
	WALKUP	278	337	410	460	519
	ELEVATOR-2-4 Sty	336	397	444		
	5 + Sty	352	433	465		

*Market Areas are not combined. FMRs are identical for these market areas.

AREA OFFICE MINNEAPOLIS, MINN. REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
MINN-ST. PAUL	DETACHED			558	605	622
	SEMI-DETACHED/ROW		408	458	502	549
	WALKUP	260	320	373	468	491
	ELEVATOR-2-4 Sty	315	367	457	482	
	5 + Sty	348	404	502		
DULUTH	DETACHED			525	571	607
	SEMI-DETACHED/ROW		428	482	528	580
	WALKUP	286	339	444	491	516
	ELEVATOR-2-4 Sty	322	371	468	502	
	5 + Sty	355	408	516		
MANKATO	DETACHED			509	554	600
	SEMI-DETACHED/ROW		389	440	484	531
	WALKUP	266	294	380	435	459
	ELEVATOR-2-4 Sty	315	356	449		
	5 + Sty	347	392	495		
ROCHESTER	DETACHED			492	546	564
	SEMI-DETACHED/ROW		392	441	494	520
	WALKUP	258	304	380	439	463
	ELEVATOR-2-4 Sty	317	364	435		
	5 + Sty	349	402	481		
ST. CLOUD	DETACHED			513	556	573
	SEMI-DETACHED/ROW		389	440	484	529
	WALKUP	258	283	349	446	469
	ELEVATOR-2-4 Sty	309	355	447		
	5 + Sty	340	390	492		
WORTHINGTON	DETACHED			490	535	552
	SEMI-DETACHED/ROW		381	430	475	483
	WALKUP	261	272	319	430	453
	ELEVATOR-2-4 Sty	316	351	443		
	5 + Sty	348	387	488		

AREA OFFICE COLUMBUS, OHIO REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
CINCINNATI	DETACHED			582	606	636
	SEMI-DETACHED/ROW		402	476	497	532
	WALKUP	311	352	406	488	511
	ELEVATOR-2-4 Sty	374	405	469		
	5 + Sty	425	476	539		
COLUMBUS	DETACHED			477	534	563
	SEMI-DETACHED/ROW		330	386	461	495
	WALKUP	290	324	358	432	455
	ELEVATOR-2-4 Sty	341	386	455		
	5 + Sty	393	432	489		
DAYTON	DETACHED			558	608	638
	SEMI-DETACHED/ROW		374	441	499	535
	WALKUP	327	369	411	455	490
	ELEVATOR-2-4 Sty	390	420	474		
	5 + Sty	441	495	600		
TROY ATHENS LIMA MARIETTA NEWARK SPRINGFIELD ZANESVILLE *	DETACHED			455	518	545
	SEMI-DETACHED/ROW		341	375	443	477
	WALKUP	290	330	370	404	449
	ELEVATOR-2-4 Sty	336	375	443		
	5 + Sty	386	420	483		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

* Market areas are not combined. FMRs are identical for these market areas.

SERVICE OFFICE CLEVELAND, OHIO REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
CLEVELAND	DETACHED			560	603	634
	SEMI-DETACHED/ROW		388	455	503	528
	WALKUP	341	353	411	464	492
	ELEVATOR-2-4 Sty	370	394	458	511	544
	5 + Sty	383	409	476		
AKRON	DETACHED			494	534	563
	SEMI-DETACHED/ROW		363	410	456	493
	WALKUP	300	323	372	419	458
	ELEVATOR-2-4 Sty	334	357	412	463	494
	5 + Sty	352	386	451		
FINDLAY	DETACHED			440	473	505
	SEMI-DETACHED/ROW		334	377	419	443
	WALKUP	276	295	340	386	411
	ELEVATOR-2-4 Sty	308	330	378	426	456
	5 + Sty	319	342	408		
LORAIN	DETACHED			480	522	552
	SEMI-DETACHED/ROW		336	402	447	472
	WALKUP	273	295	362	412	438
	ELEVATOR-2-4 Sty	303	325	402	452	483
	5 + Sty	330	363	436		
MANSFIELD	DETACHED			413	453	489
	SEMI-DETACHED/ROW		321	350	395	435
	WALKUP	261	282	322	368	405
	ELEVATOR-2-4 Sty	290	313	346	396	426
	5 + Sty	303	336	404		
TOLEDO	DETACHED			501	542	571
	SEMI-DETACHED/ROW		357	419	465	497
	WALKUP	292	318	377	428	462
	ELEVATOR-2-4 Sty	325	348	420	471	502
	5 + Sty	351	386	461		

SERVICE OFFICE CLEVELAND, OHIO REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
YOUNGSTOWN	DETACHED			475	517	545
	SEMI-DETACHED/ROW		338	397	442	466
	WALKUP	275	299	356	406	433
	ELEVATOR-2-4 Sty	305	328	397	447	478
	5 + Sty	332	365	428		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE MILWAUKEE, WIS. REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
MADISON	DETACHED			480	561	606
	SEMI-DETACHED/ROW		335	413	488	532
	WALKUP	282	317	378	446	
	ELEVATOR-2-4 Sty	296	330	392	459	
	5 + Sty	335	370	456		
REEDSVILLE	DETACHED			461	530	586
	SEMI-DETACHED/ROW		373	397	468	548
	WALKUP	260	286	363	431	
	ELEVATOR-2-4 Sty	273	299	377	444	
	5 + Sty	317	351	446		
SUPERIOR	DETACHED			487	572	610
	SEMI-DETACHED/ROW		338	414	489	543
	WALKUP	292	328	392	466	
	ELEVATOR-2-4 Sty	305	342	406	480	
	5 + Sty	342	373	461		
MILWAUKEE	DETACHED			529	620	663
	SEMI-DETACHED/ROW		374	456	530	585
	WALKUP	313	347	408	479	492
	ELEVATOR-2-4 Sty	327	361	422	492	
	5 + Sty	386	408	493		
EAU CLAIRE	DETACHED			455	540	584
	SEMI-DETACHED/ROW		318	402	467	505
	WALKUP	272	306	357	425	
	ELEVATOR-2-4 Sty	289	320	372	438	
	5 + Sty	321	333	419		
GREEN BAY	DETACHED			456	533	569
	SEMI-DETACHED/ROW		315	385	457	502
	WALKUP	248	281	356	422	
	ELEVATOR-2-4 Sty	262	295	370	470	
	5 + Sty	292	323	433		

AREA OFFICE MILWAUKEE, WIS. REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
WAUSAU	DETACHED			471	543	573
	SEMI-DETACHED/ROW		344	392	467	505
	WALKUP	263	296	368	434	
	ELEVATOR-2-4 Sty	276	309	381	448	
	5 + Sty	307	358	437		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE LITTLE ROCK, ARK. REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
LITTLE ROCK	DETACHED			327	390	469
	SEMI-DETACHED/ROW	215	262	321	383	461
	WALKUP	210	261	315	376	434
	ELEVATOR-2-4 Sty	248	308	371		
	5 + Sty	319	388	449		
FAYETTEVILLE	DETACHED			328	390	472
	SEMI-DETACHED/ROW	211	261	315	376	452
	WALKUP	210	261	310	366	426
	ELEVATOR-2-4 Sty	248	308	365		
	5 + Sty	316	386	442		
FORT SMITH	DETACHED			306	362	437
	SEMI-DETACHED/ROW	197	240	297	351	422
	WALKUP	186	240	290	344	398
	ELEVATOR-2-4 Sty	220	283	343		
	5 + Sty	304	374	436		
JONESBORO	DETACHED			328	388	468
	SEMI-DETACHED/ROW	211	259	319	376	452
	WALKUP	200	259	314	373	428
	ELEVATOR-2-4 Sty	236	305	370		
	5 + Sty	311	381	438		
TEXARKANA	DETACHED			317	378	455
	SEMI-DETACHED/ROW	207	252	311	369	445
	WALKUP	200	248	300	355	412
	ELEVATOR-2-4 Sty	238	293	354		
	5 + Sty	316	386	445		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE NEW ORLEANS, LA REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
NEW ORLEANS	DETACHED			497	589	714
	SEMI-DETACHED/ROW		325	405	524	628
	WALKUP	268	315	390	497	576
	ELEVATOR-2-4 Sty	279	346	432		
	5 + Sty	392	484	556		
BATON ROUGE	DETACHED			442	523	631
	SEMI-DETACHED/ROW		293	372	493	585
	WALKUP	271	293	372	493	569
	ELEVATOR-2-4 Sty	284	351	439		
	5 + Sty	459	532	677		
LAFAYETTE	DETACHED			469	557	673
	SEMI-DETACHED/ROW		320	403	488	568
	WALKUP	256	320	403	488	568
	ELEVATOR-2-4 Sty	268	332	411		
	5 + Sty	419	485	619		
LAKE CHARLES	DETACHED			495	588	710
	SEMI-DETACHED/ROW		335	416	570	661
	WALKUP	268	335	416	570	661
	ELEVATOR-2-4 Sty	279	348	437		
	5 + Sty	436	504	641		
HOUMA	DETACHED			455	542	656
	SEMI-DETACHED/ROW		303	379	492	570
	WALKUP	242	303	379	492	570
	ELEVATOR-2-4 Sty	252	313	389		
	5 + Sty	399	462	588		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE NEW ORLEANS, LA REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SHREVEPORT	DETACHED			402	459	556
	SEMI-DETACHED/ROW		257	334	384	463
	WALKUP	207	241	320	368	423
	ELEVATOR-2-4 Sty	304	328	349		
	5 + Sty	321	347	463		
ALEXANDRIA	DETACHED			342	407	487
	SEMI-DETACHED/ROW		231	292	346	409
	WALKUP	184	229	287	341	399
	ELEVATOR-2-4 Sty	282	308	331		
	5 + Sty	285	332	420		
MONROE	DETACHED			367	438	528
	SEMI-DETACHED/ROW		250	325	386	445
	WALKUP	196	244	309	371	428
	ELEVATOR-2-4 Sty	300	327	350		
	5 + Sty	301	358	469		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE DALLAS, TEX. REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
ALBUQUERQUE N.M.	DETACHED			339	415	452
	SEMI-DETACHED/ROW		269	306	361	425
	WALKUP	197	242	283	339	387
	ELEVATOR-2-4 Sty	246	289	355		
	5 + Sty	262	311	377		
ALAMOGORDO N.M.	DETACHED			317	390	454
	SEMI-DETACHED/ROW		271	302	362	433
	WALKUP	195	242	274	324	375
	ELEVATOR-2-4 Sty	221	259	327		
	5 + Sty	238	280	348		
ARTESIA/ CARLSBAD * N.M.	DETACHED			330	393	466
	SEMI-DETACHED/ROW		284	323	378	444
	WALKUP	207	252	284	339	387
	ELEVATOR-2-4 Sty	226	262	329		
	5 + Sty	242	284	350		
CLOVIS N.M.	DETACHED			323	388	471
	SEMI-DETACHED/ROW		278	316	371	442
	WALKUP	207	251	284	339	387
	ELEVATOR-2-4 Sty	224	260	327		
	5 + Sty	246	281	348		
FT. SUMNER/ MESCALERO * N.M.	DETACHED			347	415	490
	SEMI-DETACHED/ROW		299	334	399	473
	WALKUP	218	272	316	274	430
	ELEVATOR-2-4 Sty	242	279	352		
	5 + Sty	259	302	375		
PENASCO/ POJOAQUE * N.M.	DETACHED			349	416	490
	SEMI-DETACHED/ROW		295	328	393	465
	WALKUP	207	268	302	362	408
	ELEVATOR-2-4 Sty	232	278	352		
	5 + Sty	248	301	375		

*Market areas are not combined. FMRs are identical for these market areas.

AREA OFFICE DALLAS, TEX. REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
GALLUP N.M.	DETACHED			355	422	505
	SEMI-DETACHED/ROW		308	343	404	479
	WALKUP	220	279	315	366	393
	ELEVATOR-2-4 Sty	242	290	352		
	5 + Sty	259	312	375		
HOBBS N.M.	DETACHED			330	393	466
	SEMI-DETACHED/ROW		284	323	378	444
	WALKUP	207	252	284	339	387
	ELEVATOR-2-4 Sty	226	262	329		
	5 + Sty	242	284	350		
LAS CRUCES N.M.	DETACHED			327	386	470
	SEMI-DETACHED/ROW		278	313	374	440
	WALKUP	205	253	293	339	382
	ELEVATOR-2-4 Sty	230	266	332		
	5 + Sty	246	287	353		
LAS VEGAS/ LOS ALAMOS/ RATON * N.M.	DETACHED			349	416	490
	SEMI-DETACHED/ROW		295	328	393	465
	WALKUP	207	268	302	362	408
	ELEVATOR-2-4 Sty	232	278	352		
	5 + Sty	248	301	375		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

*Market areas are not combined. FMRs are identical for these market areas.

AREA OFFICE DALLAS, TEX. REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SOCORRO N.M.	DETACHED			317	390	454
	SEMI-DETACHED/ROW		271	302	362	433
	WALKUP	195	242	274	324	375
	ELEVATOR-2-4 Sty	221	259	327		
	5 + Sty	238	280	348		
DULCE/ RUIDOSO * N.M.	DETACHED			347	415	490
	SEMI-DETACHED/ROW		299	334	399	473
	WALKUP	218	272	316	374	430
	ELEVATOR-2-4 Sty	242	279	352		
	5 + Sty	259	302	375		
ISLETA N.M.	DETACHED			339	415	452
	SEMI-DETACHED/ROW		269	306	361	425
	WALKUP	197	242	283	339	387
	ELEVATOR-2-4 Sty	246	289	355		
	5 + Sty	262	311	377		
JEMEZ N.M.	DETACHED			349	416	490
	SEMI-DETACHED/ROW		295	328	393	465
	WALKUP	207	268	302	362	408
	ELEVATOR-2-4 Sty	232	278	352		
	5 + Sty	248	301	375		
LAGUNA N.M.	DETACHED			355	422	505
	SEMI-DETACHED/ROW		308	343	404	479
	WALKUP	220	279	315	366	393
	ELEVATOR-2-4 Sty	242	290	352		
	5 + Sty	259	312	375		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

*Market areas are not combined. FMRs are identical for these market areas.

AREA OFFICE DALLAS, TEX. REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SANTA FE N.M.	DETACHED			349	416	490
	SEMI-DETACHED/ROW		295	328	393	465
	WALKUP	207	268	302	362	408
	ELEVATOR-2-4 Sty	232	278	352		
	5 + Sty	248	301	375		
SILVER CITY/ TAOS/TIERRA AMARILLA * N.M.	DETACHED			347	415	490
	SEMI-DETACHED/ROW		299	334	399	473
	WALKUP	218	272	316	374	430
	ELEVATOR-2-4 Sty	242	279	352		
	5 + Sty	259	302	375		
TRUTH OR CONSEQUENCES N.M.	DETACHED			317	390	454
	SEMI-DETACHED/ROW		271	302	362	433
	WALKUP	195	242	274	324	375
	ELEVATOR-2-4 Sty	221	259	327		
	5 + Sty	238	280	348		
FARMINGTON N.M.	DETACHED			347	415	490
	SEMI-DETACHED/ROW		299	334	399	473
	WALKUP	218	272	316	374	430
	ELEVATOR-2-4 Sty	242	279	352		
	5 + Sty	259	302	375		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

*Market areas are not combined. FMRs are identical for these market areas.

AREA OFFICE OKLAHOMA CITY, OKLA. REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
OKLAHOMA CITY	DETACHED			388	469	514
	SEMI-DETACHED/ROW	262	303	372	453	498
	WALKUP	215	254	316	388	418
	ELEVATOR-2-4 Sty	243	285	354		
	5 + Sty	279	328	388		
ADA	DETACHED			410	479	545
	SEMI-DETACHED/ROW	302	327	398	467	534
	WALKUP	257	280	343	403	454
	ELEVATOR-2-4 Sty	286	314	384		
	5 + Sty					
ARDMORE	DETACHED			399	459	517
	SEMI-DETACHED/ROW	285	310	386	448	505
	WALKUP	242	263	333	386	428
	ELEVATOR-2-4 Sty	272	298	375		
	5 + Sty					
BARTLESVILLE	DETACHED			365	431	475
	SEMI-DETACHED/ROW		302	349	416	459
	WALKUP	249	272	316	379	413
	ELEVATOR-2-4 Sty	258	278	324		
	5 + Sty					
ENID	DETACHED			450	485	551
	SEMI-DETACHED/ROW	273	349	437	473	539
	WALKUP	224	297	377	402	451
	ELEVATOR-2-4 Sty	251	329	416		
	5 + Sty					
GUYMON	DETACHED			385	466	523
	SEMI-DETACHED/ROW	242	266	373	453	509
	WALKUP	195	218	316	388	428
	ELEVATOR-2-4 Sty	225	251	356		
	5 + Sty					

AREA OFFICE OKLAHOMA CITY, OKLA. REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
LAWTON	DETACHED			468	492	563
	SEMI-DETACHED/ROW	338	379	457	481	552
	WALKUP	295	331	404	418	473
	ELEVATOR-2-4 Sty	324	364	443		
	5 + Sty					
McALESTER	DETACHED			340	404	443
	SEMI-DETACHED/ROW		215	332	397	436
	WALKUP	169	189	303	363	390
	ELEVATOR-2-4 Sty	181	199	316		
	5 + Sty					
McALESTER	MOBILE HOMES		190	258	324	350
MUSKOGEE	DETACHED			317	390	430
	SEMI-DETACHED/ROW		265	306	371	417
	WALKUP	208	237	274	340	367
	ELEVATOR-2-4 Sty	218	247	285		
	5 + Sty					
SHAWNEE	DETACHED			367	413	455
	SEMI-DETACHED/ROW	241	276	355	401	440
	WALKUP	195	229	300	337	364
	ELEVATOR-2-4 Sty	225	263	342		
	5 + Sty					
STILLWATER	DETACHED			376	447	503
	SEMI-DETACHED/ROW	265	288	365	436	487
	WALKUP	221	242	311	373	410
	ELEVATOR-2-4 Sty	250	275	352		
	5 + Sty					

AREA OFFICE OKLAHOMA CITY, OKLA. REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
TULSA	DETACHED			403	453	514
	SEMI-DETACHED/ROW		334	388	438	498
	WALKUP	265	308	362	410	459
	ELEVATOR-2-4 Sty	272	314	368		
	5 + Sty	283	366	487		
WOODWARD	DETACHED			410	500	544
	SEMI-DETACHED/ROW	277	300	398	481	533
	WALKUP	231	253	343	416	452
	ELEVATOR-2-4 Sty	261	286	384		
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE DALLAS, TEXAS REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
DALLAS	DETACHED			467	607	666
	SEMI-DETACHED/ROW		323	407	480	559
	WALKUP	240	301	378	446	520
	ELEVATOR-2-4 Sty	265	333	419		
	5 + Sty	372	446	593		
SHERMAN	DETACHED			375	489	537
	SEMI-DETACHED/ROW		261	327	385	449
	WALKUP	194	242	304	360	419
	ELEVATOR-2-4 Sty	213	267	337		
	5 + Sty	350	421	562		
TYLER/ MARSHALL *	DETACHED			360	469	515
	SEMI-DETACHED/ROW		250	314	370	432
	WALKUP	188	232	292	344	398
	ELEVATOR-2-4 Sty	204	255	323		
	5 + Sty	333	393	533		
WACO	DETACHED			364	474	520
	SEMI-DETACHED/ROW		251	316	374	436
	WALKUP	188	234	296	347	407
	ELEVATOR-2-4 Sty	205	258	326		
	5 + Sty	334	395	528		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

*Market areas are not combined. FMRs are identical for these market areas.

AREA OFFICE DALLAS, TEX. REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
FORT WORTH	DETACHED			448	582	638
	SEMI-DETACHED/ROW		309	390	459	537
	WALKUP	230	282	362	427	498
	ELEVATOR-2-4 Sty	254	318	401		
	5 + Sty	357	427	568		
ABILENE	DETACHED			444	577	632
	SEMI-DETACHED/ROW		306	386	455	531
	WALKUP	229	267	359	424	494
	ELEVATOR-2-4 Sty	252	315	398		
	5 + Sty	353	424	563		
WICHITA FALLS	DETACHED			410	533	586
	SEMI-DETACHED/ROW		284	357	421	491
	WALKUP	210	261	333	393	457
	ELEVATOR-2-4 Sty	232	292	367		
	5 + Sty	326	393	520		
SAN ANGELO	DETACHED			410	533	586
	SEMI-DETACHED/ROW		284	357	421	491
	WALKUP	210	258	333	393	457
	ELEVATOR-2-4 Sty	232	292	367		
	5 + Sty	326	393	520		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE DALLAS, TEX. REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
HOUSTON	DETACHED			540	667	772
	SEMI-DETACHED/ROW	299	364	474	564	677
	WALKUP	292	349	441	544	603
	ELEVATOR-2-4 Sty	351	503	529		
	5 + Sty	444	518	600		
BEAUMONT	DETACHED			491	606	703
	SEMI-DETACHED/ROW	294	341	413	514	592
	WALKUP	267	322	396	490	543
	ELEVATOR-2-4 Sty	321	386	475		
	5 + Sty	399	467	567		
BRYAN	DETACHED			507	627	725
	SEMI-DETACHED/ROW	280	342	446	530	637
	WALKUP	275	326	421	490	578
	ELEVATOR-2-4 Sty	330	390	506		
	5 + Sty	441	482	640		
EL CAMPO	DETACHED			505	604	724
	SEMI-DETACHED/ROW	233	309	390	465	555
	WALKUP	221	302	390	465	534
	ELEVATOR-2-4 Sty	266	362	469		
	5 + Sty	376	442	522		
LUFKIN	DETACHED			494	580	709
	SEMI-DETACHED/ROW	298	338	420	492	598
	WALKUP	253	297	375	439	515
	ELEVATOR-2-4 Sty	303	356	450		
	5 + Sty	369	430	515		
TEXAS CITY	DETACHED			520	631	745
	SEMI-DETACHED/ROW	292	357	445	535	630
	WALKUP	280	350	445	535	608
	ELEVATOR-2-4 Sty	336	420	534		
	5 + Sty	444	518	600		

AREA OFFICE DALLAS, TEX. REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
LUBBOCK	DETACHED			370	465	537
	SEMI-DETACHED/ROW	239	282	356	446	510
	WALKUP	225	272	344	432	490
	ELEVATOR-2-4 Sty	277	303	350		
	5 + Sty	303	337	443		
AMARILLO	DETACHED			386	482	489
	SEMI-DETACHED/ROW	248	285	363	454	497
	WALKUP	231	272	350	439	475
	ELEVATOR-2-4 Sty	277	303	350		
	5 + Sty	303	337	443		
EL PASO	DETACHED			357	443	490
	SEMI-DETACHED/ROW	248	277	350	435	479
	WALKUP	231	264	337	420	457
	ELEVATOR-2-4 Sty	277	303	350		
	5 + Sty	303	337	443		
MIDLAND	DETACHED			395	473	532
	SEMI-DETACHED/ROW	275	313	379	462	505
	WALKUP	263	303	370	441	489
	ELEVATOR-2-4 Sty	306	334	381		
	5 + Sty	334	367	462		
ODESSA	DETACHED			397	470	516
	SEMI-DETACHED/ROW	273	316	376	446	487
	WALKUP	258	303	363	432	466
	ELEVATOR-2-4 Sty	301	327	374		
	5 + Sty	327	361	455		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE SAN ANTONIO, TEXAS REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
AUSTIN	DETACHED			489	620	654
	SEMI-DETACHED/ROW	333	364	467	558	627
	WALKUP	314	340	439	532	575
	ELEVATOR-2-4 Sty	460	466	606		
	5 + Sty	531	534	700		
CORPUS CHRISTI	DETACHED			443	576	687
	SEMI-DETACHED/ROW	268	342	424	518	625
	WALKUP	251	321	399	494	573
	ELEVATOR-2-4 Sty	374	439	557		
	5 + Sty	431	503	639		
DEL RIO/ EAGLE PASS/ LAREDO *	DETACHED			462	659	675
	SEMI-DETACHED/ROW	287	375	443	564	636
	WALKUP	267	333	398	507	558
	ELEVATOR-2-4 Sty	421	477	577		
	5 + Sty	483	549	665		
SAN ANTONIO	DETACHED			421	540	631
	SEMI-DETACHED/ROW	292	338	398	516	604
	WALKUP	276	320	383	491	559
	ELEVATOR-2-4 Sty	412	451	551		
	5 + Sty	473	519	636		
HARLINGEN	DETACHED			480	588	720
	SEMI-DETACHED/ROW	253	322	439	562	654
	WALKUP	238	290	375	480	545
	ELEVATOR-2-4 Sty	266	388	538		
	5 + Sty	430	447	619		
VICTORIA	DETACHED			443	576	687
	SEMI-DETACHED/ROW	268	342	424	518	625
	WALKUP	251	321	399	494	573
	ELEVATOR-2-4 Sty	374	439	557		
	5 + Sty	431	503	639		

* Market areas are not combined. FMRs are identical for these market areas.

AREA OFFICE OMAHA, NEBR. REGION VII - KANSAS CITY

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
DES MOINES IOWA	DETACHED			495	566	653
	SEMI-DETACHED/ROW		336	415	492	583
	WALKUP	257	305	365	419	473
	ELEVATOR-2-4 Sty	330	373	446		
	5 + Sty	359	409	502		
BETTENDORF IOWA	DETACHED			481	552	642
	SEMI-DETACHED/ROW		327	415	458	528
	WALKUP	273	296	373	430	496
	ELEVATOR-2-4 Sty	338	386	464		
	5 + Sty	369	422	523		
CEDAR RAPIDS IOWA	DETACHED			482	553	648
	SEMI-DETACHED/ROW		339	413	469	542
	WALKUP	272	311	387	444	506
	ELEVATOR-2-4 Sty	334	381	455		
	5 + Sty	364	416	512		
COUNCIL BLUFFS IOWA	DETACHED			466	524	595
	SEMI-DETACHED/ROW		301	373	430	493
	WALKUP	259	280	342	394	446
	ELEVATOR-2-4 Sty	312	361	420		
	5 + Sty	338	387	472		
DAVENPORT IOWA	DETACHED			480	549	637
	SEMI-DETACHED/ROW		331	425	467	529
	WALKUP	272	293	371	429	495
	ELEVATOR-2-4 Sty	344	401	473		
	5 + Sty	375	439	532		
DUBUQUE IOWA	DETACHED			493	563	652
	SEMI-DETACHED/ROW		326	396	474	529
	WALKUP	270	296	373	445	501
	ELEVATOR-2-4 Sty	334	382	456		
	5 + Sty	365	418	513		

AREA OFFICE OMAHA, NEBR. REGION VII - KANSAS CITY

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
MASON CITY IOWA	DETACHED			486	555	644
	SEMI-DETACHED/ROW		323	385	451	530
	WALKUP	255	290	356	422	487
	ELEVATOR-2-4 Sty	331	379	448		
	5 + Sty	361	414	504		
SIOUX CITY IOWA	DETACHED			469	562	652
	SEMI-DETACHED/ROW		324	395	450	528
	WALKUP	260	298	373	421	497
	ELEVATOR-2-4 Sty	331	379	454		
	5 + Sty	361	414	511		
WATERLOO IOWA	DETACHED			486	554	644
	SEMI-DETACHED/ROW		323	392	446	523
	WALKUP	268	296	361	415	492
	ELEVATOR-2-4 Sty	332	382	454		
	5 + Sty	362	418	512		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE KANSAS CITY, KAN. REGION VII - KANSAS CITY

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
TOPEKA KAN.	DETACHED					
	SEMI-DETACHED/ROW		323	381	443	483
	WALKUP	216	272	333	396	454
	ELEVATOR-2-4 Sty	238	330	421		
	5 + Sty	245	335	426		
GARDEN CITY KAN.	DETACHED					
	SEMI-DETACHED/ROW		301	363	426	454
	WALKUP	227	267	323	386	426
	ELEVATOR-2-4 Sty	238	330	421		
	5 + Sty	245	335	426		
PITTSBURG KAN.	DETACHED					
	SEMI-DETACHED/ROW		300	351	413	453
	WALKUP	221	261	315	386	432
	ELEVATOR-2-4 Sty	238	330	421		
	5 + Sty	245	335	426		
SALINA KAN.	DETACHED					
	SEMI-DETACHED/ROW		301	363	421	461
	WALKUP	227	261	318	386	426
	ELEVATOR-2-4 Sty	238	330	481		
	5 + Sty	245	335	426		
	DETACHED					
	SEMI-DETACHED/ROW		307	373	437	472
	WALKUP	210	267	329	398	448
	ELEVATOR-2-4 Sty	328	330	421		
	5 + Sty	245	335	426		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE KANSAS CITY, MO. REGION VII - KANSAS CITY

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
KANSAS CITY, KAN./MO.	DETACHED			379	433	463
	SEMI-DETACHED/ROW		302	365	433	463
	WALKUP	252	288	336	398	435
	ELEVATOR-2-4 Sty	277	317	392		
	5 + Sty	312	353	510		
JOPLIN, MO	DETACHED			368	446	483
	SEMI-DETACHED/ROW		260	315	409	447
	WALKUP	181	212	298	389	428
	ELEVATOR-2-4 Sty	260	297	367		
	5 + Sty	293	333	478		
ST. JOSEPH, MO.	DETACHED			361	431	470
	SEMI-DETACHED/ROW		302	347	399	437
	WALKUP	257	298	327	371	405
	ELEVATOR-2-4 Sty	277	316	392		
	5 + Sty	312	356	510		
SEDALIA, MO.	DETACHED			331	361	427
	SEMI-DETACHED/ROW		268	315	361	427
	WALKUP	193	221	306	381	418
	ELEVATOR-2-4 Sty	243	277	343		
	5 + Sty	273	316	446		
SPRINGFIELD, MO	DETACHED			342	408	446
	SEMI-DETACHED/ROW		267	337	408	446
	WALKUP	179	209	270	355	393
	ELEVATOR-2-4 Sty	240	275	339		
	5 + Sty	271	317	442		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE ST. LOUIS, MO REGION VII - KANSAS CITY

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
ST. LOUIS	DETACHED					
	SEMI-DETACHED/ROW		348	410	495	583
	WALKUP	252	316	386	467	518
	ELEVATOR-2-4 Sty	292	364	439		
	5 + Sty	314	383	536		
COLUMBIA	DETACHED					
	SEMI-DETACHED/ROW		295	377	462	518
	WALKUP	238	282	364	445	493
	ELEVATOR-2-4 Sty	277	329	418		
	5 + Sty					
KIRKSVILLE	DETACHED					
	SEMI-DETACHED/ROW		287	361	456	500
	WALKUP	219	273	342	424	468
	ELEVATOR-2-4 Sty	259	318	395		
	5 + Sty					
ROLLA	DETACHED					
	SEMI-DETACHED/ROW		264	337	429	491
	WALKUP	197	250	324	398	433
	ELEVATOR-2-4 Sty	236	295	375		
	5 + Sty					
CAPE GIRARDEAU	DETACHED					
	SEMI-DETACHED/ROW		268	343	439	491
	WALKUP	204	259	331	404	452
	ELEVATOR-2-4 Sty	242	304	384		
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE OMAHA, NEBRASKA REGION VII - KANSAS CITY

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
OMAHA	DETACHED			475	529	562
	SEMI-DETACHED/ROW		334	414	491	522
	WALKUP	253	283	345	405	430
	ELEVATOR-2-4 Sty	302	346	439		
	5 + Sty	338	390	503		
GRAND ISLAND	DETACHED			421	471	508
	SEMI-DETACHED/ROW		320	396	468	496
	WALKUP	246	273	331	385	408
	ELEVATOR-2-4 Sty	289	331	418		
	5 + Sty	335	388	502		
LINCOLN	DETACHED			468	522	550
	SEMI-DETACHED/ROW		316	394	470	500
	WALKUP	250	279	340	398	420
	ELEVATOR-2-4 Sty	302	345	436		
	5 + Sty	335	388	502		
NORFOL	DETACHED			449	502	531
	SEMI-DETACHED/ROW		321	397	470	497
	WALKUP	247	275	333	389	413
	ELEVATOR-2-4 Sty	295	338	426		
	5 + Sty	335	388	502		
NORTH PLATTE	DETACHED			420	471	504
	SEMI-DETACHED/ROW		311	382	447	479
	WALKUP	235	272	329	384	407
	ELEVATOR-2-4 Sty	295	336	424		
	5 + Sty	335	388	502		
SCOTTS BLUFF	DETACHED			418	469	499
	SEMI-DETACHED/ROW		314	385	454	483
	WALKUP	242	270	327	387	416
	ELEVATOR-2-4 Sty	291	333	420		
	5 + Sty	335	388	502		

AREA OFFICE DENVER, COLORADO REGION VIII - DENVER

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
DENVER	DETACHED			440	503	557
	SEMI-DETACHED/ROW		355	394	470	503
	WALKUP	266	320	351	456	495
	ELEVATOR-2-4 Sty	267	325	363		
	5 + Sty	281	341	374		
COLO. SPRINGS	DETACHED			336	423	499
	SEMI-DETACHED/ROW		279	302	365	438
	WALKUP	238	248	281	344	413
	ELEVATOR-2-4 Sty	245	290	311		
	5 + Sty	254	312	336		
DURANGO	DETACHED			402	474	518
	SEMI-DETACHED/ROW		303	342	427	494
	WALKUP	242	289	320	389	445
	ELEVATOR-2-4 Sty	251	297	330		
	5 + Sty	265	304	338		
GRAND JUNCTION	DETACHED			430	476	517
	SEMI-DETACHED/ROW		268	395	438	498
	WALKUP	259	302	363	394	442
	ELEVATOR-2-4 Sty	274	312	367		
	5 + Sty	286	325	376		
GREELEY	DETACHED			402	472	514
	SEMI-DETACHED/ROW		289	345	414	470
	WALKUP	238	265	333	363	424
	ELEVATOR-2-4 Sty	246	274	345		
	5 + Sty	260	286	357		
PUEBLO	DETACHED			381	430	487
	SEMI-DETACHED/ROW		287	322	363	426
	WALKUP	233	253	289	344	388
	ELEVATOR-2-4 Sty	240	270	305		
	5 + Sty	256	286	327		

AREA OFFICE DENVER, COLO. REGION VIII - DENVER

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
HELENA, MONT.	DETACHED			406	475	519
	SEMI-DETACHED/ROW		327	401	466	510
	WALKUP	256	317	392	457	501
	ELEVATOR-2-4 Sty	272	335	407		
	5 + Sty	284	347	419		
BILLINGS, MONT.	DETACHED			401	457	490
	SEMI-DETACHED/ROW		302	393	449	482
	WALKUP	245	292	382	440	475
	ELEVATOR-2-4 Sty	261	308	397		
	5 + Sty	272	319	409		
BOZEMAN, MONT.	DETACHED			392	463	497
	SEMI-DETACHED/ROW		315	383	454	487
	WALKUP	260	306	375	444	479
	ELEVATOR-2-4 Sty	277	325	394		
	5 + Sty	288	336	405		
BUTTE, MONT.	DETACHED			393	463	498
	SEMI-DETACHED/ROW		328	383	455	489
	WALKUP	262	319	375	445	481
	ELEVATOR-2-4 Sty	279	338	395		
	5 + Sty	290	350	406		
GREAT FALLS, MONT.	DETACHED			390	449	482
	SEMI-DETACHED/ROW		308	382	440	475
	WALKUP	249	300	374	432	466
	ELEVATOR-2-4 Sty	268	312	392		
	5 + Sty	280	324	403		
HAVRE, MONT.	DETACHED			385	439	479
	SEMI-DETACHED/ROW		292	377	431	469
	WALKUP	244	284	369	421	461
	ELEVATOR-2-4 Sty	266	303	389		
	5 + Sty	278	314	400		

AREA OFFICE DENVER, COLO. REGION VIII - DENVER

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
MILES CITY, MONT.	DETACHED			385	439	479
	SEMI-DETACHED/ROW		292	377	431	469
	WALKUP	244	284	369	421	461
	ELEVATOR-2-4 Sty	266	303	389		
	5 + Sty	278	314	400		
KALISPELL, MONT.	DETACHED			393	459	495
	SEMI-DETACHED/ROW		303	383	451	489
	WALKUP	251	294	374	442	480
	ELEVATOR-2-4 Sty	271	311	392		
	5 + Sty	283	323	403		
MISSOULA, MONT.	DETACHED			392	461	495
	SEMI-DETACHED/ROW		307	383	453	488
	WALKUP	255	300	374	443	478
	ELEVATOR-2-4 Sty	273	316	393		
	5 + Sty	285	328	404		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE DENVER, COLORADO REGION VIII - DENVER

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
FARGO, NORTH DAKOTA	DETACHED			414	492	520
	SEMI-DETACHED/ROW		339	387	456	501
	WALKUP	279	319	359	444	490
	ELEVATOR-2-4 Sty	292	337	411		
	5 + Sty	319	365	444		
BISMARK, NORTH DAKOTA	DETACHED			411	488	518
	SEMI-DETACHED/ROW		324	386	455	498
	WALKUP	274	313	358	442	487
	ELEVATOR-2-4 Sty	290	334	409		
	5 + Sty	319	363	440		
DICKINSON, NORTH DAKOTA	DETACHED			389	466	492
	SEMI-DETACHED/ROW		312	365	433	467
	WALKUP	244	296	347	422	450
	ELEVATOR-2-4 Sty	266	311	366		
	5 + Sty	285	336	404		
GRAND FORKS, NORTH DAKOTA	DETACHED			414	490	518
	SEMI-DETACHED/ROW		333	394	451	492
	WALKUP	256	316	358	435	472
	ELEVATOR-2-4 Sty	290	336	404		
	5 + Sty	308	353	427		
MINOT, NORTH DAKOTA	DETACHED			404	477	513
	SEMI-DETACHED/ROW		308	368	437	472
	WALKUP	251	296	347	427	451
	ELEVATOR-2-4 Sty	270	310	368		
	5 + Sty	290	337	399		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE DENVER, COLORADO REGION VIII - DENVER

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SIOUX FALLS, SOUTH DAKOTA	DETACHED			411	435	474
	SEMI-DETACHED/ROW		344	383	417	451
	WALKUP	275	327	364	401	431
	ELEVATOR-2-4 Sty	291	355	374		
	5 + Sty	296	341	378		
ABERDEEN, SOUTH DAKOTA	DETACHED			401	435	474
	SEMI-DETACHED/ROW		338	383	417	451
	WALKUP	263	316	361	401	435
	ELEVATOR-2-4 Sty	275	327	372		
	5 + Sty	285	338	378		
FORT THOMPSON, SOUTH DAKOTA	DETACHED			412	449	492
	SEMI-DETACHED/ROW		351	394	428	475
	WALKUP	284	333	372	409	451
	ELEVATOR-2-4 Sty	293	341	381		
	5 + Sty	297	346	385		
MCLAUGHLIN, SOUTH DAKOTA	DETACHED			412	449	492
	SEMI-DETACHED/ROW		351	393	428	475
	WALKUP	284	333	372	413	451
	ELEVATOR-2-4 Sty	293	341	381		
	5 + Sty	297	346	385		
MISSION, SOUTH DAKOTA	DETACHED			412	448	492
	SEMI-DETACHED/ROW		351	394	428	475
	WALKUP	284	333	372	413	451
	ELEVATOR-2-4 Sty	293	341	381		
	5 + Sty	297	346	385		
PIERRE, SOUTH DAKOTA	DETACHED			412	446	485
	SEMI-DETACHED/ROW		350	395	428	474
	WALKUP	263	321	361	406	451
	ELEVATOR-2-4 Sty	280	333	372		
	5 + Sty	285	338	378		

AREA OFFICE DENVER, COLO. REGION VIII - DENVER

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SALT LAKE CITY, UTAH	DETACHED			385	417	473
	SEMI-DETACHED/ROW		283	314	356	390
	WALKUP	196	274	297	334	369
	ELEVATOR-2-4 Sty	244	322	343		
	5 + Sty	269	343	381		
CEDAR CITY, UTAH	DETACHED			335	367	399
	SEMI-DETACHED/ROW		255	300	336	359
	WALKUP	185	250	294	332	347
	ELEVATOR-2-4 Sty	234	281	332		
	5 + Sty	246	312	358		
PROVO, UTAH	DETACHED			352	402	464
	SEMI-DETACHED/ROW		279	311	349	399
	WALKUP	218	272	300	342	393
	ELEVATOR-2-4 Sty	246	317	343		
	5 + Sty	270	332	365		
LOGAN, UTAH	DETACHED			381	408	468
	SEMI-DETACHED/ROW		281	305	340	372
	WALKUP	201	274	299	334	363
	ELEVATOR-2-4 Sty	239	286	338		
	5 + Sty	265	332	371		
VERNAL, UTAH	DETACHED			403	470	517
	SEMI-DETACHED/ROW		329	393	465	514
	WALKUP	202	275	320	379	427
	ELEVATOR-2-4 Sty	246	322	348		
	5 + Sty	275	343	384		
MOAB, UTAH	DETACHED			335	370	399
	SEMI-DETACHED/ROW		259	300	336	356
	WALKUP	187	250	294	329	347
	ELEVATOR-2-4 Sty	234	282	332		
	5 + Sty	244	315	358		

AREA OFFICE DENVER, COLORADO REGION VIII - DENVER

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
CASPER, WYO.	DETACHED			470	561	602
	SEMI-DETACHED/ROW		337	437	547	598
	WALKUP	278	323	426	537	588
	ELEVATOR-2-4 Sty	313	354	457		
	5 + Sty	365	426	500		
CHEYENNE, WYO.	DETACHED			456	537	587
	SEMI-DETACHED/ROW		337	408	525	576
	WALKUP	271	323	398	522	573
	ELEVATOR-2-4 Sty	306	354	441		
	5 + Sty	339	411	470		
CODY, WO.	DETACHED			459	520	581
	SEMI-DETACHED/ROW		338	423	490	549
	WALKUP	272	330	404	477	537
	ELEVATOR-2-4 Sty	308	358	444		
	5 + Sty	345	404	470		
GILLETTE, WYO.	DETACHED			456	552	617
	SEMI-DETACHED/ROW		337	437	544	603
	WALKUP	278	323	426	537	581
	ELEVATOR-2-4 Sty	311	357	449		
	5 + Sty	353	419	490		
JACKSON, WYO.	DETACHED			493	588	647
	SEMI-DETACHED/ROW		368	456	552	609
	WALKUP	308	353	441	544	573
	ELEVATOR-2-4 Sty	341	383	470		
	5 + Sty	381	435	507		
LARAMIE, WYO.	DETACHED			429	530	580
	SEMI-DETACHED/ROW		339	411	513	559
	WALKUP	271	330	404	507	549
	ELEVATOR-2-4 Sty	301	362	436		
	5 + Sty	330	404	462		

AREA OFFICE DENVER, COLO. REGION VIII - DENVER

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
RIVERTON, WYO.	DETACHED			459	501	559
	SEMI-DETACHED/ROW		338	423	486	548
	WALKUP	271	330	404	477	537
	ELEVATOR-2-4 Sty	306	358	444		
	5 + Sty	338	404	470		
ROCK SPRINGS, WYO.	DETACHED			477	576	617
	SEMI-DETACHED/ROW		338	441	556	602
	WALKUP	287	330	426	544	588
	ELEVATOR-2-4 Sty	318	362	458		
	5 + Sty	374	434	493		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE LOS ANGELES, CA. REGION IX - SAN FRANCISCO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
PHOENIX, ARIZ.	DETACHED			416	488	546
	SEMI-DETACHED/ROW		348	392	440	488
	WALKUP	249	301	374	440	488
	ELEVATOR-2-4 Sty	292	333	421		
	5 + Sty	382	446	564		
CASA GRANDE, ARIZ.	DETACHED			369	452	572
	SEMI-DETACHED/ROW		314	360	452	512
	WALKUP	279	314	359	429	456
	ELEVATOR-2-4 Sty	287	334	379		
	5 + Sty					
FLAGSTAFF, ARIZ.	DETACHED			434	544	559
	SEMI-DETACHED/ROW		299	356	404	453
	WALKUP	263	299	356	404	453
	ELEVATOR-2-4 Sty	283	320	376		
	5 + Sty					
KEAMS CANYON, ARIZ.	DETACHED			365	406	490
	SEMI-DETACHED/ROW		263	365	394	478
	WALKUP	224	251	295	352	409
	ELEVATOR-2-4 Sty	244	271	315		
	5 + Sty					
TUSCON, ARIZ.	DETACHED			435	482	541
	SEMI-DETACHED/ROW		317	388	471	530
	WALKUP	272	293	367	453	502
	ELEVATOR-2-4 Sty	293	312	387		
	5 + Sty	408	441	577		
YUMA, ARIZ.	DETACHED			428	480	538
	SEMI-DETACHED/ROW		365	405	459	510
	WALKUP	273	313	385	429	473
	ELEVATOR-2-4 Sty	295	333	405		
	5 + Sty					

AREA OFFICE LOS ANGELES, CA REGION IX - SAN FRANCISCO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
LOS ANGELES	DETACHED			642	715	815
	SEMI-DETACHED/ROW		559	592	658	745
	WALKUP	358	424	539	573	621
	ELEVATOR-2-4 Sty	376	442	557	591	640
	5 + Sty	474	612	854		
BAKERSFIELD	DETACHED			474	574	683
	SEMI-DETACHED/ROW		325	422	518	559
	WALKUP	271	311	403	497	541
	ELEVATOR-2-4 Sty	287	327	419	514	566
	5 + Sty	413	459	588		
LANCASTER	DETACHED			521	559	606
	SEMI-DETACHED/ROW		337	447	496	536
	WALKUP	281	321	414	475	524
	ELEVATOR-2-4 Sty	298	339	432	478	527
	5 + Sty	431	480	623		
OXNARD/VENTURA*	DETACHED			573	609	677
	SEMI-DETACHED/ROW		424	489	582	633
	WALKUP	324	364	415	496	543
	ELEVATOR-2-4 Sty	342	382	433	514	560
	5 + Sty	471	518	606		
SANTA MARIA	DETACHED			460	498	542
	SEMI-DETACHED/ROW		355	420	469	513
	WALKUP	287	327	383	431	479
	ELEVATOR-2-4 Sty	304	345	400	447	496
	5 + Sty	437	487	581		
SANTA BARBARA	DETACHED			676	713	761
	SEMI-DETACHED/ROW		446	551	692	747
	WALKUP	341	383	471	601	652
	ELEVATOR-2-4 Sty	358	401	488	619	669
	5 + Sty	491	542	667		

* Market areas are not combined. FMRs are identical for these market areas.

AREA OFFICE LOS ANGELES, CA REGION IX - SAN FRANCISCO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
PASA ROBLES	DETACHED			608	647	694
	SEMI-DETACHED/ROW		392	463	569	621
	WALKUP	293	332	387	484	532
	ELEVATOR-2-4 Sty	309	348	404	501	548
	5 + Sty	439	487	580		
SAN DIEGO/ EL CAJON *	DETACHED			495	553	602
	SEMI-DETACHED/ROW		414	478	527	574
	WALKUP	313	371	433	500	542
	ELEVATOR-2-4 Sty	385	444	558		
	5 + Sty	437	518	658		
SANTA ANA	DETACHED			497	558	600
	SEMI-DETACHED/ROW		388	474	528	572
	WALKUP	311	369	439	485	521
	ELEVATOR-2-4 Sty	326	386	458		
	5 + Sty	446	517	623		
SAN BERNARDINO	DETACHED			484	539	598
	SEMI-DETACHED/ROW		366	447	496	563
	WALKUP	276	333	397	431	478
	ELEVATOR-2-4 Sty	295	354	420		
	5 + Sty	407	472	573		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

*Market areas are not combined. FMRs are identical for these market areas.

SERVICE OFFICE SACRAMENTO, CA. REGION IX - SAN FRANCISCO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SACRAMENTO	DETACHED			450	487	529
	SEMI-DETACHED/ROW		397	439	476	513
	WALKUP	286	328	381	471	508
	ELEVATOR-2-4 Sty	381	428	487		
	5 + Sty	466	524	608		
PLACERVILLE	DETACHED			460	497	540
	SEMI-DETACHED/ROW		402	450	487	524
	WALKUP	291	333	386	481	518
	ELEVATOR-2-4 Sty	386	439	498		
	5 + Sty					
REDDING	DETACHED			460	497	540
	SEMI-DETACHED/ROW		407	450	487	524
	WALKUP	250	305	365	420	485
	ELEVATOR-2-4 Sty	391	439	497		
	5 + Sty					
SO. L. TAHOE	DETACHED			524	571	624
	SEMI-DETACHED/ROW		466	508	561	608
	WALKUP	333	381	444	555	603
	ELEVATOR-2-4 Sty	444	503	571		
	5 + Sty					
YREKA	DETACHED			450	487	529
	SEMI-DETACHED/ROW		397	439	476	524
	WALKUP	286	328	381	471	513
	ELEVATOR-2-4 Sty	381	428	487		
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE SAN FRANCISCO, CA REGION IX - SAN FRANCISCO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SAN FRANCISCO	DETACHED			913	1070	1147
	SEMI-DETACHED/ROW		573	780	913	979
	WALKUP	461	505	687	804	862
	ELEVATOR-2-4 Sty	487	541	756	825	880
	5 + Sty	613	687	924	978	1035
FRESNO	DETACHED			448	511	535
	SEMI-DETACHED/ROW		317	416	479	501
	WALKUP	260	281	375	467	501
	ELEVATOR-2-4 Sty	315	354	456		
	5 + Sty	461	513	663		
MODESTO	DETACHED			439	539	565
	SEMI-DETACHED/ROW		339	389	467	500
	WALKUP	303	336	382	464	500
	ELEVATOR-2-4 Sty	342	389	463		
	5 + Sty	505	568	671		
SAN JOSE	DETACHED			497	594	681
	SEMI-DETACHED/ROW		389	489	545	567
	WALKUP	368	389	471	545	567
	ELEVATOR-2-4 Sty	381	424	524		
	5 + Sty	526	582	704		
OAKLAND/MARIN	DETACHED			703	743	761
	SEMI-DETACHED/ROW		599	703	724	751
	WALKUP	350	397	568	673	722
	ELEVATOR-2-4 Sty	362	466	589		
	5 + Sty	508	624	772		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE HONOLULU, HAWAII. REGION IX- SAN FRANCISCO.

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
HONOLULU	DETACHED			491	590	677
	SEMI-DETACHED/ROW		395	437	521	558
	WALKUP	298	389	429	511	549
	ELEVATOR-2-4 Sty	308	398	438		
	5 + Sty	339	407	459		
HILO	DETACHED			403	486	524
	SEMI-DETACHED/ROW		336	385	467	505
	WALKUP	267	305	362	450	490
	ELEVATOR-2-4 Sty	276	314	371		
	5 + Sty					
KAUAI	DETACHED			515	565	605
	SEMI-DETACHED/ROW		406	487	537	577
	WALKUP	285	324	355	442	483
	ELEVATOR-2-4 Sty	297	334	364		
	5 + Sty					
KONA	DETACHED			439	522	569
	SEMI-DETACHED/ROW		372	421	503	551
	WALKUP	289	328	399	487	527
	ELEVATOR-2-4 Sty	298	338	409		
	5 + Sty					
MAUI	DETACHED			458	545	595
	SEMI-DETACHED/ROW		409	439	527	576
	WALKUP	285	324	432	520	560
	ELEVATOR-2-4 Sty	294	333	441		
	5 + Sty					
GUAM (MARIANAS IS.)	DETACHED			488	596	645
	SEMI-DETACHED/ROW		387	442	551	600
	WALKUP	245	312	395	471	
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE SAN FRANCISCO, CA. REGION IX - SAN FRANCISCO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
RENO, NEVADA	DETACHED			583	661	700
	SEMI-DETACHED/ROW		475	583	661	686
	WALKUP	369	420	527	613	660
	ELEVATOR-2-4 Sty	394	456	599		
	5 + Sty	527	600	756		
LAS VEGAS, NEVADA	DETACHED			509	626	721
	SEMI-DETACHED/ROW		397	503	591	638
	WALKUP	359	397	488	591	638
	ELEVATOR-2-4 Sty	384	433	560		
	5 + Sty	517	578	717		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE ANCHORAGE, ALASKA REGION X - SEATTLE

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
ANCHORAGE	DETACHED			643	650	722
	SEMI-DETACHED/ROW		553	612	624	694
	WALKUP	368	453	515	548	608
	ELEVATOR-2-4 Sty	503	592	662		
	5 + Sty	512	602	673		
FAIRBANKS	DETACHED			633	690	751
	SEMI-DETACHED/ROW		542	608	683	737
	WALKUP	476	517	584	657	723
	ELEVATOR-2-4 Sty	583	670	746		
	5 + Sty	595	684	760		
JUNEAU	DETACHED			614	670	732
	SEMI-DETACHED/ROW		524	580	639	697
	WALKUP	431	481	539	604	664
	ELEVATOR-2-4 Sty	478	525	503		
	5 + Sty	487	535	595		
KETCHIKAN	DETACHED			515	626	642
	SEMI-DETACHED/ROW		417	491	555	622
	WALKUP	337	390	464	529	593
	ELEVATOR-2-4 Sty	413	505	592		
	5 + Sty	421	515	609		
COASTAL AREA, NORTH OF ALEUTIANS	DETACHED		783	861	947	1042
	SEMI-DETACHED/ROW		760	836	920	1012
	WALKUP	671	738	813	894	983
	ELEVATOR-2-4 Sty					
	5 + Sty					
NORTH COASTAL AREA, BARTER ISLAND	DETACHED		783	861	947	1042
	SEMI-DETACHED/ROW		760	836	920	1012
	WALKUP	671	738	813	894	983
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE PORTLAND, ORE. REGION X - SEATTLE

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
BOISE	DETACHED			419	478	507
	SEMI-DETACHED/ROW		311	372	425	462
	WALKUP	243	285	338	397	432
	ELEVATOR-2-4 Sty	297	364	425		
	5 + Sty	312	382	463		
IDAHO FALLS	DETACHED			415	467	511
	SEMI-DETACHED/ROW		320	364	437	461
	WALKUP	259	283	349	422	457
	ELEVATOR-2-4 Sty	303	371	433		
	5 + Sty	318	389	472		
MCCALL	DETACHED			306	345	384
	SEMI-DETACHED/ROW		234	273	319	358
	WALKUP	176	215	254	306	345
	ELEVATOR-2-4 Sty					
	5 + Sty	222	273	326		
POCATELLO	DETACHED			428	474	505
	SEMI-DETACHED/ROW		316	371	431	461
	WALKUP	246	289	356	428	451
	ELEVATOR-2-4 Sty	300	367	429		
	5 + Sty	315	386	467		
TWINFALLS	DETACHED			395	448	479
	SEMI-DETACHED/ROW		300	370	410	450
	WALKUP	235	259	329	374	401
	ELEVATOR-2-4 Sty	283	347	405		
	5 + Sty	297	364	441		
LEWISTON	DETACHED			429	472	514
	SEMI-DETACHED/ROW		286	365	423	460
	WALKUP	247	273	329	395	432
	ELEVATOR-2-4 Sty	295	361	422		
	5 + Sty	309	379	459		

AREA OFFICE PORTLAND, ORE. REGION X - SEATTLE

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
COEUR D'ALENE	DETACHED			395	440	489
	SEMI-DETACHED/ROW		280	365	418	446
	WALKUP	220	261	321	380	420
	ELEVATOR-2-4 Sty	281	344	402		
	5 + Sty	295	361	438		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE PORTLAND, ORE. REGION X - SEATTLE

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
PORTLAND	DETACHED			3 3	439	477
	SEMI-DETACHED/ROW	251	286	355	420	464
	WALKUP	242	273	334	397	439
	ELEVATOR-2-4 Sty	286	360	416		
	5 + Sty	318	399	463		
BEND	DETACHED			348	435	483
	SEMI-DETACHED/ROW		292	341	421	459
	WALKUP	232	277	324	400	436
	ELEVATOR-2-4 Sty	283	343	398		
	5 + Sty	314	381	442		
COOS BAY	DETACHED			349	388	429
	SEMI-DETACHED/ROW		298	337	378	416
	WALKUP	239	278	318	358	398
	ELEVATOR-2-4 Sty	288	344	393		
	5 + Sty	319	382	436		
EUGENE	DETACHED			363	441	484
	SEMI-DETACHED/ROW		295	334	398	437
	WALKUP	251	280	320	384	422
	ELEVATOR-2-4 Sty	295	341	390		
	5 + Sty	328	379	434		
MEDFORD	DETACHED			351	403	449
	SEMI-DETACHED/ROW		283	334	387	433
	WALKUP	228	266	326	367	404
	ELEVATOR-2-4 Sty	274	329	397		
	5 + Sty	305	366	440		
ONTARIO	DETACHED			356	404	452
	SEMI-DETACHED/ROW		283	331	387	438
	WALKUP	219	266	315	380	429
	ELEVATOR-2-4 Sty	249	306	365		
	5 + Sty	278	340	406		

AREA OFFICE PORTLAND, ORE. REGION X - SEATTLE

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
PENDLETON	DETACHED			341	393	438
	SEMI-DETACHED/ROW		262	334	379	416
	WALKUP	210	249	314	366	403
	ELEVATOR-2-4 Sty	259	313	384		
	5 + Sty	288	349	427		
WEST SALEM	DETACHED			364	439	476
	SEMI-DETACHED/ROW		303	346	421	457
	WALKUP	253	293	336	405	452
	ELEVATOR-2-4 Sty	306	364	415		
	5 + Sty	340	404	462		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

AREA OFFICE SEATTLE, WASHINGTON REGION X - SEATTLE

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SEATTLE	DETACHED			383	484	510
	SEMI-DETACHED/ROW		316	380	454	502
	WALKUP	254	306	377	439	497
	ELEVATOR-2-4 Sty	289	367	430		
	5 + Sty	326	401	465		
ABERDEEN	DETACHED			354	416	476
	SEMI-DETACHED/ROW		295	348	406	464
	WALKUP	257	291	344	391	449
	ELEVATOR-2-4 Sty	285	318	390		
	5 + Sty	314	357	436		
BELLINGHAM	DETACHED			372	465	518
	SEMI-DETACHED/ROW		295	359	439	493
	WALKUP	250	280	341	404	454
	ELEVATOR-2-4 Sty	311	331	395		
	5 + Sty	342	370	442		
LONGVIEW	DETACHED			352	417	486
	SEMI-DETACHED/ROW		295	346	411	485
	WALKUP	239	277	330	396	455
	ELEVATOR-2-4 Sty	286	345	400		
	5 + Sty	315	387	449		
OLYMPIA	DETACHED			369	427	482
	SEMI-DETACHED/ROW		291	340	407	468
	WALKUP	258	276	336	401	463
	ELEVATOR-2-4 Sty	296	361	413		
	5 + Sty	325	405	463		
PORT ANGELES	DETACHED			358	427	473
	SEMI-DETACHED/ROW		291	340	410	460
	WALKUP	223	268	331	395	434
	ELEVATOR-2-4 Sty	265	314	377		
	5 + Sty	292	351	422		

AREA OFFICE SEATTLE, WASHINGTON REGION X - SEATTLE

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SPOKANE	DETACHED			335	410	478
	SEMI-DETACHED/ROW		265	314	395	441
	WALKUP	223	260	301	376	422
	ELEVATOR-2-4 Sty	277	345	406		
	5 + Sty	304	378	445		
CHENEY	DETACHED			338	437	490
	SEMI-DETACHED/ROW		267	302	395	442
	WALKUP	223	261	299	383	430
	ELEVATOR-2-4 Sty	276	344	405		
	5 + Sty	304	378	444		
KENNEWICK	DETACHED			410	486	531
	SEMI-DETACHED/ROW		361	405	477	522
	WALKUP	257	314	395	450	497
	ELEVATOR-2-4 Sty	311	381	431		
	5 + Sty	342	419	474		
PULLMAN	DETACHED			364	440	483
	SEMI-DETACHED/ROW		294	344	404	453
	WALKUP	239	278	335	395	433
	ELEVATOR-2-4 Sty	289	353	427		
	5 + Sty	318	371	436		
YAKIMA	DETACHED			359	407	461
	SEMI-DETACHED/ROW		305	340	403	452
	WALKUP	230	276	325	395	443
	ELEVATOR-2-4 Sty	285	330	394		
	5 + Sty	314	370	441		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty					
	5 + Sty					

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Wednesday
October 31, 1979

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Policies and Procedures for Enforcement of Accessibility Standards for the Physically Handicapped

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 41

[Docket No. R-79-625]

Policies and Procedures for the Enforcement of Standards and Requirements for Accessibility by the Physically Handicapped; Implementation of Enforcement of the Architectural Barriers Act of 1968

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: This final rule sets forth policies and procedures for the enforcement of standards and requirements for accessibility by the physically handicapped imposed (a) for nonresidential buildings and facilities by regulations issued by the General Services Administration at Subchapter D of the Federal Property Management Regulations, Subpart 101–19.6—Accommodations for the Physically Handicapped, or (b) by regulation or contract under any other program of the Department, except a program subject only to standards or requirements at 24 CFR Part 8 imposed pursuant to Section 504 of the Rehabilitation Act of 1973. For residential structures the controlling regulation is at 24 CFR Part 40—Standards for Design, Construction, and Alteration of Publicly Owned Residential Structures. The policies and procedures of this final rule shall apply after its effective date to all complaints received and/or findings of noncompliance made regarding buildings or facilities subject to such standards and requirements.

EFFECTIVE DATE: November 30, 1979.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Wehrli, Office of Independent Living for the Disabled, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, (202) 755–7366. (Note: This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1976, the Architectural and Transportation Barriers Compliance Board (the A&TBCB) published a Notice in the **Federal Register** entitled "Guidelines for Compliance System Development" (41 FR 27192). The Notice set forth advisory guidelines for the benefit of other Federal agencies in developing procedures for achieving compliance with standards for the accessibility of federally related buildings and facilities by the physically handicapped imposed pursuant to the Architectural Barriers Act of 1968, as amended, Pub. L. 90–480. The Notice indicated that agency compliance procedures should be compatible with those of the A&TBCB, set forth at 36 CFR Part 1150, regarding compliance with Pub. L. 90–480.

On February 21, 1979 the Department published a proposed rule at 24 CFR Part 41 for public comment. This rule is responsive to the Notice of the A&TBCB and, in addition, extends the applicability of the uniform compliance procedures to requirements other than those imposed pursuant to Pub. L. 90–480, such as those imposed pursuant to the Department's statutory authority to set building standards and requirements.

The Department received only 3 written public comments and about a dozen telephone inquiries. One of the written comments and all of the telephone inquiries involved the extent of coverage of the regulation. More specifically, they asked if the rule covers housing assisted under Section 8 of the U.S. Housing Act of 1937. This question about Section 8 coverage was prompted not by this rule at 24 CFR Part 41, but rather by a proposed revision to the regulation at 24 CFR Part 40, which was published in the **Federal Register** on the same day this rule was published. The proposed revised rule at 24 CFR Part 40 bore a revised title: "Design, Construction, and Alteration of Residential Structures to Insure Accessibility by the Physically Handicapped." On October 18, 1976 the Architectural Barriers Act had been amended by Title II of the Public Buildings Cooperative Use Act of 1976 to extend coverage of law to federally leased buildings and facilities including "privately owned residential structures leased by the Government for subsidized housing." It was this language which lead commentors to believe that Section 8 housing might be covered. However, Section 8 housing is not leased by the Federal Government. Instead, Section 8 rent subsidies are granted to qualified low-income households, who may use them for dwellings approved by HUD. Thus, Section 8 is not covered under the Act, and will not be covered when the Revised 24 CFR Part 40 is published for effect.

Aside from those privately owned residential structures which are leased by the Federal Government for subsidized housing, the coverage of 24 CFR Part 40 is, and will continue to be, limited to publicly owned residential structures defined as those which (a) have 25 or more dwelling units, (b) have an elevator, (c) are designed for the elderly or intended for the handicapped, or (d) are a building or facility appurtenant to one of the above.

Another written comment asked if the provisions of this rule are retroactive. In general, this question would have to be asked in the context of the Architectural Barriers Act of 1968, since this Act is the main source of coverage for this rule. The Architectural Barriers Act is not retroactive: it applies only to buildings and facilities constructed, altered or leased subsequent to the date when design standards were issued pursuant to the Act. For design standards for residential structures issued by HUD, the date was September 24, 1969. However, if this rule's enforcement policies or procedures were to reveal any buildings or facilities which were constructed, altered, or leased after the issuance of design standards, and which were not constructed in compliance with such design standards, then those buildings or facilities would have to be brought into compliance.

The third written comment came from the Architectural and Transportation Barriers Compliance Board, which is the Federal regulatory agency established under Section 502 of the Rehabilitation Act of 1973 to enforce compliance with the Architectural Barriers Act. This comment contained a number of concerns about making this rule conform with A&TBCB policies and procedures. Most of the recommendations resulted in changes in the rule. Details are provided below in connection with specific paragraphs of this preamble.

Summary of the Rule

For the most part, the Department's projects involve residential buildings. However, in rare cases where Departmental projects covered by the Architectural Barriers Act are nonresidential they are subject to design standards and waiver procedures set forth by the General Services Administration with which the Department must comply. This was not accounted for in the proposed rule, but has been in the final rule by a revision in § 41.1.

Section 41.1 Applicability, indicates that the procedures of this Part apply to all complaints and/or findings of noncompliance regarding buildings or facilities subject to standards and requirements for accessibility by the physically handicapped imposed for

nonresidential buildings or facilities by regulations issued by the General Services Administration at Subchapter D of the Federal Property Management Regulations, Subpart 101–19.6—Accommodations for the Physically Handicapped, or by regulation or contract under any other program of the Department including those for residential structures for which accessibility is required under 24 CFR Part 40. However, the compliance procedures of this Part are not intended to apply to findings or complaints regarding discrimination based on handicap under Section 504 of the Rehabilitation Act of 1973, or pursuant thereto, under the Department's proposed regulation at 43 FR 76 16652, April 19, 1978. All matters arising only under Section 504, including those involving alleged violations of standards and requirements for building accessibility, are to be addressed within the Department's nondiscrimination compliance procedures at 24 CFR Part 8 when they are published for effect. These procedures are mandated by the Department of Health, Education and Welfare in its governmentwide regulations on Section 504 at 45 CFR Part 85.

As was pointed out in one public comment, the Architectural Barriers Act and the Rehabilitation Act of 1973, having been enacted separately, can result in a duplication of coverage for some projects. Since two separate statutes are involved, regulations pursuant to both acts must be complied with because compliance with one does not necessarily secure compliance with the other.

Section 41.3 Assurance and Declaration Required, indicated in the proposed rule that each HUD Assistant Secretary shall require an assurance of compliance with all applicable accessibility standards and requirements prior to approving applications or entering into contracts for grants, loans, insurance, guarantee, or other forms of assistance. Based upon public comment to the proposed rule, a new paragraph (b) has been inserted to require architectural, engineering, or other declarations. The declarations shall affirm for each project that design standards and requirements for accessibility have been followed. Such declarations are not to be required for projects subject to Departmental design and construction examinations and inspections. The forms of declaration developed by Assistant Secretaries are to be acceptable to the Secretary.

Section 41.4 Waiver or Modification of Standards, has been expanded from one paragraph to seven.

A public comment correctly indicated that requests for a waiver or modification are handled differently for residential and nonresidential buildings and facilities. New paragraphs (b) and (c) have been inserted to reflect this difference; namesly, that a request for waiver or modification is handled within the Department for residential buildings, but forwarded via the Secretary to the General Services Administration for nonresidential buildings.

Also, 1978 legislative amendments to the Rehabilitation Act of 1973 granted added authority to the A&TBCB with respect to waivers and modifications of standards so as to insure that such waivers and modifications are based upon findings of fact and are consistent with the Architectural Barriers Act. As the A&TBCB expects member agencies to take a primary role in such compliance matters, the legislative language has been introduced in a new paragraph (d)(1).

Other provisions were added to this section to indicate who may request a waiver or modification, the criteria for granting a waiver or modification, and a listing of types of information which are to accompany a request so that the responsible Assistant Secretary and the Secretary will have a sound basis for deciding whether or not to recommend or approve a request. Authority for granting approval for a waiver or modification has been restricted to the Secretary for residential buildings or to the Administrator, General Services Administration for nonresidential buildings.

Section 41.5 Achieving Compliance, based upon public comment, has been expanded by the insertion of a new paragraph (a) in the final rule. Architectural and engineering examinations of drawings and specifications, and/or inspections during construction are required under some HUD programs. For such programs, paragraph (a) requires that the examinations and inspections include attention to design standards and requirements for accessibility. Such procedures enhance compliance by alerting designers to the need for accessibility, and by checking details to see that accessible features have been incorporated in building plans. This is highly cost-effecting since accessibility is cheap in new construction but often expensive to correct construction oversights or errors.

In response to a public comment, paragraph (c) was amended to indicate that a complaint also could be filed with the A&TBCB.

A new paragraph (f) has been introduced to require that complaints which are unresolved at HUD after 90 days are to be returned to the Architectural and Transportation Barriers Compliance Board for their processing as per 26 CFR Part 1150.

Section 41.6 Matters Involving the Architectural and Transportation Barriers Compliance Board, previously stated that, with respect to complaints referred by the A&TBCB, the responsible Department Official shall coordinate all investigations and other compliance actions and shall respond to the A&TBCB within the 60-day period mandated by the regulations of the A&TBCB at 36 CFR Part 1150.41. Based upon a public comment, the language of this Section was clarified to indicate that not merely a "response" to the A&TBCB was to be made, but that the informal resolution was to be achieved within the 60-day period.

In its commentary, the A&TBCB asked that the rule specify a time frame for the resolution of complaints received from within the Department. It is intended that the periods specified are to apply to any complaint regardless of origin.

With respect to corrective actions, they should be taken as expeditiously as possible. Every effort should be made to provide funds within the fiscal year when deficiencies are identified. Where this is infeasible, then the detailed planning for corrective actions should proceed, funds should be earmarked for the following fiscal year, and alterations should commence as soon after the beginning of such fiscal year as practicable.

The Department has determined that an Environmental Impact Statement is not required with respect to these amendments. The Finding of Inapplicability in accordance with HUD's environmental procedures made in connection with the proposed rule is applicable to this final rule and is available for public inspection during regular business hours in the Office of Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 5218, 451 7th Street, S.W., Washington, D.C. 20410.

In consideration of the foregoing, the Department, hereby amends 24 CFR by adding a new Part 41 as follows:

PART 41—POLICIES AND PROCEDURES FOR THE ENFORCEMENT OF STANDARDS AND REQUIREMENTS FOR ACCESSIBILITY BY THE PHYSICALLY HANDICAPPED

Sec.
41.1 Applicability.
41.2 Definitions.
41.3 Assurance and declaration required.
41.4 Waiver or modification of standards.
41.5 Achieving compliance.
41.6 Matters involving the Architectural and Transportation Barriers Compliance Board.

Authority: Architectural Barriers Act of 1968, as amended by P.L. 90–480, 42 U.S.C. 4151 et seq.

§ 41.1 Applicability.

This Part sets forth policies and procedures for the enforcement of standards and requirements for accessibility by the physically handicapped imposed (a) for nonresidential buildings or facilities by regulations issued by the General Services Administration at Subchapter D of the Federal Property Management Regulations, Subpart 101–19.6—Accommodations for the Physically Handicapped, or (b) by regulation or contract under any other program of the Department, except a program subject only to standards or requirements at 24 CFR Part 8 imposed pursuant to Section 504 of the Rehabilitation Act of 1973. The policies and procedures of this Part shall apply after the effective date of these regulations to all complaints received, and/or findings of noncompliance made, regarding buildings or facilities subject to such regulatory or contractural requirements.

§ 41.2 Definitions.

As used in this Part, the term Secretary means the Secretary of Housing and Urban Development, or to the extent of any delegation of authority by the Secretary to act under this part, any other Department Official to whom authority has been delegated.

§ 41.3 Assurance and declaration required.

(a) Each Assistant Secretary shall, as a condition for approval of any contract or application for assistance under a program imposing standards and/or requirements for accessibility which are subject to this Part, require an assurance of compliance with those standards and requirements. Such assurance shall be in a form acceptable to the Secretary.

(b) For each project covered under this Part, except a project subject to Departmental examinations and inspections as set forth in § 41.5(a), the responsible Assistant Secretary shall require a declaration as to project drawings, specifications, and other construction documents. The declaration shall be signed by the licensed, or registered, architect or engineer, or by such other responsible official as designated by HUD, who has prepared such construction documents. The declaration shall affirm that the proposed project, to the best knowledge and belief of the declarer, conforms to applicable accessibility design standards and requirements. The declaration statement shall be in a form acceptable to the Secretary.

§ 41.4 Waiver or modification of standards.

(a) The applicability of standards and requirements for accessibility by the physically handicapped may be waived or modified on a case-by-case basis upon a written request from a recipient of a Departmental grant or loan or from a Departmental agency leasing a building or facility.

(b) For residential buildings or facilities, a waiver or modification may be granted only by the Secretary.

(c) Upon the recommendation of an Assistant Secretary, a waiver or modification for nonresidential buildings or facilities may be granted only by the Administrator, General Services Administration.

(d) No request for a waiver or modification shall be recommended for approval by an Assistant Secretary or approved by the Secretary unless the following criteria obtain:

(1) The granting of the waiver or modification is based upon findings of fact, and is not inconsistent with the provisions of the Architectural Barriers Act, and

(2) Application of the requirement or standard would adversely affect the purposes of the Departmental program under which the loan or grant is being provided or for which the building or facility is being leased.

(e) Requests for a waiver or modification shall be submitted to the appropriate Assistant Secretary for review. Each request shall include:

(1) The name and address of the requestor.

(2) The name and location of the involved building or facility.

(3) Any applicable plans, drawings, specifications or other descriptions of the building or facility.

(4) The standard provision or requirement from which the requestor seeks a waiver or modification.

(5) A description of the building or facility as to its accessibility for the physically handicapped and how the waiving or modification of a standard or requirement would affect that accessibility.

(6) A statement of the facts which establish that the criteria of paragraph (d) above would be satisfied.

(7) A description of the steps taken, or to be taken, to comply with standards and requirements for which a waiver or modification is not being requested.

(8) Such other information as the requestor or the responsible Assistant Secretary deems appropriate or necessary.

(f) If the responsible Assistant Secretary finds that the criteria of paragraph (d) above are satisfied, then he or she shall submit the request along with his or her recommendations to the Secretary for action or for referral to the Administrator, General Services Administration for action. In reviewing request for waiver and modifications, the Secretary shall assure consistent Department policy regarding the removal of architectural barriers and accessibility by physically handicapped persons.

(g) All waivers and modifications granted pursuant to this part shall have only future effect on; and are limited to cases for which the request is made.

§ 41.5 Achieving compliance.

(a) *Examinations and Inspections.* If, for any project, an Assistant Secretary requires Departmental architectural and engineering examinations of drawings and specifications or other construction documents or requires Departmental architectural and engineering inspections during or upon completion of construction, those examinations and inspections shall include a determination of compliance with standards and requirements for accessibility referenced in this Part.

(b) *Periodic Compliance Reviews.* The Secretary, in consultation with the appropriate Assistant Secretary, shall conduct surveys and investigations as deemed appropriate to achieve compliance with standards or requirements subject to this Part.

(c) *Complaints.* Any interested person who has reason to believe that there has been noncompliance with standards or requirements subject to this part, may, by himself or herself, or by a representative, file a written complaint with the responsible Department Official or with the Architectural and Transportation Barriers Compliance Board, Washington, D.C. 20201.

(d) *Investigations.* The Secretary shall, after consultation with the appropriate Assistant Secretary, make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a

possible failure to comply with standards or requirements subject to this Part. The investigation should include a determination of the authority under which the standards or requirements were imposed and, where appropriate, a review of the records kept pursuant to 24 CFR Part 40.6; the circumstances under which the building of facility was designed, constructed or altered; and other factors relevant to a determination as to whether there has been noncompliance with this Part.

(e) *Resolution of Matters.* (1) If any examination, inspection, periodic compliance review, complaint, or investigation pursuant to this section indicates a failure to comply with the applicable standards or requirements, the Secretary shall attempt to gain voluntary compliance whenever possible. (2) If it has been determined that voluntary compliance cannot be achieved, the Secretary shall refer the matter to the appropriate Assistant Secretary for action pursuant to his or her program authority regarding the residential structure or other building or facility under investigation, to achieve compliance with the requirements subject to this Part. The Assistant Secretary shall report to the Secretary within 30 days of the date of such referral regarding the action taken and the schedule and means of achieving compliance, except that the Secretary may specify a shorter or longer reporting period, as deeded appropriate.

(f) *Disposition of Unresolved Complaints.* Unresolved complaints shall be referred to the Architectural and Transportation Barriers Compliance Board to be processed in accordance with 36 CFR Part 1150. A complaint shall be deemed unresolved if it is not resolved within 90 days of the date of the filing of the complaint with the Department.

(g) *Compliance Action by Other Individuals.* Individuals other than the Secretary may receive complaints and undertake other appropriate actions to achieve compliance with requirements subject to this Part, so long as initial notification of such complaints or proposed actions is given both to the Secretary and the appropriate Assistant Secretary.

§ 41.6 Matters involving the architectural and transportation barriers compliance board.

(a) *Complaints.* With respect to any complaint referred to the responsible Department Official by the Architectural and Transportation Barriers Compliance Board (A&TBCB), the procedures set forth in this Part shall apply. In such a case, the Secretary shall coordinate all investigations and/or other compliance actions to assure that the Department resolves any architectural barriers deficiencies so as to respond to the A&TBCB within its required 60-day period set forth at 36 CFR 1150.41 for the informal resolution of complaints.

(b) *Citations.* The Office of General Counsel shall, with the assistance of the appropriate Assistant Secretary, respond to any citation issued by the A&TBCB to the Department alleging noncompliance with the standards issued pursuant to the Architectural Barriers Act of 1968, as amended. The applicable procedures regarding such a citation are set forth at 36 CFR Part 1150.

Authority: Sec. 7(d) Department of HUD Act, 42 U.S.C. 3535(d), and Pub. L. 90–480, 42 U.S.C. 4153.

Issued at Washington, D.C., October 23, 1979.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 79–33648 Filed 10–30–79; 8:45 am]

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federal register

Wednesday
October 31, 1979

Part V

Environmental Protection Agency

Timber Products Processing Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 429

[FRL 1311-4]

Timber Products Processing Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Regulation.

SUMMARY: EPA proposes regulations to limit effluent discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from facilities engaged in the processing of timber products.

The regulations proposed in this notice include Best Practicable Control Technology Currently Available, Best Conventional Pollutant Control Technology, and New Source Performance Standards regulations for the wet process hardboard and insulation board subcategories and revised Pretreatment Standards for New Sources and Pretreatment Standards for Existing Sources for the wood preserving subcategories. This notice withdraws Best Available Technology Economically Achievable regulations for the Wood Preserving-steam subcategory and for the hydraulic barking portion of the Barking subcategory.

The Supplementary Information section of this preamble describes the legal authority and background, the technical and economic data bases, and other aspects of the proposed regulations. That section also summarizes the public comments on the draft technical report and the draft economic analysis report circulated in October and December 1978, respectively. The Abbreviations, acronyms and other terms used in the Supplementary Information section are defined in Appendix A to this notice.

These proposed regulations are supported by four major documents available from EPA. Analytical methods are discussed in *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants*, revised April, 1977, EPA's technical conclusions are detailed in the *Development Document for Proposed Effluent Limitations Guidelines, New Source Performance Standards and Pretreatment Standards for the Timber Products Processing Point Source Category*. The Agency's economic analysis is presented in *Economic Impact Analysis of Alternative Pollution Control Technologies, Wood Preserving Subcategories of The Timber Products Industry*, and *Economic Impact Analysis of Alternative Pollution Control Technologies, Wet Process Hardboard and Insulation Board Subcategories of the Timber Industry*.

DATES: Comments on this proposal must be submitted on or before December 31, 1979.

ADDRESS: Send comments to: Mr. Richard E. Williams, Effluent Guidelines Division, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

ATTENTION: EGD Docket Clerk, TIMBER, (WH-552). The supporting information and all comments on this proposal will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2922 (EPA Library). The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Technical information and copies of technical documents may be obtained from Mr. Richard E. Williams, at the address listed above after November 14, 1979, or call (202) 426-2554. The economic analysis may be obtained from Mr. Dale Ruhter, Office of Analysis and Evaluation (WH-586), Environmental Protection Agency, 401 M St. S.W., Washington, D.C. 20460, (202) 426-2617.

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I. Legal Authority

The regulations described in this notice are proposed under authority of Sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 et seq., as amended by the Clean Water Act of 1977, Pub. L. 95-217) (the "Act"). These regulations are also proposed in response to the Settlement Agreement in *Natural Resources Defense Council, Inc. v. Train*, 8 ERC 2120 (D.D.C. 1976), modified March 9, 1979.

II. Background

A. The Clean Water Act

The Federal Water Pollution Control Act Amendments of 1972 established a comprehensive program to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (Section 101(a)). By July 1, 1977, existing industrial dischargers were required to achieve "effluent limitations requiring the application of the best practicable control technology currently available" ("BPT") (Section 301(b)(1)(A); and by July 1, 1983, these dischargers were required to achieve "effluent limitations requiring the application of

the best available technology economically achievable (BAT) which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants" (Section 301(b)(2)(A)). New industrial direct dischargers were required to comply with Section 306, new source performance standards ("NSPS"), based on best available demonstrated technology (BADT); and new and existing dischargers to publicly owned treatment works ("POTW") were subject to pretreatment standards under Sections 307 (b) and (c) of the Act. While the requirements for direct dischargers were to be incorporated into National Pollutant Discharge Elimination System (NPDES) permits issued under Section 402 of the Act, pretreatment standards were to be enforceable directly against dischargers to POTW (indirect dischargers).

Although Section 402(a)(1) of the 1972 Act authorized the setting of requirements for direct dischargers on a case-by-case basis, Congress intended that, for the most part, control requirements would be based on regulations promulgated by the Administrator of EPA. Section 304(b) of the Act required the Administrator to promulgate regulations providing guidelines for effluent limitations setting forth the degree of effluent reduction attainable through the application of BPT and BAT. Moreover, Sections 304(c) and 306 of the Act required promulgation of regulations for NSPS, and Sections 304(f), 307(b), and 307(c) required promulgation of regulations for pretreatment standards. In addition to these regulations for designated industry categories, Section 307(a) of the Act required the Administrator to promulgate effluent standards applicable to all dischargers of toxic pollutants. Finally, Section 501(a) of the Act authorized the Administrator to prescribe any additional regulations "necessary to carry out his functions" under the Act.

The EPA was unable to promulgate many of these guidelines and standards by the dates contained in the Act. In 1976, EPA was sued by several environmental groups and in settlement of this lawsuit, EPA and the plaintiffs executed a "Settlement Agreement," which was approved by the Court. This Agreement required EPA to develop a program and adhere to a schedule for promulgation for 21 major industries of BAT effluent limitations guidelines, pretreatment standards and new source performance standards for 65 "priority" pollutants and classes of pollutants. See *Natural Resources Defense Council, Inc.* v. *Train*, 8 ERC 2120 (D.D.C. 1976), modified March 9, 1979; 12 ERC 1833.

On December 27, 1977, the President signed into law the Clean Water Act of 1977. Although this law makes several important changes in the Federal water pollution control program, its most significant feature is its incorporation of many of the basic elements of the Settlement Agreement program for toxic pollutant control. Sections 301(b)(2)(A) and 301(b)(2)(C) of the Act now require the achievement by July 1, 1984, of effluent limitations requiring application of BAT for toxic pollutants, including the 65 "priority" pollutants and classes of pollutants which Congress declared "toxic" under Section 307(a) of the Act. Likewise, EPA's programs for new source performance standards and pretreatment standards are now aimed principally at toxic pollutant controls. Moreover, to strengthen the toxics control program, Section 304(e) of the Act authorizes the Administrator to prescribe "best management practices" ("BMPs") to prevent the release of toxic and hazardous pollutants from plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage associated with, or ancillary to, the manufacturing or treatment process.

In keeping with its emphasis on toxic pollutants, the Clean Water Act of 1977 also revises the control program for non-toxic pollutants. Instead of BAT for "conventional" pollutants indentified under Section 304(a)(4), (including biochemical oxygen demand, suspended solids, fecal coliform and pH), the new Section 301(b)(2)(E) requires achievement by July 1, 1984 of "effluent limitations requiring the application of the best conventional pollutant control technology" ("BCT"). The factors considered in assessing BCT for an industry include the costs and benefits of attaining a reduction in effluents, compared to the costs and effluent reduction benefits from the discharge of a publicly owned treatment works (Section 304(b)(4)(B)). For non-toxic, non-conventional pollutants, Sections 301(b)(2)(A) and 301(b)(2)(F) require achievement of BAT effluent limitations within three years after their establishment, or July 1, 1984, whichever is later, but not later than July 1, 1987.

The purpose of these proposed regulations is to provide effluent limitations and guidelines for BPT, BAT and BCT and to establish NSPS and pretreatment standards for existing sources (PSES), and pretreatment standards for new sources (PSNS), under sections 301, 304, 306, 307, and 501 of the Clean Water Act.

B. Prior EPA Regulations

EPA promulgated BPT, BAT, NSPS, and PSNS for the Timber Products Processing Point Source Category in two phases: on April 18, 1974 (39 FR 13942; 40 CFR Part 429, Subparts A–H), and on January 16, 1975 (40 FR 2804; Subparts I–M). BPT, BAT, and NSPS regulations for Subpart E—Wet Process-Hardboard were withdrawn by the Agency on September 28, 1977. EPA promulgated pretreatment standards for existing sources (PSES) within the Timber Products Processing Point Source Category on December 9, 1976 (41 FR 53930; Subparts A–M).

C. Overview of the Industry

The Timber Products Processing Industry (timber industry) consists of a diverse group of manufacturing plants whose primary raw material is wood. Included in this industry group are thousands of industrial operations, with products ranging from finished lumber and other wood building products to hardboard and preserved lumber. The size of these operations ranges from small family-owned concerns to facilities with over a thousand employees.

The timber industry includes nearly 11,000 sawmills, 3,000 millwork and finishing operations, 500 veneer and plywood plants, 415 wood preserving plants, 75 particleboard plants, 16 dry-process hardboard plants, 11 wet-process hardboard plants, 11 insulation board plants, and 5 plants producing both wet process hardboard and insulation board. The geographical distribution of this industry follows the natural range of timberland in the Pacific Northwest, Southeast, North Central, and Northeastern United States.

The industry is defined in Major Group 24 of the Bureau of the Census, Standard Industrial Classification (SIC) Manual; insulation board plants are listed in SIC Major Group 26 (Building Paper and Building Board Mills).

Previously published effluent limitations guidelines divided the industry into 15 subcategories: Barking; Veneer; Plywood; Dry Process-Hardboard; Wet Process-Hardboard; Wood Preserving (now titled Wood Preserving—Water Borne or Non-Pressure); Wood Preserving-Steam; Wood Preserving-Boulton; Wet Storage; Log Washing; Sawmills; Finishing; Particleboard; Insulation Board-Mechanical Refining; and Insulation Board-Thermo-mechanical Refining.

The Agency is not prescribing changes to existing regulations for eight of the above subcategories: (See Section of this

Preamble entitled "Pollutants and Subcategories Not Regulated").

The Agency is prescribing changes to existing regulations for the remaining subcategories: Wood Preserving-Water Borne or Non-Pressure; Wood Preserving-Steam; Wood Preserving-Boulton; Wet-Process Hardboard, dividing it into two subcategories; Insulation Board, combining the two subcategories into one; and Barking.

This preamble summarizes the profile and subcategorization, technical base, and methodology used by the Agency to develop effluent guidelines limitations and standards for these six subcategories.

III. Scope of This Rulemaking and Summary of Methodology

These proposed regulations open a new chapter in water pollution control requirements for the timber industry. EPA's 1973–1976 round of rulemakings emphasized the achievement of best practicable technology (BPT) by July 1, 1977. In general, this technology level represented the average of the best existing performances of well known technologies for control of familiar (i.e., "classical") pollutants.

In contrast, this round of rulemaking is directed to the achievement by July 1, 1984 of a level of control of pollutant discharge which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants. This technology level represents, at a minimum, the very best economically achievable performance in any industrial category or subcategory. Moreover, as a result of the Clean Water Act of 1977, the emphasis of EPA's program has shifted from "classical" pollutants to the control of a lengthy list of toxic substances.

In the 1977 legislation, Congress recognized that it was dealing with areas of scientific uncertainity when it declared the 65 "priority" pollutants and classes of pollutants "toxic" under Section 307(a) of the Act. The "priority" pollutants have been relatively unknown outside of the scientific community, and those engaged in wastewater sampling and control have had little experience dealing with these pollutants. Additionally, these pollutants often appear and have toxic effects at concentrations which severely tax current analytical techniques. Even though Congress was aware of the state-of-the-art difficulties and expense of "toxics" detection and control, it directed EPA to act quickly and decisively to detect, measure, and regulate these substances. Thus, with the passage of the 1977 legislation, the Nation's water pollution control program was thrust toward the frontiers of science.

EPA's implementation of the Act required a complex development program, described in this section and succeeding sections of this notice. Initially, because in many cases no public or private agency had done so, EPA and its laboratories and consultants had to develop analytical methods for toxic pollutant detection and measurement. These are discussed under Sampling and Analytical Program. EPA then gathered technical and financial data about the industry, summarized under Data Gathering Efforts. The resulting information was the basis for these proposed regulations.

First, EPA studied the timber industry to determine whether differences in raw materials, final products, manufacturing processes, equipment, age and size of plants, water usage, wastewater constituents, or other factors required the development of separate effluent limitations and standards for different segments of the industry. This study included the identification of raw waste and treated effluent characteristics, including: (1) the sources and volume of water used, the processes employed, and the sources of pollutants and wastewaters in the plant, and (2) the constituents of wastewaters, including toxic pollutants. (See Industry Subcategorization for further discussion). EPA then identified the wastewater constituents to be considered for effluent limitations guidelines and standards of performance and statistically analyzed raw waste constituents as discussed in detail in Section V of the Development Document.

Next, EPA identified several distinct control and treatment technologies including both in-plant and end-of-process technologies which are either in use or capable of being used in the timber industry. The Agency compiled and analyzed both historical and newly generated data on the effluent quality resulting from the application of these technologies. The long term performance, operational limitations, and reliability of each of the treatment and control technologies were also identified. In addition, EPA considered the non-water quality environmental impacts of these technologies, including impacts on air quality, solid waste generation, water scarcity, and energy requirements.

The Agency used two separate methodologies to estimate the costs of compliance to the industry for each control and treatment technology. NSPS and PSNS costs were derived from unit cost curves applied to model plant characteristics (production, flow and pollutant loads) developed for each subcategory. BPT, BCT, and PSES costs were derived from unit cost curves applied on a plant-by-plant basis. This estimate, prepared for every plant in the technical data base, takes into consideration plant specific wastewater characteristics and flows, as well as technology currently in place. For both methodologies, the costs themselves were derived from unit cost curves developed by standard engineering analysis for each unit process within a control and treatment technology (pump station, settling basin, etc.). These unit process costs were added to yield total costs at each treatment level. After confirming the reasonableness of both methodologies by comparing EPA cost estimates to treatment system costs supplied by the industry, the Agency evaluated the economic impacts of these costs. (Costs and economic impacts are discussed in detail under the various technology options, and in the section of this notice entitled Costs, Effluent Reduction Benefits, and Economic Impacts).

Upon consideration of these factors, as more fully described below, EPA identified various control and treatment technologies as BPT, BCT, BAT, PSES, PSNS, and NSPS. The proposed regulations, however, do not require the installation of any particular technology. Rather, they require achievement of effluent limitations representative of the proper operation of these technologies or equivalent technologies.

Effluent limitations for BPT and BCT for the insulation board and hardboard segments of the timber industry are expressed as mass limitations (lbs/1,000 lbs production) and were calculated by multiplying the long term average treated effluent quality documented for the BPT and BCT technologies by their respective long term variability factors (both maximum day and maximum 30 days). The variability factors were calculated non-parametrically, as described in Section XIV of the Development Document. BCT limitations were also subjected to the BCT cost reasonableness test described in Best Conventional Pollutant Control Technology.

Effluent limitations for PSES for the wood preserving segment are expressed as allowable concentrations in milligrams per liter (mg/l). For POTW which may wish to impose mass limitations, the proposed regulations provide equivalent mass limitations.

IV. Data Gathering Efforts

The data gathering program is described in detail in Section III of the Development Document.

The Agency reviewed all available data from previous studies of the industry, information obtained from regional EPA and state regulatory offices, and data submitted by individual plants and industry trade associations. A complete bibliography of all the technical literature reviewed during the course of this project is presented in Section XVI of the Development Document.

Analysis of the above sources indicated the need for additional information, particularly concerning the use and discharge of toxic pollutants. Current information also was needed on process raw waste loads, in-process waste control techniques, and the identification and determination of the effectiveness of wastewater treatment and disposal systems.

Under the authority of Section 308 of the Act, EPA prepared and sent a technical data collection portfolio (DCP) to 288 wood preserving plants, and 27 wet process hardboard and/or insulation board producing plants. The Agency received 216 responses (75 percent) from the wood preserving segment, and 27 responses (100 percent) from the hardboard/insulation board segment. The DCP was the major source of information used to develop the profile of each industry segment. Historical data provided with the DCP responses (particularly the insulation board/hardboard responses) served as the source of long-term, historical information for the traditional parameters such as BOD5, COD, solids, pH, phenols (as measured by the 4AAP method described in Standard Methods), and metals.

Data for EPA's economic analysis also were obtained under the authority of Section 308. The Agency sent information requests to 601 addressees identified as potentially being included in SIC 2491, Wood Preserving; of these, 337 respondents were identified as wood preserving operations. In the hardboard/insulation board segment, operators of all twenty seven plants producing wet process hardboard and/or insulation board received and responded to the 308 economic survey.

Review of the responses indicated that the technical and economic information available was adequate to profile the industry, identify practices, wastewater treatment and disposal methods, and evaluate the financial status of the segments.

A major source of information was direct interviews and sampling visits to production facilities. Survey teams composed of project engineers and scientists visited the plants. Information on the identity and performance of wastewater treatment systems was obtained through interviews with plant water pollution control or engineering personnel, examination of treatment plant design and historical operating data, and the sampling and analysis of treatment plant influents and effluents. The teams visited nine wood preserving plants, six insulation board plants, and eight hardboard plants from November 1976 through May 1978, with several plants receiving more than one visit.

Additional current information and data came from State and Regional regulatory offices and academic institutions.

V. Sampling and Analytical Program

As Congress recognized in enacting the Clean Water Act of 1977, the state-of-the-art ability to detect and monitor toxic pollutants was limited. Most of the toxic pollutants were relatively unknown until only a few years ago, and only on rare occasions has EPA regulated or has industry monitored or even developed methods to monitor for these pollutants. As a result, analytical methods for many toxic pollutants, under Section 304(h) of the Act, have not yet been promulgated. Moreover, state-of-the-art techniques involve the use of highly expensive, sophisticated equipment, with costs ranging as high as $200,000 per unit of equipment.

When faced with these problems, EPA scientists, including staff of the Environmental Research Laboratory in Athens, Georgia and staff of the Environmental Monitoring and Support Laboratory in Cincinnati, Ohio, conducted a literature search and initiated a laboratory program to develop analytical protocols. The analytical techniques used in this rulemaking were developed concurrently with the development of general sampling and analytical protocols and were incorporated into the protocols ultimately adopted for the study of other industrial categories. See *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants,* revised April 1977.

Because Section 304(h) methods were available for most toxic metals, pesticides, cyanide and total phenol, the analytical effort focused on developing methods for sampling and analyses of organic toxic pollutants. The three basic analytical approaches considered by EPA were infra-red spectroscopy, gas chromatography (GC) with multiple detectors, and gas chromatography/mass spectrometry (GC/MS). In selecting among these alternatives, EPA considered their sensitivity, laboratory availability, costs applicability to diverse waste streams from numerous industries, and capability for implementation within the statutory and court-ordered time constraints of EPA's program. The Agency concluded that infra-red spectroscopy was not sufficiently sensitive or specific for application in water. GC with multiple detectors was rejected because it would require multiple runs, incompatible with program time constraints. Moreover, because this method would use several detectors each applicable to a narrow range of substances, GC with multiple detectors possibly would fail to detect certain toxic polutants. EPA chose GC/MS because it was the only available technique that could identify a wide variety of pollutants in many different waste streams, in the presence of interfering compounds, and within the time constraints of the program. In EPA's judgment, GC/MS and the other analytical methods for toxics used in this rulemaking represent the best state-of-the-art methods for toxic pollutant analyses available when this study was begun.

As the state-of-the-art began to mature, EPA began to refine the sampling and analytical protocols, and intends to continue this refinement to keep pace with technology advancements. Resource constraints, however, prevent EPA from reworking completed sampling and analyses to keep up with the evolution of analytical methods. As a result, the analytical techniques used in some rulemakings may differ slightly from those used in other rulemaking efforts. In each case, however, the analytical methods used represent the best state-of-the-art available for a given industry study. One of the goals of EPA's analytical program is the promulgation of additional Section 304(h) analytical methods for toxic pollutants, scheduled to be done within calendar year 1979.

Before proceeding to analyze timber industry wastewaters, EPA concluded that it had to define specific toxic pollutants for analyses. The list of 65 pollutants and classes of pollutants potentially includes thousands of specific pollutants; and the expenditure of resources in government and private laboratories would be overwhelming if analyses were attempted for all of these pollutants. Therefore, in order to make the task more manageable, EPA selected 124 specific toxic pollutants for study in this rulemaking.

The list of pollutants was later expanded by the Agency to 129 pollutants. The expanded list included five additional polychlorinated biphenyls (PCB's) and di-n-octyl phthalate; and deleted endrin ketone, because no analytical standard was available. The expanded list was not released until after the timber screen sampling was completed. The Agency, therefore, continued to work with the original list of 124 priority pollutants throughout the remainder of the timber verification sampling program.

EPA determined the presence and magnitude of the 124 pollutants in the timber industry in a two phase sampling and analytical program.

In the first phase (Screening), seventeen plants, at least one in each subcategory, were visited and sampled. The plants were selected primarily to be representative of the timber industry operations and the wastewater control and treatment technologies currently practiced. One 24 hour composite of raw process wastewater and one 24 hour composite of treated wastewater; they also took grab samples for certain analyses requiring special handling and preservation procedures. The second phase of the study (Verification) included nineteen plants; seven wood preserving plants, seven hardboard plants, and five insulation board plants. Nine of the nineteen plants were sampled twice.

The primary objective of the field sampling program was to produce composite samples of wastewater which could establish the concentrations of toxic pollutants. Samples were collected during three consecutive days of plant operation. Raw wastewater was sampled either before treatment or after minimal preliminary treatment (e.g., primary oil separation, screening). Treated effluent samples were taken either following the final treatment prior to discharge to a POTW (indirect dischargers), prior to discharge to receiving waters (direct final effluent dischargers), or prior to final effluent disposal such as spray irrigation or evaporation. EPA also sampled intake water to determine the presence of toxic pollutants prior to contamination by the production process.

At both raw waste and treated effluent sample points, automatic samplers took sample aliquots at time intervals of 30 minutes or less. Aliquot size was adjusted so that a complete time composited sample (at least 3.5 gal) was obtained during a 24 hour period. Flow recorders were used to obtain the wastewater flow rates for each 24 hour collection period, if available. If they were not in place flows were measured manually several times during the sampling period. Samples for conventional and toxic pollutants were obtained from each 24 hour composite. Grab samples were taken in specially prepared vials for volatile (purgeable) organics and cyanide. Prior to the plant visits, sample containers were carefully washed and prepared by specific methods, depending upon the type of sample to be taken. EPA took a number of other precautions to minimize potential contamination from sampler components. Samples were kept on ice prior to express shipment in insulated containers.

The analyses for toxic pollutants were performed according to groups of chemicals and associated analytical schemes. Organic toxic pollutants included volatile (purgeable), base-neutral and acid (extractable) pollutants, and pesticides. Inorganic toxic pollutants included heavy metals and cyanide.

The primary method used in screening and verification of the volatiles, base-neutral, and acid organics was gas chromatography with confirmation and quantification on all samples by mass spectrometry (GC/MS). Total phenols were analyzed by the 4-AAP method (*Standard Methods*). GC was employed for analysis of pesticides with limited MS confirmation. The Agency analyzed the toxic heavy metals by atomic adsorption spectrometry (AAS), with flame or graphite furnace atomization following appropriate digestion of the sample. Samples were analyzed for cyanides by a colorimetric method, with sulfide previously removed by distillation. Analyses for conventional pollutants (BOD5, TSS, oil and grease, and pH), and proposed conventional pollutant (COD) were accomplished using "Methods for Chemical Analysis of Water and Wastes" (EPA 625/66 74–003) and amendments.

The high costs, slow pace and limited laboratory capability for toxic pollutant analyses posed difficulties unique to EPA's experience. The cost of each wastewater analysis for organic toxic pollutants ranges between $650 and $1,700, excluding sample collection costs (based upon quotations recently obtained from a number of analytical laboratories). Even with unlimited resources, however, time and laboratory capability would have posed additional constraints. Although efficiency has been improving, when this study was initiated a well-trained technician using the most sophisticated equipment could perform only one complete organic analysis in an eight hour work day. Moreover, when this rulemaking study was begun there were only about 15 commercial laboratories in the United States with capability to perform these analyses. Today there are about 50 commercial laboratories known to EPA which have the capability to perform these analyses, and the number is increasing as the demand for such capability also increases.

In planning data generation for this rulemaking, EPA considered requiring dischargers to perform regular (weekly or monthly) monitoring and analyses for toxic pollutants under Section 308 of the Act. The Agency refrained from using this authority because it was reluctant to place additional financial burdens on this industry. Additionally, EPA believed that the slow pace and limited laboratory capability for toxic pollutant analyses would have hampered a mandatory sampling and analytical effort. Although EPA believes that the available data support these regulations, the Agency would have preferred a larger data base for some of the toxic pollutants and will continue to seek additional data. EPA will periodically review these regulations, as required by the Act, and make any revisions supported by new data. In developing these regulations, moreover, EPA has taken a number of steps to deal with the limits of science and available data. (See Regulated Pollutants and Monitoring Requirements.)

Wood Preserving Segment

VI. Industry Profile and Subcategorization

There are approximately 415 wood preserving plants operated by about 300 companies in the United States. The plants are concentrated in two areas, the Southeast from east Texas to Maryland and along the Northern Pacific coast. These areas correspond to the natural ranges of the southern pine and Douglas fir—western red cedar, respectively.

All wood products, regardless of their original strength, durability or natural resistance, will deteriorate in conditions which are conducive to attack by fungi, insects, bacteria, or marine borers. The application of selected chemicals as wood preservatives can protect timber from this deterioration, thus maintaining the original strength of wood over a long period of time.

Approximately 250 million cubic feet of preserved wood products are used each year. The most commonly treated woods are southern pine, Douglas fir, and oak, although railroads use large quantities of other hardwoods where they are available. Railroad ties constitute the largest use of treated

wood, accounting for 95 million cubic feet in 1976. Lumber and timbers accounted for 67 million cubic feet, and treated poles ranked third, with 53 million cubic feet. These three classes accounted for 84 percent of the volume of wood products which were treated in 1976.

The most commonly used preservatives are creosote, pentachlorophenol (PCP), and various formulations of water-soluble inorganic chemicals, the most common of which are the salts of copper, chromium, and arsenic. Fire retardants are formulations of inorganic salts; the principal ones are borates, phosphates, and ammonium compounds. Eighty percent of the plants use at least two of the three types of preservatives. Many plants treat with one or two preservatives and a fire retardant.

The wood preserving process consists of two basic steps: (1) conditioning the wood to reduce its natural moisture content and to increase its permeability; and (2) impregnation of the wood with the preservatives.

The conditioning, or drying, of wood raw material ensures that the preserving chemicals are absorbed in sufficient amounts. Conditioning occurs through a variety of methods. Air drying works by long term storage in the open air; dry kiln conditioning applies dry heat to the wood in an enclosed structure. Steam conditioning subjects the wood to a steam pressure in a pressurized treating cylinder, followed by a vacuum cycle which removes moisture from the wood. Boulton conditioning process involves heating the wood in the treating cylinder immersed in oily preservative under a partial vacuum.

EPA concluded that the conditioning process used by a wood preserving plant was the most significant determinant in generating the wastewater flows. Air and kiln drying plants generate the least amount of wastewater, followed by Boulton and steam plants. Some plants use a closed steaming process which recycles the moisture removed from the wood. This conditioning process greatly reduces wastewater flow. Plants which apply inorganic salts rely on air—or kiln—drying conditioning methods. Steam and Boulton conditioning are the predominant methods of conditioning wood prior to the application of oily preservatives, although many smaller plants use mostly air—or kiln—dried wood.

Wastewaters from plants which treat solely with inorganic salts contain high concentrations of copper, chromium, arsenic, and other heavy metals. These wastewaters are low in volume and are recycled for use as make-up water in new preservative batches. This is the basis for the existing BPT, BAT, NSPS, and PSES no discharge limitations for inorganic salt plants (Water Borne or Non-Pressure subcategory).

Wastewaters from Boulton and steam conditioning plants which use creosote and/or pentachlorophenol have high phenolic, COD, and oil and grease concentrations along with a turbid appearance that results from emulsified oils. They are always acidic, with pH values ranging from 4 to 6. The high COD contents of such wastes are caused by entrained oils and wood extractives, principally simple sugars, that are removed from wood during the conditioning phase of the process. These wastewaters also may contain traces of heavy metals at plants which use the same retort for both water-borne salts and oil-type preservatives, or which apply dual treatments to the same stock; i.e., treat with two preservatives, one organic and one inorganic.

The principal toxic pollutants in wastewaters from plants that treat with organic preservatives are volatile organic solvents such as benzene and toluene, and the polynuclear aromatic components (PNAs) of creosote, including anthracene, pyrene, phenanthrene, etc., that are contained in the entrained oils. Because PNAs are highly soluble in oil and quite insoluble in water, the conventional pollutant parameter, Oil and Grease serves as an excellent indicator compound for PNAs. Both phenol and phenol derivatives were identified in these wastewaters; pentachlorophenol (PCP) is predominant when it is used as a preservative. The conventional pollutants found in the wastewaters include TSS, oil and grease, and pH. COD is the only nonconventional pollutant that has been found.

About 125 plants use both organic and inorganic preservatives to treat wood, although the organic preservative wood treating system usually is separate from the inorganic system. Analytical data generated during this study and earlier analyses of wood preserving wastewaters concluded that, even when the organic and inorganic process water/wastewater systems are kept separate, there is often still some inorganic material ("fugitive metals") in the organic treatment system. This cross contamination occurs from such activities as the use of the same carts to move wood in and out of both organic and inorganic treating cylinders, and drippage from the inorganic operation into the organic side. Analytical data show that concentrations of fugitive metals are always less than 5 milligrams per liter, and generally well below 1 mg/l.

Of the 224 plants comprising the technical data base, 85 treat solely with inorganic preservatives, 35 use Boulton conditioning as the predominant conditioning method, and 104 are steam conditioning plants. All plants treating wood with inorganic preservatives and all plants treating wood with nonpressure processes are subject to existing BPT, BAT, NSPS, and PSES limitations which require no discharge of process wastewater pollutants. Boulton plants also are subject to existing BPT, BAT, and NSPS no-discharge limitations; however, 11 Boulton plants introduce wastewater to POTW, in compliance with existing PSES. EPA identified only one direct discharging steam conditioning plant, although existing BPT, BAT, and NSPS allow discharge of treated effluent. This plant discharges only during periods of high rainfall. Thirty-one steam conditioning plants introduce wastewater to POTW, as allowed by existing PSES.

In developing the proposed regulations for the wood preserving segment, it was necessary to determine whether different effluent limitations and standards continue to be appropriate for different groups of plants (subcategories) within the industry segment. The major factors considered in reviewing the subcategories were: plant characteristics such as age, size, and geographical location, raw materials, wastewater characteristics, manufacturing processes, and methods of wastewater treatment and disposal.

The Agency proposes to retain the existing subcategories, making minor changes in their definition and applicability sections in order to clarify the regulation.

EPA is retaining the previously promulgated Boulton and steam subcategories because the wastewater disposal options available to Boulton conditioning plants differ from those available to steam conditioning plants. The Boulton process, during the conditioning phase of the treating cycle, involves a long vacuum cycle, up to 48 hours, resulting in a source of heat from condensed vapors. This waste heat can be applied to the evaporation of process wastewater. The steaming process vacuum cycle is much shorter, about 2–6 hours. Because waste heat is not continuously available to steam subcategory plants, alternative methods of wastewater disposal are utilized. Evaporative technologies are most common, using spray or solar

evaporation instead of the cooling tower techniques usually employed by Boulton plants.

The Agency is retaining the Wood Preserving—Water Borne or Non-Pressure subcategory because of the unique wastewater characteristics generated by this subcategory and the ability of plants in this subcategory to achieve no discharge of process wastewater through recycle of process water. This proposal merely changes the Wood Preserving—Water Borne or Non-Pressure subcategory, title and applicability section. The changes simplify the regulation and minimize the possibility of misinterpretation; they do not change the applicability of the regulation previously promulgated. Additionally, PSNS standards for this subcategory, which currently allow introduction of process wastewater into POTW subject to the general pretreatment regulation (40 CFR 403), are being changed by this proposed rulemaking to prohibit introduction of wastewater into a POTW. This change will insure that pollutants contained in these wastewaters will not be introduced to POTW.

EPA is changing the Wood Preserving—steam subcategory applicability section. The previously promulgated definition included plants that use fluorchromium-arsenic-phenol (FCAP), a water borne salt-type preservative, as a wood treating solution. Upon completion of the technical study, the Agency determined that FCAP should be included in the Wood Preserving-Water Borne or Non-Pressure subcategory, which includes all other water-borne salt preservatives. Furthermore, the technical data base did not identify any direct or indirect discharging plants treating with FCAP. A more complete discussion of the rationale for this proposed modification of applicability with respect to FCAP appears in Section IV of the Development Document.

The new definitions for the proposed wood preserving subcategories are:

Wood Preserving-Water Borne or Non-Pressure—Includes all non pressure wood preserving operations, and all pressure wood preserving operations employing water borne salts.

Wood Preserving-Steam—Includes those wood preserving operations that use direct steam contact on wood as the predominant conditioning method; processes that use vapor drying as the predominant conditioning method; processes that use the same retort to treat with both salt- and oil-type preservatives; and processes which use both steam conditioning and salt- and oil-type preservatives on the same stock.

Wood Preserving-Boulton—Includes those wood preserving operations that use the Boulton process as the predominant method of conditioning stock.

VII. Available Wastewater Control and Treatment Technology

A. Status of in-Place Technology

The control and treatment technology applicable to the Wood Preserving—Water Borne or Non-Pressure subcategory is collection and reuse of cylinder drippings and other sources of wastewater. This technology, demonstrated by ninety percent of the industry, is the basis for all existing no discharge regulations and will not be addressed further in this preamble. The remainder of the discussion applies to the Wood Preserving-Boulton and Wood Preserving-Steam subcategories, both of which use organic preservatives.

Current control and treatment practices in the organic preservative wood preserving industry range from gravity oil-water separation, which is the minimum treatment used by nearly all plants, to biological treatment used by many indirect and nondischarging plants, to soil irrigation or evaporative systems used by many plants which are nondischargers of process wastewater.

B. Control Technologies Considered

The in-plant and end-of-pipe process water control and wastewater treatment practices and procedures that are applicable to the wood preserving industry are presented below.

In-Plant

(*1*) Segregation of noncontact wastewaters.

(*2*) The use of surface-type condensers in place of baromertic condensers.

(*3*) Recycle of barometric cooling water.

(*4*) Drying of raw material outside the treating cylinder.

(*5*) Use of closed steaming and modified closed steaming conditioning instead of open steaming.

The technical study supporting these proposed regulations did not quantify the reduction in process wastewater volumes resulting from the application of these in-plant controls. The Development Document and Record does include industry-provided information that each of these practices can reduce process wastewater volume. The closed or modified steaming versus open steaming conditioning alternative is not appropriate for all steaming plants because the cleanliness of wood conditioned by the closed steaming method may limit the uses of that wood. Regulations proposed herein are not contingent upon the application of the above in-plant controls. Controls (1) through (4) are common industry practice.

End of pipe	Approximate percent of plants practicing	
	Nondischarging plants	Indirect discharging plants
(1) Gravity oil-water separation	85	100
(2) Chemical flocculation	10	35
(3) Slow and filtration or sedimentation	10	35
(4) Biological treament: Oxidation ponds, aerated lagoons, activated sludge	20	15
(5) Evaporation: Solar evaporation, spray assisted solar evaporation, cooling tower evaporation, pan evaporation	90	<10
(6) Spray/soil irrigation	10	0
(7) Activated carbon adsorption	.....	.....
(8) Precipitation of heavy metals	.....	.....

The percentages given are estimates; a specific plant usually practices more than one of the listed treatment and control technologies.

The treatment application and performance capabilities of the end-of-pipe technologies 1 through 6 have been demonstrated in the wood preserving segment of the timber industry. The Development Document presents information and details on the performance capabilities of these technologies. Technologies 7 and 8 have not been demonstrated in the wood preserving industry but have been demonstrated for application in related industrial wastes. Activated carbon absorption technology has been demonstrated recently in the petroleum refining and the organic chemicals industries. Hydroxide precipitation of heavy metals is currently practiced in the electroplating industry. EPA investigated activated carbon adsorption and metals precipitation as candidate technologies (See Section VII of the Development Document); however, because of the lack of demonstration, the cost of installation and operation, and the availability of other more efficient and less expensive technologies, the Agency rejected these technologies from consideration in the development of these regulations.

The Agency developed the costs of applying these end-of-pipe technologies

through compilation of cost data supplied by individual plants in the industry, and through engineering cost estimation for these technologies applied both to a range of plants in each of the two subcategories, and to each impacted plant on an individual basis. The Agency used these cost estimates to analyze the economic impact of these regulations. Detailed capital and operating cost information is presented in Section VIII of the Development Document.

VIII. Best Available Technology (BAT) Effluent Limitations Best Conventional Technology (BCT) Effluent Limitations

The Clean Water Act of 1977 established BAT as the principal national means of controlling the discharge of toxic pollutants directly to navigable waters. The Agency considered the applicability of developing BAT and BCT limitations for the wood preserving industry.

Existing BAT limitations for the Wood Preserving-Water Borne or Nonpressure and the Wood Preserving-Boulton subcategories require no discharge of process wastewater pollutants. Existing BAT limitations for the Wood preserving—steam subcategory allow the discharge of process wastewater pollutants, establishing limits on Chemical Oxygen Demand (COD), total suspended solids (TSS), Oil and Grease (O&G), phenols, as measured by *Standard Methods*, and pH.

This study identified only one wood preserving plant in the steam subcategory that could be described as a direct discharger. This plant is an intermittent discharger, discharging only when precipitation occurs with such frequency and magnitude that the plant's wastewater treatment system (a combination of aeration, holding and evaporation) cannot contain the precipitation and the plant's runoff. These discharges occur infrequently, the last one occurring in May 1979. As of July 1, 1979, the plant has discharged a total of ten days in 1979; four days in January, four days in March, and two days in May. Discharge is controlled by the plant personnel, occurs only during the day shift, and is usually between 10,000 and 14,000 gallons per day.

The Agency considered the appropriateness of proposing BAT and BCT effluent limitations for a single discharging plant.

After reviewing the available information, EPA concluded that BAT and BCT regulations are not needed to control the discharge of pollutants from this plant and that the existing BAT limitations should be withdrawn.

National effluent limitations are unnecessary for a single plant. The appropriate technology levels and limitations for this plant will be determined by the permit issuer using best engineering judgement and, on consideration of the statutory factors. The Development Document can be used as guidance by the permit writer to develop NPDES permit requirements.

IX. New Source Performance Standards (NSPS) Pretreatment Standards for New Sources (PSNS)

The basis for new source performance standards (NSPS) under Section 306 of the Act is the best available demonstrated technology. New plants have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. Congress directed EPA to consider the best demonstrated process changes, in-plant controls, and end-of-pipe treatment technologies which reduce pollution to the maximum extent feasible.

Section 307(c) of the Act requires EPA to promulgate pretreatment standards for new sources (PSNS) at the same time that it promulgates NSPS. New indirect dischargers, like new direct dischargers, have the opportunity to incorporate the best available demonstrated technologies including process changes, in-plant controls, and end-of-pipe treatment technologies, and to use plant site selection to ensure adequate treatment system installation.

EPA reviewed the technical and economic information and data collected during the BAT review study. About ninety percent of the known wood preserving plants already are achieving no discharge of process wastewater pollutants. Only one plant in the Wood Preserving—steam subcategory was identified as a direct discharger; forty-two plants were identified as indirect dischargers.

New sources have opportunities, not readily available to existing ones, to install equipment and treatment technology which prevents discharge of contaminated wastewater. New sources also have the opportunity, if spray evaporation or spray irrigation is selected as the wastewater disposal technique, to include land requirements in the decision making process for site selection. The Agency's economic impact analysis of the wood preserving industry concluded that the cost of designing and installing the proper systems needed to achieve the no discharge status would not hinder the addition of new capacity.

Based on these facts, the Agency concluded that no discharge of process wastewater pollutants is the appropriate new source performance standard (NSPS) and the appropriate new source pretreatment standard (PSNS).

X. Pretreatment Standards for Existing Sources (PSES)

Section 307(b) of the Act requires EPA to promulgate pretreatment standards for existing sources (PSES), which must be achieved within three years of promulgation. PSES are designed to prevent the discharge of pollutants which pass through, interfere with, or are otherwise incompatible with the operation of POTW. The Clean Water Act of 1977 adds a new dimension by requiring pretreatment for toxic pollutants that interfere with, pass through or limit POTW sludge management alternatives, including the beneficial use of sludges on agricultural lands. The legislative history of the 1977 Act indicates that pretreatment standards are to be technology-based, analagous to the best available technology for removal of toxic pollutants. The general pretreatment regulations (40 CFR Part 403), which served as the framework for these proposed pretreatment regulations for the timber industry, can be found at 43 FR 27736 (June 26, 1978).

There are 42 wood preserving plants discharging to POTW, 31 in the steam subcategory and 11 in the Boulton subcategory. These plants discharge a total of about 350,000 gallons per day.

Pollutants present in effluents from indirect discharging plants in both the steam and Boulton subcategories primarily contain incompatible organic pollutants. (See the section of this preamble on Profile and Industry Subcategorization for a discussion of the pollutants found in wood preserving wastewaters.) The economic impact analysis determined that the indirect discharging segment of the wood preserving industry is sensitive to the costs of pollution control. The Agency considered options that would control pollutant discharge and minimize the economic impact. Presented below are the pretreatment options considered and a discussion of their advantages and disadvantages. The technology options discussed are applicable to both subcategories. Options 2, 3, 4, 5 and 6, which considered a size cut-off in order to reduce the number of expected closures, used different production cutoffs for each option.

Indirect discharging existing sources in the steam and in the Boulton subcategories are subject to pretreatment standards (41 FR 53930, December 9, 1976) that establish concentration based limits of 100

milligrams per liter (mg/l) of Oil and Grease; 5 mg/l copper; 4 mg/l chromium; and 4 mg/l arsenic. The regulations are based on the application of primary (gravity) and secondary (flocculation and filtration) oil water separation before discharge to the receiving POTW. Toxic pollutants found in the segment of the industry treating only with creosote are primarily PNAs. Verification data from plants which practice current pretreatment technology and which remove oil and grease concentrations to 100 mg/l or less also reduce total PNA concentrations to less than 1 mg/l. Since PNAs are highly soluble in the oil phase and quite insoluble in water, oil and grease in an excellent indicator parameter for PNAs. For toxic pollutants (PNAs) for which historical data are limited and inexpensive analytical methods are not available, EPA is proposing numerical limitations on an "indicator" pollutant, oil and grease. The data available to EPA generally show that when this "indicator" pollutant is controlled, the concentrations of PNAs are significantly lower than when oil and grease is present in high concentrations. While the relationships between oil and grease and PNAs are not quantifiable, control of an "indicator" will reasonably assure control of toxics. For this reason, all of the PSES discharging options evaluated by the Agency for organic wood preserving plants retain the current 100 mg/l oil and grease standard. For those plants which treat wood with pentachlorophenol (PCP), PCP is reduced to about 12 to 15 mg/l with this technology. Metals levels decrease only incidentally by application of this technology.

Note.—The 1976 pretreatment standards did not establish limits on polynuclear aromatics (PNAs) or PCP.

Discussion of Options

(A) Option 1—Continuation of the existing pretreatment requirements, based on primary and secondary oil water separation. Estimates of pollutant discharge were based on flow information from all indirect discharging plants, and on the pollutant concentration levels already achieved through current pretreatment technology. EPA estimated the pollutant discharge under this option to be: 16.6 pounds per day of PCP; 2.9 pounds per day of polynuclear aromatics (PNAs); and 3.4 pounds per day of total copper, chromium, and arsenic.

(B) Option 2—Continuation of existing pretreatment standards with the additional requirement of biological treatment for plants that treat with PCP. This additional requirement would apply to 6 of the 11 Boulton plants and 21 of the 31 steam plants. Biological treatment before discharge to a POTW is considered a reasonable option because long term biological treatment, as practiced by existing wood preserving plants, reduces PCP in the water phase to about 1 mg/l. This option would reduce PCP discharge by 92 percent (to 1.3 pounds per day). Although the levels of PNAs and metals are reduce incidentally with the application of biological treatment, the amount of reduction is not significant. The estimated capital investment and annualized costs total $2,699,400 and $923,400, respectively. Up to five plants, employing up to 171 workers, might close if this option were selected.

By excluding from the regulation plants in the Boulton subcategory that produce less than 700,000 cubic feet per year of treated wood, and plants in the steam subcategory that produce less than 900,000 cubic feet per year, capital investment and annualized operating costs decrease to $2,004,900 and $664,400, respectively. This production cutoff leaves 18 plants subject ot the limitation. No closures are expected, and the 18 plants would discharge about 4.7 pounds per day of PCP, a 72 percent reduction.

(C) Option 3—Continuation of existing pretreatment with the additional requirement of precipitation and removal of metals. This limitation would apply to the six Boulton plants and eight steam plants which treat some wood products with both inorganic and organic preservatives. Although all plants separate inorganic preservative operations from organic operations, cross contamination does occur. This option would reduce metals concentration to about 1 mg/l, reducing the metals discharged to POTW by 76 percent (total discharge of 0.82 pounds per day). PCP and PNA discharge levels would be reduced incidentally, but not significantly. The estimated capital investment and annualized costs total $1,862,100 and $565,100, respectively. From three to seven plants, employing from 92 to 187 people, might close if this option were selected.

By excluding from the regulation plants in the Boulton subcategory that produce less than 700,000 cubic feet per year of treated wood, and plants in the steam subcategory that produce less than 1,200,000 cubic feet per year, capital investment and annualized operating costs decrease to $1,015,500 and $320,900, respectively. This production cutoff leaves seven plants subject to the limitation. No closures are expected, and total industry discharge of metals would be about 1.5 pounds per day, a 56 percent reduction.

(D) Option 4—Continuation of existing pretreatment, with an additional prohibition against discharge of PCP or metals. Seven Boulton plants and twenty-five steam plants would be required to eliminate discharge of contaminated process wastewater by pan or cooling tower evaporation, spray evaporation, spray irrigation, or reuse and recycle. The estimated capital investment and annualized costs for the no discharge option are $4,980,300 and $1,267,300, respectively. Seven to fourteen plants employing 214 to 535 workers might close. PNA discharge would be 0.57 pounds per day.

By excluding from the regulation plants in the Boulton subcategory that produce less than 1,100,000 cubit feet per year of treated wood, and plants in the steam subcategory that produce less than 1,200,000 cubit feet per year, capital investment and annualized operating costs decrease to $2,455,400 and $614,100, respectively. This production cutoff leaves 16 plants subject to the limitation. Up to two plants with approximately 200 employees might close under this option. Total industry discharge would be about 3.4 pounds per day of PCP (a 79 percent reduction), 1.5 pounds per day of toxic metals (a 56 percent reduction), and 1.3 pounds per day of PNAs (a 55 percent reduction).

(E) Option 5—Continuation of existing pretreatment, with the additional requirement of no discharge of PCP. Six Boulton plants and twenty-one steam plants would be required to eliminate the PCP discharge by pan or cooling tower evaporation, spray evaporation, spray irrigation, or reuse and recycle. The estimated capital investment and annualized costs for the zero discharge option are $4,087,000 and $1,037,000. Three to 10 plants employing 83 to 404 workers might close. Assuming that the 27 plants currently treating with PCP elect to eliminate the discharge of all process wastewaters, the total discharge of metals and PNAs would be 1.41 and 1.61 pounds per day, respectively (a 56 and 44 percent reduction).

By excluding from the regulation plants in the Boulton subcategory that produce less than 1,100,000 cubic feet per year of treated wood, and plants in the steam subcategory that produce less than 1,200,000 cubic feet per year, capital investment and annualized operating costs decrease to $2,762,000 and $798,000, respectively. This production cutoff leaves 15 plants subject to the regulation. Up to 2 plants with 200 employees might close under this option. Total industry discharge of

metals and PNAs would be about 2.11 and 1.99 pounds per day, respectively (38 and 28 percent reductions). PCP discharged will be 3.4 pounds per day under this option (a 79 percent reduction).

(F) Option 6—Prohibiting discharge of all process wastewater pollutants to POTW for all indirect dischargers. The estimated capital investment and annualized costs are $7,376,000 and $1,866,900, respectively. Nine to seventeen plants employing 268 to 604 workers might close.

By excluding from the regulation plants in the Boulton subcategory that produce less than 1,100,000 cubic feet per year of treated wood, and plants in the steam subcategory that produce less than 1,200,000 cubic feet per year, capital investment and operating costs are reduced to $4,185,000 and $1,055,400, respectively. This production cutoff leaves 19 plants subject to the limitation. One to three closures are expected, with 27 to 226 jobs being affected. Total industry discharge would be: PCP, 4.2 pounds per day (a 75 percent reduction); PNAs, 0.7 pound per day (a 76 percent reduction); metals, 1.5 pounds per day (a 56 percent reduction).

(G) Pretreatment Standards for Existing Sources Selection and Decision Criteria

The Agency has selected Option 5, with not size cutoff—prohibiting discharge of pentachlorophenol to POTW. This option is proposed for plants in both the steam subcategory and the Boulton subcategory.

Option 1 was rejected because pentachlorophenol is a large, heavy molecule not easily degraded by the short term biological activity usually found in municipal treatment works (POTW). PCP tends to adsorb on solids in biological treatment systems, i.e., it concentrates in the sludge phase. Plants treating wood with inorganic preservatives already are subject to pretreatment standards that require no discharge of process wastewater pollutants. As discussed in the *Industry Profile and Subcategorization* section, metals appear in the wastewaters from wood preserving plants that treat with organic preservatives as a result of cross contamination. These "fugitive" metals are generally well below 1 mg/l in concentration and methods available to reduce their concentrations further will be addressed in future BMP proposals.

EPA rejected Option 2 because it is land intensive and most plants do not have sufficient land available to install a biological treatment system.

EPA rejected Option 3 because the discharge of metals from waterborne salt treating operations is prohibited by existing regulations and the application of best management practices (BMP) will prevent cross contamination.

EPA rejected Option 4 because the metals present are resulting from cross contamination at plants that treat wood with both organic and inorganic preservatives. Plants treating with inorganic preservatives are already subject to a non discharge standard. Cross contamination will be addressed in currently underway best management pracitices (BMP) study.

EPA rejected Option 6 because the economic impact was too severe, leaving 21 to 40 percent of the indirect discharing plants as candidates for closure.

Options 5 eliminates the discharge of pentachlorophenol. As stated above, ninety percent of all wood preserving plants already achieve no discharge of all process wastewater pollutants. The process controls and the end-of-pipe wastewater treatment and disposal technologies are demonstrated and widely practiced. Although the Agency considered a size cutoff in each of the options except Option 1, the excluded plants discharged enough pollutants to possibly contaminate POTW sludge, even after wastewater treatment. Therefore, none of the size cut-off options considered were selected. The *Solicitation of Comments* section request comments on this decision. Although the other except options 4 and 6 reduce the economic impact of the regulaton, they also result in the discharge of significant amounts of PCP which may pass through or interfere with the operation of a POTW, or preclude beneficial use of POTW sludge.

The Agency realizes that plants affected by this proposed regulation may elect to eliminate the treating of wood with PCP, and produce more creosote or inorganic salt treated wood. EPA requests, in the *Solicitation of Comments* section of this preamble, additional information regarding whether or not this would occur, and if not, why.

The Agency intends to amend 40 CFR Part 403, General Pretreatment Regulations. The Part 403 amendment will require that parameters limited by the pretreatment standards must be monitored at indirect discharging plants.

XI. Insulation Board and Wet-Process Hardboard Industry Profile and Subcategorization

Wet-process hardboard and insulation board are sheet materials made from wood reduced to lignocellulosic fibers by mechanical or thermomechanical means, i.e., by grinding wood chips under atmospheric pressure or under steam induced pressure. Hardboard is compressed fiberboard, with a density greater than 31 pounds per cubic foot; insulation board is a non-compressed fiberboard, with a density between 9.5 and 31 pounds per cubic foot.

Insulation board products such as ceiling tile, sheathing, and insulating board are used primarily in the construction industry. Some hardboard products such as paneling and exterior siding also are used in construction; hardboard products also occur in the automotive, furniture, and small appliance industries.

There are 27 plants in the wet process hardboard-insulation board segment. Eleven plants produce only insulation board. Of these, only two are direct dischargers, one producing mechanically refined insulation board, and one producing thermomechanically refined insulation board. Five plants are indirect dischargers, all producing mechanically refined insulation board. Four plants producing only mechanically refined insulation board are nondischargers of process wastewaters. These nondischarging plants achieve no discharge by recycle of treated wastewater, or a combination of recycle and spray irrigation. Eleven plants produce only wet process hardboard; of these, seven produce only S1S (smooth-one-sided) hardboard, three produce both S1S and S2S, and one produces only S2S (smooth-two-sided). Nine of these eleven plants are direct dischargers, including the S2S only plant; one is an indirect discharger and one is a non-discharger, using recycle of treated wastewater and spray irrigation. Five plants produce both thermomechanically refined insulation board and S2S hardboard. Three of these plants are direct dischargers, one plant is an indirect discharger, and one plant is a non-discharger, using spray irrigation of process wastewater. Ten plants are located in the south, seven in the Midwest, six in the Pacific Northwest, three in the Mid-Atlantic region, and one in the Northeast.

Eighteen companies own the 27 plants. Most are large, diversified corporations with major interests in other forest products, including pulp and paper and other building products. Several of the plants are owned by privately held corporations for whom insulation board and/or hardboard products represent the major portion of their business.

Water is essential to wet process hardboard and insulation board manufacturing, serving as the fiber transporting medium during the production process. After the wood chips are refined to fiber and fiber

bundles, water carries the wood to a forming machine, drains through the wire mesh, and either returns to the process water system or is discharged as wastewater. Pollutants present in process wastewater are mainly water soluble wood constitutents high in BOD5 and TSS, the result of the leaching of wood constituents into the process water.

Additives also contribute to the waste load. These may include wax emulsion, paraffin, starch, polyelectrolytes, aluminum sulfate, vegetable oils, ferric sulfate, and thermoplastic and thermosetting resins. Wastewater flows from discharging plants range from 0.05 to 4 MGD. Data obtained from the sampling and analysis program conducted during the BAT review study show that the only toxic pollutants present in raw or treated wastewaters from this segment are very low concentrations of heavy metals including copper and zinc, and organics—benzene, toluene, and phenol. There is no treatment technology (with the exception of a no discharge technology) currently available to further reduce the low concentrations of these pollutants, and none of these pollutants are present at levels high enough to interfere with the operation of a POTW.

Rationale for the previously published subcategorization rested primarily on the method of conditioning wood chips prior to refining, and the conditions and amount of refining. Both of these operations influence the process water requirements and waste loads generated.

In developing these proposed regulations, the Agency reviewed the appropriateness of the previous subcategorization. The major factors considered in developing the subcategories were: product produced, processes employed, process water volume and quality requirements, wastewater characteristics and treatability, treatment costs, plant size, and plant age.

The Agency determined that raw wastewater characteristics (and hence treatability and treatment costs) were closely related to the product produced and processes employed.

Mechanical refining insulation board plants exhibited generally lower raw waste loads than thermomechanical refining plants. The Agency, therefore, considered retaining the two existing insulation board subcategories. Only one mechanical refining insulation board plant, however, is a direct discharger, and this plant has a raw waste load equivalent to the average thermomechanical refining plant. Since the remaining four direct discharing insulation board plants are all thermomechanical refining plants, and since the single mechanical refining direct discharger has a raw waste load equivalent to these thermomechanical plants, the Agency decided for practical reasons to designate a single subcategory for all insulation board plants, regardless of refining method. Effluent guidelines limitations for BPT and BCT, New Source Performance Standards and Pretreatment Standards proposed herein for the Insulation Board Subcategory apply to all insulation board plants.

The Agency found that plants which produce S2S hardboard exhibit significantly greater raw wasteloads than do S1S hardboard plants. For this reason, the proposed regulations divide the wet-process hardboard segment into two subcategories, S1S Hardboard and S2S Hardboard.

The new definitions for the insulation board and wet process hardboard subcategories are:

Insulation Board—This subcategory includes facilities that produce insulation board using wood as the raw material.

Wet Process Hardboard—This category applies to plants which produce hardboard products, using the wet matting process for forming the board mat.

XII. Available Wastewater Control and Treatment Technology

A. Status of in-Place Technology

Current wastewater treatment practices in the insulation board and hardboard segment of the timber products industry range from the minimum preliminary treatment of screening and pH adjustment, practiced by many indirect dischargers, to the biological treatment systems used by all direct dischargers.

Of the seven indirect dischargers, four plants provide no treatment beyond pH adjustment and screening, one plant provides primary sedimentation only, and two plants provide both primary sedimentation and biological treatment in an aerated lagoon.

All 14 direct dischargers provide some form of biological treatment including activated sludge systems and aerated lagoons; one plant spray irrigates primary treated effluent and collects the underflow of the spray field for discharge; another plant spray irrigates a portion of its biologically treated effluent and discharges the remainder.

Six plants have achieved no discharge through complete recycle of process wastewater or disposal of excess water by soil irrigation.

B. Control Technologies Considered

The control and treatment technologies considered for the insulation board and hardboard segment of the timber industry include:

(1) In-plant controls: reuse of process water.

(2) Primary treatment: coarse screening, primary sedimentation, chemically assisted coagulation, and sedimentation.

(3) Biological treatment: aerated lagoons, activated sludge.

(4) Recycle of biologically treated wastewater.

(5) Disposal of wastewater by spray irrigation.

The applicablility and performance of all these technologies have been deomonstrated in the insulation board and hardboard segment of the timber industry. Sections VII and XIV of the Development Document summarize analysis of up to two years of perfomance data provided by the industry on existing treatment plants.

The Agency considered the feasibility of establishing a no discharge limitation for either or both the insulation board segment and the hardboard segment. Both the internal controls and operating considerations, and the external or end-of-pipe wastewater treatment and no discharge methods were considered.

The ability of an insulation board or hardboard plant to close its process water system depends largely on the type of products produced and the raw materials used. Hardboard products such as interior paneling and insulation board products such as ceiling tile must receive uniform surface treatments. Products for external use must be dimensionally stable and absorb limited amounts of water. Recycle of process water increases the dissolved solids retained in the board, which may result in lower quality board, unsuitable for certain uses. For these reasons, full internal recycle of process water is not considered achievable by all plants in the insulation board/hardboard segment.

Final wastewater disposal by spray irrigation is the only demonstrated no discharge technology for these segments. Because of the volumes of wastewater involved, land requirements are high. Land requirements can be included more easily in the site selection and design of a new facility than they can be added to existing facilities. The economic impact analysis did not consider the impact of a no discharge limitation on existing plants because this disposal technology, although

practiced at least in part by six or more plants, could not be a candidate technology for all plants in the segment.

EPA has developed the costs of applying these technologies through compilation of cost data supplied by individual plants in the insulation board and hardboard segments, as well as through engineering cost estimation for these technologies applied both to a range of new and existing plants in each of the subcategories, and to each affected plant on an individual basis. These cost estimates were used by the Agency in the economic impact analysis. Detailed capital and operating costs are presented in Section VIII of the Development Document.

XIII. Best Practicable Control Technology

Best practicable control technology (BPT) is generally based on the average of the best existing performance by plants of various sizes, ages, and unit processes within the industry or subcategory. This average is not based on a broad range of plants in an industry subcategory but on performance levels achieved by the best plant or plants.

BPT considers the total cost of the application of technology in relation to the effluent reduction benefits to be achieved from the technologies. The cost/benefit inquiry for BPT is a limited balancing, which does not require the Agency to quantify benefits in monetary terms. See, e.g., *American Iron and Steel Institute* v. *EPA*, 526 F. 2d 1027 (3rd Cir. 1975). In balancing costs in relation to effluent reduction benefits, EPA considers the volume and nature of existing discharges, the volume and nature of discharges expected after application of BPT, the general environmental effects of the pollutants and the costs and economic impacts of the required pollution control level. The Act does not require or permit consideration of water quality problems attributable to particular point sources or industries, or water quality improvements in particular water bodies. See, *Weyerhaeuser Company* v. *Costle*, 11 ERC 2149 (D.C. Cir. 1978).

BPT regulations for the wet process hardboard segment were promulgated April 18, 1974 (39 FR 13942). The Agency withdrew these regulations on September 28, 1977. Additional information provided by the industry had convinced the Agency that the promulated regulations were not correct and that the segment should be reevaluated.

BPT regulations for the insulation board segment were proposed in August 1974 but were never promulgated. Because most insulation board producing plants would be included in the review of hardboard producing plants, the Agency decided to conduct a reevaluation of the entire insulation board segment concurrently with the hardboard review. The Clean Water Act requires BCT limitations for industry subcategories that discharge conventional pollutants. Process wastewaters from both the wet process hardboard and the insulation board segments did not contain significant amounts of toxic pollutants.

The Agency concluded that the application of the BCT limitations to both the hardboard and insulation board segment was appropriate.

In order to develop BCT limitations for these segments, a base level BPT determination is desirable because the "cost reasonableness test", required as part of the BCT determinations, rests on the incremental cost of removal of BOD5 and TSS from BPT to BCT.

As stated above, the Act establishes the requirements for development of BPT limitations, which are basically the average of the best existing performance. As part of the current study, the Agency evaluated the performance of all direct discharging plants in each segment subcategory to determine which plants were representative of BPT technology.

Within the Insulation Board Subcategory there are five direct dischargers. Three of these plants produce S2S hardboard as well as insulation board, and wastewaters from both products are comingled at each of these plants. Not only are the comingled waste streams an unreasonable basis for insulation board BPT limitations, the wastewater treatment systems themselves at these plants are not representative of BPT technology. Two of the plants discharge low pollutant loads using land intensive technologies—one plant spray irrigates a 200 acre field, the other has over 100 acres of aerated lagoons and holding ponds. The third plant currently practices primary sedimentation only. Although a pure oxygen activated sludge treatment system is due to become operational in 1980 at this plant, no performance data are available for this system.

The remaining two direct dischargers produce insulation board only, one by mechanical refining and the other by thermomechanical refining. Although both of these plants perform very well with a combination of biological treatment and recycle of treated effluent as process water, the performance of the thermomechanical plant was chosen as the basis for insulation board BPT limitations because all potentially impacted plants use thermomechanical refining. Based on its demonstrated performance, the single direct discharging mechanical refining plant will be able to comply with a BPT limitation determined in this manner.

There are seven direct discharging S1S hardboard plants. Three of these plants provide a relatively high degree of treatment; however, their systems were not appropriate for DPT technology because they are either land intensive (one plant uses a combination of biological treatment and spray irrigation), or require a higher degree of internal process control than is considered applicable to the subcategory as a whole. Among the remaining four S1S direct dischargers, one plant maintains a high level of treatment using a biological system. This plant was achieving a higher (BCT) level of treatment and therefore was not chosen as a basis for the BPT regulations. Two other plants, although equipped with biological treatment systems, do not achieve the level of BOD removal expected for a BPT candidate biological system. These plants were therefore not chosen as a basis for the BPT regulation. The fourth plant, whose performance is the basis for the proposed BPT regulations, demonstrates consistently good removal of the conventional pollutants using a technology which is applicable to all other S1S hardboard plants.

There are five direct discharging S2S Hardboard subcategory plants. Two plants, which produce both S2S hardboard and insulation board, achieve extremely high treatment levels using land intensive technology which cannot be applied to existing S2S plants as a BPT technology. One of these plants uses spray irrigation and the other has over 100 acres of aerated lagoons and holding ponds. A third plant, which also produces both S2S hardboard and insulation board, currently provides primary sedimentation only. Although a pure oxygen activated sludge system is scheduled to become operational at this plant in 1980, no performance data are available for this system. Another plant uses a biological treatment system which clearly does not perform to BPT standards. The remaining plant in the subcategory, with an excellent biological treatment system, exceeds BPT standards and is representative of BCT technology. In terms of removal of the conventional pollutants, this plant performs similarly to the S1S subcategory BCT candidate.

In the absence of a BPT candidate plant in the S2S Hardboard subcategory, the Agency has decided to establish a

BPT limitation using biological treatment technology parallel to the S1S Hardboard BPT candidate plant, applying the percent removal of BOD*5* and TSS achieved by the S1S Hardboard BPT plant to the higher raw waste load of the S2S producing plant. EPA considers this approach to be a reasonable approximation of the performance which could be expected from a S2S hardboard plant applying BPT level biological treatment.

XIV. Best Available Technology Economically Achievable

Review and evaluation of the information available to the Agency, including recent analytical data relating to toxic pollutants, led the Agency to conclude that the few detected priority pollutants occurred in such low concentrations that technology was not currently available to further reduce these levels. The Development Document summarizes the specific pollutants found and their concentrations and mass amounts. The only technique available to existing plants to reduce these discharge levels would be no discharge of process wastewater pollutants. The practicality of this option is extremely limited, both technically and economically. Most existing plants do not have sufficient land available for land disposal of treated wastewaters. Recycling of treated wastewater by existing plants would probably require redesign of process waste flow systems; such redesign would also require the replacement of some existing equipment, and the installation of considerable amounts of new equipment. The wastewater pollutants generated by the direct discharging plants in this segment, primarily BOD*5* and TSS, are treatable by biological means. Based on the fact that toxic pollutants are not present at levels treatable by available technology, the Agency has concluded that a BAT regulation for the hardboard and insulation board segment is unnecessary and is not proposing one.

XV. Best Conventional Technology (BCT)

The 1977 amendments added Section 301(b)(2)(E) to the Act, establishing "best conventional pollutant control technology" (BCT) for discharges of conventional pollutants from existing industrial point sources. Conventional pollutants are those defined in Section 304(a)(4)—BOD, TSS, fecal coliform, and pH—and any additional pollutants defined by the Administrator as "conventional."

BCT is not an additional limitation, but replaces BAT for the control of conventional pollutants. BCT requires that limitations for conventional pollutants be assessed in light of a new "cost-reasonableness" test. The BCT test compares the additional cost incurred by an industrial point source in removing a pound of conventional pollutants beyond BPT limitations, to the cost incurred by an average size POTW in removing a pound of BOD*5* and TSS. If the industrial cost is lower, it passes the cost reasonableness test. Details concerning the methodology of the cost test used to determine BCT are contained in Section X of the Development Document.

The Agency reviewed the technical data base in detail prior to performing the BCT analysis of the insulation board/hardborad segment of the industry. Where possible, EPA identified for each subcategory one treatment and control option beyond BPT limitations, documenting technology performance with up to two years of historical effluent data provided by the industry. The estimated costs for each affected plant to upgrade its facilities to BCT performance levels were calculated on a plant by plant basis. The proposed BCT is based on the most stringent level of biological treatment technology applicable to a subcategory which passes the cost reasonableness test.

As discussed in the *Profile and Subcategorization* Section, the insulation board subcategory has only two direct discharging plants which produce only insulation board. Each of these systems combines biological treatment and treated effluent reuse. Both of these systems are exemplary and neither system needs to further upgrade its facilities for increased pollutant removal. For this reason, the Agency is proposing BCT limitations which equal proposed BPT limitations for the Insulation Board subcategory.

For the S1S and S2S hardboard subcategories, EPA identified one treatment and control option capable of providing pollutant removal beyond that required by BPT limitations. This option is to upgrade the existing BPT biological treatment and control technology by providing additional detention time and aeration capacity. The characteristics of the upgraded biological system are based on documented performance of existing systems treating S1S hardboard wastewater and S2S wastewaters.

BCT limitations for the S1S and S2S portions of the wet process hardboard subcategory are based on the best performing biological treatment/discharging plant in each of the portions. The Agency did not select a no discharge of process wastewater option for BCT because this level of control would fail the "cost reasonableness" test.

The costs of upgrading treatments to BCT levels for S1S and S2S hardboard plants were determined separately plant by plant, based on existing raw and treated waste load data provided by each plant.

The BCT candidate technologies chosen by the Agency for both S1S and S2S subcategories passed the cost reasonableness test.

The Agency calculated the cost reasonableness in two separate ways. First, the cost reasonableness of the proposed BCT technology was tested for the two S2S plants that will be required to upgrade, using proposed BPT for S2S as a cost base.

Secondly, the cost reasonableness of the proposed BCT technology was tested for the two S2S hardboard plants using current treatment system performance (in the case of one plant, design performance of its treatment system under construction was used) as a cost base. The proposed BCT technology passed the test of reasonableness for both plants, regardless of cost base.

XVI. New Source Performance Standards (NSPS)

The basis for new source performance standards (NSPS) under Section 306 of the Act is the best available demonstrated technology. New plants have the opportunity to design the best and most efficient hardboard and insulation board manufacturing processes and wastewater treatment systems, and, therefore, Congress directed EPA to consider the best demonstrated process changes, in-plant controls, and end-of-pipe treatment technologies which reduce pollution to the maximum extent feasible.

As discussed in the *Available Wastewater Control and Treatment Technology* section of this preamble, 6 of the 27 existing hardboard and/or insulation board producing plants (22 percent) currently do not discharge process wastewater to navigable waters directly or indirectly. Three of the six plants achieve this no discharge by spray irrigation. Two plants achieve no discharge through complete recycle of treated wastewater, combining low-moisture raw materials with the production of finished products that tolerate higher levels of dissolved solids in the process water system. The remaining plant achieves no discharge by treating wastewater in an activated sludge system, reusing the treated water, aerobic digestion of the waste sludge, and disposal of the remaining sludge by spray irrigation.

As current wastewater treatment and disposal practices illustrate, no discharge usually requires land application of waste sludge or water. Land requirements can be included in the planning and design stages for new sources. The no discharge technology is demonstrated by existing plants producing hardboard only, insulation board only, and one plant producing both hardboard and insulation board.

Capacity expansion for hardboard most likely will occur through incremental expansion of existing hardboard mills and from conversion of insulation board capacity. This results primarily from the high cost of new capacity compared with current market prices. While pollution control costs would exacerbate this relationship, they remain of secondary importance.

Therefore, no discharge of process wastewater pollutants is proposed for NSPS.

XVII. Pretreatment Standards Existing Sources (PSES) Pretreatment Standards New Sources (PSNS)

Section 307(b) of the Act requires EPA to promulgate pretreatment standards for existing sources (PSES) which must be achieved within three years of promulgation. Section 307(c) of the Act requires the Agency to publish regulations establishing pretreatment standards for new sources (PSNS) for introduction of pollutants into publicly owned treatment works at the same time that NSPS are published.

As presented in the *Best Available Technology* section, the concentration of the few toxic pollutants found in wastewaters from the hardboard and insulation board plants sampled and analyzed during this study was so low that any further reduction by available treatment and control technologies was not technically feasible. The conventional pollutants present in effluents from hardboard and insulation board producing facilities are treatable by biological treatment as practiced by publicly owned treatment works. Seven plants in the hardboard and insulation board segment currently discharge to POTW. The Agency is not aware of any incidents where discharge from one of these plants has caused an upset, or has been otherwise incompatible with the operation of a POTW.

The Agency is proposing pretreatment standards for new and existing sources in the hardboard and the insulation board subcategories that do not establish numerical limitations on the discharge of specific pollutants. Indirect discharging plants are subject to the general pretreatment regulation (40 CFR Part 403).

XVIII. Barking, Veneer, and Log Washing Effluent Limitations

Regulations promulgated in 1974 and 1975 for hydraulic barking, veneer manufacture, and log washing operations established BPT limitations with an allowable discharge. The BPT regulations controled BOD*5*, TSS, and pH. BAT limitations for these operations, promulgated at the same time, prohibited discharge of process wastewater pollutants.

The Act states that promulgated effluent guidelines and standards "* * * shall be reviewed at least every five years and, if appropriate, revised * * *."

As part of the BAT Review study, the Agency reviewed the information supporting the previously promulgated regulations and reviewed current industry practices regarding process water management in these operations.

A. Hydraulic Barking

(A) *Discussion:* The BAT limitation of no discharge of process wastewater pollutants for all barking operations (including hydraulic barking) was based primarily on information from a hydraulic barking plant located in northern California. This plant installed a hydraulic barker in 1969. The barking system was designed to operate with no discharge of process wastewater, treating and recycling 80+ percent of the process water, and disposing of the excess water by spray field irrigation. The Agency concluded that after a few years experience operating the wastewater treatment and recycle system, a completely closed (no discharge) status could be achieved by all plants. This expected performance was the basis for the previously promulgated no discharge limitation.

As part of the current study, the Agency contacted all known operators of hydraulic barking operations, state pollution control agencies, Regional EPA offices and equipment manufacturers. The purpose of this survey was to identify hydraulic barking installations, determine their process wastewater treatment and discharge status, and determine the progress made by the industry in meeting the BAT implementation date.

Fourteen plants having hydraulic barking installations were identified. Most plants practice some degree of recycle of barking water, usually after clarification. The plant identified in 1974 as recycling about 80+ percent is still at that level, apparently unable to increase the amount of recycle. The plant estimated that it discharges about 200,000 gallons per day of excess water to the spray irrigation system.

The timber industry was surveyed to determine the most recent installation of a hydraulic barking facility and also the possibilities of new installations.

EPA identified one company which currently supplies hydraulic barking equipment. The company does not include price information for hydraulic barkers in its price lists, although it will supply such information on request. The most recent installation of a hydraulic barking system in the United States occurred in 1969. Energy and environmental considerations in this country appear to make hydraulic barking less attractive to potential customers than mechanical barking. The capital cost of installing a hydraulic barking system is estimated to be about one and one-half times the cost of installing a mechanical barking system with the same throughput capacity. Previous mechanical barkers were inefficient in removing redwood bark; the bark, which is very stringy, would jam mechanical barkers. However, technological improvements have eliminated this problem. Mechanical barkers now can handle logs up to 72 inches in diameter and can effectively remove redwood bark.

Screen sampling and analysis of a hydraulic barking installation in 1976 determined the presence of toxic pollutants in effluents. The organic pollutants found were chlorinated phenols, nitrophenol, dinitro-o-cresol, benzene, chloroform, and di-chloroethane. In 1979, another hydraulic barking system wastewater was analyzed. Only phenol occurred above the 10 g/l analytical limits of detection (it was found at a concentration of 20 g/l). Over the last three years the BAT Review analytical protocol has been refined and modified significantly. Based on these refinements, analytical personnel and the Agency have concluded that the 1979 data more accurately characterize the wastewaters generated by hydraulic barking operations than the 1976 data.

The Agency's review of the hydraulic barking timber industry and its pollutant data and growth potential clearly indicated that new hydraulic barking operations are not likely. In addition, because toxic pollutants are not present at treatable levels in hydraulic barking wastewaters, a BAT based regulation is not appropriate. The Agency did not study the hydraulic barking segment in detail during the current study, other than screening and profiling the existing plants in regard to their number and current wastewater treatment practices. Because of this fact, EPA does not have

technical or potential economic impact information to be used in developing revised effluent guidelines at this time.

(B) *Decision Criteria:* After review and evaluation of the above information, the Agency considered the propriety of the existing BAT and NSPS regulations and the applicability of a BCT regulation for this segment.

The Agency has decided to withdraw the existing BAT limitation of no discharge for hydraulic barking. The Agency has further decided not to establish BCT limitations for this subcategory. The rationale for withdrawal of BAT limitations is that the performance upon which BAT is based, 100 percent recycle following coagulation and settling of wastewater, has not been achieved in spite of extensive effort by several plants in the industry. BCT limitations are inappropriate at this time, because sufficient information is not available to establish limitations based on the required "cost-reasonableness" test, and because most plants already are achieving greater than 80 percent recycle of wastewater following coagulation and settling or biological treatment. Further treatment is not considered technically or economically feasible.

B. Veneer Manufacture

(A) *Discussion:* BPT regulations for this subcategory promulgated in 1974 required no discharge of process wastewater pollutants for all veneer manufacturing plants, except those using direct steam conditioning of veneer logs. The Agency allowed this exception in order to give plants using direct steam conditioning time to modify their operations before the no discharge BAT limitation came in force.

Review of current veneer manufacturing practices has established that no known veneer manufacturing plants are discharging directly.

During the screening phase of the current BAT Review study, sampling and analysis determined that toxic pollutants, particularly heavy metals, are present in wastewaters generated by veneer manufacturing facilities.

(B) *Decision Criteria:* Based on the current status of process water control, and the presence of toxic pollutants in veneer wastewaters, the Agency has determined that the existing BAT limitation of no discharge of process wastewater pollutants should remain in force.

C. Log Washing

(A) *Discussion:* BPT for this subcategory allows the discharge of process wastewater pollutants. Existing BAT for this subcategory prohibits discharge of process wastewater pollutants.

Review of current practices in the timber industry revealed that log washing now is practiced by fewer facilities than previously reported. Plants washing logs for further processing are recycling log wash water after settling and coarse screening. The screening phase of the BAT Review study determined that toxic pollutants are present in log wash water, particularly heavy metals and phenol.

(B) *Decision Criteria:* Based on the current status of process water control, and the presence of toxic pollutants in log wash waters, the Agency has determined that the existing BAT limitation of no discharge of process wastewater pollutants should remain in force.

XIX. Regulated Pollutants

The basis for the selection of controlled pollutants, as well as the general nature and environmental effects of these pollutants, is set out in Section VI of the Development Document. Some of these pollutants are designated toxic under Section 307(a) of the Act, and no evidence has been found to warrant removal of any pollutant from the toxics list.

Appendix C lists toxic pollutants which were found in treated effluents at more than two plants and in significant concentrations.

Following is a summary of the pollutants controlled by each of the subparts of the regulations proposed here.

Wood Preserving—Steam Subcategory

Wood Preserving—Boulton Subcategory

A. BAT—The Agency is withdrawing the existing Wood Preserving—steam regulation. The one plant currently discharging has an NPDES permit. COD, Total Phenols, Oil and Grease, and pH are the parameters limited by the permit.

B. NSPS—By proposing zero discharge of process wastewater pollutants, the discharge of all pollutants is eliminated.

C. PSNS—Prohibiting the discharge of process wastewater pollutants to a POTW eliminates the discharge of all pollutants.

D. PSES—Prohibiting the discharge of pentachlorophenol (PCP) eliminates the possible pass through and sludge contamination by this toxic pollutant. Evidence indicates that PCP is biodegradable, but the compound requires long term holding in the presence of acclimated biota to achieve a significant reduction. Neither long term holding, nor acclimated biota are usually characteristic of POTW. In addition, PCP, being a heavy molecule, tends to settle to the bottom of a biological treatment system, concentrating the PCP in the sludge phase.

Existing indirect discharging wood preserving plants treating wood with creosote are required to meet a maximum Oil and Grease concentration of 100 milligrams per liter, the same limitation promulgated in 1976. Data available to the Agency show that control of oil and grease to this prescribed limit also maintains polynuclear aromatic compounds at a level less than one milligram per liter. Since PNAs are highly soluble in the oil phase and quite insoluble in water, the oil and grease concentration is an excellent indicator of PNA control.

Hardboard/Insulation Board

As discussed elsewhere in this preamble, toxic pollutants occur at extremely low levels (not easily treatable) in wastewaters from these facilities. Conventional pollutants, such as BOD*5*, total suspended solids (TSS), and pH are present and treatable. This regulation proposes BCT mass limitations, that is, pounds discharged per 1000 pounds of production, on BOD*5* and TSS, and establishes a pH range of 6 to 9. PSNS and PSES for wet process hardboard plants and for insulation board plants are the same as those promulgated earlier, i.e., no limitation is placed on BOD*5*, TSS, or pH.

XX. Pollutants and Subcategories Not Regulated

The Settlement Agreement authorized the exclusion from regulation, in certain instances, of toxic pollutants and industry subcategories. These provisions have been re-written in a Revised Settlement Agreement which was approved by the District Court for the District of Columbia on March 9, 1979.

Paragraph 8(a)(iii) of the Modified Settlement Agreement allows the Administrator to exclude from regulation toxic pollutants not detectable by Section 304(h) analytical methods or other state-of-the-art methods. The toxic pollutants not detected and therefore excluded from regulation appear in Appendix B to this notice.

Paragraph 8(a)(iii) of the Modified Settlement Agreement allows the Administrator to exclude from regulation toxic pollutants detected in the effluent from a small number of sources and uniquely related to those sources. Appendix D lists the toxic pollutants which were detected in the

effluents of only one or two plants, which are uniquely related to these sources, and which, therefore, are excluded from regulation.

Paragraph 8(a)(iii) of the Modified Settlement Agreement allows the Administrator to exclude from regulation toxic pollutants which are detected only in trace amounts and which are not likely to cause toxic effects. Appendix E lists the toxic pollutants found in trace amounts (at or below the limit of analytical detection and qualification) which are not likely to cause toxic effects, and which therefore are excluded from regulation.

The Settlement Agreement required the Agency to regulate the Timber Products Processing industry, listed under the Office of Management and Budget's Standard Industrial Classification, Major Group 24. In addition, SIE 2661—Building Paper and Building Board Mills (Insulation Board only) was included in the timber industry list of point sources for which regulations were to be developed.

Initially, the Agency developed a profile of the total timber industry. After this initial profile information was assembled and reviewed and screen samples from all subcategories were collected and analyzed, the Agency concluded that certain portions of the industry did not justify detailed technical and economic analysis studies to support revised effluent limitations and standards.

The primary bases for excluding these portions of the industry from revised regulations are as follows:

1. The processing operations involved were basically dry (no process water involved and no process wastewater generated).

2. The operations are currently subject to a BAT regulation prohibiting discharge of process wastewater.

3. Plants in a given subcategory do not discharge to a publicly owned treatment works.

4. The present waste management practices reflect the highest level of control economically achievable.

Raw wastewater and treated wastewater from at least one plant or facility in each subcategory was collected and analyzed for 124 toxic pollutants during the screening phase of the program. After confirming the presence or absence of toxic substances, EPA reviewed the available technology and considered the reliability of candidate technologies. This review and evaluation was necessary because all the subcategories, with the exception of Wood Preserving-Water Borne and Non-Pressure subcategory were allowed by the existing regulations to discharge to publicly owned treatment works without pretreatment.

Review of available information established that the following subcategories should be excluded from the development of revised effluent limitations guidelines and standards under the terms of Paragraph 8:

Barking; Sawmills and Planing Mills; Dry Process Hardboard; Veneer; Plywood; Log Washing; and Wood Preserving-Water Borne or Non-Pressure. These subcategories already are subject to no discharge limitations for existing and new sources, and contain less that 40 indirect dischargers.

Wet Storage—Wet storage facilities can be divided into two major segments: log ponds and wet log storage decks. Existing limitations require screening to prevent discharge of debris and pH control. Current practice in the industry is to contain and/or recycle most of the effluent from these facilities during dry weather periods, resulting in no discharge. During periods of wet weather, the volume of discharge depends on the amount and intensity of precipitation. Since discharges from these facilities occur primarily during rainfall, concentrations of BOD5 and TSS—the major conventional pollutants present—are usually dilute. Further treatment requires large containment basins designed to contain the heavy rainfalls which occur in many parts of the country. Considering the variabilities of precipitation, drainage areas, and dilution factors involved, the Agency concluded that it is not technically or economically feasible to require a level of control beyond that provided for by existing regulations.

Finishing and Particleboard—These subcategories are subject to a no discharge regulation for existing and new sources. Fewer than twenty plants, with a total flow of less than 2,000 gallons per day in the particleboard subcategory, and about 1,000 operations with a total flow of less than 2,500 gallons per day in the finishing subcategory, discharge indirectly.

Appendix B of the Modified Settlement Agreement lists in the Timber Products Processing point source category, SIC 2411-Logging Camps and Logging Contractors (Camps only). This timber products operation was not previously studied or regulated. Because this operation was listed in the Revised Settlement Agreement as requiring regulations, the Agency surveyed the major timber producing areas of the U.S. and determined that: (1) permit issuing offices, State and EPA Regional, are not aware of the generation of process wastewater in these operations; (2) logging camps have been issued permits to control the discharge of sanitary wastes; and (3) probably not more than ten or twelve remote logging camps exist. Therefore, this portion of the timber products industry does not justify the development of effluent limitations guidelines and standards on the discharge of process wastewater pollutants.

XXI. Economic Impact: Costs, Effluent Reduction Benefits, and Economic Impact

Executive Order 12044 requires EPA and other agencies to perform Regulatory Analyses of certain regulations. 43 FR 12661 (March 23, 1978). EPA's proposed regulations for implementing Executive Order 12044 require a Regulatory Analysis for major significant regulations involving annualized compliance costs of $100 million or meeting other specified criteria. 43 FR 29891 (July 11, 1978). Where these criteria are met, the proposed regulations require EPA to prepare a formal Regulatory Analysis, including an economic impact analysis and an evaluation of regulatory alternatives. The proposed regulations for the Timber Products industry do not meet the proposed criteria for a formal Regulatory Analysis. Nonetheless, this proposed rulemaking satisfies the formal Regulatory Analysis requirements.

EPA's economic impact assessments are contained in *Economic Impact Analysis of Alternative Pollution Control Technologies, Wood Preserving Subcategories of the Timber Products Industry*, August 1979, EPA 440/2–79–018 and, *Economic Impact Analysis of Alternative Pollution Control Technologies, Wet Process Hardboard and Insulation Board Subcategories of the Timber Products Industry*, August 1979, EPA 440/2–79–017.

These reports detail the investment and operating costs for the alternative control options, including the option proposed in this notice. Data underlying the analyses came from the Development Document and the economic survey program described under DATA GATHERING EFFORTS. The reports assess compliance costs in terms of plant closures, production changes, price changes, employment changes, local community impacts and balance of trade effects.

The analytical methodology employs basic economic and financial modeling techniques to determine whether facilities can continue operation following the imposition of pollution control requirements and to evaluate reductions in profitability. The Agency evaluated the impacts on the various plants based upon compliance costs

generated for each plant and their responses to an economic survey. This approach was possible because of the relatively small number of plants which would incur additional costs under the various control options.

The decision criteria for estimating plant closures were based upon the plant's cash flows, and profitability in the absence of price increases. If a plant could finance the pollution control investment from cash flow and remain profitable in the absence of prices increases then the plant was judged likely to remain open. In other words, the analysis assumes that bank financing will not be available because of the generally low profits in the industry. A plant was designated as having a high probability of closure if the required investment was over 200 percent of annual cash flow and/or it would incur losses after complying with the regulation. Plants judged to have a moderate probability of closure were those for which investment would be 100 percent to 200 percent of annual cash flow but which would still show an after-tax profit.

The analyses did not estiamte baseline closures (closures which may occur among the impacted plants even if EPA promulgated no additional requirements); therefore, the closure estimates are probably overstated to some extent. This is confirmed by the fact that among the wood preserving plants listing themselves as dischargers in the economic survey which was sent in the Fall of 1977 two closed before the proposal of this regulation.

Wood Preserving—PSES

Of the approximately 415 wood preserving plants in the industry, only 27 (less than 7 percent) will be affected by the proposed pretreatment regulations. These plants will require a capital investment of approximately $4.1 million, with annualized costs of compliance including depreciation, interest, operating, and maintenance costs of about $1.0 million. For over half of the plants the investment will be less than one year's cash flow.

Price increases appear to be either unobtainable or limited by the percentage cost increase incurred by the larger plants (approximately 1 to 3 percent). Larger price increases should not occur because the vast majority of the industry will not incur additional costs as a result of the proposed standard; competition between impacted and non-impacted plants also will limit price increases.

Approximately three to nine plants may choose to close rather than invest in pollution control equipment. These plants employ approximately 118 to 439 production workers, representing approximately 1.5 to 5.7 percent of the 7700 production employees in the industry in 1976. However, the Agency does not expect industry production to be significantly affected since sufficient excess capacity exists to prevent shortages of preserved wood products.

Plant closures as a result of the proposed regulation are not expected to have a large community impact. The closures will be scattered around the country and generally will occur in urban or suburban areas where alternative employment opportunities should exist. Since domestic price and production impacts will be small, balance of trade effects should be insignificant.

Achievement of these standards will prevent the introduction to publicly owned treatment works of approximately 16.6 pounds per day of PCP, 1.3 pounds per day of PNAs, and 2.0 pounds per day of heavy metals. EPA believes the effluent reduction benefits outweigh the associated costs.

Wood Preserving—NSPS and PSNS

The proposed new source standards may require capital investments of $161,000 to $428,000 per plant, which represent from 3 percent to 8 percent of the estimated capital investment for new plants. The annualized cost of the regulation may range from $85,000 to $156,000 per plant. The revenue required to recover compliance costs is approximately 1 percent to 2 percent of estimated sales for a new plant.

Based upon maximum operating capacity, there is considerable excess capacity among existing plants. However, becasue of transportation costs and growth in some regions (e.g. the South) it is likely that new capacity will be built before existing capacity is fully utilized. Because many plants are already at zero discharge and because the capital costs and revenue increases necessary to recover the control costs are relatively small, new source compliance costs are not expected to hinder the construction of new plants.

Achievement of the proposed NSPA and PSNS standards by new source wood preserving plants will prevent further discharges of toxic pollutants such as PCP, PNAs, and heavy metals to receiving waters and POTW. EPA believes that this benefit outweighs the associated cost.

Hardboard and Insulation Board—BPT

Of the 27 plants which produce hardboard or insulation board, only three hardbord plants are expected to be affected by the proposed BPT regulations. The affected plants represent less than 20 percent of industry capacity. Capital investment could total $8,871,000 with annualized costs of approximately $3,486,000. The capital investment ranges up to 300 percent of estimated plant annual cash flows. However, the Agnecy anticipates that financing for this investment will be available from banks or the parent corporations because of the favorable outlook for hardboard. There is a possibility that one plant with approximately 300 employees may close rather than make this investment. Additional information on this potential impact is requested in the Solicitation of Comments section of this preamble.

Demand for hardboard is expected to grow at approximately a 3 percent average annual rate between now and 1983 with the demand for hardboard being about 25 percent higher in 1983 than at present. Existing industry capacity cannot support this increase in demand, and price increases are expected. While some additional demand may be satisfied by imports, the industry is expected to add capacity by either incremental expansion of existing facilities or by conversion of excess insulation board capacity to hardboard production.

Studies indicate that even the least expensive method of increasing capacity would require prices of approximately $106 per thousand square feet (in 1977 dollar terms) or a 16 percent price increase to become economical. This price increase resulting from rising demand exceeds the amount necessary for existing producers to recover their BPT pollution control cost. Therefore, while the regulations may reduce profits for the three affected plants, the regulations should not have a serious price impact since price increases will be set by the demand for new capacity. If, however, price increases were not achieved, one plant would no longer be profitable.

Achievement of the proposed BPT limitations by the insulation board/hardboard segment will reduce conventional pollutant discharges (BOD5 plus TSS) by approximately 20 million pounds per year. EPA believes that the effluent reduction benefits outweigh the associated costs.

Hardboard and Insulation Board—BCT

For the proposed BCT regulation up to seven hardboard plants could have capital investments above BPT totalling $11,474,000 with associated annualized costs above BPT of $2,690,000. The capital requirements range from less than 10 percent to approximately 330 percent of annual cash flow, and again

plants are expected to obtain external financing from either banks or their parent corporation.

As with BPT, the price impacts of BCT are expected to be insignificant compared with the price increases necessary to make capacity additions economically feasible.

Assuming price increases of $5 per thousand square feet to recover pollution control, these proposed regulations would involve a less than 5 percent price increase over the long run expansion price of $106 per thousand square feet. Given the inelastic demand for hardboard and the expected growth in demand, this regulation is not expected to affect significantly industry production. If, however, one plant whose pollution control investment is over 300 percent of 1976 cash flow chooses to close then approximately 300 jobs could be lost with resultant community impacts. Profitability of existing plants will decrease somewhat, but even if prices did not increase, pre-tax profitability on sales for the affected plants would generally average close to the median for the industry (14 percent).

The price increase occasioned by pollution control costs may make imported hardboard relatively more price competitive. However, it is anticipated that U.S. producers will continue to import the board as a method of meeting peak demands and not for baseline industry demand.

Achievement of the proposed BCT limitations by the insulation board/hardboard segment will reduce conventional pollutant discharges (BOD *5* plus TSS) by approximately 10 million pounds per year. EPA believes that the effluent reduction benefits outweigh the associated costs.

Hardboard and Insulation Board—NSPS

The Agency expects the demand for insulation board to decline; no new plants are anticipated. Additions to existing hardboard plants or conversion of insulation board plants to hardboard production appears to be less expensive than construction of greenfield hardboard mills (new site, new construction). Therefore, no new greenfield hardboard mills are expected before 1985. EPA does not expect that new source requirements will preclude the construction of new plants.

An average size insulation board or hardboard plant with a BCT type biological treatment system will discharge between 0.5 and 2 million pounds of combined BOD *5* and TSS per year. Achievement of the proposed NSPS no discharge standard will prevent these pollutants from being discharged to navigable waterways. EPA believes that the pollutant reduction benefits outweight the associated costs.

XXII. Non-Water Quality Aspects of Pollution Control

The elimination or reduction of one form of pollution may aggravate other enviromental problems. Therefore, Sections 304(b) and 306 of the Act require EPA to consider the nonwater quality environmental impacts and energy requirements of certain regulation. In compliance with these provisions, EPA has considered the effect of these regulations on air pollution, solid waste generation, and energy consumption. This proposal was circulated to and reviewed by EPA personnel responsible for nonwater quality environmental programs. While it is difficult to balance pollution problems against each other and aganist energy utilization, EPA is proposing regulations which it believes best serve often competing national goals.

The following are the nonwater quality environmental impacts (including energy requirements) associated with the proposed regulations:

Air Pollution—Wood Preserving Segment. The majority of the wood preserving industry currently achieves no discharge by technologies that include evaporation of a portion of the process wastewater. Although the Office of Research and Development of EPA has recently (August 1979) collected preliminary information indicating a transfer of pentachlorophenol to the air when evaporative technology is practiced. The Agency has not confirmed air pollution problems related to the use of these evaporative technologies. However, the *Solicitation of comments* section of this preamble requests information on possible intermedia transfer, particularly pentachlorophenol and polynuclear aromatics.

Air Pollution—Hardboard/Insulation Board Segment. Wastewater treatment technologies currently in use in this segment by direct dischargers are biological, usually extended aeration or activated sludge. Air pollution problems are not expected from the application of these technologies. Proposed NSPS prohibit discharge of process wastewater pollutants, based on spray irrigation of excess process wastewater. Eleven plants currently practice this technology, which will probably be used in rural locations where land costs are lower. EPA does not expect the constuction of new sources in the insulation board segment of the industry. Expansion in the wet process hardboard segment most likely will occur by enlarging of existing facilities rather than greenfield construction. Existing and new sources discharging to POTW are not required by these regulations to install and operate additional treatment and control technology. Imposition of these regulations on hardboard and insulation board plants are not expected to create any additional air pollution problems.

Solid Waste—Wood Preserving. Information collected from the data collection portfolios received from 216 wood preserving plants indicate that plants practicing BPT technology (biological treatment) prior to disposal of wastewater are generating an average of 0.38 cubic feet of sludge per 1000 cubic feet of wood treated. Plants meeting the previously promulgated pretreatment limitations are generating 0.49 cubic feet of sludge per 1000 cubic feet of wood treated. Plants already meeting the proposed NSPS and PSNS limitations of no discharge with evaporative technologies are generating 0.43 cubic feet of sludge per 1000 cubic feet of wood treated. Thus, no significant increase in sludge generation is expected from promulgation of these regulations.

Regulations proposed by EPA under Section 3001 of the Resource Conservation and Recovery Act (RCRA) list wood preserving industry solid wastes as "hazardous" [43 FR 49402 (August 22, 1979)]. These wastes, primarily the sludges from wastewater treatment, will be subject to rigorous handling, transportation, storage, and disposal requirements, under sections 3002–3004 of RCRA. EPA's proposed generator standards would require generators of wood preserving industry solid wastes to meet stringent containerization, labeling, and reporting requirements, and, if they dispose of wastes off-site, to prepare a manifest that will track the movement of the wastes from the generator's premises to a permitted off-site treatment, storage, or disposal facility. [See 43 FR 58946, 58979 (December 18, 1978)]. The proposed transporter regulations would require transporters of wood preserving industry wastes to comply with the manifest and assure that the wastes are delivered to a permitted facility. [See 43 FR 18506 (April 28, 1978)]. Finally, the proposed treater, storer, and disposer standards would establish technical design and performance standards for wood preserving waste storage facilities, and for landfills, basins, surface impoundments, incinerators, and other facilities where such wastes would be treated or disposed, as well as

security, contingency plan, employee training, record keeping, reporting, inspection, monitoring, and financial liability requirements for all such facilities. [See 43 FR 58946, 58982 (December 18, 1978)].

The technical study supporting these regulations did not include analyses of sludge generated by the wood preserving industry. Wood preserving process waters do contain toxic pollutants, and high molecular weight organic compounds tend to settle to the bottom of holding basins. Prohibiting the discharge of pentachlorophenol to a POTW eliminates the possibility of contamination of sludges generated by publicly owned treatment works.

Solid Waste—Hardboard/Insulation Board. Sludge generation resulting from current biological treatment ranges between 0.5 and 1.0 cubic feet per ton of production. The BPT and BCT regulations proposed herein will increase the total amount of sludge generated industry wide by less than five and ten percent, respectively. Composition of the sludge generated under BPT and BCT limitations will remain the same. The general pretreatment regulations (40 CFR Part 403) to which these facilities are subject will not result in the production of any sludge. Proposed NSPS include a combination of wastewater reuse and recycle, biological treatment of wastewater, and spray irrigation. Reuse and recycle of process water results in the uptake of solids in the product (removing them from the wastewater). No appreciable change in the quantity and characteristics of sludge is expected. Biological treatment before spray irrigation results in sludge generation equal to or less than the current levels, depending on the amount of biological treatment applied. Spray irrigation as a wastewater disposal option does not result in sludge generation.

Energy Requirements—Wood Preserving Segment. Forty-two wood preserving plants are indirect dischargers. The proposed regulations will require 27 plants, 21 in the Steam subcategory, and 6 in the Boulton subcategory, to discontinue the discharge of pentachlorophenol to POTW. If these plants continue to use this preservative, the most practical method of disposing of the process wastewater is through evaporation.

The total energy requirements for the twenty-one steam subcategory plants which must achieve no discharge are 184 megawatt hours per year. At $0.05 per kilowatt hour the energy cost is $9,200 per year. Six plants in the Boulton subcategory will require a total of 974 megawatts per year ($48,700 per year at $0.05 per kilowatt hour). The energy requirements for Boulton plants is considerably higher because the evaporation technology (pan or cooling tower) upon which the proposed limitation is based is more energy intensive than the spray evaporation technique proposed for steam plants. Both subcategories must evaporate 9 to 55 inches of precipitation falling in the immediate area of the treating cylinder. The steam plants spray water into the air and achieve evaporation using natural forces, sunlight and air movement. Boulton plants use a combination of applied heat and air movement to dispose of wastewater.

Energy Requirements—Hardboard/Insulation Board Segment. BPT—In the S1S hardboard subcategory two of the seven plants will have an additional energy requirement of 1,200 megawatts per year to achieve the BPT level of control. One of the five plants producing S2S hardboard and thermomechanical insulation board will have an additional energy requirement of 6,700 megawatts per year to achieve to BPT level of control.

One of the three plants producing S1S and S2S hardboard will have an additional energy requirement of 27,360 megawatts to achieve the BPT level of control. The direct discharging segment of the insulation board industry will not have any additional energy requirements to achieve the BPT level of control.

BCT—In the S1S subcategory four plants will have an additional energy requirement of 3,140 megawatts per year to achieve the BCT level of control. One plant producing S2S hardboard and thermomechanical insulation board will have an additional energy requirement of 800 megawatts per year to achieve the BCT level of control. One plant producing S1S and S2S hardboard will have an additional energy requirement of 40 megawatts to achieve the BCT level of control.

XXIII. Best Management Practices

Section 304(e) of the Clean Water Act gives the Administrator authority to prescribe "best management practices" (BMP's), as described under Authority and Background. EPA intends to develop BMP's which are: (1) applicable to all industrial sites; (2) applicable to a designated industrial category; and (3) offer guidance to permit authorities in establishing BMP's required by unique circumstances for a given plant.

This rulemaking does not address BMP's applicable to the wood preserving, hardboard or insulation board segments, or other segments of the timber products industry. The technical study supporting the regulations presented here was completed before the passage of the Water Quality Act Amendments of 1977, the law that gives the Agency responsibility for developing BMPs. Rather than delay the publication of the regulations included in this rulemaking, the BMP publication will be postponed. The Agency plans to develop BMP support information in the near future. Areas of interest include: minimizing contamination of precipitation, controlling runoff from raw material storage areas, control of spillage or leaks, and sludge disposal.

XXIV. Upset and Bypass Provisions

An issue of recurrent concern has been whether industry guidelines should include provisions authorizing noncompliance with effluent limitations during periods of "upset" or "bypass." An upset, sometimes called an "excursion," is unintentional noncomplience occurring for reasons beyond the reasonable control of the permittee. It has been argued that an upset provision in EPA's effluent limitations guidelines is necessary because such upsets will inevitably occur because of limitations in even properly operated control equipment. Because technology-based limitations are to require only what technology can achieve, it is claimed that liability for such situations is improper. When confronted with this issue, courts have divided on the question whether an explicit upset or excursion exemption is necessary, or whether upset or excursion incidents may be handled through EPA's exercise of enforcement discretion. Compare *Marathon Oil Co.* v. *EPA*, 564 F. 2d 1253 (9th Cir. 1977) with *Weyerhaeuser* v. *Costle, supra* and *Corn Refiners Association, et al.* v. *Costle*, No. 78–1069 (8th Cir., April 2, 1979). See also *American Petroleum Institute* v. *EPA*, 540 F. 2d 1023 (10th Cir. 1976); *CPC International, Inc.* v. *Train*, 540 F. 2d 1320 (8th Cir. 1976); *FMC Corp.* v. *Train*, 539 F. 2d 973 (4th Cir. 1976).

While an upset is an unintentional episode during which effluent limits are exceeded, a bypass is an act of intentional noncompliance during which waste treatment facilities are circumvented in emergency situations. Bypass provisions have, in the past, been included in NPDES permits.

EPA has determined that both upset and bypass provisions should be included in NPDES permits and has recently promulgated NPDES regulations which include upset and bypass permit provisions (See 44 FR 32854 (June 7, 1979)). The upset provision establishes

an upset as an affirmative defense to prosecution for violation of technology-based effluent limitations. The bypass provision authorizes bypassing to prevent loss of life, personal injury or severe property damage. Consequently, although permittees in the timber industry will be entitled to upset and bypass provisions in NPDES permits, these proposed regulations do not address these issues.

XXV. Variances and Modifications

Upon the promulgation of final regulations, the effluent limitations for the appropriate subcategory must be applied in all federal and state NPDES permits thereafter issued to timber industry direct dischargers. In addition, on promulgation, the pretreatment limitations are directly applicable to indirect dischargers.

For the BPT and BCT effluent limitations, the only exception to the binding limitations is EPA's "fundamentally different factors" variance. See *E. I. du Pont de Nemours & Co.* v. *Train*, 430 U.S. 112 (1977); *Weyerhaeuser Co.* v. *Costle, supra.* This variance recognizes factors concerning a particular discharger which are fundamentally different from the factors considered in this rulemaking. Although this variance clause was set forth in EPA's 1973–1976 industry regulations, it now will be included in the NPDES regulations and will not be included in the timber or other industry regulations. See the final NPDES regulations at 40 CFR 125.30, 44 FR 32854 (June 7, 1979) for the text and explanation of the "fundamentally different factors" variance.

Pretreatment standards for existing sources are subject to the "fundamentally different factors" variance and credits for pollutants removed by POTW. (See 40 CFR §§ 403.7, 403.13; 43 FR 27736 (June 26, 1978)). Pretreatment standards for new sources are subject only to the credits provision in 40 CFR § 403.7. New source performance standards are not subject to EPA's "fundamentally different factors" variance or any statutory or regulatory modifications. See *du Pont* v. *Train, supra.*

XXVI. Relationship to NPDES Permits

The BCT and NSPS limitations in these regulations will be applied to individual timber products processing plants through NPDES permits issued by EPA or approved state agencies, under Section 402 of the Act. The preceding section of this preamble discussed the binding effect of these regulations on NPDES permits, except to the extent that variances and modifications are expressly authorized. This section describes several other aspects of the interaction of these regulations and NPDES permits.

First, one matter which has been subject to different judicial views is the scope of NPDES permit proceedings in the absence of effluent limitations guidelines and standards. Under currently applicable EPA regulations, states and EPA Regions issuing NPDES permits prior to promulgation of these regulations must include a "reopener clause," providing for permits to be modified to incorporate "toxics" regulations when they are promulgated. (See 43 FR 22159 (May 23, 1978)). To avoid cumbersome modification procedures, EPA has adopted a policy of issuing short-term permits, with a view toward issuing long-term permits only after promulgation of these and other BAT regulations. The Agency has published rules designed to encourage states to do the same. (See 43 FR 58066 (Dec. 11, 1978)). However, in the event that EPA finds it necessary to issue long term permits prior to promulgation of BAT regulations, EPA and states will follow essentially the same procedures utilized in many cases of initial permit issuance. The appropriate technology levels and limitations will be assessed by the permit issuer on a case-by-case basis, on consideration of the statutory factors. (See *U.S. Steel Corp.* v. *Train*, 556 F. 2d 822, 844, 854 (7th Cir. 1977)). In these situations, EPA documents and draft documents (including these proposed regulations and supporting documents) are relevant evidence, but not binding, in NPDES permit proceedings. (See 44 FR 32854 (June 7, 1979)).

Another noteworthy topic is the effect of these regulations on the powers of NPDES permit issuing authorities. The promulgation of these regulations does not restrict the power of any permit-issuing authority to act in any manner not inconsistent with law or these or any other EPA regulations, guidelines or policy. For example, the fact that these regulations do not control a particular pollutant does not preclude the permit issuer from limiting such pollutant on a case-by-case basis when necessary to carry out the purposes of the Act. In addition, to the extent that state water quality standards or other provisions of state or Federal law require limitation of pollutants not covered by these regulations (or require more stringent limitations on covered pollutants), such limitations must be applied by the permit-issuing authority.

One additional topic that warrants discussion is the operation of EPA's NPDES enforcement program, many aspects of which have been considered in developing these regulations. The Agency wishes to emphasize that, although the Clean Water Act is a strict liability statute, the initiation of enforcement proceedings by EPA is discretionary. EPA has exercised and intends to exercise that discretion in a manner which recognizes and promotes good faith compliance efforts and conserves enforcement resources for those who fail to make good faith efforts to comply with the Act.

XXVII. Small Business Administration Financial Assistance

Two SBA programs may be important sources of funding for the Timber Products Processing Industry Point Source Category. They are the SBA's Economic Injury Loan Program and the Pollution Control Financing Guarantees.

Section 8 of the FWPCA authorizes the SBA through its Economic Injury Loan Program to make loans to assist small business concerns in effecting additions to or alterations in equipment, facilities, or methods of operation in order to meet water pollution control requirements under the Federal Water Pollution Control Act if the concern is likely to suffer a substantial economic injury without such assistance. This program is open to small business firms as defined by the Small Business Administration. Loans can be made either directly by SBA or through a bank using an SBA guarantee. The interest on direct loans depends on the cost of money to the federal government and is currently set at 7⅜ percent. Loan repayment periods may extend up to thirty years depending on the ability of the firm to repay the loan and the useful life of the equipment. SBA loans made through banks are at somewhat higher interest rates.

Firms in the Timber Products Processing Industry Point Source Category may be eligible for direct or indirect SBA loans. For further details on this Federal loan program write or telephone any of the following individuals at EPA Headquarters or in the ten EPA Regional offices:

Coordinator—Mr. Sheldon Sacks, Environmental Protection Agency, Financial Assistance Coordinator, Office of Analysis and Evaluation (WH–586), 401 M Street, S.W., Washington, D.C. 20460, Telephone: (202) 755–3624.

Region I—Mr. Ted Landry or Gerald DeGaetno, Environmental Protection Agency, J. F. Kennedy Federal Office Building, Room 2203, Boston, Massachusetts 02203, Telephone: (617) 223–5061.

Region II—Mr. Kenneth Eng, Chief, Air and Environmental Applications Section,

Environmental Protection Agency, 26 Federal Plaza, New York, New York 10007, Telephone: (212) 264–4711.

Region III—Mr. Chuck Sapp, Environmental Protection Agency, Curtis Building, 3EN40, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, Telephone: (215) 597–9433.

Region IV—Mr. John Hurlebaus, Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30308, Telephone: (404) 881–4793.

Region V—Mr. Chester Marcyn, Contingency Plan Coordinator, Surveillance and Analysis Branch, Enforcement Division, Environmental Protection Agency, 536 South Clark Street, Chicago, Illinois 60605, AC (213) 353–2316.

Region VI—Ms. Jan Horn, Attorney, Water Enforcement Division, Water Program Branch, Environmental Protection Agency, 1st International Building, 1201 Elm Street, Dallas, Texas 75270, Telephone: (214) 767–2760.

Region VII—Mr. Donald Sandifer, Sanitary Engineer, Water Division, Engineering Branch, Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106, Telephone: (816) 374–2725.

Region VIII—Mr. Gerald Burke, Sanitary Engineer, Office of Grants, Water Division, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80203, Telephone: (303) 837–3961.

Region IX—Mr. Stan Leibowitz or Ray Seid, Permits Branch, Enforcement Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94111, Telephone: (415) 556–3450.

Region X—Mr. Dan Bodien, Special Technical Advisor, Enforcement Division, Environmental Protection Agency, 1200 6th Avenue, Seattle, Washington 98101, Telephone: (206) 442–1270.

Headquarters—Mr. Donnel Nantkes, Legal Counsel, Grants Contracts and General Administration Division, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Telephone: (202) 426–8830.

Interested persons may also contact the Assistant Regional Administrators for Finance and Investment in the Small Business Administration Regional offices for more details on federal loan assistance programs. For further information, write or telephone any of the following individuals:

Region I—Mr. Russell Berry, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 60 Batterymarch, 10th Floor, Boston, Massachusetts 02203, Telephone: (617) 223–3891.

Region II—Mr. John Axiotakis, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 26 Federal Plaza, New York, New York 10007, Telephone: (212) 264–1452.

Region III—Mr. David Malone, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 231 St. Asapas Road, West Lobby, Suite 646, Bala Cynwyd, Pennsylvania 19004, Telephone: (215) 596–5908.

Region IV—Mr. Merritt Scoggins, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 1401 Peachtree Street, N.E., Atlanta, Georgia 30309, Telephone: (404) 881–2009.

Region V—Mr. Larry Cherry, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 219 South Dearborn Street, Chicago, Illinois 60604, Telephone: (312) 353–4533.

Region VI—Mr. Donald Beaver, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 1720 Regal Row, Suite 230, Dallas, Texas 75202, Telephone: (214) 749–1265.

Region VII—Mr. Richard Whitley, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 911 Walnut Street, 23rd Floor, Kansas City, Missouri 64106, Telephone: (816) 374–3927.

Region VIII—Mr. James Chuculate, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 1405 Curtis Street, Executive Tower Building—22nd Floor, Denver, Colorado 80202, Telephone: (303) 327–3988.

Region IX—Mr. Charles Hertzberg, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 450 Golden Gate Avenue, San Francisco, California 94102, Telephone: (415) 556–7782.

Region X—Mr. Jack Welles, Regional Administrator for Finance and Investment, Small Business Administration, 710 2d Avenue, Dexter Horton Bldg.—5th floor, Seattle, Washington 98104, Telephone: (206) 399–5679.

In addition to the Economic Injury Loan Program, the Small Business Investment Act, as amended by Public Law 94–305, authorizes SBA to guarantee the payments on qualified contracts entered into by eligible small businesses to acquire needed pollution facilities when the financing is provided through taxable and tax-exempt revenue or pollution control bonds. This program is open to all eligible small businesses. Bond financing with SBA's guarantee of the payments makes available long term (20–25 years), low interest (usually 5 to 7 percent) financing to small businesses on the same basis as that available to larger national or international companies. For further details on this program write to the SBA, Pollution Control Financing Division, Office of Special Guarantees, 1815 North Lynn St., Magazine Bldg., Rosslyn, VA 22209 (703) 235–2900.

XXVIII. Summary of Public Participation

On October 21, 1978, the Agency circulated for public comment a draft technical report to a number of interested parties. The report was available to members of the American Wood Preservers Institute-Environmental Advisory Group, the American Hardboard Association-Environmental Advisory Group, all insulation board producing companies, the Natural Resources Defense Council, the U.S. Department of Commerce, EPA Regional Offices, EPA Regional libraries and all States that have authority to issue National Pollution Discharge Elimination System (NPDES) permits. This document included the technical information that served as the basis for the regulations proposed at this time, but did not make recommendations or present conclusions. Reviewers of the technical report were asked to forward to the Agency their written comments by November 23, 1978; they also were invited to a meeting December 7, 1978 where they could discuss their comments with the technical, economic impact, legal, water quality, and toxic criteria staffs of the Agency. In addition, on December 1, 1978, the Agency circulated for public comment draft economic reports to the same parties who received the technical draft. The reports assessed the potential economic impact of the various control options under consideration by the Agency at that time. Participants were asked to submit their comments by January 3, 1979. A brief summary of the comments received is presented here.

1. *Comment:* One participant stated that although 216 wood preserving plants responded to the technical Data Collection Portfolio (DCP), the effort was severely flawed because the definition of the term "process wastewater" contained in the DCP differed from the definition in the existing regulation. The same participant also suggested that the Agency develop a definition of process wastewater which accurately reflects the waters which contribute to the overall volume of water requiring treatment. This would include precipitation falling in the immediate area of the retort (treating cylinder), boiler blowdown, etc.

Response: EPA purposely expanded the definition of "process wastewater" from the definition in the existing regulation. Respondents were requested to identify, characterize, and provide historical data on each of these sources of water. The Agency then used this data base to reevaluate the suitability of the existing definition of "process wastewater" for these proposed regulations. Rather than impairing the accuracy of the data, the expanded definition contained in the DCP, and the numerous telephone follow-ups confirming the interpretation of the responses, actually enhances understanding of each contributing source of wastewater in the wood preserving industry.

The plant-by-plant cost estimates for compliance with alternative treatment technologies were based on actual water flows reported by each plant. This included sources such as boiler blowdown, steam condensate, and rainwater falling in the immediate vicinity of the retorts which might be mixed with the process generated wastewater; the reported flows specifically excluded run-off from raw material or finished product storage areas and general yard runoff. The proposed regulations here are based on the same process wastewater definition previously promulgated.

The new regulations will not apply to boiler blowdown, noncontact cooling water, and run-off from raw material or finished product storage areas; precipitation on the immediate area of the retort is included in the definition of process wastewater. Runoff from raw material and finished product storage areas might be addressed later in a review of Best Management Practices (BMP) of the industry.

2. *Comment:* One participant expressed concern that wood preserving industry members who cooperated with the Agency's contractor during the sampling program were not advised of the data results in order that they could compare these with other available data.

Response: Analytical results from the screening sampling program conducted in November 1976 through January 1977 were mailed to participating plants for their review on June 23, 1977. Analytical results from the 1977 verification sampling program were published in the draft contractor's technical report in July 1977, copies of which were provided to each member of the American Wood Preservers Institute (AWPI) Environmental Advisory Group. Although the Agency coded the pollutant data in the draft report to insure confidentiality, plants and companies that requested their codes received them. Analytical results from the 1978 verification sampling program were mailed to participating plants for their review on June 30, 1978.

3. *Comment:* One participant stated that the limited sampling of wood preserving plants was not sufficient to produce statistically representative results.

Response: The data base used to formulate these proposed regulations included 16 plants that were sampled for conventional pollutants, heavy metals, and PCP during the 1975 Pretreatment study; six plants that were sampled for conventional pollutants, pentachlorophenol (PCP), heavy metals, and base neutral extractives (specific phenolics other than PCP and volatile organic data) during the 1977 verification program; and five plants that were sampled for conventional pollutants, PCP, heavy metals, specific phenolics, base neutral extractives and volatile organic compounds during the 1978 verification program. The 1975 study collected a minimum of two grab samples per sampling point, and the remaining studies collected three 24-hour composites per sampling point. The resulting data indicated that toxic pollutants are present in sufficient quantities in the process wastewater of the wood preserving segment to warrant consideration of effluent limitations.

4. *Comment:* Two comments suggested that evaporation techniques work well in areas of low relative humidity and low rainfall but are not necessarily well suited to all geographical areas of the country.

Response: Although the Agency recognizes that evaporation techniques are easier to apply in areas of low relative humidity and low rainfall, these techniques are employed successfully by plants in areas of high humidity and high rainfall along the coasts of the Gulf of Mexico and the Pacific Northwest. The Development Document contains information on the feasibility of evaporative techniques in differing climactic extremes. EPA prepared cost estimates of evaporation systems using "worst case," i.e., high humidity, high rainfall, climatic conditions for the geographical area in which the plants are located.

5. *Comment:* In reference to forced evaporation technology for Boulton plants, one participant stated that external heat is frequently required to evaporate excess rainwater and process wastewater, and that this technology carries significant operating costs in addition to the energy cost, including costs for coil cleaning and disposal of solids.

Response: The Agency recognizes that an external heat source will be required to ensure that all wastewaters, intermittent included, are evaporated in a cooling tower/forced evaporation system using heat recovered from condensed vapors during the vacuum cycle of the Boulton conditioning process. Proper management and segregation of wastewater sources within the plant can minimize the amount of process wastewater requiring evaporation. Cost estimates reported in the Development Document for the model plants and for adoption of the system by existing plants, include operating expenses for external energy, maintenance, and disposal of residues.

6. *Comment:* One comment addressed the validity of data presented in the contractors draft report that associated a greater volume of process wastewater with plants that treat a significant amount of dry stock than with plants that use closed steaming preconditioning.

Response: The data presented in the document were provided by the plants in their response to the DCP; additionally each of the plants was contacted during a follow-up telephone survey to ensure proper interpretation of the data. Many of the plants listed as treating predominantly dry stock also treat a considerable amount of green stock by open or modified (semi-closed) steam conditioning.

7. *Comment:* The Agency received two comments which stated that activated carbon technology is inappropriate for the wood preserving industry because it is not sufficiently proven and is too costly.

Response: The Agency recognizes the lack of full-scale operating data on activated carbon technology applications in the wood preserving industry. The installation and operation of activated carbon technology is expensive. Activated carbon was evaluated as a candidate treatment technology based on successful applications in related industries, and the relative affinity of phenols, including PCP, for adsorption on activated carbon.

8. *Comment:* Two comments requested EPA to address the applicability of spray irrigation techniques in particular situations.

Response: The Agency recognizes spray irrigation technology as a viable alternative to evaporation for achieving no discharge of process wastewater under favorable hydrological conditions. One Boulton plant and ten steaming plants currently eliminate discharge of process wastewater through application of spray irrigation technology, usually following oil-water separation and biological treatment. Section VII of the Development Document has been expanded to include a more detailed discussion of this technology. Spray irrigation is generally more expensive and more land intensive than evaporation technology, and requires suitable soil conditions.

9. *Comment:* One participant noted that flocculation/filtration, the technological basis for existing pretreatment standards for the wood preserving segment, results in phenols levels (as measured by Standard Methods) nearly as low as the phenols levels resulting from biological treatment, and the removal of polynuclear aromatics (PNAs) equals,

and in some cases exceeds, the removals of PNAs achieved by biological treatment. The participant concluded that further regulation of the indirect discharging segment was not necessary.

Response: The Development Document shows that pentchorophenol (PCP), a compound not measured by the *Standard Methods* procedures, is reduced 97 percent by industry biological treatment systems (long-term). Flocculation/filtration technology reduces PCP about 83 percent. PCP levels after industrial (long-term) biological treatment are as low as 1 mg/1, while levels after flocculation/filtration average 12 to 15 mg/1. Because biological treatment reduces PCP levels more effectively, it was considered as a pretreatment technology.

10. *Comment:* One participant stated that air pollution considerations might preclude the use of evaporation technology within a local air management district.

Response: In August 1979, the Office of Research and Development obtained preliminary analytical data from a labortory scale evaporation system using wood preserving wastewater that indicated that pentachlorophenol was being transferred to the air. The Agency is planning sampling and analysis at a number of wood preserving plants currently practicing evaporation technology to dispose of wastewater. The information resulting from this study will be considered in the promulgation phase of this relemaking. Information is solicited on this question later in this preamble.

11. *Comment:* One participant stated that the cost estimates for primary oil/water separation reported in the draft technical document are understated, while another felt that dollar values of materials recovered thourgh oil separation facilities should not be deducted from annual costs of pollution control.

Response: As described in the Development Document, the value of the oil recovered in the total primary oil recovery system (which includes rough separation tanks and API-type separators) is sufficient to reduce the overall capital costs and annual operating cost allocated to pollution control to one-half of the cost of the primary oil recovery system. Because the cost of BPT and the existing pretreatment standards (promulgated in 1976) inlcude primary oil removal costs, the plant-by-plant cost estimates did not inlcude any costs for primary oil separation equipment.

12. *Comment:* One participant stated that the contractor's draft report failed to acknowledge the additional time required for the closed steaming process (as compared to other steam conditioning methods) and made no mention of the quality control problems presented by this process.

Response: The Agency has recognized these coments on time and quality control problems associated with the closed steaming process, has conisdered them in the development of these proposed regulations, and has incorporated them into the Development Document. The practice of closed or semi-closed steaming is not required by the proposed regulations, but is presented as an optional procedure, to be considered where appropriate.

13. *Comment:* Several participants indicated that their costs of sludge disposal were greater than those estimated in the contractor's draft report. These higher costs are attributed to shipping this sludge long distances to approved landfills.

Response: The sludge disposal costs presented in the contractor's draft report were based on information received in the DCP. The Agency recognizes that some plants may experience sludge disposal costs greater than normal.

14. *Comment:* One participant note that the provisions of the Coastal Zone Management Act might prevent the construction of aerated or facultative lagoons at a particular plant site. The participant noted that the cost of land needed to construct additional treatment facilities adjacent to two existing wood preserving plants located in urban areas in the Pacific Northwest is over $200,000 per acre, much greater than the value of the land used in estimating costs containing in the technical document.

Response: The Agency recognizes that all the treatment and control options may not be appropriate for all wood preserving facilities. In the event that a specific facility is not able to meet a promulgated effluent limitation or standard because of a unique situation, such as being subject to the Costal Zone Management Act, or prohibitive land costs, the variance provisions discussed above are available. Land costs were assumed at $10,000 per acre for the installation of wastewater treatment systems. Although $10,000 per acre land may not be available to all plants, the Agency believes that this is a reasonable estimate.

15. *Comment:* One comment stated that the control technologies as redefined in the 1977 Amendments to the Federal water Pollution Control Act, Section 304(b)(2)(B)(4) have not been properly described. The participant pointed out that BAT applies to toxic pollutants, otherwise BCT is applicable. Further, in the BCT there is the test of reasonableness to be applied and BAT is that which is economically achievable.

Response: The contractor's draft report contained technical information only for Agency use in developing effluent guidelines and standards. The contractor's draft report did not address statutory requirements of the Act. Earlier sections of this preamble address the statutory requirements of the Act.

16. *Comment:* A comment was made that in Section I of the contractor's draft report, *"Conclusion,"* the obvious conclusion should be that BCT is the control technology to be applied to the wet process hardboard segment.

Response: The Agency directed the contractor not to include conclusions or recommendations in the draft report. EPA's review of the report has determined that BCT is the appropriate effluent limitation basis for the wet process hardboard and the insulation board segments of the industry.

17. *Comment:* One participant felt that the variation in raw materials from plant to plant in the hardboard/insulation board segment was sufficient to justify classification on the basis of raw material.

Response: The Agency acknowledges that variation in raw materials from plant to plant affects the raw waste load generated. Subcategorization, as presented in the Development Document, considers the variation in raw material among plants and its affect on effluent BOD5 and TSS variability. The Agency has found that the differences in raw waste loads support two subcategories in the hardboard segment, but do not support a plant by plant subcategorization.

18. *Comment:* One participant stated that previously excluded sources of wastewater in the insulation board/hardboard industry have now been included.

Response: As discussed in the response to Comment 1, the DCP purposely expanded the definition of process wastewater for information collection purposes. The definition of process wastewater in the proposed regulation is the same as that in the previously existing regulations for this industry.

19. *Comment:* One participant felt that Figure V–1 in the technical document, Variation of BOD with Pre-heating Pressure, should not be considered applicable for the United States, and should be deleted because it was based on a 7 day BOD, rather than a 5 day BOD.

Response: The figure in question is based on data collected in a scientific

study relating BOD loading to pre-heating temperature. The figure is used for illustrative purposes in the Development Document and is not used to quantify raw wastewater BOD loadings.

20. *Comment:* One comment questioned the accuracy of a footnote to Table V–22 of the contractor's draft report which indicated that 41.4 lbs/ton of BOD of the reported 41.6 lbs/ton of BOD in the raw waste load from plant 97 entered the process through the recycle of treated effluent. This would mean that only 0.2 lbs/ton of BOD is instantaneously generated.

Response: The footnote was in error and has been corrected for the Development Document. Of the 41.6 lbs/ton of BOD reported in the raw waste load for this plant, 0.2 lbs/ton entered the process through recycle of treated effluent and 41.4 lbs/ton is the instantaneously generated raw waste load.

21. *Comment:* The Agency received one comment on the toxic pollutant content of wastewaters from the hardboard/insulation board segment. The commenter requested that a statement be included in the Development Document to the effect that "these numbers as reported will not be properly used in establishing a level of discharge conditions of a permit." Apparently, this request was based upon the participant's question of protocol, procedures of analysis, and sample base.

Response: The proposed regulations do not establish numerical limitations on toxic pollutants for this segment. The limitations are based on performance of wastewater treatment and control technologies currently practiced in the industry. The "Relationship to NPDES Permits" section of this preamble addresses the question of application and enforcement of these regulations on timber industry plants.

22. *Comment:* One participant questioned the use of biological treatment prior to disposal of hardboard or insulation board wastewater by spray irrigation.

Response: The Agency agrees that biological treatment prior to spray irrigation of hardboard and insulation board effluents may not always be required, because allowable BOD*5* loadings for spray irrigation depend on site-specific soil conditions. For the purposes of presenting NSPS cost information, however, the Agency assumed that biological treatment would be required in order that NSPS costs not be underestimated. The proposed regulations do not require the application of any specific technology or technology train.

23. *Comment:* One comment claimed that the term "new source" was not clearly defined and that the cost estimates in the contractor's draft report applied only to greenfield plants and not to expansions of existing plants.

Response: The costs presented for new sources do apply to "greenfield" plants. Neither the contractor's draft report nor the Development Document include costs of water pollution control associated with the expansion of existing plants. Regulations for NPDES (40 CFR 122.47) 43 FR 32915 (June 7, 1979) state that: "The modification of an existing source by . . . the addition of such (process) equipment on the site of the existing source which results in a change in the nature or quantity of pollutants discharged is not a new source under this section." Such plant expansions are covered by permit modification provisions of 40 CFR 122.31.

24. *Comment:* One participant questioned the differences in biological treatment and related costs between Candidate Treatment Technology B and Candidate Treatment Technology C as presented in the contractor's draft report.

Response: The biological treatment systems in Candidate Treatment Technology B for the insulation board/hardboard subcategories were designed for a BOD*5* removal of approximately 99 percent. The biological treatment systems in Technology C for the insulation board subcategories were designed for a BOD*5* removal of approximately 89 percent. For the hardboard subcategories, the biological treatment systems in Technology C were designed for a BOD*5* removal of approximately 93 percent. The differences in costs for the biological treatment systems of Candidate Treatment Technologies B and C are a function of the differences in BOD*5* removals. Systems designed for higher BOD*5* removals will cost more because of increased aeration costs and longer detention times.

25. *Comment:* One participant questioned estimation of sludge production in cubic yards per ton, and felt that the presentation of estimated metals content of the sludge resulting from wastewater treatment was inappropriate.

Response: The sludge generation information in the contractor's draft report came from the information provided in the DCP. The Development Document presents *estimated* metals quantities, assuming that the metals content of the sludge equals the raw wastewater metals, minus the treated effluent metals, with the mass of sludge being generated as a known factor. The Agency acknowledges that sludge generation data provided in the DCP varied; plants practice varying degrees of sludge recycling, and different methods of sludge handling and disposal. The Agency is conducting further studies to quantify the metals content (and organic toxics) of sludges resulting from wastewater treatment.

26. *Comment:* A comment was made that the use of chemical coagulants is not uniformly applicable to the insulation board/hardboard subcategories; several instances have been noted where the required additive rates are at levels which are cost prohibitive.

Response: At least two plants in the hardboard/insulation board segment are using chemically assisted coagulation. Although these plants find this practice beneficial to operation and pollution control, other plants have attempted to use coagulants without apparent success. The Agency agrees that chemically assisted coagulation has not been adequately demonstrated to be considered applicable to all plants.

27. *Comment:* One participant asserted that the application of proposed NSPS to a greenfield plant would make it economically impossible for the hardboard industry to construct such facilities.

Response: The process water control and treatment technologies considered applicable to new sources in the hardboard/insulation board industry are currently practiced by plants in the segment. The technologies are presented not as requirements, but as options. For a potential new source, one of these options might be more appropriate than another. The information presented addresses the technical feasibility, applicability of these options, and the installation and operating costs.

The economic impact analysis does not anticipate the construction of greenfield wet process hardboard plants between now and 1985. This is because it is less expensive for the industry to increase capacity through incremental expansion of existing plants, or through conversion of insulation board capacity (where excess capacity is expected) to hardboard production. In addition, pollution control costs are not substantially different for greenfield plants than for other methods of industry expansion. Therefore, EPA does not expect the proposed NSPS to affect significantly the construction of greenfield plants.

28. *Comment:* One participant stated that the average annual gross

production reported for one plant in the technical document was in error. The production reported in the document was actually the shipped panel production and not gross production as stated.

Response: The Agency had made previous attempts to clarify the production data reported by this plant. The corrected gross production figure is included in both the Development Document and in the analysis of raw and treated waste loads generated and discharged.

29. *Comment:* A participant questioned whether the plants' raw waste load data presented throughout the contractor's draft report reflected only the 1977 data.

Response: All raw waste load data in the Development Document reflect historical plant data from the latest period for which data was available, usually calendar year 1977 and in some cases 1976. If the waste loads are developed from a different data base, it is noted in the Development Document.

30. *Comment:* A participant questioned if the same analytical technique for total phenols was used for the 1977 and 1978 verification sampling programs, and what technique was used.

Response: The 4-aminoantipyrine (4-AAP) *Standard Method* was used during both the 1977 and 1978 verification sampling programs.

31. *Comment:* One comment concerned the presence of 10 μg/l of toluene in a plant's intake water, the source being a natural stream which flows through forest land receiving no industrial wastewater discharges.

Response: Toluene was found, at 10 mg/l in the plant intake water. This may have been a false positive indication, due to the fact that the concentration observed was at the limit of analytical confidence.

32. *Comment:* One comment questioned the mercury concentration of 0.018 mg/l in the plant's raw wastewater when the plant was sampled by the Agency's contractor in March 1978. The raw wastewater was sampled by the plant in November 1978; analytical results showed 0.0013 mg/l mercury on that date.

Response: The verification sampling and analysis was conducted in March 1978, five months prior to the plant's analysis. Although the Agency was not able to determine the source of the mercury, it is possible that the watershed from which the stream receives runoff or the soil from which the trees were harvested during the period of verification sampling contained high levels of mercury.

33. *Comment:* A comment was made that the annual operating and energy costs of compliance presented in Table VIII–87 (hardboard segment costs of compliance for individual plants—direct dischargers) seemed low when compared with the current treatment costs for these plants.

Response: The costs of compliance presented in the draft report and in the Development Document reflect incremental costs above and beyond the plant's current level of treatment and do not reflect total costs presently incurred by the plant.

34. *Comment:* Several participants expressed concern that the allowable treated effluent wasteloads for the candidate treatment technologies, which are based on actual annual average data for several plants, will not be attainable on a monthly basis because of seasonal variation in biological treatment system efficiency. Another participant felt that the application of a variability factor, based on 99 percent confidence with 50 percent probability, would not result in an attainable limitation on a daily basis.

Response: A variability factor applied to average treated effluent levels measures seasonal effects on biological treatment efficiency. The application of a variability factor, derived from an analysis of two years of treated effluent data from each plant's inplace biological treatment systems, and combined with bypass and upset provisions, will result in a fair and equitable effluent guidelines limitation. The variability factor itself is influenced by treatment system performance during periods of cold weather.

35. *Comment:* One participant felt that the presentation of total phenols as measured by *Standard Methods* could be confused with the data for phenol itself. Furthermore, the comment was made that analysis of total phenols is inappropriately applied to raw wastewaters from the insulation board/hardboard industry because they indicate the presence of a great many wood derived compounds with a phenolic core structure which are not toxic pollutants and have not been identified as harmful to aquatic life or other water uses.

Response: Phenols, as measured by the *Standard Methods* procedure has been identified by the Administrator as a toxic pollutant. The *Standard Methods* phenol data presented in the Developement Document is identified as such to eliminate confusion between *Standard Methods* phenols and the specific compound phenol (C_6H_5OH). The *Standard Methods* procedure measures a class of compounds including phenol, ortho- and meta-substituted phenols and, under the proper conditions of pH, certain para-substituted phenolics. It is acknowledged that wood derived compounds with a phenolic core structure are measured by this method.

36. *Comment:* A comment was made that in presenting toxic pollutant concentration data which are at or near the detection limit for the analytical techniques employed, the data should be accompanied by an indication of the precision that can be associated with a given result. Another comment recommended that sample handling, sample preservation techniques, and the presence of substances in the wastewater other than those of interest be evaluated for their effects on the precision, accuracy, and limits of detection of the Gas Chromatography/Mass Spectrophotometry analysis of organic compounds.

Response: The Agency agrees that analytical data should be accompanied by a discussion of analytical precision. Precision and accuracy studies were not conducted during this current review of the timber industry. The Agency has precision and accuracy studies under way and is soliciting information regarding this issue later in this preamble. Nonetheless, the regulations proposed here are based on wastewater control and treatment technologies as they are currently demonstrated in the industry.

37. *Comment:* A comment noted that all rainwater falling in the immediate vicinity of the treating area should be included in the estimates of rainfall runoff which becomes mixed with process wastewater.

Response: The Agency recognizes that rainwater falling in the immediate vicinity of the retorts may become mixed with other process generated wastewater and includes it in the definition of "process wastewater" set forth in this proposed regulation. Sampling data on plants presented in the Development Document include the contribution of this wastewater source, as did all cost estimates for both model plants and the plant-by-plant cost estimates for compliance. In estimating the runoff quantities in question, it was assumed that all rainwater falling in the immediate vicinity of the treating area, as defined in the Development Document, would become mixed with process wastewater.

38. *Comment:* Two comments stated that realistic consideration was not given to the influence of rainwater runoff and geological conditions in different areas of the country on wastewater quantity and quality.

Response: The proposed regulation excludes rainwater runoff from all areas other than runoff from the immediate vicinity of the treating cylinders which actually becomes mixed with process wastewater. The plant-by-plant cost estimates presented in the Development Document used location specific rainfall data obtained from NOAA publications. Unchanneled or uncollected runoff from raw material or finished product storage areas and other areas of the plant is a nonpoint pollution source which may be addressed at a later date in a review of Best Management Practices (BMP) of the industry.

39. *Comment:* One comment stated that toxic pollutant base neutral extractives data obtained during verification sampling at one wood preserving plant are either in error, or reflect unusal or upset conditions because they do not agree with data obtained at two other plants and do not compare with data obtained at the same plant one year earlier. The participant requests that the data in question be deleted.

Response: The base neutral extractives data for PNAs reported for the plant in question are an average of three data points each representing a single 24-hour composite. Further review of these data indicates that the PNA concentrations for one of these three data points is indeed a statistical outlier which can be deleted from the data base as unrepresentative. The values reported for parameters such as oil and grease, COD, phenols, and other toxic pollutants in the same sample show no significant evidence of upset or unusual conditions, nor were unusual conditions or upset reported by the plant or sample team during sampling. The outlier will be deleted from the data base, and the concentrations of PNAs reported for this plant will be based on the average of the remaining two 24-hour composites obtained at the plant.

40. *Comment:* One participant requested that the requirements of the regulations recently proposed pursuant to the Resource Conservation and Recovery Act (RCRA) be addressed in this rulemaking.

Response: It is difficult to determine the effects of RCRA on the wood preserving industry at this time. RCRA rules were proposed in December 1978 (43 FR 58946) and on August 22, 1979 (44 FR 49402). The proposed rule identifies a set of characteristics of hazardous waste. The wood preserving industry provided information to the Agency which indicated that wastewater sludge generated per 1000 cubic feet of production decreases by about 10 percent if a plant practicing current pretreatment technology elects to achieve no discharge status by evaporation. Sludge generated by a plant producing 5000 cubic feet per day of treated wood and achieving no discharge by evaporation is about 2.2 cubic feet per day.

41. *Comment:* One comment indicated that the contractor's draft report ignores the air pollution and related costs of the wood preserving treatment train of flocculation/filtration, followed by cooling tower evaporation. He noted that the application of flocculation followed by rapid sand filtration as a treatment option for new Boulton plants results in substantial heat loss from the effluent, and that the cost of heat replacement necessary to eliminate discharge through the cooling tower evaporation method makes the treatment system uneconomical.

Response: Cooling tower evaporation of Boulton process wastewater is and can be practiced following primary (gravity) oil separation. The treatment train presented in the contractor's draft report includes secondary oil separation before cooling tower evaporation. The contractor's draft report includes flocculation/filtration to further reduce the oil and grease concentration in the feed to the evaporation system. Evaporation efficiency is improved, and scaling, solids buildup, and overall equipment maintenance is reduced by decreasing the pollutant level in the feed water. The operating costs for this treatment train presented in Section VIII of the report assumed that the wastewater would be at ambient temperature when fed to the evaporation system. The energy costs presented in Section VIII are based on the requirements of raising the wastewater to evaporation temperature from ambient temperature.

42. *Comment:* One comment suggested that the economic impact analysis for wet process hardboard overlooked the competition from foreign producers, many of whom are in developing countries and so are not subject to tariffs. The comment further noted that future growth in demand may be satisfied by foreign production rather than domestic capacity expansion.

Response: Brazil, Argentina, Romania, and Korea face no U.S. tariffs. Most other importers pay ad valorem duties ranging from 7.5% to 30%. Imports are, however, very sensitive to economic conditions in the United States, and when the market for hardboard declined, imports also fall as a percentage of U.S. consumption. Imports generally satisfy the lower quality range in the hardboard market and it is believed that during periods of rapidly growing demand, domestic producers purchase foreign hardboard and concentrate on producing better quality products which improve profit margins. The United States is expected to remain a net importer of hardboard, but imports are not expected to preclude additional growth in U.S. capacity.

43. *Comment* One participant noted that the wood preserving industry is characterized by many plants which may be unable to finance pollution control costs. The participant recommended that consideration be given to extending federal and state guaranteed long term low interest loans to impacted plants.

Response: The Agency recognizes that the wood preserving industry is composed of many small plants which may have difficulty financing pollution control expenditures. Under Section 8 of the Clean Water Act, the Small Business Administration (SBA) is empowered to make loans to assist small business concerns to meet water pollution abatement requirements.

44. *Comment:* One comment suggested that the economic impact report's estimates of capital costs for new wood preserving plants were underestimated.

Response: The estimated cost in the draft report were based upon information provided by industry. However, the contractor re-examined these costs, and obtained further information from wood preserving companies and contacted equipment suppliers. Based upon these communications, the individual capital cost components were re-evaluated and were changed, as needed, in light of the additional information obtained.

45. *Comment:* One comment disputed the economic report's assertion that multi-plant companies may be able to raise prices and recover a portion of pollution control costs.

Response: While EPA recognizes that multi-plant companies do not always have this degree of market power at a specific location to raise prices, the Agency believes that multi-plant companies will frequently be able to raise prices to recover a portion of the control costs. Even so, the analysis of plant closures employed the conservative assumption that each plant is a stand alone operation that is unable to recover the cost of compliance through price increases.

46. *Comment:* One comment questioned the treating cycle times used in the characterization of operating costs for new wood preserving plants.

Response: Cycle times for wood preserving will depend upon wood species, moisture content, type of process employed and the degree of

preservation required. The data used in arriving at these assumptions were rechecked, and the Agency believes that the assumptions are reasonable.

XXIX. Solicitation of Comments

EPA invites and encourages the public to participate in this rulemaking by submitting written comments in response to this proposal. The Agency asks that if comments are submitted stating that this proposal record is incomplete, the participant specifically state the area of inadequacy and any suggestions for revision or modification by detailed information. The comment period allowed on this proposed rulemaking is sixty (60) days. This will allow adequate time for participants to conduct a thorough review of the proposed rulemaking and the supporting documents, and to prepare complete responses.

The Agency is particularly interested in receiving additional comments, data, and information in the following specific areas:

(1) The sampling and analytical methods used to determine the presence and magnitude of toxic pollutants are being reviewed by the Agency. Comments are solicited on the data produce by these methods, and the methods themselves.

(2) During the last three years, individual plants and companies have been collecting samples of untreated and treated wastewaters and analyzing them for the presence of toxic pollutants. Since the Agency has made the analytical data collected by the Agency and its contractors available to the public, we now ask that information and data assembled by individual plants, companies, as well as technical trade associations, public interest groups, state and regional pollution control offices, and others, be shared with the Agency. Further, any individuals or groups interested in generating additional data on toxic and potentially toxic pollutants in the timber products industry should contact Richard E. Williams for assistance and information.

(3) Although this rulemaking does not address Best Management Practices (BPM's) for the timber products industry, BMP's will be developed for future promulgation. The Agency is actively soliciting information, suggestions, and comments on BMP candidate practices.

(4) Characterization of the amounts and pollutant characteristics of sludges and other solid wastes generated by wood preserving, hardboard and insulation board process wastewater treatment systems, the handling and disposal techniques used, and the costs associated with sludge handling and disposal were considered in the development of these proposed rules. Any additional information related to these areas should be submitted to the Agency. The information will be considered in the final rulemaking and provided to the EPA Office of Solid Waste, the office with primary Agency responsibility for implementation of the Resource Conservation and Recovery Act (RCRA).

(5) Evaporation technology is one of the bases for new source performance standards and new source pretreatment standards for the wood preserving segment of the industry. No information is available to confirm or deny that workers in close proximity to wood preserving wastewater evaporation systems may be exposed to significant levels of toxic pollutants in the ambient air. Information is requested regarding worker contamination, illness, ailment, etc. related to exposure to wood preserving wastewater evaporation systems.

(6) In the even that reviewers of these proposed regulations and their supporting documents disagree with the cost information presented, the Agency asks participants to document that disagreement. In order to evaluate fully the comment, the Agency needs specific information on design and operating characteristics, and actual installed costs (not estimates) for each unit operation or piece of equipment. The information should include whether or not the equipment was purchased or built in-house, date of installation, whether or not it was installed by contractors or plant personnel, the costs associated with operation and maintenance, energy requirements (in kilowatt hours or equivalents), chemical usage, if any, the labor requirements of this waste treatment system (person-years or equivalent), and any other significant information.

(7) Section 304(b)(4) requires the Agency to establish Best Conventional Pollutuant Control Technology (BCT) for existing industrial point sources that discharge conventional pollutants (biochemical oxygen demand, total suspended solids, fecal coliform, pH, and oil and grease). Comments on the methodology used in the BCT analysis (discussed above), for the timber products industry are solicited and encouraged.

(8) The technical study serving as the support for the proposed regulations attempted to address the full range of treatment and control technologies, and practices and procedures, either in use, or capable of being applied to process wastewaters from the timber products industry. Reviewers of this proposal who are aware of any appropriate technologies not considered in this rulemaking are asked to provide information concerning these technologies to the Agency.

(9) In order to establish effluent limitations for the wet process hardboard and insulation board segments of the industry, the Agency conducted an analysis of variability to determine the daily and 30 day variabilities in the discharge from treatment systems in relation to the long term average discharge. EPA is soliciting comments on the use of the nonparametric analysis (as explained in detail in Section XIV of the Development Document) for determining variability factors.

(10) The Agency requests that reviewers of this proposal point out errors in data, tabulation, possible misinterpretation of industry submitted data, or any possible errors in the logic of these proposed rules. Comments of this nature should be documented with copies of the originally submitted information, together with either a discussion explaining the participant's interpretation of the data, or a discussion of the participant's logical approach to the rulemaking.

(11) The Agency requests that POTW, which receive wastewater from timber products industry plants, submit any pertinent data which would document the occurrence of interference with collection system and treatment plant operations, permit violations, sludge disposal difficulties, or other incidents attributable to the pollutants contained in these wastewaters.

(12) Information is requested regarding the transfer of toxic pollutants (in particular pentachlorphenol and polynuclear aromatics) from the water medium to the air medium resulting from the application of evaporation technology (pan evaporation, cooling tower evaporation, and spray evaporation) to wood preserving wastewaters. The Agency has not confirmed that intermedia transfer does occur; however, for some pollutants, the possibility exists. Information provided will be evaluated between proposal and promulgation of these regulations.

(13) The Agency's economic analysis suggests the possibility of closure within the timber industry. For hardboard plants which feel that the proposed standards would have a significant economic effect, the Agency requests information updating their response to the economic survey and forecasts they may have of production costs, prices, capacity utilization, markets, and any other variables relevant to a closure

decision. The bases of their forecasts should also be given. In addition, the Agency also requests information concerning costs of process modification (e.g. from wet process to dry process hardboard manufacture) and whether this would be a more cost effective method for severely affected facilities to comply with the regulation. The Agency also requests comments on the economic impact methodology and closure decision indicators employed in the wood preserving and insulationboard/hardboard segment economic analyses. If alternative assumptions are recommended, the bases for these assumption should be clearly stated. EPA plans to review all criticisms of the analyses and additional economic impact information it receives and will incorporate it into its final decision making process prior to promulgation of these guidelines. At that time, the Agency will consider setting standards on the basis of other identified control alternatives, which have less severe economic effects.

(14) The Agency considered requiring biological pretreatment with and without a size cut-off for the twenty-seven indirect discharging wood preserving plants treating with pentachlorophenol. Comments are solicited on the selected option, without including the size cut-off, and the other options considered, especially the environmental tradeoffs. Also, the Agency solicits comment on the predicted economic impacts of the options considered.

(15) Comments are solicited on the practicability of wood preserving plants that are currently treating wood with PCP, substituting creosote and/or inorganic salt treated wood for marketing in place of PCP treated wood. That is, will indirect discharging plants treating with PCP be able to reduce the estimated economic effect of these proposed regulations by substituting products?

Dated: October 16, 1979.

Douglas M. Costle,

Administrator.

XXX. Appendices

Appendix A—Abbreviations, Acronyms, and Other Terms Used in This Notice

Act—The Clean Water Act

Agency—The U.S. Environmental Protection Agency

BADT—Best Available Demonstrated Technology

BAT—The best available technology economically achievable, under Section 301(b)(2)(A) of the Act

BCT—The best conventional pollutant control technology, under Section 301(b)(2)(E) of the Act

BMP—Best management practices, under Section 304(e) of the Act

BPT—The best practicable control technology currently available, under Section 301(b)(1) of the Act

Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 et seq.), as amended by the Clean Water Act of 1977 (Pub. L. 95–217)

Direct discharger—A facility which discharges or may discharge pollutants into waters of the United States

FR—Federal Register

Indirect discharger—A facility which discharges or may discharge pollutants into a publicly owned treatment works

NPDES—National Pollutant Discharge Elimination System, under Section 402 of the Act

NSPS—New source performance standards, under Section 306 of the Act

POTW—Publicly owned treatment works

PSES—Pretreatment standards for existing sources of indirect discharges, under Section 307(b) of the Act

PSNS—Pretreatment standards for new sources of direct discharges, under Section 307 (b) and (c) of the Act

RCRA—Resource Conservation and Recovery Act of 1976, Amendments to Solid Waste Disposal Act (Pub. L. 94–580)

Appendix B—Toxic Pollutants Not Detected in Treated Effluents

Insulation Board and Hardboard

chloromethane
dichlorodifluoromethane
bromomethane
vinyl chloride
chloroethane
methylene chloride
trichlorofluoromethane
1,1-dichloroethylene
1,1-dichloroethane
1,2-trans-dichloroethylene
chloroform
1,2-dichloroethane
1,1,1-trichloroethane
carbon tetrachloride
dichlorobromomethane
bis(chloromethyl) ether
1,2-dichloropropane
2-chloroethyl vinyl ether
bromoform
tetrachloroethylene
1,1,2,2-tetrachloroethane
chlorobenzene
acrolein
acrylonitrile
trichloroethylene
chlorodibromomethane
1,2-dichloropropylene
bis(2-chloroethyl) ether
1,2-dichlorobenzene
1,3-dichlorobenzene
1,4-dichlorobenzene
hexachloroethane
bis(2-chloroisopropyl) ether
hexachlorobutadiene
1,2,4-trichlorobenzene
naphthalene
hexachlorocyclopentadiene
nitrobenzene
bis(2-chloroethoxy)methane
2-chloronaphthalene
acenaphthylene
acenaphthene
isophorone
fluorene
2,4-dinitrotoluene
2,6-dinitrotoluene
1,2-diphenylhydrazine
N-nitrosodiphenylamine
hexachlorobenzene
4-bromophenyl phenyl ether
phenanthrene
anthracene
dimethyl phthalate
diethyl phthalate
fluoranthene
pyrene
di-n-butyl phthalate
benzidine
butyl benzyl phthalate
chrysene
bis(2-ethylhexyl)phthalate
benzo(a)anthracene
3,4-benzofluoranthene
benzo(k)fluoranthene
benzo(a)pyrene
indeno(1,2,3-ed)pyrene
dibenzo(a,h)anthracene
benzo(g h i)perylene
N-nitrosodimethylamine
N-nitrosodi-n-propylamine
4-chlorophenyl phenyl ether
3,3'-dichlorobenzidine
2,3,7,8-tetrachlorodibenzo-p-dioxin
2-chlorophenol
2,4-dichlorophenol
2-nitrophenol
parachlorometa cresol
2,4,6-trichlorophenol
2,4-dimethylphenol
2,4-dinitrophenol
4,6-dinitro-o-cresol
4-nitrophenol
pentachlorophenol
aldrin
dieldrin
chlordane (technical mixture and metabolites)
4,4'-DDT
4,4'-DDE (p,p'-DDX)
4,4'-DDD (p,p'-TDE)
a-endosulfan-Alpha
b-endosulfan-Beta
endosulfan sulfate
endrin aldehyde
heptachlor
heptachlor epoxide
a-BHC-Alpha
b-BHC-Beta
r-BHC (lindane)-Gamma
g-BHC-Delta
PCB-1242 (Arochlor 1242)
PCB-1254 (Arochlor 1254)
toxaphene

Wood Preserving

chloromethane
dichlorodifluoromethane
bromomethane
vinyl chloride
chloroethane
methylene chloride
trichlorofluoromethane
1,1-dichloroethylene
1,1-dichloroethane
1,2,-trans-dichloroethylene

1,2-dichloroethane
1,1,1-trichloroethane
carbon tetrachloride
dichlorobromomethane
bis-chloromethyl ether
1,2-dichloropropane
1,1,2-trichloroethane
2-chloroethyl vinyl ether
bromoform
tetrachloroethylene
1,1,2,2-tetrachloroethane
chlorobenzene
acrolein
acrylonitrile
trichloroethylene
chlorodibromomethane
1,2-dichloropropylene
bis(2-chloroethyl)ether
1,2-dichlorobenzene
1,3-dichlorobenzene
1,4-dichlorobenzene
hexachloroethane
bis(2-chloroisopropyl)ether
hexachlorobutadiene
1,2,4-trichlorobenzene
hexachlorocyclopentadiene
nitrobenzene
bis(2-chloroethoxy)methane
2-chloronaphthalene
isophorone
2,4-dinitrotoluene
2,6-dinitrotoluene
1,2-diphenylhydrazine
N-nitrosodiphenylamine
hexachlorobenzene
4-bromophenyl phenyl ether
dimethyl phthalate
diethyl phthalate
di-n-butyl phthalate
benzidine
butyl benzyl phthalate
dibenzo(a,h) anthracene
N-nitrosodimethylamine
N-nitrosodi-n-propylamine
4-chlorophenyl phenyl ether
3,3'-dichlorobenzidine
2,3,7,8-tetrachlorodibenzo-p-dioxin
2,4-dichlorophenol
2-nitrophenol
parachlorometa cresol
2,4-dinitrophenol
4,6-dinitro-o-cresol
4-nitrophenol
aldrin
dieldrin
chlordane (technical mixture and metabolites)
4,4'-DDT
4,4'-DDE (p,p'-DDX)
4,4'-DDD (p,p'-TDE)
a-endosulfan-Alpha
b-endosulfan-Beta
endosulfan sulfate
endrin aldehyde
heptachlor
heptachlor epoxide
a-BHC-Alpha
b-BHC-Beta
r-BH(lindane)-Gamma
g-BHC-Delta
PCB-1242 (Arochlor 1242)
PCB-1254 (Arochlor 1254)
toxaphene

Appendix C— Toxic Pollutants Detected in Treated Effluents

Wood Preserving

fluoranthene
3,4-benzofluoranthene
benzo(k)fluoranthene
pyrene
benzo(a)pyrene
indeno(1,2,3-cd)pyrene
benzo(ghi)perylene
naphthalene
acenaphthylene
fluorene
chrysene
bis(2-ethylhexyl)phthalate
phenol
pentachlorophenol
arsenic
copper
chromium
nickel
zinc

Insulation Board and Hardboard

copper
nickel
zinc

Appendix D—Toxic Pollutants Detected in Treated Effluents at Two Plants or Less

Wood Preserving

chloroform
ethylbenzene
2-chlorophenol
2,4,6-trichlorophenol
2,4-dimethylphenol
beryllium

Insulation Board and Hardboard

benzene
toluene
phenol
beryllium

Appendix E—Toxic Pollutants Detected in Treated Effluents at or Below the Nominal Limit of Detection (10 ug/l)

Insulation Board and Hardboard

lead
arsenic
beryllium
antimony
cadmium
chromium
selenium
silver
thallium
mercury

Wood Preserving

benzene
chloroform
ethylbenzene
2-chlorophenol
2,4,6-trichlorophenol
lead
antimony
selenium
cadmium
silver
thallium
mercury
beryllium

It is proposed to revise 40 CFR Part 429—Timber Products Processing Point Source Category to read as follows:

PART 429—TIMBER PRODUCTS PROCESSING POINT SOURCE CATEGORY

General Provisions

Sec.

429.10 Applicability
429.11 General definitions
429.12 Reserved

Subpart A—Barking Subcategory

429.20 Applicability; description of the barking subcategory.
429.21 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
429.22 [Reserved]
429.23 [Reserved]
429.24 New source performance standards (NSPS).
429.25 Pretreatment standards for existing sources (PSES).
429.26 Pretreatment standards for new sources (PSNS).

Subpart B—Veneer Subcategory

429.30 Applicability; description of the veneer subcategory.
429.31 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (PBT).
429.32 [Reserved]
429.33 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
429.34 New source performance standards (NSPS).
429.35 Pretreatment standards for existing sources (PSES).
429.36 Pretreatment standards for new sources (PSNS).

Subpart C—Plywood Subcategory

429.40 Applicability; description of the plywood subcategory.
429.41 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
429.42 [Reserved]
429.43 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
429.44 New source performance standards (NSPS).
429.45 Pretreatment standards for existing sources (PSES).
429.46 Pretreatment standards for new sources (PSNS).

Subpart D—Hardboard—Dry Process Subcategory

429.50 Applicability; description of the hardboard dry process subcategory.

Sec.
429.51 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
429.52 [Reserved]
429.53 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
429.54 New source performance standards (NSPS).
429.55 Pretreatment standards for existing sources (PSES).
429.56 Pretreatment standards for new sources (PSNS).

Subpart E—Wet Process Hardboard Subcategory

429.60 Applicability; description of the wet process hardboard subcategory.
429.61 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
429.62 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).
429.63 [Reserved]
429.64 New source performance standards (NSPS).
429.65 Pretreatment standards for existing sources (PSES).
429.66 Pretreatment standards for new sources (PSNS).

Subpart F—Wood Preserving—Water Borne or Non-Pressure Subcategory

429.70 Applicability; description of the wood preserving—water borne or non-pressure subcategory.
429.71 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
429.72 [Reserved]
429.73 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
429.74 New source performance standards (NSPS).
429.75 Pretreatment standards for existing sources (PSES).
429.76 Pretreatment standards for new sources (PSNS).

Subpart G—Wood Preserving—Steam Subcategory

429.80 Applicability; description of the wood preserving—steam subcategory.
429.81 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
429.82 [Reserved]
429.83 [Reserved]
429.84 New source performance standards (NSPS).
429.85 Pretreatment standards for existing sources (PSES).
429.86 Pretreatment standards for new sources (PSNS).

Subpart H—Wood Preserving—Boulton Subcategory

429.90 Applicability; description of the wood preserving—Boulton subcategory.
429.91 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
429.92 [Reserved]
429.93 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
429.94 New source performance standards (NSPS).
429.95 Pretreatment standards for existing sources (PSES).
429.96 Pretreatment standards for new sources (PSNS).

Subpart I—Wet Storage Subcategory

429.100 Applicability; description of the wet storage subcategory.
429.101 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
429.102 [Reserved]
429.103 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
429.104 New source performance standards (NSPS).
429.105 Pretreatment standards for existing sources (PSES).
429.106 Pretreatment standards for new sources (PSNS).

Subpart J—Log Washing Subcategory.

429.110 Applicability; description of the log washing subcategory.
429.111 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
429.112 [Reserved]
429.113 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
429.114 New source performance standards (NSPS).
429.115 Pretreatment standards for existing sources (PSES).
429.116 Pretreatment standards for new sources (PSNS).

Subpart K—Sawmills and Planing Mills Subcategory.

429.120 Applicability; description of the sawmills and planing mills subcategory.
429.121 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
429.122 [Reserved]
429.123 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
429.124 New source performance standards (NSPS).
429.125 Pretreatment standards for existing sources (PSES).
429.126 Pretreatment standards for new sources (PSNS).

Subpart L—Finishing Subcategory.

429.130 Applicability; description of the finishing subcategory.
429.131 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
429.132 [Reserved]
429.133 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
429.134 New source performance standards (NSPS).
429.135 Pretreatment standards for existing sources (PSES).
429.136 Pretreatment standards for new sources (PSNS).

Subpart M—Particleboard Manufacturing Subcategory

429.140 Applicability; description of the particleboard manufacturing subcategory.
429.141 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
429.142 [Reserved]
429.143 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
429.144 New source performance standards (NSPS).
429.145 Pretreatment standards for existing sources (PSES).
429.146 Pretreatment standards for new sources (PSNS).

Subpart N—Insulation Board Subcategory

429.150 Applicability; description of the insulation board subcategory.
429.151 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
429.152 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).
429.153 [Reserved]
429.154 New source performance standards (NSPS).
429.155 Pretreatment standards for existing sources (PSES).
429.156 Pretreatment standards for new sources (PSNS).

Subpart O—Wood Furniture and Fixture Production Without Water Wash Spray Booth(s) or Without Laundry Facilities Subcategory

Sec.

429.160 Applicability; description of the wood furniture and fixture production without water wash spray booth(s) or without laundry facilities subcategory.
429.161 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
429.162 [Reserved]
429.163 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
429.164 New source performance standards (NSPS).
429.165 Pretreatment standards for existing sources (PSES).
429.166 Pretreatment standards for new sources (PSNS).

Subpart P—Wood Furniture and Fixture Production With Water Wash Spray Booth(s) or With Laundry Facilities Subcategory

429.170 Applicability: description of the wood furniture and fixture production with water wash spray booth(s) or with laundry facilities subcategory.
429.171 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
429.172 [Reserved]
429.173 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
429.174 New source performance standards (NSPS).
429.175 Pretreatment standards for existing sources (PSES).
429.176 Pretreatment standards for new sources (PSNS).

Authority.—Sections 301, 304 (b), (c), (e), and (g), 306 (b) and (c), and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the "Act"); 33 United States 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), 1317 (b) and (c), and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

General Provisions

§ 429.10 Applicability.

This part applies to any timber products processing operation, and any plant producing insulation board with wood as the major raw material, which discharges or may discharge pollutants to the waters of the United States, or which introduces or may introduce pollutants into a publicly owned treatment works.

§ 429.11 General definitions.

In addition to the definitions set forth in 40 CFR Part 401, the following definitions apply to this part:

(a) Hydraulic barking means a wood processing operation that removes bark from wood by the use of water under a pressure of 6.8 atm (100 psi) or greater.

(b) The term cubic feet or cubic meters of production in Subpart A means the cubic feet or cubic meters of logs from which bark is removed.

(c) The term "process wastewater" in this part specifically excludes non-contact cooling water, material storage yard runoff (either raw material or processed wood storage) and boiler blowdown.

(d) Gross production of fiberboard products in this part means the air dry weight of hardboard or insulation board following formation of the mat prior to trimming and finishing operations.

(e) The term hardboard means a panel manufactured from interfelted ligno-cellulosic fibers consolidated under heat and pressure to a density of 0.5 g/cu cm (31 lb/cu ft) or greater.

(f) The term insulation board means a panel manufactured from interfelted ligno-cellulosic fibers consolidated to a density of less than 0.5 g/cu cm (less than 31 lb/cu ft).

(g) Smooth-one-side (S1S) hardboard means hardboard which is produced by the wet-matting, wet-pressing process.

(h) Smooth-two-sides (S2S) hardboard means hardboard which is produced by the wet-matting, dry-pressing process.

(i) The term "debris" means a woody material such as bark, twigs, branches, heartwood or sapwood that will not pass through a 2.54 cm (1.0 in) diameter round opening that might be present in the discharge from a wet storage facility.

§ 429.12 [Reserved]

Subpart A—Barking Subcategory

§ 429.20 Applicability; description of the barking subcategory.

This subpart applies to discharges to waters of the United States and introduction of pollutants into publicly owned treatment works resulting from the barking of logs being processed by plants in SIC major group 24, and plants producing insulation board, in SIC group 2661.

§ 429.21 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided 40 CFR §§ 125.30–.32, any point source subject to this subpart must achieve the following effluent limitations attainable by the application of the best practicable control technology currently available (BPT):

(a) The following limitations apply to all mechanical barking installations: There shall be no discharge of process wastewater pollutants into navigable waters.

(b) The following limitations constitute the maximum permissible discharge for hydraulic barking installations:

Subpart A—BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Metric units (kilograms per cubic meter of production)	
BOD5	1.5	0.5
TSS	6.9	2.3
pH	Within the range 6.0 to 9.0 at all times	
	English units (pounds per cubic foot of production)	
BOD5	0.10	0.08
TSS	0.50	0.15
pH	Within the range 6.0 to 9.0 at all times	

§ 429.22 [Reserved]

§ 429.23 [Reserved]

§ 429.24 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

(a) The following limitations apply to all mechanical barking installations: There shall be no discharge of process wastewater pollutants into navigable waters.

(b) The following limitations constitute the maximum permissible discharge for hydraulic barking installations:

Subpart A—NSPS Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Metric units (kilograms per cubic meter of production)	
BOD5	1.5	0.5
TSS	6.9	2.3
pH	Within the range 6.0 to 9.0 at all times	
	English units (pounds per cubic foot of production)	
BOD5	0.10	0.03
TSS	0.50	0.15
pH	Within the range 6.0 to 9.0 at all times.	

§ 429.25 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR § 403.13, any existing source subject to this

supart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.26 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR § 403.13, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

Subpart B—Veneer Subcategory

§ 429.30 Applicability; description of the veneer subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from any plant which manufactures veneer and does not store or hold raw materials in wet storage conditions.

§ 429.31 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Any existing source subject to this subpart must achieve the following best practicable control technology limitations (BPT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.32 [Reserved]

§ 429.33 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Any existing source subject to this subpart must achieve the following best available technology economically achievable limitations (BAT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.34 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): there shall be no discharges of process wastewater pollutants into navigable waters.

§ 429.35 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR § 403.13, an existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.36 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR § 403.13, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

Subpart C—Plywood Subcategory

§ 429.40 Applicability; description of the plywood subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from any plywood producing plant that does not store or hold raw materials in wet storage conditions.

§ 429.41 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Any existing source subject to this subpart must achieve the following best practicable control technology limitations (BPT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.42 [Reserved]

§ 429.43 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Any existing source subject to this subpart must achieve the following best available technology economically achievable limitations (BAT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.44 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.45 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR § 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.46 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR § 403.13, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

Subpart D—Hardboard-Dry Process Subcategory

§ 429.50 Applicability; description of the hardboard-dry process subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from any plant that produces hardboard using the dry matting process for forming the board mat.

§ 429.51 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Any existing source subject to this subpart must achieve the following best practicable control technology limitations (BPT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.52 [Reserved]

§ 429.53 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Any existing source subject to this subpart must achieve the following best available technology economically achievable limitations (BAT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.54 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.55 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR § 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.56 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR § 403.13, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

Subpart E—Wet Process Hardboard Subcategory

§ 429.60 Applicability; description of the wet process hardboard subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly

owned treatment works from any plant which produces hardboard products using the wet matting process for forming the board mat.

§ 429.61 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR §§ 125.30–.32, any point source subject to this subpart must achieve the following effluent limitations, attainable by the application of the best practicable control technology currently available (BPT):

(a) The following limitations apply to plants which produce smooth-one-side (S1S) hardboard:

Subpart E (S1S)—BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	kg/kkg (lb/1,000 lb) of gross production)	
BOD5	20.7	6.0
TSS	37.4	14.0
pH	Within the range 6.0 to 9.0 at all times	

(b) The following limitations apply to plants which produce smooth-two-sides (S2S) hardboard:

Subpart E (S2S)—BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	kg/kkg (lb/1,000 lb) of gross production)	
BOD5	36.5	12.1
TSS	132.7	28.6
pH	Within the range 6.0 to 9.0 at all times	

§ 429.62 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR §§ 125.30 –.32, any point source subject to this subpart must achieve the following effluent limitations, attainable by the application of the best conventional pollutant control technology (BCT):

(a) The following limitations apply to plants which produce smooth-one-side (S1S) hardboard:

Subpart E (S1S)—BCT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	kg/kkg (lb/1000 lb) of gross production	
BOD5	4.3	1.15
TSS	14.0	4.30
pH	Within the range 6.0 to 9.0 at all times	

(b) The following limitations apply to plants which produce smooth-two-sides (S2S) hardboard:

Subpart E (S2S)—BCT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	kg/kkg (lb/1000 lb) of gross production	
BOD5	15.0	5.0
TSS	39.6	7.9
pH	Within the range 6.0 to 9.0 at all times	

§ 429.63 [Reserved]

§ 429.64 New source performance standards (NSPS):

Any new source subject to this subpart must achieve the following new source performance standards (NSPS); There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.65 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR § 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.66 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR § 403.13, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

Subpart F—Wood Preserving—Water Borne or Nonpressure Subcategory

§ 429.70 Applicability; description of the wood preserving water borne or non-pressure subcategory.

This subpart applies to discharges and introductions of pollutants into publicly owned treatment works from all non-pressure processes, and all pressure processes employing water borne inorganic salts.

§ 429.71 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Any existing source subject to this subpart must achieve the following best practicable control technology limitations (BPT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.72 [Reserved]

§ 429.73 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Any existing source subject to this subpart must achieve the following best available technology economically achievable limitations (BAT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.74 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.75 Pretreatment standards for existing sources (PSES).

Any existing source, subject to this subpart, which introduces pollutants into a publicly owned treatment works must achieve the following pretreatment standards for existing sources (PSES): There shall be no introduction of process wastewater pollutants into publicly owned treatment works.

§ 429.76 Pretreatment standards for new sources (PSNS).

Any new source, subject to this subpart, which introduces pollutants into a publicly owned treatment works must achieve the following pretreatment standards for new sources (PSNS): There shall be no introduction of process wastewater pollutants into publicly owned treatment works.

Subpart G—Wood Preserving Steam Subcategory

§ 429.80 Applicability; description of the wood preserving—steam subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from wood preserving processes that use direct steam impingement on wood as the predominant conditioning method; processes that use the vapor drying process as the predominant conditioning method; processes which use the same retort to treat with both salt and oil and oil type preservatives; and processes which steam condition and which apply both salt type preservatives to the same stock.

§ 429.81 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR § 125.30–.32, any point source subject to this subpart must achieve the following effluent limitations, attainable by the application of the best practicable control technology currently available (BPT):

The following limitations apply to plants in this subpart:

Subpart G—BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	English units (lb/1000 cubic feet of product)	
COD	68.5	34.5
Phenols	.14	.04
Oil and grease	1.5	.75
pH	Within the range of 6.0 to 9.0 at all times	
	Metric units (kg/1000 cu m of product)	
COD	1,100	550
Phenols	2.18	.65
Oil and grease	24.0	12.0
pH	Within the range of 6.0 to 9.0 at all times	

§ 429.82 [Reserved]

§ 429.83 [Reserved]

§ 429.84 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.85 Pretreatment standards for existing sources (PSES).

Any source subject to this subpart which introduces pollutants into publicly owned treatment works must comply with 40 CFR 403 and meet the following pretreatment standards for existing sources [PSES]:

Subpart G—PSES Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day (mg/l)
Pentachlorophenol	0
Oil and grease	100

In cases where POTWs find it necessary to impose mass limitations, the following equivalent mass limitations are provided as guidance.

Subpart G—PSES Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day
	Grams per cu m of production
Pentachlorophenol	0
Oil and grease	20.5

§ 429.86 Pretreatment standards for new sources (PSNS).

Any new source, subject to this subpart, which introduces pollutants into a publicly owned treatment works must achieve the following pretreatment standards for new sources (PSNS): There shall be no introduction of process wastewater pollutants into publicly owned treatment works.

Subpart H—Wood Preserving—Boulton subcategory

§ 429.90 Applicability; description of the wood preserving—Boulton subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from those wood preserving processes which use the Boulton process as the predominant method of conditioning stock.

§ 429.91 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Any existing source subject to this subpart must achieve the following best practicable control technology limitations (BPT): There shall be no disharge of process wastewater pollutants into navigable waters.

§ 429.92 [Reserved]

§ 429.93 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Any existing source subject to this subpart must achieve the following best available technology economically achievable limitations (BAT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.94 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.95 Pretreatment standards for existing sources (PSES).

Any source subject to this subpart which introduces pollutants into publicly owned treatment works must comply with 40 CFR 403, and meet the following pretreatment standards for existing sources [PSES]:

Subpart H—PSES Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day (mg/l)
Pentachlorophenol	0
Oil and grease	100

In cases where POTWs find it necessary to impose mass limitations, the following equivalent mass limitations are provided as guidance.

Subpart H—PSES Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day
	Grams per cu m of production
Pentachlorophenol	0.
Oil and grease	20.5

§ 429.96 Pretreatment standards for new sources (PSNS).

Any now source, subject to this subpart, which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): There shall be no introduction of process wastewater pollutants into publicly owned treatment works.

Subpart I—Wet Storage Subcategory

§ 429.100 Applicability; description of the wet storage subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works resulting from the holding of unprocessed wood, i.e., logs or roundwood with bark or after removal of bark in self-contained bodies of water (mill ponds or log ponds) or land storage where water is sprayed or deposited intentionally on the logs (wet decking).

§ 429.101 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR §§ 125.30–.32, any point source subject to this subpart must achieve the following effluent limitations, attainable by the application of the best

practicable control technology currently available (BPT): There shall be no debris discharged and the pH shall be within the range of 6.0 to 9.0.

§ 429.102 [Reserved]

§ 429.103 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR §§ 125.30–.32, any point source subject to this subpart must achieve the following effluent limitations, attainable by the application of the best available technology economically achievable (BAT): There shall be no debris discharged and the pH shall be within the range of 6.0 to 9.0.

§ 429.104 New source performance standards.

Except as provided in 40 CFR §§ 125.30–.32, any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no debris discharged and the pH shall be within the range of 6.0 to 9.0.

§ 429.105 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR § 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.106 Pretreatment standards for sources (PSNS).

Except as provided in 40 CFR § 403.13, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

Subpart J—Log Washing Subcategory

§ 429.110 Applicability; description of the log washing subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works resulting from the process of passing logs through an operation where water under pressure is applied to the log for the purpose of removing foreign material from the surface of the log before further processing.

§ 429.111 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR §§ 125.30–.32, any point source subject to this subpart must achieve the following effluent limitations, attainable by the application of the best practicable control technology currently available (BPT):

(a) The following limitations apply to all log washing operations: There shall be no discharge of process wastewater pollutants to navigable waters containing a total suspended solids concentration greater than 50 mg/l and the pH shall be within the range of 6.0 to 9.0.

§ 429.112 [Reserved]

§ 429.113 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Any existing source subject to this subpart must achieve the following best available technology economically achievable limitations (BAT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.114 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.115 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR § 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.116 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR § 403.13, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

Subpart K—Sawmills and Planning Mills Subcategory

§ 429.120 Applicability; description of the sawmills and planing mills subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from the timber products processing procedures that include all or part of the following operations: bark removal (other than hydraulic barking as defined in Section 429.11 of this part) sawing, resawing, edging, trimming, planing and machining.

§ 429.121 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Any existing source subject to this subpart must achieve the following best practicable control technology limitations (BPT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.122 [Reserved]

§ 429.123 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Any existing source subject to this subpart must achieve the following best available technology economically achievable limitations (BAT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.124 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.125 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR § 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.126 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR § 403.13, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

Subpart L—Finishing Subcategory

§ 429.130 Applicability; description of the finishing subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from drying, planing, dipping, staining, end coating, moisture proofing, fabrication, and by-product utilization not otherwise covered by specific guidelines and standards.

§ 429.131 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Any existing source subject to this subpart must achieve the following best

practicable control technology limitations (BPT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.132 [Reserved]

§ 429.133 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Any existing source subject to this subpart must achieve the following best available technology economically achievable limitations (BAT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.134 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.135 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR § 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.136 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR § 403.13, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

Subpart M—Particleboard Manufacturing Subcategory

§ 429.140 Applicability; description of the particleboard manufacturing subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from any plant which manufactures particleboard.

§ 429.141 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Any existing source subject to this subpart must achieve the following best practicable control technology limitations (BPT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.142 [Reserved]

§ 429.143 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Any existing source subject to this subpart must achieve the following best available technology economically achievable limitations (BAT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.144 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.145 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.146 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 8403.13, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

Subpart N—Insulation Board Subcategory

§ 429.150 Applicability; description of the insulation board subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from plants which produce insulation board using wood as the raw material. Specifically excluded from this subpart is the manufacture of insulation board from the primary raw material bagasse.

§ 429.151 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–.32, any point source subject to this subpart must achieve the following effluent limitations, attainable by the application of the best practicable control technology currently available (BPT):

Subpart N—BPT Effluent Limitations

Pollutant or Pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	kg/kkg (lb/1,000 lb of gross production)	
BOD5	8.25	2.94
TSS	6.27	2.09
pH	Within the range 6.0 to 9.0 at all times	

§ 429.152 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR § 125.30–.32, any point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

Subaprt N—BCT Effluent Limitations

Pollutant or Pollutant property	Maximum for and 1 day	Average of daily values for 30 consecutive days
	kg/kkg (lb/1,000 lb of gross production)	
BOD5	8.25	2.94
TSS	6.27	2.09
pH	Within the range 6.0 to 9.0 at all times	

§ 429.153 [Reserved]

§ 429.154 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.155 Pretreatment standards for existing sources (PSES).

Any source, subject to this subpart, which introduces pollutants into publicly owned treatment works must comply with 40 CFR 403.

§ 429.156 Pretreatment standards for new sources (PSNS).

Any source, subject to this subpart, which introduces pollutants into publicly owned treatment works must comply with 40 CFR 403.

Subpart O—Wood Furniture and Fixture Production Without Water Wash Spray Booth(s) or Without Laundry Facilities Subcategory

§ 429.160 Applicability; description of the wood furniture and fixture production without water wash spray booth(s) or without laundry facilities subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from the manufacture of wood furniture and fixtures at establishments that (a) do not utilize water wash spray booths to collect and contain the overspray from spray applications of finishing materials and (b) do not maintain on-site laundry facilities for fabric utilized in various finishing operations.

§ 429.161 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Any existing source subject to this subpart must achieve the following best practicable control technology limitations (BPT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.162 [Reserved]

§ 429.163 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Any existing source subject to this subpart must achieve the following best available technology economically achievable limitations (BAT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.164 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.165 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR § 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.166 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR § 403.13, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

Subpart P—Wood Furniture and Fixture Production With Water Wash Spray Booth(s) or With Laundry Facilities Subcategory

§ 429.170 Applicability; description of the wood furniture and fixture production with water wash spray booth(s) or with laundry facilities subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from the manufacture of wood furniture and fixtures that either (a) utilize water wash spray booth(s) to collect and contain the overspray from spray applications of finishing materials, or (b) utilize on-site laundry facilities for fabric utilized in various finishing operations, or (c) do both.

§ 429.171 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Any existing source subject to this subpart must achieve the following best practicable control technology limitations (BPT): Settleable solids shall be less than or equal to 0.2 ml/l and pH shall be between 6.0 and 9.0 at all times.

§ 429.172 [Reserved]

§ 429.173 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Any existing source subject to this subpart must achieve the following best available technology economically achievable limitations (BAT): There shall be no discharge of process wastewater pollutants.

§ 429.174 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): Settleable solids shall be less than or equal to 0.2 ml/l and pH shall be between 6.0 and 9.0 at all times.

§ 429.175 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR § 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.176 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR § 403.13, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

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October 31, 1979

Part VI

Department of Energy

Economic Regulatory Administration

Crude Oil Reseller Regulations; Proposed Rulemaking and Public Hearings

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 212

[Docket No. ERA-R-79-48]

Crude Oil Reseller Regulations

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Proposed Rulemaking and Public Hearings.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is proposing alternative amendments to Subpart L of 10 CFR Part 212 which sets forth the price regulations applicable to resales of crude oil. The primary proposal would substantially revise the regulatory scheme in Subpart L to provide for the computation of maximum permissible selling prices to which all resales of crude oil would be subject. The alternative proposal would establish a uniform, maximum permissible average markup for all crude oil resellers while continuing to permit resellers to generally charge any prices in individual transactions. In addition, under each alternative we are proposing amendments to establish a separate price rule applicable to resales of crude oil which the reseller has not gathered or otherwise transported, since such transactions not only represent a significantly lower level of investment and risk but also appear in many instances to be deliberate attempts to subvert the intent of the price regulations. We are also requesting comments on several other proposals, including a proposed amendment to establish a specified permissible average markup for resellers first doing business on or after December 1, 1977 which would be applicable to sales by such resellers on or after January 1, 1978 but prior to the effective date of any final rule we may adopt in this rulemaking proceeding.

DATES: Proposed effective date: February 1, 1979; Comments by December 31, 1979, 4:30 p.m.; Requests to speak at a hearing by November 28, 4:30 p.m.; Hearing Dates: Houston hearing, December 6, 1979, 9:30 a.m.; Washington hearing, December 11, 1979, 9:30 a.m.

ADDRESSES: All comments to Office of Public Hearings Management, Economic Regulatory Administration, Room 2313, Docket No. ERA-R-79-*48*, 2000 M Street NW., Washington, D.C. 20461. Requests to speak at Houston hearing to Department of Energy, 2626 West Mockingbird Lane, P.O. Box 352228, Dallas, Texas 75234, Attn. Mac L. Lacefield. Requests to speak at Washington hearing to Office of Public Hearings Management, Economic Regulatory Administration, Room 2313, Docket No. ERA-R-79-*48*, 2000 M Street NW., Washington, D.C. 20461.

HEARING LOCATIONS: Houston hearing: Federal Building, Ninth Floor, Court No. 4, 515 Rusk Avenue, Houston, Texas; Washington hearing: Room 2105, 2000 M Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Office of Public Hearings Management), Economic Regulatory Administration, Room 2222-A, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254-5201.

William L. Webb (Office of Public Hearings Information), Economic Regulatory Administration, Room B-110, 2000 M Street, N.W., Washington, D.C. 20461, (202) 634-2170.

Daniel J. Thomas (Office of Regulations and Emergency Planning), Economic Regulatory Administration, Room 2304, 2000 M Street, NW., Washington, D.C. 20461, (202) 254-7477.

Jack O. Kendall (Office of Public General Counsel), Department of Energy, Room 6A-127, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-6739.

SUPPLEMENTARY INFORMATION

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I. Background

On December 23, 1977, we issued a final rule which amended the Mandatory Petroleum Price Regulations to provide, through the adoption of a Subpart L for 10 CFR Part 212, a new regulatory system applicable to the pricing of crude oil by resellers and refiners, effective January 1, 1978 (42 FR 64856, December 29, 1977). Prior to January 1, 1978, prices in crude oil resales were subject to the limitations of Subpart F of 10 CFR Part 212, which provides generally for the computation of a maximum lawful price in every sale of a covered product (now other than crude oil) by a reseller. Our decision to adopt Subpart L was based primarily on our determination at that time that resellers should be permitted more flexibility in pricing crude oil resale transactions and, therefore, that it would be appropriate to establish a regulatory scheme for crude oil resellers separate from that for reseller's of other covered products.

Subpart L permits a reseller to charge any price in a particular sale of crude oil so long as the reseller's average markup (over allowed costs) for all crude oil sales in a month does not exceed its permissible average markup and provided that the reseller does not unreasonably discriminate among purchasers. The method to be used by a reseller in determining its permissible average markup for purposes of Subpart L depends on the time period during which the reseller first resold crude oil.

Under the regulations, the permissible average markup of a reseller which resold crude oil in May 1973 is defined as the reseller's total lawful revenues from sales of crude oil in the month May 1973, less all of the reseller's allowed costs and expenses associated with sales of crude oil in that month, divided by the number of barrels sold in that month. A reseller which entered the crude oil reselling business after May 1973 but before December 1, 1977 is required to impute a permissible average markup based on what the resellers's total revenues from sales in the month November 1977 would have been if the prices charged by the reseller in all sales that month has been correctly imputed, as required by the new item rule in § 212.111, from prices charged by the reseller's nearest comparable outlet for a particular grade and regulatory tier of crude oil on the day the reseller first sold such crude oil.

We announced our intent to establish at a later time the permissible average markup for crude oil resellers first doing business on or after December 1, 1977. We provided in the regulations, however, that if in any month a post-November 1977 reseller's average markup should exceed the permissible average markup subsequently established by ERA the reseller would nevertheless be deemed to have complied with the price rule if the prices charged by the reseller for each grade of lower tier, upper tier, and stripper well and other exempt crude oil did not exceed the prices at which such crude oil was priced in transactions of the

nearest comparable reseller in the month.

In the December 1977 Notice adopting the new Subpart L regulations we solicited further comments both generally and with respect to a number of specific issues to aid us in determining whether modifications to the amendments would be necessary. Although the majority of resellers commenting supported the average markup approach of Subpart L, many firms suggested various regulatory changes relating to various aspects of Subpart L, including the basis for determining permissible average markups, the length of the compliance period, margin disparities among crude oil resellers entering the business at different times, the treatment of exchanges, and the passthrough of transportation costs.

In addition, numerous commenters objected to the requirement under Subpart L that the methods for determining the permissible average markups of resellers entering the business after May 1973 require application of the new item rule of § 212.111. Specifically, these commenters indicated that the complexities involved in ascertaining a reseller's nearest comparable outlet had created uncertainties for resellers operating under Subpart F and, therefore, that any continued reliance on the new item rule would be inappropriate. A number of commenters also raised questions concerning the applicability of Subpart F generally to crude oil resellers.

In response to the concerns expressed by resellers regarding Subpart F, we indicated that we would issue a further notice pertaining to the general applicability of Subpart F to crude oil resellers. However, based on further examination of crude oil reselling activities since May 1973, we determined that a reseller acting prudently and in good faith could have applied the provisions of Subpart F including the requirements of the new item rule, so as to have been assured that its activities were in substantial compliance with the regulations. Therefore, we concluded that further clarification of those provisions in a general manner, such as that typically provided in a formal Ruling, was not only unnecessary but would have been inappropriate, since a reseller encountering difficulties in applying the provisions of Subpart F or Subpart L could have sought assistance by requesting an Interpretation specifically addressing its own particular circumstances. In addition, in any situation where a reseller believed that adherence to the regulations would create a hardship or result in a gross inequity vis-a-vis other resellers, the reseller's appropriate course of action would have been to seek relief through the exceptions process. Finally, we believe in view of these considerations, that incorporation of the new item rule into the regulatory scheme of Subpart L should have created no significant additional burdens on resellers and, therefore, was not inappropriate.

Since the adoption of Subpart L, we have monitored the crude oil reselling industry to asess the impact of the new regulations on resellers specifically and on the petroleum industry in general. We have been especially interested in the effects on reselling activities resulting from the requirement under § 212.185 of Subpart L that a reseller refund any profit it realizes in a transaction in which the reseller failed to certify the crude oil sold in accordance with the requirements of § 212.131. This improper certification rule was included in Subpart L as a means of strengthening existing certification provisions requiring that resellers maintain the certification of specific volumes of crude oil without deviation or obfuscation. In addition to adopting new regulatory provisions regarding certifications, we announced in the preamble to Subpart L that we would continue to audit resellers' transactions in order to detect possible regulatory violations. Based on information obtained in audits completed since the adoption of Subpart L, we have referred to the U.S. Department of Justice several cases we believe to involve improper certifications. Several of these cases have already resulted in indictments against a number of companies and individuals. We wish to restate at this time that we will continue to investigate reseller activities and take appropriate remedial action in any instance where we determine that a reseller has failed to comply with our regulatory provisions requiring that all resellers maintain proper certifications in crude oil sales.

Our observations since adopting Subpart L have also led to our tentative conclusion that the additional pricing flexibility afforded resellers under Subpart L may be creating significant regulatory problems. We are especially concerned that application of the current provisions of the Subpart L regulations, which provide for the establishment of different permissible markups for resellers depending on when reselling activities first began, are resulting in unjustified disparities in the markups being realized by resellers. In addition, it is our conclusion that the average markup rule may not provide effective control over reseller margins. Specifically, it appears that the flexibility in the regulations facilitates such abuses as intentional failure to utilize a correctly calculated permissible average markup or the insertion of sham transactions in calculations of monthly average markups so as to make it appear that the permissible average markup has not been exceeded. The averaging approach in Subpart L makes detection of these violations difficult.

In view of the developments discussed above, we believe extensive revisions to Subpart L may be necessary. We have set forth in the sections below the substance of various proposals, and alternatives thereto, to amend the price regulations applicable to resales of crude oil, effective February 1, 1980. We may adopt one or any combination of these proposals and alternatives which we determine would further our objective of providing an appropriate, as well as administratively enforceable, regulatory scheme for crude oil resellers.

II. Primary Proposal to Establish Maximum Permissible Price Rule for All Crude Oil Resellers for Application on Transaction-by-Transaction Basis

In view of the regulatory scheme in Subpart L and the operation of the new item rule, the permissible average markup of any reseller should be roughly consistent with that of another reseller providing essentially the same services and which is otherwise comparable. However, our auditing experience under Subpart L and the comments received in response to the adoption of Subpart L indicate that there have been wide disparities in the average markups of apparently comparable resellers. Moreover, it appears that in many instances the per barrel profit margins of resellers which do not gather or transport crude oil or perform any other function or service historically associated with the reselling industry have exceeded the profit margins realized by resellers which engage in those activities.

We believe that many of the current inconsistencies in resellers' markups are largely unjustified and in many instances may be resulting from pricing practices designed to evade the restrictions of Subpart L. In view of these considerations, we have tentatively concluded that the regulations applicable to resales of crude oil should be amended in order to achieve the objective of the price regulations in Subpart L that a reseller's

per barrel markup appropriately reflect the functions and services provided by the reseller in moving crude oil from the production site into the refinery. Accordingly, we are proposing to amend Subpart L to establish a maximum permissible price rule applicable to each resale of crude oil which we believe would insure that a reseller's profit margins appropriately reflect the gathering and transportation services provided by the reseller.

1. General Price Rule. We are proposing to amend Subpart L to provide that a reseller may not charge in any resale of crude oil, except as provided below, a price exceeding the sum of (1) the "acquisition cost" of the crude oil sold; plus (2) any amounts associated with the transportation of the crude oil between the reseller's points of acquisition and sale which were (a) actually paid by the reseller to an unaffiliated common carrier or other third party or (b) actually incurred by a common carrier or other entity affiliated with the reseller; plus (3), in sales in which the reseller has transported crude oil by means of its own facilities, a "transportation allowance" to include an amount permitting a return on investment in transportation and storage facilities; plus (4) one cent per barrel to permit the reseller a return on any services, other than transportation by means of its own facilities, that the reseller performs. We invite comments generally with respect to each of these components of the proposed maximum permissible price rule. However, we request that comments regarding the computation of a reseller's acquisition costs and transportation allowance be prepared in view of the discussion of these aspects of the proposal set forth below.

A. Acquisition cost

Under today's proposal, a reseller's acquisition cost in a particular transaction would be the price (not in excess of the applicable price permitted under Part 212) actually paid by the seller for the crude oil sold. As is currently the case under the Subpart L definition of acquisition cost, a reseller's acquisition cost when selling a volume of crude oil received in an exchange (or in a matching purchase and sale transaction having the same effect as an exchange) would be deemed to be the price paid by the seller for the crude oil given up in the exchange, adjusted to appropriately reflect any differentials paid or received in connection with the exchange. (As discussed below, we are proposing today a definition of the term "exchange" in order to emphasize the appropriate treatment of such transactions.)

The proposed definition of acquisition cost would permit a reseller to continue to use any generally accepted accounting practice it has consistently and historically used in determining the acquisition cost of crude oil sold, as long as the reseller (1) maintains separate inventory records accounting separately in each transaction for the acquisition costs of lower tier, upper tier, imported and each category of exempt domestic crude oil sold in that transaction; (2) uses actual prices paid as the basis of the costs; and (3) uses the same accounting method for both valuing its inventory of crude oil and determining costs of crude oil sold that it used in May 1973 or (if the reseller entered the crude oil reselling business after May 1973) in the first month it resold crude oil.

Our proposal to permit continued reliance by a reseller on those generally accepted accounting practices consistently and historically used by the reseller in determining acquisition costs is based on our understanding that resellers generally account for such costs in a manner reflecting actual costs with respect to specific volumes of crude oil. However, we are requesting that comments in this proceeding include a discussion concerning the accounting practices relied upon by crude oil resellers and the extent to which you believe accounting practices would not yield an "acquisition cost" that reflects actual costs associated with specific crude oil volumes. We will consider such comments to aid in our determination as to whether any restrictions as to the type of accounting practices which may be utilized by resellers would be appropriate or necessary either with respect to resellers generally or with respect to any particular class of resellers, such as resellers which first sold crude oil after November 1977 or resellers which may begin reselling operations following the issuance of this notice.

B. Transportation Allowance

As indicated above, we believe a reseller's markup over expenses in any sale of crude oil should appropriately reflect the services performed by that reseller in bringing the crude oil into the refinery. Accordingly, we are proposing to permit resellers to include in their prices a "transportation allowance" formulated to recoup not only actual expenses but also an adequate return on their investments in transportation facilities. We are proposing two alternative methods for computing the "transportation allowance" in any sale, as discussed below.

1. Comparable Common Carrier Tariff. Under the first alternative, a reseller which uses its own facilities to perform any part of the transportation of the crude oil occurring between the reseller's points of acquisition and sale would be permitted to include in its price, regardless of the actual transportation expenses incurred by the reseller, an amount equal to the expense the reseller would have incurred if it had used a common carrier to transport the crude oil that distance the crude oil was actually transported by means of the reseller's own facilities. In determining its transportation allowance under this alternative, a reseller would be required to utilize a comparable common carrier tariff filed with the appropriate State or Federal agency. Since State and Federal authorities review a common carrier's circumstances in order to determine the appropriate tariff so as to permit an adequate return on investment, we believe reliance on the comparable common carrier tariff in determining a seller's transportation allowance would permit the reseller to realize an adequate profit on reselling activities.

2. Transportation Expenses plus Return on Investment. Under the second alternative, a reseller's transportation allowance in any sale would be equal to the expenses incurred by the reseller in using its own facilities to transport the crude oil plus an additional amount to permit return on investment. For purposes of this alternative, we are proposing that a reseller's transportation expenses and allowance for return on investment be determined as discussed below.

(a) *Computation of transportation expenses.* We recognize that in many instances a reseller cannot determine at the time of sale its actual expenses associated with moving the crude oil sold from the reseller's acquisition point to its point of sale. Therefore, in order to insure the recoupment of such expenses in a manner reflecting to the extent possible actual costs, we are proposing that a reseller will be permitted to include in its "transportation allowance" in any sale an amount based on its actual transportation and gathering costs in the month prior to the preceding month. Specifically, a reseller's transportation allowance in any sale would include an amount equal to the expense that reseller would have incurred in transporting the crude oil the same distance by the same mode of transportation in the month prior to the preceding month.

The proposed formula for use in determining expenses includible in a

reseller's transportation allowance is intended to provide for the passthrough of expenses associated with the operation and maintenance of reception stations and trucks, pipelines, and other modes of transportation owned and used by the reseller to transport crude oil from the reseller's points of acquisition to its reception stations and/or points of sale.

As currently permitted under Subpart L, expenses associated with trucks which the proposal would allow to be passed through as transportation and gathering costs include fuel, repairs and maintenance, drivers' salaries, truck rentals, and depreciation. Pipeline and reception station expenses would include fuel, operators salaries, repairs and maintenance, rental payments, and depreciation, and the expense incurred in upgrading crude oil to meet pipeline quality specifications, such as the reduction of basis sediment and water, the reduction of impurities, and the adjustment of viscosity and gravity.

As we stated in the preamble to Subpart L, where, pursuant to any applicable ceiling price rule certain services are required to be provided by a crude oil producer, expenses associated with such services would not be permitted to be passed through by the reseller, regardless of whether actually incurred by the reseller or not. Furthermore, expenses associated with locating or acquiring sources of crude oil, such as, for example, the purchase of options to buy lease production, would not be includible in a reseller's allowed transportation and gathering costs or in any other component of a reseller's maximum permissible price.

We request your comments as to any modifications to today's proposal pertaining to transportation and gathering expenses which you believe would be appropriate. In this regard, we are specifically requesting comments as to whether it would be appropriate in any final rule we may adopt in this proceeding to provide that a reseller may treat as a transportation expense and thereby passthrough in its prices a per barrel amount reflecting interest payments made by the reseller in connection with financing the construction or purchase of reception stations, pipelines, and other crude oil transportation facilities.

We are also specifically requesting comments as to whether it would be feasible to require that a reseller determine its transportation costs in any sale at the time of the sale. In the event we determine that such an approach would be feasible, we may adopt a final rule providing that the transportation expenses included in a reseller's transportation allowance must reflect actual expenses in that sale, as opposed to per barrel transportation expenses in the month preceding the prior month.

(b) *Return on investment.* As indicated above, we are also proposing under this alternative that a reseller's transportation allowance include in addition to its transportation expenses an amount to permit a return on the reseller's investment in transportation, gathering and storage facilities. We propose two means of accomplishing this objective.

First, we are proposing that a reseller's transportation allowance include a fixed per barrel amount. Based on available information, we believe the appropriate amount would be approximately twenty-five cents per barrel. However, we request comments in this regard.

Second, we are proposing in the alternative that a reseller be permitted to include an amount in its transportation allowance equal to either (1) an amount equal to a percentage of its transportation expenses associated with that particular sale or (2) the product of an amount equal to a percentage of the reseller's depreciated original cost of investment in transportation and storage facilities multiplied by the number of barrels in that sale that are transported in facilities (other than common carrier facilities) owned and used by the reseller and divided by the total number of barrels sold in the month that are transported by all modes of transportation (other than common carrier) owned and used by the reseller. We request comments as to what the appropriate percentages would be in the event we adopt either of these methods.

(c) *Relationship of transportation allowance to general and administrative expenses.* Based on our observations of reseller activities to date, we have tentatively concluded that the current provisions of Subpart L which permit a reseller to separately compute and passthrough certain general and administrative expenses have unnecessarily increased the opportunity for price manipulation through exaggeration of such costs. Furthermore, the separate itemization of such expenses necessarily entails a substantially greater enforcement burden. Therefore, we are proposing to limit the passthrough of general and administrative expenses by providing for the inclusion of such costs in a reseller's transportation allowance in sales where the reseller has transported the crude oil by means of its own facilities. We request comments as to any modifications you believe necessary to account for such expenses under any of the proposed methods for determining a reseller's transportation allowance. Since the proposed price rule would permit a reseller to include in its price an additional one cent per barrel, regardless of whether the reseller has actually transported the crude oil, we believe the proposal would also permit the recoupment of general and administrative expenses, as well as an adequate profit return, in sales in which the reseller has not transported by means of its own facilities.

2. Permissible Markup in Resales of Crude Oil Not Subject to General Price Rule.—Based on information and knowledge gained since the adoption of Subpart L, we now believe that in many more instances than we had previously supposed crude oil resellers sell crude oil which they have neither gathered, transported nor stored in association with such operations. We have also observed the entrance into the crude oil reselling market of many new firms which obtain and pass title to crude oil without ever taking any volume of product into actual physical possession.

It appears that the large number of resellers in the marketplace today has resulted in long chains of resales through which much crude oil has been bought and sold prior to being refined. This passage of title to crude oil from reseller to reseller results, through the accumulation of numerous, successive markups, in significantly greater prices for such crude oil when it enters a refinery and, therefore, in increased prices to consumers of refined petroleum products. Moreover, it appears in many instances that such chains of resales have camouflaged violations of the crude oil pricing regulations.

We believe that most resales of crude oil in which a reseller has neither transported nor stored the crude oil in its own facilities do not represent any service or other function traditionally and historically associated with the movement of crude oil from producer to refiner. Therefore, these transactions would appear in most instances to be in contravention of the layering clause in § 212.186, as well as the normal business practice rule of § 210.62. Furthermore, even if a reseller can demonstrate it is providing some limited services in a sale of crude oil which has never been in its physical possession, the reseller's levels of investment and risk in such sales are nevertheless relatively much lower.

In view of the above considerations, we are proposing a separate price rule to provide that, notwithstanding the provisions of the general price rule, if between the time of purchase of crude oil by a reseller and the time of resale of

that crude oil by the reseller (a) the crude oil remained in the same physical location or (b) the reseller did not take actual physical possession of the crude oil, the reseller may not charge a price in excess of its acquisition cost of the crude oil, except in the following circumstances. If the reseller (1) sold the crude oil directly to a refiner certifying to the reseller that the crude oil was being purchased for refining purposes, or (2) receives certification from the refiner whch ultimately refines the crude oil that the refiner would not have received that volume of crude oil but for the reseller's service or (3) purchased the crude oil from the producer, or (4) in the case of imported crude oil, was the importer of record, the reseller would be permitted a markup of one cent per barrel.

We welcome comments responding generally to the issue as to under what circumstances it would be appropriate to permit a markup in resales of crude oil in which the reseller has not taken physical possession of the crude oil sold. However, we request that comments in this regard discuss in as much detail as possible the nature of and appropriate markup for any such transactions which you believe to represent an important function in bringing crude oil into the refinery.

III. Alternative Proposal To Establish Specified Permissible Average Markup

We recognize that the primary proposal presented above represents a significant departure from the regulatory scheme in Subpart L. Inasmuch as many resellers expressed support for the average markup concept for determining compliance, we are soliciting comments on an alternative to the primary proposal which would retain Subpart L in basically its present form, but which would limit resellers to a fixed average markup of twenty-five cents per barrel. For the reasons indicated above, we have taken general and administrative expenses into account in determining to propose a twenty-five cent permissible average markup, as opposed to providing for the separate itemization and passthrough of such expenses.

We are also proposing under this alternative to further modify the current Subpart L price rule by adopting the provision discussed in the primary proposal which, while generally prohibiting profit margins in resales of crude oil which the reseller has not stored or transported, would permit a one cent per barrel markup in any such sale in which the reseller (1) sold the crude oil directly to a refiner certifying to the reseller that the crude oil was being purchased for refining purposes, or (2) receives certification from the refiner which ultimately refines the crude oil that the refiner would not have received that volume of crude oil but for the reseller's service, or (3) purchased the crude oil from its producer, or (4), in the case of imported crude oil, was the importer of record.

We are proposing under this alternative, as requested by many commenters following the adoption of Subpart L, to extend from one to three months the compliance period for purposes of determining whether a reseller's average markup has exceeded its permissible average markup. In view of this proposal to extend the compliance period, we are also proposing to eliminate the self-correcting refund provisions of § 212.185 and the *per se* rule set forth in § 212.185(b) which provides that, notwithstanding the self-correcting refund provisions, a reseller will be deemed to be in violation of the price regulations if its prices result in average markups in excess of that reseller's permissible average markup during three consecutive months. However, we are requesting comments as to whether it would be appropriate to simply modify these mechanisms or adopt analogous procedures to reflect any extension of the compliance period beyond one month.

IV. Miscellaneous Proposals

A. Applicability of Subpart L to Crude Oil Exchanges

The manner in which the crude oil reseller price regulations apply to a particular transaction is affected by whether that transaction is categorized as an exchange or as a sale. However, whether a particular transaction would be appropriately characterized as an exchange or as a sale is often difficult to ascertain due to the nature of such transactions. Based on our observations of reselling activities, we believe that some firms are frequently capitalizing on the generally recognized difficulties in determining the true nature of such transactions as a means of subverting the intent of the price regulations. Therefore, we believe it would be appropriate to add a definition of the term "exchange" to Subpart L which reflects our understanding of the historical nature and legitimate purposes of such arrangements.

Generally, each firm participating in an exchange receives something of essentially the same value as that which was given up. When a firm gives up crude oil of lesser per barrel value than the crude oil received, the value difference is generally offset by the payment of cash or an additional volume of crude oil. Differences in the market values of the crude oil volumes exchanged are generally due to differences in the quality or locations of the crude oil volumes.

Based on this understanding, we believe that a transaction may be appropriately characterized as an exchange only if the intent of both firms is to receive crude oil of equal value to that given up. We recognize that in many instances it may not be practicable for the exchanged volumes to have precisely the same value and that the firm receiving crude oil of greater value may have to make a compensating payment to the other firm. Nevertheless, when in an exchange it is not commercially practicable to equalize values through adjustments to the amount of crude oil received, compensating payments should not exceed the amount necessary to account for quality, location and time differentials between the volumes of crude oil exchanged.

In view of the above considerations, we are proposing a definition of the term "exchange" to emphasize that a transaction between a reseller and any other firm will be deemed to be an exchange only if the circumstances and terms of the arrangement indicate an intent, to the extent commercially practicable, on the part of each firm to transfer to each other volumes of crude oil of equal value. Therefore, the proposed definition would provide that any compensating payment should not exceed the quality, location, or time differences between the values of the volumes exchanged. The proposed definition would also provide that exchange transactions include matching purchase and sale agreements (also known as buy/sell agreements). We are proposing to define a matching purchase and sale, for purposes of Subpart L, as a transaction in which two firms sell crude oil to each other, pursuant to an agreement that the sale by one firm is incident to the sale by the other, and in which the volumes transferred and the cash paid and received by each firm are dependent on the value of the volumes received.

We believe the proposed definition of the term "exchange" would reflect the historical nature of exchanges. However, we wish to emphasize that, notwithstanding any definition of the term "exchange" which we may adopt, we will continue to look to the nature of resellers' transactions to determine whether there exists, regardless of the reseller's characterization of the transaction as a sale or an exchange,

and intent to utilize exchange arrangements in derogation of the normal business practice rule of § 210.62 or the layering clause of § 212.186 as a means of subverting the intent of the crude oil reseller price regulations or any other provisions of the petroleum regulations. In this regard, we are particularly concerned that exchanges in a series of transactions involving the same volume of crude oil may be used as a means to obscure illegal changes of certification. In view of these considerations, we are requesting comments as to any modifications to the provisions of § 211.67(g) pertaining to the certification of crude oil received in an exchange, as well as other regulatory modifications, which you believe should be made to provide for the appropriate treatment of exchanges. Comments in this regard should describe in detail or provide examples of situations in which you believe exchange arrangements indicate an intent to violate the regulations.

B. Certification of Imported Crude Oil by Resellers

Section 212.131(b)(1) of the price regulations currently requires each reseller of crude oil to certify in writing to any purchaser the respective volumes of and respective per barrel prices for each regulatory tier or category of domestic crude oil sold. We believe that enforcement efforts, as well as administration of the entitlements program, would be facilitated by requiring that resellers also make such certification with respect to any volumes of imported crude oil they sell. Accordingly, we are proposing to amend § 212.131 to add such a requirement.

C. Definition of Reseller

We are proposing today a definition of the term "reseller" to emphasize that a reseller is permitted a markup under Subpart L with respect to any volume of crude oil only if no other firm or entity with which the reseller shares significant affiliations has realized a profit associated with that volume of crude oil. Accordingly, the proposed definition would provide that a "reseller" means, for purposes of Subpart L, a firm which carries on the trade or business of purchasing crude oil for resale in substantially unchanged form and that a "reseller" includes generally the parent of the reseller and the consolidated and unconsolidated entities which the parent of the reseller or the reseller directly or indirectly controls.

D. Affiliated Common Carriers

Since the adoption of Subpart L, we have observed that some crude oil resellers have established common carrier affiliates and then transferred or sold to the affiliates the reseller's transportation facilities. These firms then include the common carrier tariffs paid to their affiliates for the transportation of crude oil in computing their transportation and gathering costs. Because common carrier tariffs normally include a return on capital investment, use of the common carrier tariff in computing transportation and gathering cost can be expected to add a margin which represents this return on capital investment to the prices of crude oil resales. In Interpretation 1978–25, the DOE held that a firm may utilize the tariff paid an affilitate for purposes of computing transportation and gathering costs under Subpart L.

As discussed above, we believe that it may be necessary to modify the price rule of § 212.183 to insure that a reseller's markup in any sale appropriately reflects the extent of such reseller's investment in gathering and transportation facilities. Furthermore, we have today proposed alternative means which we believe might be appropriate in accomplishing this objective. It is our determination, however, that it would create inequitable disparities in reseller margins to permit resellers which establish affiliated common carriers to obtain an additional return on investment by using the common carrier tariffs paid to such affiliates for transporting crude oil in computing transportation and gathering costs. Therefore, we are proposing amendments today to provide that, in the event we do not adopt a rule permitting all resellers to use a comparable common carrier tariff, as discussed above, in computing their transportation and gathering allowances, a reseller may include in its recoverable transportation and gathering costs only those expenses incurred by the common carrier affiliate in transporting the crude oil, regardless of the applicable tariff.

E. Resellers First Selling Crude Oil After May 1973 but Prior to December 1977 Which Had No Sales in November 1977

A reseller which entered the crude oil reselling business after May 1973 but prior to December 1977 is required to determine an imputed permissible average markup based on its lawful revenues in November 1977. Some resellers have requested guidance as to how they should apply the regulations in the event they had no sales in November 1977. Therefore, we are proposing an amendment to Subpart L to provide that a reseller first selling crude oil after May 1973 but prior to December 1977 but which made no sales in November 1977 would determine its permissible average markup in reliance on its lawful revenues in the month first preceding November 1977 in which it did sell crude oil. This proposal would not be applicable prospectively in the event we adopt certain aspects of the proposals set forth above. However, we are requesting comments as to whether it would be appropriate to adopt this proposed method for determining regulatory compliance by this group of resellers during the period January 1, 1978 through the effective date of any final rule we adopt in this proceeding.

F. Provisions of Subpart L Remaining Essentially Unchanged

Today's proposed amendments pertaining to resales of crude oil which the reseller has never taken into its physical possession are intended to eliminate what we believe to be layering violations in many instances. However, since we have determined that these proposals would be most effectively framed as separate price rules, the layering provisions in § 212.186 will remain in unchanged form.

The recordkeeping and reporting requirements of § 212.187 and the provisions of § 212.188 pertaining to depreciation and § 212.185 pertaining to improper certifications will also remain in essentially unchanged form. Technical amendments will be made to these sections, however, as necessary to reflect the provisions of any final rule we may adopt in this proceeding.

We are not proposing to amend § 212.183(b) which provides that sales by a refiner, *qua* refiner, such as accommodation sales and sales to adjust inventory, are to be priced in accordance with the refiner's consistent and historical accounting practice, provided that the price charged in any sale of crude oil by the refiner *qua* refiner may not exceed the price paid by the refiner for the crude oil plus any transportation cost incurred by the refiner to transport the crude oil from the point at which the refiner takes title to the crude oil to the point of sale. However, we wish to emphasize that a refiner may not realize a markup over costs in any sale of crude oil if the sale was of such a nature that historically and customarily it would have been treated as an accommodation sale or sale to adjust refinery inventories or if

the crude oil sold was obtained or at any time held for refinery purposes.

G. Proposed Permissible Average Markup for Resellers First Reselling Crude Oil on or After December 1, 1977

As discussed above the preamble to Subpart L announced our intent to establish at a later date a permissible average markup for resellers first doing business on or after December 1, 1977. We recognize that in the event we adopt either of the alternative proposals discussed above the time period during which a reseller first entered the crude oil reselling business would no longer be relevant. However, we are proposing today a permissible average markup which would be applicable to sales by post-November 1977 resellers on or after January 1, 1978 but prior to the effective date of any final rule we adopt in this proceeding.

Based on available information, we are proposing to establish a permissible average markup of fifteen cents per barrel with respect to resellers first doing business on or after December 1, 1977. We believe such a markup would be consistent with the profit margins realized by most resellers in May 1973, a period of relative stability and strong competition in the crude oil reselling market. Furthermore, since pre-December 1977 resellers generally have not been permitted under either Subpart F or Subpart L to obtain markups in excess of May 1973 profit margins, it is our further belief that post-November 1977 resellers which established their prices with reference to their nearest comparable resellers in reliance on § 212.183(c) would not be prejudiced by the adoption of the proposed fifteen cents per barrel average markup.

We are now collecting information regarding resellers' margins on the recently adopted Form ERA–69. We will reconsider the fifteen cents per barrel permissible average markup proposed above, as well as other aspects of today's proposals, in view of the information submitted on this form by crude oil resellers. To further aid us in reaching a final determination as to the appropriate permissible average margin for post-November 1977 resellers, we request that comments on this issue provide, with as much specificity as possible, information and data regarding average markups (as currently defined in Subpart L) realized by crude resellers currently, in January 1978, in November 1977, and in May 1973. In this regard, we request that all written comments be submitted under oath as to the accuracy of any factual information or data set forth therein since it is essential that our final determination in this matter be based on a record that is as accurate and reliable as possible. We recognize that information and data regarding actual pricing components involve matters of a proprietary nature. Therefore, as indicated below in Section V regarding comment procedures, you should designate any information set forth in your comments which you believe to be of a proprietary nature. We will preserve to the full extent we deem appropriate the confidentiality of any information you indicate to be proprietary.

V. Comments Procedures

A. Written Comments

You are invited to participate in this rulemaking proceeding by submitting views, data, or arguments with respect to the proposals set forth in this notice. comments should be submitted to the address set forth in the "ADDRESSES" section of this notice and should be identified on the outside envelope and on the documents submitted with the docket number and the designation "Crude Oil Resellers." Fifteen copies should be submitted. All comments received by 4:30 p.m., December 31, 1979 and all other available relevant information will be considered before final action is taken on the proposed amendments. All comments received will be available for public inspection in the DOE Reading Room GA–152, 1000 Independence Avenue, S.W., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

If you submit any information or data you believe to be confidential, it must be so identified and submitted in writing, one copy only. We reserve the right to determine the confidential status of the information or data and to treat it according to our determination.

B. Public Hearing

1. Procedure for Requesting Opportunity To Present Oral Statement.—The times and places for the hearings are indicated in the "Dates" and "Addresses" sections of this notice. If necessary to present all testimony, a hearing will be continued to 9:30 a.m. of the first business day following the first day of the hearing.

You may make a written request for an opportunity to make an oral presentation at a hearing. You should be prepared to describe the interest concerned; if appropriate, to state why you are a proper representative of a group or class of persons that has such an interest; and to give a concise summary of the proposed oral presentation and a phone number where you may be contacted through the day before the hearing.

If you are selected to be heard at a hearing, we will notify you before 4:30 p.m. December 3, 1979. You will be required to bring your statement to the hearing location before 9:30 a.m. on the day of the hearing.

2. Conduct of the Hearings.—We reserve the right to select the persons to be heard at the hearings, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearings. The length of each presentation may be limited, based on the number of persons requesting to be heard at a hearing.

An ERA official will be designated to preside at each hearing. These will not be judicial or evidentiary-type hearings. Questions may be asked only by those conducting the hearings, and there will be no cross-examination of persons presenting statements. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she 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.

Questions to be asked of any person making a statement at a hearing should be submitted to the address indicated above for requests to speak, for the location concerned, before 4:30 p.m. on the day prior to the hearing. You may also submit any questions, in writing, to the presiding officer at a hearing. The ERA or, if the queston is submitted at a hearing, the presiding officer will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of a hearing will be announced by the presiding officer.

Transcripts of the hearings will be made, and the entire record of the hearings, including the transcripts, will be retained 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., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. You may purchase copies of the transcripts from the reporter.

VI. Other Matters

In accordance with Section 7(a) of the Federal Energy Administration Act of 1974 (15 U.S.C. 787 *et seq.*, Pub. L. 93–275, as amended) a copy of this notice was submitted to the Administrator of the Environmental Protection Agency (EPA) for his comments concerning the

potential impact of this proposal on the quality of the environment. On September 21, 1979, the Administrator informed the ERA that he does not foresee as the result of the implementation of today's proposed actions an unfavorable impact on the quality of the environment as related to the duties and responsibilities of the EPA.

We are currently reviewing the effects of these proposals on the quality of the human environment and will perform any environmental analysis required by the National Environmental Policy Act (NEPA, 32 U.S.C. 4321 *et seq.*) and the applicable DOE regulations for compliance with NEPA.

We have determined that the proposals contained in this notice will not have a major impact as that term is defined in Section VI of the proposed DOE Directive issued April 25, 1978, (43 FR 18634, May 1, 1978) to implement Executive Order 12044, and, therefore, no regulatory analysis pursuant to Executive Order 12044 is required.

Pursuant to the requirements of Section 404 of the Department of Energy Organization Act (Pub. L. 95–91), a copy of this Notice has been referred to the Federal Energy Regulatory Commission for a determination as to whether, in its discretion, this proposed rule may significantly affect any function within the Commission's jurisdiction pursuant to section 412(a)(1), (b) and (c)(1) of that Act. The Commission will have until December 31, 1979, the date the public comment period closes, to make this determination.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. 751 *et seq.*, Pub. L. 93–159, as amended, Pub. L. 93–511, Pub. L. 94–99, Pub. L. 94–133, Pub. L. 94–163, and Pub. L. 94–385; Federal Energy Administration Act of 1974, 15 U.S.C. 787 *et seq.*, Pub. L. 93–275, as amended, Pub. L. 94–332, Pub. L. 94–385, Pub. L. 95–70, and Pub. L. 95–91; Energy Policy and Conservation Act, 42 U.S.C. 6201 *et seq.*, Pub. L. 94–163, as amended, Pub. L. 94–385, Pub. L. 95–70, Pub. L. 95–619, and Pub. L. 96–30; Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*, Pub. L. 95–91, Pub. L. 95–509, Pub. L. 95–619, Pub. L. 95–620, and Pub. L. 95–621; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267)

In consideration of the foregoing, Part 212 of Chapter II, of Title 10 of the Code of Federal Regulations, is proposed to be amended as set forth below.

Issued in Washington, D.C., October 25, 1979.

David J. Bardin,

Administrator, Economic Regulatory Administration.

1. The heading and paragraphs (b) (c) and (d) of § 212.131 are amended to read as follows:

§ 212.131 Certification of crude oil sales.

* * * * *

(b)(1) Each seller of crude oil, other than a producer of domestic crude oil covered by paragraph (a) of this section, shall, with respect to each sale of crude oil other than an allocation sale pursuant to § 211.65 of Part 211 of this chapter, or a sale in which no volumes of domestic crude oil are deemed to have been transferred pursuant to § 211.67(g) of Part 211 of this chapter, certify in writing to the purchaser the respective volumes of and respective per barrel prices for the—

(i) Lower-tier ("old") crude oil (separately identifying any California lower tier crude oil as define in § 211.62 of Part 211 of this chapter, and the gravity in degrees API of such California lower tier crude oil at the time of the sale);

(ii) Upper-tier ("new") crude oil (separately identifying any California upper tier crude oil, as defined in § 211.62 of Part 211 of this chapter, and the gravity in degrees API of such California upper tier crude oil at the time of the sale), exclusive of any crude oil transported through the trans-Alaska pipeline;

(iii) Crude oil transported through the trans-Alaska pipeline;

(iv) Stripper well crude oil;

(v) Incremental tertiary crude oil;

(vi) Other domestic crude oils the first sale of which is exempt from the provisions of this part; and

(vii) Imported crude oil—included in the volume of crude oil so sold. The certification shall also contain a statement that the price charged for the crude oil is no greater than the maximum price permitted pursuant to this part.

(2) Each seller of crude oil, other than a producer of domestic crude oil, shall make the certification required by this paragraph as soon as practicable after receipt of the required certifications from its sellers, but in no event later than 30 days following such receipt. However, if the crude oil is not sold until after the expiration of the thirty-day period, the certification required by this paragraph shall be made within ten days following the sale of the crude oil.

(3) All certifications required by this paragraph shall relate only to the actual volumes of crude oil included in any mixed blend of crude oil and other refined petroleum products and residual fuel oil.

(c) No firm may sell crude oil unless it provides the certification required by this section. No firm may knowingly purchase crude oil for which there is no certification as required by this section: *Provided, however,* That the provisions of this paragraph do not apply to the sale of crude oil to a firm under circumstances of economic or other coercion in which the buyer, because of its need for crude oil, had no reasonable alternative but to purchase the crude oil for which there is no certification, and such firm promptly reports the purchase to the ERA for investigation.

(d) All certifications required by this section shall be in writing, either upon an invoice or billing or by separate instrument, and shall be effective only when delivered to and received by the purchaser of crude oil.

* * * * *

2. Principal Proposal

Subpart L is revised to read as follows:

§ 212.181 Applicability.

This subpart applies to each sale of crude oil, other than the first sale.

§ 212.182 Definitions.

"Acquisition cost" means the price (not in excess of the applicable prices permitted under this part) which a reseller actually paid for the crude oil sold in a resale. The acquisition cost for crude oil received in an exchange shall be deemed to be the acquisition cost of the crude oil given up in that exchange plus or minus the total cash paid or received in that exchange. The cost of crude oil sold by a reseller in any sale shall be determined in accordance with the same accounting practice used by the reseller to determine the cost of crude oil sold during (i) May 1973 (if the reseller sold crude oil before or during May 1973 or (ii) the reseller's first month of sales (if the reseller did not sell crude oil before or during May 1973). For purposes of determination of acquisition cost, the cost of lower tier crude oil, upper tier crude oil, stripper well crude oil, and other crude oil exempt under this part shall each be determined separately and maintained in separate records.

"Exchange" means, for purposes of this subpart, a transaction in which two firms reciprocally give up and receive crude oil, provided any payment in cash or other property by one firm to compensate the other firm does not exceed quality, location or time differences in the values of the volumes exchanged. The term also includes matching purchase and sale transactions.

"Matching purchase and sale" means, for purposes of this subpart, a transaction to which two firms sell crude oil to each other, pursuant to an agreement that the sale by one firm is incident to the sale by the other, and in which the volumes transferred and the

cash paid and received by each firm are dependent on the value of the volumes received.

"Permissible average markup" with respect to a reseller which (1) first sold crude oil after May 1973 but prior to December 1977 and which (2) had no sales in November 1977 means for any month beginning January 1, 1978 but prior to [February 1, 1980] the total lawful revenues from sales of crude oil by such reseller during the first month preceding November 1977 in which the reseller sold crude oil, less the total costs and expenses associated with sales of crude oil for that month, divided by the number of barrels of crude oil sold in that month, plus the per-barrel increase in general and administrative expense and transportation and gathering cost incurred since such reseller's first month of crude oil sales.

"Reception station" means a facility to which crude oil is gathered for resale, generally consisting of storage tanks and associated equipment, including a facility used to upgrade crude oil to meet pipeline quality specifications.

"Reseller" means, for purposes of this subpart, a firm which carries on the trade or business of purchasing crude oil for resale in substantially unchanged form. A "reseller" includes (except as provided in § 212.183(b) the parent of the reseller and the consolidated and unconsolidated entities which the parent of the reseller or the reseller directly or indirectly controls.

"Sale" means a sale other than the first sale. For purposes of this Subpart, a sale does not include an exchange or matching purchase and sale transaction having the same effect as an exchange.

"Transportation allowance" means in any sale of crude oil in which the reseller transported the crude oil between the point of acquisition and point of sale partially or entirely by means of facilities owned by the reseller (a) an amount equal to the amount the reseller would have incurred in transporting the crude oil such distance by means of a common carrier, or (b) an amount determined in accordance with the following formula:

$B_1(D)(M)+B_2(R)+[I_1 \text{ or } I_2 \text{ or } I_3]$

where

B = total number of barrels transported by all modes of transportation (other than common carrier) owned and used in that month by the reseller;

B_1 = number of barrels transported by the mode of transportation (other than common carrier) owned and used by the reseller in the sale;

B_2 = number of barrels sold in that sale which had been gathered to a reception station owned by the reseller;

D = number of miles crude oil is transported by the mode of transportation (other than common carrier) used in the sale;

M = per barrel per mile actual transportation and gathering cost for the mode of transportation used in the sale in the month prior to the preceding month: *Provided,* That, if the reseller did not employ that mode of transportation in the month prior to the preceding month, the per barrel per mile actual transportation and gathering cost in the sale shall be determined in accordance with generally accepted accounting practices consistently and historically applied by the reseller;

R = per barrel expenses, including depreciation [and interest] expenses, associated with the operation and maintenance of reception stations in the month prior to the preceding month;

Alternative provisions for return on investment:

$I_1 = [\ \%]\ [B_1(D)(M) + B_2(R)]$;

$I_2 = \$0.25[B_1]$;or

$I_3 = \frac{B_1}{B}[\ \%]$

[depreciated original cost of investment in transportation and storage facilities].

"Transportation and gathering cost" means with respect to a particular mode of transportation, the actual expenses, including depreciation expense [and interest expense associated with financing the construction or purchase of reception stations, pipelines and other modes of transporting crude oil], associated with the operation and maintenance of that mode of transportation.

§ 212.183 Price rule.

(a) *General.* (1) In a sale of crude oil, a reseller may not charge a price which exceeds (i) the acquisition cost of the crude oil sold plus (ii) any amounts actually paid to an unaffiliated common carrier or other third party to transport the crude oil between the reseller's points of acquisition and sale plus (iii) any expenses actually incurred by an affiliated common carrier or other entity to transport the crude oil between the reseller's points of acquisition and sale plus (iv) the transportation allowance in that sale plus (v) one cent per barrel.

(2) Notwithstanding the provisions of subparagraph (a)(1) of this section, if between the time of purchase and the time of resale of crude oil by a reseller (i) the crude oil remained in the same physical location or (ii) such reseller did not take actual physical possession of the crude oil, the reseller may not charge a price for that crude oil which exceeds the acquisition cost of that crude oil. *Provided, however,* If (A) the reseller was the importer of record, or (B) the reseller purchased the crude oil from the producer of that crude oil, or (C) the reseller sells the crude oil to a refiner which certifies in writing to the reseller that the crude oil is being purchased for refining purposes, or (D) the reseller receives certification from the refiner which refines the crude oil that such refiner would not have received the crude oil but for the reseller's service, the reseller may not charge a price for that crude oil which exceeds the sum of the acquisition cost of that crude oil plus one cent per barrel.

(b) *Sales by a refiner.* Notwithstanding the provisions of paragraph (a) of this section, a refiner, in sales not made by a reselling business operated by the refiner, shall determine prices in sales of crude oil in accordance with the refiner's consistent and historical accounting practice: *Provided,* That the price charged in any sale of crude oil subject to this subparagraph shall not exceed the price paid by the refiner for the crude oil plus any transportation cost incurred by the refiner to transport the crude oil from the point at which the refiner takes title to the crude oil to the point of sale.

(c) *Resellers which did not sell crude oil before December 1, 1977.* If in any month prior to [February 1, 1980] the average markup of a reseller which did not sell crude oil prior to December 1, 1977 exceeded 15 cents per barrel, the reseller shall be deemed to have complied with the price regulations of this part only if the prices charged by the reseller for each grade of lower tier, upper tier, and stripper well and other exempt crude oil did not exceed the prices at which such crude oil was priced in transactions of the nearest comparable reseller in the month.

§ 212.184 Improper certifications.

If with respect to any sale of crude oil a reseller (a) improperly certifies lower tier crude oil as upper tier or stripper (or other exempt) crude oil; (b) improperly certifies upper tier crude oil as stripper (or other exempt) crude oil; of (c) sells oil without a proper certification as required under § 212.131; the reseller shall, within the first calendar month succeeding the month during which no certification was made or such improper certification was made, deliver to the purchaser to which such improper certification was made a proper certification as required by § 212.131. With respect to any purchaser to which the reseller has failed to deliver a proper certification with respect to lower tier crude oil or has improperly certified lower tier crude oil as upper tier or stripper (or other exempt) crude oil, the reseller shall refund to such purchaser the difference between the price charged by the reseller to that purchaser for such improperly certified or uncertified crude

oil and the reseller's weighted average acquisition cost of lower tier crude oil for the month during which no certification or such improper certification was made, times the number of barrels so improperly certified or not certified. With respect to any purchaser to which the reseller has failed to deliver a proper certification with respect to upper tier crude oil has improperly certified upper tier crude oil as stripper (or other exempt) crude oil, the reseller shall refund to such purchaser the difference between the price charged by the reseller to that purchaser for such improperly certified or uncertified crude oil and the reseller's weighted average acquisition cost of upper tier crude oil for the month during which no certification or such improper certification was made, times the number of barrels so improperly certified or not certified. With respect to any purchaser to which the reseller has failed to deliver a proper certification with respect to stripper (or other exempt) crude oil, the reseller shall refund to such purchaser the difference between the price charged by the reseller for such crude oil and the reseller's weighted average acquisition cost of stripper and other exempt crude oil for the month during which no certification was made, times the number of barrels not certified. Refunds required by this paragraph shall accompany the proper certifications required by this paragraph.

§ 212.185 Layering.

The price for crude oil charged by a reseller which in a sale performs no service or other function traditionally and historically associated with the resale of crude oil shall not exceed the actual price paid by the reseller for the crude oil, less any amount received in an exhange and any amount received in excess of the amount paid in a matching purchase and sale transaction having the same effect as an exchange, plus any amount paid in an exchange and any amount paid in excess of the amount received in a matching purchase and sale transaction having the same effect as an exchange.

§ 212.186 Recordkeeping and reporting.

(a) *Recordkeeping.* Each reseller of crude oil shall, with respect to each transaction, maintain at its principal place of business, (1) original source documents (e.g. original invoices) substantiating acquisition cost (including certifications received for crude oil purchased and certifications given for crude oil sold), gathering and transportation cost, and general and administrative costs relative to the purchasing and selling of crude oil, (2) original company accounting worksheets substantiating the computation of acquisition cost, gathering and transportation cost, (3) for those firms engaged in other petroleum activities besides crude oil reselling, original company accounting worksheets substantiating the allocation of acquisiton cost, gathering and transportation cost to the crude reselling activity, (4) official inventory records showing valuations of inventory in quantity and dollar amount with the additions to and deletions from inventory, (5) official ledgers and supporting worksheets used to develop the reports required by the Department of Energy, (6) an itemized summary of all crude oil purchases containing with respect to each purchase, the supplier's name and invoice number, the date of purchase, and the number of barrels of crude oil of each regulatory category (lower tier, upper tier, and imported and each category of exempt domestic crude oil) purchased in the month, (7) an itemized summary of all crude oil sales containing with respect to each sale, the purchaser's name, the sales invoice number, the date of sale, and the number of barrels of crude oil of each regulatory category sold in the month and (8) an itemized summary of all exchanges containing with respect to each exchange, the exchange partner's name, the invoice number, the date of the exchange, and the number of barrels of crude oil exchanged, and full accounting of any differentials received by or paid to any party to the exchange.

(b) *Reporting.* Each firm engaged in the business of reselling crude oil shall submit to ERA periodic reports in accordance with forms and instructions issued by ERA.

§ 212.187 Depreciation.

For purposes of determining a reseller's transportation and gathering cost associated with any sale of crude oil, depreciation shall be determined in accordance with the accounting practice used by the reseller in preparing its Form 10–k filed with the Securities and Exchange Commission or an analogous report filed with a state regulatory agency covering the period which included (a) May 1973 in the case of a reseller which sold crude oil before or during May 1973 or (b) the first month of sales of crude oil in the case of a reseller which did not sell crude oil before or during May 1, 1977. If the reseller did not file a Form 10–k or such analogous report covering such period, depreciation shall be determined in accordance with the accounting practice applied by the reseller for a certified annual report covering such period prepared by an independent accounting firm. If the reseller neither filed a Form 10–k or an analogous report nor had a certified annual report prepared by an independent accounting firm, depreciation shall be determined in accordance with the accounting practice used by the reseller to determine depreciation for purposes of the reseller's income tax for the reseller's taxable year which included the month of May 1973 or the reseller's first month of sales, as applicable.

3. Alternative to Primary Proposal

Subpart L is revised to read as follows:

§ 212.181 Applicability.

This subpart applies to each sale of crude oil, other than the first sale.

§ 212.182 Definitions.

"Acquisition cost" means the total of the lawful prices actually paid by the reseller for crude oil sold by the reseller in a particular calendar quarter, determined in accordance with generally accepted accounting practices consistently and historically applied by the reseller; less the amounts received in exchanges and the amounts received in excess of the amounts paid in matching purchase and sale transactions having the same effect as exchanges, plus the amounts paid in exchanges and the amounts paid in excess of the amounts received in matching purchase and sale transactions having the same effect as exchanges.

"Average markup" means the total revenues in all sales of crude oil, other than those sales to which § 212.183(a)(2) is applicable, by the reseller in a particular calendar quarter less the total costs and expenses associated with such sales of crude oil in the calendar quarter, divided by the number of barrels of crude oil sold in such sales by the reseller in the calendar quarter.

"Costs and expenses associated with sales of crude oil" means the sum of the following items determined in accordance with generally accepted accounting practices consistently and historically applied by the reseller:

(a) The acquisition cost of the crude oil sold in the calendar quarter;

(b) The transportation and gathering cost associated with the crude oil sold in the calendar quarter;

"Exchange" means, for purposes of this subpart, a transaction in which two firms reciprocally give up and receive crude oil, provided any payment in cash or other property by one firm to compensate the other firm does not exceed quality, location or time

differences in the values of the volumes exchanged. The term also includes matching purchase and sale transactions.

"Matching purchase and sale" means, for purposes of this subpart, a transaction in which two firms sell crude oil to each other, pursuant to an agreement that the sale by one firm is incident to the sale by the other, and in which the volumes transferred and the cash paid and received by each firm are dependent on the value of the volumes received.

"Permissible average markup" with respect to a reseller which (1) first sold crude oil after May 1973 but prior to December 1977 and which (2) had no sales in November 1977 means for any month beginning January 1, 1978 but prior to [February 1, 1980] the total lawful revenues from sales of crude oil by such reseller during the first month preceding November 1977 in which the reseller sold crude oil, less the total costs and expenses associated with sales of crude oil for that month, divided by the number of barrels of crude oil sold in that month, plus the per-barrel increase in general and administrative expense and transportation and gathering cost incurred since such reseller's first month of crude oil sales.

"Reception station" means a facility to which crude oil is gathered for resale, generally consisting of storage tanks and associated equipment, including a facility used to upgrade crude oil to meet pipeline quality specifications.

"Reseller" means, for the purposes of this subpart, a firm which carries on the trade or business of purchasing crude oil for resale in substantially unchanged form. A "reseller" includes (except as provided in § 212.183(b) of this subpart) the parent of the reseller and the consolidated and unconsolidated entities which the parent of the reseller or the reseller directly or indirectly controls.

"Sale" unless otherwise specified means a sale other than the first sale. For purposes of this subpart, the term does not include an exchange or matching purchase and sale transaction having the same effect as an exchange.

"Transportation and gathering cost" means (a)(1) any common carrier tariff actually paid by a reseller to an unaffiliated common carrier to transport crude oil from the reseller's reception station or point of acquisition to a point of sale or (2) the expenses incurred by a reseller's affiliate in transporting crude oil from the reception station or point of acquisition to the reseller's point of sale, or (b) the actual expenses, including depreciation expense [and interest expense associated with financing the construction or purchase of trucks, pipelines and other modes of transporting crude oil], associated with the operation and maintenance of trucks, pipelines, and other modes of transportation used to transport crude oil sold from the reseller's points of acquisition to point of sale directly or through reception stations, plus the expenses, including depreciation expense [and interest expense associated with financing the construction or purchase of reception stations], associated with the operation and maintenance of reception stations.

§ 212.183 Price rule.

(a) *General.* (1) A reseller may charge any price in a sale of crude oil: *Provided,* That the reseller's average markup for each calendar quarter shall not exceed 25 cents per barrel, and provided that a reseller shall not unreasonably discriminate or grant unreasonable preferences in the pricing of crude oil among its purchasers.

(2) Notwithstanding the provisions of subparagraph (a)(1) of this section, if between the time of purchase and the time of resale of crude oil by a reseller (i) the crude oil remained in the same physical location or (ii) such reseller did not take actual physical possession of the crude oil, the reseller may not charge a price for that crude oil which exceeds the acquisition cost of that crude oil: *Provided, however,* If (A) the reseller was the importer of record, or (B) the reseller purchased the crude oil from the producer of that crude oil, or (C) the reseller sells the crude oil to a refiner which certifies in writing to the reseller that the crude oil is being purchased for refining purposes, or (D) the reseller receives certification from the refiner which refines the crude oil that such refiner would not have received the crude oil but for the reseller's service, the reseller may not charge a price for that crude oil which exceeds the sum of the acquisition cost of that crude oil plus one cent per barrel.

(b) *Sales by a refiner.* Notwithstanding the provisions of paragraph (a) of this section, a refiner, in sales not made by a reselling business operated by the refiner, shall determine prices in sales of crude oil in accordance with the refiner's consistent and historical accounting practice: *Provided,* That the price charged in any sale of crude oil not subject to this subparagraph shall not exceed the price paid by the refiner for the crude oil plus any transportation cost incurred by the refiner to transport the crude oil from the point at which the refiner takes title to the crude oil to the point of sale.

(c) *Resellers which did not sell crude oil before December 1, 1977.* If in any month prior to [February 1, 1980], the average markup of a reseller which did not sell crude oil prior to December 1, 1977 exceeded 15 cents per barrel, the reseller shall be deemed to have complied with the price regulations of this part only if the prices charged by the reseller for each grade of lower tier, upper tier, and stripper well and other exempt crude oil did not exceed the prices at which such crude oil was priced in transactions of the nearest comparable reseller in the month.

§ 212.184 Inventory rule.

(a) The cost of crude oil sold by a reseller in a calendar quarter shall b e determined in accordance with the same accounting practice used by the reseller to determine the cost of crude oil sold during (1) May 1973 in the case of a reseller which sold crude oil before or during May 1973, (2) November 1977 in the case of a reseller which sold crude oil before December 1, 1977, but not before or during May 1973, or (3) the reseller's first month of sales in the case of a reseller which did not sell crude oil before December 1, 1977.

(b) For purposes of determination of acquisition cost, the cost of lower tier crude oil, upper tier crude oil, stripper well crude oil, and other crude oil exempt under this part shall be determined separately and maintained in separate inventory records.

§ 212.185 Improper certifications.

If with respect to any sale of crude oil a reseller (a) improperly certifies lower tier crude oil as upper tier or stripper (or other exempt) crude oil; (b) improperly certifies upper tier crude oil as stripper (or other exempt) crude oil; or (c) sells any crude oil without a proper certification as required under § 212.131; the reseller shall, within the first calendar month succeeding the month during which no certification was made or such improper certification was made, deliver to the purchaser to which such improper certification was made, a proper certification as required by § 212.131. With respect to any purchaser to which the reseller has failed to deliver a proper certification with respect to lower tier crude oil or has improperly certified lower tier crude oil as upper tier or stripper (or other exempt) crude oil, the reseller shall refund to such purchaser the difference between the price charged by the reseller to that purchaser for such improperly certified or uncertified crude oil and the reseller's weighted average acquisition cost of lower tier crude oil for the month during which no

certification or such improper certification was made, times the number of barrels so improperly certified or not certified. With respect to any purchaser to which the reseller has failed to deliver a proper certification with respect to upper tier crude oil or has improperly certified upper tier crude oil as stripper (or other exempt) crude oil, the reseller shall refund to such purchaser the difference between the price charged by the reseller to that purchaser for such improperly certified or uncertified crude oil and the reseller's weighted average acquistion cost of upper tier crude oil for the month during which no certification or such improper certification was made, times the number of barrels so improperly certified or not certified. With respect to any purchaser to which the reseller has failed to deliver a proper certification with respect to stripper or other exempt crude oil, the reseller shall refund to such purchaser the difference between the price charged by the reseller for such crude oil and the reseller's weighted average acquisition cost of stripper and other exempt crude oil for the month during which no certification was made, times the number of barrels not certified. Refunds required by this paragraph shall accompany the proper certifications required by this paragraph.

§ 212.186 Layering.

The price for crude oil charged by a reseller which in a sale performs no service or other function traditionally and historically associated with the resale of crude oil shall not exceed the actual price paid by the reseller for the crude oil, less any amount received in an exchange and any amount received in excess of the amount paid in a matching purchase and sale transaction having the same effect as an exchange, plus any amount paid in an exchange and any amount paid in excess of the amount received in a matching purchase and sale transaction having the same effect as an exchange.

§ 212.187 Recordkeeping and reporting.

(a) *Recordkeeping.* Each reseller of crude oil shall, with respect to each transaction, maintain at its principal place of business, (1) original source documents (e.g. original invoices) substantiating average markup, acquisition cost (including certifications received for crude oil purchased and certifications given for crude oil sold), gathering and transportation cost, and general and administrative costs relative to the purchasing and selling of crude oil, (2) original company accounting worksheets substantiating the computation of average markup, acquisition cost, gathering and transportation cost, and general and administrative costs, (3) for those firms engaged in other petroleum activities besides crude oil reselling, original company accounting worksheets substantiating the allocation of acquisition cost, gathering and transportation cost, and general and administrative costs to the crude reselling activity, (4) official inventory records showing monthly valuations of inventory in quantity and dollar amount with the monthly additions to and deletions from inventory, (5) official ledgers and supporting worksheets used to develop the reports required by the Department of Energy, (6) an itemized summary of all crude oil purchases containing with respect to each purchase, the supplier's name and invoice number, the date of purchase, and the number of barrels of crude oil of each regulatory category (lower tier, upper tier, and exempt crude oil) purchased in the month, (7) an itemized summary of all crude oil sales containing with respect to each sale, the purchaser's name, the sales invoice number, the date of sale, and the number of barrels of crude oil of each regulatory category sold in the month and (8) an itemized summary of all exchanges containing with respect to each exchange, the exchange partner's name, the invoice number, the date of the exchange, and the number of barrels of crude oil exchanged, and full accounting of an differentials received by or paid to any party in the exchange.

(b) *Reporting.* Each firm engaged in the business of reselling crude oil shall submit to ERA periodic reports in accordance with forms and instructions issued by ERA.

§ 212.188 Depreciation.

For purposes of determining a reseller's costs and expenses associated with sales of crude oil, depreciation shall be determined in accordance with the accounting practice used by the reseller in preparing its Form 10–k filed with the Securities and Exchange Commission or an analogous report filed with a State regulatory agency covering the period which included (a) May 1973 in the case of a reseller which sold crude oil before or during May 1973; (b) November 1977 in the case of a reseller which sold crude oil before December 1, 1977, but not before or during May 1973; or (c) the first month of sales of crude oil in the case of a reseller which did not sell crude oil before December 1, 1977. If the reseller did not file a Form 10–k or such analogous report covering such period, depreciation shall be determined in accordance with the accounting practice applied by the reseller for a certified annual report covering such period prepared by an independent accounting firm. If the reseller neither filed a Form 10–k or an analogous report nor had a certified annual report prepared by an independent accounting firm, depreciation shall be determined in accordance with the accounting practice used by the reseller to determine the depreciation for purposes of the reseller's income tax for the reseller's taxable year which included the month of May 1973, the month of November 1977, or the reseller's first month of sales, as applicable.

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Part VII

Department of Agriculture

Food and Nutrition Service

Food Stamp Program: 1979 Amendments on Social Security Numbers, Fraud, and Group Homes

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273, and 278

[Amdt. No. 154]

1979 Amendments to the Food Stamp Act of 1977: Provision of Social Security Numbers; Fraud Disqualification and Recoupment; and Group Living Arrangements

AGENCY: Food and Nutrition Service.

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking amends the regulations, published October 17, 1978 (43 FR 47846), which implemented major portions of the Food Stamp Act of 1977. All of the amendments proposed in this rulemaking are the result of changes in the Food Stamp Act brought about by the enactment of Pub. L. 96–58, 93 Stat. 389, August 14, 1979.

The amendment sets forth procedures by which social security numbers will be obtained for all members of food stamp households as authorized by Section 4 of Pub. L. 96–58. That section amended the Food Stamp Act of 1977 to enable the Department to require as a condition of eligibility for participation in the Food Stamp Program, that each household member furnish to the State agency their social security account number or numbers.

In addition, this proposal would amend the regulations so that individuals subject to disqualification from program participation for fraudulent conduct would be required to agree to either a reduction in the household's food stamp allotment or to a repayment in cash in order to again participate in the Food Stamp Program as mandated by Section 5 of Pub. L. 96–58.

This proposal would also amend Part 273 to permit each State agency to retain 50 percent of the value of all funds or allotments recovered or collected through prosecutions or other State activities directed against individuals who fraudulently obtain food stamp allotments to reflect changes brought about by Section 6 of Pub. L. 96–58. The proposed rulemaking also sets forth procedures for implementing a provision for certain blind and disabled residents of State certified small group living arrangements to participate in the Food Stamp Program as mandated by Sections 7 and 8 of Pub. L. 96–58.

DATE: Comments must be received on or before December 17, 1979, in order to be assured of consideration. The Department is under a statutory mandate to issue final rulemaking on the changes dealing with social security numbers, fraud disqualification and recoupment 150 days from the date the law was enacted, August 14, 1979. Because of this mandate, Robert Greenstein, Administrator, Food and Nutrition Service, has determined that there be a 45-day comment period; a 60-day comment period would preclude the Department from meeting the mandated time for publishing final rules. While the changes by Sections 7 and 8 of Public Law 96–58 are not under the same legislative deadline, the Department believes that the legislative intent was for expeditious processing of all changes required by the amendments. Consequently, these changes were included as part of the proposed rulemaking on Sections 4 through 6 of the statute. The Department urges interested parties to comment as early as possible within the 45 day comment period since comment analysis must begin immediately after the comment period in order to publish final rules within 150 days of enactment. The Department will carefully review all comments received by the 45th day and will give them serious consideration before final rulemaking is published. The Department cannot guarantee consideration of comments received after the 45th day.

ADDRESS: Comments should be submitted to: Alberta C. Frost, Acting Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, USDA, Washington, D.C. 20250. All written comments will be open to public inspection at the offices of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at Room 678, 500 12th Street, SW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Susan McAndrew, Chief, Program Standards Branch, Program Development Division, Food and Nutrition Service, Washington, D.C. 20250. Phone (202) 447–6535.

SUPPLEMENTARY INFORMATION:

Social Security Numbers

Provision of social security numbers. Public Law 96–58 amended the Food Stamp Act of 1977 to allow the Secretary to require, as a condition of eligibility for participation in the Food Stamp Program, that each household member furnish to the State agency their social security number (SSN) (or numbers, if they have more than one.)

In addition, this amendment specifically allows State agencies to use social security numbers "in the administration of the Food Stamp Program" and grants the Secretary and State agencies the same access to data pertaining to Supplemental Security Income (SSI) recipients as the access provided to the Security of the Department of Health, Education and Welfare (DHEW) to the extent the Secretary and the Secretary of DHEW determine necessary for the purpose of determining or auditing a household's eligibility to receive assistance or the amount thereof under the program or verifying information related thereto.

Implementation. Although the legislation does not mandate a specific implementation date, it does require that final regulations implementing Section 4 of the act be issued within 150 days after the date of enactment. In keeping with Congress' mandate to promulgate these regulations expeditiously, the Department proposes that State agencies begin obtaining household members' SSN's as soon as possible after final rules are published, but no later than 120 days from the date of publication of final rules. It is the Department's opinion that the impact of obtaining SSN's for food stamp applicants and/or participants will be lessened since SSN's are already available for significant portions of the food stamp caseload. For that portion of the caseload which also receives public assistance (PA) there will already be recorded SSN's for all household members since this is already a requirement for PA households. In addition, individuals receiving social security or SSI benefits and the working members of non-assistance households will also have SSN's. The Department estimates that less than half the food stamp caseload will not have or will not know their SSN's. The Department is proposing that State agencies obtain individuals' SSN's at the time of application, recertification or at any office contact. This would eliminate the need for a massive desk review effort and gives State agencies an opportunity to gradually meet this requirement; this should avoid seriously increasing a State agency's workload.

Requiring the SSN as a condition of eligibility. The amendment states that "the Secretary and State agencies may (1) require, as a condition of eligibility for participation in the Food Stamp Program, that each household member furnish to the State agency their social security account numbers * * *

In proposing that social security numbers be required as a condition of eligibility, the Department researched the Congressional intent in passing this

amendment. It is clear from the legislation background that Congress views the requiring of an SSN as a condition of eligibility as an antifraud provision (Cong. Rec. July 27, 1979 p. S10778). The intent is to use social security numbers in computer matching and other techniques to prevent duplicate participation and to allow States to more readily identify those households that have unreported earnings or have reported their earnings incorrectly (Cong. Rec. July 27, 1979, p. S10779). The Department shares the concerns of Congress expressed in the legislative history and is therefore proposing to mandate the requiring of SSN's as a condition of eligibility.

While it is clear, as explained above, that obtaining household members' SSN's must be a requirement for applicants and participants, it is also apparent that Congress intended that provisions be made to allow an individual's participation pending receipt of an SSN from the Social Security Administrative (SSA). In Cong. Rec. August 2, 1979 H7067, it is stated that individuals not previously assigned a social security number would be eligible to participate while waiting for the SSN to be assigned, as long as the individuals apply for and susequently furnish SSN's. Congress also specifically indicated that individuals entitled to expedited service would be permitted to furnish a social security number after receiving their first allotment: this is intended to avoid delay in benefits simply because a social security number cannot be immediately furnished (Cong. Rec. August 2, 1979, H7076). Consequently, the Department is proposing that any household member who does not have an SSN, does not know the SSN, or does not know if he or she has an SSN, and does apply for the SSN, may continue to participate for 90 days pending receipt of the number. The Department researched with SSA the length of time it takes to process an paplication for an SSN. Based on study information, the average processing time from the completion of the application for an SSN to the date of SSN issuance is approximately 31 days. However, because the processing time may vary depending on the difficulty in obtaining required verification and on the particular office handling the application, the Department believes that the proposed 90 day time frame (for participation pending receipt) is needed to allow ample time.

In this situation the Department feels it is justifiable to ask individuals to provide documentation that they have, in fact, applied for and SSN and why it is delayed (e.g. problems with locating a birth certificate etc.) and this is reflected in the proposed rules. As long as the individual has applied for an SSN and has provided SSA, to the best of ability, with all necessary information, it is the Department's opinion that the household member should not be penalized for processing delays and thus may continue to participate. Further, a household's certification will not be delayed solely to validate an SSN provided for any household member. The Department is proposing that as soon as all other steps necessary for certification have been completed a household must be certified rather than wait for validation of a social security number. If all other certification steps are completed in less than 30 days, the household should be certified at that point, rather than be required to wait until later in the 30 day period because the State agency has not completed validation of an SSN.

Obtaining and verifying the SSN. The proposed rules state that for those household members who have an SSN, the State agency shall, at the time of application, recertification, or any office contact, record the SSN and verify it either by matching the reported number with computer tapes from SSA (such as BENDEX or SDX tapes) or printouts from SSA, or by viewing a document with the social security number on it, (such as a driver's license, or a social security card). It is the Department's opinion, after discussion with SSA, that verification of the SSN is important; reporting the numbers verbally often results in inaccurate transcription and if there is anything questionable about an SSN it should be completely validated to avoid the confusion caused by an incorrect SSN. Once an SSN has been validated, verification must be recorded by the State agency to prevent the need for reverification in the future.

The Department is proposing two possible procedures for obtaining SSN's of household members who do not have a number, do not know their SSN or do not know if they have a number. The individual needing an SSN may either apply for the number directly at the SSA office or the State agency can offer to complete the application for a social security number, Form SS–5, and note on the SS–5 the documentation provided by the individual as verification of identity, age, and citizenship/alien status. However, the latter procedure shall only be used in States which have a agreement with SSA which allows the States to take the SS–5 application and record the necessary verification in the same way an SSA staff person does in their District Offices. Currently, 33 State agencies have such an agreement with SSA and handle obtaining SSN's for AFDC and/or medicaid in this manner. These States will need to renegotiate their agreements with SSA since most of the existing agreements apply only to AFDC and/ medicaid. The remaining State agencies require their clients for those two programs to apply directly at SSA offices. The Department does want to offer the household members all assistance possible in meeting the SSN requirement and consequently proposes that, when individuals opt to apply directly to SSA, the State agency inform the individual where to apply and discuss with them what they will need to present as evidence of identity, age, and citizenship or alien status.

Failure to comply. The legislative background to the amendment clearly indicates the Congressional intent relative to those individuals failing to comply with this requirement. In the Cong. Rec. August 2, 1979, p. H7067, it is stated that the provision requiring social security numbers as a condition of eligibility

> * * * would permit an individual to be barred from receiving food stamps if that individual had been assigned a social security number, but refused to provide it to the State agency. Individuals not previously assigned a social security number could also be prevented from participating unless the individual applied for and subsequently furnished a social security number. The income and resources of the individual disqualified for failure to provide a social security number would be counted in the same way an individual's income and resources are counted when a person is disqualified for fraud or for failure to meet the student work registration requirement during the school year.

The proposed regulations follow the Congressional intent. In addition, the Department is proposing a good cause provision. It is the Department's position that household members should not be penalized when they have applied for an SSN, and through no fault of their own, do not receive it in a timely manner. Consequently, if the State agency determines that a household member has been unable to obtain an SSN, with good cause, that individual will not be disqualified. Examples of good cause would include a delay in SSA processing the application for an SSN, a delay in obtaining a birth certificate, a delay in obtaining alien status papers, etc.

The Department discussed with SSA whether or not all legal aliens can obtain an SSN. Currently, SSA issues SSN's to aliens admitted for permanent residence, for refugees, and for those legal temporary aliens who are given

employment authorization by the Immigration and Naturalization Service (INS). Legal temporary aliens who do not have documentation to show that they are "employment authorized" are only issued SSN's when they have valid nonwork reasons.

Preliminary discussions with SSA indicate that eligibility for food stamps would be considered a justification for a legal temporary alien to be issued an SSN.

Use of SSN. The Department believes it was Congress' intent that SSN's be used as an antifraud device. The legislative background indicates that Congress envisioned State agencies using the SSN's to prevent duplicate participation and to detect underreported or unreported income by matching reported income against data from other federal programs.

The amendment, as enacted, specifies that State agencies shall have the same access that has been provided to HEW to the information regarding individual food stamp program applicants and participants who receive benefits under title XVI of the Social Security Act, provided that the Secretary of DHEW concurs that access to SSI information is within the purposes set forth in the statute. This access will enable State agencies to determine SSI households' eligibility to receive benefits, the amount of the benefits and to verify reported income information. The proposed regulations provide for this type of suage of SSN's.

Mass changes. The Department believes that prompt implementation of the SSN requirement will greatly facilitate making mass changes, specifically the SSI and social security cost-of-living changes which occur annually. In the past, some States have made cost-of-living increases for recipients of social security and SSI benefits automatically while other have made such changes on an as reviewed or as reported basis. This has resulted in a lack of uniformity and inequity in benefit levels since some individuals' benefits were reduced more quickly than others. Because of the availability of information on these changes from SSA, by social security number, the Department expects mass changes in social security and SSI benefits to be reflected more promptly. Therefore, tighter time frames for making these changes are incorporated into this proposal. For the July 1980 changes, States must adjust benefit levels within 180 days and beginning in July 1981, within 90 days. If, by July 1980, all cases containing individuals who receive SSI or social security benefits, have not had SSN's obtained or recorded through recertification or any office contact, the State agency will have to identify these individuals by means of a desk review. The desk review will serve to identify individuals for whom SSN's are needed and will allow the State agency to contact these individuals and obtain their SSN's for use in making the annual cost-of-living increase adjustments. Since all individuals receiving social security or SSI will already have SSN's, obtaining them for food stamp purposes should be neither costly nor time consuming. The Department expects that the availability of SSN's in the future will readily identify persons affected by benefit changes from other programs as well, since SSN's are widely used as an identifier. The use of SSN's to make changes for increases in social security and SSI benefits is of particular significance given the cost constraints on the program.

The Department's proposal to allow 180 days for the July 1980 changes and 90 days thereafter is designed to allow State agencies which cannot make these changes by computer to schedule recertifications for households with SSI or social security income during these periods.

Fraud Disqualification and Recoupments

Section 5 of Pub. L. 96–58 amends Section 6(b) of the Food Stamp Act of 1977 to provide that following any disqualification from the program for fraud no individuals shall be eligible to participate in the program unless he or she agrees to repayment of the fraudulently received benefits. Repayment may be made through either a reduction in the allotment the household would otherwise receive or through repayment in cash, in accordance with a reasonable schedule, over a period of time sufficient to reimburse the amount of the fraudulently received benefits. If the individual elected repayment in cash but failed to meet the repayment schedule, the household is subject to appropriate allotment reductions.

Implementation. State agencies would implement the program changes contained in this proposal on fraud disqualification and recoupments on or before July 1, 1980. Within 120 days of implementation the Food and Nutrition Service would begin returning to each State agency 50 percent of the value of all funds or allotments recovered or collected through prosecution or other State activities directed against individuals who fraudulently obtain food stamps.

Disqualification for failure to repay. If the individual who committed fraud does not agree to a reduction in the household's allotment or does not agree to pay the fraud claim in cash, this proposed rulemaking would allow the State agency to disqualify the individual until the person agrees to repay in cash or agrees to the allotment reduction. The household would be sent an agreement letter at the time of disqualification, and a follow-up letter sent the month prior to the end of the disqualification period if the household failed to respond initially. The period of disqualification would then be extended immediately if the household again failed to respond. The income and resources of the individual disqualified for failure to repay the fraud claim would be counted in the same way an individual's income and resources are currently counted when that person is disqualified for fraud or for failure to meet the student work registration requirement during the school year. The income of the disqualified member is prorated and the amount, less the disqualifed member's share, is considered available to the remaining members. The disqualified members resources are considered available in total.

Collection of fraud claims. In order to collect fraud claims, States must currently rely on voluntary repayment by the household or incur the expense of initiating a civil court action to obtain repayment. The 1979 Amendments provide, through allotment reduction, a simple and efficient mechanism for collecting fraud claims if the household cannot or will not make cash repayments. As a result, it is anticipated that the percentage of fraud claims collected will substantially increase without increasing the administrative costs of collecting these claims. These collection procedures should also discourage persons from committing fraud.

State share of recovery. States are currently required to return to the Federal Government all funds collected from housedholds that have repaid the value of any food stamps overissued to them. The Food Stamp Act Amendments of 1979 revise Section 16(a) of the Food Stamp Act of 1977 to allow each State to retain 50 percent of the funds it recovers or collects from persons that have committed fraud as determined in accordance with the Food Stamp Act of 1977. This provision will provide an incentive for States to pursue collection of fraud claims, particularly in those cases where recoupment of disqualification is currently ineffective because the household is ineligible.

The Department is proposing a new method for States to submit funds recovered from all types of

overissuances. States would no longer forward checks to FNS for overissuance recoveries. The letter of credit would be amended quarterly to reflect 50 percent retention of funds recovered from fraud claims and to reflect the full value of nonfraud claims which are still fully payable to FNS. If needed, the letter of credit would also be adjusted to reflect recovery of funds from claims resulting from State negligence. States would continue to report claims on Form FNS–209, Status of Claims Against Households. The amount of fraud claims would be indicated on the FNS–209 and on other letter of credit documents as required by FNS. This new method will permit States to retain funds to meet administrative costs until such time as the letter of credit is adjusted.

This proposal, in accordance with the 1979 amendments, also provides that persons involved in making fraud determinations are not to benefit from the amount of such recoupments or collections. This prohibition on the use of revenues collected in this manner will assure the impartiality of officials making fraud adjudications.

Repayment schedules. As discussed earlier, the 1979 Amendments direct the Secretary to establish a reasonable restitution schedule, either through cash repayment or recoupment through allotment reduction, that will be sufficient over time to reimburse the Federal Government for the value of fraudulently obtained food stamps.

If the individual agrees to a repayment in cash, the Department proposes that the claim be collected in full if the individual is financially able to pay the indebtedness in one lump-sum. If, however, the individual is financially unable to pay the indebtness in one lump-sum, the Department suggests that installment payments be accepted that are at least equal to the minimum allotment for the size of the household of which such individual is a member.

In developing a recoupment schedule, the Department considered three options: recoupment of a flat percentage of the food stamp allotment; recoupment of any amount over and above the minimum bonus; and recoupment of the whole allotment. The Department proposes to recoup a flat percentage of the food stamp allotment, primarily because it is a uniform standard and employs a single mathematical calculation. A flat percentage also has the advantage of encouraging households to continue program participation, thereby ensuring that the overissuances are recovered. The Department is proposing that 25 percent of the food stamp allotment be recouped, except in special circumstances, but welcomes comments on this particular issue as we recognize that this proposal is of substantial concern.

In the event the household member found guilty of fraud joins another food stamp household, the Department proposes that the State agency initiate collection action against the household containing the fraudulent individual. This proposal conforms most closely to the language in the law which states that no disqualified individual shall be eligible to participate in the Food Stamp Program unless such individual agrees to a reduction in the allotment of the household of which such individual is a member.

In addition, the Department proposes that when a court of appropriate jurisdiction fails to specify a specific disqualification period for fraudulent conduct that a six-month disqualification period be employed since the Food Stamp Act of 1977 mandates a period of not less than six and not more than twenty-four months. This change is proposed to make the processing of court-handled cases more equitable with that of fraud cases processed through administrative hearings. A period of disqualification is always imposed where guilt is established in fraud hearings. This is also proposed to more closely follow the legislative history of the 1977 Act which indicates that persons committing fraud should be subject to separate actions-punishment and recovery.

Administrative fraud hearing. It has come to the Department's attention that some State agencies are not vigorously applying the administrative fraud hearing provisions specified in Section 273.16(d) of the Food Stamp Regulations. Some State agencies are choosing to interpret this regulatory language as being discretionary permitting them to either conduct or refuse to conduct administrative fraud hearings at their option on a Statewide basis. Regardless, this system is mandated and must be available for use.

The Department recognizes that there have been factors influencing State agency hesitancy to pursue fraud hearings in the past. However, with the new provisions on recoupment as a method of overissuance recovery as well as the 50 percent payment to the State for monies recovered, additional incentives to pursue fraud hearings will be in place. One additional change the proposed regulations will permit is that administrative fraud hearings for currently ineligible participants be initiated by the State agency to substantiate fraud and that a period of disqualification be instituted if the household member ever becomes eligible for the program again.

Likewise, because the Department recognizes that some State agencies are concerned about the cost of conducting an administrative fraud hearing and have suggested that the $35 limit, below which fraud hearings could not be conducted, be raised, the Department will accept comments on the limit to be imposed. These comments will be carefully considered in determining the amount below which fraud hearings would not be conducted.

It is hoped that intensive public scrutiny will assist the Department in drafting final regulations. In formulating comments, particular attention should be given in the area of percentages of allotments to be recouped. However, comments on all aspects of the proposed rules will be considered. In reading this proposed rulemaking on collection of fraud claims, it will be useful to refer to other rulemakings of the Department. These other publications are the final rules implementing major aspects of the Food Stamp Act of 1977 published on October 17, 1978, (43 FR 47846) and the preamble to the May 2, 1978 proposal (43 FR 18874).

Group Living Arrangements

One of the objectives of the 1979 amendments to the Food Stamp Act of 1977 is to provide that certain disabled or blind residents of State certified small group living arrangements are permitted to participate in the Food Stamp Program if otherwise eligible. These disabled or blind residents must be receiving social security benefits under title II (Social Security Disability) or title XVI (Supplemental Security Income—SSI), and they must be living in a public or private nonprofit group living arrangement that serves no more than sixteen residents and is certified by the appropriate State agency under regulations issued under Section 1616(e) of the Social Security Act.

In reading this proposed rulemaking on the group living arrangement provisions in the 1979 amendments to the Food Stamp Act of 1977, it will be helpful to refer to other rulemakings of the Department.

These other publications are the final rules implementing major aspects of the Food Stamp Act of 1977 published on October 17, 1978; the regulations pertinent to Authorized Firms published on September 22, 1978 (43 FR 43272) and Food Stamps' Miscellaneous Amendments and interpretations published on June 8, 1979 (44 FR 33380). This is of particular significance since treatment of these households has been structured much the same as for

residents of drug and alcoholic treatment facilities in keeping with legislative intent. Among the provisions carried over from the treatment facilities regulations are the disqualification of group homes found to have misappropriated coupons.

Implementation. The 1979 Amendments to the Food Stamp Act of 1977 require that the provision for certain disabled or blind residents of State certified small group living arrangements to be able to participate in the Food Stamp Program be implemented in all States by July 1, 1980.

Definitions. The Department proposes to amend definitions in Part 271 concerning: "Eligible food", and "Retail food store" and to added a new definition: "Group living arrangement."

Eligible food. A revision similar to the one described above is proposed to provide that meals prepared for elderly persons or SSI recipients, or both, are eligible foods. In addition, the eligible foods definition is revised to include, as eligible food, meals prepared for blind or disabled residents by authorized group living arrangement facilities. Public Law 96–58 calls for the participation of group living arrangements in the Program.

Group Living Arrangements. The Department has taken the definition of group living arrangements from Pub. L. 96–58 and has added a provision that group living arrangement facilities provide care and/or protective oversight for their residents. The regulations would require that group living arrangement facilities must provide care or protective oversight for no more than sixteen residents and must be certified by the appropriate State agency or agencies under regulations issued under section 1616(e) of the Social Security Act. Additionally, these residents must be receiving benefits under social security disability (title II) or Supplemental Security Income—SSI (title XVI)—of the Social Security Act.

Purpose. The proposed regulations provide for certain disabled or blind residents of State certified small group living arrangement facilities to participate in the Food Stamp Program under the same conditions currently in effect for drug addicts and alcoholics in residential treatment programs.

The proposed regulations exempt from the definition of institution public or private nonprofit group living arrangements that serve no more than sixteen residents and that are State certified under regulations issued under section 1616(e) of the Social Security Act. Basic policy is, and has been, that residents of institutions are not eligible because the institution provides all meals to the individual. the intent here is to cover alternatives that come closer to family or household living arrangements in which individuals may assume some responsibility for food purchase and preparation even though these group living arrangement facilities provide care and/or protective oversight over their residents.

Certain disabled or blind residents in these group living arrangements may be able to participate in the Food Stamp Program since they will no longer be considered residents of an institution. However, disabled or blind residents who receive title II or title XVI benefits are not categorically eligible for Food Stamp Program benefits. They must meet all Food Stamp Program eligibility criteria. If eligible, these residents will be certified to participate in the Food Stamp Program as one-person households.

Responsible staff members of group living arrangements facilities will act as authorized representatives for residents. These authorized representatives will make application for and receive and spend the coupon allotments on behalf of eligible residents.

The group living arrangement facility may spend the coupon allotment in authorized retail food stores. If it wishes to redeem food coupons through wholesalers, the group living arrangement facility must be authorized by FNS as a retail food store.

Approval of retail food stores and wholesale food concerns. On June 8, 1979, the Department published final rules which included an amendment stating that alcoholic and drug addiction treatment and rehabilitation programs do not have to be authorized as retail food stores in order for their residents to be certified to participate in the Program. Therefore, treatment and rehabilitation programs will be authorized only if they wish to redeem food stamps through wholesalers. The proposed regulations include this provision. In addition, a paragraph is added to the section on approval of retail food stores to allow the participation of group living arrangement facilities in the program in accordance with Public Law 96–58.

Section 278 is amended to state that group living arrangement facilities authorized as retail food stores may not redeem food stamps at banks.

Therefore, it is proposed that Parts 271, 272, 273, and 278 be amended as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

1. In § 271.2 it is proposed that the definitions of "eligible foods" and "retail food store" be amended and a new definition for "group living arrangement" be added to read as follows:

§ 271.2 Definitions

* * * * *

"Eligible foods" means (1) any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot food products prepared for immediate consumption; (2) seeds and plants to grow foods for the personal consumption of eligible households; (3) meals prepared and delivered by an authorized meal delivery service to households eligible to use coupons to purchase delivered meals; or meals served by a communal dining facility for the elderly, or SSI households, or both, to households eligible to use coupons for communal dining; (4) meals prepared and served by an authorized drug addict or alcoholic treatment and rehabilitation center to households eligible to use coupons to purchase those meals; (5) meals prepared and served by an authorized group living arrangement facility to residents who are blind or disabled recipients of benefits under title II or XVI of the Social Security Act; and (6) in the case of certain eligible households living in areas of Alsaka where access to food stores is extremely difficult and the households rely on hunting and fishing for subsistence, equipment for the purpose of procuring food for eligible households, including nets, lines, hooks, fishing rods, harpoons, knives, and other equipment necessary for subsistence hunting and fishing but not equipment for the purpose of transportation, clothing, or shelter nor firearms, ammunition or other explosives.

* * * * *

"Group living arrangement" means a public or private nonprofit facility which provides care and/or protective oversight for no more than sixteen disabled or blind residents who are recipients of benefits and under title II (Social Security Disability) or title XVI (Supplemental Security Income (SSI)) of the Social Security Act, and which is certified by the appropriate State agency or agencies under regulations issued under Section 1616(e) of the Social Security Act.

* * * * *

"Retail food store" means (1) an establishment or recognized department of an establishment, or a house-to-house

trade route, whose eligible food sales volume is more than 50 percent staple food items for home preparation and consumption; (2) public or private communal dining facilities and meal delivery services and drug addict or alcoholic treatment and rehabilition programs and public or private nonprofit group living arrangements; (3) any store selling equipment for procuring food by hunting and fishing to eligible households in Alaska, as specified in the definition of eligible food; (4) any private nonprofit cooperative food purchasing venture, including those whose members pay for food prior to receipt of the food; and (5) a farmers' market.

* * * * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. A new subparagraph (9) is added to § 272.1(g) to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(9) *Amendment 154.* State agencies shall implement the program changes required by Amendment 154 as follows:

(i) State agencies shall require social security numbers for all new applications and recertifications no later than 120 days from the date of publication of final rules. Participating households shall be requested to provide or apply for social security numbers (SSN) for all household members at recertification or at the time of office contact for any other reason. For those households which contain individuals receiving social security and/or SSI, and whose recertifications are not scheduled until after July 1980, the State agency, in order to meet the requirements for mass changes as contained in § 273.12(e)(3) as amended, shall review such cases in order to contact those households so that they may obtain SSN's within 180 days from July 1, 1980.

(ii) If any member(s) of a household cannot provide their SSN at the time of application, recertification, or any office contact they shall apply for a SSN in accordance with § 273.6 as amended.

(iii) State agencies shall implement the fraud disqualification procedures and the fraud claim procedures contained in §§ 273.16, 273.17 and 273.18 no later than 120 days from the date of publication of final rules.

(iv) FNS shall return to each State agency 50 percent of the value of all funds or allotments recovered or collected 120 days from the date of publication of final rules through prosecutions or other State activities directed against individuals who fraudently obtained food stamps.

(v) State agencies shall implement the provisions regarding group living arrangements on or before July 1, 1980.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.1, it is proposed that a new subparagraph (3) be added to § 273.1(e) and subparagraph § 273.1(f)(2) be amended to read as follows:

§ 273.1 Household concept.

* * * * *

(e) *Residents of institutions.* Individuals shall be considered residents of an institution when the institution provides them with the majority of their meals as part of the institution's normal services and the institution has not been authorized to accept coupons. Residents of institutions are not eligible for participation in the program, with the following three exceptions:

* * * * *

(3) Disabled or blind recipients of benefits under title II or title XVI of the Social Security Act who are residents of group living arrangements as defined in § 271.2.

* * * * *

(f) *Authorized representatives.* * * *

(2) *Drug addict/alcoholic treatment centers and group homes as authorized representatives.* Narcotic addicts or alcoholics who regularly participate in a drug or alcoholic treatment program on a resident basis and disabled or blind recipients of benefits under title II or title XVI of the Social Security Act who are residents of group living arrangement facilities as defined in § 271.2 may elect to participate in the Food Stamp Program. The residents shall apply and be certified for program participation through the use of an authorized representatives who shall be an employee of and designated by the private nonprofit organization or institution that is administering the treatment and rehabilitation program or public or private nonprofit group living arrangement. The organization or institution shall apply on behalf of each addict or alcoholic or each disabled or blind resident receiving benefits under title II or title XVI of the Social Security Act and shall receive and spend the coupon allotment for food prepared by and/or served to the addict or alcoholic or disabled or blind resident receiving benefits under title II or title XVI of the Social Security Act. The organization or institution shall also be responsible for complying with the requirements set forth in § 273.11(e).

* * * * *

4. In § 273.2, a new subparagraph (v) is added to § 273.2(f)(1), subparagraph (i) of § 273.2(f)(9) is revised, and subparagraphs 273.2(i)(3)(ii) and (4)(i) are amended to read as follows:

§ 273.2 Application processing.

* * * * *

(f) *Verification.* * * *

(1) *Mandatory verification.* * * *

(v) *Social Security Numbers.* The social security number(s) (SSN) reported to the State agency by the household shall be verified by the State agency. However, the State agency shall not delay certification of an otherwise eligible household solely to validate any member's SSN, even if the 30 day processing period has not expired. As soon as all other steps necessary to certify a household are completed except for validation of an SSN, the State agency must certify the household. Verification shall be completed either at initial application or at the time of or prior to the household's next recertification. The SSN (s) shall be verified in one of the following ways:

(A) Matching the reported SSN with information supplied by the Social Security Administration (SSA) (such as BENDEX or SDX computer tapes or printouts); or

(B) Observing the household member's social security card or any document containing the SSN. If the individual has no social security card or the social security number appears questionable, the State agency shall verify the number on the card either by matching it with SSA tapes or submitting or having the individual submit Form SS–5, Application for a Social Security Number, to the Social Security Administration. In the latter case, the State agency shall advise the individuals where to file and discuss with them what evidence will be needed. Once an SSN has been verified, the State must annotate its file accordingly to prevent the need for reverification in the future.

* * * * *

(9) *Verification subsequent to initial certification.* (i) *Recertification.* At recertification, the State agency shall verify a change in income, medical expenses or actual utility expenses claimed by a household if the source has changed or the amount has changed by more than $25 since the last time they were verified. State agencies may verify income, actual utility expenses, or medical expenses claimed by households which are unchanged or

have changed by $25 or less, provided verification is, at a minimum, required when information is questionable as defined in paragraph (f)(2) of this section. Unchanged information, other than income and medical or utility expenses, shall not be verified at recertification unless the information is questionable as defined in paragraph (f)(2) of this section. Newly obtained social security numbers shall be verified at recertification in accordance with verification procedures outlined in § 273.2(f)(1)(v).

* * * * *

(i) *Expedited service.* * * *

(3) *Processing Standards.* * * *

(ii) *Drug addicts and alcoholics, group living arrangement facilities.* For residents of drug addiction or alcoholic treatment and rehabilitation centers and residents of group living arrangement facilities who are entitled to expedited service, the State agency shall mail an ATP or coupons or have the ATP or coupons available for pick-up no later than seven working days following the date the application was filed.

* * * * *

(4) *Special procedures for expediting service.* * * *

(i) To expedite the certification process, the State agency shall postpone the verification required by § 273.2(f). However, the household's identity and residency shall be verified through a collateral contact or readily available documentary evidence. Examples of acceptable documentary evidence which the household may provide include, but are not limited to, a driver's license, work or school I.D., voter registration card or birth certificate. Households entitled to expedited service shall be permitted to furnish or apply for a social security number after receiving their first allotment in accordance with paragraph (iii). The household's income statements shall be verified through a collateral contact, or readily available documentary evidence whenever it can be done in sufficient time to meet the expedited processing standards. However, benefits shall not be delayed beyond the delivery standard described in paragraph (i)(3) of this section solely because income has not been verified.

5. In § 273.6 SSI cash-out States is renumbered § 273.20 and § 273.6 is retitled Social Security Numbers. The new § 273.6 reads as follows:

§ 273.6 Social security numbers.

(a) *Requirement for participation.* (1) The State agency shall require that a household participating or applying for participation in the Food Stamp Program provide the State agency with the social security number (SSN) (or numbers if they have more than one number) of each household member. The State agency shall explain to applicants and participants that refusal to provide an SSN will result in disqualification of the individual who refuses to comply in accordance with paragraph (c) of this section. The State agency shall also inform applicants and participants how the SSN will be used.

(2) If any household member(s) is unable to provide the State agency with an SSN prior to certification or recertification, the member who does not have an SSN, and therefore must apply for one, shall be allowed to participate for 90 days from the date of application pending receipt of the social security number.

(3) If the SSN has not been obtained within the 90 days and the participant cannot show good cause why an SSN has not been obtained, the participant shall be disqualified in accordance with subparagraph 273.6(c). If the SSN has not been obtained within the time limit but good cause has been established, then the participant may continue to participate provided the individual has documentation indicating they have, in fact, applied for the SSN. Household members without an SSN shall be eligible to participate while waiting for the Social Security Administration (SSA) to issue an SSN as long as they have applied for the number, made effort to provide SSA with th necessary information, and can document this. If SSA determines that an applicant will not qualify for an SSN then that individual shall be disqualified from participation in the Food Stamp Program.

(b) *Obtaining SSN's for all food stamp household members.* (1) for those individuals who provide SSN's prior to certification, recertification or at any office contact, the State agency shall record the SSN and verify it in accordance with § 273.2(f)(1)(v).

(2) For those individuals who do not have an SSN, the State agency shall use one of the following two procedures:

(i) In a State where an agreement exists between the State agency and SSA which allows the State agency to complete the application for an SSN, Form SS–5, the State agency shall offer to and shall complete this form at the household's request. To complete the form, the State agency can complete the SS–5 only when this agreement between SSA and the State exists.

(ii) If the household member elects to complete the SS–5 and apply to the SSA directly, or in a State in which no agreement with SSA exists, the State agency shall inform the household member where to apply and what information will be needed. The State agency should suggest that the household member ask for proof of application from SSA, in the event their application is not processed within the 90 days time period described in paragraph (a) of this section. The SSA normally uses the Receipt for Application for a Social Security Number, Form SSA–5028, as evidence that an individual has applied for an SSN.

(3) for those individuals who do not know if they have an SSN, or are unable to find their SSN, the State agency shall follow the procedures described in subparagaph (2) (i) and (ii) above.

(c) *Failure to comply.* It the State agency determines that a household member(s) has refused to provide an SSN or has failed without good cause to obtain an SSN, that individual(s) shall be ineligible to participate until that individual complies. This disqualification applies to the individual(s) alone and not to the entire household. The earned or unearned income of an individual disqualified from the household for failure to comply with this requirment shall be handled as outlined in § 273.9(b)(3) of these regulations.

(d) *Determining good cause.* In determining if good cause exists for failure to comply with the requirement to provide the State agency with an SSN, the State agency shall consider information from the household member, the Social Security Administration and the State agency (especially if the State agency was designated to send the SS–5 to SSA and either did not process the SS–5 or did not process it in a timely manner). Documentary evidence or collateral information that the household has applied for the number and made every effort to supply SSA with the necessary information shall be considered good cause for not complying timely with this requirement.

(e) *Ending disqualification.* The household member(s) disqualified may become eligible upon providing the State agency with an SSN or demonstrating that an application has been made at SSA for a social security number.

(f) *Use of SSN.* With the concurrence of the Secretary of the Department of Health, Education, and Welfare, the State agency shall use social security numbers in the administration of the Food Stamp Program. State agencies shall have access to information regarding individual Food Stamp Program applicants and participants who receive benefits under title XVI of the Social Security Act to determine such a household's eligibility to receive

assistance and the amount of assistance, or to verify information related to the benefits of these households. State agencies shall use the State Data Exchange (SDX) to the maximum extent possible. The State agency should also use the SSN's to prevent duplicate participation, to facilitate mass changes in Federal benefits as described in § 273.12(e)(3) and to determine the accuracy and/or reliability of information given by households.

6. In § 273.9, it is proposed that subparagraph (b)(3) be revised to read as follows:

§ 273.9 Income and deductions.

* * * * *

(b) *Definition of income.* * * *

(3) The earned or unearned income of an individual disqualified from the household for fraud in accordance with § 273.16, for failing to comply with the student work registration requirements in § 273.7(b)(9)(i) or for failing to comply with the requirement to provide an SSN in accordance with § 273.6, shall continue to be counted as income, less the pro rata share for the individual. Procedures for calculating this pro rata share are described in § 273.11.

7. In § 273.10(f)(3) it is proposed that a new subparagraph (iv) be added as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(f) *Certification periods.* * * *

(3) * * *

(iv) Households receiving SSI and social security benefits, in States which do not have the capability to effect at a point in time, mass changes in benefits due to the annual cost-of-living increases, shall be assigned certification periods that ensure that they are due for recertification at the time of or immediately after the SSI and social security cost-of-living increase. Households entitled to a certification period of up to 12 months as discussed in § 273.10(f)(3)(v) shall, on a one-time basis, be certified for less than a year in order to comply with this provision.

* * * * *

8. In § 273.11, it is proposed that a new subparagraph (iii) be added to (c)(5), paragraph (f) be relettered as paragraph (g) and the new paragraph (f) is added to read as follows:

§ 273.11 Action on households with special circumstances.

* * * * *

(c) *Treatment of income and resources of disqualified members.* Individual household members may be disqualified for fraud, for failure to meet the student work registration requirements during the school year or for failure to obtain, or refusal to provide, an SSN. During the period of time a household member is disqualified, the eligibility and benefit level of any remaining household members shall be determined as follows:

* * * * *

(5) *Reduction or termination of benefits within the certification period.*

* * *

(iii) *SSN disqualification.* If a household's benefits are reduced or terminated within the certification period because one or more of its members is being disqualified for failure to meet the SSN requirement, the State agency shall issue a notice of adverse action which informs the household that one or more of its members is being disqualified, the reason for the disqualification, and the eligibility and benefit level of the remaining members.

* * * * *

(f) *Residents of group living arrangements who receive social security disability or SSI payments.* (1) Disabled or blind recipients of social security disability or SSI payments who reside in a group living arrangement facility as defined in § 273.1(e)(3) may voluntarily apply for the Food Stamp Program. Resident disabled or blind recipients of social security disability or SSI payments shall have their eligibility determined as a one-person household. The State agency shall certify these individuals by using the same provisions that apply to all other households except that certification must be accomplished through an authorized representative as described in § 273.1(f)(5). The guidelines for issuing FNS retailer authorizations to these group living arrangement facilities are set forth in § 278.1(e).

(2) Each group living arrangement facility shall provide the State agency with a certified list of currently participating residents. The State agency shall require the list on a periodic basis. In addition, the State agency shall conduct periodic random onsite visits to assure the accuracy of the listings and that the State agency's records are consistent and up to date.

(3) The following provisions apply to residents of group living arrangements who receive social security disability of SSI payments:

(i) When expedited processing standards as described in § 273.2(i) are necessary, eligibility for the initial application shall be processed on an expedited basis, and the State agency shall complete verification and documentation requirements prior to issuance of a second coupon allotment;

(ii) When normal processing standards apply, the State agency shall complete the verification and documentation requirements prior to making an eligibility determination for the initial application;

(iii) The State agency shall process changes in household circumstances and recertifications by using the same standards that apply to all other food stamp households; and

(iv) Resident households shall be afforded the same rights to notices of adverse action, to fair hearings, and to entitlement to lost benefits as are all other food stamp households.

(4) The group living arrangement facility shall notify the State agency, as provided in § 273.12(a) of changes in the household's income or other household circumstances and of when the individual leaves the group living arrangement. The group living arrangement shall return to the State agency a household's ATP card or coupons if they are received after the household has left the group living arrangement facility.

(5) The group living arrangement facility shall provide resident disabled or blind recipients of social security disability or SSI payments with their ID card and any untransacted ATP cards issued for the household when the household leaves the group living arrangement. If the ATP card has already been transacted and the household leaves the group living arrangement prior to the 16th day of the month, the group living arrangement facility is no longer allowed to act as that household's authorized representative. The group living arrangement facility shall, if possible, provide the household with a change report form to report to the State agency the individual's new address and other circumstances after leaving the group living arrangement, and shall advise the household to return the form to the appropriate office of the State agency within 10 days.

(6) The group living arrangement facility shall be responsible for any misrepresentation or fraud which it knowingly commits in the certification of its residents. As an authorized representative, it must be knowledgeable about household circumstances and should carefully review those circumstances with residents prior to applying on their behalf. The group living arrangement facility shall be strictly liable for all losses or misuse of food coupons held on behalf of resident households and for all overissuances which occur while the

household is a resident of the group living arrangement.

(7) The group living arrangement facility may be penalized or disqualified, as described in § 278.6, if it is determined administratively or judicially that coupons were misappropriated or used for purchases that did not contribute to a certified household's meals. The State agency shall promptly notify FNS when it has reason to believe that a group living arrangement facility is misusing coupons in its possession. However, the State agency shall take no action prior to FNS action against the group living arrangement facility. The State agency shall establish a claim for overissuance of food coupons held on behalf of resident clients as stipulated in paragraph (f)(6) of this section if any overissuance are discovered during an investigation or hearing procedure for redemption violations. If FNS disqualifies a group living arrangement facility as an authorized retail food store, the State agency shall suspend its authorized representative status for the same period.

9. In § 273.12, it is proposed that subparagraph (e)(3) be revised to read as follows:

§ 273.12 Reporting changes.

* * * * *

(e) *Mass changes.* * * *

(3) *Mass changes in Federal benefits.* (i) State agencies shall treat cost-of-living increases received in July 1981 and all other subsequent years and any other mass changes in social security and SSI payments as a mass change for food stamp purposes. The household shall not be responsible for reporting these changes. The State agency shall be responsible for automatically adjusting a household's food stamp benefit level to reflect the change in accordance with the procedures in paragraph (e)(2) of this section, or as noted in paragraph (e)(3)(ii) of this section.

(ii) State agencies which do not have the capability to perform a point-in-time adjustment of the entire caseload as required by paragraph (e)(2) of this section, shall schedule all households containing one or more members who receive social security or SSI payments for recertification during July, August, and September of each year so that the cost-of-living increase can be reflected in a timely manner.

(iii) For cost-of-living increases scheduled for July 1980, State agencies which currently have the capability shall treat the increases as a mass change in accordance with the procedures in paragraph (e)(2) of this section. A State agency is capable of treating these changes as a mass change if the State agency's computer system can identify by social security number individual household members receiving social security or SSI payments and the amount of these payments, and the computer system can extract on a timely basis the new income data from BENDEX and SDX for each recipient. All other State agencies shall, within 180 days of the effective date of the increase, identify cases receiving social security and SSI payments and reflect the cost-of-living increase in the household's allotment.

10. In § 273.16, it is proposed that paragraphs (a), (d), (d)(9)(ii), and (e)(3) be amended and a new subparagraph (4) be added to § 273.16(e) to read as follows:

§ 273.16 Fraud disqualification.

(a) *Fraud disqualification penalties.* Individuals found to have committed fraud through an administrative fraud hearing shall be ineligible to participate in the program for 3 month. Individuals found guilty of criminal or civil fraud by a court of appropriate jurisdiction shall be ineligible for not less than 6 months and not more than 24 months as determined by the court. If the court fails to specify a disqualification period for the fraudulent act, the State agency shall impose a six-month disqualification period. State agencies shall disqualify only the individual convicted of fraud and not the entire household. After any specified period of disqualification, the individual found guilty of fraud will continue to be ineligible to participate in the Food Stamp Program if the individual fails to agree to either a repayment in cash or a reduction in the food stamp allotment of the household of which such individual is a member in accordance with the procedures established in § 273.18(e)(2). After the disqualification period, if the individual fails to make cash payments in accordance with an agreed to schedule, the individual's household will be subject to allotment reductions in accordance with the procedures established in § 273.18(e)(2)(i). Individuals shall be permitted to make restitution during the period of disqualification in accordance with the established procedures for recoupment or cash repayment.

* * * * *

(d) *Administrative disqualification.* Each State agency shall establish procedures for conducting fraud hearings which must conform with the procedures outlined in this section. An administrative fraud hearing should be initiated by the State agency in cases in which the State agency has sufficient evidence to substantiate that an individual has committed one or more acts of fraud as defined in paragraph (b) of this section. Such cases may include those in which the State agency believes the facts of the individual case do not warrant civil or criminal prosecution through the appropriate court system, or has previously referred the case for such prosecution and prosecution was declined by the appropriate legal authority. The State agency may initiate an administrative fraud hearing regardless of the current eligibility of the individual. The disqualification period for individuals no longer participating at the time the hearing decision is final shall be deferred until the individual applies for and is determined eligible for program benefits. Fraud hearings shall not be conducted if the amount the State agency suspects has been fraudulently obtained is less than $35 or if the value of the ineligible items that have been purchased with food stamps is under $35. The burden of proving fraud is on the State agency. The administrative fraud hearing may still be conducted regardless of whether other legal action is planned against the household member.

* * * * *

(9) *Notification of hearing decision.*

* * *

(ii) If the administrative fraud hearing finds that the household member committed fraud, the State agency shall mail a written notice to the household member prior to disqualification. The notice shall inform the household member of the decision and the reason for the decision. The notice shall also advise the remaining household members, if any, of either the allotment they will receive during the period of disqualification, or that they must reapply because the certification period has expired. The procedures for handling the income and resources of the disqualified member are described in § 273.11. For State level decisions, the notice shall inform the household member of the date disqualification will take effect. For local level decisions, the notice shall inform the household member of the deadline for requesting a State level hearing, the date disqualification will take effect unless a State level hearing is requested, and that benefits will be continued pending a State level hearing if the household is otherwise eligible. If the individual is no longer participating, the notice shall inform the individual that the period of disqualification will be deferred until such time as the individual again applies for and is determined eligible for

program benefits. A list of the household member's rights as contained in § 273.15(p) and the State level hearing procedures shall be enclosed with the local fraud hearing decision notice. In addition, the State agency shall initiate fraud claim collection activities in accordance with § 273.18(c).

* * * * *

(e) *Court imposed disqualifications.* * * *

(3) State agencies shall disqualify an individual found guilty of fraud for the length of time specified by the court. If disqualification is ordered but a date for initiating the disqualification period is not specified, the State agency shall initiate the disqualification period for currently eligible individuals with the first month following the date the disqualification was ordered. If the court fails to specify a specific disqualification period for the fraudulent conduct, the State agency shall impose a six-month disqualification period which shall begin the first month following the date the court found a currently eligible individual guilty of civil or criminal fraud. If the individual is not eligible for the program at the time the disqualification period is to begin, the period shall be postponed until the individual applies for and is determined eligible for benefits. A court ordered disqualification may run concurrently with the 3-month period of disqualification imposed as a result of an administrative fraud hearing. The State agency shall not initiate or continue a court imposed or administratively imposed fraud disqualification period contrary to a court order.

(4) If the court finds that the household member committed fraud, the State Agency shall mail a written notice to the household member prior, whenever possible, to disqualification. The notice shall inform the household member of the decision and the reason for the decision. The notice shall also advise the remaining household members, if any, of the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. The procedures for handling the income and resources of the disqualified member are described in § 273.11. The notice shall also inform the household member of the date disqualification will take effect. In addition, the State agency shall initiate fraud claim collection activities in accordance with § 273.18(c).

* * * * *

11. In § 273.18, it is proposed that paragraphs (c)(3), and (4) be deleted and subparagraph (c)(2), and paragraphs (d) and (e) be amended; subparagraph (f)(2) renumbered as (f)(3) and subparagraphs (f)(1) and (f)(2) amended. The amended paragraphs read as follows:

§ 273.18 Claims against households.

* * * * *

(c) *Fraud claim.* * * *

(2) *Collecting fraud claims.* (i) If a household member is found to have committed fraud by either an administrative fraud hearing or a court of appropriate jurisdiction, the State agency shall, prior whenever possible to disqualification, send the individual a written agreement letter for restitution, designed by FNS, which informs the individual of the amount owed, the reason for the claim, the period of time the claim covers, any offsetting that was done to reduce the claim, the types and terms of each restitution schedule which is offered, the date restitution must commence, the penalties involved for default as well as the household member's right to a fair hearing if the individual disagrees with the State agency's determination of the claim. In addition to the written agreement letter for restitution, a personal contact shall be made, if possible. The State agency shall initiate such collection unless the household has repaid the overissuance as a result of nonfraud demand letters, the State agency has documentation which shows the household cannot be located, or the legal representative prosecuting a member of the household for fraud advises, in writing, that collection action will prejudice the case. In cases where a household member was found guilty of fraud by a court, the State agency shall request the matter of restitution be brought before the court.

(ii) Mandatory restitution shall begin the month following the month the period of disqualification ends. If the disqualified individual fails to agree to make restitution, their period of disqualification shall continue until an agreement is made. The individual who committed fraud or the household may begin restitution prior to or during the period of disqualification set by a hearing. However, the penalities in § 273.16(a) shall not apply except in cases of mandatory restitution. The State agency shall follow the procedures for collecting and submitting payments as well as the applicable accounting procedures prescribed in paragraphs (e), (f), (g), and (h) of this section. FNS may grant deviations from the designed demand letter under conditions specified in § 273.2(b). A written demand letter for a fraud claim shall be sent even if the household has previously received a nonfraud demand letter, because the time period covered by the claim is different for fraud and nonfraud claims, unless the overissuance is repaid as a result of the nonfraud collection efforts. In addition to the written demand letter, a personal contact shall be made, if possible.

(iii) One month prior to the end of the specified period of disqualification, if the household member found guilty of fraud has not responded to the written agreement letter, the State agency shall send one additional follow-up letter advising the individual that he will continue to be ineligible to participate in the Food Stamp Program if the individual fails to agree to either a reduction in the household's food stamp allotment or to a repayment in cash in accordance with the procedures established in paragraph (e)(2) of this section. Individuals who fail to agree to make restitution in accordance with the terms of the written agreement shall continue to be ineligible to participate in the Food Stamp Program. The State agency shall mail a written notice to the household member informing such individual of the decision and the reason for the decision. The notice shall also advise the remaining household members, if any, of either the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. The procedures for handling the income and resources of the disqualified member are described in § 273.11. The period of disqualification continues until the fraudulent individual agrees to make restitution. The State agency may also initiate civil court action to obtain the claim.

(iv) If after the specified period of disqualification, the household member agrees to make restitution, the State agency shall follow the procedures prescribed in paragraph (e)(2) of this section for collecting and submitting payments or the procedures for reducing the food stamp allotment of the household of which such individual found guilty of fraud is a member.

(v) The State agency shall suspend collection action at any time it has documentation that the household member found guilty of fraud cannot be located. A claim shall be determined uncollectible after it is held in suspense for three years. The State agency may use an uncollectible claim to offset benefits in accordance with § 273.17.

(d) *Changes in household composition.* (1) *Nonfraud claims.* If a household's membership has changed since the overissuance occurred, the State agency shall initiate collection action against the head of the

household. If the head of the household is no longer living or cannot be located, the State agency shall initiate collection action against the household containing a majority of the individuals who were household members at the time the error occurred.

(2) *Fraud claims.* If the household member found guilty of fraud moves, resulting in a change in household membership, the State agency shall initiate collection action against the household currently containing the fraudulent individual.

(e) *Methods of collecting payments.* (1) State agencies shall collect payments for nonfraud claims in one of the following ways:

(i) *Lump-sum.* State agencies shall collect payments from households in one lump sum if the household is financially able to pay the claim in one lump sum.

(ii) *Installments.* If the household has insufficient liquid resources or is otherwise financially unable to pay the claim in one lump sum, payments shall be accepted by the State agency in regular installments. If the full amount of the claim cannot be liquidated in 3 years, the State agency shall compromise the claim by reducing it to an amount that will allow the household to pay the claim in 3 years. A State agency may use the full amount of the claim to offset in accordance with § 273.17.

(2) State agencies shall collect payments for fraud claims in one of the following ways:

(i) *Reduction in food stamp allotment.* If the household member found guilty of fraud agrees to a reduction in the household's food stamp allotment, the State agency shall discuss with the household the amount of food stamps to be recouped each month. The amount of food stamps to be recouped each month shall be 25 percent of the household's monthly allotment. Recoupment of less than 25 percent shall be accepted only of it results in equal increments or if the full amount can be recovered within a year using a lesser percentage. If the full amount of the claim cannot be liquidated in 3 years, the State agency shall compromise the claim by reducing it to an amount that will allow the household to make restitution within 3 years. A State agency may use the full amount of the claim to offset benefits in accordance with § 273.17.

(ii) *Repayment in cash.* If the household member found guilty of fraud agrees to a repayment in cash, and the individual is financially able to repay the claim in full, the State agency shall collect the payment in one lump-sum. However, if the household has insufficient liquid resources or is otherwise unable to pay the claim in one lump sum, payments shall be accepted in regular installments. If the full amount of the claim cannot be liquidated in 3 years, the State agency shall compromise the claim, by reducing it to an amount that will allow the individual to pay the claim in 3 years. A State agency may use the full amount of the claim to offset benefits in accordance with § 273.17. If the household member fails to make a payment in accordance with the established restitution schedule, the State agency shall initiate one of the following actions:

(A) If the household member fails to make any payments, the State agency shall send one follow-up notice. If the household member again fails to make any payments, the State agency shall follow the procedures prescribed in paragraph (e)(2)(i) of this section for reducing the household's food stamp allotment.

(B) If the household member makes a payment that is less than the amount established in the restitution schedule, the State agency shall determine if the household's economic circumstances have changed necessitating a reduction in the amount of the payments. If so, the State agency and the household member shall execute a revised repayment schedule. If, however, the household's economic circumstances have not changed and the household is still financially able to pay the established claim, then the State agency shall follow the procedures established in paragraph (e)(2)(i) of this section for reducing the household's food stamp allotment.

(3) State agencies may initiate civil court action to obtain payment of the claim prior to the end of the disqualification period. However, the State agency shall not deny, terminate or reduce a household's benefits for failure to repay a claim, to agree to a repayment schedule or to make the agreed upon payment, unless the State agency's request for repayment of a claim is after the period of disqualification and the household member found guilty of fraud fails to agree to make restitution in accordance with the procedures prescribed in this section.

(f) *Submission of payments.* (1) Effective July 1, 1980, the State agency shall no longer forward to FNS value of all funds collected for claims. This amount includes the total value of allotments recouped to repay fraud claims. Alternatively, FNS will amend the State's letter of credit on a quarterly basis. This amendment will reflect State's retention of 50 percent of the value of all funds collected or allotments recouped through prosecutions or other State activities directed against individuals who fraudulently obtain food stamps as well as full retention by FNS of all nonfraud overissuance recoveries.

(2) Each State shall also submit a Form FNS–209, Status of Claims Against Households, monthly to FNS to detail the State's activities relating to claims against households. This report is due no later than 30 days after the end of each calendar month and shall be submitted even if the State agency has not collected any payments. In addition to reporting the amount of funds recovered from fraud claims each month on Form FNS–209, the State agency shall also report this amount on other letter of credit documents as required. In accounting for fraud claim collections, the State agency shall include in the collections cash repayments, and the value of the allotments recouped or offset by restoration of lost benefits. However, the value of allotments reduced during periods of disqualification, including disqualification due to an individual's failure to agree to repay a fraud claim, shall not be considered recouped allotments and shall not be used to offset a fraud claim. In addition, each State agency shall establish controls to ensure that officials responsible for fraud determinations will not benefit from the State share of recoveries.

* * * * *

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS, AND BANKS

13. In § 278.1, it is proposed that paragraph (e) be revised and a new paragraph (f) added and paragraphs (f) through (l) relettered (g) through (m). The revised paragraph (e) and the new paragraph (f) reads as follows:

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

* * * * *

(e) *Treatment programs.* Drug addict or alcoholic treatment and rehabilitation programs wishing to redeem through wholesalers food stamps received from or on behalf of their particpants must, in addition to meeting the requirements of paragraph (a), (b) and (d)(1) of this section, be certified by the State agency or agencies designated by the Governor as responsible for the State's programs for alcoholics and drug addicts under Public Law 91–616, "Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1972," and Public Law 92–255, "Drug Abuse Office and Treatment Act of 1972," as providing

treatment that can lead to the rehabilitation of drug addicts and alcoholics. In addition, the certification must show that the treatment program meets the standards required of treatment programs under the supervision of the State agency or agencies designated by the Governor as responsible for the State's programs for alcoholics and drug addicts. Approval to participate is automatically cancelled at any time that a program loses its certification from the State agency or agencies.

(f) *Group living arrangement facilities.* Group living arrangement facilities wishing to redeem through wholesalers food stamps received from or on behalf of their residents must, in addition to meeting requirements of paragraphs (a), (b), and (d)(1) of this section, be certified by the appropriate State agency or agencies under regulations' issued under section 1616(e) of the Social Security Act. Approval to participate is automatically cancelled at any time that a program loses its certification from the State agency or agencies.

* * * * *

§ 278.2 [Amended]

14. In § 278.2, it is proposed that paragraph (g) be revised by adding the words "and authorized group living arrangement facilities" after the word "programs" in the final sentence.

Note.—Food Stamp forms are being revised in accordance with the requirements of this amendment. The reporting and/or record keeping requirements anticipated in this amendment resulting from the forms revisions will be forwarded to the Office of Management and Budget for approval in accordance with the Federal Reports Act of 1942.

* * * * *

(91 Stat. 958 (7 U.S.C. 2011–2027))

Note.—This proposal has been reviewed under the USDA criteria established to implement, Executive Order 12044, "Improving Government Regulations." A determination has been made that this action should not be classified as significant. Robert Greenstein, Administrator of the Food and Nutrition Service has determined that an emergency situation exists which warrants less than a full 60-day public comment period on this proposal because of the legislatively imposed publication and implementation dates. An impact statement has been prepared and is available from Claire Lipsman, Director, Program Development Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C., 20250.

(Catalog of Federal Domestic Assistance Programs No. 10.551, Food Stamps)

Dated: October 26, 1979.

Carol Tucker Foreman,

Assistant Secretary.

[FR Doc. 79-33694 Filed 10-30-79; 8:45 am]

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federal register

Wednesday
October 31, 1979

Part VIII

Council on Wage and Price Stability

Improving Government Regulations; Semiannual Agenda of Regulations

COUNCIL ON WAGE AND PRICE STABILITY

6 CFR Ch. VII

Improving Government Regulations; Semiannual Agenda of Regulations Pursuant to Executive Order 12044

AGENCY: Council on Wage and Price Stability.

ACTION: Publication of semi-annual agenda of voluntary standards and procedural regulations under development or review.

SUMMARY: Pursuant to Executive Order 12044, the Council on Wage and Price Stability is publishing its first semi-annual agenda of standards and procedures under development or review.

FOR FURTHER INFORMATION CONTACT: David A. Henderson, Office of the General Counsel, Council on Wage and Price Stability, 600 17th Street, N.W., Washington, D.C. 20506, (202) 456-6286.

SUPPLEMENTARY INFORMATION: Executive Order 12044 requires every agency to publish twice a year a list of its regulations under development or review. Aside from its procedural rules, the Council does not issue regulations that directly require compliance by members of the public; It does, however, issue voluntary standards that members of the public are encouraged to observe. The Council is publishing today its first agenda of standards and procedures under development or review. The Council is reviewing the listed standards and procedures in light of the Council's experience, public comments and the needs of the second year of the anti-inflation program. The Council is developing no new standards or procedures at this time. The Council will publish a second agenda on or about April 30, 1980.

Agenda

The Council is currently reviewing and revising the following sections of its standards and procedures for the second year of the anti-inflation program:

(a) Part 702—Public Access to Information

(b) Part 703—Records Maintained about an Individual

(c) Part 704—Investigations

(d) Part 705—The Pay and Price Standards (These standards *may* be the subject of a regulatory analysis).

(e) Part 706—Procedural Rules

(f) Part 707—Data Requests

Note.—These standards and procedures were promulgated pursuant to the Council on Wage and Price Stability Act, 12 U.S.C. 1904, note, Executive Order 12092 (43 FR 51375), and Executive Order 12161 (44 FR 56663).

Date: October 30, 1979.

R. Robert Russell,

Director.

[FR Doc. 79-33950 Filed 10-30-79; 11:18 am]

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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

NATIONAL CREDIT UNION ADMINISTRATION

51200 8–31–79 / Liquidity reserves

57071 10–4–79 / Liquidity reserves; technical amendments to regulations

Next Week's Deadlines for Comments On Proposed Rules

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—

54926 9–21–79 / Beef research and order information; comments by 11–5–79

Agricultural Stabilization and Conservation Service—

57416 10–5–79 / Acreage Allotments, Marketing Quotas, and Poundage Quota for 1978 and Subsequent Crops of Peanuts; comments by 11–5–79

Animal and Plant Health Inspection Service—

57415 10–5–79 / Hawaiian and Territorial Quarantine Notices; Hawaiian Fruits and Vegetables; comments by 11–9–79

Federal Crop Insurance Corporation—

51807 9–5–79 / Proposed peanut crop insurance regulations; comments by 11–5–79

CIVIL AERONAUTICS BOARD

55018 9–24–79 / Data requirements for applications for passenger route authority filed with the board and by commuter carriers serving an eligible point; reply comments period extended to 11–5–79

52246 9–7–79 / Establishing service mail rate zones for interstate, overseas and foreign air transportation; comments by 11–6–79

COMMERCE DEPARTMENT

Industry and Trade Administration—

60753 10–22–79 / Short supply controls; restriction on export of unprocessed western cedar logs; comments by 11–9–79

National Oceanic and Atmospheric Administration—

53085 9–12–79 / Alaskan salmon fishery; field order; comments by 11–6–79

59582 10–16–79 / Northwest Atlantic ocean fishery; Proposed increase in mesh size; comments by 11–7–79

ENERGY DEPARTMENT

52140 9–6–79 / Electric and hybrid vehicle research, development, and demonstration program; Performance standards for demonstrations; comments by 11–5–79

57902 10–5–79 / Enforcement of oil import quota; comments by 11–9–79

52642 9–7–79 / Federal price support program for municipal waste reprocessing demonstration facilities; comments by 11–6–79

Economic Regulatory Administration—

54902 9–21–79 / Mandatory petroleum price regulations; Equal application rule and allocation of increased cost at retail level; comments by 11–5–79

Federal Energy Regulatory Commission—

58749 10–11–79 / Statewide exemptions from incremental pricing; comments period extended to 11–9–79

[Originally published at 44 FR 53178, September 13, 1979]

Office of the Secretary—

57119 10–4–79 / Procurement regulations; property contract clause modifications; comments by 11–5–79

57121 10–4–79 / Property management regulations; comments by 11–5–79

ENVIRONMENTAL PROTECTION AGENCY

57942 10–9–79 / Approval and promulgation of implementation plans—New Hampshire attainment status designations; comments by 11–8–79

57427 10–5–79 / Approval and promulgation of State implementation plans; nonattainment area plan for Colorado; comments by 11–5–79

57118 10–4–79 / Approval and promulgation of State plans for designated facilities and pollutants; comments by 11–5–79

57948 10–9–79 / Approval and promulgation of State plans for designated facilities and pollutants, Alaska, Oregon, and Washington; comments by 11–8–79

54676 9–20–79 / Asbestos-containing materials in school buildings; comments by 11–5–79

52001 9–6–79 / Missouri; Proposed revision to air quality implementation plan; comments by 11–5–79

55322 9–25–79 / National Pollutant Discharge Elimination System permit program; comments by 11–9–79

57109 10–4–79 / San Diego Nonattainment area plan and revised regulations; comments by 11–5–79

51924 10–4–79 / State Implementation Plans; requirements for preparation, adoption, and submittal; comments by 11–5–79

FEDERAL COMMUNICATIONS COMMISSION

55610 9–27–79 / Certification on expired ship station license to be considered as valid attachment to renewed station license for short period of time; reply comments by 11–8–79

50379 8–28–79 / FM broadcast station in Bentonville, Ark.; changes in table of assignments; reply comments by 11–5–79

50378 8–28–79 / FM broadcast stations in Manhattan, Kans.; changes in table of assignments; reply comments by 11–5–79

FEDERAL DEPOSIT INSURANCE CORPORATION

52691 9–10–79 / Deposit insurance coverage; payment of insured deposits, etc.; comments by 11–9–79

FEDERAL TRADE COMMISSION

51817 9–5–79 / Westinghouse Credit Corp.; consent agreement with analysis to aid public comment; comments by 11–5–79

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Food and Drug Administration—

60333 10–19–79 / Allergenic products; antigen E potency test; comments by 11–10–79

58918 10–12–79 / Patient labeling requirements for prescription drug products; comments period extended from 10–4–79 to 11–5–79

[Originally published at 44 FR 40016, July 6, 1979]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Community Planning and Development, Office of Assistant Secretary—

51999 9–6–79 / Property rehabilitation loans; comments by 11–5–79

Office of Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection—

52696 9–10–79 / Revision of mobile home construction and safety standards; comments by 11–6–79

Office of the Secretary—

52695 9–10–79 / Handling conventional fuels or chemicals of an explosive or flammable nature; comments by 11–9–79

47006 8–9–79 / Procedures for floodplain management and the protection of wetlands—implementation of executive orders 11988 and 11990; comments by 11–10–79

INTERIOR DEPARTMENT

Geological Survey—

60109 10–18–79 / Model unit agreement for oil and gas and sulfur operations in the Outer Continental Shelf; comments by 11–5–79

Surface Mining Reclamation and Enforcement Office—

52098 9–6–79 / Restriction of financial interests of State employees; comments by 11–5–79

55322 9–25–79 / National Pollutant Discharge Elimination System Permit program; comments by 11–9–79

INTERSTATE COMMERCE COMMISSION

55218 9–25–79 / Elimination of requirement to file quarterly report form QL & D; comments by 11–9–79

59581 10–16–79 / Level of incentive per diem charges; comments by 11–5–79

LABOR DEPARTMENT

Office of Federal Contract Compliance Programs—

52283 9–7–79 / Construction contractors; affirmative action; comments by 11–6–79

NATIONAL CREDIT UNION ADMINISTRATION

50850 8–30–79 / Agency relationship with approved mortgage lender; comments by 11–7–79

PERSONNEL MANAGEMENT OFFICE

52217 9–7–79 / Examining system; training; comments by 11–6–79

SECURITIES AND EXCHANGE COMMISSION

55894 9–28–79 / Accountant liability for reports on unaudited interim financial information under Securities Act of 1933; comments by 11–15–79

56953 10–3–79 / Equity securities acquistion under dividend reinvestment plans; exemption; comments by 11–7–79

57374 10–4–79 / Relief for certain wholly owned subsidiaries from portions of annual and quarterly reports; comments by 11–5–79

53430 9–13–79 / Timely reporting—Proposed amendment of rule and form and proposed new rule; comments by 11–9–79

SMALL BUSINESS ADMINISTRATION

51610 9–4–79 / Conformance of SBA disaster declarations with Presidential declarations of major disasters; comments by 11–5–79

TRANSPORTATION DEPARTMENT

Coast Guard—

59306 10–15–79 / National Environmental Policy Act implementing procedures; comments by 11–5–79

Federal Aviation Administration—

52076 9–6–79 / Petition for rulemaking of the Air Transport Association of America, airport noise abatement plans: regulatory process; comments by 11–5–79

Urban Mass Transportation Administration—

54513 9–20–79 / Standards and procedures for third party contracts; comments by 11–5–79

TREASURY DEPARTMENT

57902 10–5–79 / Enforcement of oil import quota; comments by 11–9–79

Customs Service—

58527 10–10–79 / Marking imported bolts, nuts, and rivets with their country of origin; comments by 11–9–79

Internal Revenue Service—

52696 9–10–79 / Definition of gross cash rentals for valuation of certain farm real property according to actual use; comments by 11–9–79

Office of the Secretary—

52258 9–7–79 / Financial recordkeeping and reporting of currency and foreign transactions; comments by 11–6–79

56973 10–3–79 / Caribou National Forest Grazing Advisory Board Committee, Soda Springs, Idaho (open), 11–5–79

57142 10–4–79 / Challis National Forest Grazing Advisory Board, Challis, Idaho (open), 11–9–79

61075 10–23–79 / Gospel Hump Advisory Committee, Lewiston, Idaho (open), 11–30–79

61237 10–24–79 / Modoc National Forest Grazing Advisory Board, Adin, Calif. (open), 11–9–79

ARMS CONTROL AND DISARMAMENT AGENCY

61236 10–24–79 / General Advisory Committee, Washington, D.C. (closed), 11–8 and 11–9–79

ARTS AND HUMANITIES NATIONAL FOUNDATION

60177 10–18–79 / Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities, Washington, D.C. (closed), 11–8–79

57243 10–4–79 / Humanities Panel Advisory Committee, Washington, D.C. (closed), 11–8 and 11–9–79

60177 10–18–79 / Media Arts Panel (Programming in the Arts), Washington, D.C. (closed), 11–5–79

60178 10–18–79 / Special Projects Panel of the National Council on the Arts, Washington, D.C. (open), 11–8 through 11–10–79

60830 10–22–79 / Visual Arts Panel Craftsmen's Apprenticeships, Washington, D.C. (partially open) 11–8 and 11–9–79

CIVIL RIGHTS COMMISSION

60348 10–19–79 / Michigan Advisory Committee, Flint, Mich. (open), 11–8–79

COMMERCE DEPARTMENT

Industry and Trade Administration—

60348 10–19–79 / Telecommunications Equipment Technical Advisory Committee, Washington, D.C. (partially closed), 11–8–79

National Oceanic and Atmospheric Administration—

61239 10–24–79 / Caribbean Fishery Management Council, St. Croix, U.S. Virgin Islands (open), 11–8–79

61983 10–29–79 / Draft fishery management plan, hearing, Bethel, Alaska, 11–10–79

61983 10–29–79 / Draft fishery management plan, hearing, Hooper Bay, Alaska, 11–10–79

61983 10–29–79 / Draft fishery management plan, hearing, Tooksook Bay, Alaska, 11–10–79

59261 10–15–79 / Gulf of Mexico Fishery Management Council, Miami Springs, Fla. (open), 11–7 through 11–9–79

61079 10–23–79 / Mid-Atlantic Fishery Management Council, Sea Scallop Resources Subpanel (open), 11–9–79

57144 10–4–79 / Mid-Atlantic Fishery Mangement Council's Scientific and Statistical Committee, Philadelphia, Pa. (open), 11–5–79

61078 10–23–79 / New England Fishery Management Council, Danvers, Mass. (open), 11–7 and 11–8–79

58773 10–11–79 / Pacific Fishery Mangement Council's Salmon Subpanel, Boise, Idaho (open), 11–7 and 11–8–79

58534 10–10–79 / Pacific Fishery Management Council, and Scientific and Statistical Committee, Boise, Idaho (partially open), 11–6 through 11–8–79

CONSUMER PRODUCT SAFETY COMMISSION

60352 10–19–79 / Product Safety Advisory Council, Washington, D.C. (open), 11–5 and 11–6–79

DEFENSE DEPARTMENT

Air Force Department—

54332 9–19–79 / Air Force Institute of Technology Subcommittee of the Air University Board of Visitors, Wright-Patterson Air Force Base, Ohio (open), 11–6–79

Army Department—

61081 10–23–79 / U.S. Army Medical Research and Development Advisory Panel, Ad Hoc Study Group on Pharmacology (partially open), 11–8–79

Navy Department—

56978 10–3–79 / Academic Advisory Board to the Superintendent, U.S. Naval Academy, Subcommittee of the Secretary of the Navy's Advisory Board on Education and Training, Annapolis, Md., 11–9–79

Office of the Secretary—

57956 10–9–79 / Defense Intelligence School Panel of the National Defense University and the Defense Intelligence School, Washington, D.C. (closed), 11–6 through 11–8–79

61081 10–23–79 / Department of Defense Advisory Group on Electron Devices (open), 11–15 and 11–16–79

54538 9–20–79 / Wage Committee, Washington, D.C. (closed), 11–6–79

ENERGY DEPARTMENT

57902 10–5–79 / Enforcement of Oil Import Quota, Boston, Mass. (open), 11–6–79 and Washington, D.C. (open), 11–7–79

60789 10–22–79 / National Petroleum Council; Subcommittee on U.S. Petroleum Inventories, and Storage and Transportation Capacities, Washington, D.C. (open), 11–6–79

ENVIRONMENTAL PROTECTION AGENCY

57792 10–5–79 / Automobile and light-duty truck surface coating operations; standards of performance, Washington, D.C. (open), 11–9–79

57200 10–4–79 / Energy emergencies and clean air regulations, Washington, D.C. (open), 11–5–79

60157 10–18–79 / Science Advisory Board Executive Committee, Washington, D.C. (open), 11–5 and 11–6–79

61105 10–23–79 / Science Advisory Board, Economic Analysis Subcommittee (open), 11–20–79

61105 10–23–79 / Science Advisory Board, Study Group on Cadmium in Sludges (open), 11–7–79

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Alcohol, Drug Abuse, and Mental Health Administration—

59961 10–17–79 / Alcohol Abuse Prevention Review Committee, Silver Spring, Md. (partially open), 11–1 and 11–2–79

59961 10–17–79 / Basic Sociocultural Research Review Committee, Washington, D.C. (partially open), 11–1–79

59961 10–17–79 / Treatment Development and Assessment Research Review Committee, Washington, D.C. (partially open), 11–2 and 11–3–79

Center for Disease Control—

57222 10–4–79 / Safety and Occupational Health Study Section, Rockville, Md. (partially open), 11–7 through 11–9–79

Education Office—

59668 10–16–79 / Education of Disadvantaged Children National Advisory, Washington, D.C. (open), 11–8 and 11–9–79

59914 10–17–79 / National Advisory Council on Vocational Education, Washington, D.C. (open), 11–2–79

61258 10–24–79 / National diffusion network programs; Application preparation workshop, Elizabeth, N.J., 11–8 and 11–9–79

Food and Drug Administration—

57994 10–9–79 / Consumer exchange, Portland, Oreg. (open), 11–8–79

59650 10–16–79 / Consumer exchange, San Antonio, Tex. (open), 11–8–79

60408 10–19–79 / Device Good Manufacturing Practices Advisory Committee, Silver Spring, Md. (open), 11–8 and 11–9–79

60408 10–19–79 / Miscellaneous Internal Drug Products Panel, Bethesda, Md. (open), 11–10 and 11–11–79

58919 10–12–79 / New drug regulations; meeting, Washington, D.C. (open), 11–7–79

60408 10–19–79 / Radio Pharmaceutical Drugs Advisory Committee, Rockville, Md. (open), 11–8 and 11–9–79

Health Care Financing Administration—

60414 10–19–79 / National Professional Standards Review Council, Washington, D.C. (open), 11–5 and 11–6–79

Health Resources Administration—

59650 10–16–79 / Health Planning and Development National Council, Los Angeles, Calif. (open), 11–9–79

59650 10–16–79 / Implementation and Administration Subcommittee, Health Planning and Development National Council, Los Angeles, Calif. (open), 11–8–79

59650 10–16–79 / National Guidelines, Goals, Priorities and Standards Subcommittee; Health Planning and Development National Council, Los Angeles, Calif. (open), 11–8–79

59650 10–16–79 / Technology and Productivity Subcommittee, Health Planning and Development National Council, Los Angeles, Calif. (open), 11–8–79

National Institutes of Health—

55419 9–26–79 / Animal Resources Review Committee, Bethesda, Md. (open), 11–7–79

59652 10–16–79 / Cancer Clinical Investigation Review Committee, Bethesda, Md. (partially open), 11–5 and 11–6–79

53108 9–12–79 / Cancer Special Program Advisory Committee, Bethesda, Md. (partially open), 11–8 and 11–9–79

53108 9–12–79 / Clinical Cancer Education Committee, Bethesda, Md. (partially open), 11–7 and 11–8–79

57503 10–5–79 / Minority Access to Research Careers Review Committee, Bethesda, Md. (open), 11–8–79

56401 10–1–79 / National Diabetes Advisory Board, 11–6, 11–7 and 11–8–79 (for location and time call (301) 496–6045)

57503 10–5–79 / NIDR Special Grants Review Committee, Bethesda, Md. (open), 11–6 and 11–7–79

53800 9–17–79 / Research grant study sections (partially open):

Anaheim, Calif., 11–7 through 11–10–79

Atlanta, Ga., 11–7 through 11–10–79

Bethesda, Md., 11–7 through 11–10–79

Washington, D.C., 11–7 through 11–10–79

Office of the Assistant Secretary for Health—

55119 9–24–79 / Consideration of age discrimination provisions, Madison, Wis. (open), 11–5–79

55120 9–24–79 / Consideration of age discrimination provisions, St. Petersburg, Fla. (open), 11–7–79

55067 9–24–79 / Health Services Developmental Grants Review Subcommittee, New York, N.Y. (partially open), 11–7 and 11–8–79

Social Security Administration—

54128 9–18–79 / Social Security For Your Future, Chicago, Ill., 11–7–79

54128 9–18–79 / Social Security For Your Future, Kansas City, Kans., 11–8–79

INTERIOR DEPARTMENT

Geological Survey—

59970 10–17–79 / Earthquake Studies Advisory Panel, La Jolla, Calif., (open), 11–1 and 11–2–79

Land Management Bureau—

55438 9–26–79 / Burley District Grazing Advisory Board, Burley, Idaho (open), 11–5–79

56990 10–3–79 / Cedar City District Grazing Advisory Board, Cedar City, Utah (open), 11–8–79

56746 10–2–79 / District Grazing Advisory Board, Susanville, Calif. (open), 11–7–79

59296 10–15–79 / North Atlantic Technical Working Group Committee, Providence, R.I. (open), 11–8–79

57229 10–4–79 / Oregon; proposed decision on intensive wilderness inventory of selected areas; public meetings:

Lakeview, Oreg., 11–8–79

Fields, Oreg., 11–7–79

Prineville, Oreg., 11–7–79

Burns, Oreg., 11–8–79

57228 10–4–79 / Outer Continental Shelf Advisory Board; Alaska Regional Technical Working Group, Anchorage, Alaska (open), 11–6 and 11–7–79

54362 9–19–79 / Phoenix/Lower Gila Resource Areas (Phoenix, Ariz. District) Grazing Advisory Board, Wickenburg, Ariz. (open), 11–8–79

Office of the Secretary—

59296 10–15–79 / North Atlantic Regional OCS Policy Committee, Providence, R.I. (open), 11–7–79

JUSTICE DEPARTMENT

Immigration and Naturalization Service—

59971 10–17–79 / Federal Advisory Committee on Immigration, and Naturalization, Los Angeles, Calif. (open), 11–1 and 11–2–79

National Institute of Corrections—

57523 10–5–79 / Advisory Board, Long Beach, Calif. (open), 11–6 and 11–7–79

LABOR DEPARTMENT

Employment and Training Administration—

59001 10–12–79 / Federal Advisory Council on Unemployment Insurance, Washington, D.C. (open), 11–8 and 11–9–79

Occupational Safety and Health Administration—

55274 9–25–79 / Electrical standards; meeting, Washington, D.C. (open), 11–8–79

60421 10–19–79 / Federal Advisory Council on Occupational Safety and Health, Washington, D.C. (open), 11–6–79

Office of the Secretary—

59011 10–12–79 / Steel Tripartite Committee, Working Group on Technological Research and Development, Washington, D.C. (open), 11–7–79

[Corrected at 44 FR 61118, October 23, 1979]

Pension and Welfare Benefit Programs—

61118 10–23–79 / Employee Welfare and Pension Benefit Plans Advisory Council, (open), 11–7–79

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

59021 10–12–79 / NASA Advisory Council Aeronautics Advisory Committee, Wallops Island, Va., 11–5 and 11–6–79

NATIONAL ALCOHOL FUELS COMMISSION

61272 10–24–79 / Commission meeting, Salina, Kans. (open), 11–10–79

NATIONAL SCIENCE FOUNDATION

59972 10–17–79 / Advisory Committee for Atmospheric Sciences, Washington, D.C. (partially open), 10–31, 11–1 and 11–2–79

59023 10–12–79 / Advisory Committee for Behavioral and Neural Sciences, Subcommittee on Anthropology, Washington, D.C. (closed), 11–7 through 11–9–79

60831 10–22–79 / Advisory Committee for Physics, Subcommittee for the Review of Elementary Particle Physics, Washington, D.C. (closed), 11–8 and 11–9–79

60831 10–22–79 / Advisory Committee for Policy Research and Analysis and Science Resource Studies, Washington, D.C. (open), 11–8 and 11–9–79

NUCLEAR REGULATORY COMMISSION

61120 10–23–79 / Reactor Safeguards Advisory Committee (partially open), 11–8 through 11–10–79

60449 10–19–79 / Reactor Safeguards Advisory Committee, Washington, D.C., 11–5–79

60448 10–19–79 / Reactor Safeguards Advisory Committee, Ad Hoc Subcommittee on Three Mile Island Unit 2 accident; implications regarding nuclear powerplant design, Washington, D.C. 11–5–79

60831 10–22–79 / Reactor Safeguards Advisory Committee; Reactor Safety Research Subcommittee, Washington, D.C. (closed), 11–6 and 11–7–79

61120 10–23–79 / Reactor Safeguards Advisory Committee, Procedures and Administration Subcommittee (open), 11–7–79

61120 10–23–79 / Reactor Safeguards Advisory Committee, Regulatory Activities Subcommittee (open) 11–7–79

60448 10–19–79 / Reactor Safeguards Advisory Committee, Subcommittee on Metal Components, Washington, D.C. (open), 11–5–79

60831 10–22–79 / Reactor Safeguards Advisory Committee, Subcommittee on Reliability and Probabilistic Assessment, Washington, D.C. (closed), 11–6 and 11–7–79

SCIENCE AND TECHNOLOGY POLICY OFFICE

61482 10–25–79 / Intergovernmental Science, Engineering, and Technology Advisory Panel, Chantilly, Va. (open), 11–9 and 11–10–79

[Originally published at 44 FR 60832, November 9, 1979]

SMALL BUSINESS ADMINISTRATION

61126 10–23–79 / Region I Advisory Council, Montpelier, Vt. (open), 11–15–79

61124 10–23–79 / Region II Advisory Council, Hato Rey, Puerto Rico (open), 11–7–79

61125 10–23–79 / Region III Advisory Council Meeting, Baltimore, Md. (open), 11–9–79

61126 10–23–79 / Region V Advisory Council, Minneapolis, Minn. (open), 11–13–79

SMALL BUSINESS CONFERENCE COMMISSION

58823 10–11–79 / White House Conference on Small Business, Washington, D.C. (open), 11–5–79

STATE DEPARTMENT

59702 10–16–79 / Study Group 5 of the U.S. Organization for the International Radio Consultative Committee (CCIR), Boulder, Colo. (open), 11–5–79

55262 9–25–79 / Study Group 6 of U.S. Organization for the International Radio Consultative Committee, Boulder, Colo. (open), 11–8–79

Office of the Secretary—

58014 10–9–79 / Historical Diplomatic Documentation Advisory Committee, Washington, D.C. (closed), 11–9–79

TRANSPORTATION DEPARTMENT

Federal Aviation Administration—

60189 10–18–79 / Radio Technical Commission for Aeronautics (RTCA) Special Committee 134 on Electronic Test Equipment for General Application, Washington, D.C. (open), 11–8 and 11–9–79

58824 10–11–79 / Radio Technical Commission for Aeronautics (RTCA), Special Committee 141 on FM Broadcast Interference Related to Airborne ILS, VOR and VHF Communications Equipment, Washington, D.C. (open), 11–7 and 11–8–79

54489 9–20–79 / Terminal control area; Nashville, Tenn.; informal airspace meeting, Nashville, Tenn. (open), 11–7–79

National Highway Traffic Safety Administration—

60193 10–18–79 / Biomechanics Advisory Committee, Washington, D.C. (open), 11–7 and 11–8–79

TREASURY DEPARTMENT

57902 10–5–79 / Enforcement of oil import quota, Boston, Mass. (open), 11–6–79 and Washington, D.C. (open), 11–7–79

Customs Service—

59742, 59762 10–16–79 / Customs regulations relating to antidumping duties; proposed revision; Washington, D.C., 11–5 and 11–6–79

[Originally published at 44 FR 57044, October 3, 1979]

Next Week's Public Hearings

ENERGY DEPARTMENT

54336 9–19–79 / Subsidization of motor fuel marketing, Seattle, Wash., 11–6–79

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Education Office—

59291 10–15–79 / National Advisory Council on Vocational Education, Columbus, Ohio, 11–8 and 11–9–79

INTERIOR DEPARTMENT

Land Management Bureau—

52040 9–6–79 / Aravaipa Canyon Wilderness Study, Stafford, Ariz., 11–5–79; Tucson, Ariz., 11–6–79; and Phoenix, Ariz., 11–7–79

[Corrected at 44 FR 55663, September 27, 1979]

LABOR DEPARTMENT

Employment and Training Administration—

59890 10–16–79 / Adverse effect wage rate methodolgy, Chicopee, Mass., 11–5 and 11–6–79

59890 10–16–79 / Adverse effect wage rate methodology, West Palm Beach, Fla., 11–8 and 11–9–79

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.**

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Documents Relating to Federal Grant Programs

This is a list of documents relating to Federal grant programs which were published in the **Federal Register** during the previous week.

RULES GOING INTO EFFECT

61591 10–26–79 / HUD/CPD—Community development block grants; closeout procedures; effective 11–15–79

DEADLINES FOR COMMENTS ON PROPOSED RULES

61188 10–24–79 / DOE—Federal loan guarantees for alternative fuel demonstration facilities; comments by 12–12–79

61591 10–26–79 / HUD/CPD—Community development block grants; closeout procedures; comments by 12–26–79

APPLICATIONS DEADLINES

61171 10–24–79 / DOE/Conservation and Solar Energy Office—Technical assistance and energy conservation measures; grant programs for schools and hospitals and buildings owned by units of local government and public care institutions; application date extended to 3–15–80

[Originally published at 44 FR 22940, April 17, 1979]

62083 10–29–79 / HEW/HSA—Project grants for hospital affiliated primary care centers; apply by 2–15–80

61259 10–24–79 / HEW/OE—National demonstration projects, Upward Bound, and Special Services for Disadvantaged Students; apply by 3–14–80

61932 10–26–79 / Labor/ETA—National Displaced Homemakers Program; apply by 12–10–79

MEETINGS

61659 10–26–79 / HEW/HRA—National Advisory Council on Nurse Training, Hyattsville, Md. (open), 12–14–79

61258 10–24–79 / HEW/OE—National diffusion network program; Application preparation workshops, Elizabeth, N.J., 11–8 and 11–9–79; Detroit, Mich., 11–13 and 11–14–79; and Oklahoma City, Okla., 11–15 and 11–16–79

61696 10–26–79 / NSF—Advisory Committee on Science and Society, Washington, D.C. (open), 11–19 and 11–20–79

OTHER ITEMS OF INTEREST

61317 10–24–79 / DOE/Conservation and Solar Energy Office—Grant programs for Schools and Hospitals, and Buildings owned by units of local government and public care institutions; technical and editorial corrections

61208 10–24–79 / HUD/CPD—Community development block grants; transmittal of interim rule to Congress

61622 10–26–79 / HEW/NIE—Research grants program on knowledge use and school improvement; decision to develop regulations

Just Released

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(Revised as of July 1, 1979)

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