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Presidential Documents

Title 3—

The President

Proclamation 4716 of January 22, 1980

American Heart Month, 1980

By the President of the United States of America

A Proclamation

Diseases of the heart and blood vessels remain our Nation's leading cause of death and disability and one of our most serious health problems. Collectively, cardiovascular diseases affect more than 40 million Americans, visiting partial or complete disability on several millions of them and causing nearly 980,000 deaths each year.

Since 1948, this Nation has been engaged in a concerted effort to acquire new knowledge about the cardiovascular system and the diseases that afflict it; to disseminate that knowledge to the research and medical communities and to the general public; and to mobilize resources, facilities, and research and medical manpower toward the goal of reducing illness, disability, and premature death from cardiovascular disorders.

Leading this national effort have been the National Heart, Lung, and Blood Institute—a federal agency—and the American Heart Association, supported by private contributions; but it has been a cooperative endeavor involving the participation of a great many agencies and groups and enjoying the confidence and continued support of the American people.

Widespread application of research and clinical advances stemming from this effort is having substantial and salutary effects on cardiovascular disease mortality rates, which have declined by 34 percent since 1950. These mortality-rate decreases extend across the whole spectrum of cardiovascular diseases and, in most categories, have accelerated during recent years.

Since 1968, for example, the mortality rate for coronary heart disease has declined by 26 percent and that for stroke by 37 percent. These reductions represent more than three hundred thousand lives saved each year, because these two disorders account for nearly 84 percent of all cardiovascular disease deaths.

Recognizing the need for all Americans to help in the continuing battle against cardiovascular disease, the Congress, by joint resolution approved December 30, 1963 (77 Stat. 843; 36 U.S.C. 169b) has requested the President to issue annually a proclamation designating February as American Heart Month.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby proclaim the month of February, 1980, as American Heart Month. I invite the Governors of the States, the appropriate officials of all other areas subject to the jurisdiction of the United States and the American people to join with me in reaffirming our commitment to the search for new ways to prevent, detect and control cardiovascular disease in all its forms.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of January, in the year of our Lord Nineteen hundred and eighty, and of the Independence of the United States of America the two hundred and fourth.

Jimmy Carter

[FR Doc. 80-2561
Filed 1-23-80; 11:45 am]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 102

Grain Inspection Appeals

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action specifies appeal procedures for grain inspected under various authorities as permitted by regulations under the U.S. Warehouse Act. The purpose is to clarify present regulations on how, where and at what cost an interested party may make an appeal from the grade assigned to grain on original inspection. Appeal procedures will vary according to the authority under which the original inspection was performed.

EFFECTIVE DATE: January 24, 1980.

FOR FURTHER INFORMATION CONTACT: Dr. Orval Kerchner, Chief, Warehouse Development Branch, Warehouse Division, Agricultural Marketing Service, Department of Agriculture, Washington, D.C. 20250 (202–447–3821).

SUPPLEMENTARY INFORMATION: In a notice published at 44 FR 54514, September 20, 1979, the Department announced that it was proposing to amend the regulations pertaining to appeal procedures for grain inspected under various authorities as permitted under the Act. This was to be accomplished by replacing §§ 102.80 through 102.95 of the regulations governing "Grain Appeals" with new §§ 102.80 through 102.85 and corresponding amendments to other provisions of the regulations were made to conform these provisions to the changes. The public was given until November 19, 1979, to file written comments. Only one written comment from the public was received to this proposal.

The commentator was concerned as to the practicability of the proposal stating that, "the potential damage from delay in moving the harvest is appreciably greater under the proposed rules. It is quite possible that all depositors would choose automatically to avail themselves of the proposals and would, therefore, delay grain handling operations many-fold. Handling and transportation capacity have already been strained to the limit by the size of recent harvests."

This problem is recognized and received consideration in the regulations with the following provisions, (1) that the "warehouseman need not preserve the identity of the lot in the original carrier; but with the knowledge and consent of the depositor or agent may use other means to preserve such identity," and (2) "if compliance with such requests would adversely affect receiving, storing or delivering the grain of other depositors, the warehouseman may defer unloading such grain until such time as would not disrupt service to other depositors."

We believe a depositor's right to an appeal grade and necessary mechanics therefor outweigh the chances of certain depositors abusing the privilege. But if practice should prove otherwise, the Department would not hesitate to recommend further changes; we agree with the commentator that the harvest movement must not be slowed by this procedure.

The amendments were discussed with officials administering the U.S. Grain Standards Act who under the proposed regulations would hear appeals on grain inspected, graded and certificated under the Warehouse Act for which there are official standards under the Grain Standards Act, and inspected, graded and certificated under the Warehouse Act for which there are official standards under the AMA of 46.

Owing to the lack of specific regulations under the United States Grain Standards Act providing for hearing such appeals, some minor changes were made in proposed regulation 102.82. Those changes are in language not in procedure. Offices charged with providing official inspection service under the U.S. Grain Standards Act and/or the Agricultural Marketing Act of 1946 will grade the grain which is the subject of an appeal in accordance with appropriate regulations. Therefore, these changes are not significant. Accordingly, Part 102, Title 7, Code of Federal Regulations is amended in the following respects:

Said regulations, therefore, are amended to read:

1. Section 102.2(u) is amended to read as follows:

§ 102.2 Terms defined.

* * * * *

(u) *Official Standards of the United States.* The standards of the quality or condition for grain, fixed and established under the U.S. Grain Standards Act or the Agricultural Marketing Act of 1946.

* * * * *

2. Section 102.18(d) is amended to read as follows:

§ 102.18 Form.

* * * * *

(d) The grade stated in a receipt shall be stated in accordance with § 102.76 as determined by the inspector who last inspected and graded the grain or if an appeal has been taken, the grade shall be stated on such receipt in accordance with the grade as finally determined in such appeal.

* * * * *

3. Section 102.44 is amended to read:

§ 102.44 Grades and weights; bulk grain.

Except as provided in § 102.27 each warehouseman shall accept all storage and nonstorage grain and shall deliver out all storage and nonstorage grain, other than specially binned grain, in accordance with the grades of such grain as determined by a person duly licensed to inspect and grade such grain and to certificate the grade thereof and in accordance with the weights of such grain as determined by a person duly licensed to weigh such grain and to certificate the weight thereof, under the Act, and the regulations in this part; or if an appeal from the determination of an inspector has been taken, such grain shall be accepted for and delivered out of storage in accordance with the grades as finally determined in such appeal.

* * * * *

4. Section 102.65(a)(9) is amended to read as follows:

§ 102.65 Inspection certificate; form.

(a) * * *

(9) The grade of the grain, as determined by such duly licensed inspector, in accordance with § 102.76, and, in the case of grain for which no official standards of the United States are in effect, the standards or description in accordance with which such grain is graded.

* * * * *

5. Section 102.77 is amended to read:

§ 102.77 Official Standards of the United States.

The Official Standards of the United States are hereby adopted as the official grain standards for the purposes of the Act and the regulations in this part.

6. Section 102.78 is amended to read:

§ 102.78 Standards of grades for other grain.

Until official standards of the United States are fixed and established for the kind of grain to be inspected, the grade of the grain shall be stated, subject to the approval of the Administrator, (a) in accordance with the State standards, if any, established in the State in which the warehouse is located, (b) in the absence of any State standards, in accordance with the standards, if any, adopted by the local board of trade, chamber of commerce, or by the grain trade generally in the locality in which the warehouse is located, or (c) in the absence of the standards mentioned in paragraphs (a) and (b) of this section, in accordance with any standards approved for the purpose by the Service.

7. Sections 102.80 through 102.95 are deleted in their entirety and the following §§ 102.80 through 102.85 substituted therefor:

Grain Appeals

Sec.

Authority: August 11, 1916, ch. 313, part C sec. 28, 39 Stat. 490 (7 U.S.C. 268).

Grain Appeals

§ 102.80 Appeal procedure.

The depositor, holder of receipt or the warehouseman may make an appeal as to the grade of a lot of grain stored or to be stored in a licensed warehouse. If the original grade certificate was issued by an inspector licensed under, or authorized by, the U.S. Grain Standards Act or the Agricultural Marketing Act, the appeal, including the amount of fees, shall be governed by the regulations issued under those Acts respectively; otherwise the appeal, including fees shall be governed by §§ 102.81 through 102.83.

§ 102.81 Request for appeal.

A request for an appeal inspection by a depositor or holder of receipt must be made by written notice to the warehouseman before the identity of the lot of grain has been lost and not later than the close of business on the first business day following furnishing of the statement of original grade or if the appeal is requested by the warehouseman, notice must be given promptly to the owner of the grain. Oral notice may be made if followed by written notice. Where is it not practical for a warehouseman to maintain the identity of all grain being received for storage until depositors receive a statement of grade and consequently opportunity for appeal, any depositor or his agent before or at the time of delivery of his grain may request the warehouseman to retain the identity of such lot until said depositor has been furnished with a statement of grade for the lot and has waived or requested and received an appeal inspection grade. The warehouseman need not preserve the identity of the lot in the original carrier; but with the knowledge and consent of the depositor or agent may use other means to preserve such identity. Further, if compliance with such request would adversely affect receiving, storing or delivering the grain of other depositors, the warehouseman may defer unloading such grain until such time as would not disrupt service to other depositors but without unnecessary delay to the party making such request.

§ 102.82 Appeal sample—obtaining, preservation, delivery and examination.

(a) The lot of grain for which an appeal is requested shall be resampled in such manner and quantity as the depositor or holder of receipt and the warehouseman agree results in a representative sample of the lot acceptable to each for appeal purposes. Should they be unable to agree on such a sample, a sample drawn by a duly licensed inspector in the presence of both shall be deemed binding. In no case shall the sample be of less than 2000 grams by weight.

(b) The sample shall be packaged, to the satisfaction of the interested parties, so as to preserve its original condition.

(c) For grains for which there are official U.S. Standards the sample shall be secured and delivered to the nearest office charged with providing official inspection service under the U.S. Grain Standards Act and/or the Agricultural Marketing Act of 1946. At this point procedures as set forth in regulations issued under the U.S. Grain Standards Act or under the Agricultural Marketing Act of 1946 shall govern. For grain for which there are no official U.S. Standards the party requesting the appeal shall apply directly to the Administrator for relief. The Administrator or delegate thereof shall promptly determine the appeal based on approved standards and set the required fees. Such determination shall be binding on all concerned parties.

(d) The sample shall be accompanied by (1) a copy of the written request for appeal, (2) the grain inspection certificate originally issued, and (3) an agreement to pay the costs of such inspection as prescribed by the U.S. Grain Standards Act, the Agricultural Marketing Act or the Administrator.

(e) The sample of the grain involved in the appeal shall be examined as soon as possible. Such tests shall be applied as are necessary; and, unless the appeal is dismissed, a grade certificate shall be issued by the person determining the grade, showing the grade assigned by him to such grain. This certificate shall supersede the inspection certificate originally issued for the grain involved. The original or a copy of the new grade certificate shall be sent to the depositor or holder of receipt, the licensed warehouseman and the licensed inspector making the original determination of grade.

§ 102.83 Dismissal of appeal.

The departmental agency to whom the appeal has been made may dismiss such appeal without its determination upon request of the party initiating the appeal or for noncompliance with the regulations in this part.

§ 102.84 Freedom of appeal.

(a) No person licensed under the Act, shall, directly or indirectly by any means whatsoever, deter or prevent or attempt to deter or prevent any party from taking an appeal.

(b) No rule, regulation, bylaw, or custom of any market, board of trade, chamber of commerce, exchange, inspection department or similar organization nor any contract, agreement, or understanding, shall be ground for refusing to determine any appeal.

§ 102.85 Owner not compelled to store.

Nothing in these regulations shall require the owner or his agent to store such grain with the licensed warehouseman after the appeal inspection, but if the grain is stored it shall be accepted for and delivered out

of storage in accordance with the grade as finally determined in such appeal.

§§ 102.86–102.95 [Reserved]

8. Section 102.86 through 102.95.

These sections are reserved for future use.

(August 11, 1916, ch. 313, part C secs. 28, 39 Stat. 490 (7 U.S.C. 268))

Done at Washington, D.C., January 18, 1980.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 80-2281 Filed 1-23-80; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 907

[Navel Orange Reg. 476, Amdt. 1; Navel Orange Reg. 477]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period January 25–January 31, 1980, and increases the quantity of such oranges that may be so shipped during the period January 18–24, 1980. Such action is needed to provide for orderly marketing of fresh navel oranges for the periods specified due to the marketing situation confronting the orange industry.

DATES: This regulation becomes effective January 25, 1980, and the amendment is effective for the period January 18–24, 1980.

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

SUPPLEMENTARY INFORMATION: *Findings.* This regulation and amendment are issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C 601–674). The action is based upon the recommendations and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The committee met on January 22, 1980, to consider supply and market conditions and other factors affecting the need for regulation, and recommended quantities of navel oranges deemed advisable to be handled during the specified weeks. The committee reports the demand for navel oranges has improved over recent weeks.

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

Further, in accordance with procedures in Executive Order 12044, the emergency nature of this regulation warrants publication without opportunity for further public comment. The regulation has not been classified significant under USDA criteria for implementing the Executive Order. An Impact Analysis is available from Malvin E. McGaha, Fruit Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, phone (202) 447–5975.

1. Section 907.777 is added as follows:

§ 907.777 Navel Orange Regulation 477.

Order. (a) The quantities of navel oranges grown in Arizona and California which may be handled during the period January 25, 1980, through January 31, 1980, are established as follows:

(1) District 1: 1,246,000 cartons;
(2) District 2: 126,000 cartons;
(3) District 3: Unlimited;
(4) District 4: 28,000 cartons.

(b) As used in this section, "handle," "District 1," "District 2," "District 3," "District 4" and "carton" mean the same as defined in the marketing order.

2. Paragraph (a) in § 907.776 Navel Orange Regulation 476. (45 FR 3249), is hereby amended to read:

§ 907.776 Navel Orange Regulation.

(a) * * *

(1) District 1: 1,380,000 cartons;
(2) District 3: 139,000 cartons;
(3) District 3: Unlimited;
(4) District 4: 31,000 cartons.

* * * * *

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

Dated: January 23, 1980.

D. S. Kuryloski,

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

[FR Doc. 80-2567 Filed 1-23-80; 12:30 pm]

BILLING CODE 3410-02-M

DEPARTMENT OF ENERGY

10 CFR Part 205

Administrative Procedures and Sanctions; 1979 Interpretations of the General Counsel

AGENCY: Department of Energy.

ACTION: Notice of Interpretations.

SUMMARY: Attached is an interpretation and a response to a petition for reconsideration issued by the Office of General Counsel of the Department of Energy under 10 CFR Part 205, Subpart F, during the period December 1, 1979 through December 31, 1979.

Appendix C identifies those requests for interpretation which have been dismissed during the same period.

FOR FURTHER INFORMATION CONTACT: Diane Stubbs, Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW, Room 5E052, Washington, D.C. 20585 (202) 252–2948.

SUPPLEMENTARY INFORMATION:

Interpretations issued pursuant to 10 CFR Part 205, Subpart F, are published in the **Federal Register** in accordance with the editorial and classification criteria set forth in 42 FR 7923 (February 8, 1977), as modified in 42 FR 46270 (September 15, 1977).

These interpretations depend for their authority on the accuracy of the factual statement used as a basis for the interpretation (10 CFR 205.84(a)(2)) and may be rescinded or modified at any time (§ 205.85(d)). Only the persons to whom interpretations are addressed and other persons upon whom interpretations are served are entitled to rely on them (§ 205.85(c)). An interpretation is modified by a subsequent amendment to the regulation(s) or ruling(s) interpreted thereby to the extent that the interpretation is inconsistent with the amended regulation(s) or ruling(s) (§ 205.85(e)). The interpretation published below is not subject to appeal.

Issued in Washington, D.C., January 18, 1980.

Everard A. Marseglia, Jr.,
Assistant General Counsel for Interpretations and Rulings.

Appendix A—Interpretations

No.	To	Date	Category	File No.
1979-26	Consumers Power Company	December 21	Allocation	A-76

Interpretation 1979–26

To Consumers Power Company.

Regulations Interpreted 10 CFR 211.51, 211.62, 211.67.

Code GCW—AI—Entitlements Program; Definitions of Crude Oil Runs to Stills, Refined Petroleum Product, Refiner.

Facts

Consumers Power Company of Jackson, Michigan (Consumers) owns and operates a synthetic natural gas (SNG) manufacturing plant located at Marysville, Michigan.[1] The Marysville plant, which began commercial operation in September 1973, has an input capacity of more than 50,000 barrels per day of feedstock. Approximately 70 percent of the feedstock purchased by Consumers is condensate (pentanes and heavier hydrocarbons). The condensate portion of the feedstock stream is processed through a "feedstock preparation unit" which results in at least three petroleum products. One of the products resulting from the feedstock preparation process is sold, and another is used by Consumers as fuel. The remaining products are used as feedstocks in the gasification units of the Marysville SNG processing plant.

The feedstock preparation unit, which is the focus of Consumers' request, processes plant condensate and lease condensate. Of the condensate processed by Consumers at the feedstock preparation unit, between 92 and 98 percent is plant condensate imported from Canada. The condensate processed at Marysville also includes "significant amounts of lease condensates" from the northern part of Michigan's lower peninsula.[2]

Consumers receives the lease condensate processed at Marysville by pipeline. Approximately 60 gas wells located near Kalkaska, Michigan "may inject lease condensate into a common wet header pipeline system that supplies Consumers Power Company."[3] This lease condensate is the liquid separated from the gas stream at the lease production unit and separators. It is injected into the pipeline using high pressure gas from the facility or lease, or it is pumped into the pipeline. The lease condensate received by Consumers also "develops as unprocessed natural gas flows into the wet header pipeline system and condenses out due to the relatively high content of heavy components (C3 and heavier hydrocarbons)."[4] The lease condensate liquid is gravity separated from the gas stream and temporarily stored in an underground piping system from which it is piped to two Kalkaska, Michigan gas processing plants operated by Amoco Production Company and Shell Oil Company, respectively. The lease condensate liquids received by the Amoco plant are stabilized through a purely mechanical process by controlling temperature and pressure. "The processing units which stabilize these liquids [at the Kalkaska plant] do not use absorption, adsorption, compression, refrigeration cycling or a combination of these processes."[5] The stabilization of the lease condensate at the Amoco Kalkaska plant removes "the more volatile ends [but] does not transform the condensate."[6] After being stabilized, the lease condensate liquids are transported by truck from the Amoco plant to Consumers' feedstock preparation unit at Marysville.

After salt is removed, the condensate is delivered to a feed splitter tower for fractionation into an unstabilized naphtha-LPG mixture and fuel oil. This middle distillate fuel oil undergoes further desulfurization and constitutes one of the petroleum products resulting from the operation of Consumers' feedstock preparation unit.[7]

The naphtha-LPG mixture is vaporized, superheated, mixed with hydrogen gas, and fed to a naphtha hydrodesulfurization (HDS) unit, subjected to a cobalt-molybdenum catalyst and delivered to an HDS debutanizer. Desulfurized naphtha, with a boiling range typical of gasolines, results from this process. This naphtha product is pumped into a storage tank for later delivery to the Marysville SNG plant for conversion to SNG.[8]

Sour LPG, which also results from the HDS debutanizer, is processed further. The condensed, desulfurized LPG product which results from this final treatment process is also delivered to the Marysville SNG plant for conversion to SNG.

Consumers contends that the feedstock preparation unit it operates to process feedstocks for the SNG plant at the same site is unique and that "no other utility owns and operates a similar facility."[9] This feedstock preparation unit consists mainly of fractionation equipment and hydrodesulfurization and cold sieve testing for sulfur removal. The unit is designed to fractionate blends of condensate and natural gas liquids (NGL's) to produce a separate naphtha-like feed and LPG feed for gasification. It does not have the capability of cracking or saturating to upgrade feedstocks for gasification use.[10]

On September 12, 1977, the Federal Energy Administration (FEA, a predecessor agency to the Department of Energy, DOE) issued a notice inviting public comments on Consumers' request for interpretation. (42 FR 46580, September 16, 1977.) Twelve comments were received in response to this notice and were considered along with Consumers' submissions in resolving the issue addressed in this interpretation.[11]

Issue

Does the lease condensate and Canadian plant condensate run into the feedstock preparation unit, operated by Consumers Power Company in connection with its Marysville, Michigan synthetic natural gas plant, qualify as crude oil runs to stills under the entitlements program, 10 CFR 211.67?

Interpretation

Pursuant to the provisions of the Mandatory Petroleum Allocation Regulations, 10 CFR Part 211, the lease condensate and Canadian plant condensate that is run into the feedstock preparation unit, operated by Consumers in connection with its Marysville, Michigan synthetic natural gas plant, qualifies as crude oil runs to stills. Thus, Consumers may participate in the entitlements program in accordance with the provisions of 10 CFR 211.67 effective June 17, 1976, the date Consumers requested inclusion in the entitlements program.

The provisions of § 211.67 govern the issuance of entitlements, and § 211.67(d)(3) specifically determines a refiner's volume of crude oil runs to stills. This section establishes the criteria a firm must meet to be eligible for entitlements. Section 211.67(d)(3) provides that:

The volume of a refiner's crude oil runs to stills in a particular month for purposes of the

[1] This statement of facts reflects Consumers' representation of conditions prevailing at the time the interpretation request was filed.

[2] Letter from Consumers to Federal Energy Administration, June 17, 1976.

[3] Deposition of Robert J. Odlevak, Executive Manager of Gas Production and Transmission for Consumers Power Company, submitted June 17, 1976.

[4] *Id.; see also* Response by Consumers Power Company, Exhibit A, November 29, 1977.

[5] Affidavit of Don H. Pendleton, Gas Operations Supervisor for Consumers Power Company, submitted December 19, 1977.

[6] Response by Consumers Power Company, November 29, 1977, p. 8.

[7] Letter from Consumers, attachment (a), to the Department of Energy, November 7, 1977.

[8] *Id.*

[9] Response by Consumers Power Company, November 29, 1977, p. 6.

[10] Response to Request for Information p. 2, Consumers, Federal Energy Administration Office of Exceptions and Appeals Case No. FEE–2267, received May 14, 1976.

[11] Amoco Oil Company, September 27, 1977; Cities Service Company, September 28, 1977; Clark Oil & Refining, October 7, 1977; Continental Oil Company, October 10, 1977; Little America Refining Company, September 28, 1977; Michigan Public Service Commission, September 28, 1977; Mobil Oil Corporation, September 27, 1977; National LP-Gas Association, September 26, 1977; Petrochemical Energy Group, September 30, 1977; Powerine Oil Company, October 5, 1977; Shell Oil Company, September 27, 1977; Texaco, Inc., October 4, 1977.

calculations in paragraph (a)(1) of this section and the calculations for the national domestic crude oil supply ratio shall include the total number of barrels of plant condensate and the total number of barrels of synthetic crude oil made from tar sands which are imported from Canada and are utilized in that month as inputs to distillation units by a refiner, measured in accordance with the Bureau of Mines Form 6–1300–M. Neither plant condensate nor synthetic crude oil made from tar sands which are imported from Canada shall be eligible for inclusion in the volume of a refiner's crude oil runs to stills under this subparagraph (3) unless payment has been made in accordance with Presidential Proclamation No. 3279, as amended, of any import license fees applicable to crude oil as defined for purposes of this section, which is imported for refining.[12]

Thus, a firm must use crude oil as inputs to distillation units and qualify as a refiner to meet the requirements of this section. Consumers qualifies for participation in the entitlements program because it meets all the applicable requirements as defined in 10 CFR Part 211.

Consumers' feedstock preparation unit processes "crude oil," inasmuch as a portion of the condensate processed by the Marysville unit is lease condensate. For the purposes of the allocation regulations, 10 CFR 211.51 provides:

"Crude oil" means a mixture of liquid hydrocarbons *including lease condensate* that exists in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities. [Emphasis added.]

According to Consumers, the lease condensate processed in the feedstock preparation unit is liquid and is not transformed in any significant respect by the stabilization (or removal of the more volatile ends) that occurs prior to processing of the lease condensate by Consumers.[13] Therefore, the lease condensate purchased by Consumers for its Marysville unit qualifies as crude oil.

Section 211.51 contains definitions of general applicability under the Mandatory Petroleum Allocation Regulations and defines "refineries" as:

Those industrial plants, regardless of capacity, processing crude oil feedstock and manufacturing refined petroleum products, except when such plant is a petrochemical plant.

Section 211.51 then defines "refiners" as "those firms that own, operate or control the operations of one or more refineries."

Additional definitions specifically applicable to the entitlements program are set forth in § 211.62. Section 211.62 provides:

"Refinery" means an industrial plant, regardless of capacity, processing crude oil feedstock and manufacturing refined petroleum products, residual fuel oil or petrochemicals, and shall include a petrochemical plant.

The definition of "refiner" in § 211.62 is essentially identical to the definition of "refiners" in § 211.51.

Consequently, in order for Consumers to qualify as a refiner under the entitlements program, it must own, operate or control a refinery which processes crude oil feedstock [14] and manufactures refined petroleum products. Because Consumers' feedstock preparation unit meets the qualifications of a refinery, Consumers qualifies as a refiner.

The fact that Consumers' Marysville feedstock preparation unit produces refined petroleum products provides additional support for the conclusion that Consumers qualifies as a refiner for purposes of the entitlements program. According to Consumers, its feedstock preparation unit produces LPG and middle distillate fuel oil. These products are expressly included in the definition of "refined petroleum product" in § 211.51. In addition, the unit produces a naphtha product which, according to Consumers, is similar to gasoline. Subpart J of the Mandatory Petroleum Allocation Regulations covers naphtha products.[15] Therefore, each of the principal products produced by Consumers in the Marysville feedstock preparation unit is a "refined petroleum product" within the scope of 10 CFR Part 211. Accordingly, Consumers owns and operates a unit which processes crude oil and manufactures refined petroleum products. Thus, it qualifies as a refiner pursuant to the definitions set forth in §§ 211.51 and 211.62.

Because Consumers qualifies as a refiner eligible to participate in the entitlements program, the provisions of 10 CFR 211.67 apply. Pursuant to § 211.67(d)(3), quoted above, Consumers may include the Michigan lease condensate in its calculations of crude oil runs to stills [16] since it is considered to be "crude oil" under the definition of that term for purposes of Part 211.[17] Consumers may also include the total number of barrels of Canadian plant condensate processed by the unit in its volume of crude oil runs to stills in accordance with the express provisions of § 211.67(d)(3).[18] Since Consumers first submitted information demonstrating that the Marysville feedstock preparation unit processes lease condensate on June 17, 1976, it may qualify as a refiner of crude oil that may participate in the entitlements program only after that date.

The majority of the public comments received by the DOE regarding Consumers' request for interpretation expressed an objection to the classification of the feedstock preparation unit as a refinery and Consumers' participation in the entitlements program. The most frequently expressed objection was that Consumers does not sell the principal products produced from the unit and thus, does not fall within the intended scope of the entitlements program. However, Consumers' participation in the entitlements program is consistent with the policy and objectives of that program. The purpose of the entitlements program is to allocate the benefits of access to price-controlled domestic crude oil and the burdens of dependence on uncontrolled crude oil among all sectors of the petroleum industry and among all consumers of petroleum products in order to prevent competitive advantages or disadvantages resulting from the Mandatory Petroleum Price Regulations. [19] To withhold the benefits of the entitlements program from Consumers would be incompatible with the intent of the program since other refiners of LPG, naphtha, and fuel oil receive such benefits. Excluding the Marysville unit from the entitlements program merely because Consumers does not market its principal refined petroleum products would penalize Consumers for having invested in the feedstock preparation unit, which performs the same function that a commercial refinery would normally perform in preparing feedstocks for other SNG plants.

Other firms in a position similar to Consumers have been permitted or required to participate in the entitlements program, thus lending support for Consumers' participation. Consumers relies upon *Glacier*

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[12] 10 CFR 211.67(d)(3) originated in 40 FR 14738 (April 2, 1975), effective March 28, 1975, was amended in 40 FR 39847 (August 29, 1975), effective August 1, 1975, and was amended to its present form in 41 FR 13899 (April 1, 1976), effective March 29, 1976. Bureau of Mines Form 6–1300–M was superseded by Form FEA–P320–M–O, which was superseded by Form EIA–87.

[13] *Cf. Mobil Oil Corporation*, Interpretation 1977–31, 42 FR 46273 (September 15, 1977), where the facts that condensate facilities spanned an area of 20 miles, recovery was completed at a loading port, and the condensate liquids were reheated in the final stage prior to marine shipment did not alter the conclusion that the liquids were properly classified as lease, rather than plant, condensate. The lease condensate in question was classified as crude oil under the definition of that term in Part 211.

[14] Crude oil is defined differently for purposes of the Mandatory Petroleum Price Regulations. Section 212.31 specifies that " '[c]rude oil' includes condensate recovered in associated or non-associated production by mechanical separators, whether located on the lease, at central field facilities, or at the inlet side of a gas processing plant."

For purposes of the price regulations, crude oil includes both lease and plant condensate. However, for purposes of the allocation regulations, crude oil generally includes only lease, not plant, condensate. *Southern Union Production Co.* v. *FEA*, Civil No. CA–3–75–1375–D (N.D. Tex., June 20, 1977), CCH Federal Energy Guidelines [1974–1978 Court Decisions] ¶ 26,076 at 26,596, *aff'd*, 569 F.2d 1147 (TECA 1978).

[15] "Notwithstanding the provisions of Subpart J of this part, naphthas and gas oils are excluded from this part *except with respect to the use of naphtha for synthetic natural gas plant feedstock* pursuant to §§ 211.183 and 211.29." (Emphasis added.) 10 CFR 211.1(b)(7). *See also* 10 CFR 210.35(d)(1).

[16] " 'Crude oil runs to stills,' means, in the case of a refiner other than a petrochemical producer, the total number of barrels of crude oil input to distillation units processed by a refiner and measured in accordance with Bureau of Mines Form 6–1300–M and, in the case of a petrochemical producer, the total number of barrels of crude oil input to processing units for conversion into petrochemicals." 10 CFR 211.62. *See* n. 12 *supra*.

[17] *See Standard Oil Company (Indiana)*, Interpretation 1979–4, 44 FR 16893 (March 20, 1979) and *Mobil Oil Company*, Interpretation 1977–31, 42 FR 46273 (September 15, 1977).

[18] Inasmuch as Consumers imports substantial amounts of Canadian plant condensate, its inclusion of such plant condensate in its calculation of crude oil runs to stills is subject to the prerequisites of § 211.67(d)(3) regarding measurement of crude oil runs to stills and payment of import license fees.

[19] *Cities Service Co.* v. *FEA*, 529 F.2d 1016 (TECA 1975).

Park Co., 5 FEA ¶ 83,074 (February 25, 1977), to support the position advanced in its request for interpretation. In that case the FEA discussed the purpose of the entitlements program in relation to a refinery owned and operated by Glacier Park, a wholly-owned subsidiary of Burlington Northern, Inc., producing fuel oils and naphtha used directly by Burlington and exchanged for additional diesel fuel oil supplies. Glacier Park's application for exception requested exclusion from the operation of the entitlements program. In denying the firm's application for exception, the FEA stated:

[A]lthough Glacier Park may not be in direct competition with other refiners, the effective cost of the refined petroleum products which it produces for Burlington's use significantly affect[s] that firm's competitive position.

Therefore, the firm was not excluded from the entitlements program.

This decision was affirmed on appeal, *Glacier Park Co.*, 6 FEA ¶ 80,552 (July 18, 1977), where the FEA noted:

[E]ven if Glacier were not engaged in competition within the petroleum industry, we are not persuaded that Glacier's participation in the Entitlements Program constitutes a gross inequity. . . . It is undisputed that Glacier is a refiner and that the firm therefore falls within the express scope of the Entitlements Program.

Like Glacier Park, Consumers qualifies as a refiner and therefore falls within the express scope as well as the purpose of the entitlements program.

The DOE's Alaskan refineries rule further supports the inclusion of Consumers in the entitlements program. 43 FR 55322 (November 27, 1978). In its consideration of facilities designed to produce fuel used exclusively for vehicles and machinery associated with the Trans-Alaska Pipeline System, the DOE acknowledged that the products of these facilities are not sold commercially. Nevertheless, the DOE concluded:

[T]he facilities are encompassed by the definition of "refinery" contained in 10 CFR 211.62, since the facilities process crude oil and manufacture at least some refined petroleum products, and thus qualify to participate in the entitlements program. . . .

* * * * *

. . . We believe the benefits of the entitlements program should be available to all firms owning facilities which qualify as refineries, as that term is defined in DOE regulations and as that term is interpreted by the Department.

43 FR 55322–23 (November 27, 1978). With respect to such facilities, regardless whether there was an impact on competition among refiners of petroleum products, the DOE focused on the qualification of a firm as a refiner to determine whether inclusion in the entitlements program was appropriate. Accordingly, Consumers' demonstrable qualifications as a refiner similarly require its participation in the entitlements program.

For the reasons set forth above, we have determined that the proper application of the Mandatory Petroleum Allocation Regulations to the factual situation presented by Consumers is as follows:

(1) The Marysville feedstock preparation unit distills crude oil and qualifies as a refinery;

(2) Consumers is a refiner eligible to participate in the entitlements program after June 17, 1976, the date on which Consumers first submitted information demonstrating that the Marysville feedstock preparation unit processes lease condensate; and

(3) Consumers may include its entire volume of Michigan lease condensate and Canadian plant condensate in its calculations of crude oil runs to stills, subject to the provisions of 10 CFR 211.67(d)(3).

Consumers should contact the Office of Petroleum Operations, Economic Regulatory Administration, in order to effect Consumers' participation in the entitlements program in a manner that is consistent with the determinations made in this interpretation.

Issued in Washington, D.C. on December 21, 1979.

Everard A. Marseglia, Jr.,

Assistant General Counsel for Interpretations and Rulings.

Appendix B—Responses to Petition for Reconsideration

Petitioner	Interpretation	Date of response
Arizona Fuels Corporation.	Arizona Fuels Corporation, 1979–18, 44 FR 60266 (December 19, 1979).	December 14

Petition for Reconsideration

Arizona Fuels Corporation Interpretation 1979–18

Petitioner: Arizona Fuels Corporation
Date: December 14

This responds to your petition for reconsideration of *Arizona Fuels Corporation*, Interpretation 1979–18, issued on August 13, 1979. For the reasons discussed below, I have concluded that the petition for reconsideration must be denied.

Interpretations issued by the Office of General Counsel of the Department of Energy (DOE) may be reconsidered only in certain limited circumstances. In such cases the burden is on the petitioner to demonstrate that the interpretation was erroneous in fact or in law, or that the result reached in the interpretation was arbitrary or capricious. 10 CFR 205.85(f)(3).

The result reached in Interpretation 1979–18 is that Arizona Fuels was entitled to a continued supply of the crude oil in question under the plain meaning of 10 CFR 211.63(b)(2) because that crude oil had been the subject of a previous supplier/purchaser relationship, and Arizona Fuels, the subsequent purchaser of that crude oil, was not its purchaser on January 1, 1976. Accordingly, inasmuch as a supplier/purchaser relationship was established as though it has been in effect on January 1, 1976, the relationship could be terminated only as provided in 10 CFR 211.63(d). In the interpretation now challenged by Trans World Oil Corporation, we determined that the 65-day notice of cancellation provision in the termination clause of Arizona Fuels' agreement was insufficient to meet the requirements of § 211.63(d)(1) because no termination date had been specified.

Your petition for reconsideration raises several arguments to support your view that the interpretation is erroneous. You contend first that no supplier/purchaser relationships were created under § 211.63. Yet, the affidavits which you have submitted do not establish that the interpretation was based upon an erroneous factual premise, and we disagree with your interpretation that § 211.63 applies only to pre-January 1, 1976 contracts.

We also do not agree that the requirement of a specific termination date constitutes a rulemaking rather than an interpretation of an existing regulation, and is therefore void for failure to comply with statutory and regulatory requirements. This argument fails to take into account the plain language of § 211.63(d)(1) which requires written notice of "the termination date."

Inasmuch as Trans World has failed to demonstrate that the interpretation is erroneous in fact or in law, or that the interpretation is arbitrary or capricious, the petition for reconsideration is hereby denied. The denial of Trans World's petition for reconsideration is a final order of the Department of Energy from which the petitioner may seek judicial review.

Appendix C—Cases Dismissed

File No.	Requestor	Category	Date dismissed
A–449	Stephens Engineering.	Price	December 3
A–428	Dow Chemical U.S.A.	Price	December 27
A–413	LaJet, Inc.	Price and Allocation.	December 5

[FR Doc. 80–2198 Filed 1–23–80; 8:45 am]
BILLING CODE 6450–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 79–EA–58; Amdt. 39–3676]

Airworthiness Directives; Piper Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment establishes an airworthiness directive, applicable to Piper PA–31 type aircraft, which requires an inspection and alteration of the elevators. Cracks have been found in the elevator butt ribs and contiguous areas which, if permitted to propagate, could cause elevator control problems.

EFFECTIVE DATE: January 29, 1980. Compliance is required as set forth in the AD.

ADDRESSES: Piper Service Bulletins may be acquired from the manufacturer at Piper Aircraft Corporation, 820 East Bald Eagle Street, Lock Haven, Pennsylvania 17745.

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

SUPPLEMENTARY INFORMATION: Cracks have been found in the specified areas which the manufacturer concludes may result from a greater load being carried by the elevator spar and false spar than was previously estimated. The alteration required by this rule will strengthen the load path between the butt rib skin and the butt rib elevator spar. In view of the continuing air safety problem, notice and public procedure hereon are impractical, and the amendment may be made effective in less than 30 days.

Adoption of the Amendment

Accordingly, and pursuant to the authority delegated to me by the Administrator, Section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by establishing an airworthiness directive, as follows:

Piper: Applies to Model PA–31P, Serial Nos. 31P–1 thru 31P–7730012, Model PA–31T, Serial Nos. 31T–7400002 thru 31T–7920075 and Model PA–31T1, Serial Nos. 31T–7804001 thru 31T–7904036 and 31T–7904038 thru 31T–7904044 certificated in all categories except aircraft incorporating Piper Kit No. 763 943.

To prevent possible hazards in flight associated with cracks in the elevator butt ribs and adjoining area accomplish the following:

a. Within the next 100 hours in service from the effective date of this AD or upon the attainment of 400 hours in service, whichever is later, inspect and alter the elevators in accordance with Piper Kit No. 763 943 or equivalent.

b. Equivalent inspections or alterations must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

c. Upon submission of substantiating data by an owner or operator through an FAA Maintenance Inspector, the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region may adjust the inspection intervals specified in this AD.

(Piper Service Bulletin No. 658 dated July 31, 1979, refers to this subject)

Effective Date: This amendment is effective January 29, 1980.

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

Issued in Jamaica, New York, on January 14, 1980.

Murray E. Smith,

Director, Eastern Region.

[FR Doc. 80–2016 Filed 1–23–80; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 19949; Amdt. to 39–3679]

Airworthiness Directives; Short Brothers Ltd. Model SD3–30 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts an airworthiness directive (AD) that requires replacement of life limited main landing gear beam subassembly on Short Brothers Ltd. Model SD3–30 airplanes. The AD is prompted by the landing gear manufacturer's fatigue testing program, which established that failure of the beam could occur if left in service beyond 6000 landings. Failure of the beam could result in collapse of the affected gear.

DATES: Effective February 7, 1980.

Compliance schedule—as prescribed in body of AD.

ADDRESSES: The applicable service bulletins may be obtained from: Manager-Spares and Support, Product Support Department, Short Brothers Limited, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland.

Copy of the service bulletin is contained in the Rules Docket, Room 916, 800 Independence Avenue, S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: D. C. Jacobsen, Chief, Aircraft Certification Staff, AEU–100, Europe, Africa and Middle East Region, Federal Aviation Administration, c/o American Embassy, Brussels, Belgium, Telephone: 513.38.30, or C. Christie, Chief, Technical Analysis Branch, AWS–110, Federal Aviation Administration, 800 Independence Ave., S.W., Washington, D.C. 20591, Telephone 202–426–8374.

SUPPLEMENTARY INFORMATION: The FAA has determined that failure of the main landing gear beam subassembly on Short Brothers Ltd. Model SD3–30 airplanes could occur if left in service beyond 6000 landings. The life limit has been established by the manufacturer of the landing gear (Menasco Manufacturing) as a part of a continuing fatigue testing program.

Since this condition is likely to exist or develop on other airplanes of the same type design, and AD is needed to require replacement of the original bem with an improved standard beam prior to accumulating 6000 landings.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive.

Short Brothers Ltd. Applies to Model SD3–30 airplanes, certificated in all categories.

Compliance is required as indicated unless already accomplished.

To prevent possible failure of the main landing gear beam sub-assembly, accomplish the following:

Prior to the accumulation of 6000 landings or within 25 landings after the effective date of this AD, whichever occurs later, replace the beam sub-assembly, Menasco P/N 17604–5 or 17604–7, with a new beam sub-assembly, Menasco P/N 17604–13 or 17604–15, in accordance with Section 10, "Accomplishment Instructions," of Menasco Manufacturing Service Bulletin 32–15, revision 1, dated January 11, 1978, or an equivalent approved by the Chief, Aircraft Certification Staff, AEU–100, FAA, Europe, Africa, and Middle East Region, c/o American Embassy, Brussels, Belgium. Upon replacement of the beam sub-assembly, make appropriate logbook entry indicating compliance with the provisions of this AD.

Note.—Short Brothers Ltd. Service Bulletin SD3–32–28, revision 2, dated March 6, 1978, covers this same subject.

This amendment becomes effective February 7, 1980.

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

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the evaluation prepared for this action will be placed in the regulatory docket. A copy of it may be obtained by writing to C. Christie, Chief, Technical Analysis Branch, AWS–110, Federal Aviation Administration,

800 Independence Avenue, S.W., Washington, D.C. 20591.

Issued in Washington, D.C. on January 15, 1980.

M. C. Beard,

Director, Office of Airworthiness.

[FR Doc. 80-2015 Filed 1-23-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 80-CE-1-AD; Amendment 39-3675]

Airworthiness Directives; Cessna Model 441 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) applicable to Cessna Model 441 airplanes. This AD supersedes and incorporates the requirements of AD 79-10-08. It also includes an alternate action for airplanes equipped with engines having Garrett AiResearch P/N 897110-8 fuel control assemblies, which, if accomplished, restores approval of aviation gasoline as an alternate fuel for airplanes modified in the field and manufactured in compliance with AD 79-10-08. This action is taken to enable operators who desire to do so to make modifications to their airplanes which will enable them to safely use aviation gasoline as an alternate fuel.

EFFECTIVE DATE: January 29, 1980.

Compliance: Prior to further flight.

ADDRESSES: Cessna Propjet (Customer Care) Service Information Letters Number PJ 79-8, dated April 2, 1979, and PJ 80-1 dated January 11, 1980, and Garrett AiResearch Service Bulletin TPE 331-73-0093, applicable to this AD, may be obtained from Cessna Aircraft Company, Marketing Division, Attention: Customer Service Department, Wichita, Kansas 67201, telephone (316) 685-9111. Copies of these Service Letters are contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106 and at Room 916, 800 Independence Avenue, S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: L. L. Edwards, Aerospace Engineer, Engineering and Manufacturing District Office No. 43, Federal Aviation Administration, Room 238, Mid-Continent Airport, Wichita, Kansas 67209, telephone (316) 942-7927.

SUPPLEMENTARY INFORMATION: The FAA issued AD 79-10-08 to rescind approval of avgas fuel, grades 80/87 and 100LL as alternate fuels for the Cessna Model 441 airplane because some engines would not develop minimum takeoff power under certain ambient conditions on these fuels. Subsequent to this action, the aircraft and engine manufacturers have developed for engines having a Garrett AiResearch P/N 897110-8 fuel control assembly a one-time fuel control and computer adjustment and operating procedures which assure safe operation on these alternate fuels. The operating procedures incorporate a simple overspeed governor check and installation of a two-sided reversible placard so that wording corresponding to the fuel for which the engine is adjusted is displayed over the torque indicators on the instrument panel. These instructions, placard and related Pilot's Operating Handbook and FAA Approved Airplane Flight Manual Revision have been made available to the owners/operators of the affected airplanes by the airplane manufacturer per its Propjet Customer Care Service Information Letter PJ 80-1 including Garrett AiResearch Service Bulletin TPE 73-0093, and Service Kit SK 441-28. Accordingly, the FAA is issuing a new AD superseding AD 79-10-08 and incorporating the above information as an alternate action.

Since the amendment is relieving in nature and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and the amendment may be made effective in less than 30 days after the date of its publication in the **Federal Register.**

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Section 39.13 of the Federal Aviation Regulations (14 CFR Section 39.13) is amended by adding the following new Airworthiness Directive.

Cessna: Applies to Model 441 (S/Ns 441-0001 thru 441-0106 and 441-0109 airplanes).

Compliance: Required as indicated unless already accomplished. To preclude accidents resulting from the inability of the airplane to meet flight manual performance data, prior to further flight accomplish either paragraph (A) or (B) below:

(A) Install Revision 5 dated March 26, 1979, in the Pilot's Operating Handbook and FAA Approved Airplane Flight Manual and operate the airplane in accordance with this revision. (This action was required by AD 79-10-08 on S/Ns 441-0001 through 441-0097 airplanes and incorporated in Airplanes S/Ns 441-0098 through 441-0106 and S/N 441-0109 by the manufacturer).

Note.—This does not prohibit incorporation of later non-conflicting revisions in the Pilot's Operating Handbook and FAA Approved Airplane Flight Manual.

(B) If the engines are equipped with AiResearch P/N 897110-8 fuel control assemblies, modify the airplane and Pilot's Operating Handbook and FAA Approved Airplane Flight Manual in accordance with the following:

(1) Adjust the Engine Fuel Controls and Computers in accordance with Garrett AiResearch Service Bulletin TPE 331-73-8893 Cessna Customer Care Service Information Letter PJ 80-1.

(2) Install a two-sided reversible instrument panel placard in accordance with Cessna Service Kit SK 441-28 and operate the airplane in accordance with this placard.

(3) Perform an overspeed governor check in accordance with Cessna Service Kit SK 441-28.

(4) Install Revision 8 in the Pilot's Operating Handbook and FAA Approved Flight Manual and operate the airplane in accordance with this revision.

(C) The airplane may be flown to a location where paragraphs (A) or (B) can be accomplished, provided it is not operated with aviation gasoline fuel, grades 80/87 or 100LL.

(D) Any equivalent method of compliance with this AD must be approved by the Chief, Engineering & Manufacturing District Office No. 43, Federal Aviation Administration, Room 220, Mid-Continent Airport, Wichita, Kansas 67209. Telephone (316) 942-4285.

Cessna Propjet Customer Care Service Information Letters PJ 79-8 dated April 2, 1979, and PJ 80-1 dated January 11, 1980, including Garrett AiResearch Service Bulletin TPE 331-73-8893, cover the subject matter of this AD.

The AD supersedes AD 79-10-08, Amendment 39-3470 (44 FR 27977).

This amendment becomes effective January 29, 1980.

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

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing to John L. Fitzgerald, Jr., Attorney, Office of the Regional Counsel, Room 1558, Federal Aviation Administration, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, telephone (816) 374-5446.

Issued in Kansas City, Missouri on January 14, 1980.

Paul J. Baker,

Director, Central Region.

[FR Doc. 80-2144 Filed 1-23-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 79-WE-44-AD; Amdt. 39-3674]

Airworthiness Directives; McDonnell Douglas DC-9 Series Airplanes

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires x-ray inspections of the auxiliary emergency exit door shear pin fitting assemblies. This AD is necessary to prevent failure of the door which will result in depressurization of the airplane.

DATES: Effective January 28, 1980.

Compliance schedule—As prescribed in the body of the AD.

ADDRESSES: The applicable service information may be obtained from: McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60)

Also, a copy of the service information may be reviewed at, or a copy obtained from:

Rules Docket in Room 916, FAA, 800 Independence Avenue, S.W., Washington, D.C. 20591, or

Rules Docket in Room 6W14, FAA Western Region, 15000 Aviation Boulevard, Hawthorne, California 90261.

FOR FURTHER INFORMATION CONTACT: Kyle L. Olsen, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536-6351.

SUPPLEMENTARY INFORMATION: During the repair to the aft pressure bulkhead plug door as required by telegraphic AD T79WE20, cracked shear pin fitting assemblies were found by one operator. Two airplanes had one fitting cracked and a third airplane had a completely failed fitting. In all three cases the cracks have occurred through the outboard row of fasteners which attach the door stiffener, fitting, door web and frame together. The cracks have been attributed to fatigue.

Undetected failure of the fittings could result in loss of retention of the aft pressure bulkhead auxiliary emergency exit door and allow depressurization of the airplane. Inspection and replacement of failed fittings will ensure the structural integrity of this door.

Therefore, the FAA is issuing a new AD to require an x-ray inspection of each auxiliary emergency exit door shear pin fitting assembly within the next 500 landings after the effective date of this AD and thereafter at intervals not to exceed 4,000 landings or one year.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9 Series airplanes, certificated in all categories, equipped with the aft pressure bulkhead auxiliary emergency exit door, Part No. (P/N) 5910367.

Compliance required as indicated, unless already accomplished.

To detect fatigue cracks and prevent failure of the auxiliary emergency exit door, accomplish the following:

(a) Within 500 landings after the effective date of this AD and thereafter at intevals not to exceed 4,000 landings or one (1) year whichever comes first, inspect by x-ray each auxiliary emergency exit door shear pin fitting assembly in accordance with McDonnell Douglas DC-9 Alert Service Bulletin A52-116, dated December 12, 1979.

(b) Any shear pin fitting assembly found cracked must be replaced with an FAA approved assembly prior to further flight.

(c) New shear pin fitting assemblies installed in accordance with paragraph (b), of the same type design, must be inspected initially before 20,000 landings after installation and thereafter at intervals not to exceed 4,000 landings or one (1) year whichever comes first, in accordance with paragraph (a).

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections required by this AD.

(e) Alternative inspections, modifications or other actions which provide an equivalent level of safety may be used when approved by the Chief, Aircraft Engineering Division, FAA Western Region.

(f) For the purposes of complying with this AD, subject to the acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's hours' time in service by the operator's fleet average time from takeoff to landing for the DC-9 airplane.

This amendment becomes effective January 28, 1980.

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

Issued in Los Angeles, California on January 14, 1980.

W. R. Frehse,

Acting Director, FAA Western Region.

[FR Doc. 80-2143 Filed 1-23-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 80-WE-1-AD; Amdt. 39-3678]

Airworthiness Directives; Robinson Helicopter Company Model R-22 Helicopters

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires repetitive inspections of main rotor blade trailing edges on Robinson Helicopter Company Model R-22 series helicopters. The AD is needed to detect delamination which, if uncorrected, could progress to produce loss of main rotor blade stiffness.

DATES: Effective January 24, 1980.

Compliance schedule—Initial compliance required within 10 hours of the effective date of this AD.

FOR FURTHER INFORMATION CONTACT: Jerry Presba, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P. O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536-6351.

SUPPLEMENTARY INFORMATION: The FAA has received reports of delamination of main rotor blade trailing edge and root doubler structure on Robinson Helicopter Company Model R-22 helicopters. This delamination, if uncorrected, could progress to produce loss of structural stiffness in the main rotor blades of the helicopter. Since this condition is likely to exist and develop on other helicopters of the same type design, an airworthiness directive is being issued which requires daily inspection of the main rotor blade trailing edges for delamination and removal from service if delamination is found on Robinson Helicopter Company Model R-22 helicopters.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by adding the following new airworthiness directive:

Robinson Helicopter Company: Applies to Model R-22 series helicopters certificated in all categories.

Compliance is required as indicated.

To prevent loss of structural integrity of the main rotor blades, accomplish the following:

(a) Within the next 10 hours' time in service from the effective date of this AD, and once each day the helicopter is to be operated thereafter, accomplish the following:

(1) Visually check the trailing edges of the main rotor blades for any indication of separation due to an adhesive failure.

(2) Visually check the edges of the two small external doublers located near the root end of the blades, (one on top and one on bottom), for any evidence of delamination.

(3) If delamination of the doublers and/or trailing edge are found, the main rotor blades must be replaced with like serviceable parts prior to further flight.

The checks required by this AD may be performed by the pilot.

Note.—a maintenance record entry showing compliance and method of compliance with this AD is required by FAR 91.173.

(b) Alternative inspections, modifications or other actions which provide an equivalent level of safety may be used when approved by the Chief, Aircraft Engineering Division, FAA Western Region.

This amendment becomes effective January 24, 1980.

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

Issued in Los Angeles, California on January 16, 1980.

W. R. Frehse,

Acting Director, FAA Western Region.

[FR Doc. 80-2146 Filed 1-23-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 61 and 63

[Docket No. 19300; Amdt. Nos. 61-67 and 63-20]

Certification: Pilots and Flight Instructors and Certification: Flight Crewmembers Other Than Pilots; Special Purpose Pilot, Flight Engineer, and Flight Navigator Certificates

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These regulations provide for the issuance of special purpose airman certificates to foreign pilots and other foreign flight crewmembers. They permit those persons to operate certain U.S.-registered civil airplanes, leased to persons not citizens of the United States, for the carriage of persons and property for compensation or hire. They are being issued in response to numerous petitions for exemptions requesting that foreign pilots and other flight crewmembers be eligible for the issuance of U.S. airman certificates to enable them to operate these airplanes.

EFFECTIVE DATE: February 25, 1980.

FOR FURTHER INFORMATION CONTACT: Raymond E. Ramakis, Regulatory Projects Branch (AVS-24), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 755-8716.

SUPPLEMENTARY INFORMATION:

Background

The FAA has received numerous petitions for exemptions requesting that foreign pilots and other foreign flight crewmembers be eligible for the issuance of U.S. airman certificates, so that they may act as flight crewmembers on certain U.S.-registered civil airplanes, leased to persons not citizens of the United States, for the purpose of carrying persons and property for compensation or hire. Although these foreign airmen hold current appropriate certificates, licenses, or authorizations issued by contracting States to the Convention on International Civil Aviation, they may not operate U.S.-registered aircraft, because under section 610(a) of the Federal Aviation Act of 1958 (the Act) only persons holding appropriate U.S. airman certificates may serve as required flight crewmembers on U.S.-registered aircraft in air commerce.

While §§ 61.75 and 63.42 of the Federal Aviation Regulations allow the holders of current foreign pilot and foreign flight engineer licenses issued by contracting States to the Convention on International Civil Aviation to have certificates issued to them for the operation of U.S.-registered civil aircraft, certificates issued under these sections do not allow the airmen to operate aircraft if they carry persons or property for compensation or hire.

Notice of Proposed Rule Making No. 79-12 (44 FR 38563; July 2, 1979) proposed regulations to provide for the issuance of special purpose airman certificates to allow these foreign airmen to operate certain U.S.-registered civil aircraft carrying persons or property for compensation or hire. By facilitating the lease of these aircraft the FAA is acting within its statutory mandate, under section 305 of the Act, to encourage and foster the development of civil aeronautics and air commerce in the United States and abroad.

Discussion of Comments

The FAA received 12 public comments in response to Notice 79-12. Six commenters, consisting of three air carriers, two aviation organizations, and one individual, supported the proposal. They agreed that the proposal would reduce administrative delay and facilitate arrangements between U.S. and foreign operators.

One of these commenters argued that the issuance of special purpose certificates should not be limited to airplane types that can have a maximum passenger seating configuration, excluding any flight crew seat, of more than 30 seats or a maximum payload capacity of more than 7,500 pounds. It contended that this would limit the ability of foreign air carriers using smaller aircraft to lease aircraft to meet their short-term, peak season needs. As an example, the carrier, which uses some DC-3 aircraft, noted that many DC-3 aircraft of U.S. registry are configured for 30 passenger seats or less.

However, the FAA is not aware of a significant demand for the lease of smaller U.S.-registered aircraft to foreign operators, for which special purpose certificates would be needed. If a need arises for issuance of special purpose certificates to operate these aircraft, and this need cannot be efficiently met through the exemption process, the FAA will consider expanding the applicability of these regulations to meet such a need.

Moreover, in the commenter's case, special purpose certificates would be available for the operation of DC-3 aircraft configured for 30 passenger seats or less, since the aircraft can be configured for more than 30 passenger seats. The rule is keyed to the possible, not the actual, seating configuration of the aircraft.

Three commenters opposed the proposed regulations because they do not limit the issuance of special purpose certificates to pilots from countries that offer the same privilege to U.S. pilots. It is true that some countries do not offer special purpose airman certificates to foreign pilots for operating an aircraft registered in those countries. However, the FAA expects that this regulation will encourage other countries to extend this privilege to U.S. pilots, while at the same time facilitating the lease of U.S.-owned aircraft.

Two commenters took the position that special purpose certificates should

not be issued unless these airmen are first examined by the FAA. However, the requirements imposed on an applicant for pilot, flight engineer, and flight navigator licenses issued by contracting States to the Convention on International Civil Aviation are now substantially the same as those which must be met for certificates issued under Parts 61 and 63 of the Federal Aviation Regulations. Accordingly, it is not necessary for the FAA to require examinations for these airmen in addition to those required by the contracting State for the issuance and retention of its license.

This regulation simplifies the regulatory process by eliminating the requirements that those individuals wishing to utilize the authority contained herein from having to submit petitions for exemptions each time the authority was sought. This will also lessen the agency's regulatory workload and enable the agency to concentrate on safety related issues. This is part of the continuing effort to review and simplify the agency's regulations and procedures. This is consistent with Executive Order 12044.

Discussion of the Amendments

These amendments add two new sections to the Federal Aviation Regulations. Section 61.77 provides for special purpose pilot certificates, and § 63.23 provides for special purpose flight engineer and flight navigator certificates. To avoid confusion, § 63.42 has been amended to change its title from "Special purpose flight engineer certificate" to "Flight engineer certificate issued on basis of a foreign flight engineer license." The title change more accurately reflects the contents of the section and makes it consistent with § 61.75, a parallel section for pilot certificates.

Under these rules, the pilot, flight engineer, or flight navigator (or a representative of that person) applying for the special purpose certificate must present to the Administrator a current foreign pilot, flight engineer, or flight navigator certificate, license, or authorization issued by a foreign contracting State, or a facsimile acceptable to the Administrator. The applicant must present a current certification by the lessee of the airplane stating: (1) that the applicant is employed by the lessee; (2) the airplane type on which the applicant will perform the flight crewmember duties; and (3) that the applicant has received appropriate ground and flight instruction. Finally, the applicant (or a representative of the applicant) must submit documentation showing that the applicant currently meets the medical standards required by the foreign certificate, license, or authorization on which the application is based, and, in the case of a pilot, that the applicant has not reached the age of 60.

The special purpose certificate will be based solely upon the applicant's foreign certificate, license, or authorization. They are valid only while that document is valid and current, and while the holder meets the medical requirements for that document. Issuance of a medical certificate under Part 67 of the Federal Aviation Regulations does not meet this requirement unless the State issuing the foreign certificate, license, or authorization accepts a Part 67 medical certificate as evidence of the applicant's medical fitness.

The holder of a special purpose certificate may exercise the same privileges as those shown on his or her foreign certificate or license.

The certificate holder is not required to comply with § 61.55 (Second in command qualifications: Operation of large airplanes or turbojet-powered multiengine airplanes), § 61.57 (Recent flight experience: Pilot in command), and § 61.58 (Pilot in command proficiency check: Operation of aircraft requiring more than one required pilot). The FAA has determined that it is not necessary to prescribe currency and checking requirements, in addition to those prescribed by the contracting State for the issuance and retention of a pilot license, in order to maintain a level of safety equivalent to that provided by these sections.

A special purpose certificate issued under proposed § 61.77 or § 63.23 is only valid for flights between foreign countries and for flights in foreign air commerce. These certificates may not be used for operating U.S.-registered airplanes, leased to persons not citizens of the U.S., for flights in interstate, intrastate, or overseas air commerce. Flights of these airplanes within a foreign country are covered in §§ 61.3(a) and 63.3 (a) and (b) which permit those flights if the pilot, flight engineer, or flight navigator has a current appropriate license issued by the country in which the airplane is operated.

A special purpose certificate is conditioned on the validity of the airman's foreign certificate, license, or authorization and on the existence of the lease agreement. A special purpose certificate is valid while the holder: (1) has in his or her personal possession the special purpose pilot certificate and the current foreign certificate, license, or authorization upon which the special purpose certificate is based; (2) is employed by the person to whom the aircraft is leased; (3) is performing the duties of a pilot, flight engineer, or flight navigator, as appropriate, on the specific airplane type described in the certification required for issuance of the certificate; and (4) has in his or her personal possession the current medical documentation required for the issuance of the certificate. The certificate issued contains a specific reference to these limitations. Finally, the certificate is subject to any necessary additional limitations placed on the certificate by the Administrator.

The certificates issued under proposed §§ 61.77 and 63.23 automatically terminate when one of the following occurs: (1) when the lease agreement terminates; (2) when the foreign certificate, license, or authorization, or the medical documentation is suspended, revoked, or no longer valid for whatever reason; (3) after 24 months after the month in which the special purpose certificate was issued; or (4), in the case of a pilot, when the certificate holder reaches the age of 60. The requirements for renewal of a special purpose certificate are the same as for issuance of the original certificate.

Finally, the certificate holder is required to surrender the special purpose certificate to the Administrator within 7 days after the date it terminates.

The Amendment

Accordingly, Parts 61 and 63 of the Federal Aviation Regulations (14 CFR Parts 61 and 63) are amended, effective February 25, 1980, as follows:

1. By adding a new § 61.77 to read as follows:

§ 61.77 Special purpose pilot certificate: Operation of U.S.-registered civil airplanes leased by a person not a U.S. citizen.

(a) *General.* The holder of a current foreign pilot certificate or license issued by a foreign contracting State to the Convention on International Civil Aviation, who meets the requirements of this section, may hold a special purpose pilot certificate authorizing the holder to perform pilot duties on a civil airplane of U.S. registry, leased to a person not a citizen of the United States, carrying persons or property for compensation or hire. Special purpose pilot certificates are issued under this section only for airplane types that can have a maximum passenger seating configuration, excluding any flight crewmember seat, of more than 30 seats or a maximum payload capacity (as defined in

§ 135.2(e) of this chapter) of more than 7,500 pounds.

(b) *Eligibility.* To be eligible for the issuance or renewal of a certificate under this section, an applicant or a representative of the applicant must present the following to the Administrator:

(1) A current foreign pilot certificate or license, issued by the aeronautical authority of a foreign contracting State to the Convention on International Civil Aviation, or a facsimile acceptable to the Administrator. The certificate or license must authorize the applicant to perform the pilot duties to be authorized by a certificate issued under this section on the same airplane type as the leased airplane.

(2) A current certification by the lessee of the airplane—

(i) Stating that the applicant is employed by the lessee;

(ii) Specifying the airplane type on which the applicant will perform pilot duties; and

(iii) Stating that the applicant has received ground and flight instruction which qualifies the applicant to perform the duties to be assigned on the airplane.

(3) Documentation showing that the applicant has not reached the age of 60 and that the applicant currently meets the medical standards for the foreign pilot certificate or license required by paragraph (b)(1) of this section, except that a U.S. medical certificate issued under Part 67 of this chapter is not evidence that the applicant meets those standards unless the State which issued the applicant's foreign pilot certificate or license accepts a U.S. medical certificate as evidence of medical fitness for a pilot certificate or license.

(c) *Privileges.* The holder of a special purpose pilot certificate issued under this section may exercise the same privileges as those shown on the certificate or license specified in paragraph (b)(1), subject to the limitations specified in this section. The certificate holder is not subject to the requirements of §§ 61.55, 61.57, and 61.58 of this part.

(d) *Limitations.* Each certificate issued under this section is subject to the following limitations:

(1) It is valid only—

(i) For flights between foreign countries or for flights in foreign air commerce;

(ii) While it and the foreign pilot certificate or license required by paragraph (b)(1) of this section are in the certificate holder's personal possession and are current;

(iii) While the certificate holder is employed by the person to whom the airplane described in the certification required by paragraph (b)(2) of this section is leased;

(iv) While the certificate holder is performing pilot duties on the U.S.-registered civil airplane described in the certification required by paragraph (b)(2) of this section;

(v) While the medical documentation required by paragraph (b)(3) of this section is in the certificate holder's personal possession and is currently valid; and

(vi) While the certificate holder is under 60 years of age.

(2) Each certificate issued under this section contains the following:

(i) The name of the person to whom the U.S.-registered civil aircraft is leased.

(ii) The type of aircraft.

(iii) The limitation: "Issued under, and subject to, § 61.77 of the Federal Aviation Regulations."

(iv) The limitation: "Subject to the privileges and limitations shown on the holder's foreign pilot certificate or license."

(3) Any additional limitations placed on the certificate which the Administrator considers necessary.

(e) *Termination.* Each special purpose pilot certificate issued under this section terminates—

(1) When the lease agreement for the airplane described in the certification required by paragraph (b)(2) of this section terminates;

(2) When the foreign pilot certificate or license, or the medical documentation, required by paragraph (b) of this section is suspended, revoked, or no longer valid;

(3) When the certificate holder reaches the age of 60; or

(4) After 24 months after the month in which the special purpose pilot certificate was issued.

(f) *Surrender of certificate.* The certificate holder shall surrender the special purpose pilot certificate to the Administrator within 7 days after the date it terminates.

(g) *Renewal.* The certificate holder may have the certificate renewed by complying with the requirements of paragraph (b) of this section at the time of application for renewal.

2. By adding a new § 63.23 to read as follows:

§ 63.23 Special purpose flight engineer and flight navigator certificates: Operation of U.S.-registered civil airplanes leased by a person not a U.S. citizen.

(a) *General.* The holder of a current foreign flight engineer or flight navigator certificate, license, or authorization issued by a foreign contracting State to the Convention on International Civil Aviation, who meets the requirements of this section, may hold a special purpose flight engineer or flight navigator certificate, as appropriate, authorizing the holder to perform flight engineer or flight navigator duties on a civil airplane of U.S. registry, leased to a person not a citizen of the United States, carrying persons or property for compensation or hire. Special purpose flight engineer and flight navigator certificates are issued under this section only for airplane types that can have a maximum passenger seating configuration, excluding any flight crewmember seat, of more than 30 seats or a maximum payload capacity (as defined in § 135.2(e) of this chapter) of more than 7,500 pounds.

(b) *Eligibility.* To be eligible for the issuance, or renewal, of a certificate under this section, an applicant must present the following to the Administrator:

(1) A current foreign flight engineer or flight navigator certificate, license, or authorization issued by the aeronautical authority of a foreign contracting State to the Convention on International Civil Aviation or a facsimile acceptable to the Administrator. The certificate or license must authorize the applicant to perform the flight engineer or flight navigator duties to be authorized by a certificate issued under this section on the same airplane type as the leased airplane.

(2) A current certification by the lessee of the airplane—

(i) Stating that the applicant is employed by the lessee;

(ii) Specifying the airplane type on which the applicant will perform flight engineer or flight navigator duties; and

(iii) Stating that the applicant has received ground and flight instruction which qualifies the applicant to perform the duties to be assigned on the airplane.

(3) Documentation showing that the applicant currently meets the medical standards for the foreign flight engineer or flight navigator certificate, license, or authorization required by paragraph (b)(1) of this section, except that a U.S. medical certificate issued under Part 67 of this chapter is not evidence that the applicant meets those standards unless the State which issued the applicant's foreign flight engineer or flight navigator certificate, license, or authorization accepts a U.S. medical certificate as evidence of medical fitness for a flight engineer or flight navigator certificate, license, or authorization.

(c) *Privileges.* The holder of a special purpose flight engineer or flight navigator certificate issued under this section may exercise the same privileges

as those shown on the certificate, license, or authorization specified in paragraph (b)(1), subject to the limitations specified in this section.

(d) *Limitations.* Each certificate issued under this section is subject to the following limitations:

(1) It is valid only—

(i) For flights between foreign countries and for flights in foreign air commerce;

(ii) While it and the certificate, license, or authorization required by paragraph (b)(1) of this section are in the certificate holder's personal possession and are current;

(iii) While the certificate holder is employed by the person to whom the airplane described in the certification required by paragraph (b)(2) of this section is leased;

(iv) While the certificate holder is performing flight engineer or flight navigator duties on the U.S.-registered civil airplane described in the certification required by paragraph (b)(2) of this section; and

(v) While the medical documentation required by paragraph (b)(3) of this section is in the certificate holder's personal possession and is currently valid.

(2) Each certificate issued under this section contains the following:

(i) The name of the person to whom the U.S.-registered civil airplane is leased.

(ii) The type of airplane.

(iii) The limitation: "Issued under, and subject to, § 63.23 of the Federal Aviation Regulations."

(iv) The limitation: "Subject to the privileges and limitations shown on the holder's foreign flight (engineer or navigator) certificate, license, or authorization."

(3) Any additional limitations placed on the certificate which the Administrator considers necessary.

(e) *Termination.* Each special purpose flight engineer or flight navigator certificate issued under this section terminates—

(1) When the lease agreement for the airplane described in the certification required by paragraph (b)(2) of this section terminates;

(2) When the foreign flight engineer or flight navigator certificate, license, or authorization, or the medical documentation required by paragraph (b) of this section is suspended, revoked, or no longer valid; or

(3) After 24 months after the month in which the special purpose flight engineer or flight navigator certificate was issued.

(f) *Surrender of certificate.* The certificate holder shall surrender the special purpose flight engineer or flight navigator certificate to the Administrator within 7 days after the date it terminates.

(g) *Renewal.* The certificate holder may have the certificate renewed by complying with the requirements of paragraph (b) of this section at the time of application for renewal.

3. By amending § 63.42 by deleting the words "Special purpose flight engineer certificate" in the title and substituting in their place the words "Flight engineer certificate issued on basis of a foreign flight engineer license."

(Secs. 313(a), 601, and 602, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1422); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

Note.—The Federal Aviation Administration has determined that this document involves regulations which are not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final regulatory evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT:".

Issued in Washington, D.C., on January 18, 1980.

Langhorne Bond,

Administrator.

[FR Doc. 80-2148 Filed 1-23-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 79-ASW-65]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of Transition Area: Many, La.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of the action being taken is an alteration of the transition area at Many, La. The intended effect of the action is to provide controlled airspace for aircraft executing instrument approach procedures to the Hart Airport. The circumstance which created the need for the action is that a review of the current transition area revealed the controlled airspace is not properly described and a reduction of controlled airspace will adequately serve the airport.

EFFECTIVE DATE: March 20, 1980.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101; telephone 817-624-4911, extension 302.

SUPPLEMENTARY INFORMATION: Review of the transition area at Many, La., revealed that the intermediate approach area was misaligned and in excess of that required for the protection of aircraft executing the nondirectional radio beacon (NDB) to the Hart Airport. This requires amendment to the designated airspace for the protection of aircraft executing instrument approach procedures to the Hart Airport. Since this reduces the airspace required for aircraft executing instrument approach procedures, circulation and public notice of this action is not considered necessary.

The Rule

This amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR 71) alters the Many, La., transition area. This action provides controlled airspace for the protection of aircraft executing instrument approach procedures to the Hart Airport.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 442) is amended, effective 0901 GMT, March 20, 1980, as follows.

In Subpart G, 71.181 (44 FR 442), the Many, La., transition area is altered as follows:

Many, La.

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Hart Airport (latitude 31°32'45"N., longitude 93°29'30"W.) and within 2 miles each side of the 326° bearing from the NDB (latitude 31°34'16"N., longitude 93°32'29"W.) extending from the 6.5-mile radius area to 5 miles northwest of the NDB.

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

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

Issued in Fort Worth, Tex., on January 10, 1980.

C. R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 80-2142 Filed 1-23-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 79-SW-42]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Designation of Alternate VOR Federal Airway

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates north alternate Victor Airway V-212N between Alexandria, La., and McComb, Miss. This action reduces controller workload by permitting more route flexibility in the area. Also, a charted route aids flight planning and improves traffic flow between Alexandria and McComb.

EFFECTIVE DATE: March 20, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Lewis W. Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D. C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION: On October 29, 1979, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate north alternate Victor Airway V-212N between Alexandria, La., and McComb, Miss. (44 FR 61973).

This alternate airway provides more flexibility for traffic operations in the area and reduces traffic congestion. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.123 was republished in the **Federal Register** on January 2, 1980 (45 FR 307).

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) designates V-212N from Alexandria, La., to McComb, Miss., via Natchez, Miss. This action reduces controller workload by providing a reliever route, thereby improving traffic flow between Alexandria and McComb.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.123 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 307) is amended, effective 0901 GMT, March 20, 1980, as follows:

Under V-212, "Alexandria, La.; McComb, Miss." is deleted and "Alexandria, La.; to McComb, Miss., including a north alternate via Natchez, Miss." is substituted therefor.

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

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

Issued in Washington, D.C., on January 17, 1980.

William E. Broadwater,

Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-2145 Filed 1-23-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 78-WA-14]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Designation of VOR Airways, and Extension of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates two airway segments north of Molokai and Maui, Hawaii, and also enlarges the Hawaiian Islands, 5,500 feet transition area out to the new Honolulu FIR/Oceanic CTA boundary. This action reduces the congestion on the present routes northeast of Hawaii and improves the air traffic flow to and from Hawaii.

EFFECTIVE DATE: March 20, 1980.

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

SUPPLEMENTARY INFORMATION:

History

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) makes the following changes:

1. Adds a separate route segment to V-7 from the INT of Koko Head, Hawaii, 050°T(039°M) and Molokai, Hawaii, 358°T(347°M) radials to the INT of Molokai 358°T(347°M) and the Honolulu FIR/Oceanic CTA boundary.

2. Adds a separate route segment to V-17 from the INT of Koko Head, Hawaii, 071°T(060°M) and Maui, Hawaii, 348°T(337°M) radials to the INT Maui, 348°T(337°M) and Lihue, Hawaii, 065°T(054°M) radials.

3. Enlarges the Hawaiian Islands 5,500 feet transition area from the former boundary of the Honolulu FIR/Oceanic CTA to its present location.

These actions help to improve the traffic flow and reduce the congestion by providing additional northeast arrival and departure routes. The additional 5,500 feet of controlled airspace provides for domestic type of control to the Oceanic Control boundary.

Since these actions involve, in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.127 and § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 344, 445) is amended, effective 0901 GMT, March 20, 1980, as follows:

In § 71.127, under V-7 "From Koko Head 050° and Molokai 358° radials to INT Molokai 358° and the Honolulu FIR/Oceanic CTA boundary." is added.

Under V-17 "From INT Koko Head 071° and Maui 348° radials to INT Maui 348° and Lihue 065° radials." is added.

In § 71.181, under Hawaiian Islands, all before "and the airspace upward from 1,200 feet" is deleted and "The airspace extending upward from 5,500 feet above the surface within an area bounded by a line beginning at Lat. 23°57'N., Long. 160°46'W.; to Lat. 24°19'N., Long. 157°17'W.; to Lat. 24°03'N., Long. 156°19'W.; to Lat. 23°32'N., Long. 155°29'W.; to Lat. 23°00'N., Long. 154°39'W.; to Lat. 22°22'N., Long. 153°53'W.; to Lat. 21°43'N., Long. 153°09'W.; to Lat.

20°49'N., Long. 153°00'W.; to Lat. 20°16'N., Long. 152°14'W.; to Lat. 19°14'N., Long. 151°54'W.; to Lat. 18°19'N., Long. 157°49'W.; to Lat. 18°26'N., Long. 158°54'W.; to Lat. 18°53'N., Long. 159°53'W.; to Lat. 19°32'N., Long. 160°36'W.; to Lat. 20°06'N., Long. 161°52'W.; to Lat. 21°01'N., Long. 162°14'W.; to Lat. 21°56'N., Long. 162°29'W.; to Lat. 22°50'N., Long. 162°14'W.; to Lat. 23°32'N., Long. 161°35'W.; to the point of beginning;" is substituted therefor.

(Secs. 307(a), 313(a) and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a) and 1510); Executive Order 10854 (24 FR 9565); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and CFR 11.69.)

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

Issued in Washington, D.C., on January 16, 1980.

William E. Broadwater,

Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-1903 Filed 1-23-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 79-SW-53]

Special Use Airspace; Alteration of Restricted Area; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: In a rule published in the **Federal Register** on December 13, 1979, (44 FR 72106) the designated altitudes were incorrectly published in Restricted Areas R-5103B and R-5103C. Also, there is a minor correction to a coordinate under R-5103B. This action corrects those errors, thereby conforming to the original intent of allowing portions of this restricted area to be returned to the public when not being utilized by the military.

EFFECTIVE DATE: January 24, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Lewis W. Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION: **Federal Register** Document 79-37872 was published on December 13, 1979, which altered Restricted Area R-5103 by subdividing the area as R-5103A, R-5103B and R-5103C. There are no changes to the current lateral and vertical limits of this restricted area. However, the altitude limits of R-5103B and R-5103C were incorrectly published. Also, there is a minor correction to a coordinate under R-5103B. This action corrects those errors.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, **Federal Register** Document 79-37872 as published in the **Federal Register** on December 13, 1979, is amended as follows:

Under R-5103B McGregor, N. Mex., in the seventh line "Long. 106°00'00"W.;" is deleted and "Long. 106°10'00"W.;" is substituted therefor.

Designated altitudes. "Surface to unlimited" is deleted and "Surface to 12,500 feet MSL" is substituted therefor.

Under R-5103C McGregor, N. Mex., designated altitudes. "Surface to unlimited" is deleted and "12,500 feet MSL to unlimited" is substituted therefor.

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

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

Issued in Washington, D.C., on January 16, 1980.

William E. Broadwater,

Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-1904 Filed 1-23-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 19951; Amdt. No. 1156]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAPs is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Information Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, may be ordered from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The annual subscription price is $135.00.

FOR FURTHER INFORMATION CONTACT: Gary W. Wirt, Flight Procedures and Airspace Branch (AFO-730), Aircraft Programs Division, Office of Flight Operations, Federal Aviation

Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. § 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4 and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, or contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. By amending § 97.23 VOR/VOR/DME SIAPs identified as follows:

** * * Effective March 20, 1980*

Bettles, AK—Bettles, VOR/DME-B, Original
Bettles, AK—Bettles, VOR/DME Rwy 19, Original, cancelled
Huntingburg, IN—Huntingburg, VOR Rwy 9, Original
Huntingburg, IN—Huntingburg, VOR Rwy 27, Original
Indianapolis, IN—Indianapolis Terry, VOR Rwy 36, Amdt. 4
Albert Lea, MN—Albert Lea Muni, VOR Rwy 16, Amdt. 4
Austin, MN—Austin Muni, VOR Rwy 17, Amdt. 10
Austin, MN—Austin Muni, VOR Rwy 35, Amdt. 10
Minneapolis, MN—Flying Cloud, VOR Rwy 9R, Original
Scottsbluff, NE—Scotts Bluff County, VOR/DME Rwy 5, Amdt. 1
Scottsbluff, NE—Scotts Bluff County, VOR Rwy 23, Amdt. 9
Springfield, OH—Springfield Muni, VOR Rwy 6, Amdt. 4
Springfield, OH—Springfield Muni, VOR Rwy 24, Amdt. 4

** * * Effective March 6, 1980*

Hammonton, NJ—Hammonton Muni, VOR-A, Amdt. 4

** * * Effective February 21, 1980*

Rialto, CA—Rialto Muni/Miro Field/, VOR-A, Original

** * * Effective January 10, 1980*

Malden, MO—Malden Muni, VOR Rwy 31, Amdt. 7

2. By amending § 97.25 SDF-LOC-LDA SIAPs identified as follows:

** * * Effective March 20, 1980*

Indianapolis, IN—Indianapolis Terry, LOC Rwy 36, Original
Muskegon, MI—Muskegon County, LOC Rwy 23, Amdt. 2
Scottsbluff, NE—Scotts Bluff County, LOC BC Rwy 12, Amdt. 4

** * * Effective February 21, 1980*

New Orleans, LA—New Orleans Intl (Moisant Field), LOC BC Rwy 19, Amdt. 6

3. By amending § 97.27 NDB/ADF SIAPs identified as follows:

** * * Effective March 20, 1980*

Huntingburg, IN—Huntingburg, NDB Rwy 27, Original
Huntingburg, IN—Huntingburg, NDB Rwy 27, Amdt. 4, cancelled
Indianapolis, IN—Indianapolis Terry, NDB Rwy 36, Original
Covington, KY—Greater Cincinnati Intl., NDB Rwy 9R, Amdt. 7
Covington, KY—Greater Cincinnati Intl., NDB Rwy 18, Amdt. 12
Covington, KY—Greater Cincinnati Intl., NDB Rwy 36, Amdt. 26
Scottsbluff, NE—Scotts Bluff County, NDB Rwy 12, Amdt. 4
Springfield, OH—Springfield Muni, NDB Rwy 24, Amdt. 11

** * * Effective March 6, 1980*

Plattsmouth, NE—Plattsmouth Muni, NDB Rwy 34, Amdt. 1

4. By amending § 97.29 ILS-MLS SIAPs identified as follows:

** * * Effective March 20, 1980*

Covington, KY—Greater Cincinnati Intl., ILS Rwy 9R, Amdt. 8
Covington, KY—Greater Cincinnati Intl., ILS Rwy 18, Amdt. 12
Covington, KY—Greater Cincinnati Intl., ILS Rwy 27L, Amdt. 6
Covington, KY—Greater Cincinnati Intl., ILS Rwy 36, Amdt. 28
Scottsbluff, NE—Scotts Bluff County, ILS Rwy 30, Amdt. 6

** * * Effective February 21, 1980*

New Orleans, LA—New Orleans Intl. (Moisant Field), ILS Rwy 1, Amdt. 9

** * * Effective January 16, 1980*

Kodiak, AK—Kodiak, ILS/DME-1 Rwy 25, Amdt. 1

5. By amending § 97.31 RADAR SIAPs identified as follows:

** * * Effective March 20, 1980*

Covington, KY—Greater Cincinnati Intl., RADAR-1, Amdt. 19

** * * Effective March 6, 1980*

McGregor, TX—McGregor Muni, RADAR-1, Original
Waco, TX—James Connally, RADAR-1, Original
Waco, TX—Waco-Madison Cooper, RADAR-1, Original

6. By amending § 97.33 RNAV SIAPs identified as follows:

** * * Effective March 20, 1980*

Indianapolis, IN—Indianapolis Terry, RNAV Rwy 18, Amdt. 2
Scottsbluff, NE—Scotts Bluff County, RNAV Rwy 12, Amdt. 1

Scottsbluff, NE—Scotts Bluff County, RNAV Rwy 30, Amdt. 2

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. §§ 1348, 1354(a), 1421, and 1510); Sec. 6(c), Department of Transportation Act (49 U.S.C. § 1655(c)); and 14 CFR 11.49(b)(3))

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

Issued in Washington, D.C. on January 18, 1980.

James M. Vines,

Chief, Aircraft Programs Division.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on May 12, 1969.

[FR Doc. 80-2147 Filed 1-23-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 121, 127, 135, and 145

[Docket No. 17551; SFAR No. 36-1; Operations Review Program Amdt. No. 2B]

Development of Major Repair Data

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment extends the effectivity of a current Special Federal Aviation Regulation (SFAR) which provides for the use of data for accomplishing major repairs that have been developed by repair stations, air carriers, air taxis, and commercial operators of large aircraft but which have not been specifically approved by the FAA.

EFFECTIVE DATE: January 23, 1980.

FOR FURTHER INFORMATION CONTACT: Eli S. Newberger, Regulatory Projects Branch (AVS-24), Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, Telephone: (202) 755-8716.

SUPPLEMENTARY INFORMATION: SFAR 36, which became effective January 23, 1978, was issued to relieve qualifying certificated air carriers, operators, and repair stations of the burden of obtaining FAA approval of data developed by them for major repairs on a case-by-case basis. The certificate holders eligible for authorization under the SFAR are those employing adequately trained personnel and complying with specified procedural requirements.

SFAR 36 was adopted as an interim rulemaking action to obtain information upon which to base a permanent rule change. The termination date for SFAR 36 is January 23, 1980, and authorizations issued to date under SFAR 36 are effective for a period of 2 years.

At the time the termination date of SFAR 36 was established, it was anticipated that sufficient experience would be accumulated in 2 years and the termination date for SFAR 36 and each authorization issued under this SFAR was so established. However, most of the affected certificate holders did not utilize the provisions of this SFAR until recently and the FAA, therefore, does not currently have sufficient information upon which to base a permanent rule change. The reasons which justified the adoption of SFAR 36 still exist, and in order to gain the necessary experience it is in the public interest to extend the termination date of SFAR 36 from January 23, 1980, to January 23, 1982. So that previously authorized certificate holders will not be subjected to the unnecessary burden of requalifying upon expiration of the initial 2-year period, the amendment provides that each authorization issued under this SFAR has an effective period from the date of issuance until January 23, 1982. This rule extension should provide ample time for an effective evaluation of the need for, and provisions to be incorporated into, a permanent rule change.

Since this amendment continues in effect the provisions of a currently effective SFAR and imposes no additional burden on any person, I find that notice and public procedure hereon are unnecessary and it may be made effective in less than 30 days.

In consideration of the foregoing, effective January 23, 1980, Special Federal Aviation No. 36 is amended by changing the termination date from "January 23, 1980" to "January 23, 1982", and by revising paragraph 5. to read as follows:

5. *Duration of Authorization.* Each authorization issued under this Special Federal Aviation Regulations is effective from the date of issuance until January 23, 1982, unless it is surrendered or the Administrator suspends, revokes, or otherwise terminates it at an earlier date.

* * * * *

(Secs. 313(a), 601, 604 and 607, Federal Aviation Act of 1958 as amended (49 U.S.C. 1354(a), 1421, 1424, and 1427); Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)))

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Washington, D.C., on January 18, 1980.

Langhorne Bond,

Administrator.

[FR Doc. 80-2141 Filed 1-23-80; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 201 and 282

[Docket No. RM79-14]

Regulations Implementing the Incremental Pricing Provisions of the Natural Gas Policy Act of 1978

January 18, 1980.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Technical Amendments to Order No. 49-A.

SUMMARY: On December 27, 1979, the Federal Energy Regulatory Commission (Commission) issued Order No. 49-A, an order on rehearing in Docket No. RM 79-14 (44 FR 767, January 3, 1980). In order to implement fully the modifications to the accounting regulations as described in the preamble in Order No. 49-A, the Commission hereby adopts the technical amendments set forth below.

EFFECTIVE DATE: January 18, 1980.

FOR FURTHER INFORMATION CONTACT: Barbara K. Christin, Office of the General Counsel, Federal Energy Regulatory Commission, Room 8113, 825 North Capitol Street, N.E., Washington, D.C. 20426 (202) 357-8079.

SUPPLEMENTARY INFORMATION:

I. Discussion

On December 27, 1979, the Federal Energy Regulatory Commission (Commission) issued an order on rehearing in Docket No. RM79-14, captioned as Order No. 49-A (45 FR 767, January 3, 1980). The order included, in part, certain amendments to the

accounting provisions of the incremental pricing program regulations.

The amendments adopted to the accounting regulations were discussed in the preamble in Order No. 49–A in Section II.G, "Accounting Regulations" (pgs. 23–25 of the mimeo, 45 FR 772–73). In order to implement fully the modifications to the accounting regulations as described in the preamble, the Commission adopts the amendments set forth below (in addition to those adopted in Order No. 49–A).

II. Effective Date

The Commission makes the regulations below effective immediately for the reason that they are technical in nature and, in addition, are accounting regulations, which the Commission views as analogous to rules of practice and procedure, and thus not subject to the notice requirement of section 553(d) of the Administrative Procedure Act.

(Natural Gas Act, as amended, 15 U.S.C. 717 *et seq.;* Natural Gas Policy Act of 1978, Pub. L. 95–621, 92 Stat. 3350, 15 U.S.C. 3301, *et seq.;* Department of Energy Organization Act, 42 U.S.C. 7101, *et seq.*)

In consideration of the foregoing, the commission amends Parts 201 and 282 of Title 18, Code of Federal Regulations, as set forth below, effective immediately.

By the Commission.

Kenneth F. Plumb,

Secretary.

Part 201 [Amended]

1. Part 201, account 191 is amended in paragraph A to read as follows:

191 Unrecovered purchased gas costs.

A. This account shall include purchased gas costs related to Commission approved purchased gas adjustment clauses when such costs are not included in the utility's rate schedule on file with the Commission. This account shall also include such other costs as authorized by the Commission. Incremental costs of purchased gas as defined in the incremental pricing regulations of the Commission shall be excluded from this account and included in Account 192.1, Unrecovered Incremental Gas Costs, until such costs are determined not subject to incremental pricing surcharge passthrough because of alternative fuel price ceilings. Once such determination is made those costs which are related to Commission approved purchased gas adjustment clauses shall be included in this account to the extent not yet recovered.

* * * * *

2. Section 282.501 is amended by revising paragraph (d) to read as follows:

§ 282.501 General rule.

* * * * *

(d) Each month, in the case of interstate pipelines, the amount accumulated in the natural gas supplier's unrecovered incremental gas costs account which cannot be recovered by way of incremental pricing surcharges shall be cleared from that account to account 805.2, Incremental Gas Cost Adjustments, in accordance with § 282.502.

[FR Doc. 80–2229 Filed 1–23–80; 8:45 am]
BILLING CODE 6450–01–M

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18 CFR Parts 270 and 271

[Docket No. RM80–14; Order No. 68]

Rules Generally Applicable to Regulated Sales of Natural Gas and Ceiling Prices; Final Regulations

January 18, 1980.

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Order issuing final rules.

SUMMARY: The Federal Energy Regulatory Commission gives notice that it is amending and issuing as final rules, the interim regulations in subparts E and F of Part 271 concerning first sales of natural gas subject to existing and successor intrastate contracts and intrastate rollover contracts under sections 105 and 106(b) of the Natural Gas Policy Act of 1978. The interim regulations in Part 270, concerning the definition of "successor to an existing intrastate contract" and resales are also amended and issued as final rules.

EFFECTIVE DATE: February 15, 1980.

FOR FURTHER INFORMATION CONTACT: Scott E. Koves, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capital Street NE, Washington, DC 20426, (202) 357–8317.

I. Introduction

This order issues final regulations under sections 105 and 106(b) of the Natural Gas Policy Act of 1978 (NGPA). These regulations replace the interim regulations in Subparts E and F of Part 271 which implement sections 105 and 106(b) of the NGPA (December 1, 1978, 43 FR 56448). The order also amends final regulations in Part 270. The following is a description of interim regulations formerly contained in Subparts E and F:

A. *Subpart E—Existing Intrastate Contracts.* Subpart E of Part 271 of the interim rules sets forth the procedures for determining maximum lawful prices under section 105 of the NGPA. These prices cover gas sold under existing intrastate contracts and successors to existing intrastate contracts. The maximum lawful price of any section 105 gas depends on the "contract price" applicable on November 9, 1978. If the contract price that was paid (or would have been paid had deliveries occurred) on November 9, 1978, was equal to or less than $2.06, then, pursuant to section 105(b)(1), the maximum lawful price is the lower of the section 102 maximum lawful price or the "price under the terms of the existing contract" as those terms were in effect on November 9, 1978. As provided in § 270.205(b), fixed and indefinite price escalator terms in the existing contract on November 9, 1978, can operate to increase the price up to the new natural gas price. Section 105(b)(1) was implemented by § 271.502(a) of the interim regulations.

If the contract price that was paid (or would have been paid had deliveries occurred) on November 9, 1978, exceeded $2.06, then, pursuant to section 105(b)(2), the maximum lawful price is the higher of the section 102 maximum lawful price, or the contract price actually charged on November 9, 1978, escalated each month by the inflation adjustment factor applicable to such month. (*See* NGPA section 101(a)). Section 271.502(b) of the interim regulations implements section 105(b)(2) of the NGPA.

The regulations under Subpart E also refer to the applicable reporting obligations under Part 276 [1] (*see* § 271.503); provide an explanation of how the "contract price" is to be determined (*see* § 271.504); and contain a special rule generally prohibiting contract modifications that shift "production-related costs" to the purchaser or that provide for an earlier date of deliveries (*see* § 271.505).

B. *Subpart F—Intrastate Rollover Contracts.* Subpart F of Part 271 implements section 106(b) of the NGPA which establishes maximum lawful prices for first sales of natural gas under "intrastate rollover contracts." The term "rollover contract" is defined in section 2(12) of the NGPA and can generally be described as a contract, other than a "successor contract",[2] that replaces an "existing contract" which expired of its own terms on or after November 9, 1978.

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[1] Final Part 276 Regulations Under the Natural Gas Policy Act of 1978, Docket No. RM79–30, Order Amending Part 276, Issuing Part 276 as Final Regulations and Promulgating FERC Forms 122, 123, and 124 and Accompanying Affidavits and Instructions. (Issued March 23, 1979) (44 FR 18647)

[2] *See* NGPA section 2(14); § 270.101(b)(9).

Contract term extensions taking effect on or after November 9, 1978, are to be ignored for purposes of determining whether gas qualifies as section 105 or 106 gas.

Pursuant to section 106(b)(1) of the NGPA, the maximum lawful price for first sales under intrastate rollover contracts is set at the higher of the highest price actually paid under the expired contract in the month in which the rollover occurs, escalated by the inflation adjustment factor for each succeeding month, or $1.00 escalated by the inflation adjustment factor since April, 1977. Section 271.602(a) implements section 106(b)(1) of the NGPA.[3]

Like Subpart E, Subpart F also refers to the applicable filing requirements in Part 276 (*See* § 271.603), and contains a special rule dealing with contract modifications which shift production-related costs to the purchaser (*See* § 271.604).

II. Summary of Comments and Discussion.

A. *Prior Determinations—Sections 105 and 106(b).* Neither Subpart E nor Subpart F requires producers to seek a prior determination of eligibility. Several comments assert that section 501(c) of the NGPA places on the Commission a responsibility to make prior determinations of eligibility respecting sales subject to sections 105 and 106(b), and that the Commission has abrogated that responsibility.[4] Section 501(c), entitled "Delegation of Certain Determinations," gives the Commission the authority to delegate to a State agency any of its "functions" with respect to, *inter alia,* sections 105 and 106(b). The comments argue that, because we have made no such delegations, we are required to make determinations of eligibility under sections 105 and 106(b) ourselves.

We believe that the comments improperly construe the term "determination" in the title to section 501(c). Section 501 gives the Commission its general rulemaking authority under the NGPA and gives it the authority to delegate its rulemaking functions relating to sections 105, 106(b), and 109(a) (1) and (3) to State agencies. Such a delegation authority cannot be turned into a Congressional mandate to conduct a prior determination of eligibility to determine maximum lawful prices under section 105 or 106(b) for each of the thousands of sales made under existing intrastate contracts and intrastate rollover contracts. The NGPA and its legislative history are silent as to how section 105 or section 106(b) is to be administered by the Commission and do not specifically provide for or require prior determinations for section 105 or 106(b) gas. We had considered and rejected use of such a prior determination process in issuing interim regulations.[5] In our order issued December 1, 1978, in Docket No. RM79–3, (43 FR 56518) we stated:

> Given the administrative burdens attendant on making such determinations, the delay which such a determination process would cause, and the efficacy of the current reporting system in providing the information necessary for auditing to ensure compliance with the pricing limitations in the statute, the Commission can foresee no valid reason for instituting such a determination procedure.

We affirm that finding today.

Requiring prior determinations for each of the tens-of-thousands of section 105 or 106(b) contracts would prove to be an administrative impossibility.

B. *Determination of "Contract Price" and "Price Under the Terms of the Existing Contract"—Section 105.* The term "contract price" in section 105 is used to determine whether a contract qualifies under paragraph (b)(1) or (b)(2) and to determine the maximum lawful price in paragraph (b)(2).

Several parties requested clarification of how "contract price" is to be determined under section 105, particularly with regard to severance taxes. Part of this confusion may be based on the fact that many contracts designate a specific "price" for the gas and, in addition, designate other expenses, such as taxes, for which the purchaser is responsible. They may provide for the reimbursement of severance taxes in a separate section. On the other hand, they may also be silent as to taxes or provide that the seller will pay all severance taxes.

The definition of "contract price" in section 105 reads:

> (c) Definition of Contract Price.— For purposes of this section, the term "contract price," when used with respect to any specific date, means—
> (1) The price paid, per million Btu's under a contract for deliveries of natural gas occurring on such date; or
> (2) If no deliveries of natural gas occurred under such contract on such date, the price, per million Btu's, that would have been paid had such deliveries occurred on such date.

We believe that the word "price" in the definition of "contract price," as well as the phrase "price under the terms of the existing contract" means the total amount of proceeds paid by the purchaser to obtain the subject gas. Therefore, the term "price" would include all proceeds paid or payable to the seller even if specifically earmarked as reimbursement for State severance taxes or production-related costs.[6]

Consequently, in determining the maximum lawful price under section 105 the total proceeds paid or payable on November 9, 1979, are to be compared to $2.06. If the total proceeds exceeds $2.06, then section 105(b)(2) applies. If not, then section 105(b)(1) applies. If section 105(b)(2) applies, then the total proceeds paid or payable on November 9, 1978, are used as the base to which the inflation adjustments of section 105(b)(2)(B) are applied. If section 105(b)(1) applies, then the total proceeds receivable under the contract may increase pursuant to the terms of the contract in effect on November 9, 1978, up to the section 102 level.

However, several parties inquired whether State severance taxes, as defined under section 110 of the NGPA, should be subtracted from the "contract price" on November 9, 1978. The comments focused on the Statement of Managers at page 90,[7] which, in the context of explaining section 110 of the NGPA,[8] states that all ceiling prices are "exclusive" of State severance taxes borne by the seller and certain production-related cost adjustments.[9] The commenters inquire whether the

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[3] Section 271.602(b) implements section 106(b)(2) which establishes the maximum lawful price applicable to certain State or Indian production or royalty shares under rollover contracts at the new natural gas price under section 102 of the NGPA.

[4] These comments were also directed at section 106(b) of the NGPA. Our conclusions, *infra,* respecting the administrative infeasibility of such a prior determination process apply equally to that section of the NGPA. Accordingly we conclude that a prior determination is not required for section 106(b) either.

[5] *See* note *1, supra.* Part 276, now issued as final regulations, implements a reporting system covering first sales under section 105, 106(b) and 109 of the NGPA.

[6] For example, if the contract provided as of November 9, 1979, for the payment of $1.50 and that buyer shall pay severance taxes (which amounts to 11 cents for that day), the contract price would be $1.61 because that is the total amount that the purchaser actually pays for the gas. However, if the seller were obligated to pay all taxes, then the contract price would be only $1.50—again the amount paid.

[7] H.R. Rep. No. 95–1752, 95th Cong., 2d Sess. 90 (1978).

[8] Section 110(a) of the NGPA provides in pertinent part that "a price for the first sale of natural gas *shall not be considered to exceed the maximum lawful price* applicable to the first sale of such natural gas under this subtitle if such *first sale price* exceeds the maximum lawful price *to the extent necessary to recover* * * * State severance taxes * * * borne by the seller."

[9] As we shall explain in more detail, *infra* footnote 10, commenters have incorrectly created a link between the statement which refers to "ceiling prices" and the phrase "contract price" which is only partially determinative of the ceiling price in section 105 and is not, except in a limited number of cases, the same as the "ceiling price" in that section.

Manager's use of the term "exclusive" could indicate an intent that such items be subtracted from the contract price in order to compute ceiling prices under section 105.

The Commission does not interpret section 110 of the NGPA and the Statement of Managers at page 90 as requiring the subtraction of any expenditures referred to in section 110(a)(1) of the NGPA from any maximum lawful price under any section of Title I of the NGPA or, more particularly, from an intrastate "contract price" in order to establish the "ceiling price" under section 105. The words of the statute are clear: the price charged "will not be considered to exceed" the applicable maximum lawful price if the excess represents the amount "necessary to recover" State severance taxes "borne by the seller." What ambiguity exists in the Statement of Managers must be resolved in light of the plain meaning of the statute.

We believe that the Managers simply were indicating that ceiling prices were formulated without consideration of severance taxes, and logically so because severance taxes vary from state to state. Adjustments of ceiling prices to take account of severance taxes were to be considered only in the context of section 110.

Based on these general considerations, we do not find reason to reduce ceiling prices in general or prices under the terms of existing intrastate contracts in effect on date of enactment of the NGPA, in particular, by the amount representing State severance taxes levied on the production.[10] Furthermore, we do not believe that Congress intended such "contract prices" for existing intrastate contracts to be dissected. To do so would require that we dissect each existing intrastate contract price in order to excise certain of those reimbursed expenses, such as severance taxes. The emphasis Congress placed on negotiated prices in section 105 reflects the policy that historical contractural arrangements in the intrastate market were to be preserved. The NGPA and section 105 in particular were written so as to disturb contractual arrangements, for the most part, only minimally and only prospectively by limiting the rate of increases in prices subsequent to the date the NGPA was enacted. They should not be interpreted to involve retroactive downward adjustments of contract prices that were actually effective as of the date of enactment.

Acknowledging that State severance taxes should not be subtracted from the section 105 contract price, the question arises as to whether the seller may add the amount of any such taxes borne by him to the section 105 ceiling price under section 110 of the NGPA and under § 271.1102 of the Commission's regulations. This is the question which the Commission addresses in a notice of proposed rulemaking (RM80–21) which accompanies this final rule.

We received one comment suggesting that the introductory language of § 271.504(a), which defines "contract price," be amended to read: "Contract price or prices paid * * *," since one contract may contain more than one price for different areas. We do not believe an amendment is necessary. However, we shall clarify our intent that the rules governing the determination of "contract price" apply to each separate price in a contract. Each sale is considered a separate sale under the NGPA and is to be regulated accordingly.

One comment requested clarification of the mechanism for determining maximum lawful prices under section 105 when certain section 102 sales (*i.e.*, new natural gas sales) are deregulated pursuant to section 121.[11] Section 105 keys maximum lawful prices to the relationship between contract prices and the section 102 price. However, reference to section 102 is used simply to provide a benchmark price for use in section 105. Therefore, the price mechanism in section 102(b) shall continue to be used to determine maximum lawful prices under section 105 (as well as section 102(d)) regardless of the impact of section 121.

C. *Contract Modifications—Section 105.* Many comments were received suggesting various amendments to § 271.505 to allow contract modifications to shift "production-related costs" to the purchaser. The comments characterized the suggested changes as a form of "special relief," similar to that provided in §§ 2.75 and 2.76 of the Commission's Regulations under the Natural Gas Act. Section 271.505 generally prohibits contract modifications that have the effect of shifting production-related costs, which are defined in § 271.1101 and section 110 of the NGPA, to the purchaser.

The comments suggested three situations in which it would be appropriate to provide special relief-type treatment in § 271.505: (1) installation of compression, cathodic protection, or treating facilities, (2) reworking wells or removal of water, and (3) recompletions, deeper drilling and new drilling.

The Commission issued on August 14, 1979 in Docket No. RM79–67 a Notice of Proposed Rulemaking relating to special relief under the NGPA. In that Notice we requested comments on whether the proposed special relief regulations can be extended to sections 102, 103, *105*, and 108 of the NGPA through use of our authority to specify maximum lawful prices for and to define "high cost natural gas" under section 107 or through use of section 110. Accordingly, we will defer decision on this issue and will resolve it within the context of the special relief proceeding.

Two sets of comments take contrary positions on the validity of the exception in § 271.505(b). Paragraph (b) of § 271.505 provides an exception to the general rule in paragraph (a) prohibiting contract modifications which shift production-related costs to the purchaser. In paragraph (b), we provided that a new purchaser could agree to pay for increased production-related costs in order to take delivery of the gas. One group alleges that § 271.505(b) discriminates against intrastate purchasers. The other group suggests that § 271.505(b) should be clarified or amended to allow contract amendments covering all future increases in production-related costs that are to be borne by the purchaser; *i.e.*, not just a one-time allowance to permit delivery of the gas. Notably, the latter group is comprised of interstate pipelines.

We disagree with the suggestions of both groups. The purpose behind § 271.505(b) was to permit new purchasers to "hook up." No suggestion was made that a new intrastate pipeline purchaser could not take advantage of this rule. The only arguable discrimination in the rule is between new and old purchasers, not intrastate versus interstate purchasers. Accordingly, we shall retain § 271.505(b) in its present form. However, we wish to clarify that § 271.505(b) is intended to cover only the additional costs necessary for an initial hook-up with a new purchaser and not later increases in production-related costs. Once initial hookup is achieved and the new purchaser commences receipt of gas under the existing intrastate contract,

[10] Indeed there is no direct linkage between the explanation at page 90, which refers to "ceiling prices," and the suggestion that severance taxes should be subtracted from "contract prices" subject to section 105. While "contract prices" do play an integral role in the ceiling price computation mechanism of section 105, they do not necessarily constitute the "ceiling price" under that section. For example, while the price under a contract subject to section 105(b)(1) might rise above the section 102 level, the ceiling price under that section remains at the section 102 price.

[11] It should be noted that sales under section 102(d) are not deregulated under section 121.

there is no longer any reason to allow the seller to shift production-related costs to such a purchaser. It should be noted, however, that applications for adjustment may be made under § 271.1106 for allowance of production-related costs in cases of hardship, inequity, or unfair distribution of burdens.

One other comment questioned whether § 271.505(b), as well as § 271.604(b), is restricted to only those "production-related" costs required to physically take delivery to the exclusion of others such as the cost of installing conditioning facilities. Sections 271.505(b) and 271.604(b) are not so restrictive. For example, if new conditioning facilities must be installed to permit the changeover to a new purchaser,[12] then § 271.505(b) (or § 271.604(b), whichever is applicable) would permit the seller to shift to the new purchaser any obligation to pay for the new facilities. However, in that case the seller may not use a changeover to a new purchaser as a pretext to shift other "production-related" costs, such as costs of gathering that have not increased because of that changeover.

We caution that, while the special rules in §§ 271.505 and 271.604 relating to shifting production-related costs are issued and effective as final regulations, we may wish to reexamine these rules and the principles on which they are based when we deal with the question of final regulations under section 110 of the NGPA. We would also caution that these rules relate only to sections 105 and 106(b) of the NGPA and are not intended to impact on or circumscribe any policies or positions the Commission may take with respect to other sections of the NGPA or other acts.

Several comments were also received which suggested that, in any case in which an existing intrastate contract provides that the purchaser shall reimburse the seller for 85 percent of increased severance taxes, and in the event of such a tax increase, the parties should be allowed to amend the contract to provide for 100 percent reimbursement of such taxes. Section 271.1102, unless modified in accordance with the proposed rule which accompanies this final rule, permits full recovery of State severance taxes. Section 270.205(c) makes it clear that the NGPA does not prohibit contract modifications necessary in order to collect maximum lawful prices.

D. *Miscellaneous Comments on Subpart E.* One comment suggests that § 271.502(a)(1) be amended to read as follows:

> (1) The price for such month under the terms of the existing intrastate contract, *including the price determined by any fixed or indefinite price escalator clauses, including price redetermination provisions, contained in such existing contract,* to which such natural gas was subject on November 9, 1978, as such contract was in effect on November 9, 1978 * * *" (Added language italicized.)

This amendment is unnecessary in light of § 270.205(b), as issued in Order No. 23, which describes the operation of provisions in section 105 contracts governing changes in price.

Another comment suggests adding the word "if" before "required" in § 271.503 so that § 271.503 would read as follows:

> Any person who collects a price under this subpart shall file reports *if* required by § 276.101. (Added word italicized.)

This suggestion is rejected because under § 276.101, all first sellers are required to file reports under Part 276 even though the report may consist only of a title page and the attached oath statement.

It was suggested that the definition of "successor to an existing intrastate contract" in § 270.102(b)(9) be clarified to include successors that are interstate contracts. It was noted that the current definition is restricted to successor "intrastate" contracts. We believe that this suggestion has merit. An interstate contract may succeed an existing intrastate contract and in so doing become a "successor to an existing intrastate contract." Accordingly, we shall amend § 270.102(b)(9) to remove this restriction.

E. *Contract Modifications—Section 106(b).* Many commenters suggested that we should permit the modification of rollover contracts to allow for higher prices otherwise applicable under other sections of the NGPA, as well as add-ons permitted under section 110. This argument is identical to that made with respect to section 105 of the NGPA. With respect to recovery of State severance taxes, a rollover contract may provide for collection of the applicable maximum lawful price, including any allowance for State severance taxes permitted under section 110 of the NGPA. With respect to section 110 production-related cost allowances, the Commission's policy regarding section 106(b) is the same as its policy regarding section 105; *i.e.*, section 110 production-related cost allowances generally will not be permitted. With respect to contract modifications, the Commission addressed the issue in Order No. 23–A,[13] but restricted discussion in that order to section 105. However, the same principles discussed in Order No. 23–A apply with respect to section 106(b) gas. With regard to either the terms of the rollover contract as originally executed or any modifications in a rollover contract, the contractual provisions may not operate to authorize a seller to charge and collect an amount in excess of the applicable maximum lawful price. However, as in the case of existing intrastate contracts, a seller under an intrastate rollover contract is not bound by the maximum lawful price under that section when the gas otherwise qualifies for a higher maximum lawful price under another section of the NGPA. Order No. 23–A promulgated § 270.205(c) which summarized these principles regarding "existing contracts." Section 270.205(c) will be amended in order to emphasize that the Commission wishes to apply this regulation to rollover contracts under section 106 as well as to any other contract.

The comments also suggested that Subpart F as well as Subpart E provide for special relief procedures; for example, provisions for higher prices to fund workovers or new drilling. Unlike section 105, subsection (c) of section 106 authorizes the Commission to establish higher "just and reasonable" prices for *any* sales under that section, including sales made under section 106(b). Accordingly, the mechanism for special relief is already provided for in section 106. As noted above, the Commission has issued a Notice of Proposed Rulemaking requesting comments on proposed regulations governing the granting of special relief under sections 104, 106 and 109 of the NGPA.

Several intrastate companies suggested that § 271.604(b), which provides an exception to the general rule in paragraph (a) prohibiting shifting production-related costs to new purchasers, creates the same unfair advantage for interstate pipelines as is created by § 271.505(b). The same answer obtains for the reasons discussed with respect to § 271.505(b). Section 271.604(b) only concerns a shifting of costs associated with the *initial* hook-up of a new purchaser. Contract modifications concerning subsequent, additional production-related costs will be prohibited under the general rule of paragraph (a) (except to the extent necessary to collect allowances for production-related costs which are permitted pursuant to an adjustment issued under § 271.1106).

[12] For example, to meet more stringent quality standards.

[13] Docket No. RM79–22, issued June 12, 1979.

Finally, one commenter mistakenly construed § 271.604(a) to prohibit any terms of a rollover contract from differing in any respect from those of the existing contract. This was not our intent. Section 271.604(a) relates to only those particular terms which deal with production-related costs. (*See* § 271.1105.)

F. *Definition of a "Rollover"—Section 106.* One commenter asks the following question: if an existing contract expires on a date certain but nevertheless would be indefinitely extended on a month to month basis unless cancelled by one of the parties, is the contract which is entered into after the prior contract is cancelled a rollover contract under section 106(b)? Other commenters ask the more general question: when does a rollover "occur" for purposes of section 106(b)(1)(A) of the NGPA?

Before we can define when a rollover "occurs," we must consider the definition of "rollover contract" in section 2(12) of the NGPA in light of the Statement of Managers. Section 2(12) of the NGPA defines a "rollover contract" as follows:

> The term "rollover contract" means any contract entered into on or after [November 9, 1978], for the first sale of natural gas that was previously subject to an existing contract which expired at the end of a fixed term (not including any extension thereof taking effect on or after [November 9, 1978]) specified by the provisions of such existing contract, as such contract was in effect on [November 9, 1978] whether or not there is an identity of parties or terms with those of such existing contract.

Section 2(12) requires several conditions before a contract can be deemed a rollover contract for purposes of section 106(b): (1) the rollover contract must be "entered into" on or after November 9, 1978; (2) the rollover contract must cover sales of gas "previously subject" to an "existing contract," *i.e.*, a contract in existence on November 8, 1978; and (3) the previous existing contract must have "expired" at the end of a "fixed term" pursuant to the provisions of the contract in effect on November 9, 1978, including fixed term extensions which took effect prior to that date.

Under the Natural Gas Act, a rollover contract was not "entered into" until the parties executed an extension of the contract's term or a new contract. Therefore a rollover could not occur until the fixed term of the existing contract expired, and the parties executed the extension of the new contract.[14] Section 2(12) of the NGPA could be read to make the definition of "rollover contract" consistent under both the NGPA and the NGA by requiring some affirmative action of the parties to effect a rollover.

However, language in the Statement of Managers at page 70, injects an element of confusion. At page 70, the Statement indicates that:

> An existing contract which expires at the end of a fixed term qualifies as a rollover contract. An existing contract may have a specified term of five years which will be extended by operation of the contract for one or more years unless the producer gives notice of his intention to terminate the contract within a specified period of time in advance. Such a contract will qualify as a rollover contract at the end of the fixed five year term without regard to the extensions occurring after the date of enactment.

Taken literally, this language suggests that a roll-over automatically occurs upon the expiration of the primary term of the existing intrastate contract. Thus, a rollover could occur even if the "existing contract" remained in existence by virtue of automatic "evergreen"-type contract term extensions,[15] and would not require some affirmative action on the part of the parties such as entering into a new contract or modifying the price terms.

The Commission interprets the Statement of Managers at page 70 as intended only to clarify the intent behind the parenthetical in section 2 (12), which reads:

> * * * "[R]ollover contract" means any contract, entered into * * * for the first sale of natural gas that was previously subject to an existing contract which expired at the end of a fixed term (*not including any extension thereof taking effect on or after such date of enactment*) * * *. (Emphasis added.)

The simplest reading of this parenthetical and the one which resolves rather than creates contradictions between the statute and the Statement of Managers suggests that a rollover can "occur" even if a contract term extension which took effect on or after November 9, 1978, has not yet expired. Therefore, as long as the fixed term of the existing contract (as may be extended prior to November 9, 1978) has expired and a new contract is "entered into" on or after November 9, 1978, the sales may become subject to maximum lawful prices under section 106(b) of the NGPA.

Accordingly, we shall define a "rollover" for purposes of section 106(b) to require that the fixed term of the "existing intrastate contract" must expire and a new contract or amendment must be entered into. A rollover may not "occur" until both prerequisites have been met.

These prerequisites apply equally to contracts containing evergreen clauses. Under evergreen clauses a rollover contract will not automatically occur merely upon expiration of the fixed term on or after November 9, 1978. The parties must take some action to enter into a new contract or contract amendment on or after November 9, 1978. However, especially with respect to intrastate contracts, we believe the characterization of such contracts as "existing," "successor," or "rollover" contracts requires close scrutiny of the contractual provisions as well as the timing of certain key events.[16] Accordingly, we are presenting here only the general principles to be followed in characterizing such contracts. Specific interpretations must be handled and may be requested pursuant to 18 CFR 1.42 on a case-by-case basis.

G. *Percentage-of-Proceeds Sales.* We have received requests for clarification of how percentage-of-proceeds sales[17] are to be regulated under Subparts E and F of Part 271. The Commission first focused on the status of such sales when faced with the question of how percentage sellers or purchasers were to report under Part 276. The following is an excerpt from the order promulgating final regulations under Part 276:

> In this regard we perceive the need to clarify how percentage sellers are to report their "contract price" on November 9, 1978, for purposes of Part 276 reports and oath statements. Percentage sale contracts have no specific price stipulated under the terms of the contract. Rather, they are generally based on the recovery of a fixed or volumetrically-determined percentage of net proceeds received from the sale at a plant tailgate of a mix of residue gas derived from many different producers. A "contract price" on November 9, 1978, might be computed by dividing sales volumes attributable to the percentage seller on that date. Such a computed "contract price" could change from day-to-day depending on various factors

[14] See § 271.402(b) (3) and (4).

[15] "Evergreen clauses" provide that the term of the contract will be extended for some specified period beginning with the date of expiration of the primary term. The contract would remain in effect until terminated by action of one of the parties after giving the required notice prior to the anniversary date. Other variations of this type of clause also prevail in the industry.

[16] Gas subject to section 104 and 106(a) will continue to be subject to the requirement of execution of a new contract for amendment, so that the Commission may obtain adequate evidence of the parties' consent.

[17] The typical percentage-of-proceeds sales occur between a producer and a processing plant. The producer normally sells raw gas to the plant which, after processing it, sells the residue gas, which is of a lesser volume and BTU content than the raw gas, to a pipeline at the plant tailgate. Rather than receiving a fixed price for the gas, the producer recovers a percentage of the net proceeds received by the plant from the resale of gas and, perhaps, natural gas liquids.

including the mix of resale prices at the plant tailgate and the price of liquids.

Accordingly, we find it appropriate to simplify the reporting of percentage proceeds sales by permitting the percentage received from the plant to be reported in lieu of a "contract price". Volumes to be reported shall be residue gas volumes.[18]

It appears that the NGPA did not specifically address the regulation of intrastate percentage-of-proceeds-sale contracts. The pricing mechanism under sections 105 and 106(b) appears to assume a specific price as stipulated by terms of the contract. A contract price for percentage of proceeds sales calculated on the basis of sales volumes attributable to the percentage seller on a given date does not appear to be within the scope of the term "contract price" as it is used in sections 105 and 106(b). In addition, nothing in the Statement of Managers indicates how first sales under such contracts that are subject to section 105 or 106(b) are to be regulated. Under these circumstances we believe the following to be the only practical course. Because resellers, usually processors or gatherers, are themselves regulated under the reseller rules contained in § 270.202, the same system of indirect regulation which has been used under the Natural Gas Act should be used to provide a pragmatic solution to this problem.[19] This will eliminate the problem of establishing "contract prices" in order to apply section 105 or 106(b) maximum lawful prices to sales to resellers. Moreover, under this procedure, no change in reporting obligations under Part 276 would be required.

The argument against indirect regulation is that each first sale, including percentage sales, is regulated at prices established by Congress. But as noted above, Congress gave no direction for applying maximum lawful prices under section 105 or 106(b) in the case of such percentage sales. As we recognized in our order promulgating final Part 276 regulations, it would simply be too arbitrary and burdensome to calculate contract prices on a continuous, even day-to-day basis.

Instead of attempting to impose such an arbitrary and burdensome method of establishing maximum lawful prices for such percentage-of-proceeds sales, we shall apply the maximum lawful price only to the sale by the reseller. As long as the reseller complies with the reseller rules of § 270.202(a)(1), the amount of proceeds received by the percentage-of-proceeds sellers will not affect the price paid by consumers. Because the percentage-of-proceeds sellers only receive a percentage (less than 100 percent) of the proceeds from the resale, the price of which may not exceed the applicable NGPA maximum lawful price, the total price received by these sellers as a group, cannot exceed the maximum lawful price. Distribution of proceeds derived from the resale of such gas will be deemed a matter of private contract law to be resolved by the parties. This policy is similar to that governing distribution of proceeds from a fixed-price sale by the operator of a well to the often numerous working interest owners. In order to effect this policy, we are adding a new subparagraph (3) to paragraph (e) of § 270.202 which defines "percentage-of-proceeds sale" and a new paragraph (h) to § 270.202. New paragraph (h) clarifies the rule that the resale of the portion of gas purchased under a percentage-of-proceeds sale subject to section 105 or 106(b) is governed by § 270.202(a) and that such percentage sales will not be deemed to be first sales for purposes of Subchapter H. We wish to emphasize that, for administrative purposes, we will not attempt to apply the section 105 and 106(b) ceiling price provisions at the point of the percentage-of-proceeds sale. Rather we shall focus on the point of resale. We are not, however, creating any general exemption from the NGPA for such percentage sales.

Although we have discussed only intrastate sales subject to section 105 or 106(b) of the NGPA we believe that the amendment to the reseller rules that we promulgate in new paragraph (h) to § 270.202, should also apply to interstate percentage-of-proceeds sales which are subject to § 154.91(e) of the Commission's Regulations under the Natural Gas Act. Because such sales are already only indirectly regulated, no modification of our Natural Gas Act regulations is required.

III. Summary of Amendments

The following amendments have been made to the interim rules:

A definition and special rules for percentage-of-proceeds sales have been added to § 270.202. The maximum lawful price for a percentage-of-proceeds sale is applicable at the point the gas is sold by the reseller.

All references to "existing" contracts have been deleted from § 270.205(c), so that the paragraph applies to all sales and permits sellers to modify any contract to collect any applicable NGPA prices other than section 105(b)(1) gas which does not also qualify for another maximum lawful price set by reference to the contract price.

The determinations of contract price and the price under the terms of the existing contract have been clarified by an amendment to § 271.504 to reflect the effect of State severance taxes.

The definition of "successor to an existing intrastate contract" at § 271.102 has been corrected to clarify the fact that successors to existing intrastate contracts include interstate contracts.

Paragraph (b) of § 271.602 has been corrected to include a reference to State or Indian royalty interests as well as production interests.

IV. Public Procedures and Effective Date

Parts 270 and 271 were originally proposed for comment in November of 1978 and issued as interim regulations on December 1, 1978 (43 FR 56448; December 1, 1978). For 60 days thereafter comments were received and during that period public hearings were held on these regulations. By this process the Commission complied with the provision of section 502(b) of the NGPA which requires that "[t]o the maximum extent practicable, an opportunity for oral presentation of data, views, and arguments" be afforded for certain regulations under the NGPA. The amendments to Part 270 and Subparts E and F of Part 271 contained in this order rest upon considerations given to the information received during the comment and hearing process. Therefore, the Commission believes that no further notice of public procedure is required under 5 U.S.C. 553.

(Natural Gas Act, as amended, 15 U.S.C. 717, *et seq.*; Department of Energy Organization Act, 47 U.S.C. 7101–7352; E.O. 12009, 42 FR 46267; Natural Gas Policy Act of 1978; 15 U.S.C. 3301–3432)

In consideration of the foregoing, the interim regulations in Part 270, Subchapter H, Chapter I of Title 18, Code of Federal Regulations, are amended as set forth below. In addition, Subparts E and F of Part 271 are amended and issued as final regulations as set forth below. These amendments are effective with respect to natural gas delivered on or after December 1, 1978, except that the application of the effective date shall not cause the impositon of any refund obligation with respect to any deliveries made prior to February 15, 1980.

By the Commission.

Kenneth F. Plumb,

Secretary.

1. Section 270.102(b)(9) is amended in the first sentence to read as follows:

[18] Final Part 276 Regulation Under the Natural Gas Policy Act of 1978, Docket No. RM79–30, Order Amending Part 276, Issuing Part 276 as Final Regulations and Promulgating FERC Forms 122, 123, and 124 and Accompanying Affidavits and Instructions, (issued March 23, 1979, 44 FR 18647) at mimeo pages 12–13 (44 FR 18649).

[19] *See*, 18 CFR 254.91(e).

§ 270.102 Definitions.

* * * * *

(b) *Subchapter H definitions.* * * *

(9) "Successor to an existing intrastate contract" means any contract, other than a rollover contract, entered into on or after November 9, 1978, for the first sale of natural gas which was previously subject to an existing intrastate contract, whether or not there is an identity of parties or terms with those of such existing intrastate contract.* * *

2. Section 270.202 is amended in paragraph (e) by adding a new subparagraph (3) and a new paragraph (h) to read as follows:

§ 270.202 Resales.

* * * * *

(e) *Definition.* * * *

(3) "Percentage-of-proceeds sale" means a sale of natural gas the price for which is computed as a percentage of the proceeds from the resale of natural gas attributable to such sale.

* * * * *

(h) *Special rules for percentage-of-proceeds sales.* In the case of natural gas purchased by a reseller in a percentage-of-proceeds sale, if the maximum lawful price for the resale is determined under paragraph (a)(1) of this section, then any sale to such reseller in such percentage of proceeds sale shall not be treated as a first sale for purposes of this subchapter.

§ 270.205 [Amended]

3. Section 270.205 is amended in paragraph (c) by deleting "*existing*" in the heading for such paragraph; and by deleting the phrase "an existing" in the text of such paragraph and inserting in lieu thereof the word "a".

4. Part 271 is amended in Subpart E to read as follows:

Subpart E—Sales Under Existing Intrastate Contracts

§ 271.501 Applicability.

This subpart implements section 105 of the NGPA and applies to the first sale of natural gas under an existing intrastate contract or under a successor to an existing intrastate contract. This subpart is not applicable to sales made under an intrastate rollover contract as defined in § 270.102(b)(11) of this part.

§ 271.502 Maximum lawful prices.

(a) *November 9, 1978, contract price at or below $2.060 per MMBtu.* In the case of a first sale of natural gas to which this subpart applies (other than a first sale to which paragraph (b) applies), the maximum lawful price for natural gas delivered in any month shall be the lower of:

(1) The price for such month under the terms of the existing intrastate contract to which such natural gas was subject on November 9, 1978, as such contract was in effect on November 9, 1978; or

(2) The maximum lawful price per MMBtu for such month specified for new natural gas (Subpart B of Part 271) in Table I of § 271.101(a).

(b) *November 9, 1978, contract price greater than $2.060 per MMBtu.* In the case of a first sale of natural gas to which this subpart applies, if the contract price applicable on November 9, 1978, was greater than $2.060 per MMBtu, the maximum lawful price for natural gas delivered in any month shall be the higher of:

(1) The maximum lawful price per MMBtu for such month specified for new natural gas (Subpart B of Part 271) in Table I of § 271.101(a); or

(2) The contract price per MMBtu on November 9, 1978, adjusted for inflation in accordance with § 271.102 of this part.

§ 271.503 Filing requirements.

Any person who collects a price under this subpart shall file reports required by § 276.101 of this chapter.

§ 271.504 Determination of contract price.

For purposes of this subpart:

(a) *Contract price.* "Contract price," when used with respect to any specific date and contract, means:

(1) The price paid per MMBtu under a contract for deliveries of natural gas occurring on that date; including any State severance taxes which are levied on gas subject to the contract (whether such taxes are borne by the seller or reimbursed by the purchaser).

(2) If no deliveries of natural gas occurred under such contract on that date, the price per MMBtu that would have been paid had such deliveries occurred on that date, including any State severance taxes which would have been levied on gas subject to the contract (whether such taxes would have been borne by the seller or reimbursed by the purchaser).

(b) *Price under the terms of the existing contract.* "Price under the terms of the existing contract" when used with respect to any specific date and contract means the price under the terms of the existing contract, as such contract was in effect on November 9, 1978; including any State severance taxes which are levied on the sale of natural gas subject to the contract (whether such taxes are borne by the seller or reimbursed by the purchaser).

(c) *Take-or-pay clauses.* If the contract contains a take-or-pay clause and payments were made under such clause for deliveries on November 9, 1978, the contract price on November 9, 1978, shall be determined as if volumes obligated to be taken were taken.

§ 271.505 Contract modifications.

(a) *General rule.* Except as provided in paragraph (b) of this section, for purposes of this subpart, no successor to an existing intrastate contract or modification executed after November 9, 1978, of an existing intrastate contract may:

(1) Alter the terms of the existing intrastate contract in a manner which has the effect of requiring the purchaser to bear any production-related costs (as defined in § 271.1101(b)) which were allocated to the seller under the existing intrastate contract; or

(2) Provide for an earlier date for deliveries than provided for under the existing contract.

(b) *Exception.* Nothing in paragraph (a) of this section shall preclude a purchaser who was not a party to the existing intrastate contract on November 9, 1978, from agreeing, by modifications of the existing intrastate contract, or otherwise, to bear responsibility and pay for any increase (or portion thereof) in production-related costs, incurrence of which is necessary in order for such person to take delivery of the natural gas subject to the existing intrastate contract.

6. Part 271 is amended by revising Subpart F to read as follows:

Subpart F—Intrastate Rollover Contracts

§ 271.601 Applicability.

This subpart implements section 106(b) of the NGPA and applies to the first sale of natural gas under an intrastate rollover contract.

§ 271.602 Maximum lawful price.

(a) *General rule.* The maximum lawful price for a first sale of natural gas under an intrastate rollover contract to which section 106(b)(1) of the NGPA applies shall be the higher of:

(1)(i) The maximum lawful price, per MMBtu, paid under the expired contract, in the case of the month in which the effective date of such rollover contract occurs; and

(ii) In the case of any month thereafter, the maximum lawful price, per MMBtu, prescribed under this paragraph for the preceding month adjusted for inflation in accordance with § 271.102; or

(2) The alternative maximum lawful price specified in Table I of § 271.101(a) for certain intrastate rollover gas.

(b) *Certain State or Indian production or royalty shares.* The maximum lawful

price, per MMBtu, for natural gas to which section 106(b)(2) of the NGPA (relating to certain State or Indian natural gas production or royalty interests) applies shall be the price specified for new natural gas (Subpart B of Part 271) in Table I of § 271.101(a).

§ 271.603 Filing requirements.

Any person who collects a price under this subpart shall file reports required by § 276.101 of this chapter.

§ 271.604 Special rule.

(a) *General rule.* Except as provided in paragraph (b), for purposes of this subpart no intrastate rollover contract may contain terms which differ from the terms of the expired contract and which have the effect of requiring the purchaser to bear any production-related costs (as defined in § 271.1101(b)).

(b) *Exception.* Nothing in paragraph (a) of this section shall preclude a purchaser who was not a party to the expired contract from agreeing in the intrastate rollover contract to bear responsibility and pay for any increase (or portion thereof) in production-related costs, the incurrence of which is necessary in order for such person to take delivery of the natural gas subject to the intrastate rollover contract.

[FR Doc. 80-2235 Filed 1-23-80; 8:45 am]

BILLING CODE 6450-01-M

18 CFR Part 271

[Docket No. RM80-19; Order No. 64]

Order Reissuing Part 271, Subpart D of the Commission's Regulations as Final Regulations; Correction

January 18, 1980.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Erratum notice.

SUMMARY: On January 3, 1980, the Commission reissued Subpart D of Part 271 of its regulations under the Natural Gas Policy Act of 1978, 45 FR 1862 (January 9, 1980). This subpart provides for first sales of natural gas which was committed or dedicated to interstate commerce as of November 8, 1978. In that issuance, an error occurred in the definition of "1973–1974 biennium gas". By this Notice that error is corrected.

EFFECTIVE DATE: January 3, 1980.

FOR FURTHER INFORMATION CONTACT: John Conway, Federal Energy Regulatory Commission, Office of the General Counsel, Room 8100–K, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357–8150.

In the Commission's Order of January 3, 1980, reissuing Part 271, Subpart D of the Commissioner's Regulations as Final Regulations, 45 FR 1862 (January 9, 1980), a typographical error occurred on page 47 (*mimeo*), 45 FR at 1871, col. 2, under the definition of "1973–1974 biennium gas" of § 271.402(b)(2). That subsection should read as follows:

§ 271.402 Maximum lawful prices.

* * * * *

(b) *Definitions.* * * *

(2) "1973–1974 biennium gas" means natural gas, to which this subpart applies, from a well the surface drilling of which commenced on or after January 1, 1973, and prior to January 1, 1975.

* * * * *

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-2234 Filed 1-23-80; 8:45 am]

BILLING CODE 6450-01-M

RAILROAD RETIREMENT BOARD

20 CFR Part 260

Procedure for Notification of Initial Decisions; Correction

AGENCY: Railroad Retirement Board.

ACTION: Correction to Final Rule.

SUMMARY: The Railroad Retirement Board published final rules concerning procedure for notification of initial decisions on January 17, 1980 in the **Federal Register.** This document corrects an inadvertent typographical error in the final rule.

EFFECTIVE DATE: January 24, 1980.

FOR FURTHER INFORMATION CONTACT: James E. Lanter, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, 312–751–4943.

In FR Doc. 80–1608 appearing at page 3259 in the **Federal Register** of Thursday, January 17, 1980, subparagraph (3)(vii) of § 260.1(c) appearing on page 3260 in the center column is corrected from "that if information * * *" to read "that if no information * * *".

Dated: January 18, 1980.

R. F. Butler,

Secretary of the Board.

[FR Doc. 80-2238 Filed 1-23-80; 8:45 am]

BILLING CODE 7905-01-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

22 CFR Part 710

Administrative Enforcement Procedures of Post-Employment Restrictions

AGENCY: Overseas Private Investment Corporation.

ACTION: Final rule.

SUMARY: In its regulations (44 FR 19987) implementing the restrictions on post-employment activities of former federal agency employees (18 U.S.C. 207(a), (b) and (c)), the Office of Government Ethics has required each federal agency to adopt procedures providing for the administrative enforcement of such restrictions. The following procedures are adopted by the Overseas Private Investment Corporation (OPIC) to satisfy this requirement.

DATE: Effective on January 21, 1980.

ADDRESS: 1129 20th Street, NW, Washington, DC 20527.

FOR FURTHER INFORMATION CONTACT: Office of General Counsel (202) 632–1766.

A new Part 710 is added to 22 CFR to read as follows:

PART 710—ADMINISTRATIVE ENFORCEMENT PROCEDURES OF POST-EMPLOYMENT RESTRICTIONS

Sec.

Authority: 18 U.S.C. 207(j)

§ 710.1 General.

The following procedures are hereby established with respect to the administrative enforcement of restrictions on post-employment activities (18 U.S.C. 207(a), (b) or (c) and implementing regulations (44 FR 19987 and 19988, April 3, 1979) published by the Office of Government Ethics.

§ 710.2 Action on receipt of information regarding violation.

On receipt of information regarding a possible violation of the statutory or regulatory post-employment restrictions by a former OPIC employee and after determining that such information does not appear to be frivolous, the President of OPIC or the President's designee shall provide such information to the Director of the Office of Government Ethics and to the Criminal Division, Department of Justice. Any investigation or administrative action shall be coordinated with the Department of Justice to avoid prejudicing possible criminal proceedings. If the Department of Justice informs OPIC that it does not intend to institute criminal proceedings, such coordination shall no longer be required and OPIC shall be free to pursue administrative action.

§ 710.3 Initiation of administrative disciplinary proceeding.

Whenever the President of OPIC or the President's designee determines after appropriate review that there is reasonable cause to believe that a former OPIC employee had violated the statutory or regulatory post-employment restrictions, an administrative disciplinary proceeding shall be initiated.

§ 710.4 Notice.

The President of OPIC or the President's designee shall initiate an administrative disciplinary hearing by providing the former OPIC employee with notice of an intention to institute a proceeding and an opportunity for a hearing. Notice must include:

(a) A statement of allegations and the basis thereof sufficiently detailed to enable the former employee to prepare an adequate defense;

(b) Notification of the right to a hearing; and

(c) An explanation of the method by which a hearing may be requested.

§ 710.5 Failure to request hearing.

The President of OPIC may take appropriate action referred to in § 710.13 in the case of any former OPIC employee who has failed to make a written request to OPIC for a hearing within 30 days after receiving adequate notice.

§ 710.6 Appointment and qualifications of examiner.

When a former OPIC employee after receiving adequate notice requests a hearing, a presiding official (hereinafter referred to as "examiner") shall be appointed by the President of OPIC to make an initial decision. The examiner shall be a responsible person who is a member of the bar of a State or of the District of Columbia, who is impartial and who has not participated in any manner in the decision to initiate the proceedings. The examiner may or may not be an OPIC employee.

§ 710.7 Time, date and place of hearing.

The examiner shall establish a reasonable time, date and place to conduct the hearing. In establishing a date, the examiner shall give due regard to the former employee's need for:

(a) Adequate time to prepare a defense properly; and

(b) An expeditious resolution of allegations that may be damaging to the individual's reputation.

§ 710.8 Right of parties at hearing.

A hearing shall include, at a minimum, the following rights for both parties to:

(a) Represent oneself or be represented by counsel;

(b) Introduce and examine witnesses and submit physical evidence (including the use of interrogatories);

(c) Confront and cross-examine adverse witnesses;

(d) Present oral argument; and

(e) Receive a transcript or recording of the proceedings on request.

§ 710.9 Burden of proof.

In any hearing under this part, OPIC shall have the burden of proof and must establish substantial evidence of a violation of the statutory or post-employment restrictions.

§ 710.10 Findings.

The examiner shall make a determination exclusively on matters of record in the proceeding and shall set forth in the written decision all findings of fact and conclusions of law relevant to the matters in issue.

§ 710.11 Appeal.

(a) Within 20 days of the date of the initial decision, either party may appeal the decision to the President of OPIC. The President's decision on such appeal shall be based solely on the record of the proceedings or those portions thereof cited by the parties to limit the issues.

(b) If the President modifies or reverses the examiner's decision, the President shall specify such findings of fact and conclusions of law as are different from those of the examiner.

(c) The decision of the President on appeal, shall constitute final administrative decision. An initial decision of the examiner which has not been appealed during the 20-day period provided shall become a final administrative decision on the twenty-first day.

§ 710.12 Finding of violation.

The President of OPIC shall take appropriate action referred to in § 710.13 in the case of an individual who is found in violation of the statutory or regulatory post-employment restrictions, after a final administrative decision.

§ 710.13 Appropriate action.

Appropriate action referred to in paragraphs 6 and 13 above, included:

(a) Prohibiting the individual from making, on behalf of any other person (except the United States), any formal or informal appearance before, or with the intent to influence, any oral or written communication to, OPIC on any matter or business for a period not to exceed five years, which may be accomplished by directing OPIC employees to refuse to participate in any such appearance or to accept any such communicaiton.

(b) Taking other appropriate disciplinary action.

§ 710.14 Judicial review.

Any person found to have participated in a violation of statutory or regulatory post-employment restrictions (18 U.S.C. 207(a), (b) or (c) or the regulations compiled at 44 FR 19987 and 19988, April 3, 1979) may seek judicial review of the administrative determination.

§ 710.15 Delegation of authority.

The functions of the President of OPIC specified in §§ 710.2, 710.4 and 710.5 above are delegated to the General Counsel of OPIC. An examiner shall be delegated authority on an *ad hoc* basis.

Dated: January 17, 1980.

J. Bruce Llewellyn,

President.

[FR Doc. 80-2224 Filed 1-23-80; 8:45 am]

BILLING CODE 3210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 233

San Carlos Indian Irrigation Project, Ariz.

January 15, 1980.

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Final rules.

SUMMARY: The purpose of the final rules is to increase the power rates for the San Carlos Irrigation Project, Arizona, to provide adequate revenues to meet expenses. A provision (§ 233.54) has been added which authorizes the Director of the Phoenix Area Office,

Bureau of Indian Affairs, to change the power rate schedules § 233.51, § 233.52, and § 233.53 by unilateral action when necessary due to the changes in costs of labor, materials, supplies, equipment, purchased power or other causes.

EFFECTIVE DATE: These final rules shall become effective on January 24, 1980.

FOR FURTHER INFORMATION CONTACT: James L. McCabe, San Carlos Irrigation Project, P.O. Box 456, Coolidge, Arizona 85228, telephone (602) 723–5439.

SUPPLEMENTARY INFORMATION: Beginning on page 61208 of the Wednesday, October 24, 1979, **Federal Register**, Vol. 44, No. 297, there was published a notice of proposed revision of rates. All interested persons were given until November 23, 1979, to submit comments regarding the proposed revision of rates. Notice of the proposed changes had been published in the local newspapers several weeks prior to the publication in the **Federal Register**. A number of comments were received from a variety of consumers. The principal concern was the increased cost to the consumer, especially since there is an unusual amount of stored water in Coolidge Reservoir for the generation of power at Coolidge Dam. The generation capacity at Coolidge Dam is about ten percent of power distributed by the Project and due to the unusual amount of stored water at this time this was a factor in determining the power rates. After a careful analysis of the power rates it was determined there was no alternative but to place the rates in effect to provide the revenue required for proper operations and maintenance of the Power System and meet the obligations of the San Carlos Irrigation Project. The effective date of this rule will be the date of publication in the **Federal Register** as provided for in 0 BIAM Supplement 1, 2.4](d)(3) that is in conformance with the following exception of 5 U.S.C. 553(d):

(d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except—

(3) As otherwise provided by the agency for good cause found and published with the rule.

Since this revision is for good cause, the 30-day deferred effective date is dispensed with under the exception provided in subsection (d)(3) of 5 U.S.C. 553 (1970). Accordingly, these regulations will be effective on January 24, 1980.

The principal author of this document is Cecil A. Wright, Bureau of Indian Affairs, Phoenix Area Office, P.O. Box 7007, Phoenix, Arizona 85011, telephone (602) 261–4184.

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.

This regulation is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Authority: Sec. 5, 43 Stat. 476; 45 Stat. 210, 211; 5 U.S.C. 301.

Accordingly Title 25 CFR, Part 233 is amended as follows:

PART 233—SAN CARLOS INDIAN IRRIGATION PROJECT

1. The table of contents is amended by adding the following entry:

* * * * *

Sec.

233.54 Rate adjustments due to purchased power cost changes.

* * * * *

2. Sections 233.7, 233.51, 233.52 (b)–(d), (g) and 233.53 are revised and § 233.54 is added to read as follows:

§ 233.7 Installation or extension financed by consumer.

If funds are not otherwise available for an installation or extension, or if an extension to a prospective consumer will require new construction beyond the distances specified in § 233.6, the consumer or prospective consumer may, after executing an appropriate contract satisfactory to the Project Engineer, construct the needed installation or extension, or arrange to pay the Project to construct the needed installation or extension. Payment for construction by the Project shall be advanced prior to commencement of construction. Installations or extensions to be constructed by the consumer or prospective consumer shall be constructed in accordance with suitable plans and specifications approved by the Project Engineer. All installations or extensions when constructed shall be and remain the property of the United States.

§ 233.51 Rate schedule No. 1—residential rate.

(a) *Application of schedule.* This schedule is applicable to single-phase or three-phase service for residences and small, non-commercial users. Unless specifically permitted by the contract, use must be limited to the consumer's own premises and power supplied must not be resold. If more than one meter is required by the customer's installation or for the customer's convenience, bills will be independently calculated for each meter.

(b) *Monthly rate.* (1) $8.00, minimum which includes the first 50 kilowatt-hours;

(2) 8.0 cents per kilowatt-hour for the next 100 kilowatt-hours;

(3) 5.1 cents per kilowatt-hour for the next 350 kilowatt-hours;

(4) 4.4 cents per kilowatt-hours for all additional kilowatt-hours.

(c) *Minimum bill.* The minimum bill shall be $8.00 per month except when a higher minimum bill is stipulated in the contract.

(d) *Purchased power adjustment.* An adjustment shall be added to each KWH used equal to the estimated average purchased power adjustment (rounded to the nearest $0.0001) paid by the Project to Project's power suppliers.

§ 233.52 Rate schedule no. 2—General rate.

* * * * *

(b) *Monthly rate.* (1) $8.00 minimum which includes the first 50 kilowatt-hours;

(2) 9.6 cents kilowatt-hour for the next 350 kilowatt-hours;

(3) 5.7 cents per kilowatt-hour for the next 600 kilowatt-hours;

(4) 3.1 cents per kilowatt-hour for the next 9,000 kilowatt-hours.

(5) When use is 10,000 kilowatt-hours or more: First 10,000 kilowatt-hours $354.80.

(6) Additional kilowatt-hours at 3.1 cents per kilowatt-hour, less a credit of .6 cents per kilowatt-hour for each kilowatt-hour above 200 times the billing demand (50 KW minimum).

(c) *Minimum bill.* The minimum bill shall be $1.75 per month per kilowatt of billing demand, except where the customer's requirements are of a distinctly recurring seasonal nature. Then the minimum monthly bill shall not be more than an amount sufficient to make the total charges for the twelve (12) months ending with current month, equal to twelve times the highest monthly minimum computed for the same twelve month period. However, no monthly billing shall be less than $8.00.

(d) *Contract demand.* Each contract for 15 KW or over shall state the number of kilowatts which the customer expects to require and desires to have reserved for his service. This quantity is called the contract demand.

* * * * *

(g) *Purchased power adjustment.* An adjustment shall be added for each KWH used equal to the estimated average purchased power adjustment (rounded to the nearest $0.0001) paid by the Project to the Project's power suppliers.

§ 233.53 Rate schedule No. 3—Street and area lighting.

(a) *Application of schedule.* This rate schedule applies to service for yard lighting, lighting streets, alleys, thorough-fares, parks, schoolyards, industrial areas, parking lots, and similar areas where such dusk-to-dawn service is desired. The Project will own and operate lighting systems and provide normal lamp replacements.

(b) *Monthly rate.* (1) Lamps:

	1	Each 2 to 5	5 or more
200 W or less, incandescent (2,800 lm or less)	5.30	5.20	5.20
175 W mercury vapor (approximately 6,500 lm)	8.50	7.60	6.80
250 W mercury vapor (approximately 10,000 lm)	10.30	9.40	8.50
400 W mercury vapor (approximately 18,000 lm)	13.70	12.00	10.30

The minimum term of a service contract will be 12 months, payable in advance. The advance payment may be waived in special cases by the Project Engineer. Installation charges, the cost of wood poles or special steel, aluminum, or other supports, special fixtures, and the cost of underground service will be charged as determined by the Project Engineer.

§ 233.54 Rate adjustments due to purchased power cost changes.

The rate schedules given in §§ 233.51, 233.52 and 233.53 shall be adjusted as necessary and appropriate to defray increases in costs of power and energy purchased from the power supplier(s) of the Project. Rate adjustments pursuant to this provision shall become effective upon unilateral action of the Area Director; however when a rate adjustment is determined to be necessary, the Area Director shall give sufficient notice to customers and other interested parties.

Rick Lavis,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 80-2135 Filed 1-23-80; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 5

[T.D. 7667]

Temporary Income Tax Regulations Under the Revenue Act of 1978; Treatment of Certain Capital Gains of Regulated Investment Companies and Real Estate Investment Trusts

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations relating to the treatment of certain capital gains by regulated investment companies, real estate investment trusts, and their shareholders. Changes to the applicable tax law were made by the Revenue Act of 1978. These regulations affect regulated investment companies, real estate investment trusts, and their shareholders and provide them with guidance needed to comply with the law.

EFFECTIVE DATES: The temporary regulations are effective for taxable years of a regulated investment company or a real estate investment trust beginning before November 1, 1978, and ending after October 31, 1978, or beginning before January 1, 1979, and ending after December 31, 1978. They are also effective for a regulated investment company or real estate investment trust with any taxable year paying dividends after October 31, 1978, under sections 855, 858, 859 (as in effect prior to enactment of the Revenue Act of 1978) and 860 of the Internal Revenue Code of 1954.

FOR FURTHER INFORMATION CONTACT: Kent J. Schreiner of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T, 202-566-3289).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to the treatment of certain capital gains by regulated investment companies, real estate investment trusts, and their shareholders. The temporary regulations are necessary because of the amendments made to sections 1202 and 1201 by sections 402 and 403 of the Revenue Act of 1978 (Pub. Law 95-600, 92 Stat. 2867, 2868. These temporary regulations replace the temporary regulations relating to the treatment of capital gains by regulated investment companies, real estate investment trusts and their shareholders adopted by T.D. 7586 published in the **Federal Register** for January 4, 1979 (44 FR 1106).

Statutory Provisions

Section 402 of the Revenue Act of 1978 amends section 1202 of the Code (relating to deduction for capital gains) by increasing the deduction for capital gains from 50 percent to 60 percent of the amount of net capital gain. Section 1202(c) provides a transitional rule for determining the applicable deduction for capital gains for a taxpayer other than a corporation. Under the transitional rule, a deduction is allowed equal to 60 percent of the lesser of the net capital gain for the taxable year or the net capital gain taking into account only sales and exchanges after October 31, 1978. The transitional rule also provides for a deduction equal to 50 percent of the excess of the net capital gain for the taxable year over the amount taken into account in computing the 60 percent deduction.

Section 403 of the Revenue Act of 1978 reduces the alternative rate of tax on the net capital gain of a corporation from 30 percent to 28 percent. Section 1201(c), as amended by the Revenue Act of 1978, provides a transitional rule for determining the applicable rate of tax on the net capital gain of a corporation. Under the transitional rule, a tax is provided equal to 28 percent of the lesser of the net capital gain for the taxable year or the net capital gain taking into account only sales and exchanges after December 31, 1978. In addition, the transitional rule provides for a tax of 30 percent on the excess of the net capital gain for the taxable year over the amount subject to the 28 percent tax.

Replacement of T.D. 7586

Temporary regulations (T.D. 7586) were published in the **Federal Register** for January 4, 1979 (44 FR 1106), to provide taxpayers with guidance needed to comply with the changes made by section 402 of the Revenue Act of 1978. That temporary regulation provided rules that were limited to the treatment of certain capital gains of regulated investment companies and real estate investment trusts with respect to their shareholders that are not corporations and with respect to taxable years ending before January 1, 1979. It also announced that additional temporary regulations would be adopted for taxable years ending after December 31, 1978, and for dividends paid after that date.

This new temporary regulation replaces T.D. 7586 without changing the rules provided by that Treasury decision. However, this temporary regulation incorporates the transitional rules provided by both sections 402 and 403 of the Revenue Act of 1978. Thus, rules are provided for all capital gains realized by the regulated investment company or real estate investment trust during the transitional periods, regardless of the time that the gains are actually distributed, and regardless of whether or not the shareholder is a corporation.

Explanation of Provisions

Under sections 852(b)(3)(B) and 857(b)(3)(B), capital gain dividends received by shareholders of a regulated investment company and real estate investment trust are treated as gain from the sale or exchange of a capital asset held for more than 1 year and are included in income in the taxable year of the shareholder in which the dividend is received. The temporary regulations require that the regulated investment company or real estate investment trust designate the portion of a shareholder's capital gain dividend that is to be taken into account in computing the 60 percent capital gain deduction and the amount subject to the 28 percent capital gains tax. In making the designation, the regulated investment company or real estate investment trust must allocate their capital gain dividends to specified periods during which the capital gains were realized. The temporary regulations contain rules for determining the shareholder's proportionate share of the capital gain dividend.

Under section 852(b)(3)(D) a regulated investment company may designate an amount of undistributed capital gains that shareholders must include in gross income as gain from the sale or exchange of a capital asset held for more than 1 year. The temporary regulations prescribe similar rules for designated undistributed capital gains as those prescribed for capital gain dividends.

The Income Tax Regulations (26 CFR Part 1) under subchapter M, chapter 1 of the Code continue to apply while the temporary regulations provided by this document are effective. However, where the temporary regulations contained in this document are inconsistent with such Income Tax Regulations, the temporary regulations are to apply.

Technical Corrections Bill of 1979

The Technical Corrections Bill of 1979 (S. 614, 96th Cong., 1st Sess. (1979); H.R. 2797, 96th Cong., 1st Sess. (1979)) was passed by the House of Representatives on July 16, 1979. If enacted into law in the form passed by the House of Representatives, then these temporary regulations would not apply to (a) dividends includible in gross income of shareholders, other than corporations, with taxable years beginning after October 31, 1979, or (b) dividends includible in gross income of shareholders that are corporations with taxable years beginning after December 31, 1979.

Waiver of Certain Procedural Requirements

There is need for expeditious adoption of the provisions contained in this document because regulated investment companies, real estate investment trusts and their shareholders must be provided with immediate guidance in applying the transitional rules provided by sections 402 and 403 of the Revenue Act of 1978. For this reason, Jerome Kurtz, Commissioner of Internal Revenue, has determined that the provisions of pararagaphs 8 through 14 of the Treasury Department directive implementing Executive Order 12044 must be waived.

Drafting Information

The principal author of this regulation is Kent J. Schreiner of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Adoption of Amendments of the Regulations

Accordingly, 26 CFR Part 5 is amended by deleting § 5.852–1, § 5.852–2, § 5.857–1 and § 5.857–2 and inserting in lieu thereof the following new sections:

§ 5.852–1 Treatment of certain capital gains of regulated investment companies.

(a) *Taxation of certain capital gains of regulated investment companies.* Section 403 of the Revenue Act of 1978 reduces the alternative rate of tax imposed by section 1201(a) on the net capital gain of a corporation from 30 percent to 28 percent for taxable years ending after December 31, 1978. Section 1201(c), as amended by the Revenue Act of 1978, provides a transitional rule for determining the applicable rate of tax under section 1201(a) on net capital gain for a corporation with a taxable year beginning before January 1, 1979, and ending after December 31, 1978. A regulated investment company that is taxable under part I, subchapter M, chapter 1 of the Code (hereinafter regulated investment company) must pay a tax on its capital gains under section 852(b)(3)(A). The tax is determined at a rate provided in section 1201(a) on the excess of the company's net capital gain over its deduction for dividends paid (as defined in section 561) determined with reference to capital gain dividends only. For a regulated investment company with a taxable year beginning before January 1, 1979, and ending after December 31, 1978, in computing the deduction for dividends paid, any capital gain dividends (including any capital gain dividends declared after the close of the taxable year but considered as having been paid during the taxable year under section 855) shall be considered made first from the company's post-1978 capital gain, to the extent thereof, and then from its pre-1979 capital gain. For definitions of "pre-1979 capital gain" and "post-1978 capital gain", see paragraph (e) of this section.

(b) *Capital gain dividends*—(1) *Designation of capital gain dividends.* In general, under section 852(b)(3)(C) a capital gain dividend is any dividend, or part thereof, that is designated by a regulated investment company as a capital gain dividend in a written notice mailed to its shareholders not later than 45 days after the close of its taxable year. A regulated investment company with a taxable year beginning before November 1, 1978, and ending after October 31, 1978, or beginning before January 1, 1979, and ending after December 31, 1978, designating capital gain dividends with respect to such years, or a regulated investment company with any taxable year distributing capital gain dividends after October 31, 1978, under sections 855 or 860, also must include in its written notice to its shareholders a statement showing the shareholder's proportionate share of the dividend that is post-October 1978 capital gain (for use by the shareholder if the shareholder is not a corporation) and post-1978 capital gain (for use by the shareholder if the shareholder is a corporation). For the definition of "post-October 1978 capital gain", see paragraph (e) of this section.

(2) *Special procedural requirements.* In determining the portion of the capital gain dividend that is post-October 1978 capital gain in the hands of shareholders other than corporations, the regulated investment company shall consider that capital gain dividends for the taxable year are made first from its post-October 1978 capital gain, to the extent thereof, and then from its pre-November 1978 capital gain. For the definition of "pre-November 1978 capital gain", see paragraph (e) of this section. In determining the portion of the capital gain dividend that is post-1978 capital gain in the hands of shareholders that are corporations, the regulated investment company shall consider that capital gain dividends for the taxable year are made first from its post-1978 capital gain, to the extent thereof, and then from its pre-1979 capital gain. For purposes of this paragraph (b)(2), the company's post-October 1978 capital gain and post-1978 capital gain shall

each be allocated first to capital gain dividends (taking into account dividends under section 855 first), to the extent thereof, second to designated undistributed capital gains, to the extent thereof, and third to other capital gains retained by the company. The proportionate share of post-October 1978 capital gain designated for a shareholder other than a corporation is the amount that bears the same ratio to the amount paid to the shareholder as a capital gain dividend for the year as (i) the aggregate amount of the company's post-October 1978 capital gain paid to all shareholders (including shareholders that are corporations) bears to (ii) the aggregate amount of the capital gain dividend paid for the year. The proportionate share of post-1978 capital gain designated for a shareholder that is a corporation is the amount that bears the same ratio to the amount paid to it as a capital gain dividend for the year as (i) the aggregate amount of the company's post-1978 capital gain paid to all shareholders (including shareholders that are not corporations) bears to (ii) the aggregate amount of the capital gain dividend paid for the year. Every regulated investment company shall keep a record of the proportion of each capital gain dividend (to which this paragraph (b) applies) that is post-October 1978 capital gain and post-1978 capital gain.

(c) *Undistributed capital gains*—(1) *In general.* A regulated investment company that designates undistributed capital gains shall notify its shareholders of the designation according to the provisions of § 1.852–9(a)(1). In addition, a regulated investment company with a taxable year beginning before November 1, 1978, and ending after October 31, 1978, or beginning before January 1, 1979, and ending after December 31, 1978, that designates undistributed capital gains for such year shall also show on Form 2439 the shareholder's proportionate share of the designated undistributed capital gains that is considered post-October 1978 capital gain (for use by the shareholder if the shareholder is not a corporation) and post-1978 capital gain (for use by the shareholder if the shareholder is a corporation), the tax paid with respect to the company's designated undistributed capital gains deemed to have been paid by the shareholder, and the amount (determined pursuant to paragraph (c)(3) of this section) by which the shareholder's adjusted basis in its shares shall be increased.

(2) *Special procedural requirements.* In determining the portion of the designated undistributed capital gains that is post-October 1978 capital gain for shareholders other than corporations, the regulated investment company shall consider the designated amount as being first from its post-October 1978 capital gain, to the extent thereof, and then from its pre-November 1978 capital gain. In determining the portion of the designated undistributed capital gains that is post-1978 capital gain for shareholders that are corporations, the regulated investment company shall consider the designated amount as being first from its post-1978 capital gain, to the extent thereof, and then from its pre-1979 capital gain. For purposes of this paragraph (c)(2), the company's post-October 1978 capital gain and post-1978 capital gain shall each be allocated first to capital gain dividends, to the extent thereof, second to designated undistributed capital gains, to the extent thereof, and third to other capital gains retained by the company. For a shareholder other than a corporation, the proportionate share of undistributed capital gains for a taxable year that is from post-October 1978 capital gain is the amount that bears the same ratio to the amount included in the shareholder's income as designated undistributed capital gains for the year as (i) the aggregate amount of the company's post-October 1978 capital gain for the year designated as undistributed capital gains (including amounts designated for shareholders that are corporations) bears to (ii) the aggregate amount of the company's gains for the year that are designated as undistributed capital gains. For a shareholder that is a corporation, the proportionate share of undistributed capital gains for a taxable year that is from post-1978 capital gain is the amount that bears the same ratio to the amount included in its income as designated undistributed capital gains for the year as (i) the aggregate amount of the company's post-1978 capital gain for the year designated as undistributed capital gains (including amounts designated for shareholders other than corporations) bears to (ii) the aggregate amount of the company's gains for the year that are designated as undistributed capital gains. Every regulated investment company shall keep a record of the proportion of undistributed capital gains (to which this paragraph applies) that is from post-October 1978 capital gain and post-1978 capital gain.

(3) *Increase in adjusted basis.* Each shareholder's adjusted basis in its shares shall be increased by the amount includible in its gross income under section 852(b)(3)(D)(i), minus the tax that the shareholder is deemed to have paid under section 852(b)(3)(D)(ii). The tax that each shareholder is deemed to have paid is the amount that bears the same ratio to the amount of the tax imposed by section 852(b)(3)(A) on the aggregate amount of the undistributed capital gains designated for the year as the amount of such gains includible in the shareholder's gross income bears to the aggregate amount of undistributed capital gains designated for all shareholders.

(4) *Effect of certain undistributed capital gains on earnings and profits.* If a regulated investment company designates an amount as undistributed capital gains for a taxable year under section 852(b)(3)(D), its earnings and profits for the year are reduced by the total amount of the designated undistributed capital gains. The company's capital account shall be increased by the total amount designated minus the amount of tax imposed by section 852(b)(3)(A) with respect to the designated amount. For purposes of determining the tax imposed by section 852(b)(3)(A) for amounts designated under section 852(b)(3)(D), for taxable years beginning before January 1, 1979, and ending after December 31, 1978, after taking into account capital gain dividends according to the rules of paragraph (b) of this section, the designated amount shall be treated as being first from post-1978 capital gain, to the extent thereof, and then from pre-1979 capital gain.

(d) *Taxation of certain capital gains of shareholders of regulated investment companies*—(1) *In general.* Section 402 of the Revenue Act of 1978 increases the deduction for capital gains from 50 percent to 60 percent of the amount of net capital gain for taxable years ending after October 31, 1978. Section 1202(c), as amended by the Revenue Act of 1978, provides a transitional rule for determining the applicable deduction for capital gains for a taxpayer, other than a corporation, with a taxable year beginning before November 1, 1978, and ending after October 31, 1978. Section 403 of the Revenue Act of 1978 reduces the rates of tax imposed by section 1201(a) on the net capital gain of a corporation from 30 percent to 28 percent for taxable years ending after December 31, 1978. Section 1201(c), as amended by the Revenue Act of 1978, provides a transitional rule for determining the applicable rate of tax under section 1201(a) on the net capital gain of a corporation with a taxable year beginning before January 1, 1979, and ending after December 31, 1978.

(2) *Capital gain dividends.* Under section 852(b)(3)(B), capital gain dividends received by shareholders of a regulated investment company are treated as gain from the sale or exchange of a capital asset held for more than 1 year and are included in income in the taxable year of the shareholder in which the dividend is received.

(i) *Shareholders other than corporations.* In the case of a regulated investment company with a taxable year beginning before November 1, 1978, and ending after October 31, 1978, paying capital gain dividends with respect to such year, or in the case of a regulated investment company with any taxable year distributing capital gain dividends after October 31, 1978, under sections 855 or 860, the portion of the capital gain dividend of a shareholder other than a corporation that is post-October 1978 capital gain is only the portion of the total dividend designated by the regulated investment company pursuant to paragraph (b) of this section. Any capital gain dividend, or portion thereof, not designated post-October 1978 capital gain is to be considered pre-November 1978 capital gain. For dividends paid before November 1, 1978, for taxable years ending before November 1, 1978, see § 1.852–4.

(ii) *Shareholders that are corporations.* In the case of a regulated investment company with a taxable year beginning before January 1, 1979, and ending after December 31, 1978, paying capital gain dividends with respect to such year, or in the case of a regulated investment company with any taxable year distributing capital gain dividends after December 31, 1978, under sections 855 or 860, the portion of the capital gain dividend of a shareholder that is a corporation that is post-1978 capital gain is only the portion of the total dividend designated by the regulated investment company pursuant to paragraph (b) of this section. Any capital gain dividend, or portion thereof, not designated post-1978 capital gain is to be considered pre-1979 capital gain. For dividends paid before January 1, 1979, for taxable years ending before January 1, 1979, see § 1.852–4.

(3) *Undistributed capital gains.* (i) A shareholder of a regulated investment company at the close of the company's taxable year shall include in its gross income as gain from the sale or exchange of a capital asset held for more than 1 year any amount of undistributed capital gains designated by the company under section 852(b)(3)(D). The amount shall be included in the shareholder's gross income for the taxable year that includes the last day of the taxable year of the regulated investment company for which the undistributed capital gains were designated. However, for undistributed capital gains designated for any taxable year of a regulated investment company beginning before November 1, 1978, and ending after October 31, 1978, or beginning before January 1, 1979, and ending after December 31, 1978, the portion of each shareholder's designated undistributed capital gains that is post-October 1978 capital gain or post-1978 capital gain is only the portion designated by the regulated investment company pursuant to paragraph (c) of this section. Any designated undistributed capital gains, or portion thereof, not designated post-October 1978 capital gain is to be considered pre-November 1978 capital gain. Any designated undistributed capital gains, or portion thereof, not designated post-1978 capital gain is to be considered pre-1979 capital gain. For undistrubuted capital gains designated for taxable years ending before November 1, 1978, for shareholders other than corporations, and for undistributed capital gains designated for taxable years ending before January 1, 1979, for shareholders that are corporations, see § 1.852–9.

(ii) Any shareholder required to include an amount of undistributed capital gains in gross income under section 852(b)(3)(D)(i) and paragraph (d)(3)(i) of this section shall be deemed to have paid, for its taxable year for which the amount is includible, a tax equal to the tax designated under paragraph (c)(1) of this section as the shareholder's proportionate share of the capital gains tax paid with respect to such amount by the regulated investment company.

(iii) Any shareholder required to include an amount of undistributed capital gains in gross income under section 852(b)(3)(D)(i) and paragraph (d)(3)(i) of this section shall increase the adjusted basis of the shares of stock in respect of which such amount is includible by the amount designated under paragraph (c)(3) of this section by the regulated investment company.

(e) *Definitions*—(1) *Pre-November 1978 capital gain.* For purposes of this section, the term "pre-November 1978 capital gain" means net capital gain described in section 1202(c)(2), as amended by the Revenue Act of 1978.

(2) *Post-October 1978 capital gain.* For purposes of this section, the term "post-October 1978 capital gain" means net capital gain described in section 1202(c)(1), as amended by the Revenue Act of 1978.

(3) *Pre-1979 capital gain.* For purposes of this section, the term "pre-1979 capital gain" means net capital gain that is subject to tax at a rate of 30 percent as provided by section 1201(c), as amended by the Revenue Act of 1978.

(4) *Post-1978 capital gain.* For purposes of this section, the term "post-1978 capital gain" means net capital gain that is subject to tax at a rate of 28 percent as provided by section 1201(c), as amended by the Revenue Act of 1978.

(f) *Example.* The rules of this section are illustrated by the following example:

Example. (1) *Facts.* XYZ Company, a regulated investment company, makes its return using a fiscal year. Its taxable year begins on June 1 and ends on May 31. During its taxable year ending on May 31, 1979, XYZ Company realized the following capital gains and losses:

	August	December	February
Long-term capital gain	$1600	$2400	$5200
Long-term capital loss	200	400	600
Short-term capital gain	800	200	0
Short-term capital loss	0	600	200

Net capital gain for the year = $8000.

Under section 855, XYZ Company elects to treat $3400 as a capital gain dividend that will be distributed in the following taxable year. XYZ Company distributes $800 as a dividend during its taxable year ending on May 31, 1979, to its shareholders and designates the amount as capital gain. The company also designates $2600 as undistributed capital gains and retains the remaining $1200 of capital gains.

(2) *Application of definitions*—(i) *Post-October 1978 capital gain.* Under paragraph (e)(2) of this section, post-October 1978 capital gain is defined as the net capital gain described in section 1201(c)(1) or $6000 (the lesser of $8000 net capital gain for the taxable year or $6000 net capital gain taking into account only sales and exchanges after October 31, 1978).

(ii) *Pre-November 1978 capital gain.* Under paragraph (e)(1) of this section, pre-November 1978 capital gain is defined as the net capital gain described in section 1201(c)(2) or $2000 (the excess of $8000 net capital gain for the taxable year over $6000 taken into account in computing post-October 1978 capital gain).

(iii) *Post-1978 capital gain.* Under paragraph (e)(4) of this section, post-1978 capital gain is defined as the net capital gain that is subject to tax at a rate of 28 percent as provided by section 1201 (c) or $4400 (the lesser of $8000 net capital gain for the taxable year or $4400 net capital gain taken into account only sales and exchanges after December 31, 1978).

(iv) *Pre-1979 capital gain.* Under paragraph (e)(3) of this section, pre-1979 capital gain is defined as net capital gain that is subject to tax at a rate of 30 percent as provided by section 1201(c) or $3600 (the excess of $8000 net capital gain for the taxable year over $4400 taken into account in computing post-1978 capital gain).

(3) *Allocation of capital gains*—(i) *Capital gain dividends.* Under paragraph (b)(2) of this section, of the $4,200 capital gain dividend ($3,400 treated under section 855 plus $800 distributed), $4,200 is post-October 1978 capital gain. Similarly, under paragraph (b)(2) of this section, $4,200 is post-1978 capital gain.

(ii) *Undistributed capital gains.* Under paragraph (c)(2) of this section, of the $2,600 designated as undistributed capital gains, $1,800 (the excess of $6,000 total post-October 1978 capital gain over $4,200 taken into account in computing capital gain dividends) is post-October 1978 capital gain and the remaining $800 is pre-November 1978 capital gain. Similarly, under paragraph (c)(2) of this section, of the $2,600 designated as undistributed capital gain, $200 (the excess of $4,400 total post-1978 capital gain over $4,200 taken into account in computing capital gain dividends) is post-1978 capital gain and the remaining $2,400 is pre-1979 capital gain.

(iii) *Other capital gains.* The $1,200 of capital gains retained by the company is pre-1979 capital gain.

(4) *Determination of proportionate share*—(i) *Capital gain dividends.* Under paragraph (b)(2) of this section, each shareholder's proportionate share of post-October 1978 capital gain is 100 percent of the total capital gain dividend received ($6,000 total post-October 1978 capital gain dividend divided by $6,000 total capital gain dividends for the taxable year). Similarly, each shareholder's proportionate share of post-1978 capital gain is 100 percent of the total capital gain dividends.

(ii) *Undistributed capital gains.* Under paragraph (c)(2) of this section, each shareholder's proportionate share of post-October 1978 designated undistributed capital gains is 69.23 percent of the undistributed capital gains designated for him ($1,800 total post-October 1978 designated undistributed capital gains divided by $2,600 total designated undistributed capital gains). Similarly, under paragraph (c)(2), each shareholder's proportionate share of post-1978 designated undistributed capital gains is 7.69 percent of the undistributed capital gains designated for him ($200 total post-1978 designated undistributed capital gains dividend by $2,600 total designated undistributed capital gains).

(g) *Other applicable regulations.* In general, the Income Tax Regulations (26 CFR Part 1) under part I, subchapter M, chapter 1 of the Code are to apply to the treatment of capital gains by regulated investment companies. However, where this section is inconsistent with such Income Tax Regulations, this section is to apply.

§ 5.857-1 Treatment of certain capital gains of real estate investment trusts.

(a) *Taxation of certain capital gains of real estate investment trusts.* Section 403 of the Revenue Act of 1978 reduces the alternative rate of tax imposed by section 1201(a) on the net capital gain of a corporation from 30 percent to 28 percent for taxable years ending after December 31, 1978. Section 1201(c), as amended by the Revenue Act of 1978, provides a transitional rule for determining the applicable rate of tax under section 1201(a) on the net capital gain of a corporation with a taxable year beginning before January 1, 1979, and ending after December 31, 1978. A real estate investment trust that is taxable under part II, subchapter M, chapter 1 of the Code (hereinafter real estate investment trust) is provided with an alternative tax on its capital gains under section 857(b)(3)(A). The alternative tax is determined, in part, at a rate provided in section 1201(a) on the excess of the trust's net capital gain over its deduction for dividends paid (as defined in section 561) determined with reference to capital gain dividends only. For a real estate investment trust with a taxable year beginning before January 1, 1979, and ending after December 31, 1978, in computing the deduction for dividends paid, any capital gain dividends (including any dividends declared after the close of such taxable year but considered as having been paid during such taxable year under section 858) shall be considered made first from the trust's post-1978 capital gain, to the extent thereof, and then from its pre-1979 capital gain. For definitions of "pre-1979 capital gain" and "post-1978 capital gain", see paragraph (d) of this section.

(b) *Capital gain dividends*—(1) *Designation of capital gain dividends.* In general, under section 857(b)(3)(C) a capital gain dividend is any dividend, or part thereof, that is designated by a real estate investment trust as a capital gain dividend in a written notice mailed to its shareholders (or holders of beneficial interests) not later than 30 days after the close of its taxable year. A real estate investment trust with a taxable year beginning before November 1, 1978, and ending after October 31, 1978, or beginning before January 1, 1979, and ending after December 31, 1978, designating capital gain dividends with respect to such years, or a real estate investment trust with any taxable year distributing capital gain dividends under sections 858, 859 (as in effect prior to enactment of the Revenue Act of 1978) or 860 after October 31, 1978, also must include in its written notice to its shareholders a statement showing the shareholder's proportionate share of the dividend that is post-October 1978 capital gain (for use by the shareholder if the shareholder is not a corporation) and post-1978 capital gain (for use by the shareholder if the shareholder is a corporation). For the definition of "post-October 1978 capital gain", see paragraph (d) of this section.

(2) *Special procedural requirements.* In determining the portion of the capital gain dividend that is post-October 1978 capital gain in the hands of shareholders other than corporations, the real estate investment trust shall consider that capital gain dividends for the taxable year are made first from its post-October 1978 capital gain, to the extent thereof, and then from its pre-November 1978 capital gain. For the definition of "pre-November 1978 capital gain", see paragraph (d) of this section. In determining the portion of the capital gain dividend that is post-1978 capital gain in the hands of shareholders that are corporations, the real estate investment trust shall consider that capital gain dividends for the taxable year are made first from its post-1978 capital gain, to the extent thereof, and then from its pre-1979 capital gain. For purposes of this paragraph (b)(2), the trust's post-October 1978 capital gain and post-1978 capital gain shall be allocated first to capital gain dividends (taking into account dividends under section 858 first), to the extent thereof, and second to other capital gains retained by the trust. The proportionate share of post-October 1978 capital gain designated for a shareholder other than a corporation is the amount that bears the same ratio to the amount paid to him as a capital gain dividend for the year as (i) the aggregate amount of the trust's post-October 1978 capital gain paid to all shareholders (including shareholders that are corporations) bears to (ii) the aggregate amount of the capital gain dividend paid for the year. The proportionate share of post-1978 capital gain designated for a shareholder that is a corporation is the amount that bears the same ratio to the amount paid to it as a capital gain dividend for the year as (i) the aggregate amount of the trust's post-1978 capital gain paid to all shareholders (including shareholders that are not corporations) bears to (ii) the aggregate amount of the capital gain dividend paid for the year. Every real estate investment trust shall keep a record of the proportion of each capital gain dividend (to which this paragraph applies) that is post-October 1978 capital gain and post-1978 capital gain.

(c) *Taxation of certain capital gains of shareholders of real estate investment trust*—(1) *In general.* Section 402 of the Revenue Act of 1978 increases the deduction for capital gains from 50 percent to 60 percent of the amount of net capital gain for taxable years ending after October 31, 1978. Section 1202(c), as amended by the Revenue Act of 1978, provides a transitional rule for determining the applicable deduction for

capital gains for a taxpayer, other than a corporation, with a taxable year beginning before November 1, 1978, and ending after October 31, 1978. Section 403 of the Revenue Act of 1978 reduces the alternative rate of tax imposed by section 1201(a) on the net capital gain of a corporation from 30 percent to 28 percent for taxable years ending after December 31, 1978. Section 1201(c), as amended by the Revenue Act of 1978, provides a transitional rule for determining the applicable rate of tax under section 1201(a) on the net capital gain of a corporation with a taxable year beginning before January 1, 1979, and ending after December 31, 1978.

(2) *Capital gain dividends.* Under section 857(b)(3)(B), capital gain dividends received by shareholders of a real estate investment trust are treated as gain from the sale or exchange of a capital asset held for more than 1 year and are included in income in the taxable year of the shareholder in which the dividend is received.

(i) *Shareholders other than corporations.* In the case of a real estate investment trust with a taxable year beginning before November 1, 1978, and ending after October 31, 1978, paying capital gain dividends with respect to such year, or in the case of a real estate investment trust with any taxable year distributing capital gain dividends after October 31, 1978, under sections 858, 859 (as in effect prior to enactment of the Revenue Act of 1978) or 860, the portion of the capital gain dividend of a shareholder other than a corporation that is post-October 1978 capital gain is only the portion of the total dividend designated by the real estate investment trust pursuant to paragraph (b) of this section. Any capital gain dividend, or portion thereof, not designated post-October 1978 capital gain is to be considered pre-November 1978 capital gain. For dividends paid before November 1, 1978, for taxable years ending before November 1, 1978, see § 1.857–4.

(ii) *Shareholders that are corporations.* In the case of a real estate investment trust with a taxable year beginning before January 1, 1979, and ending after December 31, 1978, paying capital gain dividends with respect to such year, or in the case of a real estate investment trust with any taxable year distributing capital gain dividends after December 31, 1978, under sections 858, 859 (as in effect prior to enactment of the Revenue Act of 1978) or 860, the portion of the capital gain dividend of a shareholder that is a corporation that is post-1978 capital gain is only the portion of the total dividend designated by the real estate investment trust pursuant to paragraph (b) of this section. Any capital gain dividend, or portion thereof, not designated post-1978 capital gain is to be considered pre-1979 capital gain. For dividends paid before January 1, 1979, for taxable years ending before January 1, 1979, see § 1.857–4.

(d) *Definitions*—(1) *Pre-November 1978 capital gain.* For purposes of this section, the term "pre-November 1978 capital gain" means net capital described in section 1202(c)(2), as amended by the Revenue Act of 1978.

(2) *Post-October 1978 capital gain.* For purposes of this section, the term "post-October 1978 capital gain" means net capital gain described in section 1202(c)(1), as amended by the Revenue Act of 1978.

(3) *Pre-1979 capital gain.* For purposes of this section, the term "pre-1979 capital gain" means net capital gain that is subject to tax at a rate of 30 percent as provided by section 1201(c), as amended by the Revenue Act of 1978.

(4) *Post-1978 capital gain.* For purposes of this section, the term "post-1978 capital gain" means net capital gain that is subject to tax at a rate of 28 percent as provided by section 1201(c), as amended by the Revenue Act of 1978.

(e) *Example.* The rules of this section are illustrated by the following example:

Example. (1) *Facts.* XYZ, a real estate investment trust, makes its return using a fiscal year. Its taxable year begins on June 1 and ends on May 31. During its taxable year ending on May 31, 1979, XYZ realized the following capital gains and losses:

	August	December	February
Long-term capital gain	$1000	$4400	$2000
Long-term capital loss	800	200	400
Short-term capital gain	0	100	300
Short-term capital loss	500	100	200

Net capital gain for the year = $5600

Under section 858, XYZ elects to treat $3000 as a capital gain dividend that will be distributed in the following taxable year. XYZ distributes $500 as a dividend during its taxable year ending on May 31, 1979, and designates the amount as capital gain. The trust retains the remaining $2100 of capital gains.

(2) *Application of definitions*—(i) *Post-October 1978 capital gain.* Under paragraph (d)(2) of this section, post-October 1978 capital gain is defined as the net capital gain described in section 1202(c)(1) of $5600 (the lesser of $5600 net capital gain for the taxable year or $5800 net capital gain taking into account only sales and exchanges after October 31, 1978).

(ii) *Pre-November 1978 capital gain.* Under paragraph (d)(1) of this section, pre-November 1978 capital gain is defined as the net capital gain described in section 1202(c)(2) or $0 (the excess of $5600 net capital gain for the taxable year over $5600 taken into account in computing post-October 1978 capital gain).

(iii) *Post-1978 capital gain.* Under paragraph (d)(4) of this section, post-1978 capital gain is defined as the net capital gain that is subject to tax at a rate of 28 percent as provided by section 1201(c) or $1600 (the lesser of $5600 net capital gain for the taxable year or $1600 net capital gain taking into account only sales and exchanges after December 31, 1978).

(iv) *Pre-1979 capital gain.* Under paragraph (d)(3) of this section, pre-1979 capital gain is defined as net capital gain that is subject to tax at a rate of 30 percent as provided by section 1201(c) or $4000 (the excess of $5600 new capital gain for the taxable year over $1600 taken into account in computing post-1978 capital gain).

(3) *Allocation of capital gains*—(i) *Capital gain dividends.* Under paragraph (b)(2) of this section, of the $3500 capital gain dividend ($3000 treated under section 858 plus $500 distributed) $3500 is post-October 1978 capital gain and $0 is pre-November 1978 capital gain. Similarly, under paragraph (b)(2) of this section, of the $3500 capital gain dividend, $1600 is post-1978 capital gain and the remaining $1900 is pre-1979 capital gain.

(ii) *Other capital gains.* The $2100 retained by the trust is pre-1979 capital gain.

(4) *Determination of proportionate share.* Under paragraph (b)(2) of this section, each shareholder's proportionate share of post-October 1978 capital gain is 100 percent of the total capital gain dividend ($3500 total post-October 1978 capital gain divided by $3500 total capital gain dividends for the taxable year). Similarly, each shareholder's proportionate share of post-1979 capital gain is 45.71 percent of the total capital gain dividends ($1600 total post-1978 capital gain divided by $3500 total capital gain dividends for the taxable year).

(f) *Other applicable regulations.* In general, the Income Tax Regulations (26 CFR Part 1) under part II, subchapter M, chapter 1 of the Code are to apply to the treatment of capital gains by real estate investment trusts. However, where this section is inconsistent with such Income Tax Regulations, this section is to apply.

There is need for the immediate guidance provided by the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in section 7805 of the

Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Jerome Kurtz,

Commissioner of Internal Revenue.

Approved: January 2, 1980.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 80-2298 Filed 1-23-80; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 170, 231 and 240

[T.D. ATF-63; Ref: Notice No. 319]

Elimination and Simplification of Certain Public Use Forms Prepared by the Wine Industry

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF).

ACTION: Final rule (Treasury decision).

SUMMARY: This rule eliminates seven winery forms, simplifies the monthly bonded winery report, changes the currently required semi-annual wine inventories and reporting of losses to an annual requirement and simplifies affected regulation sections. This rule will ease a reporting burden and lighten the paperwork required for wine industry members.

EFFECTIVE DATE: February 1, 1980.

FOR FURTHER INFORMATION CONTACT: James A. Hunt, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, 202-566-7626.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Alcohol, Tobacco and Firearms found that a number of wine industry forms required by regulations (1) duplicate recordkeeping and reporting requirements, (2) are prepared in a format not compatible with a proprietor's operations or commercial records systems, and (3) are no longer necessary since the required information is available to ATF through other source records. Also, the wine report, ATF F 5120.17, submitted monthly by industry members was found difficult to prepare and requested information no longer necessary in some cases.

On April 16, 1979, a notice of proposed rulemaking was published in the **Federal Register** (44 FR 22473), which proposed to amend 27 CFR Parts 231 and 240, by eliminating seven winery forms and simplifying the monthly bonded winery report. The information required by the eliminated forms was to be replaced by commercial records of the proprietor's operations. The notice also proposed a reduction in the required wine inventories from semi-annual to annual.

Interested persons were given until June 15, 1979, to submit relevant data, views, or arguments regarding the proposals.

Discussion of Comments

Several written comments were received in response to the proposed regulations. In addition to the briefs submitted by individual industry members, the Wine Institute, a trade association whose members produce approximately 75 percent of all wine produced in California, submitted a comment letter. The comments received are discussed below according to the subject areas they addressed.

Elimination of Required Forms

Most of the commenters favored the elimination of all seven of the forms as proposed. Two commenters favored keeping the Form 2056, Record of Still Wine, and one of these commenters favored retaining the Form 2621, Record of Bottled Wine, combined into the Form 2056. One commenter favored retaining the Form 2059, Record of Distilling Materials or Vinegar Stock.

Many constructive suggestions were made on the proposed regulations which specify the record information to be maintained. If the suggestion improved the understanding of the regulation or eliminated duplicate recordkeeping, the suggestion was incorporated into this final rule. The following forms are therefore eliminated by this final rule: Form 2056, Record of Still Wine; Form 2621, Record of Bottled Wine; Form 2057, Record of Effervescent Wine; Form 2058, Special Natural Wine Production Record; Form 2059, Record of Distilling Materials or Vinegar Stock; Form 2060, Record of Cases Filled; and Form 702-C, Inventory of Wine.

Revised Report

The revision proposed for simplifying the monthly report of winery operations, ATF F 5120.17, received many favorable comments. However, many commenters objected to changing the Form 702 to the ATF Subject Classification No. 5120.17. Therefore, we have added a "(702)" to the new form number because it is well known to ATF regulatory personnel and those in the wine industry involved with Government regulations.

Change of Semi-Annual to Annual Inventory

Only one commenter opposed changing the required semi-annual wine inventory to an annual requirement. The objection was based on a possible difficulty in resolving problems discovered during an audit. While we agree inventory differences might be difficult to resolve at wineries taking only an annual inventory, we believe most proprietors' inventory controls, including full or partial periodic counts, are adequate.

Other Comments

A number of suggestions were offered by commenters which were not the subject of the notice of proposed rulemaking. These suggestions have been added to the comments received on an advance notice of proposed rulemaking for revising all wine regulations. Some of the suggestions requested the use of metric system on tax returns and reports, allowing monthly or quarterly tax returns for wineries paying under a given tax amount, and the dropping of fractional parts of a gallon for reports.

Authority and Issuance

The regulations are issued under 68A Stat 917; 26 U.S.C. 7805. Accordingly, 27 CFR is amended as follows:

PART 170—MISCELLANEOUS REGULATIONS RELATING TO LIQUOR

§ 170.687 [Amended]

1. Section 170.687 is amended to change Form 702 to Form 5120.17(702) whenever found in the section.

2. Section 170.690(b) is revised to reflect the elimination of Form 2056 and the change of Form 702 to Form 5120.17(702). As amended, § 170.690(b) reads as follows:

§ 170.690 Bonded wine cellar records.

* * * * *

(b) *Summaries and reports.* The quantity of wine, or wine products made from wine, used to produce nonbeverage wine shall be recorded daily in records prescribed by 27 CFR 240.908. At the close of each month, the quantities shall be totaled and the total recorded as a credit on Form 5120.17(702). The quantities of nonbeverage wine produced and withdrawn each month shall be summarized each month by tax class and reported on Form 5120.17(702) for that month.

3. Section 170.691 is revised to reflect the elimination of Form 702-C and the change of Form 702 to Form 5120.17(702). Also, the required inventory is changed from semi-annual to annual and no inventory report is submitted to the regional regulatory administrator. As amended, § 170.691 reads as follows:

§ 170.691 Inventories.

Each proprietor producing nonbeverage wines shall take a physical inventory of all nonbeverage wines in bond at the same time as the inventory required under 27 CFR 240.903. The nonbeverage wine inventory record shall show the total quantity of wine in each tax class by formula number. The inventory record shall be retained as required under 27 CFR 240.903.

PART 231—TAXPAID WINE BOTTLING HOUSES

1. Section 231.111 is revised to reflect the elimination of Form 2060. As amended, § 231.111 reads as follows:

§ 231.111 Record of cases filled.

Each proprietor of a taxpaid wine bottling house shall maintain a daily record, by tax class, of wine cases filled. The record shall contain the following information:

(a) The bottling tank number;

(b) The kind of wine bottled;

(c) The date the cases were filled;

(d) the size of the bottles and the number of cases filled;

(e) The serial numbers of the cases filled; and

(f) The total quantity bottled in liters or wine gallons.

(72 Stat. 1381; 26 U.S.C. 5367)

2. Section 231.113 is revised to change the required semi-annual inventory to an annual inventory. As amended, § 231.113 reads as follows:

§ 231.113 Inventories.

Each proprietor of a taxpaid wine bottling house shall take an inventory of all wine on their premises on June 30 of each year or where a different period has been established, the inventory shall be taken at the end of that period. (proprietors who want to establish a different annual inventory period from the period beginning on July 1 and ending on June 30 shall submit a notice, in duplicate, to the regional regulatory administrator. The notice shall set the date the inventory year will begin and end.) The proprietor's inventory record shall include:

(a) The serial numbers, if any, of all containers (except filled cases);

(b) Description of wine;

(1) State the generic name (i.e., port, claret) or designate as white or red table or dessert wine; or

(2) Wine intended to be marketed with a vintage, varietal and/or geographical claim shall be appropriately identified (i.e., 1977 Napa Valley Pinot Noir).

(c) Inventory summary;

(1) Bulk and bottled wines shall be totaled in liters or wine gallons separately by tax class; and

(2) All wines shall be summarized by kind.

(d) Inventory record;

(1) All inventory pages shall be numbered consecutively;

(2) The last inventory page shall be dated and signed after the statement, "Under penalties of perjury, I declare that I have examined this inventory record and to the best of my knowledge and belief, it is a true, correct and complete record of all wines required to be inventoried;" and

(3) The proprietor shall retain the record of inventory and the working papers available for inspection by ATF officers at any reasonable hour.

(72 Stat. 1381; 26 U.S.C. 5369)

PART 240—WINE

1. Table of Contents Subpart UU—Records and Reports is amended to reflect the change of a form number and the elimination of six forms. As amended, the Table of Contents Subpart UU reads as follows:

Subpart UU—Records and Reports

Sec.

240.900 Form 5120.17(702).
240.901 Form 2050.
240.902 Form 2052.
240.903 Inventories.
* * * * *
240.905 Prescribed forms.
* * * * *
240.908 Record of bulk still wines.
240.909 Record of effervescent wine.
240.910 Record of special natural wine and other wine production.
240.911 Record of distilling material or vinegar stock.
240.912 Record of bottled wine.
240.913 (Deleted).
240.914 Sugar record.
* * * * *

§ 240.320 [Amended]

2. Section 240.320 is revised to change Form 702 to Form 5120.17(702) whenever found in the section.

§ 240.321 [Amended]

3. Section 240.321 is revised to change Form 702 to Form 5120.17(702) whenever found in the section.

§ 240.362 [Amended]

4. Section 240.362 is revised to change Form 702 to Form 5120.17(702) whenever found in the section.

§ 240.367 [Amended]

5. Section 240.367 is revised to change Form 702 to Form 5120.17(702) whenever found in the section.

§ 240.383 [Amended]

6. Section 240.383 is revised to change Form 702 to Form 5120.17(702) whenever found in the section.

§ 240.402 [Amended]

7. Section 240.402 is revised to change Form 702 to Form 5120.17(702) whenever found in the section.

§ 240.408 [Amended]

8. Section 240.408 is revised to change Form 702 to Form 5120.17(702) whenever found in the section.

§ 240.443 [Amended]

9. Section 240.443 is revised to change Form 702 to Form 5120.17(702) whenever found in the section.

§ 240.486 [Amended]

10. Section 240.486 is revised to change Form 702 to Form 5120.17(702) whenever found in the section.

§ 240.487 [Amended]

11. Section 240.487 is revised to change Form 702 to Form 5120.17(702) whenever found in the section.

§ 240.491 [Amended]

12. Section 240.491 is revised to change Form 702 to Form 5120.17(702) whenever found in the section.

§ 240.620 [Amended]

13. Section 240.620 is revised to change Form 702 to Form 5120.17(702) whenever found in the section.

§ 240.633 [Amended]

14. Section 240.633 is revised to change Form 702 to Form 5120.17(702) whenever found in the section.

§ 240.662 [Amended]

15. Section 240.662 is revised to reflect the elimination of Form 2056 and the change of Form 702 to Form 5120.17(702). As revised, § 240.662 reads as follows:

§ 240.662 Records.

Soured wine removed as vinegar shall be recorded and reported on the proprietor's record of bulk still wine and on Form 5120.17(702).

(72 Stat. 1381; (26 U.S.C. 5367))

§ 240.672 [Amended]

16. Section 240.672 is revised to change Form 702 to Form 5120.17(702) whenever found in the section.

§ 240.722 [Amended]

17. Section 240.722 is revised to change Form 702 to Form 5120.17(702) whenever found in the section.

§ 240.726 [Amended]

18. Section 240.726 is revised to change Form 702 to Form 5120.17(702) whenever found in the section.

§ 240.730 [Amended]

19. Section 240.730 is revised to change Form 702 to Form 5120.17(702) whenever found in the section.

§ 240.732 [Amended]

20. Section 240.732 is revised to change Form 702 to Form 5120.17(702) whenever found in the section.

§ 240.753 [Amended]

21. Section 240.753 is revised to change Form 702 to Form 5120.17(702) whenever found in the section.

§ 240.763 [Amended]

22. Section 240.763 is revised to change Form 702 to Form 5120.17(702) whenever found in the section.

§ 240.773 [Amended]

23. Section 240.773 is revised to change Form 702 to Form 5120.17(702) whenever found in the section.

24. Section 240.783 is revised to reflect the change Form 702 to Form 5120.17(702) and a change in inventory requirements. As revised, § 240.783 reads as follows:

§ 240.783 Losses during a year.

Any losses on bonded wine cellar premises during the year shall be entered on monthly report Form 5120.17(702) when determined. The proprietor shall take an actual inventory of all untaxpaid wine on-hand in the bonded wine cellar as of the close of business June 30 of each year or where a period different from July 1 to June 30 has been established, the inventory shall be taken at the end of that period. The inventory shall be recorded as required by § 240.903, and losses disclosed by an inventory shall be reported on Form 5120.17(702) for the appropriate month. No claim for allowance of loss is required for losses in production or storage provided (a) there are no circumstances indicating that all or a part of the wine reported lost was unlawfully removed, and (b) the loss did not exceed 3 percent of the aggregate quantity of wine on-hand at the beginning of the year and received in bond during the year, 6 percent of the still wine produced by fermentation, 6 percent of the sparkling wine produced by fermentation in bottles, 3 percent of the special natural wine produced under § 240.444 or wine produced under § 240.488, 3 percent of the artificially carbonated wine produced, and 3 percent of the bulk process sparkling wine produced, at the bonded wine cellar during the annual period.

(72 Stat. 1381; 26 U.S.C. 5367)

§ 240.785 [Amended]

25. Section 240.785 is revised to change Form 702 to Form 5120.17(702) whenever found in the section.

§ 240.786 [Amended]

26. Section 240.786 is revised to change Form 702 to Form 5120.17(702) whenever found in the section.

§ 240.787 [Amended]

27. Section 240.787 is revised to change Form 702 to Form 5120.17(702) whenever found in the section.

§ 240.802 [Amended]

28. Section 240.802 is revised to change Form 702 to Form 5120.17(702) whenever found in the section.

§ 240.808 [Amended]

29. Section 240.808 is revised to change Form 702 to Form 5120.17(702) whenever found in the section.

§ 240.836 [Amended]

30. Section 240.836 is revised to change Form 702 to Form 5120.17(702) whenever found in the section.

§ 240.837 [Amended]

31. Section 240.837 is revised to change Form 702 to Form 5120.17(702) whenever found in the section.

32. Section 240.900 is revised to reflect the change of Form 702 to Form 5120.17(702). As revised, § 240.900 reads as follows:

§ 240.900 Form 5120.17.

The proprietor of each bonded wine cellar shall submit Form 5120.17(702), Monthly Report of Wine Cellar Operations, to the regional regulatory administrator as per instructions on the form. Bonded wine cellar operations shall be summarized and reported on Form 5120.17(702) as indicated by the headings of lines and columns, and in accordance with the instructions printed on the form. The information reported on Form 5120.17(702) shall be obtained from the wine cellar records maintained in accordance with the requirements of this part. Where fractional parts of a gallon are involved, they shall be expressed in decimals to the nearest one-tenth gallon, five hundredths gallon being converted to the next full one-tenth gallon.

(72 Stat. 1381; 26 U.S.C. 5367)

33. Section 240.903 is revised to reflect the elimination of Form 702–C and the change of Form 702 to Form 5120.17(702). Also, the required inventory is changed from semi-annual to annual and no inventory report is submitted to the regional regulatory administrator. As revised, § 240.903 reads as follows:

§ 240.903 Inventory.

Each proprietor of a bonded wine cellar shall prepare a record of the inventory taken of all wine in storage at the close of business on June 30 of each year or where a different period has been established, the inventory shall be taken at the end of that period. (Proprietors who want to establish a different annual inventory period from the period beginning on July 1 and ending on June 30 shall submit a notice, in duplicate, to the regional regulatory administrator.) The inventory record shall be retained on file with the proprietor's Form 5120.17(702) for the month the inventory was taken. If at other times complete inventories of wine are taken and losses disclosed are reported on the monthly report, Form 5120.17(702) an inventory record shall be prepared and remain on file with the proprietor's Form 5120.17(702) for that month. The proprietor's inventory record shall include:

(a) Serial number of containers;

(1) Where barrels or puncheons are involved, list as "barrels" or "puncheons;" and

(2) Total volume of one kind of wine in bottles or cases may be entered as one item appropriately identified.

(b) Description of wine;

(1) State the generic name (i.e., port, claret) or designate as a white or red table or dessert wine; or

(2) Wine intended to be marketed with a vintage, varietal and/or geographical claim shall be appropriately identified (i.e., 1977 Napa Valley Pinot Noir); or

(3) If the wine is other than grape wine, state the type (i.e., orange, honey).

(c) Inventory summary—Bulk and bottled wines shall be totaled separately in wine gallons or in liters, by tax class, and reported on Form 5120.17(702);

(d) Inventory record;

(1) All inventory pages shall be numbered consecutively; and

(2) The last inventory page shall be dated and signed after the statement, "Under penalties of perjury, I declare that I have examined this inventory record and to the best of my knowledge and belief, it is a true, correct and complete record of all wines required to be inventoried."

(72 Stat. 1381; 26 U.S.C. 5367, 5369)

34. Section 240.905 is revised to reflect the elimination of all prescribed cellar record forms (Forms 2056, 2057, 2058,

2059 and 2621). As revised, § 240.905 reads as follows:

§ 240.905 Prescribed forms.

All reports required by this part shall be submitted on forms prescribed by the Director. Entries shall be made as indicated by the headings of the columns and lines and as required by the instructions on the form. Form reports filed with the regional regulatory administrator are furnished free of cost.

(72 Stat. 1381; 26 U.S.C. 5367)

35. Section 240.906 is revised to reflect the change of Form 702 to Form 5120.17(702) and to reflect the elimination of Forms 702–C, 2056, 2057, 2058, 2059 and 2621. As revised, § 240.906 reads as follows:

§ 240.906 Records and reports under the metric system.

Each proprietor of a bonded wine cellar shall maintain records in wine gallons or in liters. Required reports, tax returns, and transaction records submitted to the regional regulatory administrator shall have quantities reported in wine gallons.

(72 Stat. 1381; 26 U.S.C. 5367)

36. Section 240.908 is revised to reflect the elimination of Form 2056 and the change of Form 702 to Form 5120.17(702). As revised, § 240.908 reads as follows:

§ 240.908 Record of bulk still wine.

Each proprietor of a bonded wine cellar who produces or receives still wine, other than distilling material or vinegar stock made with excess water, shall maintain a daily record of transactions for bulk still wine. A separate record (verifiable by source records) shall be maintained for each tax class of still wine. The record shall contain the following:

(a) The quantity produced, received, shipped taxpaid, removed (i.e., in bond, export, family use, samples), and used in effervescent wine production;

(b) The specific type of production method used (i.e., natural fermentation, sweetening, addition of wine spirits, amelioration, blending);

(c) The quantity of wine produced by fermentation determined by actual measurement;

(d) The quantity used and produced by sweetening, amelioration or addition of wine spirits established by measurements taken before and after production. In addition, the record shall contain the kind and quantity of any materials added to these wines;

(e) The quantity of wine used and produced by blending (record only if wine of different tax classes are blended together);

(f) The quantity of standard wine or wine lees removed to fermenters for refermentation or removed directly to the production facilities of a distilled spirits plant or vinegar plant; and

(g) An explanation of any unusual transaction.

At the end of each month the totals of the daily records shall be reported on Form 5120.17(702).

(72 Stat. 1381; 26 U.S.C. 5367)

37. Section 240.909 is revised to reflect the elimination of Form 2057 and the change of Form 702 to Form 5120.17(702). As revised, § 240.909 reads as follows:

§ 240.909 Record of effervescent wine.

Each proprietor of a bonded wine cellar producing or receiving effervescent wine shall maintain a daily record showing the details of production, receipt, storage, removal and loss. A separate record (verifiable by source records) shall be maintained for each specific process used (bulk or bottle fermented or artificially carbonated) and by the specific kind of wine (i.e., grape, pear, cherry). The record shall contain the following:

(a) Quantity of still wine put into bottles or pressure tanks prior to secondary fermentation;

(b) Quantity of first dosage used;

(c) In process bottling losses (i.e., refilling, spillage, breakage);

(d) Transfer and receipts of effervescent wines in process;

(e) Quantity of effervescent wines in process returned to still wine;

(f) Quantity of finishing dosage used;

(g) Quantity of wine contained in bottles of finished effervescent wine (amount produced);

(h) Quantity of each item used in the production of dosages (i.e., wine, syrup, wine spirits); and

(i) An explanation of any unusual transaction. At the end of each month all daily entries shall be totaled and entered on Form 5120.17(702).

(72 Stat. 1381; 26 U.S.C. 5367)

38. Section 240.910 is revised to reflect the elimination of Form 2058 and the change of Form 702 to Form 5120.17(702). As revised, § 240.910 reads as follows:

§ 240.910 Record of special natural wine and other wine production.

Each proprietor of a bonded wine cellar producing special natural wine or wine under § 240.488 shall maintain a daily record showing the details of production. The record shall contain the following:

(a) A number for each lot of wine produced;

(b) The approved formula number for each lot of wine;

(c) The quantity of wine used in the production of special natural wine, wine under § 240.488 and essences;

(d) The quantity of essences produced or purchased by the proprietor (whether made with wine spirits or other alcohol) and the use, transfer or other disposition of those essences;

(e) The date each lot of wine is finished;

(f) The gain or loss resulting from the production of each lot of wine as determined by comparing the quantity finished with the quantity used (report the total monthly loss or gain in Part I Section A of Form 5120.17(702));

(g) An explanation of any unusual loss or gain (report in Part X of Form 5120.17(702));

(h) A record of the production of essences showing date of production, formula number, quantities of wine spirits and herbs used and the amounts produced; and

(i) A separate record shall be maintained of the receipt and use or other disposition of all herbs, aromatics, or other flavoring materials to be used in the production of special natural wine or wine under § 240.488.

Proprietors producing special natural wine or wine under § 240.488 shall maintain a separate record of herbs and similar products, and in addition, keep the same records as are required in the production of natural wine.

(72 Stat. 1381; 26 U.S.C. 5367)

39. Section 240.911 is revised to reflect the elimination of Form 2059 and the change of Form 702 to Form 5120.17(702). As revised § 240.911 reads as follows:

§ 240.911 Record of distilling material or vinegar stock.

Each proprietor of a bonded wine cellar producing or receiving wine with excess water expressly for use as distilling material or vinegar stock shall maintain a daily record showing the amount and kind produced, received (and from whom), and removed (and to whom). The proprietor shall keep a separate record by each type of material used from which the distilling material or vinegar stock was fermented (i.e., grape, berry). All distilling material or vinegar stock produced, including wine lees refermented for use as distilling material, shall be recorded upon removal from fermenting tanks. At the end of each month the proprietor shall record the total of daily transactions in Part VI of Form 5120.17(702). This section shall not apply to standard wine or unwatered wine lees recorded on the proprietor's record of bulk still wine and removed for use as distilling material or vinegar stock.

(72 Stat. 1381; 26 U.S.C. 5367)

40. Section 240.912 is revised to reflect the elimination of Form 2621 and the change of Form 702 to Form 5120.17(702). As revised, § 240.912 reads as follows:

§ 240.912 Record of bottled wine.

Each proprietor of a bonded wine cellar who bottles wine or receives bottled wine in bond shall keep a daily record of bottled wine, by tax class, showing the quantity of wine bottled, the quantity of bottled wine received in bond, the quantity of taxpaid bottled wine returned to bond, and the quantity of bottled wine removed (i.e., taxpaid removals, transfers in bond, dumped to bulk or destroyed, breakage, used for tasting). At the end of each month the proprietor shall record the total of daily transactions in Part I Section B of Form 5120.17(702) and shall explain any unusual transactions in Part X of the form. The quantity bottled shall be based on the number and size of bottles filled. The quantity recorded as bottled for bottle fermented sparkling wine shall be determined after the disgorging and refilling process.

(72 Stat. 1381; 26 U.S.C. 5367)

§ 240.913 [Deleted]

41. Section 240.913 is deleted due to the elimination of all prescribed cellar record forms (Forms 2056, 2057, 2058, 2059 and 2621).

§ 240.915 [Amended]

42. Section 240.915 is revised to change Form 702 to Form 5120.17(702) whenever found in the section.

43. Section 240.916 is revised for purposes of clarification. As revised, § 240.916 reads as follows:

§ 240.916 Varietal and vintage wine records.

A proprietor of a bonded wine cellar removing wine under a varietal, vintage, appellation of origin, or any other designation shall maintain complete records so that any designation claimed may be verified by audit.

(72 Stat. 1381; 26 U.S.C. 5367)

44. Section 240.923 is revised to reflect the elimination of Form 702–C and the change of Form 702 to Form 5120.17(702). As revised, § 240.923 reads as follows:

§ 240.923 Filing of forms.

Each proprietor of a bonded wine cellar shall file records and retained copies of reports in chronological order and in bound or other secure form. An inventory record shall be filed with the Form 5120.17(702) for the month the inventory was taken.

(72 Stat. 1381; 26 U.S.C. 5367)

Signed: November 2, 1979.

G. R. Dickerson,

Director.

Approved: January 7, 1980.

Richard J. Davis,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 80-2220 Filed 1-23-80; 8:45 am]

BILLING CODE 4810-31-M

Fiscal Service

31 CFR Part 240

Forms of Indorsement on U.S. Treasury Checks

AGENCY: Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: On January 4, 1980 (45 FR 1020), a final rule was published concerning forms of indorsement on U.S. Treasury checks. One of the changes made to the pre-existing regulation, 31 CFR 240 concerned Social Security benefit checks issued jointly to individuals of the same family. The pre-existing regulation made it possible for the surviving co-payee(s) to negotiate the check after the death of the other co-payee(s). The final rule, published on January 4, 1980. eliminated the procedure allowing the surviving co-payee(s) to negotiate the check. The applicable re-numbered section is 240.8(a)(5). This rule reinstates the previously applicable wording, and again allows the surviving co-payee(s) to negotiate the check. The Social Security Administration and others have advised that the pre-existing wording was necessary to continue a procedure beneficial to the public. For that reason, the previous wording is being reinstated, prior to the effective date of the final rule.

EFFECTIVE DATE: February 1, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Serlin, Assistant Commissioner, Disbursement and Claims, Room 416, Annex Building, Pennsylvania Avenue and Madison Place, NW., Washington, D. C. 20226, (202) 566–2392.

SUPPLEMENTARY INFORMATION: It is not deemed necessary to invite comment on this issue, since the net effect is not to change an existing regulation, and particularly since this change is favorable to those most likely to be affected.

Accordingly, Part 240, Title 31 of the Code of Federal Regulations is amended as follows:

By revising Section 240.8(a)(5), to read as follows:

§ 240.8 [Amended]

(a) * * *

(5) *Social Security benefit checks issued jointly to individuals of the same family.* A social security benefit check issued jointly to two or more individuals of the same family shall, upon the death of one of the joint payees prior to the negotiation of such check, be returned to the Social Security District Office or to the Treasury Disbursing Office. Payment of the check to the surviving payee or payees may be authorized by placing on the face of the check a stamped legend signed by an official of the Social Security Administration or the Treasury Disbursing Office, redesignating such survivor or survivors as the payee or payees of the check. A check bearing such stamped legend, signed as herein prescribed, may be indorsed and negotiated by the person or persons named as if such check originally had been drawn payable to such person or persons.

Signed this 18th day of January 1980.

D. A. Pagliai,

Commissioner.

[FR Doc. 80-2158 Filed 1-23-80; 8:45 am]

BILLING CODE 4810-35-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 1398-1]

Approval and Promulgation of Implementation Plans; Georgia 1979 Plan Revisions

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today announces its approval of the Georgia 1979 implementation plan revisions providing for attainment of the 8-hour national ambient air quality standard for carbon monoxide in the Atlanta nonattainment area (those portions of Clayton, DeKalb, and Fulton Counties within perimeter highway I–285).

EPA today also announces its approval of a five year extension, until December 31, 1987, of the deadline for attaining the CO standard in the Atlanta nonattainment area.

DATE: This action is effective January 24, 1980.

ADDRESS: Copies of the materials submitted by Georgia and the comments received in response to the proposal notice of August 24, 1979 (44 FR 49702), may be examined during normal

business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.
Library, Environmental Protection Agency, Region IV, 345 Courtland Street, NE, Atlanta, Georgia 30308.
Air Protection Branch, Environmental Protection Division, Georgia Department of Natural Resources, 270 Washington Street, SW, Atlanta, Georgia 30334.

FOR FURTHER INFORMATION CONTACT: Melvin Russell, Region IV, Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30308, 404/881-3286 (FTS 257-3286).

SUPPLEMENTAL INFORMATION: On May 9, 1979 [44 FR 27184], EPA described the Georgia 1979 implementation plan revisions submitted pursuant to the requirements of Part D of Title I of the Clean Air Act. In that notice, certain deficiencies were noted in the transportation control measures needed to assure attainment of the 8-hour carbon monoxide standard in the Atlanta nonattainment area.

The Georgia Environmental Protection Division, on June 29, 1979, submitted materials designed to correct the deficiencies noted in the Agency's proposal notice. On August 24, 1979 (44 FR 49702), EPA discussed in a second proposal notice the additional materials submitted by the Georgia Environmental Protection Division and invited public comment on the Georgia revisions for the Atlanta CO nonattainment area.

Listed below are the deficiencies noted in 44 FR 27184 and the corrections noted in 44 FR 49702.

1. *Deficiency:* A memorandum of agreement between the state and the metropolitan planning organization, which delineates responsibilities under the Transportation Control Program, is not included in the SIP.

Correction: A memorandum of agreement signed by the appropriate agencies and submitted to EPA by letter of June 29, 1979, signed by Mr. Ledbetter, which identifies the responsibilities of each agency under the Transportation Control Program pursuant to the requirements of Section 174 of the CAAA.

2. *Deficiency:* The current 1979 TIP/AE must be reviewed for projects that have a positive air quality impact. Measures that are found to have benefits and are feasible must be submitted with implementation dates. The implementation dates should correspond to the dates shown in the TIP/AE. Those measures selected from the 1979 TIP/AE for incorporating into the State Implementation Plan must also include a commitment to the implementation and enforcement of such measures by the responsible agencies.

Correction: A list of projects, committed to implementation by July 1980, in the Atlanta area, which will have air qualify benefits was submitted by the State by letter of June 29, 1979 signed by Mr. Ledbetter. The projects were taken from the current Annual Element of the area's Transportation Improvement Program. The list of projects are to numerous too itemize here, but this list is available for inspection at the EPA Region IV Library. Letters of commitments to these projects by the State Department of Transportation, City of Atlanta, Clayton County Commission, Cobb County Commission, DeKalb County Commission, Fulton County Commission, and the Gwinnett County Commission were also submitted in the letter of June 29, 1979. Implementation dates are consistent with the Annual Element of the Transportation Improvement Program.

3. *Deficiency:* Section 108(f) requires EPA to publish and make available information documents on transportation control measures that are reasonably available for implementation in order to reduce emissions from transportation sources. EPA considers all Section 108(f) measures to be reasonably available. However, if through analysis some measures are found to be infeasible EPA will allow these measures to be withdrawn. The submittal does not contain the schedule for analysis of packages of 108(f) measures with a commitment to implement expeditiously the measures that are found feasible for implementation.

Correction: The 1979-1982 work program for the Atlanta Regional Commission, was submitted by the State and includes the schedule for analysis of Section 108(f) alternative transportation control measures. The Georgia Environmental Protection Division also submitted to EPA a letter dated June 29, 1979, commitments from the appropriate agencies to program those measures found feasible for expeditious implementation.

4. *Deficiency:* The submittal does not identify the financial and manpower allocations to accomplish the tasks required under Section 108(e) of the CAAA and other transportation system management elements and air quality related projects which are or will be incorporated into the Unified Planning Work Program (UPWP) and the Transportation Improvement Program/Annual Element (TIP/AE). The UPWP must also be modified to include provisions for progress reporting as required by the "Transportation/Air Quality Guidelines," issued pursuant to Section 108(e) of the CAAA. The SIP must contain only those measures from the modified UPWP and TIP/AE that are related to transportation air quality planning under Section 108(e) of the CAAA.

Correction: The 1979-1982 work program for the Atlanta Regional Commission submitted June 29, 1979, identifies the financial and manpower allocations to accomplish the analysis and to provide EPA with periodic progress reporting of the analysis.

5. *Deficiency:* The CAAA of 1977, Section 110(a)(3)(D), requires that a SIP which provides for attainment later than December 31, 1982, pursuant to Section 172(a)(2), shall be revised to include comprehensive measures and requirements referred to in subsection 110(c)(5)(B). The measures should: "establish, expand, or improve public transportation measures to meet basic transportation needs as expeditiously as practicable; and implement transportation control measures to attain and maintain national ambient air quality standards." EPA will accept a commitment to comply with this requirement.

Correction: A commitment from the Metropolitan Atlanta Rapid Transit Authority (MARTA) submitted by the State in the June 29, 1979, letter committing to the continued improvement and expansion of public transportation including implementation of appropriate projects from the annual element of the TIP and the expeditious implementation of future transportation control measures which are found feasible.

The public comments which were received are now discussed:

Comment: The Atlanta Coalition on the Transportation Crisis questions the commitment to increased public transit as contained in the Georgia Implementation Plan.

Agency Response: EPA considers the commitment adequate in that the plan contains commitments to improve public transportation by the Atlanta Regional Commission (planning) and by the Metropolitan Atlanta Rapid Transit Authority (implementation).

Comment: The National Wildlife Federation questioned the use of linear rollback modeling to determine the percent reduction in transportation related emissions required to attain the ambient standards.

Agency Response: EPA guidance permits linear rollback as an approved modeling technique for the 1979 plan

revisions in the absence of the monitoring data that is required by more sophisticated modeling techniques. EPA is currently working with the Georgia Environmental Protection Division to upgrade the monitoring network in preparation for the 1982 revision which will require a modeling technique more sophisticated than linear rollback.

The plan submitted by the Georgia Environmental Protection Division for the purpose of attaining the Carbon Monoxide (CO) standard in the Atlanta Area, does not demonstrate attainment by December 31, 1982. Therefore an inspection/maintenance (I/M) program must be implemented in order to comply with Part D of Title I of the Clean Air Act.

"Inspection/Maintenance" (I/M) refers to a program whereby motor vehicles receive periodic inspections to assess the functioning of their exhaust emission control systems. Vehicles which have excessive emissions must then undergo mandatory maintenance. Generally, I/M programs include passenger cars, although other classes can be included as well. Enforcement can be accomplished by requiring proof of compliance to purchase license plates or to register a vehicle. In certain cases, a windshield sticker system can be used, much like many safety inspection programs.

Section 172 of the Clean Air Act requires that State Implementation Plans for States which include non-attainment areas must meet certain criteria. For areas which demonstrate that they will not be able to attain the ambient air quality standards for ozone or carbon monoxide by the end of 1982, despite the implementation of all reasonably available control measures, an extension to the end of 1987 will be granted. In such cases Section 172 (b)(11)(B) requires that: "the plan provisions shall establish a specific schedule for implementation of a vehicle emission control inspection and maintenance program . . ." EPA issued guidance on February 24, 1978, on the general criteria for SIP approval including I/M, and on July 17, 1978, regarding the specific criteria for I/M SIP approval. Both of these notices are part of the SIP guidance material referred to in the General Preamble for proposed Rulemaking 44 FR 20373, n 6. Although the July 17, 1978, guidance should be consulted for details, the key elements for I/M SIP approval are as follows:

• *Legal Authority.* States or local governments must have adopted the necessary statutes, regulations, ordinances, etc., to implement and enforce the inspection/maintenance program. (Section 172 (b)(10).)

• *Commitment.* The appropriate governmental unit(s) must be committed to implement and enforce the I/M programs (Section 172(b)(10)).

• *Resources.* The necessary finances and resources to carry out the I/M program must be identified and committed (Section 172(B)(7)).

• *Schedule.* A specific schedule to establish the I/M program must be included in the State Implementation Plan. (Section 172(b)(11)(b)). Interim milestones are specified in the July 17, 1978, memorandum in accordance with the general requirement of 40 CFR 51.15(c).

• *Program Effectiveness.* As set forth in July 17, 1978, guidance memorandum, the I/M program must achieve a 25% reduction in passenger car exhaust emissions of hydrocarbons and a 25% reduction for carbon monoxide. This reduction is measured by comparing the levels of emission projected to December 31, 1987, with and without the I/M program. This policy is based on Section 172(b)(2) which states that "the plan provisions * * * shall * * * provide for the implementation of all reasonably available control measures * * *" Specific detailed requirements of these five provisions are discussed below.

To be acceptable, I/M authority must be adequate to implement and effectively enforce the program and must not be conditioned upon further legislative approval or any other substantial contingency. However, the legislation can delegate certain decision making to an appropriate regulatory body. For example, a State department of environmental protection or department of transportation may be charged with implementing the program, selecting the type of test procedure as well as the type of program to be used, and adopting all necessary rules and regulations. I/M legal authority must be included with any plan revision which must include I/M (i.e., a plan which established an attainment date beyond December 31, 1982) unless an approved extension to certify legal authority is granted by EPA. The granting of such an extension, however, is an exceptional remedy to be utilized only when a State legislature has had no opportunity to consider enabling legislation.

Written evidence is also required to establish that the appropriate governmental bodies are "committed to implement and enforce the appropriate elements of the plan." (Section 172(b)(10).) Under Section 172(b)(7), supporting commitments for the necessary financial and manpower resources are also required.

A specific schedule to establish an inspection/maintenance program is required. (Section 172(b)(11)(B).)

The July 17, 1978, guidance memorandum established as EPA policy the key milestones for the implementation of the various I/M programs. These milestones meet the general SIP requirement for compliance schedules as governed by 40 CFR 51.15(c). That section requires that increments of progress be contained in compliance schedules of over one year in length.

To be acceptable an I/M program must achieve the requisite 25% reductions in both hydrocarbon (HC) and carbon monoxide (CO) exhaust emissions from passenger cars by the end of calendar year 1987. The Act mandates "Implementation of all reasonably available control as expediously as practicable." Section 172(b)(2). At the time of passage of the Clean Air Act Amendments of 1977, several inspection/maintenance programs were already operating, including mandatory programs of New Jersey and Arizona operating at about a 20% stringency. (The stringency of a program is defined as the initial proportion of vehicles which would have failed the program's standards if the affected fleet has not undergone I/M before initial testing. Because some motorists tune their vehicles before I/M tests, the actual proportion of vehicles failing is usually a smaller number than the stringency of the program.) Depending on program type (private garage or centralized inspection) a mandatory I/M program may be implemented as late as December 13, 1982 and the attainment date may be as late as December 31, 1987.

Based on an implementation date of December 31, 1982 and a 20% stringency factor, EPA predicts the reductions of both CO and HC exhaust emissions of 25% can be achieved by December 31, 1987. Earlier implementation of I/M will produce greater emission reductions. Thus, because of the Act's requirement for the implementation of all reasonably available control measures and because New Jersey and Arizona have effectively demonstrated practical operation of I/M programs with 20% stringency factors, it is EPA policy to use a 25% emission reduction as the criteria to determine compliance of the I/M portion with Section 172 (b)(2).

Inspection and Maintenance legislation, as signed by Governor Busbee on April 16, 1979, establishes legal authority for a mandatory program

in counties with a vehicle registration of 200,000 or greater. In the Metro Atlanta area, these are Dekalb, Cobb, and Fulton Counties. The duties and powers of the Commissioner of the Public Safety and the Board of Natural Resources with respect to the I/M legislation are outlined in Section 10, page 20 and Section 8, page 14 respectively, of the bill. The program is to begin on April 1, 1981 (Ref. Section 7, page 10 of the bill) with mandatory repair of failed vehicles to begin April 1, 1982 (Ref. Section 9, page 18 of the bill).

In its State Implementation Plan, Georgia included provisions for an I/M program. This program would cover cars and light trucks, and provides for inspection each year. Inspections would be carried out by private licensed garages. Vehicles failing inspection must be repaired and reinspected. enforcement will be carried out through window stickers. Vehicles over ten years old will be excluded. Also, a vehicle exceeding the standards after its third inspection could be granted a waiver, if the cost of repairs exceeded fifty dollars ($50.00).

The complete I/M schedule is now listed:

State of Georgia—*Inspection/Maintenance Implementation Schedule**

Decentralized—Private Garage Operated

Action	Completion Date
1. Initiation and continuation of public information through a voluntary I/M program.	July 1978
2. Preparation of a draft legislative package and submittal of legislation package to legislature.	January 1979
3. Certification of adequate legal authority by appropriate State official.	April 1979
4. Adoption of procedures and guidelines for testing and quality control including emission analyzer requirements.	April 1980
5. Development and adoption of cutpoints.	April 1980
6. Initial notification of garages explaining program and schedule of implementation.	January 1980
7. Notification of and explanation to garages of procedures and guidelines for testing and quality control including emission analyzer requirements.	May 1980
8. Initiation of licensing of garages	October 1980
9. Initiation of mechanics training and/or information program.	October 1980
10. Completion of equipment purchase and delivery of equipment.	January 1981
11. Initiation of mandatory inspection/voluntary maintenance.	April 1981
12. Initiation of mandatory repair for failed vehicles.	April 1982

*AUTHORITY—H.B. 424, signed into law on April 16, 1979.

Based on information in the SIP, the program will achieve a 25 percent reduction in HC and a 25 percent reduction in CO by December 31, 1987, thus complying with EPA's requirement for minimum emission reductions.

EPA is approving the I/M portion of the State of Georgia's SIP. The plan is complete and meets all requirements of the Clean Air Act of 1977, as outlined in the May 9, 1979 FR (44 FR 27184).

Actions

EPA has determined that the Georgia 1979 revisions for the Atlanta CO nonattainment area now satisfy all the requirements of the 1977 Clean Air Act Amendments and the Agency's implementing guidelines and that they are adequate to assure attainment of the national ambient air quality standards for that pollutant by the end of 1987. Accordingly, they are hereby approved.

Also, the conditions under which a five-year extension may be granted have been met in this case and the State's request for the extension is hereby granted. These actions are effective immediately.

(Sections 110 and 172 of the Clean Air Act (42 U.S.C. 7410 and 7502).)

Dated: January 18, 1980.

Douglas M. Costle,

Administrator.

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

Subpart L—Georgia

1. In § 52.570, paragraph (c)(17) is revised to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.* * *

(17) 1979 Implementation plan revisions for nonattainment areas, submitted on January 17, March 9, 16, 20, and June 29, 1979, by the Georgia Department of Natural Resources. (No action is taken on the TSP plan for Sandersville. Conditional approval is given to the TSP plans for Atlanta and Savannah.)

2. Section 52.577 is revised to read as follows:

§ 52.577 Extensions.

(a) The Administrator hereby extends for 18 months (until July 1, 1980) the statutory timetable for submission of Georgia's plans for attainment and maintenance of the secondary standards for particulate matter in the Atlanta and Savannah areas (40 CFR 81.311).

(b) The Administrator hereby extends until December 31, 1987, the attainment date for the 8-hour national ambient air quality standard for carbon monoxide in the Atlanta area (40 CFR 81.311).

3. Section 52.575 is revised to read as follows:

§ 52.575 Attainment dates for national standards.

The following table presents the latest dates by which the national standards are to be attained. The dates reflect the information presented in Georgia's plan.

Air quality control region and nonattainment area	Pollutant						
	TSP		SO_2		NO_2	CO	O_3
	Primary	Secondary	Primary	Secondary			
Augusta (Georgia)-Aiken (South Carolina Interstate)	c	c	a	c	b	b	b
Metropolitan Atlanta Intrastate:							
a. Atlanta non-attainment areas*	d	f	c	c	b	e	d
b. Rest of AQCR	c	c	c	c	b	b	b
Chattanooga Interstate:							
a. Rossville*	d	f	a	c	b	b	b
b. Rest of AQCR	c	c	a	c	b	b	b
Columbus (Georgia)-Phenix City (Alabama) Interstate:							
a. Muscogee County	c	c	b	b	b	b	d
b. Rest of AQCR	c	c	b	b	b	b	b
Central Georgia Intrastate	c	c	c	c	b	b	b
Jacksonville (Florida)-Brunswick (Georgia) Interstate	c	c	a	c	b	b	b
Northeast Georgia Intrastate	a	c	b	b	b	b	b
Savannah (Georgia)-Beaufort (South Carolina) Interstate:							
a. Savannah*	d	f	c	c	b	b	b
b. Rest of AQCR	c	c	c	c	b	b	b
Southwest Georgia Intrastate	a	c	a	c	b	b	b

a. Air quality levels presently below primary standards or area is unclassifiable.
b. Air quality levels presently below secondary standards or area is unclassifiable.
c. July 1975.
d. December 31, 1982.
e. December 31, 1987.
f. 18-month extension granted.

*For more precise delineation, see 81.311 of this chapter.

NOTE.—Dates or footnotes which are italicized are prescribed by the Administrator because the plan did not provide a specific date or the date provided was not acceptable.

[FR Doc. 80-2225 Filed 1-23-80; 8:45 am]

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

41 CFR Parts 3-16 and 3-55

Procurement Forms; Service Contracts

AGENCY: Department of Health, Education, and Welfare.

ACTION: Final rule.

SUMMARY: The Office of the Secretary, Department of Health, Education, and Welfare is amending 41 CFR Chapter 3 to delete the outdated Part 3-55, Services Contracts, and to amend Part 3-16, Procurement Forms, by deleting § 3-16.5112, Representations and Certifications, and replacing it with a revised version of that section.

The following changes are being made to the referenced section in accordance with recently issued amendments to the Federal Procurement Regulations: (1) Replacement of three Cost Accounting Standards (Disclosure Statement—Cost Accounting Practices and Certifications; Cost Accounting Standards—Exemption; and Additional Cost Accounting Standards Applicable to Existing Contracts—Certification) with the Cost Accounting Standards—Certification—Nondefense Applicability; and (2) Replacement of the DHEW Equal Opportunity provision with that contained in the Standard Form 33 (Solicitation, Offer and Award). In addition, the representations and certifications have been renumbered to put them in a more orderly sequence.

EFFECTIVE DATE: January 24, 1980.

FOR FURTHER INFORMATION CONTACT: David Eskenazi, Division of Procurement Policy and Regulations Development, Office of Grants and Procurement, OASMB-OS, Department of Health, Education, and Welfare, 200 Independence Avenue, S.W., Washington, D.C. 20201 (202-245-0481).

SUPPLEMENTARY INFORMATION: It is the general policy of the Department of Health, Education, and Welfare to utilize the rulemaking process to solicit comments from the general public. However, because of the administrative nature of the changes, the issuance of a notice of proposed rulemaking is deemed unnecessary. The provisions of these amendments are issued under 5 U.S.C. 301 and 40 U.S.C. 486(c).

Dated January 16, 1980.

E. T. Rhodes,

Deputy Assistant Secretary for Grants and Procurement.

PART 3-55—[DELETED]

1. Part 3-55—Service Contracts, is deleted in its entirety.

2. Section 3-16.5112 is deleted and the following substituted therefor:

PART 3-16—PROCUREMENT FORMS

Subpart 3-16.51—Standardized Request for Proposal (RFP) Format and Checklist for Solicitation Documents

* * * * *

§ 3-16.5112 Representations and certifications.

The representations and certifications shown below shall be included as attachments to all RFP's which do not contain the Standard Form 33 or 33A:

(a) The request for proposal shall provide that copies of the Representations and Certifications must be executed by an official authorized to bind the offeror and made a part of the business proposal.

(b) The heading of the Representations and Certifications should be as follows:

Representations and Certifications

(The offeror makes the following representations and certifications as part of the proposal and must check or complete appropriate boxes or blanks.)

(c) The following note should be inserted at the bottom of the first page (separate from the text of any Representation or Certification) of the attachment:

Note.—The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

(d) The required Representations and Certifications are as follows:

1. Type of Organization

The offeror operates as an ( ) individual, ( ) state or local agency, ( ) partnership, ( ) joint venture, ( ) nonprofit, ( ) educational institution, ( ) corporation, organized and existing under the laws of the State of _____.

2. Employer's Identification Number

The offeror's Internal Revenue Service "Employer's Identification Number" is _____.

3. Small Business Representation

This firm ( ) is, ( ) is not, a small business concern. If the firm is a small business concern and is not the manufacturer of the supplies to be furnished hereunder, the firm also represents that all such supplies ( ) will, ( ) will not, be manufactured or produced by a small business concern in the United States, its possessions, or Puerto Rico. (A small business concern for the purpose of Government procurement is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is contracting and can further qualify under the criteria concerning number of employees, average annual receipts, or other criteria, as prescribed by the Small Business Administration). (See Code of Federal Regulations, Title 13, Part 121, as amended, which contains detailed definitions and related procedures.

4. Minority Business Enterprise

The offeror represents that it ( ) is, ( ) is not, a minority business enterprise. A minority business enterprise is defined as a "business at least 50 percent of which is owned by minority group members or, in case of publicly owned businesses, at least 51 percent of the stock of which is owned by minority group members." For the purpose of this definition, minority group members are Negroes, Spanish-speaking American persons, American-Orientals, American-Indians, American-Eskimos, and American-Aleuts.

5. Woman-Owned Business

This firm ( ) is, ( ) is not, a woman-owned business. A woman-owned business is a business which is, at least, 51 percent owned, controlled, and operated by a woman or women. Controlled is defined as exercising the power to make policy decisions. Operated is defined as actively involved in the day-to-day management.

For the purposes of this definition, businesses which are publicly owned, joint stock associations, and business trusts are exempted. Exempted businesses may voluntarily represent that they are, or are not, woman-owned if this information is available.

6. Regular Dealer-Manufacturer Representation

(Applicable only to supply contracts exceeding $10,000.)

The offeror is a ( ) regular dealer in, ( ) manufacturer of, the supplies covered by this proposal.

7. Contingent Fee Representation

(Applicable only to proposals in which the aggregate amount involved exceeds $10,000.)

Offeror represents (a) that it ( ) has, ( ) has not, employed or retained any company or person (other than a full-time bona fide employee working solely for the offeror) to solicit or secure this contract, and (b) that it ( ) has, ( ) has not, paid or agreed to pay any company or person (other than a full-time

bona fide employee working solely for the offeror) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract; and agrees to furnish information relating to (a) and (b) above as requested by the contracting officer.

(Note.—For interpretation of representation, including the term "bona fide employee," see Code of Federal Regulations, Title 41, Chapter 1, Subpart 1–1.5).

8. Percent of Foreign Content

The offeror/contractor will represent (as an estimate), immediately after the award of a contract, the percent of the foreign content of the item or service being procured expressed as a percent of the contract award price (accuracy within plus or minus 5 percent is acceptable).

9. Equal Opportunity Certification

The bidder (or offeror) ( ) has, ( ) has not, participated in a previous contract or subcontract subject either to the Equal Opportunity clause herein or the clause originally contained in section 301 of Executive Order No. 10925, or the clause contained in Section 201 of Executive Order No. 11114; that it ( ) has, ( ) has not, filed all required compliance reports; and that representations, indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained prior to subcontract awards. (The above representation need not be submitted in connection with contracts or subcontracts which are exempt from the equal opportunity clause.)

The bidder (or offeror) represents that (1) it ( ) has developed and has on file, ( ) has not developed and does not have on file, at each establishment affirmative action programs as required by the rules and regulations of the Secretary of Labor (41 CFR 60–1 and 60–2) or (2) it ( ) has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor. *(The above representations shall be completed by each bidder (or offeror) whose bid (offer) is $50,000 or more and who has 50 or more employees.)*

10. Certification of Nonsegregated Facilities

By submission of this offer, the offeror or subcontractor certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The offeror, or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification the term "Segregated Facilities" means any waiting room, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. It further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause; that it will retain such certifications in its files, and that it will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

Notice to Prospective Subcontractors of Requirement for Certifications of Nonsegregated Facilities

A Certification of Nonsegregated Facilities, as required by the May 9, 1967, order (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, by the Secretary of Labor, must be submitted prior to the award of a subcontract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

Note.—Failure of an offeror to agree to the Certification of Nonsegregated Facilities shall render its offer nonresponsive to the terms of solicitations involving awards of contracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause.

11. Buy American Certificate

(Applies to proposals involving end products as defined by FPR 1–6.101.)

The offeror hereby certifies that each end product, except the end product listed below, is a domestic source and end product (as defined in the clause entitled "Buy American Act"), and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States:

Excluded end products (show country of origin for each excluded end product).

_____

_____

12. Duplication of Cost

The Contractor represents and certifies that any charges contemplated and included in its estimate of cost for performance are not duplicative of any charges against any other Government contract, subcontract, or other Government source.

13. Place of Performance

Following is the name and location of the plant or place of business where the item(s) will be produced or supplied from stock or where the service will be performed.

_____

(Name of plant)

_____

(City and State)

_____

(County and Congressional District)

14. Certification of Independent Price Determination

a. By submission of this proposal, each offeror certifies and in the case of a joint bid or proposal, each party thereto, certifies as to its own organization, that in connection with this procurement:

(1) The prices in this proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other offeror or with any competitor.

(2) Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to award directly or indirectly to any other offeror or to any competitor; and

(3) No attempt has been made or will be made by the offeror to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

b. Each person signing this proposal certifies that:

(1) He/she is the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein and that he/she has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above; or

(2) He/she is not the person in the offeror's organization responsible within that organization for the decision as to prices being offered herein but that he/she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above, and as their agent does hereby so certify; and (b) he/she has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above.

c. This certification is not applicable to a foreign offeror submitting a proposal for a contract which requires performance or delivery outside the United States, its possessions and Puerto Rico.

d. A proposal will not be considered for award where (a)(1), (a)(3), or (b) above has been deleted or modified. Where (a)(2) above has been deleted or modified, the proposal will not be considered for award unless the offeror furnishes with the proposal a signed statement which sets forth in detail the circumstances of the disclosure and the head of the agency, or its designee, determines that such disclosure was not made for the purpose of restricting competition.

15. Cost Accounting Standards—Certification—Nondefense Applicability

(Certification No. 15 is not applicable to solicitations: (1) where the price is based on established catalog or market prices of commercial items sold in substantial

quantities to the general public; (2) where the price is set by law or regulation; (3) sent to the Canadian Commercial Corporation; and (4) where the resulting contract will be executed and performed in their entirety outside the United States, its territories and possessions.)

Any negotiated contract in excess of $100,000 resulting from this solicitation shall be subject to the requirements of the clauses entitled Cost Accounting Standards—Nondefense Contract (FPR § 1–3.1204–2(a)) and Administration of Cost Accounting Standards (FPR § 1–3.1204–1(b)) if it is awarded to a contractor's business unit that is performing a national defense contract or subcontract which is subject to cost accounting standards (CAS) pursuant to 4 CFR 331 at the time of award, except contracts which are otherwise exempt (see FPR § 1–3.1203–2(a) and (c)(4)). Otherwise, an award resulting from this solicitation shall be subject to the requirements of the clauses entitled Consistency of Cost Accounting Practices—Nondefense Contract (FPR § 1–3.1204–2(b)) and Administration of Cost Accounting Standards (FPR § 1–3.1204–1(b)) if the award is (i) the first negotiated contract over $500,000 in the event the award is to a contractor's business unit that is not performing under any CAS covered national defense or nondefense contract or subcontract, or (ii) a negotiated contract over $100,000 in the event the award is to a contractor's business unit that is performing under any CAS covered national defense or nondefense contract or subcontract, except contracts which are otherwise exempt (see FPR § 1–3.1203–2(a) and (c)(4)). This solicitation notice is not applicable to small business concerns.

Certificate of CAS Applicability

The Offeror hereby certifies that:

a. ( ) It is currently performing a negotiated national defense contract or subcontract that contains a CAS Clause (4 CFR Part 331), and it is currently required to accept that clause in any new negotiated national defense contracts it receives that are subject to CAS.

b. ( ) It is currently performing a negotiated national defense or nondefense contract or subcontract that contains a CAS clause required by 4 CFR Part 331 or 332 or by FPR Subpart 1–3.12, but it is not required to accept the 4 CFR 331 clause in new negotiated national defense contracts or subcontracts which it receives that are subject to CAS.

c. ( ) It is not performing any CAS covered national defense or nondefense contract or subcontract. The offeror further certifies that it will immediately notify the Contracting Officer in writing in the event that it is awarded any negotiated national defense or nondefense contract or subcontract containing any CAS clause subsequent to the date of this certificate but prior to the date of the award of a contract resulting from this solicitation.

d. ( ) It is an educational institution receiving contract awards subject to FPR Subpart 1–15.3 (FMC 73–8, OMB Circular A–21).

e. ( ) It is a State or local government receiving contract awards subject to FPR Subpart 1–15.7 (FMC 74–4, OMB Circular A–87).

f. ( ) It is a hospital.

Note.—Certain firm fixed-price negotiated nondefense contracts awarded on the basis of price competition may be determined by the Contracting Officer (at the time of award) to be exempt from CAS (FPR § 1–3.1203–2(c)(4)(iv)).

Additional Certification—CAS Applicable Offerors

g. ( ) The offeror, subject to CAS but not certifying under d, e, or f above, further certifies that practices used in estimating costs in pricing this proposal are consistent with the practices disclosed in the Disclosure Statement(s) where they have been submitted pursuant to CAS regulations (4 CFR Part 351).

Data Required—CAS Covered Offerors

The offeror certifying under a or b above, but not under d, e, or f above, is required to furnish the name, address (including agency or department component), and telephone number of the cognizant Contracting Officer administering the offeror's CAS covered contracts. If a above is checked, the offeror will also identify those currently effective CAS, if any, which upon award of the next negotiated national defense contract or subcontract will become effective upon the offeror.

Name of contracting officer _____
Address _____

Telephone number _____
Standards not yet applicable _____

16. Clean Air and Water Certification

(Applicable if the bid or offer exceeds $100,000, or the Contracting Officer has determined that orders under an indefinite quantity contract in any year will exceed $100,000, or a facility to be used has been the subject of a conviction under the Clean air Act (42 U.S.C. 1857C–8(C)(1)) or the Federal Water Pollution control Act (33 U.S.C. 1319(c)) and is listed by EPA, or is not otherwise exempt). The bidder or offeror certifies as follows:

a. Any facility to be utilized in the performance of this proposed contract has ( ), has not ( ), been listed on the Environmental Protection Agency List of Violating Facilities.

b. It will promptly notify the Contracting Officer, prior to award, of the receipt of any communication from the Director, Office of Federal Activities, Environmental Protection Agency, indicating that any facility which it proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities.

c. It will include substantially this certification, including this paragraph (c), in every nonexempt subcontract.

17. Certificate of Current Cost or Pricing Data

When a certificate of cost or pricing data is required to be submitted in accordance with Federal Procurement Regulations (FPR) 1–3.807–3, the Contracting Officer will request that the Offeror complete, execute, and submit to the Contracting Officer a certification in the format shown in the following Certificate of Current Cost or Pricing Data. The certification shall be submitted only at the time negotiations are concluded. Offerors should complete the certificate set forth below and return it when requested by the Contracting Officer.

Certificate of Current Cost or Pricing Data

This is to certify that to the best of my knowledge and belief, cost or pricing data [1] submitted in writing or specifically identified in writing if actual submission of the data is impracticable (see § 1–3.807–3(h)(2)), to the Contracting Officer or representative in support of _____[2] are accurate, complete, and current as of (date)_____.[3]

Firm _____
Name _____
Title _____
_____[4]

(Date of execution)

[FR Doc. 80–2221 Filed 1–23–80; 8:45 am]

BILLING CODE 4110–12–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–11

[FPMR Amdt. B–44]

Records Management; Disposition of Federal Records

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation informs Federal agencies of their responsibilities under title 44 U.S.C. chapter 33 relating to the disposition of their records. It also includes the procedures Federal agencies are to follow in transferring records to a Federal records center.

EFFECTIVE DATE: January 24, 1980.

FOR FURTHER INFORMATION CONTACT: George N. Scaboo, Deputy Assistant Archivist for Federal Records Centers, Office of Federal Records Centers (202–724–1614).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this regulation will not

[1] For definition of "cost or pricing data," see FPR § 1–3.807–3.

[2] Describe the proposal, quotation, request for price adjustment, or other submission involved, giving appropriate identifying number (e.g., RFP No. _____).

[3] This date shall be the date when the price negotiations were concluded and the contract price was agreed to. The responsibility of the contractor is not limited by the personal knowledge of the contractor's negotiator if the contractor has information reasonably available (see § 1–3.807–5(a)) at the time of agreement showing that the negotiated price is not based on accurate, complete and current data.

[4] This date should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed upon.

impose unnecessary burdens on the economy or on individuals and, therefore, is not significant for the purposes of Executive Order 12044. FPMR Temporary Regulation B–2 (44 FR 4950, January 24, 1979) is canceled and deleted from the appendix at the end of Subchapter B in 41 CFR Chapter 101.

1. The table of contents for Part 101–11 is amended by revising or adding the following entries:

Subpart 101–11.1—Federal Records; General

2. Section 101–11.102–6 is revised to read as follows:

§ 101–11.102–6 Liaison offices.

Responsibility for the development of the records management program shall be specifically assigned to an office or offices within each Federal agency. The office to which the major responsibility is assigned shall be reported for liaison purposes to the National Archives and Records Service. The name and title of the official who is authorized by the head of the agency to approve disposition schedules and transfers of records to the custody of the National Archives should be submitted to the General Services Administration (NC), Washington, DC 20408.

Subpart 101–11.4—Disposition of Federal Records

3. Sections 101–11.401 through 101–11.410 are revised to read as follows:

§ 101–11.401 Scope of subpart.

This subpart prescribes policies and promulgates standards, procedures, and techniques for the disposition of all Federal records in accordance with 44 U.S.C. chapters 21, 29, 31, and 33.

§ 101–11.402 Definition.

Disposition refers to the actions taken with regard to records following their appraisal by the National Archives and Records Service. No disposition of any series of records is authorized before its appraisal. 44 U.S.C. 2901 defines "records disposition" as "any activity with respect to:

(a) Disposal of temporary records no longer necessary for the conduct of business by destruction or donation;

(b) Transfer of records to Federal agency storage facilities or records centers;

(c) Transfer to the National Archives of the United States of records determined to have sufficient historical or other value to warrant continued preservation; or

(d) Transfer of records from one Federal agency to any other Federal agency."

§ 101–11.403 Records disposition programs.

§ 101–11.403–1 Authority.

The head of each agency (in accordance with 44 U.S.C. 2904, 3102, and 3301) is required to establish and maintain a records disposition program to ensure efficient, prompt, and orderly reduction in the quantity of records and to provide for the proper maintenance of records deemed appropriate for permanent preservation.

§ 101–11.403–2 Basic elements of disposition programs.

The primary steps in the development of a records disposition program are given below. Details of each element are contained in the GSA Records Management Handbook, Disposition of Federal Records (NSN 7610–01–055–8704).

(a) Inventory of all records in the custody of the agency.

(b) Develop disposition standards for each type or series of records which specify whether the records are of permanent or temporary value.

(c) Formulate specific disposition instructions for each series of records based on the disposition of standards, including instructions for the retirement of records to Federal records centers and/or transfer to the National Archives when applicable.

(d) Assemble the disposition standards and instructions for each series of records into a comprehensive agency records disposition schedule.

(e) Obtain approval of the records disposition schedule from the Archivist of the United States.

(f) Apply the approved records disposition schedule to all records of the agency.

§ 101–11.404 Records disposition schedules and disposal lists.

§ 101–11.404–1 Comprehensive agency records disposition schedules.

Agency records schedules approved by the Archivist of the United States specify the proper disposition for all agency records. Recurring series of records of continuing value will be scheduled for permanent retention and eventual transfer to the custody of the National Archives, and recurring series of all other records will be scheduled for destruction after a specific period of time based on administrative, fiscal, and legal values. Formulation and application of these schedules is mandatory (44 U.S.C. 3303 and 3303a). Agencies shall forward 20 copies of all formally published schedules to the General Services Administration (NCD), Washington, DC 20408 (Stop 220).

(a) Formulation of comprehensive schedules. Each Federal agency shall prepare a comprehensive records schedule for all records in its custody. New Federal agencies shall complete comprehensive schedules within 1 year of their establishment. All schedules

must follow the guidelines provided below:

(1) Schedules shall identify and describe clearly each series of records and shall contain disposition instructions that can be readily applied. Schedules must be prepared so that each office will have standing instructions detailing the destruction, transfer, or retention of records in its custody. Upon request by NARS, records recommended for retention longer than 10 years solely for administrative purposes must be justified in accordance with the procedures in § 101–11.406–10.

(2) Each item describing a permanent series of records shall include an arrangement statement, an estimate of the volume of records accumulated annually, as well as the total volume to date.

(3) All schedules shall take into account the existing filing system so that destruction or transfer can be handled in blocks.

(4) The disposition of nonrecord materials should be controlled by instructions in the comprehensive schedule. Nonrecord materials, such as extra copies of documents preserved solely for reference, stocks of processed documents, preliminary worksheets, and similar papers, shall be maintained separately from official agency files to facilitate records disposition.

(5) Schedules shall be reviewed and, if necessary, updated annually. Agencies shall schedule the records of new programs within 1 year of their implementation. Certification of this review shall be included on Standard Form 136, Annual Summary of Records Holdings, in accordance with § 101–11.102–7.

(b) Provisions of comprehensive schedules. Records schedules shall provide for:

(1) The destruction of records that have served their statutory, fiscal, or administrative uses and no longer have sufficient value to justify further retention. Procedures for obtaining disposal authorizations are prescribed in § 101–11.406–3;

(2) The removal to a Federal records center (or to an agency records center approved under § 101–11.412) of records not eligible for immediate destruction or other disposition which are no longer needed in office space and equipment. These records are maintained by the records center until they are eligible for further disposition action;

(3) The retention of the minimum volume of current records in office space and equipment consistent with efficient operations; and

(4) The identification of permanent records, in accordance with § 101–11.405, and the establishment of cutoff periods after which permanent records are offered to the National Archives and Records Service.

(c) Certification. The signature of the authorized agency representative on the Standard Form 115, Request for Records Disposition Authority, shall constitute certification that the records recommended for disposal do not or will not have sufficient administrative, legal, or fiscal value to the agency to warrant retention beyond the expiration of the specified period and that records described as permanent will be offered to the National Archives of the United States upon expiration of the stated period.

(d) Disapproval of requests for disposition authority. Requests for records disposition authority may be returned to the agency if the Standard Form 115 is improperly prepared. The agency shall make the necessary corrections and resubmit the form to the General Services Administration (NCD). The disposition request for any item may be disapproved and the agency notified in writing if after appraisal of the records the National Archives determines that the proposed disposition is not consistent with the value of the records.

(e) Application of comprehensive schedules. The head of each Federal agency shall direct the application of records schedules in order to ensure maximum economy of space, equipment, and personnel. Three copies of each directive or other issuance affecting an agency's records disposition program at the bureau of higher organizational level shall be sent to the General Services Administration (NCD).

§ 101–11.404–2 General Records Schedules.

General Records Schedules, issued by the General Services Administration (NARS), govern the disposition of certain types of records common to many or all agencies. Application of the disposition instructions in these schedules is mandatory.

(a) Authority.

(1) The Administrator of General Services shall issue schedules authorizing the disposal, after specified periods of time, of records of a prescribed form or character common to several or all agencies if these records do not have sufficient legal, fiscal, administrative, or other value to warrant their further preservation by the U.S. Government (44 U.S.C. 3303a).

(2) General Records Schedules constitute authority to dispose of certain records described therein. Guidelines are also provided for identifying certain permanent records which should be offered to the National Archives.

(3) When records covered by the General Records Schedules are incorporated into an agency's comprehensive schedule, the General Records Schedule and item number shall be cited in column 9 of Standard Form 115, Requests for Records Disposition Authority.

(4) Provisions of the General Records Schedules may be applied to records in the custody of the Archivist of the United States at his or her discretion.

(5) Agencies desiring authority to deviate from the disposition instructions prescribed in the General Records Schedules shall request this authority in accordance with § 101–11.406–3 and justify the request in accordance with § 101–11.406–8.

(b) Current schedules. The following General Records Schedules governing the disposition of records common to several or all agencies were developed by the National Archives and Records Service following consultation with the Office of Personnel Management, the U.S. General Accounting Office, and other appropriate agencies. They have been approved by the Archivist of the United States.

Schedule Number and Type of Records Governed

1—Civilian Personnel Records
2—Payrolling and Pay Administration Records
3—Procurement, Supply, and Grant Records
4—Property Disposal Records
5—Budget Preparation, Presentation, and Apportionment Records
6—Accountable Officers' Accounts Records
7—Expenditure Accounting Records
8—Stores, Plant, and Cost Accounting Records
9—Travel and Transportation Records
10—Motor Vehicle Maintenance and Operation Records
11—Space and Maintenance Records
12—Communication Records
13—Printing, Binding, Duplication, and Distribution Records
14—Informational Services Records
15—Housing Records
16—Administrative Management Records
17—Cartographic, Remote Sensing Imagery, and Related Records
18—Security and Protective Service Records
19—Research and Development Records
20—Machine-Readable Records
21—Audiovisual Records
22—Design and Construction Drawings and Related Records

(c) Availability. General Records Schedules and instructions for their use are available from the General Services Administration (NCD). The Archivist of the United States announces all new

schedules and schedule revisions in GSA bulletins.

§ 101-11.404-3 Records disposal lists.

By submitting a Standard Form 115, Request for Records Disposition Authority, agencies may request from NARS a one-time approval to dispose of records which no longer accumulate and have no further operational or other value. This type of request is known as a disposal list and must be applied to the records listed when approved (44 U.S.C. 3303 and 3303a).

§ 101-11.405 Disposition of permanent records.

§ 101-11.405-1 Authority.

The head of each agency shall direct the creation and preservation of records containing adequate and accurate documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency (44 U.S.C. 3101). The National Archives and Records Service shall establish standards for the retention of those records having continuing value, and assist Federal agencies in applying the standards to records in their custody (44 U.S.C. 2905).

§ 101-11.405-2 Definition of permanent records.

A permanent record is any record that has been determined by NARS to have sufficient value to warrant its preservation by the National Archives and Records Service. Such a determination may take the form of:

(a) An approved offer to transfer records to the National Archives and Records Service (§ 101-11.405-4);

(b) A series of records designated "permanent" in an agency records schedule approved by NARS after May 14, 1973 (§ 101-11.404-1(b)). Records so designated need not be appraised for accessioning at the time the records are offered to the National Archives and Records Service.

§ 101-11.405-3 Submission of recommendations for the permanent retention of records.

Federal agencies may recommend the permanent retention of records by a formal offer of records to the National Archives following procedures described under § 101-11.411 or by submitting Standard Form 115, Request for Records Disposition Authority, and Standard Form 115-A, Request for Records Disposition Authority—Continuation, to the General Services Administration. (NCD).

§ 101-11.405-4 Approval of the permanent retention of records.

The National Archives and Records Service will determine whether or not records are of permanent value. If the recommendation is submitted on a Standard Form 115, NARS will notify the agency that the records may be offered after a stated period to the National Archives and Records Service by returning one copy of the approved Standard Form 115. If the recommendation is made on a Standard Form 258, Request to Transfer, Approval, and Receipt of Records to National Archives of the United States, offering the records to the National Archives and Records Service, the agency will be given written notice of the final decision.

§ 101-11.405-5 Disapproval of the permanent retention of records.

If the National Archives and Records Service determines that records are not of permanent value, the agency will be given written notice of this decision. Within 6 months of the decision, the agency must submit a Standard Form 115 in accordance with § 101-11.406-3 requesting authorization to dispose of the records.

§ 101-11.406 Disposition of temporary records.

§ 101-11.406-1 Authority.

No records of the Government shall be destroyed or otherwise alienated from the Government except in accordance with 44 U.S.C. 3314. The Administrator of General Services will establish procedures to be followed by Federal agencies in compiling and submitting lists or schedules of records for disposal (44 U.S.C. 3302).

§ 101-11.406-2 Definition of temporary records.

A temporary (nonarchival) record is any record which has been determined by the Archivist of the United States to have insufficient value (on the basis of current archival standards) to warrant its preservation by the National Archives and Records Service. This determination may take the form of:

(a) A series of recurring records designated as disposable in an agency records disposition schedule approved by NARS (§ 101-11.404-1);

(b) A series of records designated as disposable in a General Records Schedule (§ 101-11.404-02); and

(c) An approved one-time authorization to dispose of records identified on a disposal list (§ 101-11.404-3).

§ 101-11.406-3 Request for authorization to dispose of temporary records.

Requests for authorization to dispose of records shall be initiated by Federal agencies by submitting records disposal lists or schedules to the National Archives and Records Service on Standard Form 115, Request for Records Disposition Authority. A Standard Form 115 is used for submitting a schedule (§ 101-11.404-1) or a list (§ 101-11.404-3). Item 6A of the Standard Form 115 should be checked if a list is being submitted or item 6B if a schedule is being submitted. Authority contained in an approved disposal list is limited to records already in existence. A schedule is a continuing authorization and should be used in all instances where the types of records described in the request continue to accumulate.

§ 101-11.406-4 General Accounting Office clearance.

Each Federal agency shall obtain the approval of the Comptroller General for the disposal of program records less than 3 years old and for certain classes of records relating to claims and demands by or against the Government, or to accounts in which the Government is concerned in accordance with the GAO Manual for Guidance of Federal Agencies, Title 8—Records Management (44 U.S.C. 3309). This approval must be obtained before the approval of the disposal request by the National Archives and Records Service.

§ 101-11.406-5 Approval of requests for disposal authority.

The Archivist of the United States will determine whether or not records may be destroyed. If the Archivist approves the request for authority to dispose of records, the National Archives and Records Service will notify the agency by returning one copy of the completed Standard Form 115. This shall constitute mandatory authority to dispose of the records (for withdrawal of disposal authority or the extension of retention periods, see §§ 101-11.406-6 and 101-11.406-8). This authorized disposal shall be accomplished as prescribed in § 101-11.406-9. Agencies shall forward 20 copies of all formally published records schedules containing disposition instructions which have been approved on a Standard Form 115 to the General Services Administration (NCD).

§ 101-11.406-6 Withdrawal of disposal authority.

In an emergency or in the interest of efficiency of Government operations, GSA will withdraw disposal authorizations in approved disposal schedules (44 U.S.C. 2909). This

withdrawal may apply to particular items on schedules submitted by agencies or may apply to all existing authorizations for the disposal of a specified type of record obtained by any or all agencies of the Government. If the withdrawal is applicable to only one agency, that agency will be notified of this action by letter signed by the Archivist; if applicable to more than one agency, notification may be by GSA bulletin issued and signed by the Archivist.

§ 101-11.406-7 Request to change disposal authority.

Agencies desiring to change the approved disposition of a series of records should submit a Standard Form 115. Disposal authorizations contained in approved disposal schedules automatically are superseded by approval of a later schedule applicable to the same records unless the later schedule specifically provides that both the earlier and later schedules shall be applicable at the agency's discretion. Agencies submitting records schedules must indicate in entry 9 of the Standard Form 115 the relevant schedule and item which is being superseded, and/or the General Records Schedule item which covers the records.

§ 101-11.406-8 Temporary extension of retention periods.

(a) Approved agency records schedules and General Records Schedules are mandatory (44 U.S.C. 3303a). Records approved for disposal shall not be maintained longer without the prior written approval of the National Archive and Records Service (NC).

(b) Upon submission of adequate justification, NARS may authorize a Federal agency to extend the retention period of a series of records (44 U.S.C. 2909). These extensions of retention periods will be granted for records which are required to conduct Government operations because of special circumstances which affect the normal administrative, legal, or fiscal value of the records.

(c) The head of a Federal agency may request approval of a temporary extension of a retention period by addressing a letter to the General Services Administration (NC), Washington, D.C. 20408. The request shall include:

(1) A concise description of the records for which the extension is requested;

(2) A complete citation of the specific provisions of the agency records schedule or the General Records Schedule currently governing disposition of the records;

(3) A statement of the estimated period of time that the records will be required; and

(4) A statement of the current and proposed physical location of the records, including information on whether the records have been or will be transferred to one or more Federal records centers.

(d) Approval of a request for extension of retention periods may apply to records in the custody of one Federal agency or records common to several or all Federal agencies. If approval of a request is applicable to records in the custody of one agency, that agency will be notified by letter. If approval is applicable to records common to several agencies, notification may be made by GSA FPMR bulletin.

(e) Upon approval of a request for a change in retention periods applicable to records that have been or will be transferred to one or more Federal records centers, centers will be notified of the change and agencies will be furnished a copy of the notification. Agencies shall forward to GSA (NC) 20 copies of all formally issued instructions which extend retention periods.

(f) Upon expiration of an approved extension of retention periods, NARS will notify all affected agencies to apply normal retention requirements.

§ 101-11.406-9 Methods of disposal.

(a) Authority. Federal agencies are required to follow regulations issued by the Administrator of General Services governing the methods of disposing of records (44 U.S.C. 3314). Only the methods described in § 101-11.406-9 shall be used.

(b) Sale or salvage. Paper records to be disposed of normally shall be sold as wastepaper. If the records are defense classified, their disposal is governed by Executive Order 12065. If the records are restricted; that is, if laws or regulations forbid their use by the public, the wastepaper contractor shall be required to pulp, macerate, or shred the records and a Federal employee must witness the disposal. The contract for sale shall prohibit the resale of all other records for use as records or documents. Records other than paper records (film and plastic recording, etc.) may be salvaged or sold in the same manner and under the same conditions as paper records. All sales shall be in accordance with the established procedures for the sale of surplus personal property. (See Part 101-45, Sale, Abandonment, or Destruction of Personal Property.)

(c) Donation for preservation and use.

(1) When the public interest will be served, a Federal agency may propose the transfer of records authorized for disposal to an eligible person, organization, institution, corporation, or government (including a foreign government) that has made application for them. Records will not be transferred without prior written approval of the National Archives and Records Service.

(2) The head of a Federal agency shall request the approval of such a transfer by addressing a letter to the General Services Administration (NC), Washington, DC 20408. The request shall include:

(i) The name of the department or agency, and subdivisions thereof, having custody of the records;

(ii) The name and address of the proposed recipient of the records;

(iii) A list containing (A) an identification by series of the records to be transferred, (B) the inclusive dates of each series, (C) the NARS disposition job and item numbers that authorize disposal of the records as indicated on the approved Standard Form 115, the agency records schedule citation, or other disposal authority;

(iv) A statement providing evidence (A) that the proposed transfer is in the best interests of the Government, (B) that the proposed recipient agrees not to sell the records as records or documents, and (C) that the transfer will be made without cost to the U.S. Government;

(v) A certification that (A) the records contain no information the disclosure of which is prohibited by law or contrary to the public interest, and/or (B) that records proposed for transfer to a person or commercial business are directly pertinent to the custody or operations of properties acquired from the Government, and/or (C) that a foreign government desiring the records has an official interest in them.

(3) NARS will consider each request and determine whether these donations are in the public interest and upon approval will notify the requesting agency in writing. If NARS determines such a proposed donation is contrary to the public interest, the request will be denied and the agency will be notified that the records must be destroyed in accordance with the appropriate disposal authority.

(d) Destruction. If the records cannot be sold advantageously or otherwise salvaged, the records may be destroyed by burning or pulping.

§ 101-11.407 Emergency authorization to destroy records.

§ 101-11.407-1 General provisions.

Under certain conditions, records may be destroyed without regard to the provisions of § 101-11.406.

§ 101-11.407-2 Menaces to human life or health or to property.

(a) Disposal is authorized whenever it is determined that records constitute a continuing menace to human health or life or to property (44 U.S.C. 3310). Whenever the head of an agency has determined that records constitute such a menace, he or she shall notify the National Archives and Records Service, specifying the nature of the records, their location and quantity, and the nature of the menace. If the National Archives and Records Service concurs in the determination, the immediate removal of the menace by the destruction of the records or by other appropriate means will be directed. However, if the determination is with respect to still or motion picture film on nitrocellulose base that has deteriorated to the extent described in paragraph (b) of this section, the head of the agency may follow the procedure therein provided.

(b) Whenever any radar scope, aerial, or other still or motion picture film on nitrocellulose base has deteriorated to the extent that it is soft, is emitting a noxious odor, contains gas bubbles, or has retrograded into an acrid powder, and the head of the agency having custody of it determines that it constitutes a menace to human health or life or to property, he or she may cause such menace to be eliminated immediately by:

(1) Arranging for its destruction in a manner that will salvage its silver content;

(2) Burning, in the event the quantity is not sufficiently large to justify the salvaging of its silver content; or

(3) Other appropriate methods in the event that the methods provided in paragraph (b) (1) or (2) of this section are not feasible.

(c) These films should be removed from inhabited buildings as soon as possible.

(d) Those to be burned should be submerged in water-filled drums and conveyed to a remote spot approved by fire authorities for burning. Preferably, only one reel should be burned at a time, but in no event should more than 25 pounds be burned at the same time. The rapid production of gases by burning is extremely dangerous, particularly if burned in a furnace or other confined space. Within 30 days after the destruction of the film as provided in this section, the head of the agency who directed its destruction shall submit a written statement to the National Archives and Records Service describing the film and showing when, where, and how the destruction was accomplished.

(e) This report has been cleared in accordance with FPMR 101-11.11 and assigned Interagency Report Control Number 1095-GSA-AR.

§ 101-11.407-3 State of war or threatened war.

(a) Destruction of records outside the territorial limits of the continental United States is authorized whenever, during a state of war between the United States and any other nation or when hostile action by a foreign power appears imminent, the head of the agency that has custody of the records determines that their retention would be prejudicial to the interest of the United States, or that they occupy space urgently needed for military purposes and are without sufficient value to warrant preservation (44 U.S.C. 3311).

(b) Within 6 months after the disposal of any records under this authorization, a written statement describing the character of the records and showing when and where the disposal was accomplished shall be submitted to the National Archives and Records Service by the agency official who directed the disposal.

§ 101-11.408 Damage to and unauthorized disposition of records.

§ 101-11.408-1 Responsibilities.

(a) The Administrator of General Services and the heads of Federal agencies are responsible for preventing unauthorized disposition of records, including all forms of mutilation and alienation of records. Unauthorized disposition is the removal from Federal custody or destruction of records without regard to the provisions of agency disposition lists and schedules that have been approved by NARS or the General Records Schedules issued by NARS (44 U.S.C. 2095, 3106, and 3303a).

(b) The heads of Federal agencies are responsible for ensuring that all employees are aware of the provisions of the law relating to unauthorized disposal, alienation, or mutilation of records, and should direct that any such action be reported to them.

§ 101-11.408-2 Penalties.

The penalties for willful and unlawful destruction, damage, or alienation of Federal records are contained in 18 U.S.C. 2071.

§ 101-11.408-3 Reporting.

(a) The head of a Federal agency shall report any unlawful removal, defacing, alteration, or destruction of records in the custody of that agency to the General Services Administration (NCD). The report shall include:

(1) A complete description of the records with volume and dates if known;

(2) The office of origin;

(3) A statement of the exact circumstances surrounding the alienation, defacing, or destruction of the records; and

(4) A statement of the safeguards with specific procedures to be instituted to prevent further instances of loss of documentation.

(b) This report has been cleared in accordance with FPMR 101-11.11 and assigned Interagency Report Control Number 1096-GSA-AR.

(c) The Administrator of General Services will assist the head of the agency in contacting the Attorney General for the recovery of any unlawfully removed records.

§ 101-11.408-4 Exclusions.

Private or personal files are not governed by these provisions. Section 101-11.202-2(d) provides the legal definition of personal papers and prescribes standards for their maintenance.

§ 101-11.409 Transfer of records from the custody of one executive agency to another

§ 101-11.409-1 Authority.

The Administrator will issue regulations governing the transfer of records from the custody of one executive agency to another (44 U.S.C. 2908).

§ 101-11.409-2 Approval.

No records shall be transferred from the custody of one executive agency to another without the prior written approval of the National Archives and Records Service except as provided in § 101-11.409-9.

§ 101-11.409-3 Agency request.

The head of any executive agency may request the transfer of records to or from his or her agency. Approval shall be requested by letter addressed to the National Archives and Records Service (NCD), in which are included:

(a) A concise description of the records to be transferred, including the volume in cubic feet;

(b) A statement of the restrictions imposed on the use of records;

(c) A statement of the agencies and persons using the records and the purpose of this use;

(d) A statement of the current and proposed physical and organizational locations of the records;

(e) Information as to why the proposed transfer is in the best interests of the Government; and

(f) A justification for the transfer of records more than 5 years old.

§ 101-11.409-4 Agency concurrences.

Copies of the concurrence or nonconcurrence in the transfer by the heads of any agencies concerned shall be attached to the agency request.

§ 101-11.409-5 Records of terminated agencies

Transfers of records of executive agencies whose functions are terminated or are in process of liquidation are expressly subject to this Subpart 101-11.4 and no such transfers shall be made except in accordance with its provisions.

§ 101-11.409-6 Equipment.

Records storage equipment shall be transferred with the records contained therein in accordance with arrangements previously agreed to by the agencies concerned.

§ 101-11.409-7 Costs of transfers.

Approved transfers shall be made without reimbursement to the agency of original custody for any cost involved, except when this reimbursement is previously agreed to by the agencies concerned.

§ 101-11.409-8 Restrictions on use of records.

Whenever any records that are transferred are subject to restrictions upon their use imposed under a statute, Executive order, or agency determination, these restrictions shall continue in effect after the transfer. Restrictions imposed by agency determination may be removed by agreement between the agencies concerned.

§ 101-11.409-9 Exceptions.

Prior written approval of the National Archives and Records Service is not required when:

(a) Records are transferred to the Federal records centers or the National Archives in accordance with §§ 101-11.410 and 101-11.411.

(b) Records are loaned for official use.

(c) The transfer of records or functions or both is required by statute, Executive order, or Presidential reorganization plan, or by specific determinations made thereunder.

§ 101-11.410 Transfer of records to Federal records centers.

§ 101-11.410-1 Authority.

The Administrator of General Services is authorized to establish, maintain, and operate records centers for the storage, processing, and servicing of records for Federal agencies (44 U.S.C. 2907). These centers are known as Federal records centers. In addition, a National Personnel Records Center is maintained for designated records of the Department of Defense and the Office of Personnel Management and for other designated records pertaining to former Federal civilian employees. A list of these records centers follows:

GSA region	Areas served	Mailing addresses
	National Centers	
	District of Columbia, Maryland, West Virginia, and Virginia (except U.S. Court records).	Washington National Records Center, Washington, DC 20409.
	Designated records of the Military Departments and the U.S. Coast Guard	National Personnel Records Center (Military Personnel Records), 9700 Page Boulevard, St. Louis, MO 63132.
	The entire Federal Government personnel records of separated Federal employees; medical and pay records of all Federal employees; designated medical records of Army and Air Force military personnel and their dependents; and records of agencies in the St. Louis area (Missouri only), of Scott AFB, IL, and of the Memphis Service Center, Internal Revenue Service.	National Personnel Records Center (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118.
	Regional Centers	
1	Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island	Federal Archives and Records Center, 380 Trapelo Road, Waltham, MA 02154.
2	New York, New Jersey, Puerto Rico, and the Virgin Islands	Federal Archives and Records Center, Military Ocean Terminal, Building 22, Bayonne, NJ 07002.
3	Delaware, Pennsylvania, and U.S. court records for Maryland, Virginia, and West Virginia.	Federal Archives and Records Center, 5000 Wissahickon Ave., Philadelphia, PA 19144.
4	North Carolina, South Carolina, Tennessee, Mississippi, Alabama, Georgia, Florida, and Kentucky.	Federal Archives and Records Center, 1557 St. Joseph Ave., East Point, GA 30044.
5	Illinois, Wisconsin, Minnesota, and U.S. court records for Indiana, Michigan, and Ohio.	Federal Archives and Records Center, 7358 South Pulaski Rd., Chicago, IL 60629.
5	Indiana, Michigan, and Ohio except U.S. court records	Federal Records Center, 3150 Bertwynn Drive, Dayton, OH 45439.
6	Kansas, Iowa, Nebraska, and Missouri except greater St. Louis area	Federal Archives and Records Center, 2306 East Bannister Rd., Kansas City, MO 64131.
	Greater St. Louis area (Missouri only)	National Personnel Records Center (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118.
7	Texas, Oklahoma, Arkansas, Louisiana, and New Mexico	Federal Archives and Records Center, P.O. Box 6216, Fort Worth, TX 76115.
8	Colorado, Wyoming, Utah, Montana, North Dakota, and South Dakota	Federal Archives and Records Center, Bldg. 48, Denver Federal Center, P.O. Box 25307, Denver, CO 80225.
9	Nevada except Clark County, California except southern California, American Samoa.	Federal Archives and Records Center, 1000 Commodore Drive, San Bruno, CA 94066.
9	Arizona; Clark County, Nevada; and southern California (counties of San Luis Obispo, Kern, San Bernadino, Santa Barbara, Ventura, Orange, Los Angeles, Riverside, Inyo, Imperial, and San Diego).	Federal Archives and Records Center, 24000 Avila Road, Laguna Niguel, CA 92677.
10	Washington, Oregon, Idaho, Alaska, Hawaii, and Pacific Ocean area (except American Samoa).	Federal Archives and Records Center, 6125 Sand Point Way, Seattle, WA 98115.

§ 101-11.410-2 Procedures for transfers to Federal records centers.

This section prescribes general procedures for the transfer of records to Federal records centers. For greater detail consult the GSA Records Management Handbook, Federal Archives and Records Centers (NSN 7610-00-298-6904).

(a) Federal records centers will accept for transfer any records of Federal agencies, subject to the following conditions:

(1) The records are properly scheduled. If the records are not scheduled, an exception to this regulation must be obtained by submitting a request in writing to the General Services Administration (NC), Washington, DC 20408.

(2) The records are not authorized for immediate destruction and transportation costs are not in excess of the resulting savings.

(3) Facilities for storing and providing reference on the records are available.

(b) Priority will be given to the removal of records from office space, from space convertible to office use, from leased space, and from filing equipment that can be reused.

(c) Inquiries concerning the appropriateness of transfers may be sent to the Director of the Federal records center in the GSA region in which the records are located. Inquiries shall specify the nature and quantity of the records proposed for transfer.

(d) Tranfers of records on an agencywide basis may be initiated by submitting a request to the General Services Administration (NC), Washington, D.C. 20408. Requests shall specify the nature and quantity of the records proposed for transfer.

(e) Transfers to Federal records centers shall be preceded by the submission of Standard Form 135, Records Transmittal and Receipt. An agency shall prepare an original and three copies of the Standard Form 135. One of the copies is retained by the agency as a file copy, and the original and two other copies are sent to the Federal records center to arrive at least 2 weeks (10 workdays) before the desired date of the records shipment. The records center will review the Standard Form 135 for completeness to determine the appropriateness of the transfer. If the transfer is approved, the records center may annotate block 6j of the Standard Form 135 with the Federal records center shelf location where each accession will be stored. The Federal records center returns two copies of the Standard Form 135 to the agency indicating that the records may be transferred. One of these copies shall be placed in the first carton of the shipment when the records are shipped to the center.

(f) The physical transfer of records to the center shall be accomplished as soon as possible after the agency has received the annotated copies of the Standard Form 135. Delay in shipment of more than 30 days will result in the return of the Standard Form 135 requiring the resubmission of transfer paperwork.

(g) Upon receipt of the records shipment at the center, the cartons are matched against the copy of the Standard Form 135 submitted with the transfer. That copy is signed by center officials and returned to the agency for its files. Any changes in location designation will be noted on this receipt copy before it is returned to the agency. This is the only receipt the center will provide for transferred material, including records having security classifications up to and including "Secret."

§ 101-11.410-3 Transfers to the National Personnel Records Center.

General Records Schedules 1 and 2 specify that certain civilian personnel and pay records shall be centralized at the National Personnel Records Center (Civilian Personnel Records) at St. Louis.

(a) The following three types of records are so specified:

(1) Official personnel folders of separated employees;

(2) Service record cards of employees who separated or transferred on or before December 31, 1947; and

(3) Audited individual earnings and pay cards and comprehensive payrolls.

(b) Official personnel folders should be transferred to the center in a sealed envelope or container. No advance notification or transmittal document is required from the transferring agency, and receipts will not be furnished for official personnel folders, loose papers intended for inclusion in these folders, or pay records.

(c) Agencies should make every effort to locate all documents required to be in the folder and file them before the folder is transferred to the National Personnel Records Center. Loose papers being prepared for transfer to the National Personnel Records Center for inclusion in official personnel folders previously sent to the records center must be thoroughly screened by the transferring agency of all temporary material, as defined in the Federal Personnel Manual. Only those papers specifically prescribed in the Federal Personnel Manual for permanent inclusion in each individual's folder should be forwarded. Each document must show the following identifying information: Current name and the name under which formerly employed (if different), date of birth and social security number, and date of separation. The transmittal should clearly identify the agency personnel office and address.

(d) Transfer of fiscal records shall be in accordance with the procedures outlined in § 101-11.410-2.

(e) Standard Form 127, Request for Official Personnel Folder (Separated Employee), shall be used by agencies in requesting transmission of personnel records of separated employees from the National Personnel Records Center. Use of this form ensures prompt transmission of the desired folders. It should be submitted to the National Personnel Records Center in duplicate.

§ 101-11.410-4 Transferring vital records to Federal records centers.

GSA provides for the storage and protection of rights and interests vital records under the dispersed concept as described in § 101-11.7. The facilities of all GSA Federal records centers (FRC) without regard to geographical location are now available for agencies desiring to store these records. Each GSA Federal records center has areas with suitable temperature and humidity controls allowing the safe storage of paper records, magnetic tape, and photographic film. Agencies may make arrangements through the General Services Administration (NC), Washington, D.C. 20408, for the transfer of indispensable vital records to these depositories and for their use.

§ 101-11.410-5 Surveying records for transfer to records centers.

The appropriate regional National Archives and Records Service facility will conduct surveys of the records accumulations of field offices of those agencies not operating approved records centers and recommend records to be transferred to Federal records centers. These recommendations will be submitted to the field office concerned and to the National Archives and Records Service (NC) for coordination with the appropriate agency headquarters. Surveys of records of agency headquarters normally will be made by the National Archives and Records Service (NC).

§ 101-11.410-6 Release of equipment.

File equipment received with the transfer of records to a Federal records center will normally be disposed of in accordance with applicable excess personal property regulations. An agency desiring return of the equipment should make this request before transfer of the records to the records center.

§ 101-11.410-7 Use of records in Federal records centers.

Each agency record which is accepted by the Administrator of General Services for storage, processing, and servicing in accordance with 44 U.S.C.

3103 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record. The Administrator of General Services will not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with existing laws.

(a) Standard Form 180, Request Pertaining to Military Records, shall be used by Federal agencies to obtain information from military service records in the National Personnel Records Center (Military Personnel Records). Agencies may furnish copies of that form to the public to aid in inquiries and may direct non-Government organizations to the Superintendent of Documents to purchase quantities of the form.

(b) Requests for official civilian personnel files shall be made in accordance with § 101–11.410–3.

(c) For any other requests, agencies should use Optional Form 11, Reference Request—Federal Records Centers, or a form jointly designated by that agency and NARS.

§ 101–11.410–8 Disposal clearances for records in Federal records centers.

(a) Records at the National Personnel Records Center covered by General Records Schedules 1 and 2 will be destroyed in accordance with those schedules without further agency clearance.

(b) Other records of Federal agencies held by Federal records centers will be disposed of with the concurrence of the agency concerned by use of GSA Form 3170, Notice of Intent to Destroy Records, or other written concurrence for each disposal action. If an agency is notified of the eligibility of its records for disposal and the agency fails to respond to this notification within 90 calendar days, the records will be disposed of in accordance with the appropriate authority.

4. Section 101–11.412 is revised to read as follows:

§ 101–11.412 Agency records centers.

§ 101–11.412–1 Authority.

Federal agencies are authorized to maintain and operate records centers for the storage, processing, and servicing of appropriate records when these centers are approved by the Administrator (44 U.S.C. 3103). Centers operated by Federal agencies are referred to in this Part 101–11 as "agency records centers."

§ 101–11.412–2 Facility standards for agency records centers.

Inspection of agency records centers by GSA shall include an evaluation of the agency's compliance with the facility standards for records centers specified below:

(a) General.

(1) The facility should be a single-story building constructed with noncombustible materials.

(2) A floor load limit shall be established for the records storage area by a structural engineer. The allowable load limit shall be posted in a conspicuous place and shall not be exceeded.

(3) Steel shelving or other open-shelf records storage equipment shall be braced to prevent collapse under full load in accordance with Federal Specifications AS–S–271 or AA–S–1047. The records storage height shall not exceed 15 feet. Agencies operating records centers which have storage heights in excess of 15 feet may apply in writing to the General Services Administration (NC), Washington, DC 20408, for an exemption to this requirement. If a request for exemption is denied, agencies will be required to remodel existing centers to meet the 15-foot requirement.

(4) The area occupied by the center shall be equipped with an anti-intrusion alarm system, or equivalent, to protect against unlawful entry after hours.

(b) Fire safety.

(1) All walls separating records storage areas from each other and from other portions of the building shall be 4-hour fire resistant. Two-hour-rated firewalls shall be provided between the records storage areas and other auxiliary spaces. Penetrations in the walls shall not reduce the specified fire-resistance ratings.

(2) Openings in firewalls separating records storage areas shall be avoided as far as possible but if openings are necessary they shall be protected by self-closing or automatic Class A firedoors, or equivalent, on each side of the wall openings.

(3) Roof support structures that cross or penetrate firewalls shall be cut and supported independently on each side of the firewall.

(4) If firewalls are erected with expansion joints, the joints shall be protected to their full height with No. 10 iron astragals lapping the opening on each side of the firewall.

(5) Building columns in the records storage areas shall be 2-hour fire resistant from the floor to the point where they meet the ceiling or roof framing system.

(6) Automatic roof vents shall not be designed into new or existing buildings.

(7) Where light steel roof or floor supporting members; e.g., bar joists having top chords with angles 2 by 1½ inches or smaller, thickness one-fourth inch or smaller, and web diameters thirteen-sixteenths inch or smaller are present, they shall be provided with a 10-minute fire-resistant coating. The coating will be applied only to the top chords.

(8) Furnace or boiler rooms shall be separated from records storage areas by 4-hour-rated firewalls, with no openings directly from these rooms to the records storage areas. No open flame (oil or gas) equipment or unit heaters shall be installed or used in any records storage area.

(9) The arrangement of the records storage equipment shall be such that there shall be no dead-end aisles. Equipment rows running perpendicular to the wall shall terminate at least 18 inches from the wall.

(10) No oil-type electrical transformers, regardless of size, except thermally protected devices included in fluorescent light ballasts, shall be installed in the records storage areas. All electrical wiring shall be in metal conduit, except that armored cable may be used where flexible connections to light fixtures are required.

(11) All records storage and adjoining areas shall be protected by automatic wetpipe sprinklers. Automatic sprinklers are specified herein because they provide the most effective fire protection for high-piled storage of paper records on open-type shelving.

Note.—Other automatic extinguishing systems or protective measures may provide an acceptable level of fire-loss risk depending upon specific conditions, such as type or importance of the records, the type of storage equipment used, or how the space is designed, controlled, and operated. For a discussion of these measures, refer to the guides on records protection available from the National Fire Protection Association (NFPA 232 and NFPA 232AM). Also, consult the Chief of the Accident and Fire Prevention Branch in the GSA regional office about these systems and protective measures.

(12) The sprinkler system shall be rated at 286 degrees Fahrenheit and designed to provide 0.30 gpm per square foot for the most remote 1,500 square feet of floor area with a minimum flowing pressure of 7.0 psi at the most remote sprinkler head. Installation shall be in accordance with Standard Number 13 of the National Fire Protection Association.

(13) Maximum spacing of the sprinkler heads shall be on a 10-foot grid and the positioning of the heads shall provide complete, unobstructed coverage, with a clearance of not less than 18 inches from the top of the highest stored materials.

(14) The sprinkle system shall be equipped with a water-flow alarm

connected to a continuously staffed fire department or central station, with responsibility for immediate response.

(15) A manual fire alarm system shall be provided with central station service or other automatic means of notifying the municipal fire department. A manual alarm pull station shall be located adjacent to each exit. Supplemental manual alarm stations are permitted within the records storage areas.

(16) All water cutoff valves in the sprinkler system shall be equipped with automatic closure alarm connected to a continously staffed station, with responsibility for immediate response.

(17) A dependable water supply free of interruption shall be provided. This normally requires a backup supply system having sufficient pressure and capacity to meet both firehose and sprinkler requirements for 2 hours.

(18) Interior firehose stations shall be provided in the records storage areas, equipped with 1½-inch diameter rubber or latex hose, enabling any point in the records storage area to be reached by a 50-foot hose stream from a 100-foot hose lay.

(19) In addition to the designed sprinkler flow demand, 500 gpm shall be provided for hose stream demand. The hose stream demand shall be calculated into the system at the base of the main sprinkler riser.

(20) Fire hydrants should be located within 250 feet of each exterior entrance or other access to the records center that could be used by firefighters. All hydrants should be at least 50 feet away from the building walls and adjacent to a roadway usable by fire apparatus.

(21) Portable water-type fire extinguishers (2½-gallon stored pressure-type) shall be provided at each fire alarm striking station.

(22) Catwalks may be provided in the aisles between the metal stacks in high-activity records storage areas without provision of sprinklers under the walkway. Where provided, the walking surface of the catwalks shall be of expanded metal at least 0.09-inch thickness with a 2-inch mesh length. The surface opening ratio shall be equal to or greater than that outlined in Military Specification (MIL–M–17194C) of March 8, 1955. The sprinkler water demand for protection over bays with catwalks where records are not oriented perpendicular to the aisles shall be calculated hydraulically to give 0.3 gpm per square foot for the most remote 2,000 square feet.

(23) Storage of hazardous cellulose nitrate film requires special facilities not covered by the above standards. (See NFPA 40 and NFPA 232.)

§ 101–11.412–3 Requests for authority to establish or relocate records centers.

No agency records center shall be established or relocated from one city to another without the prior written approval of GSA.

(a) Exclusions.

(1) Staging areas containing less than 5,000 square feet of space used by agencies for the temporary storage of materials preparatory to their transfer to a records center or other disposition, provided no records are held in staging areas in excess of 5 years. The facility standards in § 101–11.412–2 apply to these staging areas.

(2) Areas of less than 5,000 square feet used solely for the storage of records to which occasional reference is made but on which no processing activity (screening and microfilming, etc.) is performed. The facility standards in § 101–11.412–2 apply to these records areas.

(b) Content of requests. Requests for authority to establish or relocate an agency records center shall be submitted in writing to the Administrator of General Services. These requests shall specify:

(1) Proposed location of the agency records center,

(2) Space to be occupied in gross square feet,

(3) Nature and quantity of records to be stored,

(4) Total personnel to be employed, and

(5) Justification for the proposed center which shall include a comparison between the annual cost per cubic foot to store the records in the agency records centers and the cost to store the same records in a GSA Federal records center. An analysis of GSA's Federal records center space and equipment cost may be obtained from the Office of Federal Records Centers (NC), General Services Administration, Washington, DC 20408. The justification also should indicate whether the records to be stored in the agency center have high security classification, require specialized processing or high-cost indexing, or are to be used by technical agency personnel stationed at the records center.

(c) Approval of requests. Requests for the establishment or relocation of an agency records center will be approved by the Administrator of General Services when greater economy or efficiency can be achieved through its operation than by the use of a Federal records center operated by GSA.

(d) Annual agency records center report. Each Federal agency operating one or more agency records centers shall submit to the General Services Administration (NC) a report on Standard Form 137, Agency Records Center Annual Report (see § 101–11.4905), for each center within 60 days after the close of each fiscal year.

(e) This annual report has been cleared in accordance with FPMR 101–11.11 and assigned Interagency Report Control Number 1097–GSA–AN.

(Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c))

Dated: January 11, 1980.

R. G. Freeman III,

Administrator of General Services.

[FR Doc. 80–2237 Filed 1–23–80; 8:45 am]

BILLING CODE 6820–26–M

DEPARTMENT OF THE INTERIOR

43 CFR Part 4

Special Rules Applicable to Public Lands, Hearings and Appeals; Regulations To Produce More Effective Participation

AGENCY: Department of the Interior.

ACTION: Final rulemaking.

SUMMARY: This document amends the regulations pertaining to appeals to the Interior Board of Land Appeals to require service of notices of appeal, statements of reason, written arguments and briefs upon the Associate Solicitor, division of Energy and Resources. This change will enable the Associate Solicitor to participate more effectively in appeals proceedings.

EFFECTIVE DATE: February 25, 1980.

ADDRESS: Any inquiries should be addressed to: Chief Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Mr. James L. Burski, (703) 557–9040, or Mr. Paul B. Smyth, (202) 343–4036.

SUPPLEMENTARY INFORMATION: The regulations at 43 CFR Part 4, Subpart E provide an appeal process to the Interior Board of Land Appeals. Section 4.413 of 43 CFR provides than an appellant must serve a copy of the notice of appeal and of any statement of reasons, written arguments, or briefs upon each adverse party named in the decision to be appealed. The amendment set forth below will also require service of such documents upon the Associate Solicitor, Division of Energy and Resources. This change will enable the Associate Solicitor to participate more effectively in appeals proceedings.

The regulation is being published as a final rulemaking under 5 U.S.C. 553(b)(3)(A) since it pertains to rules of

agency practice and procedure. A thirty day effective date for implementation of the regulation has been chosen to allow the public to become familiar with this change. The principal author of this rulemaking is Paul B. Smyth, Office of the Solicitor, Department of the Interior, Washington, D.C.

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.

It is hereby determined that publication of this rulemaking is not a major federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (43 U.S.C. 4332(2)(C)) is required.

Accordingly, under the authority of 43 U.S.C. 1201, Part 4, Subtitle A, Title 43 of the Code of Federal Regulations is amended as follows:

§ 4.413 Service of notice of appeal and of other documents.

The appellant must serve a copy of the notice of appeal and of any statement of reasons, written arguments, or briefs on the Associate Solicitor, Division of Energy and Resources (Address: Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 20240) and each adverse party named in the decision appealed from, in the manner prescribed in § 4.401(c), not later than 15 days after filing the document. * * *

Dated: January 16, 1980.

James A. Joseph,

Under Secretary.

[FR Doc. 80-2340 Filed 1-23-80; 8:45 am]

BILLING CODE 4310-17-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the nation.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. R. Gregg Chappell, National Flood Insurance Program, (202) 426-1460 or Toll Free Line (800) 424-8872 (In Alaska and Hawaii call Toll Free (800) 424-9080), Room 5150, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67.4(a) (presently appearing at its former Title 24, Chapter 10, Part 1917.4(a) of the Code of Federal Regulations). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60 (formerly 24 CFR Part 1910).

The final base (100-year) flood elevations for selected locations are:

Final Base (100-Year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
California	San Joaquin County (unincorporated Areas), FI-3977.	San Joaquin River	State Highway 4 at centerline	*11
			Interstate Highway 5 at centerline	*25
			Airport Way at centerline	*33
			Confluence with Stanislaus River	*36
		Mokelumne River	Confluence with Dry Creek	*21
			Lower Sacramento Road 100 feet upstream of centerline	*41
			Central California Traction Railroad 100 feet upstream of centerline	*52
			Elliot Road at centerline	*71
		Bear Creek	Interstate Highway 5 at centerline	*9
			Eightmile Road at centerline	*38
			State Highway 88 200 feet upstream of centerline	*68
			Jack Tone Road at centerline	*88
		Paddy Creek	Confluence with Bear Creek	*69
			Jack Tone Road at centerline	*83
		South Paddy Creek	Hibbard Road at centerline	*70
			Jack Tone Road at centerline	*74
		Middle Paddy Creek	Jack Tone Road at centerline	*81
		Lower Mosher Creek	Confluence with Disappointment Slough	*7
			Thornton Road at centerline	*10
			State Highway 99 at centerline	*32
			Alpine Road at centerline	*48
		Mosher Creek	Confluence with Bear Creek	*57
			Jack Tone Road 200 feet upstream of centerline	*74
			Tully Road at centerline	*87
			Clements Road at centerline	*104
		Calaveras River	Interstate Highway 5 at centerline	*15
			McAllen Road 100 feet upstream of centerline	*28
			Ashley Lane 100 feet upstream of centerline	*44
			State Highway 88 at centerline	*59
			Jack Tone Road at centerline	*72
			Messick Road at centerline	*96
			Escalon-Bellota Road at centerline	*118
			Confluence with Mormon Slough	*125
			Shelton Road at centerline	*159

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Stockton Diverting Canal	Sanguinetti Lane 30 feet upstream of centerline	*27
			Southern Pacific Railroad at centerline	*39
		Mormon Slough	Panella Road 60 feet upstream of centerline	*53
			Duncan Road approximately 150 feet upstream of centerline	*80
			Flood Road at centerline	*100
			Escalon-Bellota Road 200 feet upstream of centerline	*123
		French Camp Slough	Confluence with San Joaquin River	*12
			Western Pacific Railroad approximately 140 feet upstream of centerline.	*16
			Tidewater Southern Railroad at centerline	*25
		Walker Slough	Interstate Highway 5 at centerline	*12
			Southern Pacific Railroad at centerline	*12
		Duck Creek	Airport Way at centerline	*17
			Atchison, Topeka, and Sante Fe Railroad at centerline	*30
			Panella Road 50 feet upstream of centerline	*55
			Drais Road 200 feet upstream of centerline	*79
			Hewitt Road at centerline	*92
			Escalon-Bellota Road 40 feet upstream of centerline	*106
		South Fork South Littlejohns Creek.	Confluence with French Camp Slough	*26
			Austin Road at centerline	*41
			Jack Tone Road 50 feet upstream of centerline	*55
		South Littlejohns Creek	Mariposa Road approximately 200 feet upstream of centerline	*66
			Van Allen Road approximately 200 feet upstream of centerline	*91
		Littlejohns Creek	Stanley Road at centerline	*98
			Southern Pacific Railroad at centerline	*110
		North Fork South Littlejohns Creek.	State Highway 99 200 feet upstream of centerline	*30
			Kaiser Road at centerline	*49
			Atchison, Topeka, and Santa Fe Railroad at centerline	*57
		Lone Tree Creek	State Highway 99 approximately 200 feet upstream of centerline	*31
			Murphy Road at centerline	*59
			Lone Tree Road 150 feet upstream of centerline	*74
			Atchison, Topeka, and Sante Fe Railroad at centerline	*93
			Escalon-Bellota Road 75 feet upstream of centerline	*115
		Temple Creek	Jack Tone Road approximately 200 feet upstream of centerline	*50
			Murphy Road approximately 200 feet upstream of centerline	*67
			Van Allen Road at centerline	*85
			Escalon-Bellota Road at centerline	*106
		Corral Hollow Creek	Chrisman Road at centerline	*124
			McArthur Drive at centerline	*158
			Private Road (1.57 mile above Chrisman road) 100 feet downstream of centerline.	*174
			Private Road (1.57 mile above Chrisman Road) 60 feet upstream of centerline.	*188
			Private Road (1.715 mile above Chrisman Road) 50 feet downstream of centerline.	*189
			Private Road (1.715 mile above Chrisman Road) 25 feet upstream of centerline.	*197
			Jefferson Road at centerline	*201
			Western Pacific Railroad upstream of centerline	*208
			California Aqueduct at downstream side	*209
			California Aqueduct at upstream side	*226
			Interstate Highway 580 140 feet upstream of centerline	*226
			Downstream crossing of Coral Hollow Road 45 feet upstream of centerline.	*285
		Jahant Slough	Southern Pacific Railroad at centerline	*38
			North Cherokee Road at centerline	*52
	Maps are available at 1810 East Hazleton Street, Stockton, California.			
Massachusetts	Chelmsford (Town), Middlesex County, FI-4696.	River Meadow Brook	U.S. Route 3 at centerline	*103
			Billerica Road 50 feet upstream of centerline	*108
			Power Line Access Road 50 feet upstream of centerline	*113
		Beaver Brook	Confluence with River Meadow Brook Summer Street	*111
			Summer Street at centerline	*121
			State Route 4 100 feet upstream of centerline	*128
		Putnam Brook	Confluence with River Meadow Brook	*111
			Boston Road 20 feet upstream of centerline	*127
			Hall Road 20 feet upstream of centerline	*136
		Merrimack River	Confluence with Deep Brook	*102
		Stony Brook	Middlesex Road at centerline	*102
			U.S. Route 3 at centerline	*105
			Meadowbrook Road at centerline	*109
		Hales Brook	Interstate Highway 495 (Upstream Culvert) at centerline	*103
			Riverneck Road 80 feet upstream of centerline	*106
		Concord River	Downstream Corporate Limits	*106
	Maps are available at Town Hall, 1 North Road, Chelmsford, Massachusetts.			
Texas	Fort Worth, City, Tarrant County (Docket No. FI-4288).	Big Fossil Creek	Upstream side of Alta Vista Road	*578
			Upstream side of Watauga-Saginaw Road	*608
			A. T. & S. F. Railroad	*700
			Wagley Roberston Road	*730
		Cement Creek	Mouth	*580
			35th Street	*584
			Upstream side of I. H. 820	*683
			Upstream Corporate Limits	*687
		Clear Fork Trinity River	Mouth	*535

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Trinity River	Henderson Street	*539
			Lancaster Street	*544
			I. H. 20	*549
			University Drive	*558
			Hulen Street	*568
			Bryant Erwin Road	*587
			Loop 820	*602
			Upstream Corporate Limits	*611
		Cottonwood Creek	Mouth	*480
			Randol Mill Road	*489
			Upstream side Dallas-Fort Worth Turnpike	*506
			Cooke Lane	*522
			Sandy Lane	*570
			Muse Street	*582
			Milam Drive	*598
		Dry Branch	Mouth	*508
			Upstream side of Lower Birdville Road	*523
			Marsalis Street	*547
			Upstream side Beach Street (Extended)	*556
			Upstream side Robinwood Street	*565
			Carnation Drive	*570
			Hollis Street	*588
		Farmer's Branch	Upstream side I. H. 820	*715
			Upstream side Alamed Street	*749
		King's Branch	Downstream Corporate Limits	*591
			Ridgemar Road	*603
			Green Oaks Road	*619
		Little Fossil Creek	Beach Street	*563
			Upstream side of Texas & Pacific Railroad	*575
			Upstream side of St. Louis & Southwestern Railroad	*579
			Sylvania Avenue	*590
			I. H. 35 West	*602
			Great Southwest Parkway	*608
			Upstream side Forth Worth & Denver Railroad	*619
			Loop I. H. 820	*625
			Upstream side of Old Richey Airport Road	*630
			Upstream Corporate Limits	*650
		Live Oak Creek	Mouth	*600
			Silver Creek Road	*604
			Upstream Corporate Limits	*662
		Lorean Branch	Trinity Boulevard	*498
			Chicago, Rock Island & Pacific Railroad	*507
		Marine Creek	Mouth	*528
			St. Louis & Southwestern Railway	*529
			Upstream side of Exchange Avenue	*539
			Upstream side of Clinton Avenue	*547
			Upstream side of N. W. 30th Street	*567
			Downstream side of N. W. 33rd Street	*574
			N. W. 35th Street	*590
			Rock Island Avenue	*606
			Upstream side of Sherman Avenue	*614
			Upstream side of Frontage Road	*706
			Upstream Corporate Limits	*706
		Mary's Creek	Mouth	*608
			Ridglea Country Club Drive	*612
			Upstream side of Old Benbrook Road	*632
			Upstream side of I. H. 820	*674
			Longvue Road	*697
			New F.M. 2871	*701
			Downstream side of U.S. Route 80	*717
			Upstream side of U.S. Route 180	*722
			Upstream Corporate Limits	*738
		Silver Creek	Mouth	*600
			Silver Creek Road	*612
		Sulpher Branch	Mouth	*475
			Arlington-Bedford Road	*475
			State Route 183	*478
		Sycamore Creek	E. Lancaster Avenue	*524
			Vickery Boulevard	*534
			Upstream side of E. Rosedale Street	*543
			Upstream side of Polytechnic Freeway	*547
			Colvin Avenue	*559
			S. Riverside Drive	*573
			Southern Pacific Railroad	*582
			Elva Warren Street	*588
			Upstream side of Seminary Drive	*601
			Texas & Pacific Railroad	*619
			Oak Grove Road	*628
			Downstream side I. H. 820	*639
			North-South Freeway	*649
			Hemphill Street	*660
			Sycamore School Road	*700
		Valley View Creek	Upstream side of Trinity Boulevard	*487
			Upstream side of Chicago, Rock Island & Pacific Railroad	*504
			State Route 183	*508

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Village Creek	Mouth	*476
			Fort Worth-Dallas Turnpike	*483
			Randol Mill Road	*486
			Downstream side of U.S. Route 80 and 180	*497
		Walker's Branch	Soldier Hurst Road	*487
			Trinity Boulevard	*498
			Downstream side of Lower Precinct Line Road	*503
			Upstream Corporate Limits	*509
		Walnut Creek	Mouth	*633
			Upstream side of Texas & Pacific Railroad	*647
			Upstream Corporate Limits	*650
		West Fork Trinity River	Downstream Corporate Limits	*472
			Arlington-Bedford Road	*475
			Lower Precinct Line Road	*483
			Upstream side Loop I. H. 820	*500
			Downstream side of E. First Street	*509
			Beach Street	*513
			Riverside Drive	*516
			4th Street	*520
			I. H. 35	*524
			Samuels Avenue	*528
			N. Main Street	*535
			University Drive	*540
			State Route 183	*555
			Meandering Road	*561
			Upstream side of Lake Worth Dam	*599
			Upstream Corporate Limits	*599
		Wildcat Branch	Mouth	*564
			I. H. 820	*568
			Radford Road	*574
			Stallcup Road	*582
			Village Creek Road	*610
		Stream 1	Mouth	*668
			State Route 156	*674
			Atcheson, Topeka & Santa Fe Railroad	*718
		Stream 2	Mouth	*695
			Hicks Road	*734
			Upstream Corporate Limits	*740
		Stream 3	Mouth	*682
			FM 156—First Crossing	*692
			U.S. Route 287 & 81	*720
		Stream 4	Mouth	*638
			Harman Road	*686
		Stream 5	Mouth	*586
			Downstream side of Watauga-Saginaw Road	*593
			Old Denton Road	*610
			Upstream side of I. H. 35	*645
			Frontage Road	*670
			Upstream Corporate Limits	*683
		Stream 6	Mouth	*632
			Upstream Corporate Limits	*654
		Stream 7	Mouth	*600
			Upstream Corporate Limits	*607
		Stream 8	North Shore Drive	*605
			Upstream Corporate Limits	*629
		Stream 9	Mouth	*605
			Nine Mile Bridge Road	*633
		Stream 10	Upstream side of North Shore Drive	*611
			Shelby Lane	*616
			Joe Elle Lane	*620
		Stream 11	Mouth	*543
			Upstream side of Ohio Gardens Road	*548
			River Oaks Boulevard	*563
		Stream 12	Mouth	*527
			Downstream side of Burlington Northern Railroad	*533
			Upstream side of Peak Street (Extended)	*546
			Upstream side of 28th Street	*552
			Upstream side of Dewey Street	*564
			Swartz Street	*590
			32nd Street	*595
			St. Louis & Southwestern Railway	*599
			Long Avenue	*604
			36th Street	*617
			Upstream side of Beaumont Street	*625
			Jasper Street	*630
			Upstream side of Michael Terminal Street	*636
			Hardy Street	*643
			Decatur Avenue	*650
		Stream 13	Mouth	*583
			Meachum Boulevard	*601
		Stream 14	Mouth	*576
			St. Louis & Southwestern Railway	*578
			Upstream side of Meachum Boulevard	*609

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Stream 15	Mouth	*505
			Upstream side of Randol Mill Road	*524
			Downstream side of Lawrence Road	*564
			Downstream side of Dallas-Fort Worth Turnpike	*573
			Downstream side of McNeer Road	*576
		Stream 16	Mouth	*504
			Boca Ration Boulevard	*510
			Upstream side of Dallas-Fort Worth Turnpike	*520
			Ederville Road	*524
		Stream 17	Mouth	*489
			Upstream side of Randol Mill Road (1st crossing)	*505
			Upstream side of Randol Mill Road (3rd crossing)	*526
		Stream 18	Mouth	*539
			Downstream side of John T. White Road	*575
		Stream 19	Mouth	*676
			Upstream side of Mary's Creek Road	*702
			Upstream side of FM 2871	*716
		Stream 20	Mouth	*702
			Upstream side Chapin Road	*707
			Downstream side of U.S. Route 80	*748
		Stream 21	Downstream Corporate Limits	*682
			Upstream side of Chapin Road	*697
			Downstream side of Dr. Harris Road	*717
		Stream 22	Chapin Road	*699
			Downstream side of U.S. Highway 80	*728
		Stream 23	Mouth	*606
			Shadow Drive	*651
			Floyd Drive	*657
			Upstream side of Fortune Road	*688
			Upstream side of Clayton Road	*692
		Stream 24	Mouth	*584
			Bryant Irvin Road	*595
			Upstream side of Texas & Pacific Railroad	*600
			Stove Foundary Road	*610
			Upstream side of Spring Road	*637
			Upstream side of Clayton Road	*672
		Stream 25	Mouth	*569
			Upstream side of Texas & Pacific Railroad	*573
		Stream 26	Mouth	*591
			Bryant Irvin Road	*612
			Upstream side Loop 820	*617
		Stream 27	Downstream Corporate Limits	*709
			W. Clevurne Road	*746
		Stream 28	Mouth	*653
			Upsteam side of Edgecliff Road	*670
			Upstream side of Southcrest Drive	*682
		Stream 29	Upstream side of Edgecliff Road	*687
			James Avenue	*694
			Old Crowley Road	*697
			Upstream side Crowley Road	*707
		Stream 30	Mouth	*562
			Mockingbird Land	*575
			Colonial Parkway	*579
		Stream 31	Mouth	*557
			Upstream side of Colonial Parkway	*560
			Glenco Terrace	*571
			Upstream side of Forest Park Boulevard	*596
			Downstream side of Warner Street	*611
		Stream 32	Mouth	*583
			Weinsenberger Street	*585
			Bulter Street	*588
		Stream 33	Mouth	*561
			East Berry Road	*574
		Stream 34	Mouth	*568
			Riverside Drive	*575
			Upstream side of Yuma Avenue	*592
			Downstream side of Texas & Pacific Railroad	*601
		Stream 35	Mouth	*526
			Upstream side of Woodrow Street	*527
			Upstream side of Beach Street	*538
			Upstream side of Connor Street	*545
		Stream 36	Mouth	*528
			Upstream side of Polytechnic Freeway	*536
			Upstream side of Vickery Boulevard	*548
			Exeter Street	*548
		Stream 37	Mouth	*564
			I. H. 820	*566
			Upstream side of Fitzhugh Street	*586
			Stallcup Road	*597
		Stream 38	Mouth	*564
			Upstream side of Cravens Road	*569
			Upstream side of I. H. 820	*574
			Upstream side of Carey Street	*589
			Hilldale Street	*593

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Stream 39	Mouth	*564
			Upstream side I. H. 820	*571
			Parker-Henderson Road	*600
		Stream 40	Mouth	*585
Maps available at the City hall, Forth Worth, Texas.				

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963).

Issued: December 18, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-2084 Filed 1-23-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the nation.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT:

Mr. R. Gregg Chappell, National Flood Insurance Program (202) 426–1460 or Toll Free Line (800) 424–8872 (In Alaska and Hawaii call Toll Free Line (800) 424–9080), Room 5150, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.4(a) (presently appearing at its former Title 24, Chapter 10, Part 1917.4(a) of the Code of Federal Regulations)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60 (formerly 24 CFR Part 1910).

The final base (100-year) flood elevations for selected locations are:

Final Base (100-Year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Arkansas	Town of Huttig, Union County (Docket No. FI-5713).	Quachita River	Intersection of Fourth Street Eastern Corporate limits	*91
Maps available at Mayor's Office, Town Hall, Huttig, Arkansas 71747.				
California	Anaheim (City), Orange County (Docket No. FI-5673).	Santa Ana River	Imperial Highway Bridge 100 feet downstream from centerline	*283
			Confluence with Walnut Canyon Channel 25 feet upstream from centerline.	*292
			Corporate limits upstream from confluence with Walnut Canyon Channel 250 feet downstream from centerline.	*312
			Most upstream limit of flooding within the City of Anaheim	*323
		Carbon Creek Channel	Intersection of Tola Avenue and Tola Place	*85
			Intersection of Sunrise Via and Ocean Via	*85
			Area south of Lincoln Avenue and west of Stinson Street	*88
			Area west of the intersection of Chippewa Street and Crescent Avenue.	*120
		Atwood Channel	Intersection of McDowhill Avenue and Burbach Street	*259
			Intersection of Glenview Avenue and Greenwood Drive	*261
			Intersection of Holbrook Street and Tanglewood Avenue	*262
		East Richfield Channel	Intersection of Kellogg Drive and Marita Lane	*274
			Intersection of Oak Knoll Road and Pine Ridge Road	*283
		Atwood Channel	Area along Orangethrope Avenue, south of intersection with Burback Street.	#1

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Area along Orangethrope Avenue, south of Holbrook Street	#1
			Area north of Atchison, Topeka and Santa Fe Railroad, and north of Kellogg Drive.	#1
		East Richfield Channel	Intersection of Orangethrope Avenue and Oak Knolls Drive	#2
			Intersection of Orangethrope Avenue and Willow Woods Drive	#2
		Carbon Creek Channel	Areas east and west of Magnolia Avenue, north of Lincoln Avenue and south of Crescent Avenue.	#1
			Area west of Southern Pacific Railroad at the intersection of Julianna Street and Pauline Street.	#2
			Area between Orange Avenue and Bridgeport Avenue	#3
		Carbon Creek Channel	Intersection of Westhaven Drive and Westhaven Circle	#3
		Santa Ana River	Intersection of Orangewood Avenue and Levee	#1
Maps available at the City Hall, 204 East Lincoln, Anaheim, California.				
California	Willows (City), Glenn County (Docket No. FI-5444).	South Fork Willow, Wilson, and Walker Creeks.	At the intersection of Laurel Street and Yolo Street	*129
			At the intersection of Willow Street and Ventura Street	*130
			At the intersection of Lassen Street and French Street	*136
		South Fork Willow and Wilson Creeks.	At the intersection of French Street and Shasta Street	*136
Maps are available at City Hall, 201 Lassen Street, Willows, California.				
Colorado	Breckenridge (Town), Summit County (Docket No. FI-5688).	Blue River	Watson Road 50 feet down stream from centerline	*9,543
			Watson Road 50 feet upstream from centerline	*9,551
			Village Road 50 feet downstream from centerline	*9,597
			Village Road 30 feet upstream from centerline	*9,606
			Upstream corporate limit	*9,633
		Lehman Gulch	Confluence with Blue River 30 feet upstream from centerline	*9,620
			Upstream corporate limit 10 feet from crossing	*9,690
		Lehman Gulch Ponding Area	150 feet west of the Blue River and 125 feet south of Lehman Gulch	*9,632
		Illinois Gulch	Broken Lance Road at centerline	*9,646
			Upstream corporate limit	*9,683
		Sawmill Gulch	Confluence with Blue River	*9,563
			4 O'Clock Road 50 feet downstream from centerline	*9,704
			4 O'Clock Road at centerline	*9,712
			Upstream corporate limit	*9,787
		Blue River Sheet Flow	50 feet north of Watson Road and 200 feet west of Main Street	#2
		Illinois Gulch Sheet Flow	Intersection of Village Road and Columbine Road	#1
		Sawmill Gulch Sheet Flow	350 feet north of 4 O'Clock Road and 150 feet west of Park Street	#1
		Sawmill Gulch Sheet Flow	4 O'Clock Road 300 feet west of intersection with Kings Crown Road	#2
		Lehman Gulch Sheet Flow	200 feet north of Lehman Gulch and 180 feet west of Blue River	#3
Maps available at Town Hall, 150 Ski Hill Road Breckenridge, Colorado.				
Colorado	Redcliff (Town), Eagle County (Docket No. FI-5538).	Eagle River	Denver and Rio Grande Western Railroad 40 feet upstream from centerline.	*8,573
			Colorado State Highway 293 20 feet upstream from centerline	*8,580
			Railroad Access Road 20 feet upstream from centerline	*8,597
			Pine Street 40 feet upstream from centerline	*8,629
			Eagle Street 70 feet upstream from centerline	*8,655
		Turkey Creek	Colorado State Highway 293:	
			80 feet downstream from centerline	*8,633
			30 feet upstream from centerline	*8,638
			Eagle Street 20 feet upstream from centerline	*8,644
			Private Bridge:	
			70 feet downstream from centerline	*8,647
			30 feet upstream from centerline	*8,651
			Shrine Pass Road:	
			80 feet downstream from centerline	*8,659
			20 feet upstream from centerline	*8,665
Maps available at City Hall, Redcliff, Colorado 81649.				
Connecticut	(T) of Coventry, Tolland County (Docket No. FI-5688).	Willimantic River	Downstream corporate limits	*250
			Just upstream of Cider Mill Road	*251
			Approximately 500 feet upstream of Route 31	*255
			Just upstream of Central Vermont Railroad	*265
			Just upstream of Coventry Road	*266
			Just downstream of Eagleville Dam	*275
			Just upstream of Eagleville Dam	*284
			Just upstream of Plains Road	*291
			Just upstream of Route 44A	*296
			Just upstream of Merrow Road	*316
			Just upstream of Tolland Road	*325
			Upstream corporate limits	*330

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Skungamaug River	Downstream corporate limits	*343
			Just downstream of Dam	*345
			Approximately 100 feet upstream of Dam	*349
			Approximately 3,600 feet downstream of Woodbrige Road	*380
			Approximately 200 feet downstream of Woodbridge Road	*394
			Approximately 200 feet upstream of Woodbridge Road	*398
			Approximately 100 feet downstream of South Street Dam	*407
			Just upstream of South Street Dam	*437
			Just upstream of Sagraves Road	*443
			Just upstream of Route 31	*466
			Just upstream of Route 44A	*474
			Just upstream of Broadway	*486
			Just downstream of Dam near Folley Brook Road	*497
			Just upstream of Folley Brook Road	*501
			Upsteam corporate limits	*503
		Ash Brook	Confluence with Hop River	*344
			Approximately 1,500 feet upstream of confluence with Hop River	*377
			Approximately 3,000 feet upstream of confluence with Hop River	*437
			Just upstream of Brewster Street	*500
			Approximately 1,500 feet upstream of Brewster Street	*530
			Approximately 4,000 feet upstream of Brewster Street	*600
			State Route 44A	*650
		Hop River	Downstream County Boundary	*249
			Approximately 100 feet upstream of Flanders River Road	*249
			Just upstream of Conrail	*250
			Just upstream of Pucker Street	*261
			Just upstream of Hop River Road	*272
			Just upstream of Conrail	*278
			At upstream corporation limits	*283
	Maps available at Planning Office or Town Library, Town Hall, Coventry, Connecticut 06238.			
Florida	City of Palatka, Putnam County (FEMA–5713).	St. Johns River	Just downstream of U.S. Highway 27	*6
			Golf Road extended	*6
	Maps available at City Hall, Palatka, Florida 32077.			
Idaho	Moscow (City), Latah County (Docket No. FI–5092).	Paradise Creek	Perimeter Drive—50 feet upstream from centerline	*2,545
			White Avenue—50 feet upstream from centerline	*2,579
			Eisenhower Street—25 feet upstream from centerline	*2,606
		South Fork Palouse River	U.S. Highway 95—10 feet upstream from centerline	*2,548
	Maps available at City Hall, 122 East 4th Street, Moscow, Idaho.			
Illinois	(V) Alorton, St. Clair County (Docket No. FI–5614).	Interior Flooding within community (Ponding AH Zones).	300 feet northeast of the intersection of Missouri Avenue and 45th Street.	*411
			300 feet northeast of the intersection of Missouri Avenue and Jarvis Place.	*410
			200 feet north of the intersection of Route 163 and Mary Street	*410
			200 feet east of the intersection of Route 163 and Mary Street	*410
			300 feet north of the intersection of Missouri Avenue with Harding Ditch.	*410
			300 feet east of the intersection of Missouri Avenue with Harding Ditch.	*410
	Maps available at Village Hall, Village Clerk's Office, 4821 Bond Avenue, Alorton, Illinois 62007.			
Illinois	(V) Bensenville, DuPage County (Docket No. FI–5207).	Bensenville Ditch	Approximately 800 feet downstream of Orchard Avenue	*662
			Just downstream of Chicago and North Western Railroad	*662
			Just upstream of Chicago and North Western Railroad	*665
			Just upstream Church Road	*667
		Addison Creek	Just downstream Third Avenue	*656
		Tributary 1	Just upstream of Evergreen Avenue	*658
			At Field Road	*663
		Tributary 2	At Confluence with Tributary 3	*662
			Downstream of York Road	*663
			At Church Road	*681
		Tributary 3	Confluence with Tributary 2	*662
			Just upstream of George Street	*662
			Just upstream of Private Driveway	*669
			1,200 feet upstream of Private Drive	*676
		Tributary 4	Approximately 700 feet downstream of Church Road	*679
			Just upstream of Church Road	*683
		Addison Creek	2,050 feet downstream of Diana Court	*656
			At George Street	*656
	Maps available at Village Hall, Engineering Department, 700 West Irving Park Road, Bensenville, Illinois 60106.			
Illinois	(V) Dixmoor, Cook County (Docket No. FI–5683).	Little Calumet River	Approximately 317 feet downstream from the Indiana Harbor Belt Railroad (Northern Corporate Limits of Dixmoor).	*591
			Approximately 1,400 feet upstream from Ashland Avenue (Eastern Corporate Limit).	*592
		Calumet Union Drainage Ditch	Area North of Sibley Boulevard (147th Street), East of Dixie Highway, South of Interstate Route 57 and Grand Trunk Western Railroad and West of Robey Street.	*2
	Maps available at the Village Engineer's Office, Village Hall, Dixmoor, Illinois 60426.			

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Illinois	(V) Fox River Grove, McHenry County (Docket No. FI-5665).	Fox River	Western corporate limit	*736
			Eastern corporate limit	*737
Maps available at Village President's Office, Fox River Grove, Illinois 60021.				
Illinois	(V) Grayslake, Lake County (Docket No. FI-5683).	Avon Freemont Ditch	Downstream corporate limits	*775
			Just downstream of Old Center Street	*776
			Just upstream of Old Center Street	*781
			Just upstream of Center Street	*782
			Just upstream of Soo Line Railroad	*782
			250 feet upstream of Milwaukee, St. Paul, and Pacific railroad	*785
		Shallow Ponding Areas	Northwest Retention Basin	*783
			Berry Avenue, near sewage disposal plant	*772
Maps available at the Village Hall, P.O. Box 325, Grayslake, Illinois 60030.				
Illinois	(V) North Pekin, Tazewell County (Docket No. FEUA-5702).	Illinois River	Approximately 2,700 feet downstream of confluence of Lick Creek	*459
			Approximately 4,000 feet upstream of confluence of Lick Creek	*459
		Lick Creek	Approximately 700 feet upstream of Illinois Central Gulf Railroad	*460
			Approximately 500 feet upstream of State Highway 98	*467
			Approximately 1,050 feet upstream of State Highway 98	*469
Maps available at the Village Hall, 318 North Main Street, North Pekin, Illinois 61554.				
Illinois	(C) Pekin, Peoria County and Tazewell County (Docket No. FEMA-5702).	Illinois River	Just upstream of Chicago and North Western Railroad	*458
			Approximately 5,000 feet upstream of Peoria and Pekin Union Railroad.	*459
		Lick Creek	Just upstream of State Highway 98	*465
			Approximately 500 feet upstream of State Highway 98	*467
			Approximately 1,050 feet upstream of State Highway 98	*469
Maps available at the City Hall, 400 Margaret Street, Pekin, Illinois 61554.				
Illinois	(V) Round Lake Park Lake County (Docket No. REMA-5683).	Round Lake	Shoreline	*765
		Squaw Creek	About 1,100 feet downstream of Timber Creek Road (Downstream corporate limit).	*775
			Just downstream of Belvidere Road	*779
			Just upstream of Belvidere Road	*783
			Just downstream of State Route 60 (Upstream corporate limit)	*786
Maps available at Village Hall, 203 E. Lake Shore Drive, Round Lake Park, Illinois 60073.				
Illinois	(C) Savanna; Carroll County (Docket No. FI-5683).	Plum River	Downstream corporate limit	*596
			Upstream corporate limit	*596
		Mississippii River	Downstream corporate limit	*596
			U.S. Route 52	*596
			Upstream corporate limit	*596
Maps available at the Mayor's Office, Village Hall, 101 Main Street, Savanna, Illinois 61074.				
Illinois	(V) Spring Bay Woodford County (Docket No. FI-5702).	Illinois River	Downstream corporate limit	*460
			Upstream corporate limit	*460
Maps available at 200 Missouri Street, Box 210, Spring Bay, Illinois 61611.				
Illinois	Village of Westchester, Cook County (Docket No. FI-5688).	Salt Creek	Southeast of intersection of Preston Street and Hawthorne Avenue (entire reach within Village of Westchester).	*628
		Addnon Creek	Upstream side of Gardner Road	*625
			Upstream side of Roosevelt Road	*627
			At upstream corporate limits	*627
		Salt Creek Tributary	Downsteam of diversion orifice for Mayfair Reservoir	*637
			Upstream of diversion orifice for Mayfair Reservoir	*640
			Area of shallow flooding downstream of culvert entrance above Mayfair Avenue Avenue. Ave. #1.	
		South Fork	Downstream side of Wolf Road	*641
			Upstream of Wolf Road	*644
			*Upstream corporate limits	*644
		Middle Fork	Upstream side of Wolf Road	*644
			Upstream corporate limits	*644
Maps available at the Village Hall, Westchester, Illinois.				
Indiana	(C) East Chicago, Lake County (Docket No. FI-5344).	Grand Calumet River	Western corporate limits	*585
			Just upstream of Kennedy Avenue	*585
			Eastern corporate limits	*586
		Indiana Harbor Canal	Mouth at Lake Michigan	*584
			Confluence with Grand Calumet River	*585
		Lake George Canal	Confluence with Indiana Harbor Canal	*584
			Western corporate limits	*584
		Lake Michigan	Shoreline	*584
		Indiana Harbor	Shoreline	*584
Maps available at City Hall, Planning Office, East Chicago, Indiana 46312.				

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Iowa	(C) Lake View, Sac County (Docket No. FI-5665).	Blackhawk Lake	Entire shoreline	*1,224
		Provost Slough	Entire shoreline	*1,224
		Arrowhead Lake	Entire shoreline	*1,224
	Maps available at City Hall, City Clerk's Office, 305 Main Street, Lakeview, Iowa 51450.			
Kentucky	Bloomfield (City), Nelson County (Docket No. FI-5688).	East Fork Simpson Creek	Railroad Street 50 feet upstream from centerline	*636
			State Highway 48 50 feet upstream from centerline	*653
			Upstream Corporate Limits	*665
		Hinkle Creek	State Highway 55 50 feet upstream from centerline	*655
			State Highway 62 75 feet upstream from centerline	*672
	Maps available at City Hall, Main Street, Bloomfield, Kentucky.			
Kentucky	Unincorporated areas of McCracken County (FI-5546).	Black Branch	Just downstream of Mayfield Metropolis Road (KY. 780)	*354
			Just downstream of New Hinkleville Road (U.S. HWY 60)	*362
			Approximately 250 feet upstream of Lightfoot Road	*376
		Camp Creek	Just downstream of Harmoney Road	*349
			Approximately 100 feet upstream of Old Mayfield Road	*361
			Just downstream of Illinois Central Gulf Railroad	*369
			Approximately 180 feet downstream of Old Houser Road (Davis Road).	*393
		Champion Creek	Approximately 40 feet upstream of Illinois Central Gulf Railroad	*334
			Just downstream of Old Mayfield Road	*343
			Approximately 120 feet upstream of Clark Line Road	*362
		Island Creek	Lane Road	*330
			Just downstream of Husbands Road	*330
		Massac Creek	Approximately 500 feet upstream of Illinois Central Gulf Railroad	*336
			Approximately 300 feet downstream of Hinkleville Road (US 60)	*344
			Confluence of Middle Fork Massac Creek	*351
			Approximately 150 feet upstream of Blandville Road (US 62)	*361
			Just downstream of Lovelaceville Road	*379
			Approximately 50 feet upstream of Clinton Road	*390
		Middle Fork, Massac Creek	Approximately 150 feet upstream of Blandville Road	*369
			Approximately 120 feet upstream of Hines Road	*381
			Approximately 130 feet upstream of Lovelaceville Road	*389
			Approximately 50 feet downstream of New Hope Church Road	*415
		West Fork, Massac Creek	Approximately 100 feet upstream of Steel Road	*349
			Approximately 180 feet upstream of Woodville Road	*358
			Just upstream of Hinkleville Road (US 60)	*377
			Just upstream of Old Hinkleville Road	*387
			Approximately 70 feet downstream of the upstream crossing of Biggs Road.	*412
		Crooked Creek	Approximately 30 feet upstream of Buckner Lane	*372
			Just upstream of Pecan Drive	*384
			Approximately 200 feet upstream of Interstate 24	*398
		Ohio River	At the Westen County Limits (River Mile 956.2)	*331
			Approximately 200 feet upstream of Paducha and Illinois Railroad	*335
			At Interstate 24	*336
			At Jacobs Lane (Extended)	*337
		Perkins Creek	Approximately 200 feet upstream of Paducah and Illinois Railroad	*349
			Just upstream of Hinkleville Road	*355
			Approximately 270 feet upstream of Interstate 24	*360
			Approximately 120 feet upsteam of Hensen Road	*369
			Approximately 100 feet upstream of Friendship Church Road	*377
	Maps available at County Engineer's Office, McCracken County Courthouse, Paducah, Kentucky 42001.			
Louisiana	Town of Jackson, East Feliciana Parish (FI-5688).	Asylum Creek	250 feet downstreamn of LA Highway #10	*132
		Asylum Creek and Unnamed Tributary.	Confluence of Asylum Creek and Unnamed Tributary	*114
			125 feet upstream of southern corporate limits	*100
		Unnamed Tributary	250 feet upstream of LA Highway 951	*144
			100 feet upsteam of Wooden Bridge Field Road	*121
	Maps available at Town Hall, 1610 Charter Street, Jackson, Louisiana 70748.			
Maine	City of Auburn; Androscoggin County (Docket No. FI-5688).	Androscoggin River	Downstream Corporate Limits	*125
			Main Turnpike (Upstream)	*133
			North Bridge (Upstream)	*137
			Main Central Railroad Bridge (Upstream)	*176
			Vietnam Veterans' Memorial Bridge (Downstream)	*179
			Deer Rips Dam (Downstream)	*187
			Deer Rips Dam (Upstream)	*213
			Gulf Island Dam (Downstream)	*215
			Gulf Island Dam (Upstream)	*263
			Upstream Corporate Limits (approximately 7,000 feet above Gulf Island Dam).	*263
		Little Androscoggin River	Barker Mills Dam (Downstream)	*160
			Barker Mills Dam (Upstream)	*170
			Breached Dam (Downstream), located approximately 4,000 feet downstream of Maine Central Railroad Bridge.	*190

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Breached Dam (Upstream), located approximately 4,000 feet downstream of Maine Central Railroad Bridge.	*195
			Maine Central Railroad Bridge (Upstream)	*200
			U.S. Route 202 North Bound (Upstream)	*205
			Breached Dam (Downstream), located approximately 4,000 feet upstream of Southbound U.S. Route 202.	*207
			Breached Dam (Upstream) located approximately 4,000 feet upstream of Southbound U.S. Route 202.	*211
			Old Trolley Bridge (Upstream)	*217
			Old Hotel Road (Upstream)	*222
			Upstream Corporate Limits	*231
		Taylor Brook	Dead End Road and Dam (Downstream)	*240
			Dead End Road and Dam (Upstream)	*242
			Limit of Detailed Study (located approximately 400 feet upstream of Old Hotel Road).	*247
		Lapham Brook	Beginning of detailed Study (located approximately 2,850 feet downstream of Young's Corner Road).	*247
			Young's Corner Road (Upstream)	*248
			Limit of Detailed Study (approximately 3,150 feet upstream of Young's Corner Road).	*256
	Maps available at the Auburn Community Development Office.			
Maine	(T) Chelsea, Kennebec County, (Docket No. FI-5665).	Kennebec River	At Chelsea-Randolph Townline	*30
			Just downstream of Farmingdale Townline	*31
			At mouth of Vaughn Brook	*31
			Approximately 4,600 feet upstream of mouth of Vaughn Brook	*32
		Togus Stream	At Chelsea-Pittson Townline	*80
			Approximately 300 feet upstream Chelsea-Pittson Townline	*84
			Approximately 2,500 feet upstream Chelsea-Pittson Townline	*87
			Approximately 3,050 feet upstream Chelsea-Pittson Townline	*96
			Approximately 6,000 feet upstream Chelsea-Pittson Townline	*102
			Approximately 6,900 feet upstream Chelsea-Pittson Townline	*106
			Approximately 250 feet upstream Searles Mill Road	*110
			Approximately 1,000 feet upstream Searles Mill Road	*115
			Just upstream of Windsor Road	*131
			Approximately 1,300 feet downstream of confluence of Chase Meadow Brook.	*133
			Approximately 750 feet downstream of confluence of Chase Meadow Brook.	*137
			Just upstream confluence of Chase Meadow Brook	*141
			Approximately 175 feet downstream of Gravel Pit Road	*144
			Approximately 300 feet upstream of Gravel Pit Road	*150
			Approximately 500 feet upstream of Gravel Pit Road	*155
			Approximately 100 feet downstream of Wellman Road	*158
			Approximately 500 feet upstream of Wellman Road	*165
			Just downstream of Route 17 By-pass	*166
			Just upstream of Route 17 By-pass	*169
			Just downstream of Route 17	*175
			Just upstream of Route 17	*178
	Maps available at Town Office, Town of Chelsea, Chelsea, Maine 04345.			
Maine	Town of Fort Kent, Aroostook County, (Docket No. FI-5688).	St. John River	Corporate Limits Downstream	*492
			Confluence of Daigle Brook	*496
			20,600' upstream of Corporate Limit	*500
			Confluence of Audibert Brook	*508
			Confluence of Fish River	*519
			Upstream side of International Bridge	*520
			Confluence of Camel Brook	*526
			Corporate Limits Upstream	*531
		Fish River	Confluence with St. John River	*519
			Main Street (U.S. Route 1)	*519
			Confluence of Perley Brook	*521
			200' Upstream of Bradbury's Bridge	*524
			Upstream crossing of Bangor and Aroostook Railroad (Downstream side).	*531
			5,700' Upstream of Upstream crossing of Bangor and Aroostook Railroad.	*541
			12,700' Upstream of Upstream crossing of Bangor and Aroostook Railroad.	*547
			15,700' Upstream of Upstream crossing of Bangor and Aroostook Railroad.	*559
			Upstream Corporate Limits	*563
		Perley Brook	Confluence with Fish River	*521
			Upstream side of Route 161	*523
			Bangor and Aroostook Railroad (Upstream)	*531
			2,300' Upstream of Bangor and Aroostook Railroad	*539
			4,300' Upstream of Bangor and Aroostook Railroad	*549
			5,800' Upstream of Bangor and Aroostook Railroad	*559
			7,300' Upstream of Bangor and Aroostook Railroad	*570
			8,600' Upstream of Bangor and Aroostook Railroad	*580
	Maps available at the Fort Kent Town Hall.			
Massachusetts	Chelmsford (Town), Middlesex County FI-4696.	River Meadow Brook	U.S. Route 3 at centerline	*103
			Billerica Road 50 feet upstream of centerline	*108
			Power Line Access Road 50 feet upstream of centerline	*113
		Beaver Brook	Confluence with River Meadow Brook	*111

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Summer Street at centerline	*121
			State Route 4 100 feet upstream of centerline	*128
		Putnam Brook	Confluence with River Meadow Brook	*111
			Boston Road 20 feet upstream of centerline	*127
			Hall Road 20 feet upstream of centerline	*136
		Merrimack River	Confluence with Deep Brook	*102
		Stony Brook	Middlesex Road at centerline	*102
			U.S. Route 3 at centerline	*105
			Meadowbrook Road at centerline	*109
		Hales Brook	Interstate Highway 495 (Upstream Culvert) at centerline	*103
			Riverneck Road 80 feet upstream of centerline	*106
		Concord River	Downstream Corporate Limits	*106
Maps are available at Town Hall, 1 North Road, Chelmsford, Massachusetts.				
Massachusetts	(T) Conway, Franklin County (Docket No. FI-5678).	Deerfield River	Downstream corporate limit	*170
			Just upstream of confluence of South River	*178
			Upstream corporate limit	*196
		South River	About 0.45 mile upstream of Reeds Bridge Road	*474
			Just downstream of dam located 1.63 miles upstream of Reeds Bridge Road.	*494
			Just upstream of dam located 1.63 miles upstream of Reeds Bridge Road.	*511
			Just downstream of State Route 116 (near the confluence of Pumpkin Hollow Brook).	*545
			About 0.2 mile upstream of confluence of Pumpkin Hollow Brook	*563
			About 0.41 mile upstream of confluence of Pumpkin Hollow Brook	*590
			About 0.44 mile upstream of confluence of Pumpkin Hollow Brook (upstream of State Route 116).	*605
			Just upstream of Ashfield Road Bridge (near Delabarre Avenue)	*635
			Just upstream of Main Poland Road	*643
			Approximately 1.33 miles upstream of Main Poland Road	*682
		Pumpkin Hollow Brook	Confluence with South River	*551
			About 50 feet upstream of Academy Road	*553
			About 50 feet downstream of Hill View Road	*579
			About 50 feet upstream of Hill View Road	*585
			About 100 feet downstream of Old Cricket Hill Road	*587
			Just upstream of Cricket Hill Road	*591
			Approximately 1,025 feet upstream of Cricket Hill Road	*602
Maps available at Selectmen's Office, Town Office, Conway, Massachusetts 01340.				
Massachusetts	Georgetown (Town), Essex County, FI-5053.	Bulford Brook	Confluence with Penn Brook	*81
			East Main Street—at centerline	*81
				*81
		Jackman Brook	Parish Road—at centerline	*18
			Jewett Street—at centerline	*57
		Parker River	Thurlow Street—at centerline	*65
			Mill Street—at centerline	*74
			Confluence with Penn Brook	*75
			Pond Street—175 feet downstream from centerline	*77
			Pond Street—50 feet upstream from centerline	*83
			Bailey Lane—at centerline	*85
		Penn Brook	North Street—at centerline	*75
			Summer Street—at centerline	*78
			Confluence with Bulford Brook	*81
			East Street—50 feet downstream from centerline	*88
			State Highway 97 (Central Street)—at centerline	*93
Maps available at Town Clerk's Office, Town Hall, 1 Library Street, Georgetown, Massachusetts.				
Massachusetts	Gosnold, (Town), Dukes County (Docket No. FI-5688).	Buzzards Bay	North Shoreline	*13
		Vineyard Sound	South Shoreline	*13
Maps available at the office of the Town Clerk, Gosnold, Massachusetts.				
Massachusetts	Lakeville (Town), Plymouth County (Docket No. FI-5054).	Long Pond River	State Routes 18 and 105—50 feet upstream from centerline	*59
		Nemasket River	Bituminous Road 40 feet upstream from centerline	*62
			Vaugh Street 90 feet upstream from centerline	*62
Maps available at Town Hall, Bedford Street, Lakeville, Massachusetts.				
Massachusetts	Leverett (Town), Franklin County.. FI-5368.	Sawmill River	Downstream Corporate Limits 25 feet upstream from crossing	*407
			Dam (approximately ¾ mile upstream from corporate limits):	
			80 feet downstream from centerline	*460
			80 feet upstream from centerline	*472
			Dam (approximately 9/10 mile upstream from corporate limits):	
			25 feet downstream from centerline	*475
			150 feet upstream from centerline	*484
			Old Coke Kiln Road 50 feet upstream from centerline	*537
			Old Mill Yard Road at centerline	*546
			Rattlesnake Gutter Road at centerline	*570
			Dam (approximately 160 feet upstream from Dudleyville Road):	
			50 feet downstream from centerline	*624
			55 feet upstream from centerline	*631
			Confluence with Red Brook	*794
			Upstream Corporate Limit	*804

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Doolittle Brook	Teewaddle Hill Road 55 feet upstream from centerline	*342
			Shutesbury Road 55 feet upstream from centerline	*360
			Farm Road at centerline	*379
		Roaring Brook	Confluence with Doolittle Brook	*342
			Cushman Road 65 feet upstream from centerline	*385
		Long Plain Brook	Downstream Corporate Limits	*272
			Bull Hill Road 200 feet upstream from centerline	*317
			Central Vermont Railroad 105 feet upstream from centerline	*331
Maps are available at Town Hall, Leverett, Massachusetts.				
Massachusetts	Shrewsbury (Town); Worcester (County) (Docket No. FI-5138).	Big Bummit Brook	State Highway 140 (downstream crossing)—at centerline	*384
			Grafton Street—at centerline	*391
			State Highway 140 (upstream crossing)—at centerline	*397
			State Highway 20—feet upstream from centerline	*398
			Gold Street—at centerline	*449
		West Brook	Melvin Avenue—at centerline	*399
			Everett Avenue—at centerline	*400
			Old Mill Road—225 feet downstream from centerline	*403
			Old Mill Road—50 feet upstream from centerline	*416
			Main Street—25 feet upstream from centerline	*425
		Meadow Brook	Oak Street—at centerline	*362
		Rawson Hill Brook	Prospect Street—90 feet upstream from centerline	*533
			Rawson Hill Dam—50 feet upstream from centerline	*545
			Deerfield Road—100 feet upstream from centerline	*586
			Deerfield Road—25 feet upstream from centerline	*591
			Rawson Hill Drive—at centerline	*599
			Intersection Highway 290—at centerline	*604
			Colonial Drive—at centerline	*608
Maps available at Town Engineer's Office, Municipal Office Building, 100 Maple Street, Shrewsbury, Massachusetts.				
Massachusetts	Topsfield (Town), Essex County (Docket No. FI-4797).	Ipswich River	Newburyport Turnpike	*39
			Rowley Bridge Street	*40
		Branch of Ipswich River	Dirt Road	*38
			Boston and Maine Railroad	*41
			Newburyport Turnpike	*42
		Fish Brook	Washington Street	*45
			River Road	*46
			Corporate Limits	*47
		Mile Brook	Newburyport Turnpike	*46
			Dirt Road	*50
		Pye Brook	Haverhill Road—40 feet downstream from centerline	*59
			Haverhill Road—at centerline	*64
		Howlett Brook	Newburyport Turnpike	*50
			North Street	*51
			Stage Coach Road	*54
Maps available at Town Clerk's Office, Town Hall, 8 West Common Street Topsfield, Massachusetts.				
Massachusetts	Williamsburg, Town, Hampshire County (Docket No. FI-5102).	Joe Wright Brook	Driveway Bridge 919 feet upstream from Route 9 Bridge (Upstream)	*483
			Route 9 Bridge (Upstream)	*482
		East Branch Mill River	Confluence of Bradford Brook	*711
			Wooden Footbridge 11,088 feet upstream from Bullard Road Bridge (Upstream).	*706
			Timber Footbridge 9,768 feet upstream from Bullard Road Bridge (Upstream).	*689
			Footbridge 9,240 feet upstream from Bullard Road Bridge (Upstream).	*681
			Wooden Footbridge 6,969 feet upstream from Bullard Road Bridge (Upstream).	*663
			Bullard Road Bridge (Upstream)	*558
			Nash Hill Road Bridge (Upstream)	*523
		West Branch Mill River	Graham Pond Dam (Upstream)	*737
			Graham Pond Dam (Downstream)	*724
			Stone Dam (Upstream)	*718
			Route 9 Bridge (Upstream)	*702
			Route 9 Bridge 1,637 feet downstream from Village Hill Road Bridge (Upstream).	*685
			Route 9 Bridge 1,214 feet upstream from Chesterfield Road Bridge (Upstream).	*605
			Chesterfield Road Bridge (Upstream)	*580
			Route 9 Bridge 792 feet upstream from North Street Bridge (Upstream).	*559
			North Street Bridge (Upstream)	*539
			Confluence with Mill River and East Branch Mill River	*514
		Unquomonk Brook	South Street Culvert	*555
			Driveway Bridge 1,900 feet downstream from South Street Culvert (Upstream).	*543
			Confluence of Mill River	*470
		Bradford Brook	Ashfield Williamsburg Valley Road Culvert	*715
			Confluence of East Branch Mill River	*711

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Beaver Brook	Mountain Street Culvert	*439
			Wooden Footbridge 1,795 feet downstream from Mountain Street Culvert (Upstream).	*431
			Mountain Street Bridge (Upstream)	*421
			Wooden Footbridge 4,646 feet downstream from Mountain Street Bridge (Upstream).	*385
			Wooden Footbridge 5,860 feet downstream from Mountain Street Bridge (Upstream).	*384
			Downstream Corporate Limits	*379
		Mill River	Confluence of East and West Branches of Mill River	*514
			Route 9 Bridge (Upstream)	*489
			Confluence of Unquomonk Brook	*470
			Driveway Bridge 3,590 feet downstream from Route 9 Bridge (Upstream).	*458
			Stone Dam (Upstream)	*442
			Stone Dam (Downstream)	*434
			South Main Street Bridge (Upstream)	*424
			High Street Bridge (Upstream)	*416
			Beached Dam (Upstream)	*403
			Downstream Corporate Limits	*389
	Maps available at the Town Clerk's Office, Williamsburg, Massachusetts.			
Michigan	(TWP) Casco, Allegan County (Docket No. FI-5607).	Middle Fork, Black River	Upstream confluence with North Branch Black River	*588
			Just downstream 70th Street	*589
		North Branch, Black River	At downstream southern corporate limits	*585
			About 250 feet upstream of Baseline Road	*586
			400 feet upstream confluence of Middle Fork Black River	*588
		Lake Michigan	Located on west boundary of the Township of Casco	*584
	Maps available at the Office of the Zoning Administrator, 6800 109th Avenue, South Haven, Michigan 49090.			
Michigan	(TWP) Laketown, Allegan County (Docket No. FEMA-5702).	Lake Michigan	Shoreline	*584
		Hults Lake	Shoreline	*624
		Goshorn Lake	Shoreline	*617
		Tibbie Lake	Shoreline	*607
	Maps available at Township Hall, A-6242 West 144th Street, Holland, Michigan 49423.			
Minnesota	(C) Granite Falls, Chippewa County (Docket No. FI-5678).	Minnesota River	Downstream of corporate limits	*893
			Just upstream of U.S. Highway 212	*896
			Just downstream of City Dam	*899
			Just upstream of City Dam	*908
			Just upstream of Oak Street	*909
			Upstream corporate limits	*917
		Minnesota River overflow channel	Mouth at Minnesota River	*895
			Just upstream of State Highway 67	*896
			Just upstream of Burlington Northern	*905
			Upstream corporate limits	*905
	Maps available at City Hall, 885 Prentice Street, Granite Falls, Minnesota 56241.			
Minnesota	(C) Grasston, Kanabec County (Docket No. FI-5617).	Snake River	Downstream corporate limit	*948
			Downstream of Burlington Northern Railroad	*949
			500 feet upstream of State Highway 107	*951
			Upstream corporate limit	*952
	Maps available at City Hall, Grasston, Minnesota 55030.			
Minnesota	Unincorporated Areas of Lac Qui Parle County (Docket No. FEMA-5702).	Lac Qui Parle River	Just upstream of U.S. Highway 212	*1,039
			Just downstream of Chicago and North Western railroad	*1,044
			Just upstream of Chicago and North Western railroad	*1,045
			7,000 feet upstream of Chicago and North Western railroad	*1,046
		West Branch Lac Qui Parle River	Confluence with Lac Qui Parle River	*1,042
			Eastern corporate limit, City of Dawson	*1,043
			Western corporate limit, City of Dawson	*1,048
			7,200 feet upstream of western corporate limit, City of Dawson	*1,049
			14,700 feet downstream of U.S. Highway 212	*1,065
			Just downstream of U.S. Highway 75	*1,069
			Just upstream of U.S. Highway 75	*1,070
			2,900 feet upstream of U.S. Highway 75	*1,071
	Maps available from Ray Olsen, County Auditor, County Courthouse, Auditor's Office, Madison, Minnesota 56212.			
Mississippi	Unincorporated Areas of Panola County (FI-5688).	Little Tallahatchie River	Just downstream of Mississippi State Highway 6	*185
			Confluence of McIvor Drainage Canal	*186
			Confluence of Cole Creek	*190
			Just downstream of Panola Avenue	*193
			Confluence of Whitten Creek	*195
			Just downstream of U.S. Highway 51	*199
			Confluence of Stream D	*201
			Just downstream of I-55 Southbound Lane	*202
			Confluence of Hotophia Creek	*205
			Just downstream of Belmont Road	*207
		Running Slough Ditch	Confluence with Little Tallahatchie River	*186
			Confluence with Stream A	*186
			Confluence of Stream B	*187
			Confluence of Stream C	*187

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Stream A	Confluence with Running Slough Ditch	*186
			Just downstream of Unnamed Road No. 1	*192
			Just downstream of Mississippi State Highway 6	*199
		Stream B	Confluence with Running Slough Ditch	*187
			Just downstream of Mississippi State Highway 6	*206
		Stream C	Confluence with Running Slough Ditch	*187
			Just downstream of Mississippi State Highway 6	*207
		McIvor Canal	Confluence with Little Tallahatchie River	*186
			Just downstream of Unnamed Road Number 2	*196
			Just downstream of Unnamed Road Number 3	*214
			Confluence of Black's Creek	*215
			Just downstream of Unnamed Road Number 4	*223
			Just downstream of Mississippi Highway 315	*248
			Just downstream of Unnamed Road Number 6	*254
			Just downstream of Unnamed Road Number 7	*267
		Black's Creek	Confluence with McIvor Canal	*215
			Just downstream of Unnamed Road Number 8	*219
			Just downstream of Unnamed Road Number 9	*244
		Cole Creek	Confluence with Little Talahatchie River	*190
			Just downstream of Unnamed Road Number 10	*201
			Just downstream of Tubb Street	*210
			Just downstream of Mississippi State Highway 6	*217
		Stream C	Confluence with Running Slough Ditch	*187
			Just downstream of Mississippi State Highway 6	*207
		McIvor Canal	Confluence with Little Tallahatchie River	*186
			Just downstream of Unnamed Road Number 2	*196
			Just downstream of Unnamed Road Road Number 3	*214
			Confluence of Black's Creek	*215
			Just downstream of Unnamed Road Number 4	*223
			Just downstream of Mississippi Highway 315	*248
			Just downstream of Unnamed Road Number 6	*254
			Just downstream of Unnamed Road Number 7	*267
		Black's Creek	Confluence with McIvor Canal	*215
			Just downstream of Unnamed Road Number 8	*219
			Just downstream of Unnamed Road Number 9	*244
		Cole Creek	Confluence with Little Talahatchie River	*190
			Just downstream of Unnamed Road Number 10	*201
			Just downstream of Tubb Street	*210
			Just downstream of Mississippi State Highway 6	*217
			Just downstream of Unnamed Road Number 15	*249
			Just downstream of Unnamed Road Number 16	*255
		Jones Creek	Confluence with Little Tallahatchie River	*209
			Just downstream of Mississippi State Highway 35	*218
			Just downstream of Unnamed Road Number 17	*228
			Just downstream of Unnamed Road Number 18	*234
			Just downstream of Unnamed Road Number 19	*240
			Just downstream of Unnamed Road Number 20	*248
			Just downstream of Unnamed Road Number 21	*260
		Peters Creek	Just downstream of Unnamed Road Number 22	*210
			Just downstream of Illinois Central Gulf Railroad	*226
			Just downstream of U.S. Highway 51	*229
			Just downstream of I-55 Southbound Lane	*234
		Long Creek	Confluence with Peters Creek	*235
			Just downstream of Unnamed Road Number 23	*241
			Just downstream of Unnamed Road Number 24	*257
			Just downstream of Unnamed Road Number 25	*269
			Just downstream of Unnamed Road Number 26	*284
		Johnson Creek	Confluence with Peters Creeks	*235
			Just downstream of Unnamed Road Number 27	*238
			Just downstream of Unnamed Road Number 28	*254
			Just downstream of Unnamed Road Number 29	*279
			Just downstream of Unnamed Road Number 30	*298
			Just downstream of Unnamed Road Number 31	*304
			Just downstream of Unnamed Road Number 32	*322
		Goodwin Creek	Confluence with Lone Creek	*238
			Just downstream of Unnamed Road Number 23	*238
			Just downstream of Unnamed Road Number 28	*256
			Just downstream of Unnamed Road Number 33	*280
	Maps available at Panola County Courthouse, Sardis, Mississippi 38666.			
Missouri	(C) Edgerton, Platte County (Docket No. FI-5678).	Grove Creek	At west corporate limit	*817
			300 feet downstream of county road "B"	*821
			At county road "B"	*823
			750 feet downstream of Clark Street	*826
			At Clark Street	*828
			At east corporate limit	*831
	Maps available at City Clerk's Home, Becky Sellers, Edgerton, Missouri 64444.			
Missouri	(C) Kennett, Dunklin County (Docket No. FI-5678).	Snipe Slough	Upstream of State Highway 25	*263
			Upstream of Seventh Street	*264
		Buffalo Ditch No. 39	Downstream of State Highway 25	*257
			Upstream of State Highway 25	*258
			Upstream of Third Street	*259
			Upstream of First Street	*261
			Downstream of Ely Street	*262
		Shipley Slough	Western Corporate limit	*260
			Northwestern corporate limit at Ely Street	*261
	Maps available at City Hall, 200 Cedar Street, Kennett, Missouri 63857.			

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Missouri	(C) Republic, Greene County (Docket No. FI-5683).	Schuyler Creek	At eastern corporate limits	*1,226
			Approximately 390 feet upstream from eastern corporate limits	*1,230
			Just downstream from South Lynn Avenue	*1,240
			Approximately 380 feet upstream from corporate limits at Field Road	*1,225
			Just upstream from East Miller Road	*1,270
			Just upstream from Ritter Street	*1,290
			Approximately 100 feet downstream from South Main Street	*1,295
			Just upstream from South Main Street	*1,298
			Just upstream from West Charles Street	*1,308
			Just upstream from West Miller Road	*1,313
		North Fork, Schuyler Creek	At eastern corporate limits	*1,221
			Just upstream from East Hines Street	*1,238
			Just downstream from U.S. Route 60	*1,254
			Approximately 80 feet upstream from U.S. Route 60	*1,261
		Dry Branch	At western corporate limits	*1,254
			Just upstream from West Hines Street	*1,273
			100 feet upstream from West Logan Street	*1,276
			100 feet upstream from State Route 174	*1,300
			Just upstream from West Elm Street	*1,308
		West Fork Dry Branch	At northern corporate limits	*1,272
			Approximately 210 feet downstream from State Route 174	*1,274
			Approximately 240 feet upstream from State Route 174	*1,283
			Just downstream from Kansas Street	*1,293
			80 feet upstream from Kansas Street	*1,295
			Approximately 1,270 feet upstream from Kansas Street	*1,309
		Evergreen Creek	At northern corporate limits	*1,249
			Just downstream from State Route 174	*1,267
			Just upstream from State Route 174	*1,270
			Approximately 130 feet downstream from North Hampton Avenue	*1,272
			Approximately 60 feet upstream from North Hampton Avenue	*1,275
			Just upstream from East Hines Street	*1,287
	Maps available at City Hall, 146 North Main, Republic, Missouri 65738.			
Montana	East Helena (City), Lewis & Clark County (Docket No. FI-5673).	Prickley Pear Creek	Groschell Street 100 feet upstream from centerline	*3,870
			Main Street at centerline	*3,874
			Burlington Northern Railroad 60 feet upstream from centerline	*3,883
	Maps available at City Hall, 7 East Main, East Helena, Montana.			
New Hamphsire	Lebanon (City), Grafton County (Docket No. FI-5688).	Connecticut River	Interstate Route 89 50 feet upstream from centerline	*351
			U.S. Route 4-10 feet upstream from centerline	355
		Mascoma River	South Main Street 10 feet upstream from centerline	*351
			Seminary Hill Road 10 feet upstream from centerline	*450
			Mechanic Street 100 feet upstream from centerline	*470
			Hanover Street 10 feet upstream from centerline	*576
			Upstream crossing of Interstate Route 89 10 feet upstream from centerline.	*658
			Mascona Lake Dam 50 feet upstream from centerline	*755
	Maps available at City Hall, 51 North Park Street, Lebanon, New Hampshire.			
New Jersey	Franklin (Township), Somerset County (Docket No. FI-5509).	Raritan River	Corporate Limits at centerline	*18
			Foot of De Mott Lane (100 feet) upstream from centerline	*23
			Fieldville Dam (100 feet) upstream from centerline	*30
			Calco Dam (100 feet) upstream from centerline	*38
		Millstone River	Dam upstream from confluence with Raritan River (100 feet) upstream from centerline.	*40
			Dam at Manville Causeway (100 feet) upstream from centerline	*41
			Amwell Road (100 feet) downstream from centerline	*44
			U.S. Geological Survey Gaging Station Weir at Blackwell Mills Causeway (100 feet) upstream from centerline.	*46
			Griggstown Causeway (100 feet) upstream from centerline	*49
			Route 518 (100 feet) upstream from centerline	*52
		Simonson Brook	Delaware and Rarital Canal (100 feet) upstream from centerline	*49
			Melbern Lake Dam (100 feet) downstream from centerline	*99
		Tenmile Road	Canal Road (100 feet) upstream from centerline	*47
			Butler Road (100 feet) downstream from centerline	*68
	Maps Available at Township Hall, 207 Berger Street, Somerset, New Jersey.			
New Jersey	Roselle Park, Borough, Union County (Docket No. FI-5637).	Morses Creek	Conrail Culvert Opening	*75
			West Westfield Avenue	*76
			Upstream Corporate Limits	*76
		Morses Tributary 9-1-7	Shallow flooding is found from the downstream corporate limits to 200 feet beyond Colfax Avenue.	#1
		Peach Orchard Brook	Shallow flooding is found from the downstream corporate limits to Dalton Street.	#2
	Maps available at the Municipal Building, Roselle Park, New Jersey.			
New Jersey	South River (Borough), Middlesex County (Docket No. FI-5673).	South River	Intersection of Main and Reid Streets	#12
			Intersection of Herman and Water Streets	#12
	Maps available at the Borough Clerk's Office, 61-63 Main Street, South River, New Jersey.			

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
New Jersey	Wallington, Borough, Bergen County (Docket No. FI-5638).	Passaic River	Main Avenue Upstream	*17
			Eighth Street Upstream	*18
			Upstream Corporate Limits	*19
		Saddle River	Confluence with Passaic River	*19
			Conrail Bridge	*19
	Maps available at the Municipal Building.			
New York	Brunswick (Town), Rensselaer County (Docket No. FI-5673).	Poesten Kill	Most downstream limit of detailed study 200 feet upstream from centerline.	*415
			Corporate limits at centerline	*423
			Confluence with Quacken Kill 100 feet upstream from centerline	*426
		Quacken Kill	Corporate limits 60 feet downstream from centerline	*433
			Darter Hill Road 75 feet downstream from centerline	*451
			Darter Hill Road 40 feet upstream from centerline	*453
			Deerstyne Road 25 feet downstream from centerline	*461
			Deerstyne Road 70 feet upstream from centerline	*463
			White Church Road 140 feet downstream from centerline	*494
			White Church Road 75 feet upstream from centerline	*497
			County Highway 77 200 feet downstream from centerline	*514
			County Highway 77 100 feet upstream from centerline	*519
			Private Road upstream of County Highway 77 100 feet downstream from centerline.	*529
			Private Road upstream of County Highway 77 50 feet upstream from centerline.	*538
		Wynatts Kill	Most downstream limit of flooding affecting the Town of Brunswick	*324
			Most upstream limit of flooding affecting the Town of Brunswick	*327
	Maps available at the Brunswick Town Office, Center Brunswick, Eagle Mills Road, Brunswick, New York.			
New York	Lewiston, Town, Niagara County (Docket No. FI 4985).	Fish Creek	120 feet upstream of Robert Moses Parkway	*562
			310 feet upstream of Robert Moses Parkway	*567
			530 feet upstream of Robert Moses Parkway	*571
			930 feet upstream of Robert Moses Parkway	*575
			85 feet upstream of U.S. Route 104	*580
			1,265 feet upstream of U.S. Route 104	*585
			60 feet upstream of State Route 265	*593
			720 feet upstream of State Route 265	*593
			3,580 feet upstream of State Route 265	*595
			Approximately 45 feet upstream of Bronson Drive	*599
		Gil Creek	Approximately 100 feet upstream of Hewitt Drive	*603
			Approximately 4,500 feet upstream of Hewitt Drive	*611
			Approximately 6,500 feet upstream of Hewitt Drive	*616
			Approximately 8,500 feet upstream of Hewitt Drive	*621
	Maps available at the Town Hall, 1375 Ridge Road, Lewiston, New York.			
New York	Town of Mount Pleasant, Westchester County (Docket No. FI-5678).	Saw Mill River	Downstream corporate limit	*191
			First crossing Saw Mill River Parkway upstream from corporate limit	*202
			Confluence of Fly Kill Brook	*231
			Upstream corporate limit	*253
		Nanny Hagen Brook	Confluence with Saw Mill River	*250
			Culvert approximately 300 feet upstream from Kensico Road crossing	*257
		Fly Kill Brook	Confluence with Saw Mill River	*231
			Crossing of Chelsea Street	*250
			Conrail crossing just upstream from Bridge	*255
		Clove Brook	Confluence with Davis Brook	*244
			Wall Road crossing	*250
	Maps available at the Town Hall.			
New York	Sanford (Town), Broome County (Docket No. FI-5688).	West Branch Delaware River	Hales-Eddy Road 200 feet upstream from centerline	*960
		Oquaga Creek	State Highway 17 most downstream crossing at centerline	*1,015
			Alternate State Highway 17 50 feet upstream from centerline	*1,081
			Old Plank Road most downstream crossing at centerline	*1,114
			Loomis Hill Road 150 feet upstream from centerline	*1,166
			Clark Road 50 feet upstream from centerline	*1,262
		Marsh Creek	State Highway 41 20 feet upstream from centerline	*1,119
		Dry Brook	Clark Road 100 feet upstream from centerline	*1,306
		Sanford Tributary	At confluence with Oquaga Creek	*1,166
		Deer Lake	Western Corporate Limit	*1,522
	Maps available at Town Hall, 146 Front Street, Deposit, New York.			
New York	Youngstown, Village, Niagara County (Docket No. FI-5678).	Lake Ontario	Backwater affecting reach of Niagara River in the Village of Youngstown, New York.	*249
	Maps available at the Village Hall, 240 Lockport Street, Youngstown, New York.			
North Carolina	Unincorporated areas of Guilford County (FI-5688).	Haw River	Just downstream of State Highway 2712	*634
			Approximately 1,000 feet upstream of State Highway 2711	*640
			Confluence of Mear's Fork Creek (of just upstream of State Highway 1001).	*707
			Just upstream of State Highway 2347	*746

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Just upstream of U.S. Highway 220	*762
			Approximately 400 feet upstream of State Highway 68	*792
			Just upstream of State Highway 2022	*825
		Big Alamance Creek	Just downstream of State Highway 61	*544
			Just upstream of State Highway 3056	*559
			Just downstream of State Road 3045	*583
			Approximately 200 feet upstream of State Highway 3092	*590
			Just upstream of State Highway 3088	*597
			Just downstream of Highway 3388	*623
			Just upstream of State Highway 3549	*649
			Just upstream of Dam near State Highway 3396	*656
			Just upstream of Dam at State Highway 3412	*683
		Big Alamance Creek Tributary No. 1.	Confluence with Big Alamance Creek	*687
		Big Alamance Creek Tributary No. 2.	Just upstream of U.S. Highway 421	*668
		Back Creek Tributary	Just downstream of Sanitary Landfill Road	*624
		South Little Alamance Creek	Just upstream of State Highway 1005	*626
			Just upstream of State Highway 3370	*685
			Just upstream of U.S. Highway 421	*716
		North Little Alamance Creek	Just upstream of State Highway 61	*538
			Just upstream of State Highway 3056	*571
			Just downstream of State Highway 3045	*605
			Just upstream of Stewart Mill Dam	*619
			Just upstream of Dam at 600 upstream of Highway 3029	*647
			Approximately 300 feet upstream of Highway 1005	*685
			Just upstream of U.S. Highway 421	*728
		Tributary 2 of North Little Alamance Creek.	Just upstream of State Highway 1005	*665
			Just upstream of State Highway 3048	*632
		Tributary 4 of North Little Alamance Creek.	Just upstream of Dam	*657
			Just upstream of U.S. I-85	*670
		Tributary 5 of North Little Alamance Creek.	Just upstream of State Highway 2826	*635
		Rock Creek	Just upstream of I-85	*563
			Just upstream of Southern Railroad	*633
		Rock Creek Tributary 1	Approximately 400 feet downstream of State Highway 2808	*638
		Tributary to Tributary 1	Just downstream of State Highway 2808	*633
		East Beaver Creek	Just upstream of State Highway 1005	*674
			Just upstream of Masonry Dam	*685
		Reedy Fork	Approximately 1000 feet upstream of State Highway 2719 and just downstream of Masonry Dam.	*646
			Just downstream of U.S. Highway 29	*687
			Lake Townsend	*720
			Lake Brandt	*743
			Just upstream of State Highway 68	*803
			Just upstream of State Highway 1858	*842
			Just upstream of State Highway 2001	*866
		Buffalo Creek	Just downstream of State Highway 2719	*652
			Just downstream of State Highway 2795	*665
		North Buffalo Creek	Just downstream of State Highway 2784	*682
			Just upstream of State Highway 2832	*698
		South Buffalo Creek	Just upstream of U.S. Highway 70A	*699
			Just upstream of State Highway 300 (McConnell Road)	*709
		Richland Creek (Tributary of Reedy Fork).	Just upstream of Dam of Lake Richland	*752
		Squirrel Creek	Just upstream of State Highway 2519	*723
			Just upstream of State Highway 1001	*750
		Long Branch (Tributary of Reedy Fork).	Just upstream of State Highway 2324	*723
		Horse Pen Creek	Just upstream of Southern Railroad	*744
			Just upstream of State Highway 2182	*772
			Just upstream of State Highway 2136	*777
			Just downstream of State Highway 2145	*811
		Brush Creek	Just upstream of State Highway 2136	*783
			Just downstream of State Highway 2137	*802
		Moore's Creek	Approximately 400 feet upstream of State Highway 2134	*779
		West Beaver Creek	Just upstream of Dam, approximately 200 feet upstream of Highway 68.	*828
			Just upstream of State Highway 2018	*847
		Benaja Creek	Just upstream of Southern Railroad	*700
		Mear's Fork	Just upstream of State Highway 2303	*762
			Just upstream of State Highway 2317	*783
		Troublesome Creek	Just upstream of State Highway 2103	*855
		Deep River	Approximately 200 feet downstream of State Highway 62	*675
			Just upstream of State Highway 1129	*684
			Approximately 600 feet upstream of U.S. Highways 29 and 70	*703
			Just upstream of U.S. Highway 1355	*705
		Polecat Creek	Just upstream of State Highway 62	*713
			Just upstream of U.S. Highway 220	*746
		Polecat Creek Tributary	Just upstream of Dam at State Highway 3426	*770
		Hickory Creek	Just upstream of State Highway 1140	*680
			Just upstream of State Highway 1132	*689
			Just upstream of State Highway 1113	*712
		Hickory Creek Tributary No. 2	Just upstream of State Highway 1132	*740

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Register Creek	Just upstream of State Highway 1129	*714
			Just upstream of State Highway 1113	*726
			Just upstream of U.S. Highways 29 and 70	*747
			Just upstream of Cumberland Road (1372)	*775
		Richard Creek (Tributary of Deep River).	Approximately 300 feet upstream of a Private Road	*693
		Bull Run	Just upstream of U.S. Highways 29A and 70A	*744
			Just upstream of State Highway 1549	*770
			Just upstream of Concrete Dam	*798
		Bull Run Tributary	Just upstream of Horse Path	*778
		East Fork Deep River	Just upstream of State Highway 1541	*780
			Just upstream of State Highway 1556	*807
			Just upstream of Interstate Highway I-40	*829
		Long Branch (Tributary East Fork Deep River).	Just upstream of State Highway 1549	*789
		West Fork Deep River	Just upstream of State Highway 1818	*817
			Just upstream of State Highway 1850	*821
		Tributary No. 1 (West Fork Deep River).	Just upstream of State Highway 1859	*846
			Just upstream of State Highway 1858	*854
		Tributary to Tributary No. 1	Approximately 1,200 feet downstream of Interstate Highway I-40	*865
		Tributary No. 2 (West Fork Deep River).	Approximately 600 feet upstream of State Highway 1834	*808
	Maps available at Guilford County Manager's Office, Greensboro, North Carolina 27402.			
Ohio	(V) Canal Winchester, Fairfield County, and Franklin County (Docket No. FI-5678).	Little Walnut Creek	Downstream corporate limits	*741
			Just downstream of Gender Road	*748
			About 630 feet upstream of State Route 674	*760
			Upstream corporate limits	*762
		Tussing Ditch	At downstream corporate limits	*741
			Just upstream of Groveport Road	*752
			About 710 feet upstream of Walnut Street	*753
			Just downstream of Chessie System	*754
			About 100 feet downstream of Waterloo Street	*761
			Just upstream of Waterloo Street	*764
			Just upstream of U.S. Route 33	*766
		George Creek	About 1,270 feet downstream of U.S. Route 33	*751
			Just upstream of U.S. Route 33	*755
			At upstream corporate limits	*759
	Maps available at Village Hall, 10 North High Street, Canal Winchester, Ohio 43110.			
	(V) Dublin, Franklin and Delaware County (Docket No. FI-5678).	Scioto River	Downstream corporate limits	*771
			400 feet upstream of confluence of Indian Run	*777
			Just upstream of Interstate 270	*779
			Just upstream of confluence of Tributary S2	*780
			Just upstream of confluence of Tributary S4	*793
			Upstream corporate limits	*795
		Indian Run	250 feet upstream of High Street	*777
			At confluence with South Fork Indian Run	*804
		North Fork Indian Run	400 feet upstream of confluence with South Fork Indian Run	*805
			Just upstream of Interstate 270	*838
			1,100 feet upstream of Interstate 270	*853
			Just upstream of Coffman Road	*884
			Just upstream of Brand Road	*886
			Just upstream of Ashbaugh Road	*895
			Just upstream of Muirfield Drive	*902
			Upstream corporate limits	*920
		South Fork Indian Run	Just upstream of access road, 1,025 feet upstream of confluence with Indian Run.	*853
			Just upstream of Interstate 270	*870
			100 feet upstream of access road, 2,260 feet upstream of Coffman Road.	*888
			Just upstream of access road 4,460 feet upstream of Coffman Road	*897
			About 1,300 feet upstream of Avery Road	*914
		Tributary S-1	Mouth at Scioto River	*773
			600 feet upstream of mouth at Scioto River	*776
			Just upstream of High Street	*802
			Just upstream of access road, 1,520 feet upstream of High Street	*843
			Just upstream of Frantz Road	*864
			Just upstream of Interstate 270	*894
			Upstream corporate limits	*899
	Maps available at Village Hall, Dublin, Ohio 43217.			
Ohio	(V) Grafton, Lorain County (Docket No. FI-5683).	East Branch Black River	Downstream corporate limits	*778
			Just upstream of Parsons Road	*783
			Just upstream of Conrail	*788
	Maps available at the Village Hall, 1009 Chestnut Street, Grafton, Ohio 44044.			

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Ohio	(C) North Ridgeville, Lorain County (Docket No. FI-5678).	Ridgeway Ditch	Just downstream Case Road	*695
			About 900 feet upstream Case Road	*700
			Just downstream Center Ridge Road	*716
			About 1700 feet upstream Center Ridge Road	*719
		Shallow flooding (overflow from Ridgeway Ditch).	Intersection of Maddock Road and Ridgeway Ditch	#1
		Shallow flooding (overflow from French Creek).	Intersection of French Creek and Center Ridge Road	#1
		Shallow flooding (overflow from Robinson Ditch).	Intersection of Root Road and Robinson Ditch	#1
		Shallow flooding (overflow from Mills Creek).	Intersection Chestnut Ridge Road and Mills Creek	#1
			Intersection Center Ridge Road and Mills Creek	#1
	Maps available at City Hall, 7307 Avon-Belden Road, North Ridgeville, Ohio 47039.			
Ohio	(V) Ottawa Hills, Lucas County (Docket No. FI-5620).	Ottawa River	Just upstream Talmadge Road	*597
			Upstream corporate limit	*602
	Maps available at Village Hall, 2125 Richards Road, Toledo, Ohio 43606.			
Ohio	(C) Toledo, Lucas County (Docket No. FI-5678).	Maumee Bay	Shoreline	*579
		Halfway Creek	Just downstream of State Line Road	*591
			Just upstream of Lewis Avenue	*597
			Upstream side of Jackman Road	*602
			Upstream Corporate limits	*605
		Silver Creek	Downstream Corporate limits	*579
			Downstream side of Hagman Road	*580
			Downstream side of Ann Arbor Railroad	*585
			Upstream side of Ann Arbor Railroad	*589
			Upstream side of Bennet Road	*594
			Just upstream of Lewis Avenue	*600
			Just upstream of Detroit Toledo Ironton Railroad 0.52 mile downstream of Jackman Road.	*606
			Just upstream of Rowland Drive West	*612
			Downstream side of Clegg Street	*617
			Upstream side of Whitmer Drive	*626
			Just upstream of Acoma Drive	*634
		Shantee Creek	Confluence with Silver Creek	*583
			Just upstream of Stickney Avenue	*589
			Upstream side of Conrail	*594
			Downstream of Bennett Road	*597
			Downstream side of Willys Parkway	*602
			Downstream side of Toledo Terminal Railroad 898 feet upstream of Jackman Road.	*610
			Upstream side of Toledo Terminal Railroad 898 feet upstream of Jackman Road.	*614
			Upstream side of Tremainsville Road	*614
		Tifft Ditch	Confluence with Shantee Creek	*614
			Upstream side of Douglas Road	*618
			Upstream side of Secor Road	*624
			Upstream side of Fox Glove Road	*629
			300 feet upstream of Paddington Drive	*637
		Eisenbraum Ditch	Confluence with Tifft Ditch	*619
			Downstream side of Laskey Road	*629
			Just upstream of Clover Lane	*635
			Upstream side of Talmadge Road 840 feet downstream of Private Drive.	*642
			Upstream Corporate limit	*651
		Jamieson Ditch	Confluence with Silver Creek	*593
			Just upstream of Regina Parkway	*600
			Downstream side of Lewis Avenue	*602
		Ketchem Ditch	Confluence with Silver Creek	*606
			Upstream side of Jackman Road	*611
			Just upstream of Oldham Drive	*615
			Downstream side of Douglas Road	*620
		Ottawa River	Downstream Corporate limit	*579
			Just upstream of Lagrange Street	*583
			Upstream side of Berdan Avenue	*586
			Upstream of Upton Avenue	*590
			Upstream Corporate limits	*595
		Peterson Ditch	Confluence with Ottawa River	*588
			Just downstream of Algonquin Parkway	*613
			500 feet upstream of Cheltenham Road	*615
			200 feet upstream of Manchester Boulevard	*623
			Upstream side of Woodley Road	*628
		Williams Ditch	200 feet upstream of Dorr Street	*610
			Upstream side of Wamba Avenue	*617
			Just downstream of Hill Avenue	*620
			300 feet upstream of Marine Drive	*622
			0.56 mile upstream of Marine Drive	*624
		Schneider Ditch	Confluence with Williams Ditch	*619
			Downstream side of Hill Avenue	*620
		Heldman Ditch	Downstream Corporate limits	*598
			Upstream side of Inverdale Avenue	*603
			Upstream side of Hill Avenue	614
			Upstream side of Holland-Sylvania Road	629
			Upstream Corporate limit	*634

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Dennis Ditch	Confluence with Heldman Ditch	*598
			Just upstream of Whitegate Drive	*603
			Upstream side of Hill Avenue	*613
			Downstream side of Wenz Road	*625
		Hill Ditch	Confluence with Heldman Ditch	*598
			Upstream side of Terrace View South	*605
			Just upstream of Bancroft Street	*613
			Just upstream of Reynolds Road	*620
			Downstream side of Elmer Drive	*626
		Haefner Ditch	Confluence with Hill Ditch	*598
			Just upstream of Penn Road	*610
			300 feet downstream of Atwood Road	*615
			750 feet downstream of Olimphia Drive	*630
			Upstream Corporate limits	*638
		Deline Ditch	Confluence with Heldman Ditch	*601
			Upstream side of St. Andrews Drive	*604
			Just downstream of Reynolds Road	*620
			Upstream side of Reynolds Road	*626
			Downstream side of Hill Avenue	*628
		Mayer Ditch	Confluence with Heldman Ditch	*631
			Just upstream of Nebraska Avenue	*636
			Upstream Corporate limit	*637
		Swan Creek	Mouth at Maumee River	*579
			Upstream side of Collingwood Boulevard	*586
			Just upstream of Hawley Street	*592
			Upstream side of Byrne Road	*598
			Upstream side of Reynolds Road	*605
			Just upstream of Garden Road	*613
		Wolf Creek	Confluence with Swan Creek	*606
			Upstream Corporate limit	*606
		Good Ditch	Confluence with Wolf Creek	*606
			Just upstream of Airport Highway	*611
			Upstream Corporate limit	*618
		Delaware Creek	Mouth at Maumee River	*580
			100 feet upstream of Wildwood Road	*583
			Just upstream of Detroit Avenue	*598
			400 feet downstream of Toledo Terminal Railroad	*598
			Confluence with Gerdes Ditch	*606
			Downstream side of Glanzman Road	*606
		Maumee River	Mouth at Maumee Bay	*579
			Upstream Corporate limits	*581
	Maps available at Planning Commission, 415 North St. Clair Street, Toledo, Ohio 43624.			
Ohio	(V) Wellington, Lorain County (Docket No. FI-5678).	Wellington Creek	Approximately 1,050 feet downstream of downstream corporate limit	*834
			At the downstreamcorporate limit	*836
			Approximately 2,300 feet downstream of Cemetery Road	*840
			Just downstream of Cemetery Road	*843
			Approximately 150 feet upstream of Cemetery Road	*844
	Maps available at Village Hall, Willard Memorial Square, Wellington, Ohio 44090.			
Oregon	Phoenix (City), Jackson County (Docket No. FI-5673).	Bear Creek	Fern Valley Road 150 feet upstream from centerline	*1,472
			Phoenix Corporate Limits approximately 3470 feet upstream from Fern valley Road at centerline.	*1,488
		Coleman Creek	Phoenix Corporate Limits approximately 1000 feet upstream from mouth at centerline.	*1,471
			U.S. Highway 99 30 feet downstream from centerline	*1,485
	Maps available at City Hall, 510 West First Street, Phoenix, Oregon.			
Pennsylvania	Township of Bethlehem, Northampton County (Docket No. FI-5678).	Lehigh River	Downstream corporate limits	*209
			Upstream corporate limits	*220
		Nancy Run	Washington Street	*259
			Keystone Street	*267
			Middletown Road	*272
			Willow Park Road	*293
		Monocacy Creek	Private Bridge	*316
			U.S. Route 22	*318
			Broadhead Road	*319
			Nazareth Pike (Pennsylvania Route 191)	*321
	Maps available at the Township Building, Bethlehem, Pennsylvania.			
Pennsylvania	Township of Conoy, Lancaster County (Docket No. FI-5678).	Susquehanna River	Downstream corporate limits	*272
			Upstream corporate limits	*291
		Conoy Creek	At mouth	*278
			Confluence of Tributary A	*286
		Tributary A	At mouth	*286
			State Route 441 bridge	*325
		Conewago Creek—East	At mouth	*294
			Township Route 300 bridge	*309
			Township Route 304 bridge	*322
	Maps available at the Township Building, Conoy, Pennsylvania.			

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Pennsylvania	South Wavery, Borough Bradford County (Docket No. FI-4892).	Dry Brook	Downstream Corporate Limits	*785
			U.S. Route 220 Downstream	*807
			U.S. Route 220 Upstream	*817
			Elmira Street (L. R. 08114)	*821
			Foot Bridge	*826
			Southern Tier Expressway Downstream	*827
			Southern Tier Expressway Upstream	*833
			Bradford Street Downstream	*833
			Bradford Street Upstream	*837
			Upstream Corporate Limits	*837
		Chemung River	Downstream Corporate Limits	*776
			Upstream Corporate Limits	*778
	Maps available at the Borough Office of South Waverly, Pennsylvania.			
Pennsylvania	Tremont, Borough, Schuylkill County (Docket No. FI-5603).	Good Spring Creek	Downstream Corporate Limits	*753
			East Line Street—Upstream	*762
			East Main Street—Upstream	*767
			Footbridge 480 feet downstream of North Pine Street	*768
			North Pine Street—Upstream	*778
			Washington Street—Upstream	*780
			Upstream Corporate Limits	*814
	Maps available at the Borough Office, Main Street, Tremont, Pennsylvania.			
South Carolina	Abbeville (City), Abbeville County (Docket No. FI-5688).	Blue Hill Creek	South Main Street at centerline	*469
			Brooks Street 50 feet downstream from centerline	*480
			Brooks Street 20 feet upstream from centerline	*486
			West Greenwood Road 70 feet upstream from centerline	*488
			Vienna Street 20 feet upstream from centerline	*492
		Blue Hill Creek Tributary	Filter Plant Drive 60 feet upstream from centerline	*495
			Ferry Street 60 feet upstream from centerline	*524
			Haigler Street 70 feet downstream from centerline	*549
			Haigler Street 20 feet upstream from centerline	*556
		Parker Creek	Washington Street 80 feet upstream from centerline	*494
			South Carolina Highway 20-30 feet upstream from centerline	*513
			Sunset Drive 80 feet downstream from centerline	*536
			Sunset Drive 40 feet upstream from centerline	*545
	Maps available at City Hall, Court Square, Abbeville, South Carolina.			
South Carolina	City of Newberry, Newberry County (FI-5673).	North Fork, Scotts Creek	Just downstream of Drayton St	*450
			Just downstream of Caldwell St	*462
			Just downstream of Calhoun St	*465
		South Fork, Scotts Creek	Just downstream of Caldwell St	*460
			Just downstream of Glenn St	*474
	Maps available at City Hall, 1201 McKebben Street, Newberry, South Carolina 29128.			
South Dakota	Mission Hill (Town), Yankton County (Docket No. FI-5673).	Unnamed Stream	Finotti Avenue at centerline	*1,175
			Nichols Avenue 30 feet upstream from centerline	*1,179
	Maps available at the home of Ms. Paula Gunderson, Town Clerk, Town of Mission Hill, Mission Hill, South Dakota.			
South Dakota	Pierre (City), Hughes County (Docket No. FI-5665).	Hilgers Gulch	Confluence with Missouri River	*1,427
			Wells Avenue centerline	*1,466
			Church Street 50 feet downstream from centerline	*1,486
			U.S. Highway 14/83-200 feet upstream from centerline	*1,608
			Most upstream corporate limits at centerline	*1,639
	Maps available at City Hall, 222 East Dakota Avenue, Pierre, South Dakota.			
South Dakota	Trent (Town), Moody County (Docket No. FI-5673).	Big Sioux River	Downstream Corporate Limits	*1,502
			Third Street at centerline	*1,504
			Upstream Corporate Limits	*1,505
	Maps available at the home of Mr. LeRoy Allen, President of the Town Board, Town of Trent, Trent, South Dakota.			
Texas	City of El Campo, Wharton County (FEMA-5713).	Tres Palacios Creek	Just upstream of Pinchot Street	*101
			Just downstream of West Norn's Street1	*106
		Tres Palacios Tributary	Just downstream of South Meadow Street	*102
		Stage Stand Creek	Just upstream of U.S. Highway 71	*100
		Blue Creek	Just upstream of Oliva Street	*108
			Just upstream of Earl Street	*112
	Maps available at City Hall, El Campo, Texas 77437			
Texas	Sherman, City, Grayson County (FI-5683).	Post Oak Creek	Just upstream of Old U.S. Highway 75	*662
			Just upstream of Center Street	*677
			Just upstream of Lamberth Street	*717
		Sand Creek	Just upstream of State Highway 82	*691
		East Fork Post Oak Creek	Just upstream of Travis Street	*708
			Just downstream of McLain Drive	*740
		Choctaw Creek	Just upstream of Southern Pacific Railroad	*655
		Stream B	Just upstream of Texas and Pacific Railroad	*726
		Stream E	Just upstream of Vancouver Street	*722
			Just downstream of Pecan Grove Road	*746
	Maps available at City Clerk's Office, City Hall, 400 N. Rusk, Sherman, Texas 75090.			

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Texas	City of Spring Valley, Harris County (Docket No. FI-5678).	Spring Branch	Westview Drive	*62
			Bingle Road	*65
			Voss Road	*74
			Upstream Corporate Limits	*78
		Briar Branch	Bingle Road	*54
			Voss Road	*69
			Campbell Road	*75
			Adkins Road	*77
	Maps available at the Spring Valley City Hall.			
Texas	City of Wylie, Collin County (FI-5688).	Rush Creek	Approximately 70 feet downstream of New State Highway 78	*502
			Just downstream of East Stone Road	*473
		Rush Creek Tributary	Approximately 40 feet downstream of New State Highway 78	*511
		Muddy Creek Tributary	Just upstream of Martinez Lane	*496
			Approximately 140 feet downstream of Martinez Lane	*495
	Maps available at City Hall, Wylie, Texas 75098.			
Utah	Mapleton (City), Utah County (Docket No. FI-5673).	Hobble Creek	3,200 East Utah County at centerline	*4,703
			Diversion Structure (east of Main Street) 50 feet downstream of centerline.	*4,712
			Diversion Structure (east of Main Street) 50 feet upstream of centerline.	*4,719
			Unnamed Road upstream of confluence with Mapleton Lateral Canal 50 feet upstream of centerline.	*4,771
			Upstream Corporate limits at centerline	*4,794
		Maple Creek	Area 2,300 feet southeast of the intersection of 1,200 North and 1,700 East.	*#1
	Maps available at City Hall, 35 East Maple, Mapleton, Utah.			
Utah	Moab (City), Grand County (Docket No. FI-5688).	Mill Creek	Corporate Limits (first crossing)	*3,964
			500 West Street 30 feet upstream from centerline	*3,986
			Main Street 55 feet upstream from centerline	*4,030
			300 South Street 25 feet downstream from centerline	*4,050
			300 South Street 25 feet upstream from centerline	*4,056
			400 East Street 25 feet upstream from centerline	*4,082
			Mill Creek Drive 20 feet upstream from centerline	*4,128
			Intersection of Main Street and Center Street	#1
			300 feet south along 100 East Street from intersection of 300 South Street and 100 East Street.	#1
		Pack Creek	Confluence with Mill Creek	*3,995
			Main Street Bridge 25 feet upstream from centerline	*4,058
			Corporate Limits (third crossing)	*4,165
	Maps available at City Hall, 121 East Center, Moab, Utah.			
Vermont	Town of Burke, Caledonia County (Docket No. FI-5688).	Calendar Brook	Downstream Corporate Limits	*737
			Sutton Road (Upstream)	*742
			Upstream Corporate Limits	*822
		Dish Mill Brook	Confluence with East Branch Passumpsic River	*820
			State Route 114 (Upstream)	*827
			Town Highway 48 (Upstream)	*884
		East Branch Passumpsic River	Downstream Corporate Limits	*798
			Lunge Road (Upstream)	*872
			State Route 114 (Upstream)	*916
			Upstream Corporate Limits (County Boundary)	*963
		Roundy Brook	1,230 feet downstream of Burke Hollow Road	*917
			Burke Hollow Road (Upstream)	*956
			2,300 feet upstream of Burke Hollow Road	*1,026
		West Branch Passumpsic River	Bugbee Road (Upstream)	*768
			Town Highway 31 (Upstream)	*850
			Town Highway 54 (Downstream)	*898
			Town Highway 54 (Upstream)	*904
			Upstream Corporate Limits	*955
		Sutton River	Confluence with West Branch Passumpsic River	*894
			U.S. Route 5 (Upstream)	*911
			Upstream Corporate Limits	*925
	Maps available at the office of the Town Clerk, Burke, Vermont.			
Vermont	Lyndon (Town), Caledonia County (Docket No. FI-2885).	Passumpsic River	Canada Pacific Railroad Bridge	*689
			U.S. Route 5 75 feet upstream from centerline	*707
			Center Street	*708
			U.S. Route 5 100 feet downstream from centerline	*709
			Vermont Route 114 100 feet downstream from centerline	*711
			Canada Pacific Railroad Bridge	*716
			Vermont Route 114 25 feet downstream from centerline	*717
			Town Highway 36	*718
			Town Highway 40	*741
			Vermont Route 114	*752

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Calendar Brook	U.S. Route 5 475 feet upstream from centerline	*735
		Hawkins Brook	Town Highway 69 275 feet upstream from centerline	*687
			Town Highway 6 100 feet downstream from centerline	*706
		Millers Run	Interstate Highway 91	*714
			Town Highway 31	*718
		Wheelock Branch Brook	Town Highway 1 *708	
			Cross Street 150 feet upstream from centerline	*709
Maps available at Town Hall, 24 Main Street, Lyndonville, Vermont.				
Washington	Duvall (Town), King County (Docket No. FI-5673).	Snoqualmie River	County Road 1136 100 feet upstream from centerline	*45
			Most upstream limit of flooding affecting the Town of Duvall at centerline.	*46
Maps available at Town Hall, Corner of Main and Stella, Duvall, Washington.				
Washington	Tenino (Town), Thurston County (Docket No. FI-5688).	Scatter Creek	McDuff Road at centerline	*263
			Olympia-Tenino Highway 100 feet upstream of centerline	*269
		Scatter Creek Tributary	Confluence with Scatter Creek	*275
Maps available at City Hall, 308 Hodgen Street, Tenino, Washington.				
Wisconsin	(V) Cambridge, Dane County and Jefferson County (Docket No. FI-5632).	Koshkonong Creek	Just upstream from southern corporate limit	*826
			280 feet upstream from Water Street	*827
			Approximately 160 feet upstream from Main Street	*828
			Approximately 1,000 feet upstream from Main Street	*829
			Just downstream of corporate limit (Approximately 2,500 feet upstream of Main Street).	*830
			Downstream from the most northern corporate limit	*833
Maps available at Office of Village Clerk, Box 89, Cambridge, Wisconsin 53523.				
Wisconsin	(V) Sturtevant, Racine County (Docket No. FI-5633).	Waxdale Tributary	Downstream most corporate limits	*679
			Just downstream of 90th Street	*688
			Just upstream of 90th Street	*691
			0.2 mile upstream of 90th Street	*692
			Just downstream of Wisconsin Street	*706
			Just upstream of Wisconsin Street	*710
			At upstream corporate limits	*712
		Unnamed Tributary to Waydale Tributary.	At mouth	*696
			Just upstream of Charles Street	*712
			Approximately 130 feet upstream Wisconsin Street	*715
			At upstream corporate limits	*726
Maps available at the Office of the Village Clerk, 2555 Wisconsin Street, Sturtevant, Wisconsin 53177.				

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963).

Issued: January 3, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-2086 Filed 1-23-80; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

[Docket No. HM-139B; Amdt. Nos. 172-55, 173-133, 174-35, 177-46, 178-58]

Conversion of Individual Exemptions to Regulations of General Applicability; Revision of Amendment 173-133

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Revision of previous amendment 173–133.

SUMMARY: This revision to Amendment No. 173–133 (44 FR 60097, October 18, 1979) pertains to the "Salvage Drum" and changes the wording in § 173.3(c) and § 173.3(c)(1) by: (1) removing the words "during transportation" each time they appear in § 173.3(c). In addition, the words "that is compatible with the lading," have been added to emphasize safety precautions; and (2) the word "drum" has been changed to read "package" where it appears near the end of the first sentence in § 173.3(c)(1). The need for this action has been created by public demand to allow the use of salvage drums for the shipment of damaged or leaking packages in addition to those which are found to be damaged or leaking during transportation. The intended effect of these amendments is to provide wider access to the benefits of transportation innovations recognized and shown to be effective and safe.

EFFECTIVE DATE: January 24, 1980 except that the effective date of § 173.3(c)(3) is February 15, 1980.

FOR FURTHER INFORMATION CONTACT: Darrell L. Raines, Office of Hazardous Materials Regulations, 400 7th Street SW., Washington, D.C. 20590, 202–472–2726.

SUPPLEMENTARY INFORMATION: On October 18, 1979, the MTB published a final rule under Docket HM–139B in the **Federal Register** [44 FR 60097], which revised § 173.3(c). Since that publication, the MTB has received six petitions for reconsideration in accordance with the provisions of 49 CFR 106.35.

All six petitioners requested removal of the words "during transportation" in § 173.3(c). One of the petitioners recommended that a phrase regarding drum and lading compatibility be included in § 173.3(c).

Five of the six petitioners also requested that the word "package" be substituted for "drum" in the last part of § 173.3(c)(1) in order to overpack defective boxes or bags containing hazardous materials for which a DOT specification drum does not exist.

Finally, one petitioner requested that a sentence be added at the end of § 173.3(c)(3) to read "Other markings that clearly indicate the drum is being used for recovery purposes under this section are also authorized."

Except for the final recommendation, the MTB agrees with the six petitioners and this amendment includes their recommended changes. The MTB does not agree with the last petitioner's request because it would allow the drum to be marked with various names depending on the choice of the user. The required marking "SALVAGE DRUM" will serve to tie the authorization provided in § 173.3 to the conditions and requirement of that section. For this reason, the marking requirements in § 173.3(c)(3) have not been changed.

This amendment only revises the introductory text of § 173.3 (c) and (c)(1), however the entire paragraph (c) is being republished for clarity.

In consideration of the foregoing, the introductory text of paragraph (c) and paragraph (c)(1) are revised. The remainder of the paragraph is repeated for clarity.

§ 173.3 Packaging and exceptions.

* * * * *

(c) Packages of hazardous materials that are damaged or found leaking and hazardous materials that have been spilled or leaked may be placed in a metal removable head salvage drum that is compatible with the lading and shipped for repackaging or disposal under the following conditions.

(1) The drum utilized may be either a DOT specification or a non-DOT specification drum as long as the drum has equal or greater structural integrity than a package that is authorized for the respective material in this subchapter. Maximum capacity shall not exceed 110 gallons.

(2) Each drum must be provided with adequate closure and, when necessary, provided with sufficient cushioning and absorption material to prevent excessive movement of the damaged package and to absorb all free liquid. All cushioning and absorbent material used in the drum must be compatible with the hazardous material.

(3) Each drum must be marked with the proper shipping name of the material inside the defective packaging and the name and address of the consignee. In addition, the drum must be marked "Salvage Drum".

(4) Each drum must be labeled as prescribed for the respective material.

(5) The shipper shall prepare shipping papers in accordance with Subpart C of Part 172 of this subchapter.

(6) The overpack requirements of § 173.25, and the reuse provisions of § 173.28(h) and § 173.28(m) do not apply to drums used in accordance with this paragraph.

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53 and App. A to Part 1)

Note.—The Materials Transportation Bureau has determined that this document will not have a major economic impact under the terms of Executive Order 12044 and DOT implementing procedures (44 FR 11034), nor an environmental impact under the National Environmental Policy Act (49 U.S.C. 4321 et seq.). A regulatory evaluation is available for review in the docket.

Issued in Washington, D.C. on January 14, 1980.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 80–1935 Filed 1–23–80; 8:45 am]

BILLING CODE 4910–60–M

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. LVM 77–07; Notice 4]

Passenger Automobile Average Fuel Economy Standards; Exemption From Average Fuel Economy Standards

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Technical Amendment.

SUMMARY: In the **Federal Register** of March 1, 1979 (44 FR 11548), this agency published a notice exempting Officine Alfieri Maserati, S.p.A. (Maserati) from the generally applicable average fuel economy standard of 18.0 miles per gallon (mpg) for 1978 model year passenger automobiles, and established an alternative average standard for Maserati at its maximum feasible level of 12.6 mpg. Upon recalculating Maserati's maximum feasible average fuel economy level, this agency discovered that it had made an error in rounding the number to the nearest tenth of a mile per gallon. The actual maximum feasible fuel economy for 1978 Maserati automobiles was 12.5 mpg, and this notice amends Maserati's alternative standard for the 1978 model year to 12.5 mpg.

DATE: This amendment is effective January 24, 1980.

FOR FURTHER INFORMATION CONTACT: Robert Mercure, Office of Automotive Fuel Economy Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202–755–9384).

SUPPLEMENTARY INFORMATION: In a notice published at 44 FR 11548, March 1, 1979, the National Highway Traffic Safety Administration, (NHTSA) announced the final determination exempting Maserati from the generally applicable passenger automobile average fuel economy standard for the 1978 model year, and establishing an alternative standard of 12.6 mpg for Maserati for the 1978 model year. This alternative standard was set at the level which NHTSA determined was Maserati's maximum feasible average fuel economy for its two model types, as NHTSA is required to do by section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 2002(c)). Determination of that level involved assessing the extent to which the fuel economy of Maserati's two model types could be improved and then averaging the fuel economy values for those model types in accordance with the procedure of the Environmental Protection Agency.

A recent re-examination by the agency of its computation of Maserati's maximum average fuel economy for model year 1978 revealed a significant mathematical error. The agency had erroneously rounded off the fuel economy values for that company's two model types. When those values are properly rounded and the average is recomputed, the average is 12.5 mpg instead of the 12.6 mpg originally computed by the agency.

To correct this error, the agency is amending the alternative standard for

Maserati for model year 1978 to change it from 12.6 mpg to 12.5 mpg.

Accordingly, 49 CFR § 531.5(b)(7) is amended to read as follows:

§ 531.5 Fuel economy standards.

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * * *

(7) Officine Alfieri Maserati, S.p.A.: Model Year 1978, average fuel economy standard (miles per gallon), 12.5.

Issued on January 15, 1980.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 80-1925 Filed 1-23-80; 8:45 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1011 and 1100

[Ex Parte No. MC-55 (Sub-No. 39)]

Suspension Board Matters; Revisions to Existing Delegations and Procedural Rules

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Interstate Commerce Commission has revised its general rules and regulations to reflect the change in name of its Suspension Board; to remove the term "Fourth Section" from its rules; and to effect other changes of a strictly procedural nature. These actions were taken because the nonsubstantive revisions of the Interstate Commerce Act last year make inappropriate the continued reference to the long and short haul and the aggregate-of-intermediate restrictions as "Fourth Section" matters. It is expected that this action will effectively update its rules and procedures in matters pertaining to suspension, investigation, and long and short haul restrictions.

EFFECTIVE DATE: January 24, 1980.

FOR FURTHER INFORMATION CONTACT: Martin E. Foley, Director, Bureau of Traffic, 202-275-7348.

SUPPLEMENTARY INFORMATION: Former Section 4 of the Interstate Commerce Act (49 U.S.C. 4) contained provisions which prohibited railroads from charging more to intermediate points than to more distant points over the same route and for the same service. The former Section also prohibited a greater charge under a through rate than under the aggregate-of-intermediate rates. Applications for relief from these restrictions are filed with the Commission and decisions on these matters delegated to an employee board named the Suspension and Fourth Section Board (49 CFR 1011.6).

The Interstate Commerce Act was recodified without substantive change last year. The revision has eliminated Section 4 and the provisions formerly placed there are now contained in 49 U.S.C. 10726. Internally, we changed the employee board's name to "the Suspension Board," but it still is authorized to decide long and short haul and aggregate-of-intermediate rail rate matters.

The action taken here now is simply to tidy up the housekeeping aspects of making our Organization and General Rules of Practice current with respect to the Board's name and to adopt other minor procedural changes to those rules. See the appendix for details.

Notice and hearing are not required under the provisions of the Administrative Procedure Act nor 49 U.S.C. Subtitle IV (formerly the Interstate Commerce Act). This decision does not significantly affect the quality of the human environnent nor have any impact on energy consumption.

This action is taken under authority contained in 5 U.S.C. 553, 559 and 49 U.S.C. 10321 and 10501.

A note of caution is added here to alert interested persons to the fact that the changes adopted here will not be reflected in the "Green Book" which contains the Commission's rules of practice, but they will, of course, be incorporated into 49 CFR Parts 1000 to 1199 when that volume is updated. Beyond that the Commission is required by law to review its rules of practice not less than once every three years. Since the Interstate Commerce Act was revised subsequent to the last general revision of our Rules of Practice that will be undertaken to bring about conformity. In the interim, all persons should take care to follow the rules in 49 CFR.

Decided: December 12, 1979.

By the Commission, Chairman O'Neal, Vice Chairman Stafford, Commissioners, Gresham, Clapp, Christian, Trantum, Gaskins, and Alexis.

Agatha L. Mergenovich,

Secretary.

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

1. 49 CFR Part 1011 is amended by revising § 1011.5(b)(2), the paragraph heading for § 1011.6(a) and § 1011.6(a)(2) as follows:

§ 1011.5 Delegations to individual commissioners.

* * * * *

(b) * * *

(2) Reduced rates authorizations in cases of calamitous visitation under 49 U.S.C. 10721 and, in related matters, relief from the provisions of 49 U.S.C. 10730 and the long and short haul restrictions of 49 U.S.C. 10726.

* * * * *

§ 1011.6 Employee Boards.

* * * * *

(a) Suspension Board. * * *

(2) Matters arising under the long and short haul restrictions of 49 U.S.C. Subtitle IV, except proceedings made the subject of formal hearing, matters prompted by an order of requirement of the Commission or a division or matters arising from general increase proceedings.

* * * * *

PART 1100—GENERAL RULES OF PRACTICE

2. 49 CFR Part 1100 is amended by revising § 1100.40 (d), (e), (g), and (h) and § 1100.200 as follows:

§ 1100.40 Protests against tariffs or schedules.

* * * * *

(d) *Copies; Service.* In connection with proceedings involving proposals subject to the special procedures in Ex Parte No. MC-82, "New Procedures in Motor Carrier Rev. Proc.," 339 I.C.C. 324, and set forth in Part 1104 of this subchapter, an original and 11 copies of every protest or reply filed under this section shall be furnished for the use of the Commission. Except as provided for proposals subject to the special procedures in Ex Parte No. MC-82, the original and six copies of each protest, except as provided in paragraph (e) of this section, or of each reply filed under this section, must be filed with the Commission, and one copy of the protest simultaneously must be served upon the publishing carrier, freight forwarder, or agent, and upon other persons known by protestants to be interested. These pleadings should be directed to the attention of the Suspension Board.

(e) *Passenger fare increases.* The original only of each protest or request for investigation and suspension of increased passenger fares need be filed with the Commission. Requests for suspension of changes in rail passenger fares must include a verified (notarized) complaint.

* * * * *

(g) *Special requirements for protests against revisions to rail rates and charges and replies thereto.* (1) Protests against, and requests for suspension of, tariffs or schedules filed by rail carriers or the publishing agents that result in revisions of rates, charges or rules shall also include a verified complaint containing specific facts showing: (i) That without suspension the protested tariffs or schedules will cause substantial injury to the complainant or the party represented by the complainant, (ii) that it is likely that complainant or the party represented by the complainant will prevail on the merits pursuant to any applicable provisions of 49 U.S.C. Subtitle IV, and (iii) where protestants allege that a rate is unreasonably high in violation of 49 U.S.C. 10701, they must submit evidence relating to market dominance as set forth at 49 CFR 1109.1, (2) Replies to verified complaints filed under this section shall be verified. Protests against, and requests for suspension of, tariffs or schedules filed by rail carriers or the publishing agents for rail carriers that fail to include verified complaints may be accepted and construed as requests for investigation without suspension.

(h) Except in extraordinary circumstances, the Suspension Board will act on protests against or requests for suspension of tariffs applicable on household goods as defined in 49 CFR 1056.1(a), when published for the account of household goods carriers as defined in 49 CFR 1040.2(b) on not less than 45 days' notice, no later than 18 days before the effective dates of the tariffs, schedules, or parts thereof to which they refer.

§ 1100.200 Rules of practice governing procedure in certain suspension and long and short haul restriction matters.

(a) The proceedings of the Suspension Board shall be informal. No transcriptions of such proceedings will be made. Subpoenas will not be issued and, except when applications or petitions are required to be attested, oaths will not be administered.

(b) Petitions for reconsideration of orders of the following may be filed by any interested person within 20 days after the date of the service of the orders:

(1) Of the Suspension Board,

(2) Of an Appellate Division reversing, changing, or modifying a previous determination of an employee board, and

(3) Of the Commission or a Division suspending schedules or granting or denying relief from long and short haul restrictions prior to hearing in proceedings not subject to a prior determination by an employee board.

In connection with proceedings involving proposals subject to the special procedures in Ex Parte No. MC–82, "New Procedures in Motor Carrier Rev. Proc.," 339 I.C.C. 324, and set forth in Part 1104 of this subchapter, an original and 11 copies of every protest or reply filed under this section shall be furnished for the use of the Commission. Except as provided for proposals subject to the special procedures in Ex Parte No. MC–82, the original and six copies of every pleading, document or paper filed under this section shall be furnished for the use of the Commission. Any interested person may file and serve a reply to any petition for reconsideration permitted under this paragraph within 20 days after the filing of such petition with the Commission but if the facts stated in any such petition disclose a need for accelerated action, such action may be taken before expiration of the time allowed for reply. In all other respects, such petitions and replies thereto will be governed by the Commission's rules of practice.

(c) When the Suspension Board has declined to suspend a proposed tariff or schedule, or any part thereof, a petition in writing by any protestant or protestants may be filed with the Commission for reconsideration by the designated appellate division provided it reaches the Commission at least two work days prior to the effective date of the tariff or schedule in question. For the purposes of this section, a work day shall be considered as any day except Saturday, Sunday, or a legal holiday in the District of Columbia. (A legal holiday of less than one day shall be considered a work day within the meaning of this section.) Petitions submitted under this section shall be filed with the Secretary of the Commission by 4:00 p.m., United States Standard Time (or by 4:00 p.m., Local Daylight Saving Time if that time is observed in the District of Columbia). Telegraphic notice or the equivalent thereof must be given by the petitioners to the respondent or respondents. As no replies to the petitions for reconsideration are contemplated under this rule, petitioners will be expected, except in unusual circumstances, to rely wholly on the information previously filed with the Suspension Board. Written or telegraphic communication in intelligible form requesting reconsideration will be sufficient. Such request shall contain the following prefatory statement: "This matter requires expedited handling under Rule 200 of the Commission's Rules of Practice." A petition not timely filed is subject to rejection.

(d) When the Suspension Board has declined to suspend a proposed tariff or schedule applicable on household goods as defined in 49 CFR 1056.1(a) published for the account of a household goods carrier as defined in 49 CFR 1040.2(b) on not less than 45 days' notice, the designated appellate division will, except in extraordinary circumstances, act on petitions for reconsideration no later than 2 work days after the petition is filed.

[FR Doc. 80-2290 Filed 1-23-80; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 45, No. 17
Thursday, January 24, 1980

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 79-WE-10-AD]

McDonnell Douglas DC-10 Series Airplanes; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of proposed rule making.

SUMMARY: This notice proposes an airworthiness directive that would supersede AD 79-15-03 (Amdt. 39-3513 as amended by Amdt. 39-3557) and require certain design changes to DC-10 series airplane wing-mounted pylons. In addition, a revised wing-pylon inspection program is proposed. This AD is necesary to ensure integrity of the wing pylon structure, to reduce the possibility of inflicting internal structural damage during maintenance operations, and to eliminate inspections shown to be redundant.

DATES: Comments must be received on or before March 23, 1980.

ADDRESSES: Send comments on the proposal to: Department of Transportation, Federal Aviation Administration, Western Region Attention: Regional Counsel, Airworthiness Rule Docket, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The applicable service infromation may be obtained from: McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training CI-750 (54-60).

FOR FURTHER INFORMATION CONTACT: Jerry Presba, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone (213) 536-6351.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Interested persons are also invited to comment on the economic, environmental and energy impact that might result because of adoption of the proposed rule. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of the proposed AD will be filed in the Rules Docket.

The DC-10 series aircraft type certificate was restored with the restriction that, until more detailed data were available to FAA for analysis, a strict inspection program would be rigorously followed in order to ensure the safety of the traveling public. A damage tolerance study mandated and specified by FAA has been performed by Douglas Aircraft. The reports of this study have been placed in the public docket established for this proposed rulemaking action (Douglas Reports Nos. J8543 and J8545, approximately 5,000 pages). The criteria for this study were specified by FAA in consultation with the U.S. Air Force who, together, formed a "DC-10 Pylon Damage Tolerance Team". These criteria are reproduced in Section 1 of Report MDC J8543. The Final Report of the DC-10 Plyon Damage Tolerance Team has also been placed in the public docket. Independently, a team of non-Government consultants reviewed these results. The report of this team, led by Dr. Raymond Bisplinghoff, has also been placed in the docket. The results of a supplementary study which addressed the specific need to rationally explain the failure mode of the pylon upper spar web experienced by Fuselage No. 198 (aircraft registration N1827U) were reviewed by Dr. Bisplinghoff's team. This report is available in the public docket. Finally, a summary of the damage tolerance and related studies has been placed in the docket.

These data, taken together, form a solid basis for modification of the present DC-10 inspection program. Accordingly, modifications are proposed as described below.

The new program would supersede that specified in AD 79-15-03, as amended by Amendment 39-3557, and applies to Model DC-10, -10, -10F, -30, -30F, and -40 series airplanes certificated in all categories. Modification of the inspection program is based, in part, on timely completion of several design changes, including:

1. Installation of "flush-head" bolts in the two center fastener locations on the forward flange of the aft pylon bulkhead, immediately below the forward lug of the wing clevis to replace "raised-head" bolts;

2. Use of a pylon removal/installation procedure which incorporates a mechanical device intended to minimize the possibility of bulkhead lug to clevis assembly contact, thus further reducing the possibility of recurrence of the maintenance-induced damage which caused the loss of American Airlines Flight 191 (Fuselage No. 22, aircraft registration N110AA);

3. Replacement of titanium thrust links with steel thrust links on all DC-10 wing-mounted engine pylons.

The first two modifications are specifically directed at prevention of maintenance-induced damage which has occurred in the past when the pylon and engine were installed as a unit. While it is true that this specific maintenance practice is prohibited by FAA AD (AD 79-15-03), the post-accident investigations of both FAA and the National Transportation Safety Board (NTSB) indicate that the structural modifications proposed are necessary to significantly reduce the vulnerability of the pylon to similar damage in the future from other reinstallation maintenance practices that may be followed. The nature of the modifications makes it prudent to adopt them as soon as practicable as an added measure of safety. Since the "flush-head" bolts can readily be installed with the pylon removed from the aircraft, this change is mandated at the next pylon removal. Procurement and supply lead-times make it impractical to require adoption

of change (2) prior to June 30, 1980. In its stead, three special postinstallation nondestructive inspections are required for those few pylons which may be removed and reinstalled in the interim. These inspections are designed to insure that, in the remote chance that flange cracking did occur, its existence would be detected well before the crack could present any service difficulties. The third modification makes mandatory compliance with an existing Douglas service bulletin (SB54047), requiring replacement of the wing pylon titanium thrust links. Suggested compliance time for the service bulletin, which covered only DC–10–30/40 aircraft, was "prior to the accumulation of 16,000 flights" (48,000 flight hours) based on fatigue tests which produced a failed thrust link at about 32,000 flights (96,000 hours). A review of the fatigue test results confirms the reasonable nature of that recommendation based on the test data and remaining strength of the pylon in the event of a failed thrust link. The damage tolerance results, however, suggest that it would be prudent to replace titanium thrust links much sooner. Thrust link replacement requires a complex pylon removal and reinstallation procedure which is subject to human error. This could in itself present difficulties outweighing the small benefit to be gained by early precautionary replacement of the thrust link (in view of the large safety margin provided by the thrust link backup load path). An alternative to requiring thrust link replacement is, of course, inspection at relatively frequent intervals to preclude extended periods of operation with a failed link. The proposed rule requires, therefore, replacement of all DC–10 series aircraft titanium thrust links at the next pylon removal, but no later than prior to the accumulation of 48,000 flight hours. In situ X-ray or other approved nondestructive inspection of titanium thrust links is required at 3,600-hour intervals until replacement, to insure the load-bearing integrity of the assembly until they are replaced by steel thrust links.

With those changes taken into account, and in view of the technical information developed since July 1979, the inspection program is proposed to be modified as follows.

Within 3,600 hours (approximately 1 year), and each successive 3,600 hours, inspections are required of the upper and lower surfaces of the pylon upper spar, the wing and pylon attach fitting lugs, and titanium thrust links; in addition, an overall inspection of the exterior pylon surfaces and the major internal pylon structural elements is required; finally, it is required that the pylon aft spherical bearing and attaching handle be inspected to verify security of the nut and attach bolt.

The pylon upper spar is subject to failure similar to that which occurred on Fuselage No. 198 as a result of improper fastener installation. Though it appears that the cause of this problem, a quality control breakdown which has since been corrected, has been eliminated, it cannot be denied that such failure may recur. The Damage Tolerance Study did not treat this failure mode in a manner satisfactory to FAA, but supplementary information developed by Douglas and reviewed by FAA served to confirm our understanding of the mode and speed with which such failures develop. These data, taken together with service experience showing major spar web damage after 11,500 hours in service, establish an appropriate inspection interval. Three opportunities to detect this damage prior to reaching the stage seen in Fuselage No. 198 would be provided if inspection intervals were set at about 3,800 hours. Approximately annually, the typical air carrier aircraft undergoes a "C check," which is a time during which the aircraft is removed from revenue service and subjected to major maintenance and inspection. A typical interval for this maintenance is 3,600 hours, at which time the aircraft is prepared in such a way that an inspection of the upper spar web can be conducted with optimum efficiency. Accordingly, it is recommended that the inspections be conducted at those intervals.

Because of the ease of accessibility to the wing and pylon attach fitting lugs during the conduct of the upper spar web inspection, and in view of the fact that in an otherwise well structure the thrust link attachments here represent the next weakest link in the thrust load-path for the pylon, inspection of these fittings would also be recommended at this time.

The proposed rule would require nondestructive inspection of all DC–10 wing pylon titanium thrust links at 3,600-hour intervals to provide assurance that an aircraft does not operate for an extended period of time with a broken thrust link. The Damage Tolerance Study shows that failure of an initially damaged thrust link could occur in 1,200 hours for the DC–10–40, and 3,700 hours in the DC–10–10. On the other hand, the vast service experience and extensive data base available on DC–10 inspection results show that there have been no in-service failures of the thrust link, even when it was subjected to the extraordinarily aberrant load encountered in the Chicago accident. These factors taken together, in combination with the damage tolerance study finding that the alternate load path can carry the service loads intended for the thrust link for 90,000 hours, lead to the conclusion that in situ X-ray or other approved nondestructive test inspection of the titanium thrust link is satisfactory at 3,600-hour intervals. In addition, this interval coincides with the "C" check and therefore imposes no substantial burden.

Finally, a comprehensive general pylon inspection is mandated every 3,600 hours. At this time, visual examination and inspection of the complete external skin of the pylon structure is called for, and a general visual inspection of all major internal elements is specified. To eliminate any possible misinterpretation, this inspection requirement is quite specific about verifying the security of the nut and attach bolt at the aft pylon attach point.

The data available to FAA indicate that the remaining elements of the pylon do not require the type of special consideration for inspection described above. FAA has concluded that the remaining elements of the pylon may be expected to adequately perform the intended function during the normal service life of the aircraft provided they are subjected to the normal precautionary maintenance required of all U.S. air carriers in accordance with Parts 121 and 43 of the Federal Aviation Regulations. However, the FAA recognizes, from its investigation over the past 6 months, that significant structural failure of many elements of a wing pylon assembly such as that on the DC–10 may not manifest itself in external signs. Thus, the practice of inspecting only a sample of these significant structural elements during conduct of an internal inspection is not acceptable. Rather, the FAA proposes to require that 100 percent of the U.S. air carrier DC–10 fleet be inspected as described below at 20,000-hour intervals.

Twenty thousand hours is approximately the interval at which aircraft "D checks" are conducted. This is a period of heavy maintenance which has been adopted as a result of service experience on turbojet air carrier aircraft in general as appropriate for inspection of internal structural elements which are not expected to have a high probability of failure during an aircraft life. Since the design life of the DC–10 aircraft is about 70,000 to 90,000 hours, depending on model, this frequency provides for 3 or 4 such

inspections. It should be noted that, as service experience builds up and the aircraft fleet ages, service history will better be able to identify elements, including elements in the pylon, which present maintenance problems associated with their older age. Accordingly, it is recognized that there may in the future develop justification to require more frequent inspection on some elements of the pylon based on service experience not presently available. Accordingly, the proposed provision in the new inspection program will provide for the following.

Each operator of DC–10 aircraft is to reestablish a normal pylon maintenance program to be approved by FAA within 30 days from the effective date of the airworthiness directive. The inspection program must as a minimum include inspections of a specified nature on the pylon items listed below on each aircraft at a maximum interval of 20,000 hours.

The inspections proposed at intervals no greater than 20,000 hours include a detailed visual and eddy current inspection of the aft pylon bulkhead; visual inspection of the front spar bulkhead, the wing front spar attach fitting, and the lower spherical bearing; ultrasonic inspection of the bulkhead lug and wing clevis to wing attachment bolt; and, disassembly and visual inspection of the upper forward spherical bearing, the thrust link attach fitting, and the aft pylon attach fitting. Finally, an X-ray or other approved in situ inspection of steel thrust links would be required. This requirement provides sufficient flexibility to permit each operator to accommodate its own special circumstances in developing the inspection program.

The proposed inspection program retains a number of special inspections for particular circumstances, including, for example, hard or oveweight landings, ground damage, and installation of a pylon with a titanium upper forward spherical bearing.

With one exception, these inspections are carried over from the existing airworthiness directive (AD 79–15–03) prescribing the DC–10 inspection program because circumstances which require these inspections have not changed. The exception is that in order to avoid any possibility of misinterpretation, a special inspection of the integrity of the aft pylon attach bolt and nut is specifically required before further flight following pylon reinstallation.

Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new Airworthiness Directive:

McDonnell Douglas: Applies to Model DC–10–10, –10F, –30, –30F, and –40 series airplanes, certificated in all categories. Compliance required as indicated.

To ensure integrity of the wing engine pylon structure and attachment, accomplish the following on both the right and left wing:

(a) At each pylon removal and installation after the effective date of this AD, remove and install the engine and pylon separately unless removal or installation as an assembly is in accordance with a method approved by the Chief, Aircraft Engineering Division, FAA Western Region.

(b) At the next pylon reinstallation after the effective date of this amendment, unless already accomplished, install two flush-head bolts in place of the two raised head bolts adjacent to the pylon aft bulkhead upper flange centerline, in accordance with data approved by the Chief, Aircraft Enginering Division, FAA Western Region.

(c) At each pylon reinstallation after June 30, 1980, protect the pylon aft bulkhead lug from contact with the clevis to wing attach bolt heads in accordance with a method approved by the Chief, Aircraft Engineering Division, FAA Western Region.

(d) Before further flight following any pylon reinstallation after the effective date of this AD, (1) inspect the aft pylon bulkhead in accordance with paragraph H of McDonnell Douglas Alert Service Bulletin (ASB) 54–71 dated July 6, 1979 (hereinafter referred to as ASB 54–71); (2) inspect the pylon aft spherical bearing and attaching hardware to verify security of nut and bolt; and (3) inspect torque stripe for alignment. If compliance with (c) above was not required, repeat the inspection within the next 300 hours' time in service after the reinstallation inspection, and again within the next 600 hours' time in service following the second inspection.

(e) At next pylon reinstallation after the effective date of this AD or before the accumulation of 48,000 hours' total time in service, whichever comes sooner, unless already accomplished, install steel thrust links in place of titanium thrust links on all DC–10–10, –30, and –40 series aircraft in accordance with Part 2 of McDonnell Douglas Service Bulletin (SB) 54–47, dated August 18, 1975.

(f) Before the accumulation of 3,600 hours' time in service, or within the next 3,600 hours' time in service since the last such inspection, whichever occurs sooner, and thereafter at intervals not to exceed 3,600 hours' time in service since the last inspection, inspect as follows:

1. Inspect wing and pylon attach fitting lugs in accordance with Part 2, paragraph K of ASB 54–71.

2. Visually inspect the upper surface of pylon upper spar in accordance with Part 2, paragraph E (except (2)) of ASB 54–71.

3. Visually inspect lower surface of upper spar and spar cap angles in accordance with Part 2, paragraph F of ASB 54–71.

4. Inspect pylon in accordance with paragraph Q of ASB 54–71. In addition, inspect the pylon aft spherical bearing and attaching hardware to verify security of nut and bolt; inspect torque stripe for alignment.

5. Perform an in situ X-ray or other nondestructive inspection of titanium thrust links to insure integrity, in accordance with a method approved by the Chief, Aircraft Engineering Division, FAA Western Region.

(g) Within the next 30 days following the effective date of this amendment, submit a pylon maintenance program to FAA for approval, specifying that before the accumulation of 20,000 hours' time in service or within the next 20,000 hours' time in service since the last inspection, whichever occurs sooner, and thereafter at intervals not to exceed 20,000 hours' time in service since the last inspection, the operator will, at a minimum—

1. Inspect pylon aft bulkhead visually in accordance with Part 2, paragraph D(1) through D(5) of ASB 54–71, and by eddy current in accordance with Part 2, paragraph P of ASB 54–71;

2. Visually inspect front spar bulkhead in accordance with Part 2, paragraph 2, paragraph M of ASB 54–71;

3. Inspect wing front spar attach fitting (foot stool) in accordance with Part 2, paragraph P of ASB 54–71;

4. Inspect lower forward spherical bearing in accordance with Part 2, paragraph 0(2) and 0(3) of ASB 54–71;

5. Inspect upper forward spherical bearing in accordance with Part 2, paragraph N of ASB 54–71;

6. Inspect thrust link installations in accordance with Part 2, paragraph K of ASB 54–71;

7. Inspect the aft spherical bearing in accordance with Part 2, paragraph I of ASB 54–71;

8. Ultrasonically inspect the bulkhead lung and wing clevis to wing attachment including bolts in accordance with Part 2, paragraph D(6) of ASB 54–71; and,

9. Perform an X-ray or other in situ inspection of steel thrust links to ensure integrity, in accordance with a method approved by the Chief, Aircraft Engineering Division, FAA Western Region.

(h) After a pylon has been subjected to vertical or horizontal misalignment, or both, before further flight, inspect in accordance with Part 2, paragraph H of ASB 54–71.

(i) After each installation of a pylon with a titanium upper forward spherical bearing plug, after the effective date of this AD, after 200 hours' time in service from time of installation and not later than 400 hours' time in service after installation, ultrasonically inspect titanium plug in place in accordance with McDonald Douglas NDT Manual 54–10–11, dated December 1, 1979.

(j) Inspect pylon for structural integrity in accordance with McDonnell Douglas DC–10 Maintenance Manual TR5–20, dated June 14, 1979, before further flight after events producing high pylon loads including, but not limited to:

1. Hard or overweight landings
2. Severe turbulence encounters
3. Engine vibration which requires engine removal or critical engine failure, or both
4. Ground damage (workstands, etc.)
5. Compressor stalls requiring engine removal

6. Excursions from the runway

(k) Whenever fasteners are replaced as a result of the inspections specified in ASB 54–71, Part 2, paragraph E, prior to installing new fasteners, inspect the holes and the area around adjacent fasteners (without removing fasteners) for cracks using eddy current or equivalent NDT methods.

(l) All discrepancies found as a result of inspections required by this AD which exceed limitations specified in FAA approved data must be corrected prior to further flight.

(m) Alternative inspections, modifications or other actions which provide equivalent level of safety may be used when approved by the Chief, Aircraft Engineering Division, FAA Western Region.

(n) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections required by this AD.

This supersedes Amendment 39–3513 (44 FR 45375), AD 79–15–03, as amended by 39–3557 (44 FR 53735).

[Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.85]

Note.—The Federal Aviation Administration has determined that this document is not significant in accordance with the criteria required by Executive Order 12044 and set forth in interim Department of Transportation Guidelines.

Issued in Los Angeles, California on January 21, 1980.

W. R. Frehse,

Acting Director, FAA Western Region.

[FR Doc. 80-2388 Filed 1-23-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 73

[Airspace Docket No. 79-WA-14]

Alteration of Restricted Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to rescind one restricted area and alter three restricted areas in the Hawaiian Islands. This action and associated changes to warning areas would reduce necessary intergency coordination time and thereby improve the air traffic handling capability in the Pacific-Asia Region. This proposal is the result of an extensive study of the use of airspace in this area.

DATES: Comments must be received on or before Feburary 20, 1080.

ADDRESSES: Send comments on the proposal in triplicte to: Director, FAA Pacific-Asia Region, Attention: Chief, Air Traffic Division, Docket No. 79–WA–14 P.O. Box 50109 Honolulu, Hawaii 96850.

The official docket may be examined at the following location: FAA Office of the Chief Counsel, Rules Docket (AGC–24), Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

An informal docket may be examined at the office of the Regional Air Traffic Division.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Pacific-Asia Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, P.O. Box 50109, Honolulu, Hawaii 96850. All communications recieved on or before Feburary 20, 1980, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to Section 73.31 of the Federal Aviation Regulations (14 CFR Part 73) to alter R–3101 A–B, R3104 A–B–C, R–3107 A–B and to rescind R–3120. The proposed action combined with associated warning area changes would improve airspace use and air traffic operations in the Hawaiian air traffic control area. Changes to the restricted areas are proposed to be as follows:

1. In R–3101 the designated altitudes would be changed to "Surface to unlimited," and all of Subarea B would be rescinded.

2. In R–3104A the designated altitudes would be changed to "Surface to 18,000 feet MSL" and the title would be changed from R–3104A to R–3104.

3. All of R–3104B would be rescinded.

4. All of R–3104C would be rescinded.

5. R–3107 would be designated within 3 NM of the Island of Kaula (lat. 21°39'30" N., long. 160°32'30" W) from the surface to 18,000 feet MSL replacing R–3107A.

6. All of R–3107A and B would be rescinded.

7. All of R–3120 would be rescinded.

Proposed changes to nonregulatory warning area airspace includes rescinding present areas and establishing new areas in some of that airspace. Changes to warning areas are proposed to be as follows: W–319 Area A, Hawaii; W–320 Area B, Hawaii; W–321A, Hawaii; W–321B, Hawaii; W–321 Area C, Hawaii; W–322 Area D, Hawaii; W–324A Lanai, Hawaii; W–324B Lanai, Hawaii; W–324C Lanai, Hawaii; W–442A Kaula Rock, Hawaii; W–442B Kaula Rock, Hawaii; W–510 PMRFAC Barking Sands Two; W–511 PMRFAC Barking Sands One; W–512A PMRFAC Barking Sands Three Alfa and W–512B PMRFAC Barking Sands Three Bravo, would be rescinded. W–181 would be established as follows:

Name. W–181, Hawaii.

Boundaries. Beginning at lat. 20°56'00" N., long. 157°54'00" W., to lat. 20°46'30" N., long. 157°50'00" W., thence clockwise along the arc of a circle radius of 35 NM centered at lat. 21°20'00" N., long. 158°02'00" W., (Honolulu VORTAC) to lat. 20°48'00" N., long. 158°18'00" W., to lat. 20°57'30" N., long. 158°14'00" W., thence counter-clockwise along the arc of a circle radius of 25 NM centered at lat. 21°20'00" N., long. 158°02'00" W., (Honolulu VORTAC) to point of beginning.

Altitude. Surface to 3,000 feet MSL.

Time of use. Sunrise to sunset daily, other time by NOTAM.

Controlling agency. FAA, Honolulu ARTC Center.

Using agency. COMFLETRAGRU Pearl Harbor.

W–182 would be established as follows:

Name. W–182 Hawaii.

Boundaries. Beginning at lat. 20°46'30" N., long. 157°50'00" W., to lat. 20°41'00" N., long. 157°50'00" W., to lat. 20°41'00" N., long. 157°28'00" W., to lat. 19°48'00" N., long. 156°36'00" W., to lat. 19°13'00" N., long. 156°36'00" W., thence clockwise

along the arc of a circle radius of 150 NM centered at lat. 21°20'00" N., long. 158°02'00" W., (Honolulu VORTAC) to lat. 18°52'00" N., long. 158°32'00" W., to lat. 20°45'00" N., long. 158°08'00" W., thence counter/clockwise along the arc of a circle radius of 35 NM centered at lat. 21°20'00" N., long. 158°02'00" W., (Honolulu VORTAC) to point of beginning.

Altitude. Surface to unlimited.

Time of use. Sunrise to sunset daily, other time by NOTAM.

Controlling agency. FAA, Honolulu ARTC Center.

Using agency. COMFLETRAGRU Pearl Harbor.

W–183 would be established as follows:

Name. W–183 Hawaii.

Boundaries. Beginning at lat. 20°45'00"N., long. 158°08'00"W., to lat. 18°52'00"N., long. 158°32'00"W., thence clockwise along the arc of a circle radius of 150 NM centered at lat. 21°20'00"N., long. 158°02'00"W., (Honolulu VORTAC) to lat. 19°06'00"N., long. 159°15'00"W., to lat. 20°48'00"N., long. 158°18'00"W., thence counter-clockwise along the arc of a circle radius of 35 NM centered at lat. 21°20'00"N., long. 158°02'00"W., (Honolulu VORTAC) to point of beginning.

Altitude. Surface to unlimited.

Time of use. Sunrise to sunset daily, other time by NOTAM.

Controlling agency. FAA, Honolulu ARTC Center.

Using agency. COMFLETRAGRU Pearl Harbor.

W–184 would be established as follows:

Name. W–183 Hawaii.

Boundaries. Beginning at lat. 20°34'00"N., long. 156°44'00"W., thence counter-clockwise along the southern boundary of R–3104 to lat. 20°28'00"N., long. 156°32'00"W., to lat. 20°18'00"N., long. 156°41'00"W., to lat. 20°31'00"N., long. 156°58'00"W., to point of beginning.

Altitude. Surface to 18,000 feet MSL.

Time of use. Sunrise to sunset daily, other time by NOTAM.

Controlling agency. FAA, Honolulu ARTC Center.

Using agency. COMFLETRAGRU Pearl Harbor.

W–185 would be established as follows:

Name. W–185 Hawaii.

Boundaries. Beginning at lat. 20°31'00"N., long. 156°58'00"W., to lat. 20°18'00"N., long. 156°41'00"W., to lat. 20°05'00"N., long. 156°53'00"W., to (abutting W–182) lat. 20°28'00"N., long. 157°15'30"W., to point of beginning.

Altitude. Surface to 18,000 feet MSL.

Time of use. Sunrise to sunset daily, other time by NOTAM.

Controlling agency. FAA, Honolulu ARTC Center.

Using agency. COMFLETRAGRU Pearl Harbor.

W–186 would be established as follows:

Name. W–186 Hawaii.

Boundaries. Beginning at lat. 21°55'00"N., long. 159°44'00"W., to lat. 21°33'00"N., long. 159°33'00"W., thence clockwise along the arc of a circle radius of 32 NM centered at lat. 22°02'26"N., long. 159°47'15"W., (Barking Sands TACAN) to lat. 22°00'00"N., long. 160°21'45"W., to lat. 21°58'30"N., long. 159°48'40"W., thence counter-clockwise 3 NM from and parallel to the shoreline of the Island of Kauai to the point of beginning, excluding the airspace within 3 NM of the Islands of Niihau and Lehua.

Altitude. Surface to 9,000 feet MSL.

Time of use. Continuous.

Controlling agency. FAA, Honolulu ARTC Center.

Using agency. CO PMRFAC HAWAREA.

W–187 would be established as follows:

Name. W–187 Hawaii.

Boundaries. A circular area with a radius of 5 NM centered at lat. 21°39'30"N., long. 160°32'30"W., excluding the airspace within 3 NM of the Island of Kaula.

Altitude. Surface to 18,000 feet MSL.

Time of use. Continuous.

Controlling agency. FAA, Honolulu ARTC Center.

Using agency. COMFLETRAGRU Pearl Harbor.

W–188 would be established as follows:

Name. W–188 Hawaii.

Boundaries. Beginning at lat. 21°58'30"N., long. 159°48'40"W., to lat. 21°58'40"N., long. 160°00'00"W., to lat. 22°05'00"N., long. 161°35'00"W., (excluding the airspace over and within 3 NM of the Islands of Lehua and Niihau) thence clockwise along the arc of a circle radius of 100 NM centered at lat. 22°02'26"N., long. 159°47'15"W., (Barking Sands TACAN) to lat. 22°45'00"N., long. 161°25'00"W., to lat. 22°56'00"N., long. 161°49'00"W., thence clockwise along the arc of a circle radius of 125 NM centered at lat. 22°02'26"N., long. 159°47'15"W., (Barking Sands TACAN) to lat. 23°57'00"N., long. 160°41'00"W., to lat. 25°41'00"N., long. 161°36'00"W., thence clockwise along the arc of a circle radius of 240 NM centered at lat. 22°02'26"N., long. 159°47'15"W., (Barking Sands TACAN) to lat. 25°47'00"N., long. 158°15'00"W., to lat. 23°54'00"N., long. 158°15'00"W., to lat. 22°20'30"N., long. 159°09'00"W., thence counter-clockwise along the arc of a circle radius of 25 NM centered at lat. 21°58'06"N., long. 159°20'27"W., (Lihue VORTAC) to lat. 22°13'00"N., long. 159°42'00"W., thence counter-clockwise 3 NM from and parallel to the shoreline of the Island of Kauai to point of beginning.

Altitude. Surface to unlimited.

Time of use. Continuous.

Controlling agency. FAA, Honolulu ARTC Center.

Using agency. CO PMRFAC HAWAREA.

W–189 would be established as follows:

Name. W–189 Hawaii.

Boundaries. Beginning at lat. 23°54'00"N., long. 158°15'00"W., thence clockwise along the arc of a circle radius of 130 NM centered at lat. 21°58'06"N., long. 159°20'27"W., (Lihue VORTAC) to lat. 23°18'00"N., long. 157°30'00"W., to lat. 21°59'00"N., long. 157°30'00"W., thence counter-clockwise along the arc of a circle radius of 35 NM centered at lat. 21°27'04"N., long. 157°45'35"W., (Kaneohe Bay TACAN) to lat. 22°01'00"N., long. 157°56'00"W., to lat. 21°45'00"N., long. 157°53'00"W., to lat. 21°47'00"N., long. 158°00'00"W., to lat. 21°44'00"N., long. 158°04'00"W., to lat. 21°38'00"N., long. 158°09'00"W., thence counter-clockwise 3 NM from and parallel to the shoreline of Oahu to lat. 21°36'00"N., long. 158°20'00"W., to lat. 21°59'00"N., long. 158°54'00"W., thence counter-clockwise along the arc of a circle radius of 25 NM centered at lat. 21°58'06"N., long. 159°20'27"W., (Lihue VORTAC) to lat. 22°20'00"N., long. 159°09'00"W., to point of beginning.

Altitude. Surface to unlimited.

Time of use. Sunrise to sunset daily, other time by NOTAM.

Controlling agency. FAA, Honolulu ARTC Center.

Using agency. COMFLETRAGRU Pearl Harbor.

W–190 would be established as follows:

Name. W–190 Hawaii.

Boundaries. Beginning at lat. 23°00'00"N., long. 157°30'00"W., to lat. 23°00'00"N., long. 157°09'00"W., to lat. 22°36'00"N., long. 157°00'00"W., to lat. 22°11'00"N., long. 157°00'00"W., to lat. 21°49'00"N., long. 157°17'00"W., thence counter-clockwise along the arc of a circle radius of 35 NM centered at lat. 21°27'04"N., long. 157°45'35"W., (Kaneohe Bay TACAN) to lat. 21°59'00"N., long. 157°30'00"W., to point of beginning.

Altitude. Surface to unlimited.

Time of use. Sunrise to sunset daily, other time by NOTAM.

Controlling agency. FAA, Honolulu ARTC Center.

Using agency. COMFLETRAGRU Pearl Harbor.

The Department of the Navy will serve as the lead agency for purposes of compliance with the National Environmental Policy Act for this proposal. Comments on environmental aspects relating to the proposed area changes should be directed to: Commander Knapp, APC–590, 300 Ala Moana Blvd., P.O. Box 50109, Honolulu, Hawaii 96850, Telephone: (808) 546–8349.

ICAO Considerations

As part of this proposal relates to the navigable airspace outside the United States, this notice is submitted in consonance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of and Annex 11 to the Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to insure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices to civil aircraft in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Section 73.31 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as republished (45 FR 697) as follows:

1. Under R–3101 "Subarea A" title, is deleted. "Surface to 5,000 feet MSL." is deleted and "Surface to unlimited." is substituted therefor. Subarea B title and text is deleted.
2. Under R–3104A "R–3104A" title is deleted and "R–3104" is substituted therefor. "Surface to 10,000 feet MSL." is deleted and "Surface to 18,000 feet MSL." is substituted therefor.
3. R–3104B title and text is deleted.
4. R–3104C title and text is deleted.
5. Under R–3107A "R–3107A" title is deleted and "R–3107" is substituted therefor. "A circular area with a 3 NM radius centered at lat. 21°39′30″ N., long. 160°32′30″ W." is deleted and "The airspace within 3 NM of the Island of Kaula (lat. 21°39′30″ N., long. 160°32′30″ W.)" is substituted therefor. "Surface to FL 180" is deleted and "Surface to 18,000 feet MSL" is substituted therefor.
6. R–3107B title and text is deleted.
7. R–3120 title and text is deleted.

(Secs. 307(a), 313(a), and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510); Executive Order 10854 (24 FR 9565); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65.)

The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Washington, D.C., on January 16, 1980.

William E. Broadwater,

Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80–2017 Filed 1–23–80; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 75

[Airspace Docket No. 79–SO–79]

Alteration of Jet Routes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to realign jet route J–89 from Lakeland, Fla., direct to Atlanta, Ga., and extend J–91 from Atlanta, Ga., via an intersection to Cross City, Fla. This action would reduce congestion of air traffic to and from south Florida.

DATES: Comments must be received on or before February 20, 1980.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Southern Region, Attention: Chief, Air Traffic Division, Docket No. 79–SO–79, Federal Aviation Administration, P.O. Box 20636, Atlanta, Ga. 30320.

The official docket may be examined at the following location: FAA Office of the Chief Counsel, Rules Docket (AGC–24), Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

An informal docket may be examined at the office of the Regional Air Traffic Division.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, FAA Southern Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Ga. 30320. All communications received on or before February 20, 1980 will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal

Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) that would realign J–89 between Lakeland, Fla., and Atlanta, Ga., to be direct rather than via Cross City, Fla., and to extend J–91 to begin at Cross City and extend to its present beginning at Atlanta via the intersection of Cross City 338°T(337°M) and Atlanta 169°T(169°M) radials. This action would provide a direct and an alternate route between Atlanta and southern Florida. Congestion of air traffic would be reduced in this area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as republished (45 FR 732) as follows:

Under Jet Route No. 89 "Cross City, Fla.; Atlanta, Ga.;" is deleted and "Atlanta, Ga.;" is substituted therefor.

Under Jet Route No. 91 "From Atlanta, Ga., via" is deleted and "From Cross City, Fla.; via INT Cross City 338° and Atlanta, Ga., 169° radials; Atlanta;" is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65.)

The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Washington, D.C., on January 16, 1980.

William E. Broadwater,

Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80–1902 Filed 1–23–80 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM80–21]

Proposed Regulations Under Section 110 of the Natural Gas Policy Act of 1978

January 18, 1980.

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission gives notice of proposed amendments to the regulations which implement section 110 of the Natural Gas Policy Act of 1978 (NGPA) at Part 271 in the Commission's regulations. These proposals would affect the treatment of State severance taxes in the case of sales of natural gas regulation under section 105 of the NGPA.

DATE: Written comments due by February 19, 1980.

ADDRESS: Send 14 copies of the comments to: The Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426. Reference Docket No. RM80–21.

FOR FURTHER INFORMATION:

Scott E. Koves, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, Washington, DC 20426, (202) 357–8317; or
Teresa Ponder, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, Washington, DC 20426, (202) 357–8151.

I. Introduction

The Commission in Order No. 68, (Docket No. RM80–14) which accompanies this notice of proposed rulemaking, issued final regulations under sections 105 and 106(b) of the Natural Gas Policy Act of 1978 (NGPA). This order gives notice of a proposal to amend the interim regulations under section 110 of the NGPA to provide for the treatment of State severance taxes imposed on gas subject to section 105(b)(1).

The Commission's final regulations under subpart E of Part 271 set forth the procedures for determining maximum lawful prices under section 105 of the NGPA. These prices cover gas sold under existing intrastate contracts and successors to existing intrastate contracts. The maximum lawful price of any section 105 gas depends on the "contract price" applicable on November 9, 1978. If the contract price that was paid (or would have been paid had deliveries occurred) on November 9, 1978, was equal to or less than $2.06, then, pursuant to section 105(b)(1), the maximum lawful price is the lower of the section 102 maximum lawful price or the "price under the terms of the existing contract" as those terms were in effect on November 9, 1978. As provided in § 270.205(b), fixed and indefinite price escalator terms in the existing contract on November 9, 1978, can operate to increase the price up to the new natural gas price. Section 105(b)(1) is implemented by § 271.502(a) of the final regulations.

If the contract price that was paid (or would have been paid had deliveries occurred) on November 9, 1978, exceeded $2.06, then, pursuant to section 105(b)(2), the maximum lawful price is the higher of the section 102 maximum lawful price, or the contract price actually charged on November 9, 1978, escalated each month by the inflation adjustment factor applicable to such month. (*See* NGPA section 101(a)).

This proposed rule applies to natural gas subject to section 105(b)(1) of the NGPA and would prescribe the extent to which State severance taxes may be recovered by the seller both under that section and section 110 of the NGPA.

II. Discussion

A. Determination of "Contract Price" and "Price Under the Terms of the Existing Contract"—Section 105

The Commission addressed the severance tax issue in Order No. 68, in which is explained:

> The term "contract price" in section 105 is used to determine whether a contract qualifies under paragraph (b)(1) or (b)(2) and to determine the maximum lawful price in paragraph (b)(2) * * *. We believe that the word "price" in the definition of "contract price," as well as the phrase "price under the terms of existing contract" means the total amount of proceeds paid by the purchaser to obtain the subject gas. Therefore, the term "price" would include all proceeds paid or payable to the seller even if specifically earmarked as reimbursement for State severance taxes or production-related costs.
>
> Consequently, in determining the maximum lawful price under section 105 the total proceeds paid or payable on November 9, 1979, are to be compared to $2.06. If the total proceeds exceeds $2.06, then section 105(b)(2) applies. If not, then section 105(b)(1) applies.

If section 105(b)(2) applies, then the total proceeds paid or payable on November 9, 1978, are used as the base to which the inflation adjustments of section 105(b)(2)(B) are applied. If section 105(b)(1) applies, then the total proceeds receivable under the contract may increase pursuant to the terms of the contract in effect on November 9, 1978, up to the section 102 level. (mimeo pages 6–7)

The Commission also examined the question of whether State severance taxes should be subtracted from the section 105 contract price. It determined they should not, and stated that the further question "as to whether the seller may add the amount of any such taxes borne by him to the section 105 ceiling price under section 110 of the NGPA and under § 271.1102 of the Commission's regulations" would be addressed in this separate rulemaking proceeding.

Section 271.1102 of the Commission's interim regulations as it is presently written, speaks in terms of making additions to maximum lawful prices, without specifically referring to the section 105 price. Several comments on the interim regulations asserted that the Commission must amend § 271.1102 to clearly permit the addition of State severance taxes borne by the seller to the section 105 ceiling price. The Commission is tentatively of the view that it should in most cases decline to extend the provsions of § 271.1102 to section 105(b)(1) because there is an essential difference between the nature of the section 105(b)(1) price and other maximum lawful prices in Title I.

While most maximum lawful prices are tied to one specific ceiling price established by Congress, the maximum lawful price for section 105(b)(1) references negotiated prices established by the parties to intrastate contracts in existence on November 9, 1978. These contracts number in the thousands. Accordingly, there are potentially many thousands of individual maximum lawful prices under section 105(b)(1) of the NGPA. Moreover, many of these contracts contain provisions under which the seller clearly agrees to pay all severance taxes. Other provide that the buyer agrees to pay all severance taxes. Other contracts may provide that buyer and seller share the obligation to pay either existing or increased severance taxes. Still others may be silent as to severance taxes. However, in all cases, we believe it is reasonable to presume that when the seller negotiated the contract, he took into consideration the amount of severance tax for which he was to be liable.[1] The total proceeds to be received under the contract, therefore, are presumably sufficient to repay the seller for all severance taxes he may be obligated to pay. Because the section 105(b)(1) price is based on this consideration, it is our tentative view that no additional allowance under section 110 is necessary to allow the seller to "recover" severance taxes paid by him because the seller is already recovering all such taxes in the proceeds he receives.

In considering this issue, we would propose to apply section 110 in the manner which is most consistent with Congressional intent that price regulation of the intrastate market reflect the prices and provisions originally bargained for.[2] Assuming the seller is already reimbursed for State severance taxes under the contract, an additional adjustment under section 110 would arguably permit double recovery of State severance taxes. Permitting such double recovery of State severance taxes would under this view be inequitable and would be inconsistent with Congressional treatment of the intrastate market. Therefore, we do not propose to amend § 271.1102 as commenters suggest. In Order No. 68, the Commission has already amended the definition of "contract price" in § 271.504(a) to clarify that "contract price" includes State severance taxes levied on the sale and which are either borne by the seller or reimbursed by the purchaser. A similar amendment was made to the definition of "price under the terms of the existing contract" in § 271.504(b). In this notice of proposed rulemaking we would also add a new paragraph (c) to § 271.1102 which clarifies that ceiling prices under section 105 include reimbursement for certain State severance taxes and which limit the State severance taxes which under section 110 may be added to the section 105 ceiling price.

The Commission's proposed rule limiting the section 110 allowance for State severance taxes would prevent "double recovery" of severance taxes borne by the seller. However, under the proposed rule, if the section 105(b)(1) maximum lawful price constrains the seller from collecting the full price specified under the terms of his contract (as in effect on date of enactment of the NGPA), then, to the extent he is so constrained, he may collect the allowance for State severance tax under section 110.

The proposed rule recognizes that simply because a seller's contract price on date of enactment might have been sufficient to ensure payment of all State severance taxes levied on the sale, there may be cases in which he will not be permitted to collect the negotiated "contract price." For example, if the seller's contract provided for an indefinite price escalator increase from $1.50 to $5.00, effective December 1, 1978, his ceiling price under section 105(b)(1) for December 1978 would only be $2.078. His total proceeds could not lawfully exceed that amount.

The following amendment to § 271.1102 will permit a seller under an existing intrastate contract subject to section 105(b)(1) to fully recover State severance taxes levied on the sale of natural gas subject to such contract:

(c) Under § 271.502(a) of Subpart E, the price under the terms of the contract (as those terms were in effect on November 8, 1978) is deemed to be sufficient to recover State severance taxes (whether borne by the seller or reimbursed by the buyer). State severance taxes may not be recovered under this section except to the extent the price under the terms of the contract as those terms were in effect on November 8, 1978, exceeds the maximum lawful price specified for new natural gas (Subpart B of Part 271) in Table 1 of § 271.101(a).

However, we do not believe that the same treatment of severance taxes can be implemented in the case of sales under section 105(b)(2) contracts because of a fundamental distinction between section 105(b)(1) and (b)(2).

Section 105(b)(1) focuses on the terms of the contract on November 9, 1978. Presumably these were bargained for on an arms-length basis prior to enactment of the NGPA. In effect, each contract which falls under section 105(b)(1) imposes an individual set of pricing regulations superceded only in the event that the price under such terms exceeds the section 102 ceiling price (*See*, section 105(b)(1)(B)). Ceiling prices under section 105(b)(1) are *continuously* circumscribed by the pre-NGPA negotiated provisions of the contract, which, with certain exceptions noted above, provide a continuous recoupment of all existing State severance taxes borne by the seller.

This pricing mechanism is to be contrasted with that of section 105(b)(2). Under section 105(b)(2), while the negotiated "contract price" on date of enactment of the NGPA forms the base to which inflation adjustments are later applied, that is the one and only

[1] Severance taxes are among many costs of providing service that a producer will take into consideration when he negotiates price terms.

[2] This approach is in accord with our position disallowing the shifting of production-related costs to the purchaser in sales of natural gas subject to existing intrastate contracts. In the Preamble to the Interim Regulations (43 F.R. 56448) we noted, "It would be contrary to the intent of Congress to permit a change in such prices and terms that would have the effect of increasing the total costs borne by the purchaser for acquiring the very same commodity as he was acquiring for a lower price before date of enactment.

occasion on which the terms of the contract affect the ceiling price.[3] After the date of enactment, as is the case with all other Title I ceiling prices (except section 105(b)(1)(A)), numerical price limitations are mechanically applied to the previous month's ceiling price. All Title I ceiling prices (except section 105(b)(1)(A)), are arrived at in essentially the same way: a base price per MMBtu on a given date is adjusted upward each month with inflation related increments. For example, after December 1, 1978, all ceiling prices under sections 103, 104, 106(a), 106(b)(1), 109 and 105(B)(2) escalate upward at exactly the same rate of increase.

Based on these considerations, we find no practical difference between section 105(b)(2) and other Title I ceiling price sections (except 105(b)(1)) with respect to the method of computing ceiling prices. As such, we also can perceive of no reason why the recovery of State severance taxes under section 110(a)(1) should be handled differently in the case of section 105(b)(2) than the other Title I ceiling price provisions. Accordingly, as a general rule, the price under a section 105(b)(2) contract would be permitted to increase above the section 105(b)(2) ceiling price to the extent necessary to recovery State severance taxes borne by the seller. *See* § 271.1102(a).

However, because our policy respecting the treatment of State severance taxes is only a proposal at this juncture, we specifically invite comments on this issue in the context of both sections 105 and 106(b).

There may be circumstances to which the proposed § 271.1102(c) would not apply and which, due to special hardship, inequity, or unfair distribution of burdens, it would be appropriate to permit a section 110 allowance (or other form of relief) for severance taxes paid by the seller under a section 105 contract. However, these matters are more properly considered in the context of an application for an adjustment in a section 502(c) proceeding.

The Commission also recognizes that some gas subject to section 105 pricing may subsequently receive a determination of eligibility under section 102, 103, 107 or 108, and, contract permitting, may receive a maximum lawful price under one of those sections, to which severance taxes may then be added. Once gas has become eligible to move into an "incentive" pricing category, the contract price or terms as of November 9, 1978, are no longer instrumental in determining the maximum lawful price and the gas becomes eligible for all of the benefits Congress intended to give other Title I gas. Because the base prices for other Title I gas were not based on private negotiations and therefore cannot be assumed to provide compensation for individual severance taxes (with the exception of Permian Basin gas, see § 271.102(b)), the proposed rule would permit the addition of State severance taxes. Therefore, contract permitting[4], gas qualifying under sections 102, 103, 107 or 108 could be sold at a higher base ceiling price and the applicable severance tax allowance may be added to that price.

B. Contract Modification

In Order No. 68, at page 14, we noted:

> Several comments were also received which suggested that, in any case in which an existing intrastate contract provides that the purchaser shall reimburse the seller for 85 percent of increased severance taxes, and in the event of such a tax increase, the parties should be allowed to amend the contract to provide for 100 percent reimbursement of such taxes. Section 271.1102, unless modified in accordance with the proposed rule which accompanies this final rule, permits full recovery of State severance tax. Section 270.205(c) makes it clear that the NGPA does not prohibit contract modifications necessary in order to collect maximum lawful prices.

However, a different result would be reached under the proposed rule. If the contract is subject to section 105(b)(1) of the NGPA, the parties may not increase the price under the terms of the contract as those terms were in effect on November 9, 1978. If section 105(b)(2) applies, then the amendment may not result in a price in excess of the ceiling imposed by paragraph (b)(2)(B)(ii) of section 105, plus applicable section 110 allowances. As long as contract amendments do not cause the price paid to exceed the applicable ceiling price, the parties may allocate the obligation to pay for such taxes in any manner they wish.

III. Summary of Amendments

The proposed rule would make the following amendments to the Commission's rules:

Section 271.1102 would be amended to explain the treatment of State severance taxes with reference to section 105(b)(1) gas.

IV. Public Procedures and Effective Date

The Commission requests comment on the proposed rule, and specifically requests comment on whether § 271.1102 should prohibit any allowance for State severance tax under section 110 of the NGPA with respect to all natural gas subject to sections 105(b)(1), 105(b)(2), and 106(b). The Commission also requests comment on whether provision should be made for special treatment of increases in State severance taxes after November 9, 1978. In addition, comment is requested on the issue of the relationship between the ceiling price for intrastate rollover contracts and the allowance for severance taxes for the expired existing intrastate contract, as well as the general question of the interaction between the section 105 and 106(b) ceiling prices and the allowance for State severance taxes under section 110.

Interested persons may submit comments by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before February 19, 1980. Each person submitting a comment should include his name and address, identify Docket No. RM80–21, and give reasons for any recommendations. An original and 14 conformed copies shoud be filed with the Secretary of the Commission. Comments should indicate the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. Written comments will be placed in the Commission's public files and will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street NE., Washington, D.C. 20426, during regular business hours.

The Commission intends to hold a public hearing on the proposals, as required by section 502 of the NGPA. The date and location of such hearing will be announced shortly. The regulations proposed in this notice shall not become final until the Commission has had an opportunity to receive oral presentation of relevant data, views and arguments.

(Natural Gas Act, as amended, 15 U.S.C. 717, *et seq.*; Department of Energy Organization Act, 47 U.S.C. 7101–7352; E.O. 12009, 42 FR 46267; Natural Gas Policy Act of 1978; 15 U.S.C. 3301–3432)

The Commission proposes to amend § 271.1102, as set forth below. Such proposed amendments are proposed to become effective April 1, 1980.

[3] Except of course, that the contract terms always override ceiling prices if the contract does not permit the collection of the ceiling price. *See*, section 101(b)(9) of the NGPA. This applies to *all* ceiling prices, not just those under section 105.

[4] See section 101(b)(9) of the NGPA.

By the direction of the Commission.
Kenneth F. Plumb,
Secretary.

1. Section 271.1102 is amended in paragraph (a) by deleting the phrase "paragraph (b)" and inserting in lieu thereof the phrase "paragraphs (b) and (c)," and by adding a new paragraph (c) to read as follows:

§ 271.1102 State severance taxes.

* * * * *

(c) Under § 271.502(a) of Subpart E, the price under the terms of the contract (as those terms were in effect on November 9, 1978) is deemed to be sufficient to recover State severance taxes (whether borne by the seller or reimbursed by the buyer). State severance taxes may not be recovered under this section except to the extent the price under the terms of the contract as those terms were in effect on November 9, 1978, exceeds the maximum lawful price specified for new natural gas (Subpart B of Part 271) in Table 1 of § 271.101(a).

[FR Doc. 80-2236 Filed 1-23-80; 8:45 am]
BILLING CODE 6450-85-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 625, 655 Subpart F

[FHWA Docket No. 79-35]

National Standards for Traffic Control Devices: Manual on Uniform Traffic Control Devices.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed amendments to the Manual on Uniform Traffic Control Devices

SUMMARY: The FHWA is requesting comments on proposed amendments to the Manual on Uniform Traffic Control Devices (MUTCD). These proposals affect markers, railroad-highway grade crossings, bicycle facilities, and traffic signals, among others. They are intended to improve safety standards and provide a uniform approach to traffic control devices. The MUTCD is incorporated by reference in title 23 of the Code of Federal Regulations. It contains the standards for traffic control devices which have been approved by the FHWA for use on all streets and highways open to public travel.

DATE: Comments must be received on or before March 24, 1980.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 79-35, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed stamped postcard. The MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D. It may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 ($18.00).

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Conner, Chief, Traffic Control Systems Division, 202-426-0411, or Mr. Lee J. Burstyn, Office of the Chief Counsel, 202-426-0754, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA) prepares and issues the national standards for traffic control devices used on all streets and highways open to public travel. These standards are published in the Manual on Uniform Traffic Control Devices (MUTCD), which has been incorporated by reference into title 23 of the Code of Federal Regulations, Parts 625 and 655 Subpart F. Prior to June 12, 1979, the National Advisory Committee on Uniform Traffic Control Devices (NACUTCD) provided advice and recommendations to FHWA on requests for changes in the national standards in the MUTCD.

The FHWA terminated its sponsorship of NACUTCD on June 12, 1979, and will now process all revisions to the MUTCD in accordance with the informal rulemaking procedures of 5 U.S.C. 553 and Department of Transportation procedures issued pursuant to Executive Order 12044.

Alternative methods for assuring the availability of the variety of interests, viewpoints, and technical skills formerly provided by NACUTCD, which are essential to the standards development process, were the subject of a public meeting held on June 20, 1979. The notice for this public meeting was published in the **Federal Register** on May 22, 1979 (44 FR 29787). Final action on development of the alternative methods to be used will be taken following a detailed review and consideration of all comments received in response to Docket 79-19. This will require the revision of Section 1A-6 of the MUTCD, which describes a general procedure for processing requests for changes in the national standards for traffic control devices.

Prior to termination of the NACUTCD, the proposals discussed in this notice were submitted to that organization, reviewed, and recommendations submitted to the Federal Highway Administration for consideration.[1] These recommendations form the basis of the actions proposed in this notice.

Each request for a change to the 1978 edition of the MUTCD has been assigned an identification number which indicates the organizational part of the MUTCD affected, by Roman numeral, and the sequence in which the request was received, by Arabic numeral. For example, Request III-7 is the seventh request for a change to Part III of the MUTCD, which deals with markings. Prior to publication of the 1978 edition, identification numbers were assigned using subject abbreviations. For example, Request Sg-96 is the 96th request received for a change to Part IV of the MUTCD, which deals with signals ("Sg").

Part A contains a discussion of five requests for changes or additions to the MUTCD which are being proposed as amendments by FHWA. Part B discusses those requests that, for the reasons stated, are not being proposed by FHWA.

This notice is issued as a proposal, with publication in the **Federal Register**, so that interested persons may have an opportunity to participate in the processing of proposed amendments to the MUTCD. The FHWA will consider all written comments received on Parts A and B prior to taking final action on the proposed amendments. Final amendments to the MUTCD will be published in the **Federal Register** and incorporated by reference in the Code of Federal Regulations.

Part A—Proposed Changes to the MUTCD. 1. *Markings (Part III)—Request III-7—Object Markers.* Section 3C-1 of the MUTCD provides that Type 3 object markers shall have either alternating black and reflectorized yellow stripes or alternating black and reflectorized white stripes. The MUTCD makes no distinction between these differently colored markers in the provisions and requirements for their use. The mounting height for Type 3 object markers is not specified in Section 3C-1.

The FHWA asked the NACUTCD to provide an interpretation and recommendations clarifying the use of

[1] Copies of the materials which form the basis for this rulemaking action are available for inspection and copying by contacting Mr. Robert E. Conner at the address provided above.

Type 3 object markers based on the two different color combinations and to recommend a mounting height. Due to factors developed during its study, NACUTCD and FHWA determined that this request for an interpretation should be reclassified as a request for a change.

The black and yellow Type 3 object marker was added to the MUTCD in 1971 as an alternative to the black and white marker. A survey conducted by FHWA in 1978–79 showed that 30 States use only the black and white object marker, 13 States use only the black and yellow marker, and eight States use both. There has been insufficient effort among the States and even within some States to adopt the exclusive use of one of the two permissible color combinations. The use of two different warning signs for the same purpose is neither necessary nor desirable. The NACUTCD recommended that since the Type 3 object marker is a warning device, it should conform to the standard color code of black and yellow which is established in the MUTCD for warning devices. The FHWA concurred with this recommendation and proposes the following change in Section 3C–1 of the MUTCD to provide for the exclusive use of black and yellow stripes on Type 3 object markers with a recommended compliance date of December 31, 1984, for this change.

Revise the fourth paragraph of Section 3C–1 to read as follows: Type 3—Striped marker consisting of a vertical rectangle approximately 1 foot by 3 feet in size with alternating black and reflectorized yellow stripes sloping downward at an angle of 45° toward the side of the obstruction on which traffic is to pass. The minimum width of the yellow stripe shall be 3 inches. A better appearance can be achieved if the black stripes are wider than the yellow stripes.

The NACUTCD also determined that the mounting height for object markers shown on Figure 2–1 of the MUTCD, together with the results of an engineering study of the specific sign location as recommended in Section 1A–4 and other sections of the MUTCD, constituted sufficient guidance. The FHWA concurred with that interpretation.

This change would eliminate black and white Type 3 object markers as standard devices. Many of the existing black and white markers could be replaced by black and yellow markers through routine maintenance procedures. Other black and white markers could be refurbished at the convenience of the highway agencies within the proposed period. Material costs for white and yellow sheeting are comparable and screening costs identical.

2. *Signals (Part IV)*—(a) *Request IV–8—Alternative to Full Signalization at School Predestrian Crossings.* This request for a change in the MUTCD was initiated by the city of Seattle in 1974 to allow the use of traffic signals on the main street approaches and STOP signs only on the side street approaches at intersections with school pedestrian crossings. In January 1975, NACUTCD recommended denial of this request by a vote of 21–3. Following a review of this action, including a meeting with advocates from several cities where the concept is used, the Federal Highway Administrator denied the request but suggested additional research and the development of alternative specialized pedestrian control techniques for consideration.

Of five alternatives studied under a subsequent research contract, the use of a crossing guard and the proposed STOP sign-signal concept were considered the most desirable as an alternative to full signalization by the contractor. The NACUTCD reviewed this additional data in January 1979, and again recommended 21 to 6 against granting a request for use of the concept and a change to the MUTCD. Primary considerations were the degradation of the meaning of a green traffic signal on a national basis and that widespread use could result in a deterioration in the authority and effectiveness of traffic signals and pedestrian safety in general. Proponents indicated that the concept has been utilized successfully in several cities in the West and Midwest and that conversion of these intersections to full signalization in compliance with MUTCD standards would require considerable funding resources.

Considering all factors, it is the recommendation of FHWA that: where State standards permit, local jurisdictions desiring to utilize the concept at school crossings where MUTCD Warrant 4, School Crossings (Sec. 4C–6),[2] is met should be permitted to do so as an alternative to full signalization at these locations. This alternative would not mandate any direct action by highway agencies but would provide local highway agencies an alternative method of control for school crossings to that specified in current standards.

(b) *Request Sg–96—Pedestrian WALK Color.* Section 4D–4, MUTCD, provides that when illuminated the WALK indication signal shall be lunar white conforming to the Standard for Adjustable Face Pedestrian Signal Heads, 1975.[3]

Since the introduction of lunar white lenses, there have been several complaints of lack of visibility of the new lunar white in comparison to clear white, especially from those agencies changing from "clear" to lunar white. Following the request of its Signals Subcommittee, the NACUTCD recommended that the MUTCD be changed to delete the word lunar from lunar white and allow lunar white, clear white or white for pedestrian WALK indications and to delete the reference to the Institute of Transportation Engineers (ITE) Standard for Adjustable Face Pedestrian Heads, 1975, insofar as it pertains to the WALK color. The recommended change would provide for a wider range of color limits and, in addition to lunar white, allow for clear white and white, both of which are not currently defined in the ITE Standard. When the ITE Standard does define all three color limits it will again be referenced. The FHWA concurs in this change and proposes a change in the MUTCD, as follows:

Revise 4D–4 Design Requirements, Item 3, and 7D–23 Pedestrian Indications, paragraph 3, to read as follows: When illuminated, the WALK indication shall be white with all except the letters or symbols obscured by an opaque material.

This change would not mandate any direct action by highway agencies. It would provide highway agencies with an additional voluntary method for improving guidance for pedestrians.

3. *Traffic Control Systems for Railroad-Highway Grade Crossings (Part VIII)—Request VIII–3—Crossbuck Border.* Section 8B–2 of the MUTCD provides that the railroad crossing sign, commonly identified as the "crossbuck" sign, as a minimum, shall be reflectorized white, with the words RAILROAD CROSSING in black lettering. This sign consists of rectangular sections arranged in a shape similar to a capital letter "X" with one word on each segment of the "X."

This request, originating within the FHWA, proposed a change in the MUTCD to provide a 4-inch black border around the periphery of the sign to improve its visibility or target value. Although the use of a border on a sign to improve target value is a fundamental principle of good sign design, the

[2] The MUTCD (IV–C) prescribes warrants or conditions which should be met before a traffic control signal is installed. Warrant 4 prescribes a study of the frequency and adequacy of gaps in the vehicular traffic stream and a study of the number of school children crossing at the intersection.

[3] Available from the Institute of Transportation Engineers, 525 School Street, SW., Washington, D.C. 20024.

standard railroad crossbuck sign (sign R15–1 in the MUTCD) does not have a border. Direct observation of railroad crossbuck signs mounted on overhead mastarms showed a need for improving the target value of a white sign viewed against a light sky background. Post-mounted crossbucks viewed against a light background also need improved target value. Railroad flashing light signals, which are often mounted near to or in conjunction with crossbucks, have 4-inch black backplates around them to provide the needed target value. The NACUTCD recommended that Section 8B–2 of the MUTCD should be changed to permit a 2-inch wide black border around the standard crossbuck sign when there is a need to improve target value. The FHWA concurred in the recommendation and proposes a change in the MUTCD to that effect, as follows:

Add the following at the end of the first paragraph of Section 8B–2: Where there is a need to improve the target value of the crossbuck, a uniform black border, not exceeding 2 inches in width, may be added. Where used, this border shall be applied as an addition to the dimensions specified for crossbucks without borders.

This change would not mandate any direct action by highway agencies. It would provide highway agencies with an additional voluntary method of improving safety at railroad grade crossings.

4. *Traffic Controls for Bicycle Facilities (Part IX)—Request IX–2—Bike Parking Sign.* Part IX of the MUTCD provides the standards for traffic control devices for bicycle facilities but does not include a standard sign to guide bicyclists to designate bicycle parking areas.

This request, submitted by the Department of Transportation, Montgomery County, Maryland, proposed the adoption of a 24 by 18 inch, green on white, bicycle parking area sign. The sign, as proposed, was similar to the standard Parking Area sign (D4) with a large capital P and an upward sloping arrow, but with a bicycle profile symbol in lieu of the letters "ARKING." An educational plaque was included as part of the proposed sign. The sign would be used primarily in large parking areas to direct bicyclists to their designated parking areas.

The NACUTCD determined that there is a need for a standard bicycle area parking sign but that in order to avoid confusion, it should not be similar to the D4 Parking Area sign. The NACUTCD recommended the adoption of a standard 12 by 18 inch, green on white, Bicycle Area Parking sign. The sign should have a bicycle symbol, the word "Parking," and a directional arrow at the bottom. The FHWA concurred in this recommendation and proposes a change in the MUTCD to this effect, as follows:

Add the following paragraph and an appropriate illustration [4] to Section 9B: 9B–23 Bicycle Parking Area Sign (XX). The Bicycle Parking Area sign may be used where it is desired to show the direction to a designated bicycle parking area within a parking facility or at other locations. The sign shall be a vertical rectangle of a standard size of 12 by 18 inches. It shall carry a standard bicycle symbol, the word PARKING, and an arrow. The legend and border shall be green on a reflectorized white background.

This change would not mandate any direct action by highway agencies. It would provide highway agencies with an additional voluntary method for improving guidance for bicyclists.

Part B—No Changes in MUTCD Proposed. The following requests for changes in the MUTCD were either received by the FHWA or originated within the FHWA. All were then reviewed by the NACUTCD, which subsequently recommended against their adoption. Based upon the recommendations of the NACUTCD and the FHWA's own review, no changes in the MUTCD are being proposed by the FHWA for these items.

1. *Signs (Part II)*—(a) *Request II–12/Sn–237 (Chng.)—Channel 9 Monitored Sign.* This request, which originated within the FHWA, was to develop a standard sign to notify citizen band (CB) operators that Channel 9 is monitored by various responsible agencies. Although it is common knowledge to CB operators that Channel 9 is the emergency channel, this channel is not monitored everywhere on a 24-hour basis by a responsible agency.

This change is not recommended for the following reasons:

(1) It is common knowledge to CB operators that Channel 9 is the emergency channel.

(2) An informal survey revealed that there are CB sign installations, with various formats, currently in use.

(3) Current signing having a white legend and border on a blue background with the legend CHANNEL 9 MONITORED and the name of an official monitoring agency should be permitted using existing sign format.

(b) *Request II–16/Sn–241—Accessibility to Handicapped Persons for Logo Businesses.* This request, originated by the Virginia Developmental Disabilities Planning and Advisory Council, an Office of the Commonwealth of Virginia, is to establish accessibility to handicapped persons as a criterion for logo signing (motels, restaurants, etc.). The requester feels that if a facility is inaccessible to the handicapped then this is a form of discrimination.

This revision to MUTCD sign criteria is not recommended for the following reasons:

(1) Establishing such criteria for the logo signing program is a State legal matter.

(2) The MUTCD requirements cover design of the sign to be used as needed.

(c) *Request II–18—Use of the Terms Parking, Standing and Stopping.* This request by a private individual is to add clarifying language on the terms "Parking," "Standing," and "Stopping" to Section 2B–31 of the MUTCD. The individual feels that since the Uniform Vehicle Code defines each of the terms separately, each being a progressively more restrictive prohibition, only one of the three terms need be used on a Parking Prohibition sign.

The recommendation is that the MUTCD text not be changed for the following reasons:

(1) The MUTCD already permits the use of individual messages on a particular sign.

(2) The example in the MUTCD has been modified to illustrate only one of the terms on the sign.

(3) Engineers should have the prerogative to use two or three of the terms on a single sign to provide emphasis.

(d) *Request II–19—Spacing of Chevron Alignment Signs.* This request, originated by the Michigan Department of Transportation, is to revise Section 2C–10 of the MUTCD to include a suggested spacing for chevron alignment signs. The requesting agency feels that the guidelines established for the use and application of chevron alignment signs do not address the question of recommended spacing.

Adoption of this requested revision is not recommended for the following reasons:

(1) This sign should be used for added emphasis to denote the sharpness of a road curve. Because of its use in special situations, there must be some flexibility in spacing.

(2) Field observations have found that the present MUTCD spacing guide is adequate.

(e) *Request II–20—Symbol for Police Assistance.* The Alaska Department of Public Safety requested development of a standard symbol sign for police

[4] Available from Mr. Robert E. Conner, Chief, Traffic Control Systems Division, FHWA, 400 Seventh Street, SW., Washington, D.C. 20590.

assistance. It was felt that the need for a uniform symbol is evident in the fact that police agencies use different terms (trooper, patrol, police, etc.). A traveler going from State to State is not sure if the terms have the same connotation.

The development of a special symbol sign is not recommended for the following reasons:

(1) The Symbols Task Force of NACUTCD and the International Association of Chiefs of Police reviewed several different symbols but determined that the word message POLICE is the most appropriate.

(2) The word POLICE is fairly well understood in any language.

(3) The letters of the word POLICE are noticeable in whatever language used.

(f) *Request II–21—Motorcycle and/or Trail Bike Symbol.* The American Motocyclist Association requested establishment of a uniform motorcycle symbol. The association feels that such a symbol can be used to designate road vehicle trails or to restrict motorcycle use in certain areas. The symbol might also be used in a warning format to advise motorcyclists of a hazardous condition.

The addition of a new symbol is not recommended for the following reasons:

(1) The National Park Service already has a symbol for motorcycles which is being used nationally.

(2) The National Park Service symbols are included in the MUTCD by reference.

(g) *Request II–22—Noise Ordinance Sign.* The Environmental Protection Agency proposed adoption of a national standard for a noise ordinance sign. This sign is currently being used by several cities from coast to coast.

The proposal is not recommended as a change in the MUTCD for the following reasons:

(1) The noise ordinance sign is not an appropriate traffic control device.

(2) Such a sign is a notification of a blanket regulation and as such is permitted where specific ordinances are enforced.

(3) The general nature of the sign does not identify the noise level limit.

2. *Markings (Part III)—Request III–5/M–46—No-Passing Zone Markings.* This request, originated by the United Traffic Service Corporation, is to make eight specific changes to the procedure for the determination of No-Passing Zone Markings.

More specifically, these changes are:

(1) vertical and horizontal curve criteria,

(2) definition of object size,

(3) minimum passing distance,

(4) lowering of target height,

(5) revise vertical sight line,

(6) minimum marking on no-passing zones,

(7) no-passing zones for narrow bridges, and

(8) no-passing zones for intersections.

The recommendation is not to adopt these changes to the MUTCD for the following reasons:

(1) The MUTCD adequately covers the vertical and horizontal curve criteria.

(2) The object size is not considered a problem.

(3) Research is needed to change the minimum passing distance.

(4) The subject of lowering the target height was addressed in another ruling (M–42).

(5) The introduction of the technical term "vertical sight line" may increase confusion.

(6) The proposed lengths for minimum no-passing zones are not supported by research data.

(7) Neither narrow bridges nor intersections warrant a blanket policy.

3. *Signals (Part IV)*—(a) *Request IV–9/Sg-80 (chng.)—Flashing Red Signals Facing the Median Crossover.* This request from the Delaware Department of Highways and Transportation would allow the concurrent display of flashing and steady signal indications in the particular case of a two-phase traffic signal at a wide median crossing. This change to the MUTCD is not recommended for the following reasons:

(1) There was a previous ruling that where a median is greater than 30 feet in width each accompanying roadway is to have a separate intersection for signalization purposes.

(2) The circular green signal indication being displayed to the divided roadway through traffic would not have the same meaning as it would at other roadway intersections due to the possibility of right angle crossings by vehicles making left turns from the main highway through the wide median area.

(b) *Request IV–10—Prohibit Straight Ahead Green Arrow.* The request from a private individual would preclude the use of the straight ahead green arrow in favor of the circular green signal at intersections. This change to the MUTCD is not recommended for the following reasons:

(1) The straight ahead green arrow serves a purpose at many complex intersections, signifying "No Turns."

(2) The correct interpretation of the MUTCD does not allow indiscriminate use of straight ahead green arrow.

(3) Prohibiting its use would unnecessarily limit flexibility of control device uses.

(4) Problems with glare in the use of an arrow display could be corrected with shields, back plates or by adjustment of signal intensity.

(5) The 12" green arrow indication is readily visible when installed properly.

(c) *Request IV–11—Left-Turn Lane Signal Displays For Permissive Left Turn.* The request from a private individual would preclude display of the circular green signal in separate signal faces which controls an exclusive turn lane during intervals when a circular green signal is displayed to oncoming straight through traffic from the opposite direction.

The basis for not recommending this change in the MUTCD is that traffic capacity would be unnecessarily reduced by eliminating permissive left turns, especially during off-peak hours and low-volume traffic flows.

(d) *Request Sg-104—Pedestrian Indications at T-Intersection.* The Arizona Department of Transportation requested elimination of a specific indication (DW–W or R–Y–G) for pedestrians crossing from the top of the T toward the stem, by changing "shall" to "should" in Section 4D–3(3). This request is not considered proper or reasonable in the safe control of traffic at signalized intersections and is not recommended.

In consideration of the foregoing, and under the authority of 23 U.S.C. 109 (b) and (d), 315, and 402(a), and the delegation of authority in 49 CFR 1.48(b), it is proposed to amend the MUTCD as set forth in Part A herein.

Note.—The Federal Highway Administration has determined that this document does not contain a significant proposal according to the criteria established by the Department of Transportation pursuant to Executive Order 12044. Due to the fact that four of the five amendments proposed would not mandate any direct action by highway agencies, and the remaining amendment would be phased in over a proposed five-year period, the economic impact of these amendments is so minimal as to not require preparation of a full regulatory evaluation.

Issued on: January 16, 1980.

L. P. Lamm,

Executive Director.

[FR Doc. 80–2003 Filed 1–23–80; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 200

[Docket No. R-80-765]

Transmittal of Proposed Rule to Congress Under Section 7(o) of the Department of HUD Act

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of transmittal of proposed rule to Congress under Section 7(o) of the Department of HUD Act.

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

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

SUPPLEMENTARY INFORMATION: Concurrently with issuance of this Notice, the Secretary is forwarding to the Chairmen and Ranking Minority Members of both the Senate Banking, Housing and Urban Affairs Committee and the House Banking, Finance and Urban Affairs Committee the following rulemaking document: 24 CFR Part 200 Introduction—Subpart S—Minimum Property Standards (MPS)—Addition of Water Conservation Requirements.

This proposed rule would make changes to the Minimum Property Standards (MPS) for One- and Two-Family Dwellings (Handbook 4900.1), the MPS for Multifamily Housing (Handbook 4910.1) and the MPS for Care-Type Housing (Handbook 4920.1) to add requirements for flow controls on shower heads and aerators on faucets of lavatories and kitchen sinks in order to conserve water. HUD MPS are published in handbooks and incorporated by reference into 24 CFR Part 200, and notice of changes to the MPS must be published in the Federal Register.

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

Issued at Washington, D.C., January 16, 1980.

Moon Landrieu,

Secretary, Department of Housing and Urban Development.

[FR Doc. 80-2161 Filed 1-23-80; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 43a

Preparation of a Roll of Pyramid Lake Paiute Indians; Preparation, Certification and Approval of Roll; Correction

January 21, 1980.

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Correction to a proposed rule.

SUMMARY: In the Federal Register of January 14, 1980, on page 2665, the phone number listed under "FOR FURTHER INFORMAITON CONTACT:" should read "(602) 261-4112; after February 4, 1980, 602-241-2314." In the same issue, on page 2666, the ninth line in the first column should read "§ 43a.1 Definitions."

FOR FURTHER INFORMATION CONTACT: Tribal Information Officer, Bureau of Indian Affairs, Phoenix Area Office, Phoenix, Arizona (602) 241-2314.

Rick Lavis,

Deputy Assistant Secretary, Indian Affairs.

[FR Doc. 80-2363 Filed 1-23-80; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-24-78]

Income Tax; Limitations on Benefits and Contributions Under Qualified Plans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to limitations on benefits and contributions under qualified pension plans, etc. Changes in the applicable tax law were made by the Employee Retirement Income Security Act of 1974, the Tax Reform Act of 1976 and the Revenue Act of 1978. The regulations would provide the public with the guidance needed to comply with those Acts and would affect all qualified plans.

DATES: Written comments and requests for a public hearing must be delivered or mailed by April 23, 1980. Except as otherwise indicated, the amendments are proposed to be effective for plan years beginning after 1975 and for limitation years ending with or within plan years beginning after 1975.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (EE-24-78), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Norman J. Misher of the Employee Plans and Exempt Organizations Division of the Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3433) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 401(a)(16), 403(b)(2) and 415 of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 2004 (a) and (c)(4) of the Employee Retirement Income Security Act of 1974 ("ERISA") (88 Stat. 979 and 986), to sections 803(f)(1), 1501(b)(3), 1502(a)(1) and 1511 of the Tax Reform Act of 1976 (90 Stat. 1589, 1735, 1737 and 1741) and to section 153(a) of the Revenue Act of 1978 (92 Stat. 2800). They are to be issued under the authority contained in sections 415(j) and 7805 of the Internal Revenue Code of 1954 (88 Stat. 985, 68A Stat. 917; 26 U.S.C. 415(j) and 7805).

This document also contains a proposed amendment to the Income Tax Regulations (26 CFR Part 1) under section 401(f) of the Internal Revenue Code of 1954. This amendment is proposed to conform the regulations to section 1505(b) of the Tax Reform Act of 1976 (90 Stat. 1738) and is to be issued under the authority contained in section 7805(b) of the Code (68A Stat. 917; 26 U.S.C. 7805).

Treatment of Contract as Qualified Trust

Prior to the Tax Reform Act of 1976, section 401(f) provided that a custodial account or an annuity contract would be treated as a qualified trust provided that certain requirements were met. The Tax Reform Act of 1976 amended section 401(f) to provide that a contract (other than a life, health or accident, property, casualty or liability insurance contract) issued by an insurance company qualified to do business in a state will

also be treated as a qualified trust provided that the contract would, except for the fact that it is not a trust, constitute a qualified trust under section 401.

General Application of Section 415

The limitations on benefits and contributions under section 415 apply to all qualified pension, profit-sharing, annuity, bond purchase and stock bonus plans, including "H.R. 10" plans, as well as so-called "tax sheltered annuities" described in section 403(b) and individual retirement arrangements described in sections 408 and 409. The limitations of section 415 also apply to simplified employee pensions described in section 408(k).

Plan Provision

The regulations do not require that a plan contain a specific plan provision for section 415 purposes in order to establish or maintain its qualification. However, the plan provisions must preclude the possibility that the limitations imposed by section 415 will be exceeded.

Plans Maintained by More Than One Employer

Under the regulations, the limitations of section 415 are applied with respect to a participant of a plan described in section 413(c) or section 413(b) (other than a plan described in section 414(f)) by taking into account all of the benefits or contributions attributable to the participant from all of the employers maintaining the plan. However, with respect to a participant of an employer maintaining a plan described in section 414(f), only the benefits or contributions provided by the employer of the participant are required to be taken into account for section 415 purposes.

Effective Date

Section 415 and these regulations are applicable for plan years beginning after 1975 and for limitation years ending with or within plan years beginning after 1975. However, besides those provisions that have special effective dates which are authorized by statute, the regulations provide a special effective date for excess contributions to section 403(b) annuity contracts and for the rules relating to a change in the limitation year.

Supersession of Temporary Regulations

These regulations supersede the Temporary Income Tax Regulations under section 415(c)(4), which related to special elections for section 403(b) annuity contracts purchased by educational organizations, hospitals and home health service agencies.

Limitation Year

Under the regulations, the limitation year with respect to any qualified plan maintained by the employer is the calendar year unless the employer elects to use any other consecutive twelve month period. The regulations provide that this election is made by the adoption of a written resolution by the employer.

In the event that an employer elects to change the limitation year, the regulations provide a special rule for applying the limitations of section 415 in this situation. This rule is different than the rule set forth in section 2.01(4) of Rev. Rul. 75–481, 1975–2 C.B. 188 with respect to such a change and therefore has a special effective date.

Compensation

For purposes of applying the limitations of section 415, the regulations provide that the compensation actually paid or made available to a participant within a limitation year is controlling. However, under the regulations, an employer may elect to use the compensation accrued during the limitation year instead of the compensation paid or made available.

In determining what is compensation for section 415 purposes, the regulations set forth a list of items which are includable as compensation and a list specifying those items which are not includable as compensation. The items listed are only for illustrative purposes and are not intended to be all-inclusive.

The regulations also provide a special rule for employees of a controlled group of employers. In such a case, an employee's compensation includes compensation from all employers which are members of the group, regardless of whether the employee's particular employer has a qualified plan.

Limitation for Defined Benefit Plans

Under the regulations, a participant's projected annual benefit under a qualified defined benefit plan may not, at any time during the limitation year, exceed the lesser of $75,000 (subject to cost-of-living increases) or 100 percent of the participant's average compensation for his high three years of service with the employer. The regulations provide that a participant's high three years of service is the period of three consecutive calendar years during which the employee had the greatest aggregate compensation from the employer.

The regulations define a participant's projected annual benefit as the annual benefit to which the participant is entitled under the terms of the plan based upon specified assumptions. An annual benefit is a benefit which is payable annually in the form of a straight life annuity under the plan. If the plan provides a benefit which is not payable in the form of a straight life annuity, the regulations require that the benefit be adjusted in accordance with rules determined by the Commissioner for purposes of applying the benefit limitations of section 415(b). The regulations also provide specific rules relating to certain benefits to which no such adjustment is required.

Under the regulations, employee contributions, whether mandatory or voluntary, are considered a separate defined contribution plan maintained by the employer which is subject to the limitations on contributions and other additions under section 415(c). However, the regulations provide that these contributions will not be considered a separate defined contribution plan maintained by the employer for purposes of the special $10,000 limitation under section 415(b)(4). Thus, a contributory defined benefit plan may utilize this special dollar limitation.

With respect to the special $10,000 limitation under section 415(b)(4), the regulations make it clear that in applying the $10,000 limit, no upward adjustment is required for early retirement provisions and benefits which are not in the form of a straight life annuity. The regulations also make it clear that the rule requiring a reduction of the limitations on benefits for less than 10 years of service under section 415(b)(5) applies only where a participant has less than 10 years of service with the employer at the time the participant begins to receive retirement benefits under the plan.

Transitional Rule for Defined Benefit Plans

Section 2004(d)(2) of ERISA and the regulations provide a special transitional rule for any individual who was a participant in a defined benefit plan before October 3, 1973. Under this transitional rule, if certain conditions are satisfied, the annual benefit payable to such individual will not be considered to exceed the benefit limitation of section 415(b). Under the regulations, the special transitional rule is also available in the case of an individual who was a participant in more than one defined benefit plan at any time before October 3, 1973.

In determining a participant's compensation for purposes of the transitional rule, the regulations provide a special rule under which the

compensation which would be used to determine benefits under the plan if the employee separated from service on October 2, 1973, may be taken into account, if that is greater than the otherwise applicable compensation for the participant. The regulations also make it clear that any cost-of-living increase in the $75,000 limitation may not be taken into account under the transitional rule.

Cost of Living Adjustments for Defined Benefit Plans

Under section 415(d)(1)(A) and the regulations, the $75,000 limitation is adjusted annually to take into account increases in the cost of living. The regulations provide that the adjusted dollar limitation is effective as of January 1 of each calendar year and applies with respect to limitation years ending with or within that calendar year. The regulations also state that the adjusted dollar limitation is applicable not only to employees who are participants in a plan, but also to employees who have retired or otherwise terminated their service under the plan with a nonforfeitable right to accrued benefits.

The regulations allow a defined benefit plan to include a provision which provides for an annual automatic cost-of-living adjustment of the $75,000 limitation. Accordingly, a defined benefit plan will not have to be amended each year to reflect the increased dollar limitation. However, under the regulations, such a provision may only provide for scheduled annual increases in the $75,000 limitation which take effect no sooner than the effective date of the applicable adjusted dollar limitation. The effect of this limitation will preclude the making of deductible contributions based on anticipated increases of the dollar limitation.

The regulations also set forth the procedure for adjusting the compensation limitation to take into account increases in the cost of living with respect to participants who have separated from service with a nonforfeitable right to an accrued benefit.

Limitation for Defined Contribution Plans

Under section 415(c) and the regulations, the amount of annual additions that may be made to a participant's account under a qualified defined contribution plan for any limitation year may not exceed the lesser of $25,000 (subject to cost-of-living increases) or 25 percent of a participant's compensation for the limitation year. The regulations provide special rules with respect to determining when certain items are considered annual additions as well as specifically excluding certain items from being considered annual additions. For purposes of applying the limitations of section 415, the regulations make it clear that a money purchase pension plan, such as a target benefit plan, is considered a defined contribution plan.

For purposes of the limitations of section 415, the regulations state that an annual addition will be credited to a participant's account for a limitation year if it is allocated to the participant's account under the terms of the plan as of any date within that limitation year. However, the regulations specifically provide that in order for employer contributions to be considered credited for a limitation year, the contributions must actually be made to the plan no later than 30 days after the end of period described in section 404(a)(6). Moreover, under the regulations, employee contributions will not be considered credited for a limitation year, unless the contributions are actually made to the plan within that limitation year.

If the allocation of forfeitures or a reasonable error in estimating a participant's annual compensation causes the annual additions for a participant to exceed the limitations of section 415 for a limitation year, the regulations provide that the excess amounts will not be considered annual additions in that limitation year if they are treated in accordance with one of three alternative methods. The first method requires the allocation of the excess amounts to other participants in the plan with the availability of a suspense account if such allocation causes the limitations of section 415 to be exceeded with respect to each plan participant. Under the second method, the excess amounts in the participant's account must be used to reduce future employer contributions for that participant. Finally, under the third method, the excess amounts must be held in a suspense account for the limitation year, allocated to all participants in the plan in the next limitation year and used to reduce employer contributions for all such participants.

Section 415(c)(6) and the regulations provide a special dollar limitation for certain employee stock ownership plans ("ESOP's"). Generally, if an ESOP meets the requirements described in section 415(c)(6) and the regulations, the applicable dollar limitation will be equal to twice the normal amount. However, this special rule is available only if the amounts contributed in excess of the normal dollar limitation consist solely of certain qualifying employer securities. Moreover, even if this special dollar limitation is taken advantage of, the amount of annual additions that may be allocated to a participant's account is subject to the 25 percent limitation of section 415(c)(1)(B). The regulations also provide special rules concerning the treatment of cash contributions as contributions of employer securities and the amount that is considered an annual addition in the context of a leveraged ESOP.

Special Rules for Section 403(b) Annuity Contract Under Defined Contribution Plan Limitations

For purposes of the limitations of section 415, the regulations provide that an annuity contract described in section 403(b) is treated as a defined contribution plan. These annuity contracts are also subject to the exclusion allowance described in section 403(b)(2)(A). In general, the excludable amount of a contribution towards the purchase of a section 403(b) annuity contract is the lesser of the exclusion allowance or the limitation imposed by section 415(c)(1). To the extent that the amount of contributions under a section 403(b) annuity contract exceeds the limitation of section 415(c)(1), the regulations provide that for future taxable years, the exclusion allowance is reduced by the amount of the excess contribution even though that amount was not excludable from the employee's gross income in the taxable year when it was made. Because this rule is different than the rule set forth under the temporary regulations under section 415(c)(4) with respect to such excess contributions, the regulations provide a special effective date for the rule.

Under section 415(c)(4) and the regulations, certain employees may elect to be subject to special alternative limitations which permit larger excludable contributions to be made on their behalf for the section 403(b) annuity contracts. The regulations do not require that a formal election be made in order to take advantage of an alternative limitation. Rather, the regulations state that the election is made by determining income tax liability for the taxable year in a way which is consistent with one of the alternative limitations.

The election made by an individual under these regulations will be controlling for all prior taxable years in which the individual had taken advantage of an alternative limitation under the temporary regulations under section 415(c)(4), even if inconsistent

with the alternative limitation used under the temporary regulations in determining income tax liability for those taxable years. The regulations provide that if such inconsistency exists, it may be corrected for each prior open taxable year in either of two ways. The individual may redetermine income tax liability as though none of the alternative limitations applied for that taxable year. Alternatively, the individual may recompute income tax liability for the particular taxable year in a way consistent with the alternative limitation elected under these regulations.

In the case of an individual who took advantage of an alternative limitation under the temporary regulations under section 415(c)(4) for prior taxable years, the election made under these regulations will only be effective if it is made in the individual's income tax return for the taxable year in which final regulations under section 415 are first published in the **Federal Register.** Moreover, if the alternative limitation elected under these regulations is different from the limitation used under the temporary regulations for prior taxable years, the regulations provide that the individual must correct this inconsistency by recomputing income tax liability for all such prior open taxable years. The regulations also contain special rules for an individual who had taken advantage of an alternative limitation under the temporary regulations in prior taxable years, but does not elect any of the alternative limitations for the taxable year in which final regulations under section 415 are first published in the **Federal Register.**

If the election under these regulations to use an alternative limitation different from the limitation used under the temporary regulations under section 415(c)(4) or prior taxable years results in an excess contribution to a section 403(b)(7) custodial account within the meaning of section 4973, the tax imposed by that section will not be assessed.

Limitation in Case of Defined Benefit Plan and Defined Contribution Plan for Same Employee

Under section 415(e) and the regulations, in any case in which an individual has at any time participated in a defined benefit plan and also has at any time participated in a defined contribution plan maintained by the same employer, the sum of the defined benefit plan fraction and the defined contribution plan fraction may not exceed 140 percent.

In computing the defined benefit plan fraction with respect to a participant who is using the transitional rule described in section 2004(d)(2) of ERISA, the regulations make it clear that the fraction applicable to such participant will not be considered to exceed 100 percent for any limitation year to which the limitations of section 415 are applicable. Additionally, for purposes of determining the denominator of the defined contribution plan fraction, the regulations provide that all of the participant's years of service with the employer are taken into account, regardless of whether a plan was in existence during those years. The regulations also contain special rules for computing the defined contribution plan fraction in those cases in which past records are unavailable.

If the sum of the defined benefit plan fraction and the defined contribution plan fraction applicable to a participant for the limitation year during which September 2, 1974, falls, exceeded 140 percent, the regulations provide that the sum of such fractions may continue to exceed 140 percent for future limitation years but only if certain conditions are satisfied. The first condition is that the defined benefit plan fraction of the participant as of the limitation year during which September 2, 1974, falls, is not increased. The second condition is that, after September 2, 1974, no employer contributions and forfeitures are allocated to the participant's account under any defined contribution plan and, except for mandatory employee contributions to a defined benefit plan, no employee contributions are made under any plan.

Special Rules for Section 403(b) Annuity Contract Under Overall Limitation

If an individual is a participant in a qualified defined benefit plan and also has a section 403(b) annuity contract purchased on his behalf, the regulations contain special rules concerning the question of whether the annuity contract must be aggregated with the defined benefit plan for purposes of applying the overall limitation of section 415(e). In general, the regulations provide that because only the participant and not the employer that purchased the annuity contract will be considered to be maintaining the annuity contract, aggregation is not required. However, under the regulations, if the participant is in control of an employer or has elected to have the provisions of section 415(c)(4)(C) apply to the annuity contract, the employer will be considered to be maintaining the annuity contract and therefore aggregation will be required. The regulations also provide special rules which are applicable upon the aggregation of the annuity contract with the defined benefit plan as well as after the annuity contract is no longer subject to aggregation.

In computing the defined contribution plan fraction applicable to an individual with respect to a section 403(b) annuity contract, the regulations provide that the denominator of the fraction is the maximum amount which could have been contributed under the limitations of section 415(c). This is so, even if that limitation is greater than the exclusion allowance. If, however, the individual elects an alternative limitation described in either section 415(c)(4)(A) or section 415(c)(4)(B), the denominator is modified in accordance with the alternative limitation elected.

Combining and Aggregating Plans

Under section 415(f) and the regulations, for purposes of applying the limitations of section 415, all defined benefit plans ever maintained by an employer will be treated as a single defined benefit plan and all defined contribution plans ever maintained by an employer will be treated as a single defined contribution plan. This aggregation is required without regard to whether a plan has been terminated.

For purposes of applying the limitations of section 415, the regulations provide that a group of employers which constitutes a controlled group of corporations or which constitutes trades or businesses (whether or not incorporated) which are under common control will be treated as a single employer.

The regulations also contain rules concerning the combining of a section 403(b) annuity contract and a qualified defined contribution plan. These rules are identical to the rules set forth in the regulations under the overall limitation of section 415(e) with respect to the aggregation of a section 403(b) annuity contract with a qualified defined benefit plan.

Disqualification of Plans and Trusts

Under section 415(g) and the regulations, a plan (and the trust forming part of the plan) is disqualified if the applicable limitations of section 415 are exceeded in a particular limitation year with respect to any participant in the plan. The regulations provide that any plan that is disqualified in a particular limitation year is disqualified as of the first day of the first plan year containing any portion of the particular limitation year.

If there are two plans, the regulations contain special rules for determining the

plan that is disqualified. Under the regulations, if one of the plans has been terminated, the plan which has not been terminated will be disqualified. The regulations further provide that if neither plan has been terminated and one of the plans is a multiemployer plan described in section 414(f), the plan which is not a multiemployer plan will be disqualified.

If neither of the two plans has been terminated or determined to be a multiemployer plan described in section 414(f), under the regulations the employer may elect the plan that is disqualified. In the case of a controlled group of employers, all of the employers within the controlled group must make the election in order for the election to be effective. If the election is not made, the regulations provide that the Commissioner, taking into account all of the facts and circumstances, will have the discretion to determine the plan that is disqualified. The regulations state that some of the factors that will be taken into account in making this determination are the number of participants in each plan and the amount of benefits provided on an overall basis by each plan.

The regulations also contain a special rule with respect to the disqualification of a simplified employee pension described in section 408(k).

Finally, the regulations contain special rules relating to the disqualification of amounts contributed for a section 403 (b) annuity contract where the combining or aggregating of the annuity contract with a qualified plan causes the applicable limitations of section 415 to be exceeded. Under the regulations, any contribution which is treated as a disqualified contribution is currently includable in the gross income of the participant. Moreover, the regulations provide that for future taxable years, the exclusion allowance for the participant (as determined under section 403(b)(2)(A)) will be reduced by the amount of the disqualified contribution even though such amount was not excludable from the participant's gross income in the taxable year when it was made.

Special Aggregation Rules

The regulations provide special rules for those situations in which two or more existing plans, which previously were unaggregated, are aggregated during a particular limitation year resulting in the limitations of section 415(b), (c) or (e) being exceeded for that limitation year. The regulations also make it clear that these special rules are applicable with respect to the aggregation of benefits under a multiemployer plan described in section 414(f) which previously were not required to be aggregated.

Under the regulations, plans which are not aggregated as of the first day of a limitation year will not be considered aggregated for that limitation year. However, the regulations contain a special rule in this context if the aggregation of a section 403(b) annuity contract and a qualified plan is the result of the election to have the provisions of section 415(c)(4)(C) apply for the taxable year.

If the aggregation of two or more defined benefit plans causes the limitations of section 415(b) to be exceeded for a limitation year, the regulations provide that these limitations may be exceeded for that limitation year as well as future limitation years provided that there is no increase in the participant's accrued benefit derived from employer contributions during that period. Similarly, if the aggregation of a defined benefit and defined contribution plan causes the limitations of section 415(e) to be exceeded for a limitation year, the regulations provide that these limitations may be exceeded for that limitation year and for future limitation years if certain specified conditions are complied with during that period.

The regulations also set forth special rules for determining the applicable limitation year if the plans which are aggregated have different limitation years.

Comments and Requests for a Public Hearing

Before adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Drafting Information

The principal author of these proposed regulations is Norman J. Misher of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

Paragraph 1. Paragraph (a)(1) of § 1.401–2 is amended by adding a sentence at the end thereof. The new sentence reads as follows:

§ 1.401–2 Impossibility of diversion under the trust instrument.

(a) *In general.* (1) * * * For rules permitting reversion to the employer of amounts held in a section 415 suspense account, see § 1.401(a)–2(b).

* * * * *

§ 1.401.8 [Redesignated as § 1.401(f)–1]

§ 1.401–8A [Redesignated as § 1.401–8 and amended]

Par. 2. Present § 1.401–8 is redesignated at § 1.401(f)–1. Section 1.401–8A is redesignated as new § 1.401–8 and is amended by deleting the reference to "§ 1.401–8" in paragraph (a) and inserting in lieu thereof, "§ 1.401(f)–1".

Par. 3. The following new sections are added immediately before § 1.401(a)–11:

§ 1.401(a)–1 Post-ERISA qualified plans and qualified trusts; in general.

(a) *Introduction*—(1) *In general.* This section and the following regulation sections under section 401 reflect the provisions of section 401 after amendment by the Employee Retirement Income Security Act of 1974 (Pub. L. 93–406) ("ERISA").

(2) [Reserved]

(b) *Requirements for pension plans*—(1) *Definitely determinable benefits.* (i) In order for a pension plan to be a qualified plan under seciton 401(a), the plan must be established and maintained by an employer primarily to provide systematically for the payment of definitely determinable benefits to its employees over a period of years, usually for life, after retirement.

(ii) Section 1.401–1(b)(1)(i), a pre-ERISA regulation, provides rules applicable to this requirement, and that regulation is applicable except as otherwise provided.

(iii) The use of the type of plan provision described in § 1.415–1(d)(1) which automatically freezes or reduces the rate of benefit accrual or the annual addition to insure that the limitations of section 415 will not be exceeded, will not be considered to violate the requirements of this subparagraph provided that the operation of such provision precludes discretion by the employer.

(2) [Reserved]

§ 1.401(a)–2 Impossibility of diversion under qualified plan or trust.

(a) *General rule.* Section 401(a)(2) requires that in order for a trust to be qualified, it must be impossible under the trust instrument (in the taxable year and at any time thereafter before the satisfaction of all liabilities to employees or their beneficiaries covered by the trust) for any part of the trust corpus or income to be used for, or diverted to, purposes other than for the exclusive benefit of those employees or their beneficiaires. Section 1.401–2, a pre-ERISA regulation, provides rules under section 401(a)(2) and that regulation is applicable except as otherwise provided.

(b) *Section 415 suspense account.* Paragraph (a) of this section does not apply to amounts properly allocated to a suspense account pursuant to § 1.415–6(b)(6). The plan, or the trust forming part of the plan, may provide for the reversion to the employer, upon termination of the plan, of amounts held in the suspense account.

Par. 4. The following new section is added immediately after § 1.401(a)–15:

§ 1.401(a)–16 Limitations on benefits and contributions under qualified plans.

A trust will not be a qualified trust and a plan will not be a qualified plan if the plan provides for benefits or contributions which exceed the limitations of section 415. Section 415 and the regulations thereunder provide rules concerning these limitations on benefits and contributions.

Par. 5. Section 1.401(f)–1 as redesignated in paragraph 2 is amended by (1) deleting the reference to "§ 1.401–8A" in paragraph (a) and inserting in lieu thereof "§ 1.401–8" and (2) redesignating paragraph (e) as paragraph (f) and adding a new paragraph (e). New paragraph (e) reads as follows:

§ 1.401(f)–1 Certain custodial accounts and annuity contracts.

* * * * *

(e) *Other contracts.* For purposes of this section, other than the non-transferability restriction of paragraph (d)(2), a contract issued by an insurance company qualified to do business in a state shall be treated as an annuity contract. For purposes of the preceding sentence, the contract does not include a life, health or accident, property, casualty or liability insurance contract. For purposes of this paragraph, a contract which is issued by an insurance company will not be considered a life insurance contract merely because the contract provides incidental life insurance protection. The provisions of this paragraph are effective for taxable years beginning after December 31, 1975.

(f) *Cross reference.* * * *

Par. 6. Paragraph (b)(3) of 1.403(b)–1 is amended by (1) revising the fourth sentence of subdivision (i), (2) redesignating subdivision (ii) and subdivision (iii) and revising so much thereof as precedes the example, and (3) adding a new subdivision (ii) following subdivision (i). These revised and added provisions read as follows:

§ 1.403(b)–1 Taxability of beneficiary under annuity purchased by a section 501 (c)(3) organization or public school.

* * * * *

(b) *Amounts paid by employer during taxable years beginning after December 31, 1957.* * * *

(3) *Agreement to take a reduction in salary or to forego an increase in salary.* (i) * * * Except as provided in subdivision (ii) of this subparagraph, the employee must not be permitted to make more than one agreement with the same employer during any taxable year of such employee beginning after December 31, 1963; the exclusion provided by this paragraph shall not apply to any amounts which are contributed under any further agreement made by such employee during the same taxable year beginning after such date. * * *

(ii) An individual who is employed by an organization described in section 415(c)(4) may make a salary reduction agreement for his taxable year beginning in 1976 or 1977 at any time before the end of the 1976 or 1977 taxable year, respectively, without the agreement's being considered a new agreement within the meaning of this subparagraph. The agreement for 1976 may be made on or before June 15, 1977, and the agreement for 1977 may be made on or before April 17, 1978. This special rule only applies if the individual makes a statement of intention in accordance with § 11.415(c)(4)–1(b) electing, or determines his income tax liability for the taxable year in a way which is consistent with, one of the alternative limitations under section 415(c)(4) for 1976 or 1977 (as the case may be). The salary reduction agreement for 1976 may be made effective with respect to any amount earned during the taxpayer's most recent one-year period of service (as defined in paragraph (f) of this section) ending not later than the end of the 1976 taxable year, notwithstanding subdivision (i) of this subparagraph. Similarly, the salary reduction agreement for 1977 may be made effective with respect to such period of service ending not later than the end of the 1977 taxable year. If the salary reduction agreement for 1976 is entered into at any time after December 31, 1976, or if the salary reduction agreement for 1977 is entered into at any time after December 31, 1977, an amended Form W–2 must be filed on behalf of the individual.

(iii) The rules of subdivision (i) of this subparagraph may be illustrated by the following example:

* * * * *

Par. 7. Paragraph (d) of § 1.403(b)–1 is amended by (1) deleting the period at the end of subparagraph (3)(iv)(*c*) and inserting in lieu thereof "; or"; (2) adding a new subdivision (v) following subdivision (iv) of subparagraph (3); and (3) adding a new subparagraph (5) at the end thereof. The added provisions read as follows:

§ 1.403(b)–1 Taxability of beneficiary under annuity purchased by a section 501(c)(3) organization or public school.

* * * * *

(d) *Exclusion allowance.* * * *

(3) *Amounts previously contributed by the employer which were excludable from the employee's gross income.* * * *

(v) Which were contributions to a section 403(b) annuity contract for a prior taxable year and which exceeded the limitations of section 415(c)(1) applicable to the employee. See § 1.415–6(e)(1)(ii) for a more detailed discussion of this rule. See also § 1.415–9(c) for rules relating to the treatment of certain contributions to a section 403(b) annuity contract which are excess contributions because of the aggregation of the annuity contract with a qualified plan.

* * * * *

(5) *Election to have allowance determined under section 415 rules.* Under section 415(c)(4)(D), an employee may elect to have the provisions of section 415(c)(4)(C) (relating to special limitations for annuity contracts purchased by educational organizations, hospitals and home health service agencies) apply for a taxable year. If the empoyee so elects, his exclusion allowance is the maximum amount under section 415 that could be contributed by the employer for the benefit of the employee if the annuity contract for the benefit of the employee were treated as a defined contribution plan maintained by the employer. Thus, the exclusion allowance for the taxable year of an employee who makes the election may not exceed the limitation on contributions and other additions (as described in § 1.415–6) applicable to the employee for that taxable year. See § 1.415–7 for provisions applicable in the event an employer maintains a defined benefit plan and a defined contribution

plan for the same employee. See § 1.415–8 for provisions applicable in the event an employer maintains more than one defined contribution plan covering the same employee.

* * * * *

§ 1.405–1(b)(1) [Amended]

Par. 8. Section 1.405–1(b)(1) is amended by deleting "and (8)" in the third sentence and inserting in lieu thereof "(8), (16), and (19)".

Par. 9. The following new §§ 1.415–1 through 1.415–10 are added at the appropriate place:

§ 1.415–1 General rules with respect to limitations on benefits and contributions under qualified plans.

(a) *Trusts.* Under sections 415 and 401(a)(16), a trust which forms part of a pension, profit-sharing or stock bonus plan will not be qualified under section 401(a) if any one of the following conditions exists:

(1) The projected annual benefits under a defined benefit plan with respect to any participant for any limitation year exceed the limitations of section 415(b) and § 1.415–3.

(2) The contributions and other additions actually made or allocated under a defined contribution plan with respect to any participant for any limitation year exceed the limitations of section 415(c) and § 1.415–6.

(3) Where an individual has at any time participated in a defined benefit plan and also has at any time participated in a defined contribution plan maintained by the same employer, the trust has been disqualified under section 415(g) and § 1.415–9.

(b) *Certain annuities and accounts*—(1) *In general.* Except as provided in paragraph(c) of this section, an annuity, account, etc., listed in section 415 (a)(2) will not be considered to be described in the otherwise applicable section unless—

(i) It satisfies the requirements of § 1.415–3 (relating to limitations on benefits), § 1.415–6 (relating to limitations on contributions and other additions) or § 1.415–7 (relating to limitations where an individual has at any time participated in a defined contribution plan and also has at any time participated in a defined benefit plan maintained by the same employer), whichever is applicable, and

(ii) It has not been disqualified under § 1.415–9 (relating to disqualification of plans and trusts).

(2) *Special rule for section 403 (b) annuity contracts.* (i) With respect to an annuity contract described in section 403(b), the provisions of subparagraph (1) of this paragraph apply only to that portion of the contract which exceeds the limitations of § 1.415–3, § 1.415–6 § 1.415–7, whichever is applicable.

(ii) In addition, where the amount of the contribution under the section 403(b) annuity contract exceeds the applicable limitation, the exclusion allowance described in section 403(b)(2)(A) is reduced in the manner described in § 1.415–6(e)(1)(ii).

(3) *Cross references to additional rules for section 403(b) annuity contracts.* For additional rules relating to section 403(b) annuity contracts, see—

(i) Section § 1.415–1(f)(2) (relating to the plan year for such annuity contracts),

(ii) Section § 1.415–2(b)(7) (relating to the limitation year for such annuity contracts),

(iii) Section § 1.415–6(e) (relating to the applicability of the alternative limitations described in section 415(c)(4) to such annuity contracts),

(iv) Sections § 1.415–7(c)(2) and 1.415–7(h) (relating to rules for such annuity contracts for purposes of computing the defined contribution plan fraction),

(v) Section § 1.415–8(d) (relating to rules for such annuity contracts for purposes of combining plans), and

(vi) Section § 1.415–9(c) (relating to rules for such annuity contracts for purposes of determining the amount of a disqualified contribution to the annuity contract).

(c) *Certain accounts, annuities and bonds established for non-employed spouse.* Paragraph (b) of this section is not applicable to an account, annuity or bond as described in section 408(a), 408(b) or 409, respectively) esablished for the benefit of the spouse of the individual who contributes to it for any year for which a deduction is allowable for the individual under section 220. For a special effective date with respect to this paragraph, see paragraph(f)(3) of this section.

(d) *Plan provisions*—(1) *In general.* Although no specific plan provision is required under section 415 in order for a plan to establish or maintain its qualification, the plan provisions must preclude the possibility that the limitations imposed by section 415 will be exceeded. For example, a plan may include provisions which automatically freeze or reduce the rate of benefit accrual (in the case of a defined benefit plan) or the annual addition (in the case of a defined contribution plan) to a level necessary to prevent the limitations from being exceeded with respect to any participant. For rules relating to this type of plan provision and the definitely determinable benefit requirement for pension plans, see § 1.401(a)–1(b)(1).

(2) *Special rule for profit-sharing and stock bonus plans.* The use of the type of plan provision described in subparagraph (1) of this paragraph which automatically freezes or reduces the amount of annual additions to a profit-sharing or stock bonus plan to insure that the limitations of section 415 will not be exceeded will be effective only if the operation of such provision precludes discretion by the employer.

(e) *Rules for plans maintained by more than one employer*—(1) *Plans described in section 413(b) or section 413(c).* This subparagraph provides for participants of a plan described in section 413(c) or section 413(b) (other than a plan described in section 414(f). For purposes of applying the limitations of section 415 with respect to a participant of an employer maintaining the plan, benefits or contributions attributable to such participant from all of the employers maintaining the plan must be taken into account.

(2) *Plans described in section 414(f).* (i) This subparagraph provides rules for participants of a multiemployer plan described in section 414(f). For purposes of applying the limitations of section 415 with respect to a participant of an employer maintaining the plan, only the benefits or contributions provided by the employer of such participant shall be taken into account. The benefits provided by an employer under such a plan shall equal the excess of the plan benefit over the plan benefit computed as if the participant had no covered service with that employer.

(ii) For rules relating to the limitation year for a multiemployer plan, see § 1.415–2(b)(6). See also § 1.415–8(e) for a special rule relating to the aggregation of multiemployer plans.

(f) *Rules relating to the effective date of section 415*—(1) *In general.* Except as otherwise provided in this paragraph, §§ 1.415–1 through 1.415–10 are applicable for plan years beginning after 1975 and for limitation years ending with or within plan years beginning after 1975.

(2) *Plan year for certain annuity contracts and individual retirement plans.* For purposes of section 415 and §§ 1.415–1 through 1.415–10—

(i) An annuity contract described in section 403(b) shall be considered to have a plan year coinciding with the taxable year of the individual on whose behalf the contract has been purchased, and

(ii) An individual retirement plan (as described in section 7701(a)(37)) shall be considered to have a plan year coinciding with the taxable year of the individual on whose behalf the plan is maintained,

unless the individual demonstrates to the satisfaction of the Commissioner that a different 12 month period should be considered to be the plan year.

(3) *Special effective date for certain accounts, annuities and bonds established for non-employed spouse.* Notwithstanding subparagraph (1) of this paragraph, the provisions of section 415(a)(3) and paragraph (c) of this section are not applicable until taxable years beginning after December 31, 1976.

(4) *Special rules for certain defined contribution plans with respect to the first limitation year to which section 415 applies.* In the case of a defined contribution plan whose plan year does not coincide with the limitation year, the rules of this subparagraph shall be effective with respect to applying the limitations described in section 415(c) and § 1.415–6 for the first limitation year to which section 415 and §§ 1.415–1 through 1.415–10 apply.

(i) Annual additions (as defined in section 415(c)(2) and § 1.415–6(b)) which are allocated under the plan prior to the first day of the first plan year to which section 415 and §§ 1.415–1 through 1.415–10 are effective do not have to be taken into account.

(ii) The amount of compensation (as defined in § 1.415–2(d)) taken into account in applying the limitations may include compensation for the entire limitation year.

(5) *Special effective date for special benefit limitation with respect to certain collectively bargained plans.* Notwithstanding subparagraph (1) of this paragraph, section 415(b)(7) is not applicable until limitation years beginning after December 31, 1978.

(6) *Special effective date for excess contributions to section 403(b) annuity contracts.* (i) Notwithstanding subparagraph (1) of this paragraph, the provisions of § 1.415–6(e)(1)(ii) (relating to the manner in which contributions to a section 403(b) annuity contract which exceed the limitations of section 415(c)(1) are treated) are only applicable to taxable years beginning after January 24, 1980.

(ii) For all prior taxable years for which the limitations of section 415 are applicable to section 403(b) annuity contracts, any contribution to the account of an individual under a section 403(b) annuity contract for a taxable year which exceeds the limitations of section 415(c)(1), instead of being treated in the manner described in § 1.415–6(e)(1)(ii), shall reduce the exclusion allowance under section 403(b)(2) for such taxable year to the extent of the excess.

(7) *Special effective date for rules relating to change of limitation year.* Notwithstanding subparagraph (1) of this paragraph, the provisions of § 1.415–2(b)(4) (relating to the effect of a change of the limitation year) are only applicable to changes in limitation years which occur after January 24, 1980. For all prior changes in limitation years, the requirements of section 2.01(4) of Rev. Rul. 75–481, 1975–2 C.B. 188, shall be applicable.

(8) *Special effective date for TRASOP's.* The limitations of section 415 apply to an Employee Stock Ownership Plan under section 301(d) of the Tax Reduction Act of 1975 ("TRASOP"). The earliest date on which the first plan year of a TRASOP may begin is January 22, 1974. Therefore, notwithstanding subparagraph (1) of this paragraph, the limitations of section 415 are applicable for TRASOP plan years beginning before 1975 and for limitation years ending with or within plan years beginning before 1975. However, the aggregation rules of § 1.415–8 do not apply to a limitation year of a TRASOP ending with or within a plan year beginning before 1975.

(9) *Transitional rules.* For special transitional rules, see—

(i) Section 1.415–4 (relating to a transitional rule for defined benefit plans),

(ii) Section 1.415–7(b)(2) (relating to the defined benefit plan fraction applicable to certain participants),

(iii) Section 1.415–7(d) (relating to transitional rules for the defined contribution plan fraction), and

(iv) Section 1.415–7(g) (relating to a special rule for certain plans in effect on September 2, 1974).

(g) *Supersession.* Section 11.415(c)(4)–1 (relating to special elections for section 403(b) annuity contracts purchased by educational organizations, hospitals and home health service agencies) of the Temporary Income Tax Regulations under the Employee Retirement Income Security Act of 1974 is superseded by this section and §§ 1.415–2 through 1.415–10.

§ 1.415–2 Definitions and special rules.

(a) *General application.* Unless otherwise provided in the appropriate section, for purposes of §§ 1.415–1 through 1.415–10, the following definitions and special rules shall apply.

(b) *Limitation year*—(1) *In general.* (i) Unless the election described in subdivision (ii) of this subparagraph is made, the limitation year, with respect to any qualified plan maintained by the employer, is the calendar year.

(ii) Instead of using the calendar year, an employer may elect to use any other consecutive twelve month period as the limitation year. This includes a fiscal year with an annual period varying from 52 to 53 weeks, so long as the fiscal year satisfies the requirements of section 441(f). If the case of a group of employers which constitute either a controlled group of corporations (within the meaning of section 414(b) as modified by section 415(h)) or trades or businesses (whether or not incorporated) which are under common control (within the meaning of section 414(c) as modified by section 45(h)), the election to use a consecutive twelve month period other than the calendar year as the limitation year must be made by all members of the group that maintain a qualified plan.

(2) *Method of election to use a limitation year other than the calendar year or to change limitation year.* (i) The election described in subparagraph (1)(ii) of this paragraph shall be made by the adoption of a written resolution by the employer.

(ii) This resolution will not be considered a change of the limitation year, if it is adopted or modified on or before the later of the adoption date of the first amendment conforming an existing plan to the Employee Retirement Income Security Act of 1974, or December 31, 1976.

(3) *Election of multiple limitation years.* Any employer that maintains more than one qualified plan may elect to use different limitation years for each such plan in accordance with rules determined by the Commissioner.

(4) *Effect of change of limitation year.* (i) Once established, the limitation year may be changed only by making the election in the manner described in subparagraph (2) of this paragraph.

(ii) Any change in the limitation year must be a change to a twelve-month period commencing with any day within the current limitation year.

(iii) For purposes of this paragraph, the limitations of section 415 are to be applied in the normal manner to the new limitation year. Moreover, the limitations of section 415 are to be separately applied to a "limitation period" which begins with the first day of the current limitation year and which ends on the day before the first day of the first limitation year for which the change is effective. The dollar limitation with respect to this limitation period is determined by multiplying (A) the applicable dollar limitation for the calendar year in which the limitation period ends by (B) a fraction, the numerator of which is the number of months (including any fractional parts of a month) in the limitation period, and the denominator of which is 12. This adjustment of the dollar limitation only applies to a defined contribution plan.

(iv) For a special effective date with respect to this paragraph, see § 1.415–1(f)(7).

(v) The provisions of this subparagraph may be illustrated by the following example:

Example. In 1981, an employer with a qualified defined contribution plan using the calendar year as the limitation year elects to change the limitation year to a period beginning July 1 and ending June 30. Because of this change, the plan must satisfy the limitations of section 415(c) for the limitation period beginning January 1, 1981 and ending June 30 of that year. In applying the limitations of section 415(c) to this limitation period, the amount of compensation taken into account may only include compensation for this period. Furthermore, the dollar limitation for this period is the otherwise applicable dollar limitation for calendar year 1981, multiplied by ½.

(5) *Limitation year for years prior to effective date.* The limitation year for all years prior to the effective date of section 415 is the consecutive twelve-month period which corresponds to the first limitation year of a plan after the effective date of section 415. (See paragraph (b)(1) of this section for rules relating to the determination of a plan's limitation year.)

(6) *Limitation year for multiemployer plans.* In the case of a multiemployer plan (as defined in section 414(f)), the limitation year is the calendar year unless the plan administrator elects otherwise under paragraph (b)(2) of this section.

(7) *Limitation year for individuals on whose behalf section 403(b) annuity contracts have been purchased.* (i) The limitation year of an individual on whose behalf a section 403(b) annuity contract has been purchased by an employer is determined in the following manner.

(ii) If the individual is not in control (within the meaning of section 414 (b) or (c) as modified by section 415(h)) of any employer, the limitation year is the calendar year. However, the individual may elect to change the limitation year to another twelve-month period. To do this, the individual must attach a statement to his income tax return filed for the taxable year in which the change is made. Any change in the limitation year must comply with the rules set forth in paragraph (b)(4) of this section.

(iii) If the individual is in control (within the meaning of section 414 (b) or (c) as modified by section 415(h)) of an employer, the limitation year is to be the limitation year of that employer.

(8) *Limitation year for individuals on whose behalf individual retirement plans are maintained.* The limitation year of an individual on whose behalf an individual retirement plan (as described in section 7701(a)(37)) is maintained shall be determined in the manner described in paragraph (b)(7) of this section.

(c) *Defined benefit and defined contribution plan*—(1) *Defined benefit plan.* A "defined benefit plan" means a plan described in section 414(j).

(2) *Defined contribution plan.* A "defined contribution plan" means a plan described in section 414(i). It includes a money purchase pension plan (as described in § 1.401–1(b)(1)(i)), such as a target benefit plan (as described in § 1.410(a)–4(a)(1)). A hybrid plan (as defined in section 414(k)) is to be treated as a defined contribution plan to the extent that benefits payable under the plan are based upon the individual account of the participant.

(d) *Compensation*—(1) *Items includable as compensation.* For purposes of applying the limitations of section 415, the term "compensation" includes—

(i) The participant's wages, salaries, fees for professional service and other amounts received for personal services actually rendered in the course of employment with an employer (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips and bonuses).

(ii) In the case of a participant who is an employee within the meaning of section 401(c)(1) and the regulations thereunder, the participant's earned income (as described in section 401(c)(2) and the regulations thereunder).

(iii) For purposes of subdivisions (i) and (ii) of this subparagraph, earned income from sources outside the United States (as defined in section 911(b)), whether or not excludable from gross income under section 911 or deductible under section 913.

(iv) Amounts described in sections 104(a)(3), 105(a) and 105(h), but only to the extent that these amounts are includable in the gross income of the employee.

(v) Amounts described in section 105(d), whether or not these amounts are excludable from the gross income of the employee under that section.

(vi) Amounts paid or reimbursed by the employer for moving expenses incurred by an employee, but only to the extent that these amounts are not deductible by the employee under section 217.

(vii) The value of a non-qualified stock option granted to an employee by the employer, but only to the extent that the value of the option is includable in the gross income of the employee for the taxable year in which granted.

(viii) The amount includable in the gross income of an employee upon making the election described in section 83(b).

(2) *Items not includable as compensation.* The term "compensation" does not include items such as—

(i) Contributions made by the employer to a plan of deferred compensation (even if the plan is not qualified under, for example, section 401, 403(a), 405 or 408(k)).

(ii) Amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by an employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture (see section 83 and the regulations thereunder).

(iii) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option.

(iv) Other amounts which receive special tax benefits, such as premiums for group term life insurance (but only to the extent that the premiums are not includable in the gross income of the employee), or contributions made by an employer (whether or not under a salary reduction agreement) towards the purchase of an annuity contract described in section 403(b) (whether or not the contributions are excludable from the gross income of the employee).

(3) *Compensation in limitation year.* The compensation (as defined in subparagraph (1) of this paragraph) actually paid or made available to a participant within the limitation year is the compensation used for purposes of applying the limitations of section 415.

(4) *Election to use compensation accrued during limitation year.* Instead of using the compensation actually paid or made available to a participant during the limitation year, an employer may elect to use the compensation accrued for an entire limitation year for purposes of applying the limitations of section 415. In the case of a group of employers which constitute either a controlled group of corporations (within the meaning of section 414(b) as modified by section 415(h)) or trades or businesses (whether or not incorporated) which are under common control (within the meaning of section 414(c) as modified by section 415(h)), the election to use accrued compensation must be made by all members of the group that maintain a qualified plan. Once an election is made, it remains in effect until it is revoked by the employer or group of employers. The election is made or revoked by the adoption of a

written resolution by the employer or group of employers. The rule described in this subparagraph does not apply to a section 403(b) annuity contract or to an individual retirement plan (as described in section 7701(a)(37)).

(5) *Effect of change in method of determining compensation.* If, in a particular limitation year, a previously effective election to use accrued compensation is revoked or an election to use accrued compensation is made, any amounts taken into account for compensation purposes for any preceding limitation year may not be counted again in determining compensation for the particular limitation year.

(6) *Special rule for employees of controlled group of corporations or trades or businesses under common control.* In the case of an employee of two or more corporations which are members of a controlled group of corporations (as defined in section 414(b) as modified by section 415 (h)), the term "compensation" for such employee includes compensation from all employers which are members of the group, regardless of whether the employee's particular employer has a qualified plan. This special rule is also applicable to an employee of two or more trades or businesses (whether or not incorporated) which are under common control (as defined in section 414(c) as modified by section 415(h)).

§ 1.415-3 Limitation for defined benefit plans.

(a) *General rules*—(1) *Maximum limitations.* Under section 415(b) and this section, to satisfy the provisions of section 415(a) for any limitation year, the projected annual benefit (as defined in paragraph (b)(2) of this section) of a participant in a defined benefit plan may not, at any time during the limitation year, exceed the lesser of—

(i) $75,000, or

(ii) 100 percent of the participant's average compensation for his high 3 years of service.

(2) *Adjustment to dollar limitation.* The dollar limitation described in section 415(b)(1)(A) and paragraph (a)(1)(i) of this section is adjusted for cost of living increases under section 415(d) and § 1.415-5(a). The adjusted figure is effective as of January 1 of each calendar year and is applicable to limitation years that end during that calendar year.

(3) *Average compensation for high 3 years of service.* For purposes of applying the limitations on benefits described in this section, a participant's high 3 years of service is the period of 3 consecutive calendar years during which the employee had the greatest aggregate compensation (as defined in § 1.415-2 (d)) from the employer.

(b) *Definitions of terms*—(1) *Annual benefit.* (i) The term "annual benefit" means a benefit which is payable annually in the form of a straight life annuity under a plan. Such benefit does not include any benefits attributable to either employee contributions or rollover contributions (as defined in sections 402(a)(5), 403(a)(4), 408(d)(3) and 409(b)(3)(C)).

(ii) If the plan provides for a benefit which is not payable in the form of a straight life annuity, the benefit is adjusted in accordance with paragraph (c) of this section for purposes of applying the limitations on benefits described in paragraph (a)(1) of this section.

(iii) If rollover contributions are made to the plan, the annual benefit attributable to these contributions is determined on the basis of reasonable actuarial assumptions. See paragraph (d) of this section for rules relating to employee contributions.

(iv) For puroses of this paragraph, when there is a transfer of assets or liabilities from one qualified plan to another, the annual benefit attributable to the assets transferred does not have to be taken into account by the transferee plan in applying the limitations of section 415. The annual benefit payable on account of the transfer for any individual that is attributable to the assets transferred will be equal to the annual benefit transferred on behalf of such individual multiple by a fraction, the numerator of which is the total assets transferred and the denominator of which is the total liabilities transferred.

(2) *Projected annual benefit.* For purposes of paragraph (a) of this section, a participant's "projected annual benefit" is equal to the annual benefit to which a participant in a defined benefit plan would be entitled under the terms of the plan based upon the following assumptions—

(i) The participant will continue employment until reaching normal retirement age as determined under the terms of the plan (or current age, if that is later).

(ii) The participant's compensation for the limitation year under consideration will remain the same until the date the participant attains the age described in paragraph (b)(2)(i) of this section.

(iii) All other relevant factors used to determine benefits under the plan for the limitation year under consideration will remain constant for all future limitation years.

(3) *Retirement benefit.* For purposes of this section, the term "retirement benefit" means a benefit provided under the terms of a defined benefit plan which is subject to the limitations of section 415(b) and this section.

(c) *Adjustment where form of benefit is other than straight life annuity*—(1) *In general.* (i) Where a defined benefit plan provides a retirement benefit in any form other than a straight life annuity, the plan benefit is adjusted to a straight life annuity beginning at the same age which is the actuarial equivalent of such benefit in accordance with rules determined by the Commissioner. This adjustment is for purposes of applying the limitations on benefits described in paragraph (a)(1) of this section to the projected annual benefit.

(ii) Examples of benefits that are not in the form of a straight life annuity are an annuity which includes a post-retirement death benefit and an annuity providing for a guaranteed number of payments.

(2) *Certain benefits to which no adjustment is required.* For purposes of the adjustment described in subparagraph (1) of this paragraph, the following values are not taken into account:

(i) The value of a qualified joint and survivor annuity (as defined in section 401(a)(11)(G)(iii) and the regulations thereunder) provided by the plan to the extent that such value exceeds the sum of (A) the value of a straight life annuity beginning on the same date and (B) the value of any post-retirement death benefits which would be payable even if the annuity was not in the form of a joint and survivor annuity.

(ii) The value of benefits that are not directly related to retirement benefits (such as pre-retirement disability and death benefits and post-retirement medical benefits).

(iii) The value of benefits provided by the plan which reflect post-retirement cost of living increases to the extent that such increases are in accordance with section 415(d) and § 1.415-5.

(3) *Examples.* The provisions of subparagraph (2)(i) of this paragraph may be illustrated by the following examples:

Example (1). (i) Corporation ABC maintains a defined benefit plan that provides a benefit in the form of a joint and 100% survivor annuity with a 10 year certain feature. The value of this benefit is equal to 126% of the value of the same amount payable as a straight life annuity beginning on the same date. If the benefit were payable in the form of a joint and 100% survivor annuity, without a 10 year certain feature, its value would be equal to only 123% of the value of the same amount payable as a

straight life annuity beginning on the same date. If the benefit were payable with a 10 year certain feature, but without the joint and 100% survivor aspect, its value would equal 110% of the value of the same amount payable as a straight life annuity beginning on the same date. Thus, the value of the post-retirement death benefits which would be payable even if the annuity were not in the form of a joint and survivor annuity is 10%.

(ii) Under subparagraph (2)(i) of this paragraph, the values which may be excluded for purposes of the adjustment required by subparagraph (1) of this paragraph are as follows: The value of the joint and survivor annuity provided by the plan (126%) to the extent that such value exceeds the sum of, the value of the straight life annuity beginning on the same date (100%) and the value of the post-retirement death benefits (10%). Therefore, the value of the joint and survivor annuity provided by the plan exceeds the value of the straight life annuity with the 10 year certain feature by 16% (126%–110%).

(iii) Although 16% of the excess benefit attributable to the annuity provided by this plan may, consequently, be ignored, 10% of such excess benefit must be taken into account for purposes of adjusting the benefit under the plan to an actuarially equivalent straight life annuity. Thus, for example, if ABC Corporation were to provide a benefit equal to 95% of a participant's compensation for the high three years of service, the limitation of section 415(b)(1)(B) would be exceeded because the benefit under the plan would be the actuarial equivalent of a straight life annuity equal to 105% of a participant's compensation for the high three years.

Example (2). Corporation XYZ maintains a nondiscriminatory defined benefit plan that provides a benefit which is equal to 100% of a participant's compensation for his high 3 years of service. For married participants, the benefit is payable in the form of a joint and 100% survivor annuity, while for participants who are not married, the benefit is payable in the form of a straight life annuity. The plan also provides that married participants can elect to receive their benefits in the form of a lump sum distribution which is the actuarial equivalent of a joint and 100% survivor annuity. The special rule set forth in subparagraph (2)(i) of this paragraph only applies, however, if the benefit is payable in the form of a qualified joint and survivor annuity. Any other forms of optional benefits must be adjusted to a straight life annuity in accordance with subparagraph (1) of this paragraph. Accordingly, because the benefit payable under the plan in the form of a lump sum distribution is the actuarial equivalent of a straight life annuity which is greater than 100% of a participant's compensation for his high 3 years, the limitation of section 415(b)(1)(B) has been exceeded.

(d) *Employee contributions*—(1) *Mandatory contributions.* Where a defined benefit plan provides for mandatory employee contributions (as defined in section 411(c)(2)(C)), the annual benefit attributable to such contributions is not taken into account for purposes of applying the limitations on benefits described in paragraph (a) of this section. The annual benefit attributable to mandatory contributions is determined by using the factors described in section 411(c)(2)(B) and the regulations thereunder, regardless of whether section 411 applies to that plan, based on the assumption that the employee continues to make such contributions at the same rate as in effect during the limitation year under consideration until the age described in paragraph (b)(2)(i) of this section. However, the mandatory employee contributions are considered a separate defined contribution plan maintained by the employer that is subject to the limitations on contributions and other additions described in § 1.415–6. (See § 1.415–7 for provisions relating to the limitations applicable where an employer maintains a defined benefit and defined contribution plan for the same employee.)

(2) *Voluntary contributions.* Where a defined benefit plan provides for voluntary employee contributions, these contributions are considered a separate defined contribution plan maintained by the employer which is subject to the limitations on contributions and other additions described in § 1.415–6. (See § 1.415–7 for provisions relating to the limitations applicable where an employer maintains a defined benefit and defined contribution plan for the same employee.)

(3) *Example:* The provisions of this paragraph may be illustrated by the following example:

Example. A is a participant in a defined benefit plan maintained by his employer. Under the terms of the plan A must make contributions to the plan in a stated amount to accrue benefits derived from employer contributions. These contributions are mandatory employee contributions within the meaning of section 411(c)(2)(C) and, thus, the annual benefit attributable to these contributions does not have to be taken into account for purposes of testing the projected annual benefit derived from employer contributions against the applicable limitation on benefits. However, these contributions are considered a separate defined contribution plan maintained by A's employer. Accordingly, with respect to the current limitation year: (1) The limitation on benefits (as described in paragraph (a)(1) of this section) is applicable to the projected annual benefit attributable to employer contributions to the defined benefit plan; (2) the limitation on contributions and other additions (as described in § 1.415–6) is applicable to the defined contribution plan consisting of A's mandatory contributions; and (3) the provisions of § 1.415–7 (relating to the limitations where the employer maintains a defined benefit and defined contribution plan for the same employee) are applicable to the defined benefit and defined contribution plan in which A participates. These same limitations would also apply, if, instead of providing for mandatory employee contributions the plan permitted voluntary employee contributions, since both voluntary and mandatory employee contributions are treated as separate defined contribution plans maintained by the employer.

(e) *Adjustment where benefit begins before age 55.* Where a defined benefit plan provides a retirement benefit beginning before age 55, the plan benefit is adjusted to the actuarial equivalent of a benefit beginning at age 55 in accordance with rules determined by the Commissioner. This adjustment is only for purposes of applying the dollar limitation described in section 415(b)(1)(A) to the projected annual benefit.

(f) *Total annual benefits not in excess of $10,000*—(1) *In general.* The projected annual benefit (without regard to the age at which benefits commence) payable with respect to a participant under any defined benefit plan is not considered to exceed the limitations on benefits described in section 415(b)(1) and in paragraph (a)(1) of this section if—

(i) The retirement benefits derived from employer contributions payable with respect to the participant under the plan and all other defined benefit plans of the employer do not in the aggregate exceed $10,000 for the limitation year, or for any prior limitation year, and

(ii) The employer has not at any time, either before or after the effective date of section 415, maintained a defined contribution plan in which the participant participated.

(2) *Special rule with respect to employee contributions.* For purposes of subparagraph (1)(ii) of this paragraph, if a defined benefit plan provides for employee contributions, whether voluntary or mandatory, these contributions will not be considered a separate defined contribution plan maintained by the employer. Thus, a contributory defined benefit plant may utilize the special dollar limitation provided for in this paragraph.

(3) *Computation of $10,000 amount.* For purposes of subparagraph (1)(i) of this paragraph, the value of the retirement benefit payable under the plan is not adjusted upward for early retirement provisions and benefits which are not in the form of a straight life annuity (whether or not directly related to retirement benefits).

(4) *Examples.* The application of this paragraph may be illustrated by the following examples:

Example (1). B is a participant in a defined benefit plan maintained by his employer. X

Corporation, which provides for a benefit payable in the form of a straight life annuity beginning at age 65. B's compensation for his high 3 years of service is $6,000. The plan does not provide for employee contributions and at no time has B been a participant in a defined contribution plan maintained by X. With respect to the current limitation year, B's retirement benefit under the plan is $9,500. Because B's retirement benefit does not exceed $10,000 and because B has at no time participated in a defined contribution plan maintained by X, the benefits payable under the plan are not considered to exceed the limitation on benefits otherwise applicable to B ($6,000). This result would remain the same, even if, under the terms of the plan, B's normal retirement age were age 50 or if the plan provided for employee contributions.

Example (2). Assume the same facts as in example (1), except that the plan provides for a benefit payable in the form of a life annuity with a 10 year certain feature. Assume that after the adjustment described in paragraph (c) of this section, B's projected annual benefit under the plan for the current limitation year is $10,500. However, for purposes of applying the special rule provided in this paragraph for total benefits not in excess of $10,000, there is no adjustment required if the retirement benefit payable under the plan is not in the form of a straight life annuity. Therefore, because B's retirement benefit does not exceed $10,000, B may receive the full $9,500 benefit without the otherwise applicable benefit limitations of this section being exceeded.

(g) *Special rule for service of less than 10 years*—(1) *In general.* Where a participant has less than 10 years of service with the employer at the time the participant begins to receive retirement benefits under the plan, the benefit limitations described in section 415(b)(1) and (4) and paragraphs (a)(1) and (f)(1) of this section are to be reduced by multiplying the otherwise applicable limitation by a fraction—

(i) The numerator of which is the number of years of service with the employer as of, and including, the current limitation year, and

(ii) The denominator of which is 10.

For purposes of this subparagraph, the term "year of service" is to be determined on a reasonable and consistent basis.

(2) *Examples.* The provision of this paragraph may be illustrated by the following examples:

Example (1). C begins employment with Acme Corporation on January 1, 1977, at the age of 58. Acme maintains only a noncontributory defined benefit plan which provides for a straight life annuity beginning at age 65 and uses the calendar year for the limitation and plan year. Acme has never maintained a defined contribution plan. C becomes a participant in Acme's plan on January 1, 1978 and works through December 31, 1983, when he is age 65. C begins to receive benefits under the plan in 1984. C's average compensation for his high 3 years of service is $20,000. Furthermore, under the terms of Acme's plan, for purposes of computing C's nonforfeitable percentage in his accrued benefit derived from employer contributions, C has only 7 years of service with Acme (1977–1983). Therefore, because C has less than 10 years of service with Acme at the time he begins to receive benefits under the plan, the maximum permissible annual benefit payable with respect to C is only $14,000 ($20,000 × 7/10).

Example (2). Assume the same facts as in example (1), except that C's average compensation for his high 3 years is $8,000. Because C has less than 10 years of service with Acme at the time he begins to receive benefits, the maximum benefit payable with respect to C would be reduced to $5,600 ($8,000 × 7/10). However, the special rule for total benefits not in excess of $10,000, provided in paragraph (f) of this section, is applicable in this case. Accordingly, C may receive an annual benefit of $7,000 ($10,000 × 7/10) without the benefit limitations of this section being exceeded.

Example (3). ABC corporation maintains a defined benefit plan. Instead of adjusting the benefit limitations in accordance with the method described in subparagraph (1) of this paragraph, the plan provides that the plan administrator may make the necessary adjustment by multiplying the otherwise applicable limitation by a fraction—(1) the numerator of which is the number of completed months of service with the employer, and (2) the denominator of which is 120. The plan further provides that a completed month of service with the employer is any calendar month in which the employee is credited with at least 83 hours of service. Provided that an hour of service is determined in a manner that is reasonable and consistent, the plan may use this alternative rule for making the adjustment required when a participant has less than 10 years of service with the employer at the time he begins to receive benefits under the plan.

(h) *Benefits under certain collectively bargained plans.* For a special rule affecting the compensation limitation described in section 415 (b) (1) (B) and paragraph (a) (1) (ii) of this section, see section 415 (b) (7). For a special effective date with respect to this rule, see § 1.415–1 (f) (5).

§ 1.415–4 Transitional rule for defined benefit plans.

(a) *In general.* If all of the conditions described in paragraph (b) of this section are satisfied, the annual benefit payable to an individual who was a participant in a defined benefit plan at any time before October 3, 1973, will not be considered to exceed the limitations of section 415 (b) and § 1.415–3 (a). This special transitional rule is also applicable with respect to the projected annual benefit payable to an individual who was a participant at any time before October 3, 1973, and after the effective date of section 415. In the case of an individual who was a participant in more than one defined benefit plan at any time before October 3, 1973, the annual benefit or projected annual benefit (whichever is applicable) payable to that individual from each plan will be deemed not to exceed the limitations of section 415 (b) and § 1.415–3 (a) if the benefit from each plan satisfies all of the conditions described in paragraph (b) of this section.

(b) *Conditions for application of transitional rule.* The conditions are—

(1) The annual benefit or projected annual benefit (whichever is applicable) payable to the participant does not exceed 100 percent of that participant's annual rate of compensation (as defined in paragraph (c) of this section) on October 2, 1973, or, if earlier, as of the date the participant separated from the service of the employer.

(2) The annual benefit or projected annual benefit (whichever is applicable) payable to the participant does not exceed the annual benefit which would have been payable to the participant at any time if—

(i) All the terms and conditions of the plan which were actually in effect on October 2, 1973 (or if earlier, on the date the participant separated from the service of the employer) had remained in effect, and

(ii) The participant's compensation taken into account for determining benefits under the plan for any period after October 2, 1973, did not exceed his annual rate of compensation (as defined in paragraph (c) of this section) on that date.

(3) The annual benefit payable to a participant who separated from the service of the employer before October 2, 1973, does not exceed the participant's nonforfeitable accrued benefit under the plan as of the date he separated from service.

(c) *Special rules*—(1) *Annual rate of compensation.* For purposes of this section, a participant's annual rate of compensation for a particular calendar year shall be the greater of—

(i) The participant's compensation for that calendar year as determined in accordance with the rules provided in § 1.415–2(d), or

(ii) The compensation which would be used to determine benefits under the plan if the employee separated from the service of the employer on October 2, 1973, or, if earlier, the employee's actual date of separation from the service of the employer.

(2) *Cost of living adjustments.* (i) If the plan, as in existence on October 2, 1973, provided for a post-retirement cost of living adjustment to benefits, the

adjustment may be taken into account in determining the participant's allowable benefit under paragraph (b) of this section. However, under paragraph (b)(2) of this section, if a plan is amended after October 2, 1973 to provide for cost-of-living benefit increases for retired participants, the transitional rule of this section will not apply to any increased benefit attributable to the amendment.

(ii) Any cost-of-living increase in the dollar limitation described in section 415(b)(1)(A) under 415(d) and § 1.415–5(a) may not be taken into account for purposes of determining the benefit limitations applicable to a participant under the transitional rule set forth in this section.

(3) *Retirement benefit beginning before age 55.* If a defined benefit plan provides a retirement benefit beginning before age 55, no actuarial adjustment of the benefit which can be provided under the transitional rule of this section is required to be made.

(4) *Retirement benefit payable in a form other than a straight life annuity.* If a defined benefit plan, as in existence on October 2, 1973, provided a retirement benefit in a form other than a straight life annuity, no actuarial adjustment (as otherwise required under § 1.415–3(c)) of the benefit which can be provided under the transitional rule of this section is required to be made. However, if the plan is amended after October 2, 1973, to provide a benefit of greater value than the benefit provided under the plan as of October 2, 1973, the transitional rule of this section will not apply to the increase in the value of the benefit attributable to the amendment. (See paragraph (b)(2)(i) of this section.)

(d) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). N, a participant in a noncontributory defined benefit plan maintained by his employer, retired on February 17, 1969, and became eligible to receive benefits under the plan. At that time, N had attained age 65, the normal retirement age under the plan. N's annual rate of compensation on February 17, 1969, was $90,000. Under the terms of the plan, as in effect on February 17, 1969, N was entitled to an annual benefit of $86,000, which was N's accrued nonforfeitable benefit as of that date. Because the annual benefit payable with respect to N (i) does not exceed 100 percent of N's compensation on February 17, 1969, (ii) does not exceed the annual benefit to which N was entitled on retirement, and (iii) did not exceed N's nonforfeitable accrued benefit on retirement, the plan may provide an annual benefit of $86,000 with respect to N for limitation years to which section 415 applies without violating the limitations imposed by section 415(b) and § 1.415–3.

Example (2). Assume the same facts as in example (1) except that on February 17, 1969, when N retired and became eligible to receive benefits under the plan, N had not attained the age of 55. Because the adjustment required under section 415(b)(2)(C) for retirement benefits beginning before age 55 is only applicable to the dollar limitation described in section 415(b)(1)(A), under paragraph (c)(3) of this section, no actuarial adjustment of the annual benefit of $86,000 payable with respect to N is required to be made. Therefore, the plan may pay annual benefits of $86,000 to N, even though N retires and is eligible to receive benefits before age 55.

§ 1.415–5 Cost of living adjustments for defined benefit plans.

(a) *Dollar limitation*—(1) *In general.* Under section 415(d)(1)(A), the dollar limitation described in section 415(b)(1)(A) applicable to defined benefit plans for limitation years to which section 415 applies is adjusted annually to take into account increases in the cost of living. The adjustment of the dollar limitation is made by multiplying an annual adjustment factor by $75,000. For purposes of this paragraph, the annual adjustment factor is to be determined by the Commissioner.

(2) *Effective date of adjustment.* The adjusted dollar limitation applicable to defined benefit plans is effective as of January 1 of each calendar year and applies with respect to limitation years ending with or within that calendar year.

(3) *Application of adjusted figure.* The adjusted dollar limitation is applicable to employees who are participants in a defined benefit plan and to employees who have retired or otherwise terminated their service under the plan with a nonforfeitable right to accrued benefits, regardless of whether they have actually begun to receive such benefits.

(b) *Average compensation for high 3 years of service limitation*—(1) *In general.* Under section 415(d)(1)(C), with regard to participants who have separated from service with a nonforfeitable right to an accrued benefit, the compensation limitation described in section 415(b)(1)(B) applicable to limitation years to which section 415 applies may be adjusted annually to take into account increases in the cost of living. For any limitation year beginning after the separation occurs, the adjustment of the compensation limitation is made by multiplying the annual adjustment factor (as defined in paragraph (b)(2) of this section) by the compensation limitation applicable to the participant in the limitation year he separated from the service of the employer.

(2) *Annual adjustment factor for compensation limitation.* For any limitation year beginning after the separation occurs, the annual adjustment factor is a fraction, the numerator of which is the adjusted dollar limitation for the limitation year in which the compensation limitation is being adjusted and the denominator of which is the adjusted dollar limitation for the limitation year in which the participant separated from service. In determining the adjusted dollar limitation for purposes of computing the annual adjustment factor under this subparagraph, the rule provided in paragraph (a)(2) of this section (relating to the effective date of the adjusted dollar limitation) shall be applicable.

(3) *Example.* The provisions of this paragraph may be illustrated by the following example:

Example. X is a participant in a qualified defined benefit plan maintained by his employer. The plan has a calendar year limitation year. Under the terms of the plan, X is entitled to a benefit consisting of a straight life annuity equal to 100 percent of X's compensation for his high 3 years of service. X's average compensation for his high 3 years is $20,000. X separates from the service of his employer on October 3, 1980, with a nonforfeitable right to his accrued benefit, and begins to receive benefit payments on November 1, 1980. Assume that the adjusted dollar limitation for 1980 is $100,000 and that the adjusted dollar limitation for 1981 is $110,000. For the limitation year beginning January 1, 1981 (the first limitation year beginning after X separates from service), the compensation limitation applicable to X may be adjusted for cost of living increases by multiplying the annual adjustment factor by $20,000. The annual adjustment factor for this limitation year is a fraction, the numerator of which is $110,000 (the adjusted dollar limitation for the limitation year in which the compensation limitation is being adjusted) and the denominator of which is $100,000 (the adjusted dollar limitation for the limitation year in which X separates from service). Thus, for the limitation year beginning January 1, 1981, if the plan provides for post-retirement cost of living adjustments, X's maximum annual benefit could be increased to $22,000 ($110,000/$100,000 × $20,000).

(c) *Automatic cost of living adjustments of dollar limitation*—(1) *General rule.* A defined benefit plan may include a provision which provides for an annual automatic cost-of-living adjustment of the dollar limitation described in section 415(b)(1)(A) in accordance with paragraph (a) of this section. However, the provision may only provide for scheduled annual increases in the dollar limitation which become effective no sooner than the date determined in accordance with paragraph (a)(2) of this section.

(2) *Example.* The provisions of this paragraph may be illustrated by the following example:

Example. Plan A is a defined benefit plan. Effective January 1, 1976, the plan was amended to limit all participants' annual plan benefits, determined on a straight life annuity basis, to $75,000. The amendment also provides that, "as of January 1 of each calendar year, the dollar limitation as determined by the Commissioner of Internal Revenue for that calendar year will become effective as the Maximum Permissible Dollar Amount of the plan for that calendar year. The Maximum Permissible Dollar Amount for a calendar year applies to limitation years ending with or within that calendar year." The automatic cost-of-living adjustment of the dollar limitation of plan A satisfies the requirements of paragraph (c)(1) of this section.

§ 1.415–6 Limitation for defined contribution plans.

(a) *General rules*—(1) *Maximum limitations.* Under section 415(c) and this section, to satisfy the provisions of section 415(a) for any limitation year, the annual additions (as defined in paragraph (b) of this section) made with respect to the account of a participant in a defined contribution plan (as defined in section 414(i)) for the limitation year may not exceed the lesser of—

(i) $25,000, or

(ii) 25 percent of the participant's compensation (as defined in subparagraph (3) of this paragraph) for the limitation year.

(2) *Adjustment to dollar limitation.* The dollar limitation described in section 415(c)(1)(A) and subparagraph (1)(i) of this paragraph is adjusted for cost of living increases under section 415(d) and paragraph (d) of this section. The adjusted figure is effective as of January 1 of each calendar year and applies to limitation years that end during that calendar year.

(3) *Participant's compensation.* For purposes of this section, the term "participant's compensation" for any limitation year has the same meaning as set forth in § 1.415–2(d). The term "participant's compensation" includes all compensation actually paid or made available to the individual for the entire limitation year even though the individual may not have been a participant for the entire limitation year.

(4) *Section 403(b) annuity contracts.* For special rules with respect to section 403(b) annuity contracts purchased by educational organizations, hospitals and home health service agencies, see paragraph (e) of this section.

(b) *Annual additions*—(1) *In general.* For purposes of this section, the term "annual additions" means the sum, credited to a participant's account for any limitation year, of—

(i) Employer contributions,

(ii) The lesser of the amount of employee contributions in excess of 6% of his compensation (as defined in paragraph (a)(3) of this section) for the limitation year, or one half of the employee contributions for that year, and

(iii) Forfeitures.

(2) *Employer contributions.* (i) For purposes of paragraph (b)(1)(i) of this section, the term "annual additions" includes employer contributions which are made under the plan. Furthermore, the Commissioner may in an appropriate case, considering all of the facts and circumstances treat transactions between the plan and the employer or certain allocations to participants' accounts as giving rise to annual additions.

(ii) If, in a particular limitation year, an employer contributes an amount to a participant's account because of an erroneous forfeiture in a prior limitation year, or because of an erroneous failure to allocate amounts in a prior limitation year, the contribution will not be considered an annual addition with respect to the participant for that particular limitation year, but will be considered an annual addition for the limitation year to which it relates. An example of a situation in which an employer contribution might occur under the circumstances described in the preceding sentence is a retroactive crediting of service for an employee under 29 CFR 2530.200(b)–2(a)(3) (regulations promulgated by the Department of Labor) in accordance with an award of back pay. For purposes of this subdivision, it is immaterial whether the amount so contributed in the particular limitation year takes into account investment gains or losses or other gains or losses attributable to the period subsequent to the year to which the contribution relates. The rule described in this subdivision is only applicable for purposes of applying the limitations of section 415.

(iii) The restoration of an employee's accrued benefits by the employer in accordance with section 411(a)(3)(D) or section 411(a)(7)(C) will not be considered an annual addition for the limitation year in which the restoration occurs. (See § 1.411(a)–7(d)(6)(iii)(B).)

(iv) The transfer of funds from one qualified plan to another will not be considered an annual addition for the limitation year in which the transfer occurs.

(v) In the case of a defined contribution plan (such as a money purchase pension plan) to which an employer makes a contribution in order to reduce an accumulated funding deficiency (as defined in section 412(a)), the contribution will be considered an annual addition for the limitation year when the contribution was otherwise required to have been made. The special rule provided in the preceding sentence is available however, only if the contribution is allocated to those participants who would have received an addition if the contribution had been timely made. For purposes of determining the amount of the annual addition under this subdivision, any reasonable amount of interest paid by the employer is disregarded. However, any interest paid by the employer that is in excess of a reasonable amount, as determined by the Commissioner, is taken into account as an annual addition.

(vi) In the case of a defined contribution plan (such as a money purchase pension plan) for which there has been a waiver of the minimum funding standard in a prior limitation year in accordance with section 412(d), that portion of an employer contribution in a subsequent limitation year which, if not for the waiver, would have otherwise been required in the prior limitation year under section 412(a) will be considered an annual addition for the prior limitation year. For purposes of determining the amount of such annual addition for the prior limitation year, any reasonable amount of interest paid by the employer in addition to the actual make-up contribution is disregarded. However, any interest paid by the employer that is in excess of a reasonable amount, as determined by the Commissioner, is taken into account as an annual addition for the prior limitation year.

(3) *Employee contributions.* For purposes of paragraph (b)(1)(ii) of this section, the term "annual additions" includes, to the extent employee contributions would otherwise be taken into account under this section as an annual addition, mandatory employee contributions (as defined in section 411(c)(2)(C) and the regulations thereunder) as well as voluntary employee contributions. The term "annual additions" does not include—

(i) Rollover contributions (as defined in section 402(a)(5), 403(a)(4), 408(d)(3) and 409(b)(3)(C)),

(ii) Repayments of loans made to a participant from the plan,

(iii) Repayments of amounts described in section 411(a)(7)(B) (in accordance with section 411(a)(7)(C)) and section 411(a)(3)(D) (see § 1.411(a)–7(d)(6)(iii)(B)).

However, the Commissioner may in an appropriate case, considering all of the facts and circumstances, treat transactions between the plan and the employee or certain allocations to participants' accounts as giving rise to annual additions.

(4) *Contributions other than cash.* For purposes of this paragraph, a contribution by the employer or employee of property other than cash will be considered to be a contribution in an amount equal to the fair market value (as defined in § 20.2031–1 of the Estate Tax Regulations) of the property on the date the contribution is made. The contribution described in this subparagraph may, however, constitute a prohibited transaction within the meaning of section 4975(c)(1).

(5) *Forfeitures.* With respect to a particular limitation year, forfeitures will be considered to be an annual addition to the plan if such forfeitures are allocated to the account of the participant as of any day within that limitation year.

(6) *Excess annual additions.* If as a result of either the allocation of forfeitures or a reasonable error in estimating a participant's annual compensation, the annual additions under the terms of a plan for a particular participant would cause the limitations of section 415 applicable to that participant for the limitation year to be exceeded, the excess amounts shall not be deemed annual additions in that limitation year if they are treated in accordance with any one of the following subdivisions:

(i) The excess amounts in the participant's account must be allocated and reallocated to other participants in the plan. However, if the allocation or reallocation of the excess amounts pursuant to the provisions of the plan causes the limitations of section 415 to be exceeded with respect to each plan participant for the limitation year, then these amounts must be held unallocated in a suspense account. If a suspense account is in existence at any time during a particular limitation year, other than the limitation year described in the preceding sentence, all amounts in the suspense account must be allocated and reallocated to participants' accounts (subject to the limitations of section 415) before any employer contributions and employee contributions which would constitute annual additions may be made to the plan for that limitation year.

(ii) The excess amounts in the participant's account must be used to reduce employer contributions for the next limitation year (and succeeding limitation years, as necessary) for that participant if that participant is covered by the plan of the employer as of the end of the limitation year. However, if that participant is not covered by the plan of the employer as of the end of the limitation year, then the excess amounts must be held unallocated in a suspense account for the limitation year and allocated and reallocated in the next limitation year to all of the remaining participants in the plan in accordance with the rules set forth in paragraph (b)(6)(i) of this section. Furthermore, the excess amounts must be used to reduce employer contributions for the next limitation year (and succeeding limitation years, as necessary) for all of the remaining participants in the plan. For purposes of this subdivision, excess amounts may not be distributed to participants or former participants.

(iii) The excess amounts in the participant's account must be held unallocated in a suspense account for the limitation year and allocated and reallocated in the next limitation year to all of the participants in the plan in accordance with the rules provided in paragraph (b)(6)(i) of this section. The excess amounts must be used to reduce employer contributions for the next limitation year (and succeeding limitation years, as necessary) for all of the participants in the plan. For purposes of this subdivision, excess amounts may not be distributed to participants or former participants.

If a suspense account is in existence at any time during the limitation year in accordance with this subparagraph, investment gains and losses and other income may, but need not, be allocated to the suspense account. See § 1.401(a)–2(b) for provisions relating to the disposition of a suspense account in existence upon termination of a plan.

(7) *Time when annual additions credited.* (i) For purposes of this paragraph, an annual addition is credited to the account of a participant for a particular limitation year if it is allocated to the participant's account under the terms of the plan as of any date within that limitation year. However, an amount is not deemed allocated as of any date within a limitation year if such allocation is dependent upon participation in the plan as of any date subsequent to such date.

(ii) For purposes of this subparagraph, employer contributions shall not be deemed credited to a participant's account for a particular limitation year, unless the contributions are actually made to the plan no later than 30 days after the end of the period described in section 404(a)(6) applicable to the taxable year with or within which the particular limitation year ends. If, however, contributions are made by an employer exempt from Federal income tax under section 501(a), the contributions must be made to the plan no later than the 15th day of the sixth calendar month following the close of the taxable year (or fiscal year, if no taxable year) with or within which the particular limitation year ends.

(iii) For purposes of this paragraph, employee contributions, whether voluntary or mandatory, shall not be deemed credited to a participant's account for a particular limitation year, unless the contributions are actually made to the plan within that limitation year.

(iv) For purposes of this paragraph, amounts contributed to an individual retirement plan (as described in section 7701(a)(37)) are treated as allocated to the individual's account as of the last day of the limitation year ending with or within the taxable year for which the contribution is made.

(c) *Examples.* The provisions of paragraphs (a) and (b) of this section may be illustrated by the following examples:

Example (1). P is a participant in a qualified profit-sharing plan maintained by his employer, ABC Corporation. The limitation year for the plan is the calendar year. P's compensation (as defined in paragraph (a)(3) of this section) for the current limitation year is $20,000 consisting exclusively of salary. Because the compensation limitation described in section 415 (c)(1)(B) applicable to P for the current limitation year is lower than the dollar limitation described in section 415(c)(1)(A) (as adjusted for cost of living increases), the maximum annual addition which can be allocated to P's account for the current limitation year is $5,000 (25 percent of $20,000).

Example (2). Assume the same facts as in Example (1), except that P's compensation for the current limitation year is $140,000. The maximum amount of annual additions that may be allocated to P's account in the current limitation year may not exceed the lesser of $35,000 (25 percent of $140,000) or the dollar limitation as in effect as of January 1 of the calendar year in which the current limitation year ends.

Example (3). Assume the same facts as in Example (1), except that P's compensation for the current limitation year consists of $20,000 salary and a bonus which is paid to P after the end of the current limitation year. Because the bonus was not actually paid or made available to P within the current limitation year, P's compensation for that year, for purposes of computing the compensation limitation described in section 415(c)(1)(B), may not include the bonus. However, if ABC Corporation had elected under § 1.415–2(d)(4) to use the compensation accrued for the current limitation year, then the amount of the bonus which accrued within the current limitation year could have been taken into account.

Example (4). Employer N maintains a qualified profit-sharing plan which uses the calendar year as its plan year and its limitation year. N's taxable year is a fiscal year beginning June 1 and ending May 31. Under the terms of the profit-sharing plan maintained by N, employer contributions are made to the plan two months after the close of N's taxable year and are allocated as of the last day of the plan year ending within that taxable year. Thus, employer contributions for the 1977 calendar year limitation year are made on July 31, 1978 (the date that is two months after the close of N's taxable year ending May 31, 1978) and are allocated as of December 31, 1977. Because the employer contributions are actually made to the plan no later than 30 days after the end of the period described in section 404(a)(6) with respect to N's taxable year ending May 31, 1978, the contributions will be considered annual additions for the 1977 calendar year limitation year.

Example (5). Assume the same facts as in example (4), except that the plan year for the profit-sharing plan maintained by N is the 12-month period beginning on March 1 and ending on February 28. Under the terms of the plan, an employer contribution which is made to the plan on July 31, 1978, is allocated to participants' accounts as of February 28, 1978. Because the last day of the plan year is in the 1978 calendar year limitation year, and because, under the terms of the plan, employer contributions are allocated to participants' accounts as of the last day of the plan year, the contributions are considered annual additions for the 1978 calendar year limitation year.

Example (6). XYZ Corporation maintains a profit-sharing plan to which a participant may make voluntary employee contributions for any year not to exceed 10 percent of the participant's compensation for the year. The plan permits a participant to make retroactive make-up contributions for any year for which he contributed less than 10 percent of compensation. XYZ uses the calendar year as the plan year and the limitation year. Under the terms of the plan, voluntary employee contributions are credited to a participant's account for a particular limitation year if such contributions are allocated to the participant's account as of any date within that limitation year. Participant A's compensation is as follows:

Limitation year and compensation	
1976	$10,000
1977	$12,000
1978	$14,000
1979	$16,000

Participant A makes no voluntary employee contributions during limitation years 1976, 1977 and 1978. On October 1, 1979, participant A makes a voluntary employee contribution of $5,200 (10 percent of A's aggregate compensation for limitation years 1976, 1977, 1978 and 1979 of $52,000). Under the terms of the plan, $1,000 of this 1979 contribution is allocated to A's account as of limitation year 1976; $1,200 is allocated to A's account as of limitation year 1977; $1,400 is allocated to A's account as of limitation year 1978, and $1,600 is allocated to A's account as of limitation year 1979. However, under the rule set forth in paragraph (b)(7)(iii) of this section, employee contributions will not be considered credited to a participant's account for a particular limitation year for section 415 purposes unless the contributions are actually made to the plan within that limitation year. Thus, A's voluntary employee contribution of $5,200 made on October 1, 1979 would be considered as credited to A's account only for the 1979 calendar year limitation year, notwithstanding the plan provisions. (See section 415(c)(2)(B) and paragraph (b)(1)(ii) of this section for provisions relating to the amount of A's contribution that would be considered an annual addition to A's account for the 1979 calendar year limitation year.)

(d) *Cost-of-living adjustment for defined contribution plans*—(1) *In general.* Under section 415(d)(1)(B), the dollar limitation described in section 415(c)(1)(A) applicable to limitation years to which section 415 applies is adjusted annually to take into account increases in the cost of living. See § 1.415–5(a) for the procedure for making this adjustment and the effective date of the adjusted dollar limitation.

(2) *Automatic adjustments with respect to dollar limitation.* A defined contribution plan may include a provision which provides for an annual automatic cost of living adjustment of the dollar limitation described in section 415(c)(1)(A).

(e) *Special election for section 403(b) contracts purchased by educational organizations, hospitals and home health service agencies*—(1) *In general.* (i) An annuity contract described in section 403(b) is treated as a defined contribution plan for purposes of the limitations on contributions imposed by section 415. Thus, section 403(b) annuity contracts are subject to the rules regarding the amount of annual additions which may be made to a participant's account for any limitation year under section 415(C)(1) and paragraph (a)(1) of this section. Section 403(b) annuity contracts are also subject to the limitations imposed by section 403(b)(2)(A) with respect to the amount of employer contributions for the purchase of an annuity contract that may be excluded from the gross income of the employee on whose behalf the annuity contract is purchased. Therefore, unless a special election has been made as described in section 415(c)(4) and subparagraph (2) of this paragraph, the excludable amount of a contribution toward the purchase of a section 403(b) annuity contract for a particular taxable year is the lesser of the exclusion allowance computed under section 403(b)(2)(A) for that taxable year or the limitation imposed by section 415(c)(1) for the limitation year ending with or within that taxable year.

(ii) If the amount of contributions for an individual under a section 403(b) annuity contract for a taxable year exceeds the limitation of section 415(c)(1), then for purposes of computing the exclusion allowance under section 403(b)(2)(A) for future taxable years, the excess contribution is considered as an amount contributed by the employer for an annuity contract which was excludable from the employee's gross income for a prior taxable year under section 403(b)(2)(A)(ii). Thus, for future taxable years, the exclusion allowance under section 403(b)(2)(A) is reduced by the amount of the excess contribution even though that amount was not excludable from the employee's gross income in the taxable year when it was made. For a special effective date for the rule provided in this subdivision, see § 1.415–1(f)(6).

(iii) For purposes of the limitation imposed by section 415(c)(1), the amount contributed toward the purchase of a section 403(b) annuity contract is treated as allocated to the employee's account as of the last day of the limitation year ending with or within the taxable year during which the contribution is made.

(iv) For rules relating to the limitation year applicable to an individual on whose behalf a section 403(b) annuity contract has been purchased, see § 1.415–2(b)(7).

(2) *Alternative limitations.* (i) Under section 415(c)(4) and this paragraph, a special election is permitted with respect to section 403(b) annuity contracts (including custodial accounts treated as section 403(b) annuity contracts) purchased by educational organizations (as described in section 170(b)(1)(A)(ii)), home health service agencies (as described in paragraph (e)(2)(vi) of this section) and hospitals. Instead of the compensation limitation described in section 415(c)(1)(B) otherwise applicable to the amount of annual additions that may be made to the account of a participant in a defined contribution plan in any limitation year, an individual on whose behalf a section 403(b) annuity contract has been purchased may elect to have substituted for such limitation the amounts described in subparagraph (3) ("(A) election limitation") or (4) ("(B) election limitation") of this paragraph. Instead of the exclusion allowance determined under section 403(b)(2)(A) otherwise applicable for the taxable year with or within which the limitation year ends to an individual on whose behalf a section 403(b) annuity contract has been purchased, an individual may elect to

have substituted for such exclusion allowance the amount described in paragraph (e)(5) ("(C) election limitation") of this section. The election shall be made at the time and in the manner prescribed in subparagraph (6) of this paragraph.

(ii) With respect to any limitation or taxable year, an election by an individual to have any one of the alternative limitations described in paragraph (e) (3), (4) or (5) of this section apply to contributions made on his behalf by the employer with respect to any section 403(b) annuity contract precludes an election to have any other of the alternative limitations apply for any future limitation or taxable year with respect to any section 403(b) annuity contract purchased by any employer of such individual.

(iii) With respect to any limitation year, an election by an individual to have paragraph (e)(3) of this section ("(A) election limitation") apply to contributions made on his behalf by the employer with respect to any section 403(b) annuity contract precludes an election to have any of the alternative limitations apply for any future limitation or taxable year with respect to any section 403(b) annnuity contract purchased by any employer of such individual.

(iv) Any election made under this paragraph is irrevocable.

(v) The election made by the individual under this paragraph shall be controlling for all prior taxable years in which, in accordance with § 11.415(c)(4)–1(b), the individual had taken advantage of an alternative limitation, even if inconsistent with the alternative limitation used in determining income tax liability for those taxable years under that section. An individual, who took advantage of an alternative limitation under § 11.415(c)(4)–1(b) which is inconsistent with the one finally elected, may correct this inconsistency for each prior open taxable year in either of two ways. The individual may redetermine income tax liability as though none of the alternative limitations applied for that taxable year. Alternatively, the individual may recompute income tax liability for the particular taxable year in a manner consistent with the alternative limitation elected by the individual under this paragraph rather than the limitation originally used in accordance with § 11.415(c)(4)–1(b). Furthermore, if an individual, who had taken advantage of an alternative limitation in prior taxable years under § 11.415(c)(4)–1(b), elects under this paragraph not to have any of the alternative limitations apply, the individual, will, nevertheless, be considered to have elected the alternative limitation used under § 11.415(c)(4)–1(b). However, the rule described in the preceding sentence is not applicable if the individual recomputes income tax liability for all prior open taxable years in which an alternate limitation was taken advantage of under § 11.415(c)(4)–1(b) as though none of the alternative limitations applied for those taxable years. For purposes of section 6654 (relating to the failure of an individual to pay estimated tax), a difference in tax for such years resulting from a difference in these limitations is not treated as an underpayment. This rule only applies to the extent the difference in tax is due to the election of one of the alternative limitations or to a final election not to use one of the alternative limitations.

(vi) For purposes of this paragraph, a home health service agency is an organization described in section 501(c)(3) which is exempt from tax under section 501(a) and which has been determined by the Secretary of Health, Education and Welfare to be a home health service agency under section 1395x(o) of Title 42 of the United States Code.

(3) *"(A) election limitation."* For the limitation year that ends with or within the taxable year in which an individual eligible to make a special election separates from the service of his employer (and only for that limitation year), the "(A) election limitation" is the exclusion allowance computed under section 403(b)(2)(A) for the individual's taxable year in which the separation occurs (without regard to section 415). However, in determining this limitation, there may only be taken into account the individual's years of service for the employer (as defined in section 403(b)(4) and the regulations thereunder) and contributions made by the employer (as described in section 403(b)(2)(A)(ii) and regulations thereunder) during the period of years (not exceeding 10) ending on the date of separation. For purposes of this subparagraph, all service for the employer performed within the period beginning ten years before the date of separation and ending on the separation date must be taken into account. However, the "(A) election limitation" may not exceed the dollar limitation described in section 415(c)(1)(A) (as adjusted for cost-of-living increases under section 415(d)(1) and paragraph (d) of this section) applicable to the individual for the limitation year.

(4) *"(B) election limitation."* For any limitation year with respect to an individual eligible to make a special election, the "(B) election limitation" is equal to the least of the following amounts—

(i) $4,000, plus 25 percent of the participant's includible compensation (as defined in section 403(b)(3) and the regulations thereunder) for the taxable year with or within which the limitation year ends.

(ii) The amount of the exclusion allowance determined under section 403(b)(2)(A) and the regulations thereunder for the taxable year with or within which the limitation year ends.

(iii) $15,000.

(5) *"(C) election limitation."* For any taxable year with respect to an individual eligible to make a special election, the "(C) election limitation" is the lesser of the dollar limitation described in section 415(c)(1)(A) (as adjusted for cost-of-living increases under section 415(d)(1) and paragraph (d) of this section) or the compensation limitation described in section 415(c)(1)(B) applicable to the individual for the limitation year ending with or within that taxable year. For purposes of determining the compensation limitation under this subparagraph for a particular limitation year, the term "compensation" has the same meaning as set forth in § 1.415–2(d).

(6) *Time and method of making election.* (i) With respect to any taxable year, an election by an individual to take advantage of any of the alternative limitations described in subparagraphs (3), (4) or (5) of this paragraph is made by determining income tax liability for that taxable year in a way which is consistent with one of the alternative limitations.

(ii) In the case of an individual who, in accordance with § 11.415 (c)(4)–1 (b), took advantage of one of the alternative limitations for prior taxable years, the election described in this paragraph to take advantage of an alternative limitation will be effective only if the following two conditions are satisfied. The first condition is that the election must be made (in the manner described in subdivision (i) of this subparagraph) in the individual's income tax return for the taxable year in which final regulations under section 415 are first published in the **Federal Register.** The second condition is that if the individual's election is different from the limitation used under § 11.415 (c)(4)–1 (b) in determining income tax liability for prior taxable years, the individual must correct this inconsistency by recomputing income tax liability for all such prior open taxable years in

accordance with paragraph (e)(2)(v) of this section. See paragraph (e)(2)(v) of this section for rules relating to an individual who had taken advantage of an alterntive limitation in prior taxable years under § 11.415 (c)(4)–1 (b) but does not elect any of the alternative limitations for the taxable year in which final regulations under section 415 are first published in the Federal Register.

(7) *Examples:* The provisions of this paragraph may be illustrated by the following examples:

Example (i). Doctor M is an employee of H Hospital (an organization described in section 501(c)(3) and exempt from taxation under section 501(a)) for the entire 1976 calendar year. M is not in control of H within the meaning of section 414 (b) or (c), as modified by section 415(h). M uses the calendar year as the taxable year and limitation year. M has includible compensation (as defined in section 403(b)(3) and the regulations thereunder) and compensation (as defined in paragraph (a)(3) of this section) for taxable year 1976 of $30,000, and M has 4 years of service (as defined in § 1.403 (b)–1 (f)) with H as of December 31, 1976. During M's prior service with H, H had contributed a total of $12,000 on M's behalf for annuity contracts described in section 403(b), which amount was excludable from M's gross income for such prior years. Thus, for the limitation year ending with or within taxable year 1976, M's exclusion allowance determined under section 403(b)(2)(A) is $12,000 ((.20 × $30,000 × 4) − $12,000). The limitation imposed by section 415(c)(1) that is applicable to M for limitation year 1976 is the lesser of $26,825 (the amount described in section 415(c)(1)(A) adjusted under section 415 (d)(1) (b) for limitation year 1976) or $7,500 (the amount described in section 415(c)(1)(B)). Absent the special elections provided in section 415(c)(4) and this paragraph, $7,500 would be the maximum contribution H could make for annuity contracts described in section 403(b) on M's behalf for limitation year 1976 without increasing M's gross income for taxable year 1976. However, because H is an organization described in section 415(c)(4), M may make a special election with respect to amounts contributed by H on M's behalf for section 403(b) annuity contracts for 1976. Assumne that M does not separate from the service of H during 1976 and that, therefore, the "(A) election limitation" described in section 415(c)(4)(A) and subparagraph (3) of this paragraph is not available to M. If M elects the "(B) election limitation" for 1976, H could contribute $11,500 on M's behalf for annuity contracts described in section 403(b) for that year (the least of $11,500 (the amount described in section 415 (c)(4)(B) (i)); $12,000 (the amount described in section 415 (c)(4)(B) (ii)); and $15,000 (the amount described in section 415 (c)(4)(B) (iii)). If M elects the "(C) election limitation" for 1976, H could only contribute up to $7,500 (the lower of the amounts described in section 415(c)(1) (A) or (B)) for section 403(b) annuity contracts on M's behalf for 1976 without increasing M's gross income for that year.

Example (2). Assume the same facts as in example (1) except that H had contributed a total of $18,000 on M's behalf for annuity contracts in prior years, which amount was excludable from M's gross income for such prior years. Accordingly, for 1976, M's exclusion allowance determined under section 403(b)(2)(A) is $6,000 ((.20 = × $30,000 × 4) = $18,000). The limitation imposed by section 415(c)(1) applicable to M for 1976 is $7,500 (the lesser of the amount described in section 415(c)(1) (A) or (B)). Absent the special elections provided in section 415(c)(4) and this paragraph, $6,000 would be the maximum amount H could contribute for annuity contracts described in section 403(b) on M's behalf for 1976 without increasing M's gross income for that year. However, if M elects the "(c) election limitation" for 1976, H may contribute up to $7,500 without increasing M's gross income for that year.

Example (3). G, a teacher, is an employee of E, an educational organization described in section 170(b)(1)(A)(ii). G uses the calendar year as the taxable year and G uses the 12-month consecutive period beginning July 1 as the limitation year. G has includible compensation (as defined in section 403(b)(3) and the regulations thereunder) for taxable year 1976 of $12,000 and G has compensation (as defined in paragraph (a)(3) of this section) for the limitation year ending with or within taxable year 1976 of $12,000. G has 20 years of service (as defined in § 1.403(b)–1(f)) as of May 30, 1976, the date G separates from the service of E. During G's service with E before taxable year 1976, E had contributed $34,000 toward the purchase of a section 403(b) annuity contract on G's behalf, which amount was excludable from G's gross income for such prior years. Of this amount, $19,000 was so contributed and excluded during the 10 year period ending on May 30, 1976. For the taxable year 1976, G's exclusion allowance determined under section 403(b)(2)(A) is $14,000 ((.20×$12,000×20) = $34,000). Absent the special elections described in section 415(c)(4) and this paragraph, $3,000 (the lesser of G's exclusion allowance for taxable year 1976 or the section 415(c)(1) limitation applicable to G for the limitation year ending with or within such taxable year) would be the maximum excludable contribution E could make for section 403(b) annuity contracts on G's behalf for the limitation year ending with or within taxable year 1976. However, because E is an organization described in section 415(c)(4), G may make a special election with respect to amounts contributed on G's behalf by E for section 403(b) annuity contracts for the limitation year ending with or within taxable year 1976. Because G has separated from the service of E during such taxable year, G may elect the "(A) election limitation" as well as the "(B) election limitation" or the "(C) election limitation." If G elects the "(A) election limitation" for the limitation year ending with or within taxable year 1976, E could contribute up to $5,000 ((.20×$12,000×10) = $19,000) on G's behalf for section 403(b) annuity contracts for such limitation year without increasing G's gross income for the taxable year with or within which such limitation year ends. If G elects the "(B) election limitation" for such limitation year, E could contribute $7,000 (the least of $7,000 (the amount described in section 415(c)(4)(B)(i)); $14,000 (the amount described in section 415(c)(4)(B)(ii)); and $15,000 (the amount described in section 415(c)(4)(B)(iii)). If G elects the "(C) election limitation" for taxable year 1976, E could contribute $3,000 (the lesser of the amounts described in section 415(c)(1) (A) or (B)).

(f) *Special rules with respect to the application of section 415(c)(1)(B) with section 404(e)(4).* For special rules relating to the application of the compensation limitation described in section 415(c)(1)(B) with the minimum allowable deduction described in section 404(e)(4) in the case of a plan which provides contributions for employees, some or all of whom are employees within the meaning of section 401(c)(1), see the regulations under section 404(e).

(g) *Special rules for employee stock ownership plans*—(1) *General definitions.* For purposes of this paragraph—(i) An employee stock ownership plan is a plan which meets the requirements of either section 4975(e)(7) and the regulations thereunder, or whichever of the following is applicable: section 301(d) of the Tax Reduction Act of 1975 (89 Stat. 38, 26 CFR 1.46–7) and the regulations thereunder (26 CFR 1.46–8) or section 409A and the regulations thereunder.

(ii) The term "employer securities" means, in the case of an employee stock ownership plan within the meaning of section 4975(e)(7) and the regulations thereunder, qualifying employer securities within the meaning of section 4975(e)(8), that are also described in section 301(d)(9)(A) of the Tax Reduction Act of 1975 and the regulations thereunder or section 409A(l) and the regulations thereunder, whichever is applicable. In the case of an employee stock ownership plan described in section 301(d)(2) of the Tax Reduction Act of 1975 or section 409A, whichever is applicable, such term means employer securities within the meaning of section 301(d)(9)(A) of that Act and the regulations thereunder or section 409A(l) and the regulations thereunder, whichever is applicable.

(iii) An individual is considered to own more than 10 percent of the employer's stock if, without regard to stock held under the employee stock ownership plan, the individual owns (after application of section 1563(e), relating to constructive ownership of stock) more than 10 percent of the total combined voting power of all classes of stock entitled to vote or more than 10 percent of the total value of shares of all classes of stock.

(2) *Special dollar limitation.* In the case of an employee stock ownership plan which meets the requirements of paragraph (g)(3) of this section, the applicable dollar limitation for a limitation year equals the sum of—

(i) The dollar amount described in section 415(c)(1)(A) (as so adjusted for that limitation year), and

(ii) The lesser of the amount determined under paragraph (g)(2)(i) of this section or the amount of employer securities within the meaning of paragraph (g)(1)(ii) of this section contributed to the employee stock ownership plan.

(3) *Employee stock ownership plans to which the special dollar limitation applies.* For purposes of this paragraph, the special dollar limitation is only applicable to an employee stock ownership plan for a particular limitation year for which no more than one-third of the employer contributions for the limitation year are allocated to employees who are officers, shareholders owning more than 10 percent of the employer's stock (as determined under subparagraph (1)(iii) of this paragraph), or whose compensation for the limitation year exceeds twice the dollar amount described in section 415(c)(1)(A) (as adjusted for cost-of-living increases under section 415(d)(1) and paragraph (d) of this section).

(4) *Cash contributions treated as contributions of employer securities.* For purposes of the special dollar limitation—

(i) In the case of an employee stock ownership plan in which the employer makes cash contributions which are used in a direct acquisition of employer securities, the cash contributions are treated as a contribution of employer securities for the limitation year, provided that the securities are employer securities within the meaning of paragraph (g)(1)(ii) of this section and are allocated to participants under the terms of the plan as of any date within that limitation year. However, this subdivision is not applicable unless the employer securities are purchased no later than 30 days after the end of the period described in section 404(a)(6) applicable to the taxable year with or within which the limitation year ends.

(ii) In the case of an employee stock ownership plan to which an exempt loan as described in § 54.4975–7(b) has been made, the employer's contribution of both principal and interest used to repay the exempt loan for the limitation year will be treated as a contribution of employer securities for that limitation year, provided that the securities allocated to participants are employer securities within the meaning of paragraph (g)(1)(ii) of this section.

(5) *Amounts considered as annual additions.* For purposes of applying the limitations of section 415(c)(1) and this section and for the special dollar limitation, in the case of an employee stock ownership plan to which an exempt loan as described in § 54.4975–7(b) has been made, the amount of employer contributions which is considered an annual addition for the limitation year is calculated with respect to employer contributions of both principal and interest used to repay the exempt loan for that limitation year.

(6) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). Employee N is a participant in an employee stock ownership plan maintained by his employer, M Corporation, which meets the requirements of section 4975(e)(7) and the regulations thereunder. The plan also meets the requirements set forth in subparagraph (3) of this paragraph. M does not maintain any other qualified plan. The limitation year for the plan is the calendar year. For 1977, N has compensation (as defined in paragraph (a)(3) of this section) of $160,000. Without the special dollar limitation described in subparagraph (2) of this paragraph, under section 415(c)(1), N could only have annual additions of $28,175 (the lesser of the dollar limitation described in section 415(c)(1)(A) as adjusted for cost of living increases ($28,175) or the compensation limitation described in section 415(c)(1)(B) (25% of $160,000 = $40,000)) made to his account for the 1977 limitation year. Under the special dollar limitation, N would be able to have annual additions of $56,350 ($28,175×2) made to his account for the 1977 limitation year, provided that amounts contributed in excess of $28,175 consist solely of employer securities. However, N is also subject to the compensation limitation described in section 415(c)(1)(B). Therefore, even under the special dollar limitation, N may only have annual additions of $40,000 made to his account for the 1977 limitation year: *Provided,* That amounts contributed in excess of $28,175 consist solely of employer securities within the meaning of paragraph (g)(1)(ii) of this section.

Example (2). Assume the same facts as in example (1), except that N's compensation for 1977 is $300,000. Because the compensation limitation (25% of $300,000 = $75,000) is greater than the special dollar limitation of $56,350, N can have annual additions of $56,350 made to his account for the 1977 limitation year, provided that amounts contributed in excess of $28,175 consist solely of employer securities.

(h) *Special rules for level premium annuity contracts under plans benefiting owner-employees*—(1) *In general.* The compensation limitation described in section 415(c)(1)(B) will not be less than the contribution described in section 401(e) which is made for the benefit of an owner-employee (within the meaning of section 401(c)(3)) for a limitation year provided that—

(i) The annual additions with respect to such owner-employee for the limitation year consist solely of the contributions described in this paragraph, and

(ii) The owner-employee is not a participant at any time during the limitation year in a defined benefit plan maintained by the employer.

(2) *Application of the non-discrimination rules.* In the case of a plan which provides contributions for employees who are not owner-employees, that plan will not be treated as failing to satisfy the non-discrimination rules of section 401(a)(4) merely because contributions made on behalf of employees who are not owner-employees are not permitted to exceed the compensation limitation described in section 415(c)(1)(B).

(3) *Additional rules.* For additional rules concerning contributions described in section 401(e), see § 1.401(e)–4.

§ 1.415–7 Limitation in case of defined benefit and defined contribution plan for same employee.

(a) *Overall limitation*—(1) *In general.* Under section 415(e) and this section, in any case in which an individual has at any time participated in a defined benefit plan and also has at any time participated in a defined contribution plan maintained by the same employer, to satisfy the provisions of section 415(a), the sum of the defined benefit plan fraction (as defined in paragraph (b) of this section) and the defined contribution plan fraction (as defined in paragraph (c) of this section) with respect to that participant for any limitation year may not exceed 1.4.

(2) *Application of overall limitation to employee stock ownership plan.* An employee stock ownership plan which qualifies for, and takes advantage of, the special dollar limitation provided in section 415(c)(6) and § 1.415–6(g) is still subject to the 1.4 limitation of paragraph (a)(1) of this section.

(b) *Defined benefit plan fraction*—(1) *In general.* For purposes of paragraph (a) of this section, the defined benefit plan fraction applicable to a participant for any limitation year is a fraction—

(i) The numerator of which is the projected annual benefit (as defined in § 1.415–3(b)(2)) of the participant under the plan (determined as of the close of the limitation year), and

(ii) The denominator of which is the projected annual benefit (as defined in § 1.415–3(b)(2)) of the participant under the plan (determined as of the close of the limitation year) if the plan provided

such participant the maximum benefit allowable under § 1.415–3.

In the event a participant has participated in more than one defined benefit plan maintained by the employer, the numerator of the defined benefit plan fraction is the sum of the projected annual benefits under all of the defined benefit plans.

(2) *Participants described in section 2004(d)(2) of the Employee Retirement Income Security Act of 1974.* For purposes of this paragraph, in the case of a participant described in section 2004(d)(2) of the Employee Retirement Income Security Act of 1974 (Pub. L. No. 93–406, 88 Stat. 987), the defined benefit plan fraction applicable to such participant is deemed not to exceed 1.0 for any limitation year to which section 415 and this section apply.

(c) *Defined contribution plan fraction*—(1) *In general.* For purposes of paragraph (a) of this section, the defined contribution plan fraction applicable to a participant for any limitation year is a fraction—

(i) The numerator of which is the sum of the annual additions to the participant's account as of the close of the limitation year and for all prior limitation years, and

(ii) The denominator of which is the sum of the maximum amount of annual additions which could have been made under section 415(c) § 1.415–6(a) (determined without regard to the special dollar limitation provided for employee stock ownership plans under section 415(c)(6) and § 1.415–6(g)) for the limitation year and for each prior limitation year of the participant's service with the employer (regardless of whether a plan was in existence during those years).

For purposes of this paragraph, the term "annual additions" has the same meaning as set forth in § 1.415–6(b).

(2) *Special rules for certain annuity contracts and individual retirement plans.* (i) Except as provided in subdivision (ii) of this subparagraph, in computing the defined contribution plan fraction applicable to an individual on whose behalf a section 403(b) annuity contract has been purchased, the amount which is included in the denominator of such fraction for a particular limitation year is the maximum amount which could have been contributed under the limitations of section 415(c) and § 1.415–6(a) applicable to the individual for the particular limitation year. However, if the individual elects an alternative limitation described in either section 415(c)(4)(A) or section 415(c)(4)(B) for a particular limitation year, the denominator of the fraction for such limitation year is the maximum amount which could have been contributed under the applicable limitations of section 415(c) and § 1.415–6(a), as modified by the alternative limitation elected.

(ii) This subdivision provides a rule for computing the defined contribution plan fraction with respect to an individual on whose behalf a section 403(b) annuity contract has been purchased for each limitation year in which the individual did not have a year of service with the employer (within the meaning of subparagraph (1)(ii) of this paragraph) that is now considered to be maintaining the section 403(b) annuity contract with the individual under the rules of paragraph (h)(2) of this section. In this situation, for each such limitation year, the denominator of the defined contribution plan fraction applicable to the individual is deemed to equal the numerator of that fraction.

(iii) The rules described in this paragraph also apply to an individual on whose behalf an individual retirement plan (as described in section 7701(a)(37)) has been maintained.

(iv) See paragraph (h)(4) of this section for special rules relating to the aggregation of a section 403(b) annuity contract and a qualified plan.

(d) *Special transitional rules for defined contribution plan fraction.* For purposes of determining the defined contribution plan fraction under paragraph (c) of this section for any limitation year beginning after December 31, 1975, the following rules shall apply with respect to limitation years before the first limitation year to which section 415 and this section apply.

(1) The aggregate amount taken into account under paragraph (c)(1)(i) of this section in determining the numerator of the defined contribution plan fraction is deemed not to exceed the aggregate amount taken into account under paragraph (c)(1)(ii) of this section in determining the denominator of the fraction.

(2) The amount taken into account under section 415(c)(2)(B)(i) for each such limitation year is an amount equal to—

(i) The amount by which the aggregate amount of employee contributions (whether voluntary or mandatory) for all limitation years beginning before January 1, 1976, during which the employee was a participant in the plan exceeds 10 percent of the employee's aggregate compensation from the employer for all such limitation years, divided by

(ii) The number of full limitation years (counting any part of a limitation year as a full limitation year) beginning before January 1, 1976, during which the employee was a participant in the plan.

Therefore, for purposes of computing the numerator of a participant's defined contribution plan fraction for limitation years beginning after December 31, 1975, no employee contributions made to the plan before the first limitation year to which section 415 and this section apply are taken into account as annual additions if the aggregate amount of the contributions does not exceed 10 percent of the employee's aggregate compensation from the employer for all limitation years prior to the first such limitation year.

(3) The special transitional rule concerning employee contributions provided for in paragraph (d)(2) of this section does not apply to any employee contributions (whether voluntary or mandatory) made on or after October 2, 1973, to the extent that these contributions exceed the maximum amount of employee contributions permitted under the plan as in effect on October 2, 1973. For purposes of the preceding sentence, plan amendments approved by the Internal Revenue Service before October 2, 1973, and actually put into effect before January 1, 1974, are considered in effect on October 2, 1973. Therefore, for purposes of computing the numerator of the defined contribution plan fraction for limitation years beginning after December 31, 1975, employee contributions made between October 2, 1973 and prior to the first limitation year to which section 415 and this section apply which exceed the maximum amount the employee was permitted to contribute under the provisions of the plan as in effect on October 2, 1973, are taken into account as annual additions (within the meaning of § 1.415–6(b)(1)(ii)).

(4) For purposes of this paragraph, the participant's aggregate compensation for all years (whichever are applicable under either paragraph (d)(1) or (2) of this section) with the employer before the first limitation year to which section 415 applies equals the product of the participant's compensation during the first limitation year to which section 415 applies times the number of such applicable years. However, this special rule is available only if records necessary for the determination of the participant's aggregate compensation for all such applicable years with the employer before the first limitation year to which section 415 applies are not available.

(e) *Examples.* The provisions of paragraphs (a) through (d) of this section may be illustrated by the following examples:

Example (1). (i) S is an employee of T Corporation and is a participant in both the noncontributory defined benefit plan and noncontributory defined contribution plan maintained by the corporation. S became an employee of T on July 1, 1966. S became a participant in the defined benefit plan maintained by T on January 1, 1968 and he became a participant in the defined contribution plan maintained by T on January 1, 1970. T uses the calendar year as the limitation year for both plans. The current limitation year is 1978. S's compensation (as defined in § 1.415–2(d)) from T is as follows:

Limitation year	Compensation
1966	$3,000
1967	6,000
1968	6,000
1969	8,000
1970	8,000
1971	8,000
1972	9,000
1973	10,000
1974	10,000
1975	11,000
1976	11,000
1977	12,000
1978	12,000

(ii) S's projected annual benefit (as defined in § 1.415–3(b)(2)) as of the close of the current limitation year under the terms of the plan is $9,000. S's compensation for the current limitation year is $12,000. Therefore, the defined benefit plan fraction applicable to S for the current limitation year is .75 or 75 percent (9,000÷12,000). S's defined contribution compensation limitation (as described in section 415(c)(1)(B)) for the current limitation year is $3,000 (25 percent of $12,000). For all limitation years beginning before January 1, 1978, the maximum aggregate amount of annual additions which could have been allocated to S's account under the defined contribution plan is $25,500 (aggregate compensation of $102,000 for all years of service with T Corporation × 25 percent). Assume that annual additions totaling $11,400 have been allocated to S's account as of the end of the current limitation year. Therefore, S's defined contribution plan fraction as of the end of the current limitation year equals

$$\frac{\$11,400}{\$25,500+\$3,000} = \frac{\$11,400}{\$28,500} = .40 \text{ or } 40 \text{ percent.}$$

Because the sum (115 percent) of the defined benefit plan fraction (75 percent) and the defined contribution plan fraction (40 percent) applicable to S for the current limitation year does not exceed 140 percent, the limitations of section 415(e) and this section are not exceeded.

Example (2). Assume the same facts as in example (1) except that the defined contribution plan maintained by T Corporation provides for mandatory employee contributions of 6% of compensation and voluntary employee contributions of 10% of compensation. Assume further that S made the maximum allowable employee contributions under the plan for each limitation year (including the current limitation year) during which he was a participant. For limitation years beginning before January 1, 1976, S made total employee contributions of $8,960. However, because of the special transitional rule applicable to the defined contribution plan fraction with respect to employee contributions for limitation years beginning before January 1, 1976 (as described in paragraph (d)(2) of this section), only $560 of the total employee contributions of $8,960 made by S will be considered an annual addition for each of those limitation years in which S was a participant in the plan (total employee contributions for limitation years in which S participated in the plan beginning before January 1, 1976 of $8,960 minus $5,600 (10 percent of total compensation of $56,000 for such years) divided by 6 (the number of such years in which S was a participant in the plan). Thus, in determining the numerator of the defined contribution plan fraction applicable to S, because S was a participant in the plan for 6 limitation years beginning before January 1, 1976, the total amount of employee contributions that must be taken into account as annual additions for such limitation years is $3,360 ($560 × 6). For limitation years beginning after January 1, 1976, S made contributions of $1,760 (for limitation year 1976), $1,920 (for limitation year 1977) and $1,920 (for limitation year 1978, the current limitation year). The amount of annual additions attributable to such contributions under section 415(c)(2)(B) is $880 (for limitation year 1976), $960 (for limitation year 1977) and $960 (for the current limitation year), for a total of $2,800. Thus, the defined contribution plan fraction applicable to S for the current limitation year is

$$\frac{\$3,360+\$2,800+\$11,400}{\$28,500} = \frac{\$17,560}{\$28,500} = .62 \text{ or } 62 \text{ percent.}$$

Because the sum (137 percent) of the defined benefit plan fraction (75 percent) and the defined contribution plan fraction (62 percent) applicable to S for the current limitation year does not exceed 140 percent, the limitations of section 415(e) and this section are not exceeded.

Example (3). (i) A is an employee of M Corporation and is a participant in both the noncontributory defined benefit plan and noncontributory defined contribution plan maintained by the corporation. A became an employee of M on January 1, 1969 and immediately became a participant in both plans. M uses the calendar year as the limitation year for both plans. The current limitation year is 1978. A's compensation (as defined in § 1.415–2(d)) from M is as follows:

Limitation year	Compensation
1969	$100,000
1970	120,000
1971	130,000
1972	160,000
1973	200,000
1974	240,000
1975	280,000
1976	320,000
1977	400,000
1978	460,000

(ii) A is a participant described in section 2004(d)(2) of the Employee Retirement Income Security Act of 1974. A's projected annual benefit (as defined in § 1.415–3(b)(2)) as of the close of the current limitation year under the terms of the defined benefit plan is $100,000. The defined benefit dollar limitation (as described in section 415(b)(1)(A)) applicable to A for the current limitation year is $90,150. Absent the provisions of paragraph (b)(2) of this section, the defined benefit plan fraction applicable to A for the current limitation year would be 1.11 or 111 percent. However, under the provisions of paragraph (b)(2) of this section, for purposes of computing the overall 1.4 limitation imposed by section 415(e) and this section applicable to A for the current limitation year and all future limitation years, A's defined benefit plan fraction is considered to equal 1.0 or 100 percent.

(iii) A's defined contribution dollar limitation (as described in section 415(c)(1)(A)) for the current limitation year is $30,050. For the 9 limitation years ending before January 1, 1978, the maximum amount of annual additions which could have been allocated to A's account under the defined contribution plan is $230,000 ($25,000×7, plus $26,825 (adjusted figure for 1976) and $28,175 (adjusted figure for 1977)). Assume that annual additions totaling $60,000 ($10,000 of this amount being attributable to the current limitation year) have been allocated to A's account as of the close of the current limitation year. A's defined contribution plan fraction computed as of the end of the current limitation year is .23 or 23 percent

$$\frac{\$60,000}{\$230,000+\$30,050} = .23 \text{ or } 23 \text{ percent.}$$

Because the sum (123 percent) of the defined benefit plan fraction (1.0 or 100 percent) and the defined contribution plan fraction (.23 or 23 percent) for the current limitation year does not exceed 1.4 or 140 percent, the limitations of section 415(e) and this section are not violated.

(f) *Special rules where records are not available for past periods*—(1) *In general.* The rules described in paragraph (f) (2) and (3) of this section apply only if the plan is unable to compute the defined contribution plan fraction because of the unavailability of records with respect to limitation years ending before the first limitation year to which section 415 applies to the plan.

(2) *Defined contribution plan fraction for first limitation year to which section 415 applies to a plan.* For purposes of paragraph (c) of this section, the defined contribution plan fraction for the first limitation year to which section 415 and this section apply to a plan equals the following fraction:

(i) The numerator of the fraction is the sum of the participant's account balance as of the valuation date under the plan immediately preceding November 2, 1975, plus any additions made to the participant's account through the end of the first limitation year to which section 415 applies to the plan. In determining the participant's account balance as of the valuation date under the plan immediately preceding November 2, 1975, for purposes of this subdivision, one-half of all employee contributions (whether voluntary or mandatory) are not taken into account.

(ii) The denominator of the fraction is the sum of the maximum allowable annual additions under section 415(c) and § 1.415–6 for each limitation year, including the first limitation year to which section 415 applies to the plan, in which the participant had a year of service with the employer (see § 1.415–3(g)(1) for rules relating to the determination of a year of service). In determining the maximum allowable annual additions for purposes of this subdivision, the compensation limitation (as described in section 415(c)(1)(B)) taken into account for all of such limitation years is the applicable compensation limitation for the first limitation year to which section 415 applies to the plan and the dollar limitation taken into account for each such limitation year is the dollar limitation described in section 415(c)(1)(A), as adjusted for cost-of-living increases under section 415(d)(1)(B).

(3) *Defined contribution plan fraction for future limitation years.* For purposes of paragraph (c) of this section, with respect to all limitation years after the first limitation year to which section 415 applies to the plan, the defined contribution plan fraction for the current limitation year equals a fraction. The numerator of the fraction is the amount determined under paragraph (g)(2)(i) of this section, plus any subsequent annual additions made to the participant's account through the end of the current limitation year. The denominator of the fraction equals the sum of—

(i) The amount determined under subparagraph (2)(ii) of this paragraph, plus

(ii) The sum of the maximum allowable annual additions under section 415(c) and § 1.415–6 for the current limitation year and all prior limitation years beginning after the end of the first limitation year to which section 415 applies to the plan.

(g) *Special rule for certain plans in effect on date of enactment.* In the case of an individual who, on September 2, 1974, was a participant in a defined benefit and defined contribution plan maintained by the same employer and with respect to whom the sum of the defined benefit plan fraction and the defined contribution plan fraction for the limitation year during which such date falls (determined as of the close of that limitation year) exceeded 140 percent, the sum of such fractions may continue to exceed 140 percent for any particular future limitation year, but only if the conditions set forth in paragraph (g) (1) and (2) of this section are satisfied:

(1) The defined benefit plan fraction of the participant computed as of the close of the particular limitation year does not exceed such fraction computed as of the close of the limitation year during which September 2, 1974, falls.

(2) After September 2, 1974,

(i) No employer contributions are allocated to the participant's account under any defined contribution plan,

(ii) No forfietures arising under any defined contribution plan are allocated to the participant's account,

(iii) No voluntary employee contributions are made by the participant under any defined contribution or defined benefit plan, and

(iv) No mandatory employee contributions are made by the participant under any defined contribution plan.

(h) *Special rules for section 403(b) annuity contracts*—(1) *In general.* For purposes of section 415, the following rules shall apply:

(i) In the case of an annuity contract described in section 403(b), the participant, on whose behalf the annuity contract is purchased, is considered to have exclusive control of the annuity contract. Accordingly, the participant, and not the participant's employer who purchased the section 403(b) annuity contract, is deemed to maintain the annuity contract.

(ii) Any contributions by the employer for an annuity contract described in this subparagraph are not taken into account in computing the defined contribution plan fraction applicable to the participant for the limitation year.

(2) *Special rules under which the employer is deemed to maintain the annuity contract.* (i) The provisions of this paragraph and not paragraph (h)(1) of this section apply for a particular limitation year with respect to a participant on whose behalf a section 403(b) annuity contract is purchased, if that participant is in control of any employer within the meaning of section 414 (b) or (c), as modified by section 415(h). Under these circumstances, the section 403(b) annuity contract for the benefit of the participant is treated as a defined contribution plan maintained by both the controlled employer and the participant for that limitation year.

(ii) The provisions of this paragraph also apply for a particular limitation year if a participant on whose behalf a section 403(b) annuity contract is purchased has elected, under section 415(c)(4)(D) and § 1.415–6(e)(6), to have the provisions of section 415(c)(4)(C) and § 1.415–6(e)(5) apply for the taxable year with or within which such limitation year ends. In such a case, the exclusion allowance determined under section 403(b)(2)(A) is not applicable to the annuity contract for the particular limitation year, and the annuity contract is treated as a defined contribution plan maintained by both the employer and the participant for that limitation year.

(iii) For purposes of the limitations of section 415(e) and this section, where a section 403(b) annuity contract is treated as a defined contribution plan maintained by the employer under this subparagraph, any contributions made for the annuity contract for a participant are taken into account in computing the defined contribution plan fraction applicable to that participant for the limitation year. Thus, for example, if a doctor is employed by an educational organization which provides him with a section 403(b) annuity contract and also maintains a private practice as a shareholder owning at least 50 percent of a professional corporation, any qualified defined benefit plan of the professional corporation must be aggregated with the section 403(b) annuity contract for purposes of

applying the limitations of section 415(e) and this section.

(3) *Special rule with respect to salary reduction agreements.* The rules provided in this paragraph are applicable whether or not the section 403(b) annuity contract is purchased in connection with a salary reduction agreement between the emloyer and participant.

(4) *Special rules relating to the aggregation of the annuity contract with a qualified plan.* (i) Where a section 403(b) annuity contract is aggregated with a qualified defined benefit plan in a limitation year because of the application of the rules of paragraph (h)(2) of this section, all contributions made to the annuity contract for a participant in prior limitation years shall be taken into account in computing the participant's defined contribution plan fraction. However, the rule described in the preceding sentence is not applicable if the aggregation is solely attributable to the participant's election to have the provisions of section 415(c)(4)(C) apply. Accordingly, in any case in which aggregation is required as a result of the application of paragraph (h)(2)(ii) of this section, all contributions made to the annuity contract for a participant in prior limitation years in which paragraph (h)(1) of this section was applicable do not have to be taken into account in computing the defined contribution plan fraction applicable to the participant.

(ii) Any contributions made to a section 403(b) annuity contract for a participant in any limitation year in which the rules of paragraph (h)(2) of this section are applicable shall be taken into account in subsequent limitation years even though the rules of such paragraph are no longer applicable.

(iii) See paragraph (c)(2) of this section for special rules relating to the defined contribution plan fraction for a participant on whose behalf a section 403(b) annuity contract has been purchased.

(5) *Examples.* The application of this paragraph may be illustrated by the following examples:

Example (1). A is employed by a hospital which is described in section 501(c)(3) and exempt from tax under section 501(a). The hospital purchases an annuity contract described in section 403(b) on A's behalf for the current limitation year. The hospital also maintains a qualified defined benefit plan during the current limitation year in which A is a participant, but it does not maintain a qualified defined contribution plan during that limitation year. With respect to the annuity contract, A does not elect to have the provisions of section 415(c)(4)(C) apply for the current limitation year. Also, A is not in control of the hospital within the meaning of section 414 (b) or (c), as modified by section 415(h). For purposes of section 415, under subparagraph (1) of this paragraph, A is considered to have exclusive control of the annuity contract. Therefore, because A (and not the hospital) is treated as maintaining the annuity contract, because the hospital does not maintain any defined contribution plan, and because A is not in control of the hospital within the meaning of section 414 (b) or (c), as modified by section 415(h), the limitations of section 415(e) and this section are not applicable to A for either the annuity contract or the hospital's defined benefit plan for the current limitation year.

Example (2). Assume the same facts as in example (1), except that the hospital also maintains a qualified defined contribution plan during the limitation year in which A is a participant. Because the hospital is not considered to be maintaining the section 403 (b) annuity contract, contributions made to the annuity contract on behalf of A during the current limitation year by the hospital are not taken into account in computing the defined contribution plan fraction applicable to A for the plans maintained by the hospital for that limitation year.

Example (3). Assume the same facts as in example (1), except that A has elected to have the provisions of section 415(c)(4)(C) apply to the annuity contract for the current limitation year. Under the special rules contained in subparagraph (2) of this paragraph, the annuity contract is treated as a defined contribution plan maintained by the hospital as well as a defined contribution plan maintained by A. Accordingly, because the hospital is also maintaining a qualified defined benefit plan, the limitations of section 415(e) and this section are applicable to A for the annuity contract and the defined benefit plan maintained by the hospital in the current limitation year.

Example (4). Assume the same facts as in example (1), except that A is in control of the hospital within the meaning of section 414 (b) or (c), as modified by section 415(h). Under the special rules contained in subparagraph (2) of this paragraph, the annuity contract is treated as a defined contribution plan maintained by the hospital as well as a defined contribution plan maintained by A. Therefore, because the hospital is also maintaining a qualified defined benefit plan, the limitations of section 415(e) and this section are applicable to A for the annuity contract and the defined benefit plan maintained by the hospital in the current limitation year.

(i) *Special rules for individual retirement plans.* For purposes of section 415, and individual on whose behalf an individual retirement plan (as described in section 7701(a)(37)) is maintained is considered to have exclusive control of such plan. Therefore, the individual is treated as maintaining such plan. However, if that individual is in control of any employer within the meaning of section 414 (b) or (c), as modified by section 415(h), the individual retirement plan for the benefit of such individual is treated as a defined contribution plan maintained by both the controlled employer and such individual.

§ 1.415-8 Combining and aggregating plans.

(a) *In general.* Under section 415(f) and this section, for purposes of applying the limitations of section 415 (b), (c), and (e) applicable to a participant for a particular limitation year—

(1) All qualified defined benefit plans (without regard to whether a plan has been terminated) ever maintained by the employer will be treated as one defined benefit plan, and

(2) All qualified defined contribution plans (without regard to whether a plan has been terminated) ever maintained by the employer will be treated as one defined contribution plan.

(b) *Annual compensation taken into account for defined benefit plans.* With respect to a particular limitation year, if more than one qualified defined benefit plan is being aggregated under paragraph (a) of this section during that year, the defined benefit compensation limitation (as described in section 415(b)(1)(B)) applicable with respect to any participant is applied separately to the projected annual benefit (as defined in § 1.415-3(b)(2)) payable to the participant under each qualified defined benefit plan. In applying the defined benefit compensation limitation to the projected annual benefit of a participant under each plan, the participant's high 3 years of compensation is determined in accordance with § 1.415-3(a)(3).

(c) *Affiliated employers.* Any qualified defined benefit plan or qualified defined contribution plan maintained by any member of a controlled group of corporations (within the meaning of section 414(b) as modified by section 415(h)) or by any trade or business (whether or not incorporated) under common control (within the meaning of section 414(c) as modified by section 415(h)) is deemed maintained by all such members or such trades or businesses.

(d) *Section 403(b) annuity contracts*—(1) *In general.* in the case of an annuity contract described in section 403(b), except as provided in subparagraph (2) of this paragraph, the participant on whose behalf the annuity contract is purchased is considered to have exclusive control of the annuity contract. Accordingly, the participant, and not the participant's employer who purchased the section 403(b) annuity contract, is deemed to maintain the annuity contract.

(2) *Special rules under which the employer is deemed to maintain the*

annuity contract. If a participant on whose behalf a section 403(b) annuity contract is purchased has elected to have the provisions of section 415(c)(4)(C) and § 1.415–6(e)(5) apply for a taxable year, the annuity contract is treated as a defined contribution plan maintained by both the employer that purchased the annuity contract and the participant on whose behalf it was purchased for the limitation year which ends during such taxable year. Even if the election under section 415(c)(4)(C) is not made, where a participant, on whose behalf a section 403(b) annuity contract is purchased, is in control of any employer within the meaning of section 414 (b) or (c) as modified by section 415(h) for a limitation year, the annuity contract for the benefit of the participant is treated as a defined contribution plan maintained by both the controlled employer and the participant for that limitation year. Thus, for example, if a doctor is employed by an educational organization which provides him with a section 403(b) annuity contract and also maintains a private practice as a shareholder owning at least 50 percent of a professional corporation, any qualified defined contribution plan of the professional corporation must be combined with the section 403(b) annuity contract for purposes of applying the limitations of section 415(c) and § 1.415–6. For purposes of this paragraph, it is immaterial whether the section 403(b) annuity contract is purchased as a result of a salary reduction agreement between the employer and the participant.

(e) *Multiemployer plans.* Multiemployer plans, as defined in section 414(f), shall not be aggregated with other multiemployer plans. However, where an employer maintains both a plan which is not a multiemployer plan and a multiemployer plan, the plan which is not a multiemployer plan shall be aggregated (based on its limitation year) with the multiemployer plan to the extent that benefits provided under the multiemployer plan are provided by such employer with respect to a common participant. See § 1.415–1(e)(2) for a rule relating to the computation of the benefits provided by an employer under a section 414(f) multiemployer plan.

(f) *Special rules for combining certain plans, etc.* If a plan, annuity contract or arrangement is subject to a special limitation in addition to, or instead of, the regular limitations described in section 415 (b) or (c), and is combined under this section with a plan which is subject only to such limitations, the following rules shall apply:

(1) Each plan, annuity contract or arrangement must meet the applicable specific limitations.

(2) The combined limitations shall be the larger of the applicable specific limitations.

(g) *Special priority rule for TRASOP's.* For a special rule concerning allocations to a participant's account under an Employee Stock Ownership Plan under section 301(d) of the Tax Reduction Act of 1975, see § 1.46–8(d)(6)(v).

(h) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). M is an employee of ABC Corporation and XYZ Corporation. ABC maintains a qualified noncontributory defined benefit plan in which M participates and XYZ maintains a qualified defined contribution plan in which M participates. ABC Corporation and XYZ Corporation are members of a controlled group of corporations within the meaning of section 414(b) as modified by section 415(h). Because ABC Corporation and XYZ Corporation are members of a controlled group of corporations within the meaning of section 414(b) as modified by section 415(h), M is treated as being employed by a single employer. Thus, M's projected annual benefit under the defined benefit plan maintained by ABC may not exceed the limitations of section 415(b) and § 1.415–3; the annual additions to M's account under the defined contribution plan maintained by XYZ may not exceed the limitations of section 415(c) and § 1.415–6; and, in addition, the two plans may not exceed the limitations of section 415(e) and § 1.415–7.

Example (2). Assume the same facts as in example (1), except that the qualified defined benefit plan maintained by ABC Corporation provides for employee contributions (whether mandatory or voluntary). Under § 1.415–3(d), ABC Corporation will be considered to be maintaining a defined contribution plan consisting of M's contributions to the defined benefit plan. For purposes of applying the limitations of section 415(e) and § 1.415–7, the qualified defined benefit plan maintained by ABC must be combined with the defined contribution plan which ABC is considered to maintain. In addition, because corporations ABC and XYZ are members of a controlled group of corporations (within the meaning of section 414(b), as modified by section 415(h)), for purposes of applying the limitations of section 415(c) and § 1.415–6, the qualified defined contribution plan maintained by XYZ must be combined with the define contribution plan which ABC is considered to be maintaining and the defined contribution plans (as combined) must be aggregated with the qualified defined benefit plan maintained by ABC for purposes of the limitations imposed by section 415(e) and § 1.415–7.

§ 1.415–9 Disqualification of plans and trusts.

(a) *In general.* Under section 415(g) and this section, with respect to a particular limitation year, a plan (and the trust forming part of the plan) is disqualified in accordance with the rules provided in paragraph (b) of this section, if any of the following conditions exist:

(1) Annual additions (as defined in § 1.415–6(b)) with respect to the account of any participant in a qualified defined contribution plan maintained by the employer exceed the limitations of section 415(c) and § 1.415–6.

(2) The projected annual benefit (as defined in § 1.415–3(b)(2)) payable with respect to any participant in a qualified defined benefit plan maintained by the employer exceeds the limitations of section 415(b) and § 1.415–3.

(3) The combination of annual additions with respect to the account of any participant in a qualified defined contribution plan and the projected annual benefit payable with respect to such participant in a qualified defined benefit plan maintained by the employer exceeds the limitations of section 415(e) and § 1.415–7.

For purposes of this paragraph, the determination of whether a plan or a combination of plans exceeds the limitations imposed by section 415 for a particular limitation year is, except as otherwise provided, made by taking into account the aggregation of plan rules provided in sections 415(f) and 414 (b) and (c) (as modified by section 415(h)).

(b) *Rules for disqualification of plans and trusts*—(1) *In general.* Any plan (including a trust which forms part of such plan) that is disqualified in a particular limitation year under the rules set forth in this paragraph, shall be disqualified as of the first day of the first plan year containing any portion of the particular limitation year.

(2) *Single plan.* In the case of a single qualified defined benefit plan maintained by the employer that provides a projected annual benefit (as defined in § 1.415–3(b)(2)) payable with respect to any participant in excess of the limitations of section 415(b) and § 1.415–3 for any particular limitation year, such plan is disqualified in that limitation year. Similarly, if the employer only maintains a single defined contribution plan under which annual additions (as defined in § 1.415–6(b)) allocated to the account of any participant exceed the limitations of section 415(c) and § 1.415–6 for any particular limitation year, such plan is also disqualified in that limitation year.

(3) *More than one plan.* In the event that the limitations of section 415(b) and

§ 1.415–3, or section 415(c) and § 1.415–6 are exceeded for a particular limitation year with respect to any participant because of the application of the aggregation rules of section 415(f)(1) or section 414 (b) or (c), as modified by section 415(h), one or more of the plans shall be disqualified in accordance with the rules set forth in this subparagraph. Similarly, if the limitations of section 415(e) and § 1.415–7 are exceeded for a particular limitation year with respect to any participant because of the application of such aggregation rules (although if an individual participates in a defiend contribution and defined benefit plan maintained by the same employer, these limitations may be exceeded even without the application of such aggregation rules), one or more of the plans shall be disqualified in accordance with the following rules:

(i) If there are two plans and one of the plans has been terminated at any time including the last day of the particular limitation year, the plan which has not been so terminated (whether or not that plan is a multiemployer plan described in section 414(f)) is disqualified in that limitation year.

(ii) If there are two plans and neither plan has been terminated at any time including the last day of the particular limitation year, and if one of the plans is a multiemployer plan described in section 414(f), the plan which is not a multiemployer plan is disqualified in that limitation year. For purposes of the preceding sentence, the determination of whether a plan is a multiemployer plan described in section 414(f) is made as of the last day of the particular limitation year.

(iii) If there are two plans of an employer and neither plan has either been terminated at any time including the last day of the particular limitation year or determined to be a multiemployer plan described in section 414(f) as of such day, the employer may elect, in a manner determined by the Commissioner, the plan that is disqualified. If the two plans described in this subdivision are involved because of the application of section 414 (b) or (c), as modified by section 415(h), the employers of the controlled group may elect, in a manner determined by the Commissioner, the plan that is disqualified. However, the election described in the preceding sentence is not effective unless made by all of the employers within the controlled group. For purposes of this subdivision, the elected plan is disqualified in the particular limitation year.

(iv) If the election described in subdivision (b)(3)(iii) of this paragraph is not made with respect to the two plans described in such subdivision, the Commissioner, taking into account all of the facts and circumstances, shall have the discretion to determine the plan that is disqualified in the particular limitation year. In making this determination, some of the factors that will be taken into account include, but are not limited to, the number of participants in each plan and the amount of benefits provided on an overall basis by each plan.

(v) If more than two plans are involved, a plan or plans shall be disqualified in the particular limitation year in accordance with the principles contained in this subparagraph.

(4) *Special rules for simplified employee pension.* If there are two or more plans and if one of the plans is a simplified employee pension (as defined in section 408(k)), the simplified employee pension shall not be disqualified until all of the other plans have been disqualified. However, if one of the plans has been terminated, the simplified employee pension shall be disqualified before the terminated plan. For purposes of this subparagraph, the disqualification of a simplified employee pension means that the simplified employee pension is no longer described under section 408(k).

(c) *Special rules concerning section 403(b) annuity contracts*—(1) *In general.* If aggregating or combining a section 403(b) annuity contract and a qualified plan causes the applicable limitations of section 415 to be exceeded, the exclusion allowance under section 403(b)(2) shall be adjusted first to the extent necessary to satisfy such limitations.

(2) Aggregating section 403(b) annuity contract and qualified defined benefit plan. In the event that aggregating a section 403(b) annuity contract and a qualified defined benefit plan causes the limitations of section 415(e) and § 1.415–7 to be exceeded with respect to a participant for a particular limitation year, the amount of the contribution to the annuity contract in excess of such limitations is treated as a disqualified contribution and therefore includable in the gross income of the participant for the taxable year with or within which that limitation year ends. Furthermore, for purposes of computing the exclusion allowance under section 403(b)(2)(A) for future taxable years with respect to such participant, the disqualified contribution is treated as an amount contributed by the employer for an annuity contract which was excludable from the participant's gross income under section 403(b)(2)(A)(ii). Thus, for future taxable years, the exclusion allowance will be reduced by the amount of the disqualified contribution even though such amount was not excludable from the participant's gross income in the taxable year when it was made. See § 1.415–7(c)(2) for special rules relating to the defined contribution plan fraction applicable to an individual on whose behalf a section 403(b) annuity contract has been purchased.

(3) *Combining section 403(b) annuity contract and qualified defined contribution plan.* In the event that combining a section 403(b) annuity contract and a qualified defined contribution plan under the provisions of section 415(f)(1)(B) causes the limitations of section 415(c) and § 1.415–6 applicable to a participant under the defined contribution plan to be exceeded for a particular limitation year, the excess of the contributions to the annuity contract plus the annual additions to the plan over such limitations is treated as a disqualified contribution to the annuity contract and therefore includable in the gross income of the participant for the taxable year with or within which that limitation year ends. Furthermore, for purposes of computing the exclusion allowance under section 403(b)(2)(A) for future taxable years with respect to such participant, the disqualified contribution is treated as an amount contributed by the employer for an annuity contract which was excludable from the participant's gross income under section 403(b)(2)(A)(ii). Thus, for future taxable years, the exclusion allowance will be reduced by the amount of the disqualified contribution even though such amount was not excludable from the participant's gross income in the taxable year when it was made.

(4) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). N is employed by a hospital which purchases an annuity contract described in section 403(b) on N's behalf for the current limitation year. The current limitation year is N's first year of service with the hospital. N is in control of the hospital within the meaning of section 414 (b) or (c), as modified by section 415(h). Therefore, under section 415(e)(5), the section 403(b) annuity contract is treated as a defined contribution plan maintained by the hospital and N. The hospital also maintains a qualified defined contribution plan during the current limitation year in which N participates, but it does not maintain any other qualified plan. N's compensation (within the meaning of § 1.415–2(d)) from the hospital for the current limitation year is $20,000. N does not elect any of the alternative limitations provided in section 415(c)(4) for the section 403(b) annuity contract. For the current limitation year, the

hospital contributes $3,000 for the section 403(b) annuity contract on N's behalf, which is within the limitations applicable to N under the annuity contract (i.e., the lesser of the exclusion allowance under section 403(b)(2)(A) ($4,000) or the limitations of section 415(c)(1) ($5,000)). The hospital also contributes $3,000 to the qualified plan on N's behalf for the current limitation year (which represents the only annual additions allocated to N's account under the plan for such year), which is within the $5,000 limitation of section 415(c)(1) applicable to N under the plan. However, under section 415(f)(1)(B), for purposes of applying the limitations of section 415(c) and § 1.415–6, the hospital is considered to be maintain only one defined contribution plan and thus, all contributions to the annuity contract and to the regular plan must be combined. Because the total combined contributions ($6,000) exceed the section 415(c) limitation applicable to N under the plan ($5,000), under the special rules contained in this paragraph, $1,000 of the $3,000 contributed to the section 403(b) annuity contract is considered a disqualified contribution and therefore currently includable in N's gross income. Furthermore, in computing N's exclusion allowance for the section 403(b) annuity contract for future taxable years, besides the $3,000 contributed to the qualified plan, the $3,000 contributed for the section 403(b) annuity contract is also considered an amount contributed by the employer and excludable from N's gross income for purposes of section 403(b)(2)(A)(ii), even though only $2,000 of this amount was excludable from N's gross income.

Example (2). Assume the same facts as in example (1), except that instead of the defined contribution plan the hospital maintains a qualified defined benefit plan during the current limitation year in which N participates. Because the hospital is considered to be maintaining a defined contribution plan (in the form of a section 403(b) annuity contract) in addition to its defined benefit plan, the limitations of section 415(e) and § 1.415–7 are applicable to N for the current limitation year. If N's defined benefit plan fraction for the current limitation year is 1.0, then to satisfy the limitations of section 415(e) and § 1.415–7, N's defined contribution plan fraction may not exceed .4 for the current limitation year. This means that only $2,000 (i.e. 40% of $5,000—the applicable limitation to N for the annuity contract under the special rule set forth in § 1.415–7(c)(2)(i)) could have been contributed to the annuity contract on N's behalf for the current limitation year without violating the 1.4 limitation of section 415(e) and § 1.415–7. However, because the hospital contributed $3,000 to the section 403(b) annuity contract on N's behalf, under the special rules contained in this paragraph, $1,000 of this amount is considered a disqualified contribution and therefore currently includable in N's gross income. Furthermore, in computing N's exclusion allowance for the section 403(b) annuity contract for future taxable years, the $3,000 contributed to the annuity contract is considered the amount contributed by the employer and excludable from N's gross income for purposes of section 403(b)(2)(A)(ii), even though only $2,000 of this amount was excludable from N's gross income.

§ 1.415–10 Special aggregation rules.

(a) *General rules relating to aggregation of plans during limitation year*—(1) *Scope of aggregation rules.* This section provides rules for those situations in which two or more existing plans, which previously were unaggregated, are aggregated during a particular limitation year after the effective date of section 415 and these regulations, and as a result, the limitations of section 415 (b), (c) or (e) are exceeded for that limitation year. The rules described in this section are also applicable with respect to the aggregation of benefits under a multiemployer plan described in section 414(f) that previously were not required to be aggregated.

(2) *Controlling date of aggregation.* For purposes of this section, plans which are not aggregated as of the first day of a limitation year will not be considered aggregated for that limitation year. Notwithstanding the preceding sentence, if a section 403(b) annuity contract is aggregated with a qualified plan because of the election by the individual on whose behalf the annuity contract is purchased to have the provisions of section 415(c)(4)(C) apply for the taxable year, the annuity contract and the plan are deemed to be aggregated as of the first day of the limitation year ending with or within such taxable year.

(3) *Aggregation of additions and benefits.* If plans are aggregated under this section, the following rules shall apply:

(i) All annual additions credited to a participant's account under a defined contribution plan prior to the aggregation of such plan shall be taken into account in computing the participant's defined contribution plan fraction for purposes of applying the limitations of section 415(e) to the aggregated plans.

(ii) The projected annual benefit of a participant under a defined benefit plan prior to the aggregation of such plan shall be taken into account for purposes of applying the limitations of section 415(b) or section 415(e) to the aggregated plans.

(iii) For a special rule relating to the aggregation of contributions to a section 403(b) annuity contract upon the aggregation of the annuity contract with a qualified plan, see § 1.415–7(h)(4)(i).

(b) *Aggregation of defined benefit plans.* In the case of an individual who is a participant in two or more defined benefit plans and with respect to whom the limitations of section 415(b) and § 1.415–3 are exceeded for a particular limitation year because of the aggregation of the plans for that limitation year, the limitations of section 415(b) and § 1.415–3 may be exceeded for that limitation year and for future limitation years provided that there is no increase in the participant's accrued benefit derived from employer contributions during the period within which these limitations are being exceeded.

(c) *Aggregation of defined benefit and defined contribution plan.* In the case of an individual who has at any time participated in a defined benefit plan and also has at any time participated in a defined contribution plan and with respect to whom the limitations of section 415(e) and § 1.415–7 are exceeded for a particular limitation year because of the aggregation of the plans for that limitation year, the limitations of section 415(e) and § 1.415–7 may be exceeded for that limitation year and for future limitation years provided that the following conditions are complied with during that period:

(1) The participant's accrued benefit derived from employer contributions in the defined benefit plan is not increased.

(2) No employer contributions are allocated to the participant's account under any defined contribution plan.

(3) No forfeitures arising under any defined contribution plan are allocated to the participant's account.

(4) No voluntary employee contributions are made by the participant under any defined benefit or defined contribution plan.

(5) No mandatory employee contributions are made by the participant under any defined contribution plan.

(d) *Limitation year for aggregated plans.* If the plans which are aggregated under this section have different limitation years, subparagraph (1) or (2) of this paragraph must be complied with.

(1) The relevant employer or employers must elect the limitation year that is to be controlling. This election shall be made by the adoption of a written resolution by the employer or employers. See § 1.415–2(b)(4) for rules relating to a change in the limitation year.

(2) The employer or employers may continue to use different limitation years for each plan in accordance with rules determined by the Commissioner.

If, in accordance with paragraph (d)(1) of this section, one limitation year is elected, and if the plans which are aggregated covered at least one common

participant prior to being aggregated, that limitation year shall be applicable for past years for purposes of computing the defined contribution fraction for those years. For special rules relating to the computation of the defined contribution plan fraction where records are not available for past periods, see § 1.415–7(f).

(e) The provisions of this section may be illustrated by the following examples:

Example (1). J is an employee of two unrelated corporations, N and M. Each corporation has a qualified defined benefit plan in which J participates. Each plan provides a benefit which is equal to 75 percent of a participant's average compensation for his high 3 years of service and is payable in the form of a straight life annuity beginning at age 65. J's average compensation (within the meaning of § 1.415–2(d)) for his high three years of service from each corporation is $80,000. Each plan uses the calendar year for the limitation and plan year. In July, 1978, N Corporation becomes a wholly owned subsidiary of M Corporation, and as a result, J is treated as being employed by a single employer under section 414(b). Therefore, because section 415(f)(1)(A) requires that all defined benefit plans of an employer be treated as one defined benefit plan, the two plans must be aggregated for purposes of applying the limitations of section 415. (Although, under paragraph (a)(2) of this section, since the plans were not aggregated as of the first day of the 1978 limitation year (January 1, 1978), they will not be considered aggregated until the limitation year beginning January 1, 1979.) As a result of such aggregation, J becomes entitled to a combined benefit which is equal to $120,000, which is in excess of the section 415(b) dollar limitation for 1979 of $98,100. However, under paragraph (b) of this section, the limitations of section 415(b) and § 1.415–3 applicable to J may be exceeded in this situation without plan disqualification, so long as J's accrued benefit derived from employer contributions is not increased during the period within which the limitations are being exceeded.

Example (2). A, age 30, owns all of the stock of X Corporation and also owns 10 percent of the stock of Z Corporation. F, A's father, directly owns 75 percent of the stock of Z Corporation. Both corporations have qualified defined contribution plans in which A participates and both plans use the calendar year for the limitation and plan year. A's compensation (within the meaning of § 1.415–6(a)(3)) for 1976 is $40,000 from Z Corporation and $150,000 from X Corporation. During 1976, annual additions of $10,000 are credited to A's account under the plan of Z Corporation, while annual additions of $26,825 are credited to A's account under the plan of X Corporation. In both instances, the amount of annual additions represent the maximum allowable under section 415(c) and § 1.415–6. On July 15, 1976, F dies, and A inherits all of F's stock in Z in 1976. Because under section 414(b), A is considered to be in control of X and Z Corporation, the two plans must be aggregated for purposes of applying the limitations of section 415. However, even though A's total annual additions for 1976 are $36,825, the limitations of section 415(c) and § 1.415–6 are not violated for 1976, because, under paragraph (a)(2) of this section, the two plans are considered separate plans for that year since they were not aggregated as of the first day of that year.

Jerome Kurtz,

Commissioner of Internal Revenue.

[FR Doc. 80–20046 Filed 1–18–80; 11:41 am]

BILLING CODE 4830–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–5725]

National Flood Insurance Program; Withdrawal of Proposed Flood Elevation Determinations for City of Elmira, Chemung County, N.Y.

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Federal Insurance Administration has erroneously published at 44 FR 64459 on November 7, 1979, the proposed flood elevation determinations for the City of Elmira, Chemung County, New York. This notice will serve to withdraw that publication. A new notice of proposed flood elevation determinations will be published in the near future.

EFFECTIVE DATE: January 24, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. R. Gregg Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872, (In Alaska and Hawaii call Toll Free Line (800) 424–9080), Room 5150, 451 Seventh Street, S.W., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: As the result of a recent engineering analysis, the Federal Insurance Administration has determined that the notice of proposed rule for the City of Elmira, Chemung County, New York, published at 44 FR 64459 on November 7, 1979, should be withdrawn. After a technical review, a new notice of proposed flood elevation determination will be published.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963)

Issued: January 10, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

FR Doc. 80–2291 Filed 1–23–80; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

[Docket No. FI–5665]

National Flood Insurance Program; Proposed Flood Elevation Determinations Revision; Winnebago County, Ill.

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Revision of proposed rule.

SUMMARY: The notice published on July 23, 1979, at 44 FR 43008 should be revised in part to correctly correspond with the Flood Insurance Study for Winnebago County, Illinois.

EFFECTIVE DATE: January 24, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. R. Gregg Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872, (In Alaska and Hawaii call Toll Free Line (800) 424–9080), Room 5150, 451 Seventh Street, S.W., Washington, D. C. 20410.

SUPPLEMENTARY INFORMATION: The notice previously published on July 23, 1979, at 44 FR 43008 should be revised in part to correctly correspond with the Flood Insurance Study for Winnebago County, Illinois. The revisions, which reflect a lowering of elevations, are as follows:

Source of Flooding	Location	*Elevation in Feet (NGVD)
South Branch Dry Creek.	Confluence with Dry Creek	*753
North Branch Otter Creek.	Upstream Field Road	*779
	Upstream of Rock Grove Road.	*783

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963).

Issued: January 10, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80–2292 Filed 1–23–80; 8:45 am]

BILLING CODE 6718–03–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 42 and 93

[CGD 76–080]

Hopper Dredges; Load Line and Stability Requirements

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This supplemental notice corrects an inadvertent deletion from the proposed rule published under this docket number at 44 FR 70791 on December 10, 1979. This supplemental notice reflects what the Coast Guard proposes regarding bottom penetration damage stability calculations.

DATES: Comments must be received on or before March 10, 1980.

ADDRESSES: Comments should be mailed to Commandant (G–CMC/24), (CGD 76–080), U.S. Coast Guard, Washington, D.C. 20593. Between the hours of 7:30 a.m. and 4:30 p.m., Monday through Thursday; comments may be delivered to and will be available for inspection or copying at the Marine Safety Council (G–CMC/24), Room 2418, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: Mr. Donald L. Ewing, Commandant (G–MMT–5), U.S. Coast Guard, 2100 Second St., SW., Washington, D.C. 20593 (202) 426–2187.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this rulemaking in submitting written data, views, or arguments. Each comment should include the name and address of the person submitting the comments, reference the docket number (CGD 76–080), identify the specific section of the proposal to which each comment applies, and include sufficient detail to indicate the basis on which each argument is made. If an acknowledgment is desired, a stamped, addressed postcard should be enclosed. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this proposal are Mr. D. L. Ewing, Project Manager, Office of Merchant Marine Safety, and LT Jack Orchard, Project Counsel, Office of the Chief Counsel.

Discussion of the Notice

At 44 FR 70795, published on December 10, 1979, bottom penetration damage stability calculations were published regarding penetrations made at any position forward of a point 0.3L aft of the forward perpendicular. A paragraph containing information regarding bottom penetrations at positions aft of a point 0.3L aft of the forward perpendicular was inadvertently omitted. This information is provided by this supplemental notice.

In consideration of the foregoing, the Coast Guard proposes to amend Chapter I of Title 46, Code of Federal Regulations as follows:

1. By adding a new § 93.40–20(d)(2)(ii) to read as follows:

§ 93.40–20 Damage stability calculations.

* * * * *

(d) * * *

(2) * * *

(ii) At any position aft of a point 0.3L aft of the forward perpendicular:

(A) Longitudinal extent: L/10 or 5 m (16.4 ft.), whichever is shorter.

(B) Transverse extent: B/6 or 5 m (16.4 ft.), whichever is shorter.

(C) Vertical extent (from the molded line of the shell at the center line): B/15 or 2m (6.6 ft), whichever is shorter.

* * * * *

(Sec. 1, 49 Stat. 888; as amended (46 U.S.C. 88); sec. 1, 33 Stat. 1022, as amended (46 U.S.C. 375); sec. 1, 2, 49 Stat. 1544, 1545, as amended, (46 U.S.C. 367); 49 CFR 1.46(b).)

J. B. Hayes,

Admiral, U.S. Coast Guard Commandant.

January 17, 1980.

[FR Doc. 80–2299 Filed 1–23–80; 8:45 am]

BILLING CODE 4910–14–M

Federal Highway Administration

49 CFR Part 395

[BMCS Docket No. MC–90; Notice No. 80–1]

Hours of Service of Drivers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Request for public comments.

SUMMARY: A petition was filed in September of 1979 with the Federal Highway Administration by owner-operator participants of a White House established Ad Hoc Working Group. The petitioning truck drivers requested that the Administrator take action to suspend the present log book requirements and expand the present hours of service. The petitioners further requested that these changes be made immediately. The purpose of this Notice is to announce denial of the immediacy of the petition, but at the same time give the public an opportunity to comment on the merit of the petition to expand the present hours of service limits.

DATE: Comments must be received on or before May 23, 1980.,

ADDRESS: Submit comments, preferably in triplicate, to BMCS Docket No. MC–90, Notice No. 80–1, Room 3402, Bureau of Motor Carrier Safety (BMCS), 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald J. Davis, Chief, Development Branch, Regulations Division, Bureau of Motor Carrier Safety, (202) 426–9767, or Mr. Gerald M. Tierney, Attorney, Motor Carrier and Highway Safety Law Division, (202) 426–0346, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The cut off of Iranian crude oil coming on top of an already tight fuel supply situation produced serious widespread shortages of both gasoline and diesel fuel. These shortages and the accompanying escalation in fuel prices created severe economic pressures on a number of industries, including the independent owner-operators of the motor carrier industry. As a result, several representatives of the independent truck owner-operators were invited to the White House to discuss their problems.

To follow-up on those discussions the White House directed that working parties of owner-operator representatives and the appropriate Government officials be established by the Department of Transportation (DOT). Consequently, and Ad Hoc Working Group on Truck Owner-Operator Problems was formed. The DOT was charged with examining the general problems of all independent truckers.

One of the actions developed as a result of meetings of the working group was a petition filed by the owner-operator participants. The petition requested that the Administrator of the Federal Highway Administration take emergency action to suspend the present log book requirements and replace them with a check-off, time-in and time-out, system on bills of lading and to expand the permissible driving hours not to exceed 12 hours in one 24-hour period and no more than 96 hours spent on duty in an 8-day period. It was further stipulated that these changed be acted upon immediately without complying with the notice and comment requirements of the Administrative Procedures Act (APA), 5 U.S.C. 553.

The petitioners request that the scope would be "those independent truck

operators involved in the transport of interstate commerce, whether they be leased to a carrier, are a small fleet carrier or drive for a small fleet, are a company driver *or* to any of those drivers who are governed by present regulations that this emergency authority would suspend whether they be regulated or unregulated."

It is the opinion of the owner-operators that the (1) rise in cost of fuel (2) cost of maintaining, servicing and driving their vehicles and (3) cost of complying with Federal regulations forced 20 percent of the owner-operators out of business, and that these are reasons to evoke emergency administrative action.

With respect to log book requirements, the petitioners claim the log books are unwieldy, cost money, are not in the present spirit of paperwork reduction, cannot be complied with, constitute an invasion of individual privacy under the Fifth Amendment, and are unenforceable since thousands of owner-operators as well as other truckers violate the requirements daily and are not investigated.

The petitioners feel that increasing the allowable hours of service they could drive would result in increased revenue. Their figure for the increased revenue is roughly figured at "$100 per day for one owner-operator; $20,000 per driver a year; and 4.4 billion dollars per year over the entire industry."

The petitioners feel that the 55 m.p.h. speed limit has hurt the owner-operator especially and that they have suffered due to unfair competitive practices. They also feel that driving conditions have improved over the years due to wider highways, improved roads, and improved vehicles thereby reducing accidents.

Accordingly, comments are respectfully requested on the issues set forth above. The petition is available in its entirety in the public docket and may be reviewed by contacting Mr. Gerald J. Davis of the program office at the address specified above.

With respect to the request that the proposed amendments be acted upon immediately, the Administrative Procedures Act (5 U.S.C. 551 et seq.), Executive Order 12044 (43 FR 12661, Mar. 23, 1978), and agency policy dictate an opportunity for public comment whenever it can be reasonably accomplished. In addition, although the safety implications of the "emergency" action requested are not yet fully understood, they could be significant and need to be evaluated further.

Accordingly, the immediacy of the petition is hereby denied. However, while the immediate nature of the petitioners' demands is not felt to be justified, the FHWA is still open to considering whether any remedial action is necessary on the basis of the points presented in the petition.

Specifically, comments are requested from motor carriers, company drivers, other owner-operators and the public on the following:

1. The safety effects of expanding the hours of service not to exceed 12 hours in one 24-hour period and no more than 96 hours spent on duty in an 8-day period.

2. The petitioners' suggestion of using a check-off time-in and time-out system on bills of lading for controlling the driver's hours to ensure that limits are not exceeded.

3. The petitioners' financial references set forth in the petition concerning the opinion that increasing the allowable hours of service would generate increased revenue for the industry.

(49 U.S.C. 304 and 1655; 49 CFR 1.48(b) and 301.60)

Issued on: January 14, 1980.

Robert A. Kaye,

Director, Bureau of Motor Carrier Safety.

[FR Doc. 80-1963 Filed 1-23-80; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Withdrawal of Three Expired Proposals for Listing of Nine Species of Fishes and one Species of Toad

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of withdrawal of three expired proposed rules.

SUMMARY: As amended November 10, 1978, the Endangered Species Act mandatorily withdraws proposed rules to list species which have not been finalized within two years of the proposal. The amended Act also authorized a one-year suspension of all withdrawals, until November 10, 1979. The time limits have expired for 9 fishes and one toad and this constitutes notice of their withdrawal.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, Fish and Wildlife Service, Washington, D.C. 20240 (703/235-2771).

SUPPLEMENTARY INFORMATION:

Background

Section 4(f)(5) of the Endangered Species Act of 1973, as amended November 10, 1978, states that:

> A final regulation adding a species to any list published pursuant to subsection (c) shall be published in the **Federal Register** not later than two years after the date of publication of notice of the regulation proposing such two year period, the Secretary shall withdraw the proposed regulation and shall publish notice of such withdrawal in the **Federal Register** not later than 30 days after the end of such period. The Secretary shall not propose a regulation adding to such a list any species for which a proposed regulation has been withdrawn under this paragraph unless he determines that sufficient new information is available to warrant the proposal of a regulation. No proposed regulation for the listing of any species published before the date of the enactment of the Endangered Species Act Amendment of the Endangered Species Act Amendments of 1978 shall be withdrawn under this paragraph before the end of the one-year period beginning on such date of enactment.

The two-year time limit on proposals and one-year period on suspension of withdrawals which were established in this subsection have expired for the three proposed rules indicated below:

—Proposed Threatened status and Critical Habitat for the black toad * * * March 11, 1977 * * * 42 FR 13567-12.

—Proposed Endangered status and Critical Habitat for 4 fishes * * * November 29, 1977 * * * 42 FR 60765-68.

—Proposed Endangered status and Critical Habitat for 5 fishes * * * December 30, 1977 * * * 42 FR 65209-12.

In accord with section 4(f)(5), all species in these proposed rules were withdrawn on November 10, 1979, November 29, 1979 and December 30, 1979 respectively.

This action gives notice of the withdrawal of 9 fishes and one toad. These species occur in the states of Alabama, Arkansas, California, Georgia, North Carolina and Tennessee.

This notice is issued under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*: 87 Stat. 884, 92 Stat. 3751).

The primary author of this notice is Dr. James D. Williams, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1975).

Dated: January 21, 1980.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

[FR Doc. 80-2264 Filed 1-23-80; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 45, No. 17
Thursday, January 24, 1980

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

Farmers Home Administration

Loans and Grants; Rural Rental Housing Policies, Procedures, and Authorizations; Memorandum of Understanding Between Farmers Home Administration and Administration on Aging

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The Farmers Home Administration (FmHA) gives notice of reopening competition for participation in the joint Farmers Home Administration (FmHA) and Administration on Aging (AoA) demonstration effort to provide congregate housing with adequate support services for Carroll County, New Hampshire.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence D. Hammond, Room 5325, South Agriculture Building, 14th and Independence, SW., Washington, D.C. 20250, telephone 202–447–7207.

SUPPLEMENTARY INFORMATION: On May 18, 1979, FmHA published in the Federal Register (44 FR 29131) the selection of the 10 counties for a demonstration effort and invited interested parties to participate in this program as applicants under FmHA's Section 515 rural rental housing program. Applications were received, evaluated and selections made by the Administrator, Farmers Home Administration. Subsequent to the conclusion of this competition, the selected applicant for Carroll County, New Hampshire, withdrew from this demonstration effort. Therefore, FmHA has decided to readvertise for participation in this demonstration effort for Carroll County, New Hampshire and has reserved $1,000,000 for this purpose. AoA has also reserved $85,000 for each year of the 3-year program to support the services component of the Congregate Housing project.

Parties interested in participating in this program as applicants under FmHA's Section 515 rural rental housing program should contact the State Director with jurisdiction for New Hampshire at 141 Main Street, Post Office Box 588, Montpelier, VT 06502.

A. All applicants proposals for funding shall be submitted to the FmHA District Office or County Office for Carroll County.

B. All applications must contain the information prescribed in Exhibits F–6 and F–7 of Subpart D of Part 1822, Chapter XVIII, Title 7, Code of Federal Regulations.

C. The following additional requirements must be met and submitted with the preapplication to assure that housing facilities and the applicant can meet the requirements needed for this National demonstration effort:

1. *Community Involvement in the Planning and Development of the Project:* Each applicant must provide a letter from the chief elected official of the proposed community indicating that community's support of the proposed project. The applicant will also provide a narrative on the manner in which it will work with local concerned citizens, prospective occupants, local lenders and public officials in the planning, design, location and support services program for the project.

2. *Involvement of the Area Agency on Aging.*—Each applicant will be required to cooperate fully with the Area Agency on Aging in the developmental stages of the application and later in the operational stages of the project. Each applicant will, at the time the preapplication is submitted, indicate how it plans to work with the Area Agency on Aging. In New Hampshire, the State Agency on Aging serves also as an Area Agency. That Agency may be contacted by writing or calling: Mrs. Claire A. Monier, Director, New Hampshire Council on Aging, 14 Depot Street, Concord, NH 03301, 603–271–2751.

3. *Site Location.*—Each site for this National Demonstration Program must be identified and owned, optioned or otherwise under the control of the applicant at the time the preapplication is submitted. Thus, proof of this reqirement must be included. Furthermore, a site analysis must be submitted showing where the site is located relative to services within the general areas such as shopping center, medical facilities, banks, etc., and activities immediately surrounding the site. Evidence from the appropriate local official will be provided indicating that the proposed site is in compliance with zoning regulations and is otherwise acceptable to the community for the proposed purpose. Utilities that will be available to the site will be identified (public sewer, water, natural gas, etc).

4. *Architectural Design Concepts.*—Each applicant is required to obtain the services of a qualified architect to design the project. For the preapplication, complete working drawings should not be developed. However to provide FmHA and AoA with basic understanding of how the architect proposes to design the project, preliminary (schematic) drawings, submitted with the preapplication should be detailed enough to show how the building(s) will be located on the site, the number and size of units, and the location and size of space(s) that will be provided for the support services.

This information must be accompanied by an Architectural Program Narrative that describes the characteristics of the elderly population being served by the specific facility as well as the methodology by which specific user needs will be addressed by the architect in the development of the preliminary plans. At a minimum, these needs should address issues of the use of: interior and exterior space, security, recreation, provisions for individuality within living units, access to facilities from surrounding areas, and how the design will provide an aesthetically pleasing environment—thus preventing a sense of institutionalization on the part of the residents and promoting independent life styles. Further, the applicant should include a statement of qualifications and experiences of the architect in the design of similar or comparable facilities with the preapplication.

5. *Management Plans.*—A detailed management plan identifying the manager and his/her background and qualifications must be provided. The management plan should address the goals, objectives and operations of a congregate facility. The management plan should include the working

agreement with the Area Agency on Aging, tenant selection criteria, characteristics of the supported services to be provided, provisions for assessing the needs of the tenants, staffing patterns and functions, and planned social and recreational services.

6. *Support Services.*—The applicant should identify the support services to be provided and how they will cooperate with the Area Agency on Aging in accordance with the Memorandum of Understanding both initially and after the 3-year demonstration period. As a minimum each project must provide the following support services:

(a) Meal service—full or partial.

(b) Housekeeping elements for those unable to perform these responsibilities.

(c) Personal care and services for those who need assistance in daily care.

(d) Transportation and other access to essential services; and

(e) Social and Recreational activities.

D. *Selection Criteria.* Preapplications submitted to FmHA must meet the requirements of Subpart D of Part 1822, Chapter XVIII, Title 7, Code of Federal Regulations. Evaluation will be based on the Memorandum of Understanding and the following weighted criteria:

1. Management plan and demonstrated management experience	25
2. Site evaluation, (location, public utilities available, accessibility to essential services: etc)	25
3. Architectural design with specific relevance to the needs of elderly persons	20
4. Support Services plan and the ability of the applicant to work with the Area Agency on Aging	20
5. Overall innovativeness and efficiency of entire proposal	10
Maximum rating	100

E. *Estimated Timetable for funding and final Selection Process.*—

1. January—Interested parties investigate and discuss program with FmHA State Director and State and Area Agency on Aging.

2. February 22—All preapplications to be submitted to FmHA State Director in Final form. FmHA State Director, with the assistance of the State and Area Agency on Aging will perform site visits and prepare written report on each application.

3. March 17—FmHA State Director to submit all preapplications with individual written comments to the National Office.

4. A review committee consisting of persons from FmHA and AoA will review, evaluate, and submit recommendation to Administrator FmHA.

5. FmHA Administrator shall make selection of finalist and notify FmHA State Director. The decision of the Administrator, FmHA shall be final and is not subject to appeal.

(42 U.S.C. 1480; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by Asst Sec. for Rural Development, 7 CFR 2.70)

Dated: January 15, 1980.

James E. Thornton,

Associate Administrator, Farmers Home Administration.

[FR Doc. 80-2226 Filed 1-23-80; 8:45 am]

BILLING CODE 3410-07-M

Forest Service

Targhee National Forest; Bonneville, Butte, Clark, Fremont, Lemhi, Madison, and Teton Counties, Idaho, and Lincoln and Teton Counties, Wyo.; Intent To Prepare an Environmental Impact Statement for Proposed Forest Land and Resource Management Plan

Pursuant to the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture will prepare an Environmental Impact Statement for the proposed Forest Land and Resource Management Plan for the Targhee National Forest. The Management Plan for the Targhee will encompass 1,797,620 acres.

Preparation of the Plan will follow direction outlined in the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976. The Forest Plan will be prepared according to regulations promulgated by the Secretary of Agriculture. The regulations implement section 6 of the National Forest Management Act of 1976.

The resulting Plan will provide for multiple use and sustained yield of products and services from the Targhee National Forest. The Plan will guide all natural resource management activities and establish management standards and guidelines. It will determine resource management practices, harvesting levels and procedures under the principles of multiple use and sustained yield, and the availability and suitablility of lands for resource management.

The Forest Plan will be selected from among representative alternatives which will include at least: (1) A no-change in existing resource outputs alternative, (2) A range of alternatives that displays possible outputs of resources available at each of several expenditure levels, and (3) Alternatives designed to resolve the identified major public issues and management concerns.

Public participation will be an integral part of the planning process. Small "scoping" meetings to identify issues to be addressed will be held early in the process. Times and places for these meetings will be announced by notices in area newspapers, news releases to news media, and announcements mailed to other agencies, organizations, and individuals known to have interest in management of the Targhee National Forest. Four general meetings will be held in 1980 at the following places: Dubois, Dubois County Courthouse, March 24; St. Anthony, Fremont High School, March 25; Idaho Falls, Eagle Rock Jr. High School, March 26; and Driggs, Driggs Armory, March 27.

Vern Hamre, Regional Forester, is the reponsible official for this plan.

Further information about the planning and Environmental Impact Statement process or comments on the Notice of Intent should be directed to: Robert Williams, Forest Planning Staff Officer, Targhee National Forest, 420 N. Bridge St., St. Anthony, ID 83445, (208) 624-3151.

The estimated date for filing the Draft Environmental Impact Statement is April 1981; and the anticipated date for filing the Final Environmental Statement is October 1981.

Dated: January 14, 1980.

Vern Hamre,

Regional Forester.

[FR Doc. 80-2239 Filed 1-23-80; 8:45 am]

BILLING CODE 3410-11-M

Sugarbush Ski Area Expansion; Green Mountain National Forest, Washington County, Vt.; Intent To Prepare an Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of Agriculture, Forest Service, will prepare an environmental impact statement in response to a proposal for expansion of the Sugarbush Ski Area. This proposed expansion involves National Forest and adjacent private lands within the Rochester Ranger District.

Sugarbush Valley, Inc., owns and operates two separate ski areas, Sugarbush and Sugarbush North, with the combined capacity for 5,400 skiers at one time (SAOT). The proposal for expansion decribes linking the two sites by additional development and increasing the capacity to 11,700 SAOT. The expansion is planned to occur over a 15 to 20 year period. An important objective is the creation of a highly focused, destination ski resort with emphasis upon trailside development.

A range of alternatives, broad enough to respond to major issues, concerns and opportunities, will be considered. One alternative will be no additional development on National Forest land.

Other alternatives will vary with regard to the level of development and will range from 5,400 to 18,550 SAOT. Alternative locations for ski lifts, ski trails and support facilities will be considered.

Before the environmental analysis is started, Federal, State and local agencies, potential developers and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in identification of: (a) issues to be addressed; (b) issues to be analyzed indepth; and (c) issues which are not significant, or which have been covered by prior environmental review and should be eliminated from detailed study.

It is anticipated that the analysis will require about 18 months. The draft environmental impact statement is scheduled for completion by March 1981 and the final environmental impact statement is scheduled for filing in July 1981.

Steve Yurich, Regional Forester of the Eastern Region, is the responsible official. Questions about the proposed action and environmental impact statement should be directed to Jack Blackwell, Rochester District Ranger (802–767–4777).

Written comments and suggestions concerning this Notice of Intent or on the proposal are encouraged and should be sent to the Forest Supervisor, Green Mountain National Forest, Rutland, Vermont 05701, by April 15, 1980.

James H. Freeman,

Director, Planning, Programming and Budgeting.

January 14, 1980.

[FR Doc. 80–2149 Filed 1–23–80; 8:45 am]

BILLING CODE 3410–11–M

Intermountain Region Land and Resource Management Plan; Intent To Prepare and Environmental Impact Statement

Pursuant to the National Environmental Policy Act of 1969, the Department of Agriculture, Forest Service, will prepare an environmental impact statement for the Intermountain Region Land and Resource Management Plan.

The Plan will be developed in accordance with the National Forest Management Act of 1976 and will discuss the following:

1. Broad, long range policy, goals, and objectives for the Intermountain Region as assigned by the National RPA Program.

2. The ability of the Intermountain Region to achieve the assigned RPA output levels of goods and services.

3. Land and resource objectives for national forests of the Intermountain Region.

4. Guidelines and alternative strategies to resolve public issues and management concerns.

A reasonable range of alternatives including a no-action alternative will be formulated by the interdisciplinary team. All alternatives will reflect a range of resource outputs and expenditure levels. Alternatives will address major public issues and management concerns. Each alternative will represent to the extent practicable the most cost efficient combination of management practices.

As part of the scoping process, a preliminary list of issues was presented to the public in March 1979. Input was received from Forest Service officials, intersted Federal, State, county and local government officials as well as the public. This input has been summarized and evaluated and will be discussed in the draft environmental impact statement. Issues as well as concerns and opportunities will be addressed in the plan. Opportunities to comment on the draft environmental impact statement (DEIS) will be made available to the public. Specific dates, times and places for future public participation will be published in the **Federal Register** prior to release of the DEIS.

The filing of the draft environmental impact statement for the Intermountain Region Land and Resource Management Plan with the Environmental Protection Agency is expected in August 1980. The proposed release of the final environmental impact statement and plan is February 1981.

Mr. R. Max Peterson, Chief, Forest Service, USDA, is the responsible official who will approve the plan. Vern Hamre, Regional Forester, Intermountain Region, is responsible for preparation of the plan.

Comments or questions regarding this Notice of Intent or the planning process should be addressed to Warren Thiem, Planning and Budget Ofice, Intermountain Region, Forest Service, 324–25th Street, Ogden, Utah 84401 (Phone: 801–626–3502).

Dated: January 17, 1980.

Philip L. Thornton,

Acting Chief, Forest Service.

[FR Doc. 80–2171 Filed 1–23–80; 8:45 am]

BILLING CODE 3410–11–M

CIVIL AERONAUTICS BOARD

[Docket No. 37278]

American Airlines, Inc., New York-San Juan Cargo Service, Enforcment Proceeding; Prehearing Conference

Notice is hereby given that a prehearing conference will be held in the above-entitled proceeding on February 13, 1980, at 10:30 a.m. (local time), in Hearing Room 1003B, North Universal Building, 1875 Connecticut Avenue, N.W., Washington, D.C. before me.

Parties are expected to be prepared to discuss simplification of the issues, stipulations as to facts, authentication of documents, future procedural dates, and such other matters as will contribute to the orderly and prompt conduct of this proceeding.

Dated at Washington, D.C., January 21, 1980.

Marvin H. Morse,

Administrative Law Judge.

[FR Doc. 80–2276 Filed 1–23–80; 8:45 am]

BILLING CODE 6320–01–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations

Notice is hereby given that, during the week ended January 18, 1980 CAB has received the applications listed below, which request the issuance, amendment, or renewal of certificates of public convenience and necessity or foreign air carrier permits under Subpart Q of 14 CFR Part 302.

Answers to foreign permit applications are due 28 days after the application is filed. Answers to certificate applications requesting restriction removal are due within 14 days of the filing of the application. Answers to conforming applications in a restriction removal proceeding are due 28 days after the filing of the original application. Answers to certificate applications (other than restriction removals) are due 28 days after the filing of the application. Answers to conforming applications or those filed in conjunction with a motion to modify scope are due within 42 days after the original application was filed. If you are in doubt as to the type of application which has been filed, contact the applicant, the Bureau of Pricing and Domestic Aviation (in interstate and overseas cases) or the Bureau of International Aviation (in foreign air transportation cases).

Subpart Q Applications

Date filed	Docket No.	Description
Jan. 16, 1980	37452	Southwest Airlines Co., c/o Paul Y. Seligson, Wilner & Scheiner, 2021 L Street, N.W., Washington, D.C. 20036. Application of Southwest Airlines Co. requests under Section 401 of the Act and Subpart Q requests a certificate of public convenience and necessity authorizing it to perform scheduled air transportation of persons and property between and among the terminal point New Orleans, Louisiana, on the one hand, and the alternate terminal points Daytona Beach, Fort Lauderdale, Fort Myers, Gainesville, Miami, Orlando, Sarasota, and West Palm Beach, Florida, on the other hand. Answers may be filed January 30, 1980.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-2279 Filed 1-23-80; 8:45 am]

BILLING CODE 6320-01-M

[Order No. 80-1-121; Docket No. 37472]

Chicago-Phoenix; Show Cause Proceeding

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 80-1-121, (Docket 37472) Chicago-Phoenix Show-Cause Proceeding.

SUMMARY: The Board is proposing to grant nonstop air route authority between Chicago and Phoenix to United Air Lines, USAir, 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 an order making final the tentative findings and conclusions shall file, by February 22, 1980, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections. Such filings shall be served upon all parties listed below.

ADDRESSES: Objections to the issuance of a final order, or additional data as described above, should be filed in Docket 37472, which we have entitled the *Chicago-Phoenix Show-Cause 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 United Air Lines; USAir; Trans World Airlines; the Mayors of Chicago and Phoenix; Airport Managers of Chicago and Phoenix; and the Aeronautical Commissions of Arizona and Illinois.

FOR FURTHER INFORMATION CONTACT: Neil G. Whitehouse, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C., 20428, (202) 673-5328.

SUPPLEMENTARY INFORMATION: The complete text of Order 80-1-121 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 80-1-121 to the Distribution Section, Civil Aeronautics Board, Washington, D.C., 20428.

By the Bureau of Domestic Aviation: January 18, 1980.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-2278 Filed 1-23-80; 8:45 am]

BILLING CODE 6320-01-M

[Dockets Nos. 33363, 33688, and 33689]

Former Large Irregular Air Service Investigation Phase III, Applications of Lone Star Airways, Inc.; Reassignment of Proceeding

This proceeding, insofar as it involves the applications of Lone Star Airways, Inc., Dockets 33688 and 33689, has been reassigned to Administrative Law Judge Richard M. Hartsock. Future communications should be addressed to Judge Hartsock.

Dated at Washington, D.C., January 18, 1980.

Joseph J. Saunders,

Chief Administrative Law Judge.

[FR Doc. 80-2274 Filed 1-23-80; 8:45 am]

BILLING CODE 6320-01-M

[Dockets Nos. 33363, 34281, and 34282]

Former Large Irregular Air Service Investigation Phase III, Applications of Robert G. Rutkowski, d.b.a. Northeastern International Airways; Reassignment of Proceeding

This proceeding, insofar as it involves the applications of Robert G. Rutkowski d/b/a Northeastern International Airways, Dockets 34281 and 34282, has been reassigned to Chief Administrative Law Judge Joseph J. Saunders.

Dated at Washington, D.C., January 18, 1980.

Joseph J. Saunders,

Chief Administrative Law Judge.

[FR Doc. 80-2273 Filed 1-23-80; 8:45 am]

BILLING CODE 6320-01-M

[Dockets Nos. 33363, 36183, and 36184]

Former Large Irregular Air Service Investigation Phase III, Applications of Sunland Airlines Inc.; Reassignment of Proceeding

This proceeding, insofar as it involves the applications of Sunland Airlines, Inc., Dockets 36183 and 36184, has been reassigned to Administrative Law Judge Richard M. Hartsock. Future communications should be addressed to Judge Hartsock.

Dated at Washington, D.C., January 18, 1980.

Joseph J. Saunders,

Chief Administrative Law Judge.

[FR Doc. 80-2275 Filed 1-23-80; 8:45 am]

BILLING CODE 6320-01-M

[Order No. 80-1-83; Docket No. 37441]

Sacramento-San Francisco/Oakland/San Jose; Show Cause Proceeding

AGENCY: Civil Aeronautics Board.

ACTION: Notice of *Sacramento-San Francisco/Oakland/San Jose Show-Cause Proceeding* (Docket 37441) (Order 80-1-83).

SUMMARY: The Board is proposing to award nonstop air route authority to Pan American World Airways and any other fit, willing and able applicants the fitness of which can be established by officially noticeable material, between Sacramento, on the one hand, and San Francisco, Oakland, and San Jose, on the other.

The complete text of this order is available as noted below.

DATES: All interested persons having objections to the Board issuing an order making final the tentative findings and conclusions shall file, by February 25, 1980, 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 shall be served upon all parties listed below.

Additional Data: All further applicants are directed to file applications, motions to consolidate, illustrative service proposals, environmental evaluations, and estimates of fuel to be consumed in the first year and statements of fuel availability no later than February 8, 1980.

ADDRESSES: Objections to the issuance of a final order, or additional data as described above, should be filed in Docket 37441, which we have entitled the *Sacramento-San Francisco/ Oakland/San Jose Show-Cause 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 Pan American World Airways; Governor of California; the California Public Utilities Commission; California Department of Transportation, Division of Aeronautics; County of Sacramento; and the mayors and airport managers of Sacramento, San Francisco, Oakland, and San Jose.

FOR FURTHER INFORMATION CONTACT: Anne W. Stockvis, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, Washington, D.C. 20428, (202) 673–5198.

SUPPLEMENTARY INFORMATION:

The complete text of Order 80–1–83 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 80–1–83 to that address.

By the Bureau of Domestic Aviation:
January 14, 1980.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 80-2277 Filed 1-23-80; 8:45 am]
BILLING CODE 6320-01-M

CIVIL RIGHTS COMMISSION

New Mexico Advisory Committee to the U.S. Commission on Civil Rights; 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 Mexico Advisory Committee (SAC) of the Commission will convene at 2:00 p.m. and will end at 5:00 p.m., on February 21, 1980, at the Holiday Inn of Taos (Padre Martinez), P.O. Box 1409, Taos, New Mexico.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Southwestern Regional Office of the Commission, 418 South Main Street, San Antonio, Texas 78204.

The purpose of this meeting is full SAC planning and community meeting.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 18, 1980.

Thomas L. Neumann,
Advisory Committee Management Officer.

[FR Doc. 80-2269 Filed 1-23-80; 8:45 am]
BILLING CODE 6335-01-M

Missouri Advisory Committee to the U.S. Commission on Civil Rights; Amendment

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 Missouri Advisory Committee (SAC) of the Commission originally scheduled for February 8, 1980, in St. Louis, Missouri, (FR Doc. 80–1169 on page 2675) has been cancelled.

Thomas L. Neumann,
Advisory Committee Management Officer.

[FR Doc. 80-2270 Filed 1-23-80; 8:45 am]
BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Survey of Retail Sales and Inventories; Determination

In accordance with Title 13, United States Code, sections 182, 224 and 225, and due notice of consideration having been published November 15, 1979, (44 FR 65802) I have determined that certain 1979 annual data for retail trade are needed to provide a sound statistical basis for the formation of policy by various governmental agencies, and that these data are also applicable to a variety of public and business needs. This annual survey is a continuation of similar surveys conducted each year since 1951 (except 1954). It provides, on a comparable classification basis, data covering 1978 and 1979 year-end inventories and 1979 annual sales. These data are not publicly available on a timely basis from nongovernmental or other governmental sources.

Reports will be required only from a selected sample of firms operating retail restablishments in the United States. The sample will provide, with measurable reliability, statistics on the subjects specified above. Reports will be requested from a sample of stores with probability of selections based on their sales size.

Report forms will be furnished to the firms covered by the survey and will be due 20 days after receipt. Copies of the forms are available on written request to the Director, Bureau of the Census, Washington, D.C. 20233.

I have, therefore, directed that an annual survey be conducted for the purpose of collecting these data.

Dated: January 18, 1980.

Vincent P. Barabba,
Director, Bureau of the Census.

[FR Doc. 80-2176 Filed 1-23-80; 8:45 am]
BILLING CODE 3510-07-M

International Trade Administration

Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Hardware Subcommittee of Computer Systems Technical Advisory Committee will be held on Wednesday, February 13, 1980, at 1:30 p.m. in Room B841, Main Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C.

The Computer Systems Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, January 13, 1977, and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to Section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c)(1) and the Federal Advisory Committee Act. The Hardware Subcommittee of the Computer Systems Technical Advisory Committee was established on July 8, 1975, with the approval of the Director, Office of Export Administration, pursuant to the Charter of the Committee. And, on October 16, 1978, the Assistant Secretary for Industry and Trade approved the continuation of the Subcommittee pursuant to the charter of the Committee.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls

applicable to computer systems, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls. The Hardware Subcommittee was formed to continue the work of the Performance Characteristics and Performance Measurements Subcommittee, pertaining to (1) maintenance of the processor performance tables and further investigation of total systems performance; and (2) investigation of array processors in terms of establishing the significance of these devices and determining the differences in characteristics of various types of these devices.

The Subcommittee meeting agenda has four parts:

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion of improved method of submitting supporting information for export license applications and development of methods of reporting performance values.

Executive Session

4. Discussion of matters properly classified under Executive Order 11652 or 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting is open to the public; a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

With respect to agenda item (4), the Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 6, 1978, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government in the Sunshine Act, P.L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1). Such matters are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy. All materials to be reviewed and discussed by the Subcommittee during the Execution Session of the meeting have been properly classified under Executive Order 11652 or 12065. All Subcommittee members have appropriate security clearances.

The complete Notice of Determination to close meetings or portions thereof of the series of meetings of the Computer Systems Technical Advisory Committee and of any Subcommittees thereof, was published in the **Federal Register** on September 14, 1978 (43 FR 41073).

Copies of the minutes of the General Session can be obtained by calling Mrs. Margaret Cornejo, Policy Planning Division, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230, phone 202–377–2583.

For further information contact Mrs. Cornejo either in writing or by phone at the address or number shown above.

Dated: January 18, 1980.

Kent N. Knowles,

Director, Office of Export Administration, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 80–2155 Filed 1–23–80; 8:45 am]

BILLING CODE 3510–25–M

Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee will be held on Wednesday, February 13, 1980, at 9:30 a.m. in Room B841, Main Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C.

The Computer Systems Technical Advisory Committee was initially established on January 13, 1973. On December 20, 1974, January 13, 1977, and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to Section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c)(1) and the Federal Advisory Committee Act. The Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee was established on February 4, 1974. On July 8, 1975, the Director, Office of Export Administration, approved the reestablishment of this Subcommittee, pursuant to the charter of the Committee. And, on October 16, 1978, the Assistant Secretary for Industry and Trade approved the continuation of the Subcommittee pursuant to the charter of the Committee.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which may affect the level of export controls applicable to computer systems, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates, including proposed revisions of any such multilateral controls. The Licensing Procedures Subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

The Subcommittee meeting agenda has four parts:

(1) Opening remarks by the Subcommittee Chairman.
(2) Presentation of papers or comments by the public.
(3) Pending items of business:
a. Technical Data rewrite
b. Qualifed License concept
(4) Discussion of improved method and format for submitting export license applications.

The meeting will be open for public observation and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

Copies of the minutes of the meeting will be available by calling Mrs. Margaret Cornejo, Policy Planning Division, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202–377–2583.

For further information contact Mrs. Cornejo either in writing or by phone at the address or number shown above.

Dated: Janaury 18, 1980.

Kent Knowles,

Director Office of Export Administration, International Trade Administration, Department of Commerce.

[FR Doc. 80–2156 Filed 1–23–80; 8:45 am]

BILLING CODE 3510–25–M

Foreign Availability Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is

hereby given that a meeting of the Foreign Availability Subcommittee of the Computer Systems Technical Advisory Committee will be held on Tuesday, February 12, 1980, at 1:00 p.m. in Room 5611, Main Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C.

The Computer Systems Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, January 13, 1977, and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to Section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. app. Sec. 2404(c)(1) (1976 and Supp. I 1977), and the Federal Advisory Committee Act. The Foreign Availability Subcommittee of the Computer Systems Technical Advisory Committee was established on July 8, 1975. October 16, 1978, the Assistant Secretary for Industry and Trade approved the continuation of the Subcommittee pursuant to the charter of the Committee.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which may affect the level of export controls applicable to computer systems, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates, including proposed revisions of any such multilateral controls. The Foreign Availability Subcommittee was formed to ascertain if certain kinds of equipment are available in non-COCOM and Communist countries, and if such equipment is available, then to ascertain if it is technically the same or similar to that available elsewhere.

The Subcommittee meeting agenda has six parts:

General Session

(1) Opening remarks by the Subcommittee Chairman.

(2) Presentation of papers or comments by the public.

(3) Distribution of Moscow picture book.

(4) Discussion of progress on foreign availability activities of the Office of Export Administration.

(5) New business.

Executive Session

(6) Discussion of matters properly classified under Executive Order 11652, 3 CFR 678 (1971–1975 Compilation), or 12065, 3 CFR 191 (1979), dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public; a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

With respect to agenda item (6), the Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 7, 1978, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government In The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. Sec. 552b(c)(1) (1976). Such matters are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of the national defense or foreign policy. All materials to be reviewed and discussed by the Subcommittee during the Executive Session of the meeting have been properly classified under Executive Order 11652 or 12065. All Subcommittee members have appropriate security clearances.

The complete Notice of Determination to close meetings or portions thereof of the series of meetings of the Computer Systems Technical Advisory Committee and of any Subcommittees thereof, was published in the Federal Register on September 14, 1978 (43 FR 41073).

Copies of the minutes of the open portions of the meeting will be available by calling Mrs. Margaret Cornejo, Policy Planning Division, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202–377–2583.

For further information contact Mrs. Cornejo either in writing or by phone at the address or number shown above.

Dated: January 21, 1980.

Kent N. Knowles,

Director, Office of Export Administration, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 80–2283 Filed 1–23–80; 8:45 am]

BILLING CODE 3510–25–M

Numerically Controlled Machine Tool Technical Advisory Committee; Partially Closed Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Numerically Controlled Machine Tool Technical Advisory Committee will be held on Tuesday, February 12, 1980, at 10:00 a.m. in Room 3708, Main Commerce Building, 14th Street and Constitution Avenue NW., Washington, D.C.

The Numerically Controlled Machine Tool Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, January 13, 1977, and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to Section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. app. Sec. 2404(c)(1) (1976 and Supp. I 1977), and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production of technology, (C) licensing procedures which affect the level of export controls applicable to numerically controlled machine tools, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls.

The Committee meeting agenda has six parts:

General Session

(1) Opening remarks by the Chairman.

(2) Presentation of papers or comments by the public.

(3) Continued discussion of accuracy parameters for numerically controlled machine tools.

Review of information regarding foreign availability of numerical controlled technology.

(5) New business.

Executive Session

(6) Discussion of matters properly classified under Executive Order 11652, 3 CFR 678 (1971–1975 Compilation), and 12065, 3 CFR 191 (1979), dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits members of the

public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

With respect to agenda item (6), the Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 6, 1978, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government In The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. Sec. 552(b)(c)(1)(1976). Such matters are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of the national defense or foreign policy. All materials to be reviewed and discussed by the Committee during the Executive Session of the meeting have been properly classified under Executive Order 11652 or 12065. All Committee members have appropriate security clearances.

The complete Notice of Determination to close meetings or portions thereof of the series of meetings of the Numerically Controlled Machine Tool Technical Advisory Committee and of any Subcommittees thereof, was published in the **Federal Register** on October 25, 1978 (43 FR 49828).

Copies of the minutes of the General Session will be available by calling Mrs. Margaret Cornejo, Policy Planning Division, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202–377–2583.

For further information contact Mrs. Cornejo either in writing or by phone at the address or number shown above.

Dated: January 21, 1980.

Kent N. Knowles,

Director, Office of Export Administration, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 80–2282 Filed 1–23–80; 8:45 am]

BILLING CODE 3510–25–M

Ohio State University; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. at 666–11th Street, N.W. (Room 735) Washington, D.C.

Docket No.: 79–00261. Applicant: The Ohio State University, Department of Pharmacology, 5086 Graves Hall, 333 W. 10th Avenue, Columbus, Ohio 43210. Article: Double Focusing High Resolution Gas Chromatograph/Mass Spectrometer System, Model MAT 311A and Accessories. Manufacturer: Varian MAT GmbH, West Germany. Intended use of article: The article is intended to be used to perform studies of a variety of endogenous and exogenous organic compounds in biological fluids (urine, blood, cerebrospinal fluid, and tissues) from man and animal.

The experiments to be conducted will include the following: (1) Mapping of the contents of the cerebrospinal fluid and identification and quantification of abnormal constituents, (2) Analysis of blood and tissue in a similar way, (3) Investigations of functional changes in cellular processes, which will bring mass spectrometric analysis down to the cellular level, and (4) Study of turn-over rates and metabolism of some endogenous compound labeled with stable isotopes. The article will also be used in courses 794 Pharmacology: Biomedical Mass Spectrometry and Chromatography and 999 Pharmacology: Dissertation Research for demonstration of the different techniques and principles, training in the operation of the system and use of the system in solving research problems.

Comments: No comments have been received with respect to this application. Decision: Application approved. No domestic manufacturer was both able and willing to manufacture an instrument or apparatus of equivalent scientific value to the foreign article for such purposes as the foreign article is intended to be used, and have it available to the applicant without unreasonable delay in accordance with Subsection 301.11(c) of the regulations at the time the foreign article was ordered (June 28, 1978). Reasons: This application is a resubmission of Docket No. 78–00368 which was denied without prejudice to resubmission on January 8, 1979, for informational deficiencies. A request for quote (RFQ) dated April 27, 1978, including a comprehensive list of the applicant's technical requirements in a mass spectrometer, was sent to domestic manufacturer's of instruments comparable to the foreign article. E. I. DuPont de Nemour and Company, Inc., Instrument Product Division, (DuPont) bid on these requirements offering its Model 21–491BR. The Department of Health, Education, and Welfare advises in its memorandum dated September 12, 1979, that the DuPont Model 21–491BR is inadequate for the applicant's purposes. Noting that guaranteed resolution and the sensitivity of the foreign article is far superior to the resolution and sensitivity of the 21–491BR the Department concurs and finds that the Model 21–491BR was not of equivalent scientific value to the foreign article at the time of order. Nuclide Corporation (Nuclide) received its RFQ on May 1, 1979, but did not respond.

Mass Spectrometers fall in a category of instruments that are produced on order. Section 301.11(b) of the Department's regulations provide that in determining whether a produced on order instrument is "manufactured in the United States" the Department shall determine whether a U.S. manufacturer is *able* and *willing* to produce the instrument and have it available without unreasonable delay, taking into account "the normal commerical practices applicable to the production and delivery of instruments, apparatus, or accessories of the same general category."

In failing to respond to the formal request for bid, the Department has determined that the domestic manufacturer that may have had the capability to produce an instrument scientifically equivalent to the foreign article was not willing to do so. The Department by letter dated November 5, 1979, requested the domestic manufacturer in question to supply evidence, if such be the case, that it was both willing and able to offer its instrument (notwithstanding the fact that an employee of the firm advised the Department by telephone that the firm did not respond to the formal bid request). No such evidence was forthcoming.

Accordingly, the Department of Commerce finds that with respect to this importation no domestic manufacturer was both "able and willing" to manufacture a domestic instrument of equivalent scientific value to the foreign article for such purposes as the foreign article is intended to be used at the time the foreign article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Progams Staff.

[FR Doc. 80–2250 Filed 1–23–80; 8:45 am]

BILLING CODE 3510–25–M

Uniformed Services University of Health Sciences, et al.; Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230, within 20 calendar days after the date on which this notice of application is published in the **Federal Register.**

Regulations (15 CFR 301.9) issued under the cited Act prescribe the requirements for comments.

A copy of each application is on file, and may be examined between 8:30 A.M. and 5:00 P.M., Monday through Friday, in Room 735 at 666-11th Street N.W. Washington, D.C.

Docket No. 80–00072. Applicant: Uniformed Services University of the Health Sciences, School of Medicine, 4301 Jones Bridge Road, Bethesda, Maryland 20014. Article: Scanning Transmission Electron Microscope, Model JEM 100CX and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used primarily to support a variety of clinical and basic science medical research projects in high resolution transmission electron microscopy, scanning transmission electron microscopy and high resolution scanning electron microscopy. The article will also be used for teaching graduate students and staff advanced techniques in electron microscopy. It will be used in graduate school courses including an interdepartmental laboratory course on electron microscopic techniques, a course on Ultrastructure of the Central Nervous System and elective tutorial courses in Special Projects in Transmission Electron Microscopy. Application received by Commissioner of Customs: December 12, 1979.

Docket No. 80–00073. Applicant: National Aeronautics and Space Administration, Lyndon B. Johnson Space Center, R&T Procurement Branch/BC7, Houston, Texas 77058. Article: Monohud Pilots' Display Unit, Video Signals Unit, Electronic Drive Unit, Electronic Unit and Accessories. Manufacturer: Marconi Avionics Elliott Bros. Ltd., United Kingdom. Intended use of article: The article is intended to be used in the study, in-flight development, and verification of Head-Up Display (HUD) symbology formats and algorithms for Space Shuttle Orbiter approach and landing. Application received by Commissioner of Customs: December 12, 1979.

Docket No.: 80–00074. Applicant: University of California, Mechanical Engineering Department, 2020 Bainer Hall, Davis, CA 95616. Article: Ion Milling Machine. Manufacturer: Ion Tech., United Kingdom. Intended use of article: The article is intended to be used to prepare specimens of glass and ceramic materials for observation in the transmission electron microscope. The article will also be used in the course Fundamentals of Transmission Electron Microscopy for training students in the principles and techniques of electron microscopy used in the study of materials. Application received by Commissioner of Customs: December 12, 1979.

Docket No.: 80–00075. Applicant: Ricks College, P.O. Box 38, Rexburg, Idaho 83440. Article: Sound Mixing Console. Manufacturer: Richmond Sound Design, Ltd., Canada. Intended use of article: The article is intended to be used for dramatic arts production. Application received by Commissioner of Customs: December 12, 1979.

Docket No.: 80–00076. Applicant: University of Hawaii, Honolulu, Hawaii 96822. Article: Rotating Anode X-Ray Generator and Accessories. Manufacturer: Rigaku, Japan. Intended use of article: The article is intended to be used with a well-established high pressure-high temperature apparatus, and energy dispersive X-ray diffraction system as an intense X-ray source to investigate several very important problems in the area of (i) equation of state, (ii) phase relationships and (iii) melting phenomena for mantle minerals such as olivines $(Mg,Fe)_2SiO_4$; pyroxenes $(Mg,Fe)SiO_3$; garnets $(Mg,Fe)_3Al_2Si_3O_{12}$; and stishovite (SiO_2) and their analogs (i.e., MgF_2, FeF_2, MnF_2, CoF_2, NiF_2 and ZnF_2) under *in situ* high pressure (up to 600 kbar) and high temperature (up to 2000°C). Experimental data obtained will be used to refine the earth model and thus will be of great value in understanding of geothermal and geodynamics processes in the earth's interior. Application received by Commissioner of Customs: December 12, 1979.

Docket No.: 80–00078. Applicant: The Johns Hopkins University School of Medicine, Department of Ophthalmology, 720 Rutland Avenue, Baltimore, Maryland 21205. Article: Automatic Visual Perimeter. Manufacturer: Bara Elektronik, Sweden. Intended use of article: The article is intended to be used for research studies including evaluation of the instrument in the diagnosis of visual field loss. Medical doctors of the ophthalmic residency program will be instructed in the use of the article for the diagnosis of visual field loss. Application received by Commissioner of Customs: December 12, 1979.

Docket No.: 80–00079. Applicant: Northwest Community Hospital, 800 W. Central, Arlington Heights, Ill. 60005. Article: Electron Microscope, Model H–300 and Accessories. Manufacturer: Hitachi, Ltd., Japan. Intended use of article: The article is intended to be used for studies of biological materials, especially human tissues of products. Ultrastructural studies on human tissues, cells, or byproducts will be performed for the purposes of diagnosis of disease and elucidation of disease mechanisms. Membrane changes, alterations in subcellular organellae and subcellular tumor markers will be studied. The article will also be used for various educational purposes. Application received by Commissioner of Customs: December 12, 1979.

Docket No.: 80–00080. Applicant: St. Paul Hospital, Daughters of Charity, 5909 Harry Hines Blvd., Dallas, Texas 75235. Article: 20 MeV Electron Linear Accelerator and Accessories. Manufacturer: Atomic Energy of Canada Ltd., Canada. Intended use of article: The article is intended to be used in clinical trials in which patients treated on this unit will have treatment results and incidence of complications, evaluated and compared with treatment from conventional units that use scattering foils that must be carefully matched with a range of fixed dimension field applicators designed for field flatness. Through the treatment programs for deep seated tumors as well as those lying within a few centimeters of the skin, care of patients with cancer will be taught to physicians; training will then persist on what benefits will be expected for the patient in terms of reduced morbidity and hence tumor controls through the use of this new generation of equipment. Application received by Commissioner of Customs: December 12, 1979.

Docket No.: 80–00081. Applicant: Municipality of Metropolitan Seattle (Metro), 821 Second Avenue, Seattle, Washington 98104. Article: Gas Chromotagraph/Mass Spectrometer,

Model MS80. Manufacturer: Kratos Ltd., United Kingdom. Intended use of article: The article is intended to be used for identification and quantitation of trace levels of organic compounds in environmental samples, including publicly owned, treatment plant wastewater and sludges. The compounds of interest to be studied are mostly synthetic organic compounds identified as anthropogenically derived environmental contaminants. Organic compounds other than these will be searched for and identified where possible. Industrial spills of unidentified or potentially hazardous organic compounds, and illegal dumps of unknown pesticides and herbicides, will be characterized and quantitated. Additional objectives include identifying unknown compounds coming from industrial spills into the Metro sewage collection system, identifying unknown pesticides and herbicides illegally dumped into environmental waters, and monitoring the fates and distributions of those organic compounds introduced to the environment. Application received by Commissioner of Customs: December 12, 1979.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 80-2249 Filed 1-23-80; 8:45 am]

BILLING CODE 3510-25-M

Minority Business Development Agency

Financial Assistance Application Announcement

The Minority Business Development Agency (MBDA) formerly the Office of Minority Business Enterprise (OMBE), announces that it is seeking applications under its program to operate one project for a 12 month period beginning March 1, 1980 in the eleven State Dallas Region which includes: Montana, North Dakota, South Dakota, Wyoming, Utah, Colorado, New Mexico, Oklahoma, Texas, Arkansas and Louisiana. The cost of the project is estimated to be $372,000 and the Project Number is 06-10-40163-00.

Funding Instrument: It is anticipated that the funding instrument, as defined by the Federal Grant and Cooperative Agreement Act of 1977, will be a grant.

Program Description: Executive Order 11625 authorizes MBDA to fund projects which will provide technical and management assistance to minority business enterprises. This proposed project is specifically designed to provide specialized assistance to satisfy the needs of the minority business firms; management and technical assistance; and to develop special impact projects in growth and high leverage industries.

Eligibility Requirements: There are no restrictions. Any for-profit firm or not-for-profit institution is eligible to submit an application.

Application Materials: An application kit for each of the projects may be requested by writing to the following address: U.S. Department of Commerce, Minority Business Development Agency, Dallas Regional Office, 1100 Commerce Street, Room 7B26, Dallas, Texas 75242.

In requesting an application kit, the applicant must specify its profit status (i.e., a State or local government, Federally recognized Indian Tribunal Unit, Educational Institution, Hospital, other type of non-profit organization, or if the applicant is a for-profit firm). This information is necessary to enable MBDA to include the appropriate cost principles in the application kit.

Award Process: All applications that are submitted in accordance with the instructions in the application kit will be submitted to a panel for review and ranking. The applications will be ranked as to their understanding of minority business problems, approach and program methodology, responsiveness to questions, organizational structure, quality of personnel, experience, capacity, and cost. Specific criteria will be included in the application kit. If an application is approved, an initial award will be made for a period specified for that award. Continuation awards may be made on a noncompetitive basis when detemined by the Awards Office to be in the best interest of the Government.

Closing Date: Applicants are encouraged to obtain an application kit as soon as possible in order to allow sufficient time to prepare and submit an application before the closing date of February 11, 1980. Detailed submission procedures are outlined in each application kit.

(11.800 Minority Business Development; Catalog of Federal Domestic Assistance)

Dated: January 18, 1980.

Allan A. Stephenson,

Deputy Director.

[FR Doc. 80-2248 Filed 1-23-80; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

New England Fishery Management Council's Scientific and Statistical Committee; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The New England Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), has established a Scientific and Statistical Committee (SSC), which will meet to discuss: Sea Scallop Fishery Management Plan (FMP); Groundfish, the process of developing attainable objectives for fishery management; and other Council related business.

DATES: The meeting will convene on Wednesday, February 13, 1980, at approximately 10 a.m. and will adjourn at approximately 5 p.m. The meeting is open to the public.

ADDRESS: The meeting will take place at Best Western Motel, Green Airport, Providence, Rhode Island.

FOR FURTHER INFORMATION CONTACT: New England Fishery Management Council, Peabody Office Building, One Newbury Street, Peabody, Massachusetts, Telephone: (617) 535-5450.

Dated: January 21, 1980.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 80-2288 Filed 1-23-80; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council and Scientific and Statistical Committee and Advisory Panel; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The North Pacific Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265) and its Scientific and Statistical Committee (SSC) and Advisory Panel (AP) will hold joint and separate meetings.

DATES: The Council meeting will convene on Thursday, February 7, 1980, at 8:30 a.m. and will adjourn on Friday, February 8, 1980, at 5 p.m. at the Anchorage/Westward/Hilton Hotel, 3rd & E Streets, Anchorage, Alaska, in the Alaska Room. The SSC meeting will convene on Wednesday, February 6, 1980, at 9:30 a.m. and will adjourn at 5 p.m. at the Council Conference Room, 333 W. 4th Avenue, Suite 32, Anchorage,

Alaska. The AP meeting will convene on Wednesday, February 6, 1980, at 9 a.m. and will adjourn at 5 p.m. at the Anchorage/Westward/Hilton Hotel. The meetings will be lengthened or shortened depending upon progress on the agenda. The meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: North Pacific Fishery Management Council, P.O. Box 3136DT, Anchorage, Alaska 99510, Telephone: (907) 274–4563.

Proposed Agenda:

Council

Special Note: Preregistration (except in special or unusual cases) will be required for all public comments which pertain to a specific agenda topic. Preregistration is accomplished by informing the Agenda Clerk as early as possible of the agenda item to be addressed and the time requested. Preregistration and public comment may be scheduled for: F. Old Business: G. Fishery Management Plans: H. New Business agenda items. The following agenda items will be discussed by the Council: A. *Call to Order.* B. *Approval of Agenda.* C. *Approval of Minutes.* D. *Executive Director's Report.* E. *Special Reports:* E–1. The Alaska Department of Fish & Game (ADFG) Report on Domestic Fisheries. E–2. National Marine Fisheries Service (NMFS) Report on Foreign Fisheries, including Joint Ventures. E–3. U.S. Coast Guard Report of Enforcement and Surveillance. E–4. Special SSC and AP Reports. E–5. A Report from Mike Hunter, Associate Director, International Fisheries Relations Branch, Canada, on U.S./Canada relations and halibut issues. F. *Old Business.* F–1. Old business as appropriate. G. *Fishery Management Plans.* G–1. High Seas Salmon Fishery Off the Coast of Alaska East of 175° East Longitude Fishery Management Plan (FMP). Discussion of the recent Council/State management decisions and chinook management issues. G–2. Gulf of Alaska Groundfish FMP. Proposed list of Amendments. Consideration of release of Reserves. G–3. Bering Sea/Aleutian Islands Groundfish FMP. Proposed list of Amendments and issues. G–4. Tanner Crab Off Alaska FMP. H. *New Business:* H–1. A discussion of foreign allocations with reciprocal proposals. H–2. A proposal to expand the NPFMC office. H–3. Other New Business as needed. I. *Reports, Contracts, Proposals.* I–1. Proposed Contract Amendment; Domestic Groundfish Observer Contract. I–2. A proposal for: The Expansion and Enhancement of the Alaska Commercial Fisheries Catch Data Reporting System. I–3. Contract Final Report 78–5. Assessment of Spawning Herring and Capelin Stocks in Selected Coastal Areas in the Eastern Bering Sea. I–4. A proposal for a domestic groundfish observer program in the Bering Sea. J. *Finance Report.* K. *General Comment Period.* L. *Chairman's Closing Comments.* M. *Adjournment.* SSC/AP Agenda Same as Council.

Dated: January 21, 1980.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 80-2289 Filed 1-23-80; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council's Herring Advisory Subpanel; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Pacific Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94–265), has established a Herring Advisory Subpanel (AP) which will meet to review proposed objectives for the Fishery Management Plan (FMP).

DATES: The meeting will convene on Tuesday, February 12, 1980, at 1 p.m. adjourning at 5 p.m.; reconvene on Wednesday, February 13, 1980, at 8 a.m. adjourning at 12 noon. The meeting is open to the public.

ADDRESS: The meeting will take place at the Cosmopolitan Hotel, 1030 N.E. Union, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Pacific Fishery Management Council, 526 S.W. Mill Street, Second Floor, Portland, Oregon 97201, Telephone: (503) 221–6352.

Dated: January 21, 1980.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 80-2287 Filed 1-23-80; 8:45 am]

BILLING CODE 3510-22-M

Office of the Secretary

Commerce Technical Advisory Board; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976) notice is hereby given that the Commerce Technical Advisory Board will hold a meeting on Thursday, January 31, 1980 from 9:00 a.m. until 5:00 p.m. and on Friday, February 1, 1980 from 9:00 a.m. until 12 o'clock Noon in Room 6802, Main Commerce Building, 14th and Constitution Avenue N.W., Washington, D.C.

The Board was established to study and evaluate the technical activities of the Department of Commerce and recommend measures to increase their value to the business community.

Tentative agenda items include:

1. Implementation of Selected Industrial Innovation Initiatives
2. Management of Innovation in Other Countries; e.g., China and the European Community
3. Status Report on Cooperative Technology
4. Progress Report on Development of Human Resources for Technological Innovation

The meeting will be open to public observation. The public may submit written statements or inquiries to the Chairman before or after the meeting. A limited number of seats will be available to the public and to the press on a first-come, first-served basis.

Copies of minutes and materials distributed will be made available for reproduction following certification by the Chairman, in accordance with the Federal Advisory Committee Act, in Room 3867, U.S. Department of Commerce, Washington, D.C. 20230.

Further information may be obtained from Mrs. Florence Feinberg, Administrator, Room 3867, U.S. Department of Commerce, Washington, D.C. 20230. Telephone (202) 377–5065.

Dated: January 7, 1980.

Jordan J. Baruch,

Assistant Secretary for Science and Technology.

[FR Doc. 80-2153 Filed 1-23-80; 8:45 am]

BILLING CODE 3510-18-M

THE COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts will next meet in open session on Tuesday, February 12, 1980, at 10:00 a.m. in the Commission's offices at 708 Jackson Place, N.W., Washington, D.C. 20006 to discuss various projects affecting the appearance of Washington, D.C.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address.

Dated in Washington, D.C. January 11, 1980.

Charles H. Atherton,

Secretary.

[FR Doc. 80-2240 Filed 1-23-80; 8:45 am]

BILLING CODE 6330-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

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

Name of the Committee: Army Science Board.

Dates of Meeting: February 12, 13, and 14, 1980.

Place: February 12, 1980, Fort Rucker, Alabama; February 13, 1980, Washington, DC; February 14, 1980, Washington, DC.

Time: 0800 to 1400 hours, February 12, 1980 (Open); 0800 to 1600 hours, February 13, 1980 (Open); 0800 to 1200 hours, February 14, 1980 (Open).

Proposed Agenda: The Army Science Board Ad Hoc Sub-Group on Blast Overpressure will conduct visits to acquire scientific and technical information relevant to human biophysical and physiological response to blast overpressure. Specific schedule of events includes:

12 Feb 0800–1400—Visit blast overpressure staff and facilities at the US Army Aeromedical Research Laboratory, Ft. Rucker, AL; receive description of auditory program.

13 Feb 0800–1600—Visit blast overpressure staff and facilities at the Walter Reed Army Institute of Research Washington, DC; receive description of nonauditory program.

14 Feb 0800–1200—Sub-Group working meeting at the Walter Reed Army Institute of Research Washington, DC.

Persons desiring to attend the meetings should contact the Army Science Board, (202) 697–9703, for specific meeting locations.

Helen Pipon,

Staff Assistant.

[FR Doc. 80-2195 Filed 1-23-80; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

National Petroleum Council, Task Group of the Committee on Unconventional Gas Sources; Meeting

Notice is hereby given that a task group of the Committee on Unconventional Gas Sources will meet in February 1980. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Unconventional Gas Sources will analyze the potential constraints in these areas which may inhibit future production and will report its findings to the National Petroleum Council. Its analysis and findings will be based on information and data to be gathered by the various task groups. The task group scheduling a meeting is the Tight Gas Reservoirs Task Group. The time, location and agenda of the meeting follows:

The fourteenth meeting of the Tight Gas Reservoirs Task Group will be held on Tuesday, February 5, 1980, starting at 9:00 a.m., Room 3228, Mobil Oil Corporation, First International Building 1201 Elm Street, Dallas, Texas.

The tentative agenda for the meeting follows:

1. Introductory remarks by Chairman and Government Cochairman.
2. Discussion of the report outline of the Tight Gas Reservoirs Task Group.
3. Review the preliminary results of the Tight Gas Reservoirs Task Group.
4. Review of the Tight Gas Reservoirs Task Group's assignments.
5. Discussion of any other matters pertinent to the overall assignment of the Tight Gas Reservoirs Task Group.

The meeting is open to the public. The chairman of the task group is empowered to conduct the meeting in a fashion that will, in his judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the task group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Lucio A. D'Andrea, Office of Resource Applications, 202/633–8383, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room GA 152, DOE, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on January 11, 1980.

R. Dobie Langenkamp,

Deputy Assistant Secretary, Resource Development and Operations Resource Applications.

January 11, 1980.

[FR Doc. 80-2295 Filed 1-23-80; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

F. M. Buxton; 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 F. M. Buxton, 1019 Fidelity Plaza, Oklahoma City, Oklahoma 73102. This Proposed Remedial Order charges Buxton with pricing violations in the amount of $50,285.18, relative to Buxton's sale of certain domestic crude oil at free market prices which the firm characterized as "stripper well" crude oil during the period January 1, 1975 through October 31, 1977.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Wayne I. Tucker, District Manager, Southwest District Enforcement, Department of Energy, Economic Regulatory Administration, P.O. Box 35228, Dallas, Texas 75235, or by calling (214) 749–7626. On or before Feburary 8, 1980, 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 Dallas, Texas, on the 18th day of January, 1980.

Wayne I. Tucker,

District Manager, Southwest District Enforcement.

[FR Doc. 80-2296 Filed 1-23-80; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-79-012; OFC Cases Nos. 55119-9044-01-11, 55119-9044-02-11, and 55119-9044-03-11]

General Motors Corp.; Acceptance of Petition

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Acceptance of Petition for Exemptions Pursuant to the Interim Rules Implementing the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: On December 17, 1979, the General Motors Corporation (GM) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order temporarily exempting three major fuel burning installations (MFBI's) from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*), which prohibits the use of petroleum and natural gas as a primary energy source in new MFBI's. GM is requesting temporary public interest exemptions to permit the immediate use of a mixture of natural gas and coal in the three boilers until ERA completes its analyses and makes a final determination on GM's pending petition for a permanent fuel mixtures exemption for each of the three boilers. Criteria for petitioning for

exemptions from the prohibitions of FUA are published at 44 FR 28530 (May 15, 1979) and at 44 FR 28950 (May 17, 1979) (Interim Rules).

The MFBI's for which the petition is filed are three field-erected boilers (identified as Boilers Number 1, 2 and 3) installed at GM's Assembly Division (GMAD), Oklahoma City, Oklahoma. Each boiler has a design heat input rate of 182 million Btu's per hour with a steam generating capacity of 150,000 pounds per hour and is capable of burning fuel oil, coal, and natural gas. Under § 505.15 of the Interim Rules, GM has requested a temporary public interest exemption to permit the burning of certain fuel mixtures in each of the three units.

ERA has determined that GM's petition requesting a temporary public interest exemption for each of the three subject units is complete and, in accordance with Section 501.3(c) of the Interim Rules, GM is hereby notified that its petition is accepted on the basis that GM states in its Compliance Plan that it intends to comply with any applicable prohibitions of the Act at the termination of the temporary exemption by ceasing use of natural gas in each of the three subject boilers. ERA retains the right to request additional relevant information from GM at any time during the pendency of these proceedings where circumstances or procedural requirements may so require. A review of the petition is provided in the Supplementary Section below.

FUA imposes statutory prohibitions against the use of natural gas and petroleum as a primary energy source by new MFBI's which consist of a boiler. ERA's decision in this matter will determine whether under the Act and the Interim Rules, it is in the public interest to permit GM to operate the three boilers with a natural gas-coal fuels mixture on a temporary basis.

As provided for in section 701 (c) and (d) of FUA and §§ 501.31 and 501.33 of the Interim Rules, interested persons are invited to submit written comments in regard to this matter, and any interested person may submit a written request that ERA convene a public hearing.

DATES: Written comments are due on or before March 10, 1980. A request for public hearing must also be made within this same 45 day public comment period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Economic Regulatory Administration, Case Control Unit, box 4629, Room 2313, 2000 M Street NW., Washington, D.C. 20461.

Docket Number ERA–FC–79–012 should be printed clearly on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Constance L. Buckley, Chief, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street NW., Room 3128, Washington, D.C. 20461, Phone (202) 254–7814.

Edward Jiran, Office of General Counsel, Department of Energy, Forrestal Building, Room 6G–087, 1000 Independence Avenue SW., Washington, D.C. 20585, Phone (202) 252–2967.

Kathleen Ewing, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street, NW., Room 3319, Washington, D.C. 20461, Phone (202) 254–3262.

SUPPLEMENTARY INFORMATION: ERA published in the **Federal Register** on May 15 and 17, 1979, its Interim Rules implementing the provisions of Title II of FUA. The Act prohibits the use of natural gas and petroleum as a primary energy source in certain new MFBI's unless an exemption to do so has been granted by ERA.

The MFBI's for which the temporary public interest exemptions are requested are three identical field-erected boilers installed at GMAD in Oklahoma City, Oklahoma. Each boiler has a design heat input rate of 182 million Btu's per hour, a steam generating capacity of 150,000 pounds per hour and is designed to burn coal, natural gas and fuel oil. GM states that the steam generated will be used for process equipment in the Assembly Building, for auxiliary powerhouse steam, and for building heating and air conditioning.

Section 505.15 of the Interim Rules provides that a temporary public interest exemption may be granted if the petitioner can demonstrate to the satisfaction of ERA that it is unable to comply with the applicable prohibitions imposed by the Act, except in extraordinary circumstances, during the period for which the exemption is requested, but will be capable of compliance at the end of the proposed exemption period; and that the granting of the petition would be in accord with the purposes of the Act and would be in the public interest.

GM is requesting temporary public interest exemptions to permit the immediate use of a mixture of natural gas and coal in the three boilers until ERA completes its analyses and makes a final determination on GM's pending petition for a permanent fuel mixtures exemptions for each of the three boilers. GM contends that granting such exemptions will be consistent with the purposes of the Act and in the public interest.

In addressing the eligibility and evidentiary requirements of § 505.15, GM states that although it has obtained all necessary permits to consume coal at this facility, the design limitations of the boilers require the use of natural gas during periods of low production. Burning only coal during such periods creates opacity problems, results in the unavoidable production of unneeded steam, and creates noise pollution problems caused by exhausting excess steam into the atmosphere. GM contends that by using natural gas in the boilers during periods of low steam demand, the opacity and noise problems would be reduced and the waste of coal energy would be eliminated.

GM's compliance plan contains a discussion of alternate methods by which GM proposes, at the expiration of a temporary exemption, to be in compliance with the prohibitions of the Act. One of the alternatives proposed is that ultimate compliance will be achieved by the exclusive combustion of coal as a primary energy source. This alternative is consistent with the concept of compliance with FUA prohibitions upon the expiration of a temporary exemption. The other alternative proposed is that ultimate compliance will occur upon the granting by ERA of a permanent mixtures exemption.

ERA does not agree that, in the absence of significantly changed circumstances, obtaining a permanent exemption constitutes compliance with the applicable FUA prohibition upon the expiration of a temporary exemption. In other words, ERA rejects the idea that a temporary exemption should be used as a preliminary step in ultimately acquiring a permanent exemption as being inconsistent with the language of FUA and with the intent of Congress. Furthermore, simultaneous consideration of petitions for both a temporary and a permanent exemption might result in the granting of the temporary exemption prior to the completion of the processing of the petition for the permanent exemption. In individual cases, the granting of the temporary exemption would preclude further consideration of the petition for permanent exemption.

ERA has determined that the petition of GM, as filed, containing a commitment to use coal exclusively at the end of the exemption period, is complete in accordance with the Interim Rules and GM is hereby notified of ERA's acceptance of its petition for temporary public interest exemptions.

As set forth in § 501.3(g) of the Interim Rules, the acceptance of the petition by ERA does not constitute a determination

that GM is entitled to the exemptions requested.

Prior to the filing of this petition, GM had filed on October 29, 1979, petitions requesting a temporary public interest exemption and a permanent fuel mixtures exemption for each of the subject boilers. ERA determined that GM's petition for temporary exemptions was incomplete and, in accordance with § 501.3(d) of the Interim Rules, ERA notified GM by letter dated November 28, 1979, that its petition for temporary public interest exemptions, as filed, was not acceptable. ERA's decision was based upon GM's failure to simultaneously submit with the petition the Compliance Plan required by Section 505.15(d) of the Interim Rules. GM also failed to address the Fuel Mixtures demonstration required by Section 505.15(c) of the Interim Rules. However, inasmuch as the thrust of the temporary public interest exemption requested by GM is to permit the use of a fuel mixtures, ERA, in its letter of November 28, 1979, notified GM that the Fuel Mixtures Demonstration is waived.

ERA determined that GM's petition for permanent fuel mixtures exemptions for the same three MFBI's, to permit, under Section 505.28 of the Interim Rules, the use of a coal and natural gas mixture as a primary energy source in each of the units, was complete. ERA's acceptance of that petition was published in the **Federal Register** on December 18, 1979, at 44 FR 74901.

The 45 day public comment period on GM's petition for permanent fuel mixtures exemptions expires on February 1, 1980. The petition accepted herein was resubmitted by GM on December 17, 1979. The resubmitted petition contained the required Compliance Plan and was determined by ERA to be complete.

The public file containing documents on these proceedings and supporting materials is available for inspection upon request at: ERA, Room B–110, 2000 M Street, NW, Washington, DC, Monday through Friday, 8:00 am to 4:30 pm.

Issued in Washington, D.C. on January 16, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80–2294 Filed 1–23–80; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. ERA–FC–79–013; OFC Cases Nos. 67014–9136–11–77 and 67014–9136–12–77]

Texas Utilities Generating Co.; Request for Classification

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Requests for Classification as Existing Installations Pursuant to the Final Rule, Part 515—Transitional Facilities.

SUMMARY: On December 19, 1979, the Texas Utilities Generating Company (TUGCo), Dallas, Texas, filed requests with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) to classify Auxiliary Boilers A and B to be installed at its Twin Oak Steam Electric Station, Franklin, Texas, as existing installations pursuant to Section 515.13 of ERA's Final Rule to Permit Classification of Certain Powerplants and Installations as Existing Facilities (Final Rule) and pursuant to the provisions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA). The Final Rule, which became effective November 30, 1979, was published in the **Federal Register** October 19, 1979 (44 FR 60690). An amendment to the Final Rule was issued by ERA on November 29, 1979, and published in the **Federal Register** on December 5, 1979 (44 FR 69919). FUA, which was effective May 8, 1979, imposed certain statutory prohibitions against the use of natural gas and petroleum as a primary energy source by new major fuel burning installations (MFBI's) consisting of a boiler.

ERA's decision in this matter will determine whether Auxiliary Boilers A and B are new or existing MFBI's. The prohibitions which apply to existing MFBI's are different from those which apply to new MFBI's.

As provided for in § 515.26 of the Final Rule, interested persons are invited to submit written comments in regard to this matter, however, no public hearing will be held.

DATES: Written comments are due on or before February 14, 1980.

ADDRESSES: Ten copies of written comments shall be submitted to: Economic Regulatory Administration, Case Control Unit, Box 4629, Room 2313, 2000 M Street NW., Washington, D.C. 20461. Docket Number ERA–FC–79–013 should be printed clearly on the outside of the envelope and on the document contained therein.

FOR FURTHER INFORMATION CONTACT:

William L. Webb, (Office of Public Information), Economic Regulatory Administration, 2000 M Street NW., Room B–110, Washington, D.C. 20461, Phone (202) 634–2170.

Constance Buckley, Chief, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street NW., Room 3128, Washington, D.C. 20461, Phone (202) 254–7814.

Edward Jiran, Office of General Counsel, Department of Energy, Forrestal Building, Room 6G–087, 1000 Independence Avenue SW., Washington, D.C. 20585, Phone (202) 252–2967.

Robert L. Davies, Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street NW., Room 3128, Washington, D.C. 20461, Phone (202) 634–6557.

SUPPLEMENTARY INFORMATION: The MFBI's for which the requests for classification were filed are two packaged boilers (designated Auxiliary Boilers A and B by TUGCo) having a design capability to consume fuel at a fuel heat input rate of 260 million Btu's per hour each and will be used at the Twin Oak Station for startup of the two main coal-fired steam generators and for plant protection during shutdown of the main units. The boilers will use No. 2 fuel oil and natural gas as the primary energy source and are scheduled to be placed in operation on October 1, 1983.

Section 515.10 of the Final Rule requires that to be eligible to submit a request to have a transitional facility classified as existing, a contract for the construction or acquisition of the installation must have been signed prior to November 9, 1978. TUGCo states in its requests that a contract for the acquisition of Auxiliary Boilers A and B was signed on March 23, 1976.

In accordance with the provisions of § 515.13 of the Final Rule, ERA will classify an eligible installation as existing if it is demonstrated to the satisfaction of ERA that the cancellation, rescheduling, or modification of the construction or the acquisition of the installation would result in substantial financial penalty or a significant operational detriment.

TUGCo bases its requests for classification of Auxiliary Boilers A and B as existing on a demonstration of significant operational detriment. Pursuant to § 515.13(b), ERA will classify a facility as existing upon demonstration that significant operational detriment would have incurred if on November 9, 1978, the installations had been cancelled, rescheduled, or modified to burn an alternate fuel or fuel mixture.

In accordance with § 515.15(c), TUGCo has provided the following information to demonstrate that it would incur significant operational detriment if the construction or acquisition of

Auxiliary Boilers A and B were to be cancelled, rescheduled, or modified:

The two auxiliary boilers would have to be completely redesigned to burn coal or coal oil slurry. Coal handling and pulverizing equipment will have to be designed and ash handling systems will have to be provided. Additionally, environmental protection systems, including a high stack, scrubber and baghouse filters and a pollutant discharge elimination system for the boiler ash disposal will be required. TUGCo states these requirements would delay the project by at least 15 months.

Without Auxiliary Boilers A and B, the main steam electric generators (two lignite/western coal-fired boilers) cannot be started and the plant's production of 750 MW of electricity would be lost.

Without Auxiliary Boilers A and B, the Twin Oak Steam Electric Station could not be operated and there would be 100 jobs lost during the period the project is delayed.

Auxiliary Boilers A and B will be utilized for startup and plant shutdown purposes only and are expected to be operated for only 5 percent of the time. TUGCo contends that installation of pollution controls and coal and ash handling systems in order to burn coal or slurries in auxiliary units that are used about 20 time a year would not be economical. Additionally, TUGCo states use of coal or slurries in auxiliary boilers would jeopardize the capability to provide fast starts, thus causing unreliable operation of the generating station.

ERA hereby invites all interested persons to submit written comments on this matter. The public file containing documents on these proceedings and supporting materials is available for inspection upon request at: ERA Room B-110, 2000 M Street NW., Washington, D.C., Monday-Friday 8 a.m.-4:30 p.m.

Issued in Washington, D.C. on January 21, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-2293 Filed 1-23-80; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-79-014; OFC Cases Nos. 67014-9137-11-77 and 67014-9137-12-77]

Texas Utilities Generating Co.; Request for Classification

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Requests for Classification as Existing Installations Pursuant to the Final Rule, Part 515—Transitional Facilities.

SUMMARY: On December 19, 1979, the Texas Utilities Generating Company (TUGCo), Dallas, Texas, filed requests with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) to classify Auxiliary Boilers A and B to be installed at its Forest Grove Steam Electric Station, Athens, Texas, as existing installations pursuant to Section 515.13 of ERA's Final Rule to Permit Classification of Certain Powerplants and Installations as Existing Facilities (Final Rule) and pursuant to the provisions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA). The Final Rule, which became effective November 30, 1979, was published in the Federal Register October 19, 1979 (44 FR 60690). An amendment to the Final Rule was issued by ERA on November 29, 1979, and published in the Federal Register on December 5, 1979 (44 FR 69919). FUA, which was effective May 8, 1979, imposes certain statutory prohibitions against the use of natural gas and petroleum as a primary energy source by new major fuel burning installations (MFBI's) consisting of a boiler.

ERA's decision in this matter will determine whether Auxiliary Boilers A and B are new or existing MFBI's. The prohibitions which apply to existing MFBI's are different from those which apply to new MFBI's.

As provided for in Section 515.26 of the Final Rule, interested persons are invited to submit written comments in regard to this matter; however, no public hearing will be held.

DATES: Written comments are due on or before February 14, 1980.

ADDRESSES: Ten copies of written comments shall be submitted to: Economic Regulatory Administration, Case Control Unit, Box 4629, Room 2313, 2000 M Street NW., Washington, D.C. 20461.

Docket Number ERA-FC-79-014 should be printed clearly on the outside of the envelope and on the document contained therein.

FOR FURTHER INFORMATION CONTACT:

William L. Webb (Office of Public Information), Economic Regulatory Administration, 2000 M Street NW., Room B-110, Washington, D.C. 20461, Phone (202) 634-2170.

Constance Buckley, Chief, New MFBI Branch, Office of Fuels Conversion, Economic Regualtory Administration, 200 M Street NW., Room 3128, Washington, D.C. 20461, Phone (202) 254-7814.

Edward Jiran, Office of General Counsel, Department of Energy, Forrestal Building, Room 6G-087, 1000 Independence Avenue SW., Washington, D.C. 20585, Phone (202)252-2967.

Robert L. Davies, Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street NW., Room 3128, Washington, D.C. 20461 Phone (202) 634-6557.

SUPPLEMENTARY INFORMATION: The MFBI's for which the requests for classification were filed are two packaged boilers (designated Auxiliary Boilers A and B by TUGCo) having a design capability to consume fuel at a fuel heat input rate of 365 million Btu's per hour each and will be used at the Forest Grove Station for startup of the coal-fired main steam generator and for plant protection during shutdown of the main unit. The boilers will use No. 2 fuel oil and natural gas as the primary energy source and are scheduled to be placed in operation on September 1, 1982.

Section 515.10 of the Final Rule requires that to be eligible to submit a request to have a transitional facility classified as existing, a contract for the construction or acquisition of the installation must have been signed prior to November 9, 1978. TUGCo states in its requests that a contract for the acquisition of Auxiliary Boilers A and B was signed on August 18, 1976.

In accordance with the provisions of § 515.13 of the Final Rule, ERA will classify an eligible installation as existing if it is demonstrated to the satisfaction of ERA that the cancellation, rescheduling, or modification of the construction or the acquisition of the installation would result in substantial financial penalty or a significant operational detriment.

TUGCo bases its requests for classification of Auxiliary Boilers A and B as existing on a demonstration of significant operational detriment. Pursuant to § 515.13(b), ERA will classify a facility as existing upon demonstration that significant operational detriment would have incurred if on November 9, 1978, the installations had been cancelled, rescheduled, or modified to burn an alternate fuel or fuel mixture.

In accordance with § 515.15(c), TUGCo has provided the following information to demonstrate that it would incur significant operational detriment if the construction or acquisition of Auxiliary Boilers A and B were to be cancelled, rescheduled, or modified:

The two auxiliary boilers would have to be completely redesigned to burn coal or coal oil slurry. Coal handling and pulverizing equipment will have to be designed and ash handling systems will have to be provided. Additionally,

environmental protection systems, including a high stack, scrubber and baghouse filters and a pollutant discharge elimination system for the boiler ash disposal will be required. TUGCo states these requirements would delay the project by at least 15 months.

Without Auxiliary Boilers A and B, the main steam electric generator (a lignite/western coal-fired boiler) cannot be started and the plant's production of 750 MW of electricity would be lost.

Without Auxiliary Boilers A and B, the Forest Grove Steam Electric Station could not be operated and there would be 100 jobs lost during the period the project is delayed.

Auxiliary Boilers A and B will be utilized for startup and plant shutdown purposes only and are expected to be operated for only 5 percent of the time. TUGCo contends that installation of pollution controls and coal and ash handling systems in order to burn coal or slurries in auxiliary units that are used about 20 times a year would not be economical. Additionally, TUGCo states use of coal or slurries in auxiliary boilers would jeopardize the capability to provide fast starts, thus causing unreliable operation of the generating station.

ERA hereby invites all interested persons to submit written comments on this matter. The public file containing documents on these proceedings and supporting materials is available for inspection upon request at: ERA, Room B–110, 2000 M Street NW., Washington, D.C., Monday–Friday, 8:00 a.m.–4:30 p.m.

Issued in Washington, D.C. on January 21, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80–2297 Filed 1–23–80; 8:45 am]

BILLING CODE 6450–01–M

B. F. Goodrich Co.; Petrochemical Feedstock Use of Propane

AGENCY: Economic Regulatory Administration.

ACTION: Notice of Request for Comments.

SUMMARY: On August 3, 1979 the B. F. Goodrich Company petitioned the Department of Energy, Economic Regulatory Administration (ERA) for an adjustment to its base period use of propane for use as petrochemical feedstock. This notice requests public comments to assist the ERA in evaluating B. F. Goodrich Company's petition under ERA's Regulations for the allocation of propane and other natural gas liquids for petrochemical feedstock use.

DATES: Written comments to be submitted by February 19, 1980.

ADDRESS: Comments should be submitted to: Box XP, Economic Regulatory Administration, Office of Public Hearings Management, Room 2313, 2000 M Street, N.W., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Bruce D. Starns (Office of Petroleum Operations), Department of Energy, Economic Regulatory Administration, 2000 M Street NW., Room 6318, Washington, D.C. 20461, (202) 254–6030.

Verlette Gatlin (Freedom of Information Reading Room), Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Room GA–142, Washington, D.C. 20585, (202) 252–5968.

SUPPLEMENTAL INFORMATION: B. F. Goodrich Company anticipated the need to increase its production of petrochemicals to meet an anticipated increase in demand for petrochemicals. Accordingly, the B. F. Goodrich Company has requested that the ERA adjust its base period volume of 4,884,461 barrels of propane to 5,577,930 barrels of propane, or an increase of 693,469 barrels of propane (an increase of 1900 barrels per day).

B. F. Goodrich Company has petitioned the ERA for an adjustment to its base period volume of propane pursuant to 10 CFR 211.84 (44 FR 60638, October 19, 1979).

A file containing all pertinent information and data filed in conjunction with the B. F. Goodrich Company's petition, other than confidential information which ERA has determined to be exempt from the disclosure requirements of 5 USC 552, is available for public inspection and copying at the DOE Freedom of Information Reading Room, Room GA–142, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Written comments regarding the B. F. Goodrich Company's petition will be accepted and considered if filed by 4:30 p.m. on February 19, 1980. Any person submitting written comments with respect to the B. F. Goodrich Company's petition should submit ten (10) copies to the ERA and should comply with the requirements of the ERA procedural regulations set forth at 10 CFR 205.9 *et seq.* Comments should be submitted to the Office of Public Hearings Management, Room 2313, 2000 M Street NW., Washington, D.C. 20461, Attention: Box XP. Comments should be identified on the outside of the envelope and on the documents submitted to ERA with the designation "Petrochemical Feesstock Use of Propane by the B. F. Goodrich Company". One copy of each comment with confidential information deleted should be submitted to each of the following: The B F. Goodrich Company, 500 South Main Street, Akron, Ohio 44318, Attention: Tucker W. Peterson; and Baker and Botts, Counsel for the B. F. Goodrich Company, 1701 Pennsylvania Avenue NW., Washington, D.C. 20006, Attention: Bruce F. Kiely and David T. Douthwaite. Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing in one copy only, in accordance with procedures set forth in 10 CFR 205.9(f). Any material not accompanied by a statement of confidentiality will be considered to be nonconfidential. The Economic Regulatory Administration reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

Issued in Washington, D.C., January 17, 1980.

Doris J. Dewton,

Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.

[FR Doc. 80–2191 Filed 1–23–80; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 79–CERT–106]

Energy Systems Division of Northern Natural Gas Co.; Certification of Eligible Use of Natural Gas To Displace Fuel Oil

Energy Systems Division of Northern Natural Gas Company (Energy Systems) filed an application for certification of an eligible use of natural gas to displace fuel oil at its Howard Street Plant facility in Omaha, Nebraska with the Administrator of the Economic Regulatory Administration (ERA) pursuant to 10 CFR Part 595 on October 17, 1979. Notice of that application was published in the **Federal Register** (44 FR 69983 December 5, 1979) and an opportunity for public comment was provided for a period of ten (10) calendar days from the date of publication. No comments were received.

The ERA has carefully reviewed Energy System's application in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44

FR 47920, August 16, 1979). The ERA has determined that Energy System's application satisfies the criteria enumerated in 10 CFR Part 595, and, therefore, has granted the certification and transmitted that certification to the Federal Energy Regulatory Commission. A copy of the transmittal letter and the actual certification are appended to this notice.

Issued in Washington, D.C., on January 18, 1980.

Doris J. Dewton,

Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.

Appendix I

Department of Energy,
Washington, D.C. 20461, January 18, 1980.

Re ERA Certification of Eligible Use ERA Docket No. 79–CERT–106 Energy Systems Division of Northern Natural Gas Company Company

Mr. Kenneth F. Plumb,
Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, D.C. 20426.

Dear Mr. Plumb: Pursuant to the provisions of 10 CFR Part 595, I am hereby transmitting to the Commission the enclosed certification of an eligible use of natural gas to displace fuel oil. This certification is required by the Commission as a precondition to interstate transportation of fuel oil displacement gas in accordance with the authorizing procedures in 18 CFR Part 284, Subpart F. As noted in the certificate, it is effective for one year from the date of issuance, unless a shorter period of time is required by 18 CFR Part 284, Subpart F. A copy of the enclosed certification is also being published in the **Federal Register** and provided to the applicant.

Should the Commission have any further questions, please contact Mr. Finn K. Neilsen, Director, Import/Export Division, Economic Regulatory Administration, 2000 M Street, N.W., Room 4126, Washington, D.C. 20461, telephone (202) 254–8202. All correspondence and inquiries regarding this certification should reference ERA Docket No. 79–CERT–106.

Sincerely,

Doris J. Dewton,

Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.

Enclosure.

Certification by the Economic Regulatory Administration to the Federal Energy Regulatory Commission of the Use of Natural Gas for Fuel Oil Displacement by the Energy Systems Division of Northern Natural Gas Com., ERA Docket No. 79–Cert–106

Application for Certification

Pursuant to 10 CFR Part 595, Energy Systems Division of Northern Natural Gas Company (Energy Systems) filed an application for certification of an eligible use of 550,000 Mcf of natural gas at its Howard Street Plant facility in Omaha, Nebraska with the Administrator of the Economic Regulatory Administration (ERA) on October 17, 1979. On January 4, 1980, Energy Systems amended its original application to reflect a new eligible seller and transporting pipeline. The amended application states that the eligible seller of the gas is Peoples Natural Gas Division of Northern Natural Gas Company (Peoples) and that the gas will be transported by the Northern Natural Gas Company, the Metropolitan Utilities District, and the Panhandle Eastern Pipeline Company. The application and supplemental information indicates that the use of this natural gas is estimated to displace approximately 4,000,000 gallons of No. 2 home heating oil (0.2–0.3 percent sulfur) before April 1, 1980. The application also indicates that neither the gas nor the displaced fuel oil will be used to displace coal in the applicant's facilities.

Certification

Based upon a review of the information contained in the application, as well as other information available to ERA, the ERA hereby certifies, pursuant to 10 CFR Part 595, that the use of 550,000 Mcf of natural gas at Energy System's Howard Street Plant facility purchased from Peoples is an eligible use of gas within the meaning of 10 CFR Part 595.

Effective Date

This certification is effective upon the date of issuance, and expires one year from that date, unless a shorter period of time is required by 18 CFR Part 284, Subpart F. It is effective during this period of time for the use of up to the same certified volume of natural gas at the same facility purchased from the same eligible seller.

Issued in Washington, D.C., on January 18, 1980.

Doris J. Dewton,

Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.

[FR Doc. 80–2192 Filed 1–23–80; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Issuance of Proposed Decisions and Orders; December 24 Through December 28, 1979

Notice is hereby given that during the period December 24 through December 28, 1979, the Proposed Decisions and Orders which are summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to Applications for exception which had been filed with that Office.

Under the procedures which govern the filing and consideration of exception applications (10 CFR, Part 205, Subpart D), any person who will be aggrieved by the issuance of the Proposed Decision and Order in final form may file a written Notice of Objection within ten days of service. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. The applicable procedures also specify that if a Notice of Objection is not received from any aggrieved party within the time period specified in the regulations, the party will be deemed to consent to the issuance of the Proposed Decision and Order in final form. Any aggrieved party that wishes to contest any finding or conslusion contained in a Proposed Decision and Order must also file a detailed Statement of Objections within 30 days of the date of service of the Proposed Decision and Order. In that Statement of Objections an aggrieved party must specify each issue of fact or law contained in the Proposed Decision and Order which it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these Proposed Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B–120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m. e.s.t., except federal holidays.

Melvin Goldstein,

Director, Office of Hearings and Appeals.

January 17, 1980.

Proposed Decisions and Orders

City of Wilson, Wilson, N.C., BEE–0422, reporting requirements.

The City of Wilson, North Carolina filed an Application for Exception from the reporting requirements of Form EIA–149 ("Natural Gas Supply, Requirements and Usage"). The exception request, if granted, would relieve the city of the obligation to file the form with the Energy Information Administration. On December 26, 1979, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that Wilson should be granted an extension of time in which to file the form and that the city should be permitted to submit its data in a simplified format.

Liberty Hill Oil Corp., Denver, Colo., DEE–6132, crude oil.

Liberty Hill Oil Corporation filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit the firm to sell at market prices a certain portion of the crude oil produced for the benefit of the working interest owners from the Spur Ranch "A" Lease, located in Chautauqua County, Kansas. On December 26, 1979, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that exception relief should be granted.

Midwest Solvents Co., Atchison, Kans., DEE–7741, motor gasoline.

Midwest Solvents Company filed an Application for Exception from the provisions of 10 CFR, Part 211, Subpart F. The exception request, if granted, would assign to the firm a base period volume and supplier of unleaded gasoline for use in blending gasohol. On December 27, 1979, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception request should be granted.

O'Meara Brothers, New Orleans, La., BXE–0317, crude oil.

O'Meara Brothers filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in an extension of exception relief previously granted and would permit the firm to sell at market price levels not to exceed $32.26 per barrel a certain portion of the crude oil which it produces for the benefit of the working interest owners from the Louisiana State Lease 2192. On December 28, 1979, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that an extension of exception relief should be granted.

Paradee Oil Co., Dover, Del., DEE–7527, motor gasoline.

Paradee Oil Company filed an Application for Exception from the provisions of 10 CFR, Part 211, Subpart F. The exception request, if granted, would permit the firm to receive an increased allocation of unleaded motor gasoline for use in blending gasohol. On December 27, 1979, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception request should be granted in part.

Pennzoil Producing Co., Houston, Tex., BXE–0348, crude oil.

Pennzoil Producing Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in an extension of exception relief previously granted and would permit the firm to sell at upper tier ceiling prices a certain portion of the crude oil which it produces for the benefit of the working interest owners from the Woodruff Sand Waterflood Unit. On December 28, 1979, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that an extension of exception relief should be granted.

Priest Explorations, Inc., Oklahoma City, Okla., DEE–8068, crude oil.

Priest Explorations, Inc. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit the firm to sell at market prices a certain portion of the crude oil produced for the benefit of the working interest owners from the Choate Wells 3A and 4A, located in Seminole County, Oklahoma. On December 26, 1979, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that exception relief should be granted.

Priest Explorations, Inc., Oklahoma City, Okla., DEE–8067, crude oil.

Priest Explorations, Inc. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit the firm to sell at market prices a certain portion of the crude oil produced for the benefit of the working interest owners from the Barnes Wells 2A and 3A, located in Seminole County, Oklahoma. On December 26, 1979, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception request for Barnes Well 3A should be denied and that exception relief should be granted with respect to the applicant's Barnes Well 2A.

Southland Oil Co./VGS Corp., Washington, D.C, BXE–0003, crude oil.

Southland Oil Company/VGS Corporation filed an Application for Exception from the provisions of 10 CFR 211.67 (Entitlements Program). The exception request, if granted, would relieve the firm of a portion of its entitlement purchase obligations during the period December 1979 through May 1980. On December 27, 1979, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception request should be granted.

Warrior Asphalt Co. of Alabama, Inc., Washington, D.C., BXE–0004, crude oil.

Warrior Asphalt Company of Alabama, Inc. filed an Application for Exception from the provisions of 10 CFR 211.67 (Entitlements Program). The exception request, if granted, would relieve the firm of a portion of its entitlement purchase obligations during the period December 1979 through May 1980. On December 27, 1979, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception request should be granted.

Young Refining Corp., Washington, D.C., BXE–0005, crude oil.

Young Refining Corporation filed an Application for Exception from the provisions of 10 CFR 211.67 (Entitlements Program). The exception request, if granted, would relieve the firm of a portion of its entitlement purchase obligations during the period December 1979 through May 1980. On December 27, 1979, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception request should be granted.

Petitions Involving the Motor Gasoline Allocation Regulations

The following firms filed Applications for Exception from the provisions of the Motor Gasoline Allocation Regulations. The exception requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline. The DOE issued Proposed Decisions and Orders which determined that the exception requests be granted.

Company Name, Case Number, and Location

North Side Center, DEE–7919, Hamilton, MT.
Rousseau's Texaco, DEE–7348, Meriden, CT.

Petitions Involving the Motor Gasoline Allocation Regulations

The following firms filed Applications for Exception from the provisions of the Motor Gasoline Allocation Regulations. The exception requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline. The DOE issued Proposed Decisions and Orders which determined that the exception requests be denied.

Company Name, Case Number, and Location

Boardwalk Regency Texaco, DEE–6673, Atlantic City, NJ.

[FR Doc. 80–2194 Filed 1–23–80; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Proposed Decisions and Orders; December 17 Through December 21, 1979

Notice is hereby given that during the period December 17 through December 21, 1979, the Proposed Decisions and Orders which are summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to Applications for Exception which had been filed with that Office.

Under the procedures which govern the filing and consideration of exception applications (10 CFR, Part 205, Subpart D), any person who will be aggrieved by the issuance of the Proposed Decision and Order in final form may file a written Notice of Objection within ten days of service. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. The applicable procedures also specify that if a Notice of Objection is not received from any aggrieved party within the time period specified in the regulations, the party will be deemed to consent to the issuance of the Proposed Decision and Order in final form. Any aggrieved party that wishes to contest any finding or conclusion contained in a Proposed Decision and Order must also file a detailed Statement of Objections within 30 days of the date of service of the Proposed Decision and Order. In that Statement of Objections an aggrieved party must specify each issue of fact or law contained in the Proposed Decision and Order which it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these Proposed Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B–120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of

1:00 p.m. and 5:00 p.m. e.s.t., except federal holidays.

Melvin Goldstein,

Director, Office of Hearings and Appeals.

January 17, 1980.

Proposed Decisions and Orders

American Air Filter Co., Inc., Louisville, Ky., DEE–7839, emergency building temperature restrictions.

The American Air Filter Company, Inc. (AAF) filed an Application for Exception from the provisions of 10 CFR, Part 490. The exception request, if granted, would permit AAF to set its thermostats at a uniform temperature during periods of the year when the building in which the firm is located must be both heated and cooled in the course of a single day. On December 21, 1979, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception request should be denied.

City of Long Beach, Calif., Long Beach, Calif., BXE–0341, crude oil.

City of Long Beach, California filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in an extension of exception relief previously granted and would permit the firm to sell at upper tier ceiling prices a certain portion of the crude oil which it produces for the benefit of the working interest owners from the Fault Block II Unit. On December 21, 1979, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that an extension of exception relief should be granted.

John P. Davis, Stephens, Ark., DEE–7364, crude oil.

John P. Davis filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Davis to receive upper tier ceiling prices for the crude oil which was produced and sold from the J. P. Davis #1 well during the period August 1977 through August 1979 by recertification of the well's output as upper tier crude oil. On December 18, 1979, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that exception relief should be denied.

E. I. du Pont de Nemours & Co., Seaford, Del., Gibbstown, N.J., BEE–0309, BEE–0310, emergency building temperature restrictions.

E. I. du Pont de Nemours and Co. filed Applications for Exception from the provisions of 10 CFR, Part 490. The exception requests, if granted, would permit the firm to raise the maximum heating temperature above 65 degrees fahrenheit in the locker facilities of two of its industrial plants. On December 21, 1979, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception requests should be denied.

City of Pleasant Grove, Pleasant Grove, Ala., BEE–0211, reporting requirements.

City of Pleasant Grove, Alabama filed an Application for Exception from the reporting requirements of Form EIA–149 ("Natural Gas Supply, Requirements, and Usage"). The exception request, if granted, would relieve the city of the obligation to file the form with the Energy Information Administration. On December 18, 1979, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that Pleasant Grove should be granted an extension of time in which to file Form EIA–149 and that the city should be permitted to submit its data in a simplified format.

Elaine Powers Figure Salons, Inc., Milwaukee, Wis., DEE–7542, emergency building temperature restrictions.

Elaine Powers Figure Salons, Inc. filed an Application for Exception from the provisions of 10 CFR, Part 490. The exception request, if granted, would permit the firm to maintain the temperature in its facilities below 78 degrees fahrenheit. On December 17, 1979, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception request should be denied.

Energy Cooperative, Inc., East Chicago, Ind., DEX–8112, crude oil.

Energy Cooperative, Inc. filed an Application for Temporary Exception from the provisions of 10 CFR 211.65 (Crude Oil Buy/Sell Program) and 10 CFR 211.67 (Entitlements Program). On October 3, 1979, the Department of Energy issued a Decision and Order in which it determined that temporary exception relief should be granted to the firm in the form of a crude oil allocation of 3,034,896 barrels under the Buy/Sell Program for the period October through December, 1979. The Order also directed the Permian Corporation to supply Energy Cooperative Inc. with 1,835,000 barrels of crude oil during the same period. The directive to the Permian Corporation was later stayed pending a further Decision by the DOE. On December 21, 1979, the DOE issued a Proposed Supplemental Decision and Order in which it tentatively determined that the portion of the October 3 Decision and Order relating to The Permian Corporation should be rescinded.

Great River Gas Co., Hannibal, Mo., BEE–0087, natural gas.

Great River Gas Company filed an Application for Exception from the reporting requirements of Form EIA–149 ("Natural Gas Supply, Requirements and Usage"). The exception request, if granted, would relieve the firm of the obligation to prepare and submit Parts III and IV of the form with the Energy Information Administration. On December 17, 1979, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception request should be granted in part.

Gulf Oil Corp., Tulsa, Okla., BXE–0350, crude oil.

Gulf Oil Corporation filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in an extension of exception relief previously granted and would permit the firm to sell at upper tier ceiling prices and certain portion of the crude oil which it produces for the benefit of the working interest owners from the N.W. Graylin "D" Sand Unit. On December 17, 1979, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that an extension of exception relief should be granted.

Milner Super Gas, Inc., Aiken, S.C., BEE–0252, motor gasoline.

Milner Super Gas, Inc. filed an Application for Exception from the provisions of 10 CFR, Part 211, Subpart F. The exception request, if granted, would permit the firm to receive an increased allocation of unleaded motor gasoline for use in blending gasohol. On December 17, 1979, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception request should be granted.

Oil Products Co., Inc., Council Bluffs, Iowa, BEE–0258, motor gasoline.

Oil Products Company, Inc. filed an Application for Exception from the provisions of 10 CFR, Part 211, Subpart F. The exception request, if granted, would permit the firm to receive an increased allocation of unleaded motor gasoline for use in blending gasohol. On December 17, 1979, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception request should be granted.

Union Oil Co. of California, Los Angeles, Calif., DEE–5748, crude oil.

The Union Oil Company of California filed an Application for Exception from the provisions of the Mandatory Petroleum Allocation Regulations. The exception request, if granted, would permit Union to purchase crude oil from other domestic refiners in order to reduce its entitlement-adjusted crude oil acquisition costs. On December 21, 1979, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception request should be granted in part.

Petitions Involving the Motor Gasoline Allocation Regulations

The following firms filed Applications for Exception from the provisions of the Motor Gasoline Allocation Regulations. The exception requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline. The DOE issued Proposed Decisions and Orders which determined that the exception requests be granted.

Company Name, Case Number and location

Advanced Sales Corp., DEE–8251, St. Petersburg, FL.
Berry's Garage, DEE–6819, Tyngsboro, MA.
Handi-Car, Inc., Chevron USA Inc., DEE–4605, Tucson, AZ.
Harrison Gas & Oil, BXE–0245, Los Angeles, CA.
John's Standard Serv., DEE–7520, College Pk, GA.
Midway Pet, Inc., DEE–3851, Dundalk, MD.
Stonewall City, TX, DEE–8248, Aspermont, TX.

Petitions Involving the Motor Gasoline Allocation Regulations

The following firms filed Applications for Exception from the provisions of the Motor

Gasoline Allocation Regulations. The exception requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline. The DOE issued Proposed Decisions and Orders which determined that the exception requests be denied.

Company Name, Case Number and Location

Buh, Inc., DEE–5232, Pierz, NM.
Center 66 Service, DEE–7588, Columbus, NE.
James R. Stiltner d/b/a Arco Mini Mart, DEE–6040, Yakima, MA.
Leo's One Stop Mart, DEE–4764, Chehalis, WA.
Otis Jones Oil Co., DEE–6355, Newman, GA.
Parkview Exxon, DEE–6348, New Iberia, LA.
Prospect Auto Repair, DEE–6383, Cambridge, MA.
Town & Country Oil, DEE–2793, Overland, Pk., KS.

[FR Doc. 80–2193 Filed 1–23–80; 8:45 am]
BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Dockets Nos. CS 72–883 and CS 72–950]

Application for "Small Producer" Certificates[1]

January 17, 1980.

Take notice that each of the applicants listed herein has filed an application pursuant to Section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before January 25, 1980, 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.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission in 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 Applicants to appear or be represented at the hearing.

Kenneth F. Plumb
Secretary.

Docket No., Date Filed and Applicant

CS72–883, 12/10/79,[2] Tommy and Terry Bolack, Co-Personal Representatives of the Estate of Alice N. Bolack, deceased and Tom Bolack (Tom and Alice N. Bolack) P.O. Box 268, Farmington, New Mexico 87401.

CS72–950, 12/14/79,[2] Maurice L. Brown Company (Formerly the Maurice L. Brown Company), P.O. Box 11320, Kansas City, Missouri 64112.

[FR Doc. 80–2215 Filed 1–23–80; 8:45 am]
BILLING CODE 6450–01–M

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[2] Being notified to reflect designation of small producer certificate.

[Docket Nos. RP73–107, *et al.*]

Consolidated Gas Supply Corp., et al., Filing of Pipeline Refund Reports and Refund Plans

January 17, 1980.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before February 4, 1980. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,
Secretary.

[3] Being noticed to relect an amendment to small producer certificate so as to reflect a change in status from a Missouri limited partnership to a corporate entity on October 1, 1979.

Appendix

Filing date	Company	Docket No.	Type filing
Dec. 26, 1979	Consolidated Gas Supply Corp	RP73–107, *et al*	Report.
Jan. 7, 1980	Tennessee Gas Pipeline Company	G–11980	Plan.
Jan. 11, 1980	Northern Natural Gas Company	RP78–56	Report.
Jan. 11, 1980	Natural Gas Pipe Line Company of America	RP77–98	Report.

[FR Doc. 80–2199 Filed 1–23–80; 8:45 am]
BILLING CODE 6450–01–M

[No. 131]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

January 11, 1980.

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.

Kansas Corporation Commission

1. Control number (F.E.R.C./STATE)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchasers(s)

1. 80–08874/K–79–0262
2. 15–075–20155–0000
3. 108 000 000
4. Johnson-Mizel Oil Company
5. Salvation Army #1
6. Bradshaw
7. Hamilton County, KS

8. 4.2 million cubic feet
9. December 11, 1979
10. Kansas-Nebraska Natural Gas Co Inc

Ohio Department of Natural Resources, Division of Oil and Gas

1. Control number (F.E.R.C./STATE)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchasers(s)

1. 80-08675/01152
2. 34-059-21246-0014
3. 108 000 000
4. Guernsey Petroleum Corp
5. Fehrman Whitehair #1
6.
7. Guernsey, OH
8. 1.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission Co

1. 80-08676/02220
2. 34-155-20453-0014
3. 108 000 000
4. Flint Oil & Gas Inc
5. (2007) J & M FEJKO Unit #1
6.
7. Trumbull, OH
8. 8.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company

1. 80-08677/02223
2. 34-155-20506-0014
3. 108 000 000
4. Flint Oil & Gas Inc
5. (2023) V Bacon Unit #1
6.
7. Trumbull, OH
8. 1.8 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company

1. 80-08678/02224
2. 34-155-20563-0014
3. 108 000 000
4. Flint Oil & Gas Inc
5. (2027) BJH Inc Unit #2
6.
7. Trumbull, OH
8. 6.3 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company

1. 80-08679/02225
2. 34-155-20562-0014
3. 108 000 000
4. Flint Oil & Gas Inc
5. (2015) BJH Inc Unit #1
6.
7. Trumbull, OH
8. 6.3 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company

1. 80-08680/02226
2. 34-155-20454-0014
3. 108 000 000
4. Flint Oil & Gas Inc
5. (2006) M Cribbs Unit #1
6.
7. Trumbull, OH
8. 5.4 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company

1. 80-08681/02227
2. 34-155-20456-0014
3. 108 000 000
4. Flint Oil & Gas Inc
5. (2004) FEJKO Unit #1
6.
7. Trumbull, OH
8. 12.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company

1. 80-08682/02228
2. 34-155-20464-0014
3. 108 000 000
4. Flint Oil & Gas Inc
5. (2007) J & M Lammon #1
6.
7. Trumbull, OH
8. 4.1 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company

1. 80-08683/02230
2. 34-155-20560-0014
3. 108 000 000
4. Flint Oil & Gas Inc
5. (2028) Thomas Pindur #1
6.
7. Trumbull, OH
8. 10.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company

1. 80-08684/02232
2. 34-155-20507-0014
3. 108 000 000
4. Flint Oil & Gas Inc
5. (2026) S Millik Unit #1
6.
7. Trumbull, OH
8. 5.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company

1. 80-08685/02234
2. 34-155-20472-0014
3. 108 000 000
4. Flint Oil & Gas Inc
5. (2013) Shaffer Unit #1
6.
7. Trumbull, OH
8. 6.8 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company

1. 80-08686/02236
2. 34-155-20495-0014
3. 108 000 000
4. Flint Oil & Gas Inc
5. (2011) R Papp Unit #1
6.
7. Trumbull, OH
8. 1.4 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company

1. 80-08687/02238
2. 34-155-20458-0014
3. 108 000 000
4. Flint Oil & Gas Inc
5. (2009) W & E Downs Unit #1
6.
7. Trumbull, OH
8. 8.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company

1. 80-08688/02239
2. 34-155-20457-0014
3. 108 000 000
4. Flint Oil & Gas Inc
5. (2008) Martinek Unit #1
6.
7. Trumbull, OH
8. 5.3 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company

1. 80-08689/02240
2. 34-155-20559-0014
3. 108 000 000
4. Flint Oil & Gas Inc
5. (2036) Wilcox Unit #2
6.
7. Trumbull, OH
8. 4.9 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company

1. 80-08690/02242
2. 34-155-20633-0014
3. 108 000 000
4. Flint Oil & Gas Inc
5. (2056) N Sutliff Unit #1
6.
7. Trumbull, OH
8. 6.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company

1. 80-08691/02243
2. 34-155-20643-0014
3. 108 000 000
4. Flint Oil & Gas Inc
5. (2055) Harry Clisby #1
6.
7. Trumbull, OH
8. 3.7 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company

1. 80-08692/02244
2. 34-155-20595-0014
3. 108 000 000
4. Flint Oil & Gas Inc
5. (2054) C Perkins Unit #1
6.
7. Trumbull, OH
8. 1.6 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company

1. 80-08693/02249
2. 34-155-20564-0014
3. 108 000 000
4. Flint Oil & Gas Inc
5. (2035) Ackerman Unit #1
6.
7. Trumbull, OH
8. 6.7 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company

1. 80-08694/02250
2. 34-155-20579-0014-
3. 108 000 000
4. Flint Oil & Gas Inc
5. (2034) F Sutliff Unit # 1
6.
7. Trumbull, OH
8. 15.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company

1. 80-08695/02251
2. 34-155-20763-0014-
3. 108 000 000
4. Flint Oil & Gas Inc
5. (2094) Jeanette Farmer # 1
6.
7. Trumbull, OH
8. 16.4 million cubic feet

9. December 5, 1979
10. East Ohio Gas Company
1. 80–08696/02255
2. 34–155–20645–0014–
3. 108 000 000
4. Flint Oil & Gas Inc
5. (2040) J Maurice # 1
6.
7. Trumbull, OH
8. 9.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company
1. 80–08698/02260
2. 34–155–20775–0014–
3. 108 000 000
4. Flint Oil & Gas Inc
5. (2121) Frank Doan Et Ux # 1
6.
7. Trumbull, OH
8. 13.1 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company
1. 80–08699/02262
2. 34–155–20716–0014–
3. 108 000 000
4. Flint Oil & Gas Inc
5. (2099) R & J Baugher # 1
6.
7. Trumbull, OH
8. 15.2 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company
1. 80–08700/02265
2. 34–155–20714–0014–
3. 108 000 000
4. Flint Oil & Gas Inc
5. (2096) Bill Baugher # 1
6.
7. Trumbull, OH
8. 8.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company
1. 80–08701/02266
2. 34–155–20701–0014–
3. 108 000 000
4. Flint Oil & Gas Inc
5. (2081) Schweikert Unit # 1
6.
7. Trumbull, OH
8. 2.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company
1. 80–08702/02267
2. 34–155–20640–0014–
3. 108 000 000
4. Flint Oil & Gas Inc
5. (2070) F Clark Unit # 1
6.
7. Trumbull, OH
8. 5.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company
1. 80–08703/03291
2. 34–169–21567–0014–
3. 108 000 000
4. Wenner Petroleum Corporation
5. Lois I Shisler # 1
6. Smithville—Hermanville
7. Wayne, OH
8. 5.3 million cubic feet
9. December 5, 1979
10. Columbia Gas Trans Corp
1. 80–08704/03297
2. 34–169–22026–0014–
3. 108 000 000
4. Wenner Petroleum Corporation
5. L Geiser # 1
6. Smithville Gas Field
7. Wayne, OH
8. 2.5 million cubic feet
9. December 5, 1979
10. Columbia Gas Trans Corp
1. 80–08705/03353
2. 34–167–22991–0014–
3. 107 000 000
4. Cline Oil & Gas Co
5. Roff #1
6.
7. Washington, OH
8. 2.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission Corp
1. 80–08706/03354
2. 34–167–23966–0014
3. 107 000 000
4. Cline Oil & Gas Co
5. Hughey #1
6.
7. Washington, OH
8. 24.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission Corp
1. 80–08707/03356
2. 34–167–22909–0014–
3. 107 000 000
4. Cline Oil & Gas Co
5. Snodgrass #1
6.
7. Washington, OH
8. 7.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission Corp
1. 80–08708/03972
2. 34–169–21204–0014–
3. 108 000 000
4. Buckeye Oil Producing Co
5. Lengacher #2
6.
7. Wayne, OH
8. 2.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission Corp
1. 80–08709/03979
2. 34–169–21250–0014–
3. 108 000 000
4. Buckeye Oil Producing Co
5. Enkeman #1
6.
7. Wayne, OH
8. 2.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission Corp
1. 80–08710/03982
2. 34–133–20090–0014–
3. 108 000 000
4. Buckeye Oil Producing Co
5. Geiger #1
6.
7. Portage, OH
8. 12.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company
1. 80–08711/03984
2. 34–099–20122–0014–
3. 108 000 000
4. Buckeye Oil Producing Co
5. Hartzell #1
6.
7. Mahoning, OH
8. 10.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company
1. 80–08712/03986
2. 34–133–20105–0014–
3. 108 000 000
4. Buckeye Oil Producing Co
5. Hormell #1
6.
7. Portage, OH
8. 12.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company
1. 80–08713/03992
2. 34–133–20089–0014–
3. 108 000 000
4. Buckeye Oil Producing Co
5. Tennefoss #1
6.
7. Portage, OH
8. 12.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company
1. 80–08714/03993
2. 34–133–20096–0014–
3. 108 000 000
4. Buckeye Oil Producing Co
5. Van Camp #1
6.
7. Portage, OH
8. 9.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company
1. 80–08715/03994
2. 34–151–21037–0014–
3. 108 000 000
4. Buckeye Oil Producing Co
5. Volkmann #1
6.
7. Stark, OH
8. 6.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company
1. 80–08716/03996
2. 34–075–21765–0014–
3. 108 000 000
4. Buckeye Oil Producing Co
5. Lecky #1
6.
7. Holmes, OH
8. .1 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission Corp
1. 80–08717/03998
2. 34–075–21613–0014–
3. 108 000 000
4. Buckeye Oil Producing Co
5. Flack #1
6.
7. Holmes, OH
8. 13.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission Corp
1. 80–08718/04001
2. 34–075–21667–0014–
3. 108 000 000
4. Buckeye Oil Producing Co
5. McGrady #1–A
6.
7. Holmes, OH
8. 13.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission Corp
1. 80–08719/04002

2. 34–075–21979–0014–
3. 108 000 000
4. Buckeye Oil Producing Co
5. McGrady #2
6.
7. Holmes, OH
8. 13.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission Corp
1. 80–08720/04003
2. 34–075–21702–0014–
3. 108 000 000
4. Buckeye Oil Producing Co
5. Bigler #1
6.
7. Holmes, OH
8. 5.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission Corp
1. 80–08721/04005
2. 34–169–21950–0014–
3. 108 000 000
4. Buckeye Oil Producing Co
5. Willour #1
6.
7. Wayne, OH
8. 3.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission Corp
1. 80–08722/04007
2. 34–075–21691–0014–
3. 108 000 000
4. Buckeye Oil Producing Co
5. Kaufman #1
6.
7. Holmes, OH
8. 1.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission Corp
1. 80–08723/04010
2. 34–169–21323–0014–
3. 108 000 000
4. Buckeye Oil Producing Co
5. Uhler #1
6.
7. Wayne, OH
8. 3.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission Corp
1. 80–08724/04013
2. 34–133–20116–0014–
3. 108 000 000
4. Buckeye Oil Producing Co
5. Ball #1
6.
7. Portage, OH
8. 7.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company
1. 80–08725/04018
2. 34–151–21040–0014
3. 108 000 000
4. Buckeye Oil Producing Co
5. Bowers #1
6.
7. Stark, OH
8. 4.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company
1. 80–08726/04560
2. 34–167–24054–0014
3. 108 000 000
4. Energy Unlimited Inc
5. G Curry #3
6.
7. Washington, OH
8. 3.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission
1. 80–08727/04569
2. 34–167–24052–0014
3. 108 000 000
4. Energy Unlimited Inc
5. Larry Curry #1
6.
7. Washington, OH
8. 6.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission
1. 80–08728/04570
2. 34–167–24048–0014
3. 108 000 000
4. Energy Unlimited Inc
5. G Curry #2
6.
7. Washington, OH
8. 1.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission
1. 80–08729/04571
2. 34–167–24051–0014
3. 108 000 000
4. Emergy Unlimited Inc
5. Gibson Barnes #2
6.
7. Washington, OH
8. 3.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission Co Inc
1. 80–08730/04961
2. 34–059–21635–0014
3. 108 000 000
4. Guernsey Petroleum Corp
5. Cowden-McCreary #1–C
6.
7. Guernsey, OH
8. 12.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company
1. 80–08731/05922
2. 34–155–20107–0014
3. 108 000 000
4. William N Tipka
5. Blackson #1
6.
7. Trumbull, OH
8. 10.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Trans Corp
1. 80–08732/06123
2. 34–155–20499–0014
3. 108 000 000
4. Flint Oil & Gas Inc
5. (2016) R Lance Unit #1
6.
7. Trumbull, OH
8. 19.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company
1. 80–08733/06127
2. 34–155–20500–0014
3. 108 000 000
4. Flint Oil & Gas Inc
5. (2017) R Lance Unit #2
6.
7. Trumbull, OH
8. 19.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company
1. 80–08734/06231
2. 34–155–20460–0014
3. 108 000 000
4. Flint Oil & Gas Inc
5. (2001) S & H Glass Unit #2
6.
7. Trumbull, OH
8. 18.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company
1. 80–08735/06332
2. 34–155–20793–0014
3. 108 000 000
4. Flint Oil & Gas Inc
5. (2137) J Church Unit #1
6.
7. Trumbull, OH
8. 18.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company
1. 80–08736/06233
2. 34–155–20794–0014
3. 108 000 000
4. Flint Oil & Gas Inc
5. (2138) J Church Unit #2
6.
7. Trumbull, OH
8. 18.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company
1. 80–08737/06304
2. 34–105–20979–0014
3. 108 000 000
4. William H Putnam
5. Anchorage-Ohio #55031
6.
7. Meigs, OH
8. 1.7 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission
1. 80–08738/06318
2. 34–105–20944–0014
3. 108 000 000
4. W H Putnam
5. Anchorage-Ohio #35031
6.
7. Meigs, OH
8. .8 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission
1. 80–087739/06398
2. 34–009–21580–0014
3. 108 000 000
4. Paul A Grim Inc c/o Hays & Com
5. R Mead Kayser #1
6.
7. Athens, OH
8. 4.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission
1. 80–08740/06399
2. 34–009–21615–0014
3. 108 000 000
4. Paul A Grim Inc c/o Hays & Com
5. M H Flanders #1
6.
7. Athens, OH
8. 5.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission
1. 80–08741/06400
2. 34–009–21614–0014
3. 108 000 000
4. Paul A Grim Inc c/o Hays & Com
5. R Mead Kayser #2
6.

7. Athens, OH
8. 4.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission
1. 80–08742/06401
2. 34–009–21616–0014
3. 108 000 000
4. Paul A Grim Inc c/o Hays & Com
5. Coke Lawson #1
6.
7. Athens, OH
8. 4.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission
1. 80–08743/06584
2. 34–155–20650–0014
3. 108 000 000
4. Flint Oil & Gas Inc
5. (2057) Neal Sutliff Unit #2
6.
7. Trumbull, OH
8. 8.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company
1. 80–08744/06585
2. 34–155–20700–0014
3. 108 000 000
4. Flint Oil & Gas Inc
5. (2089) C Fansler #1
6.
7. Trumbull, OH
8. 16.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company
1. 80–08745/06586
2. 34–155–20699–0014
3. 108 000 000
4. Flint Oil & Gas Inc
5. (2090) C Fansler #2
6.
7. Trumbull, OH
8. 16.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company
1. 80–08746/06858
2. 34–009–21126–0014
3. 108 000 000
4. Cameron Brothers
5. Henry #1
6.
7. Athens, OH
8. 1.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Trans Corp
1. 80–08747/07280
2. 34–121–22127–0014
3. 103 000 000
4. J P Sigler Inc
5. Monroe #2
6.
7. Noble, OH
8. 40.0 million cubic feet
9. December 5, 1979
10. Columbia Gas
1. 80–08748/07281
2. 34–121–22126–0014
3. 103 000 000
4. J P Sigler Inc
5. Monroe #1
6.
7. Noble, OH
8. 40.0 million cubic feet
9. December 5, 1979
10. Columbia Gas
1. 80–08749/07426
2. 34–127–24376–0014
3. 103 000 000
4. Barton A Holl Estate
5. Chas Kishler et al #1
6.
7. Perry, OH
8. 182.0 million cubic feet
9. December 5, 1979
10. National Gas & Oil Corp
1. 80–08750/07445
2. 34–155–21288–0014
3. 103 000 000
4. Berea Oil and Gas Corp
5. Mosora #1
6.
7. Trumbull, OH
8. 54.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission
1. 80–08751/07455
2. 34–119–24827–0014
3. 103 000 000
4. Pemco Gas Inc
5. Sara Fliger No 3
6.
7. Muskingum, OH
8. 7.2 million cubic feet
9. December 5, 1979
10.
1. 80–08752/07456
2. 34–167–25053–0014
3. 103 000 000
4. Appalachian Petroleum Corp
5. D Baker #1
6.
7. Washington, OH
8. 3.5 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission Corp
1. 80–08753/07457
2. 34–167–24987–0014
3. 103 000 000
4. Appalachian Petroleum Corp
5. Perry #1
6.
7. Washington, OH
8. 3.5 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission Corp
1. 80–08754/07458
2. 34–167–25004–0014
3. 103 000 000
4. Appalachian Petroleum Corp
5. Jarrell #1
6.
7. Washington, OH
8. 3.5 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission Corp
1. 80–08755/07459
2. 34–167–25009–0014
3. 103 000 000
4. Appalachian Petroleum Corp
5. Wilbur C Baker #1
6.
7. Washington, OH
8. 3.5 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission Corp
1. 80–08756/07470
2. 34–031–23589–0014
3. 103 000 000
4. Energy Investment Company
5. Masielle #3
6.
7. Coshocton, OH
8. 36.0 million cubic feet
9. December 5, 1979
10.
1. 80–08757/07471
2. 34–115–21852–0014
3. 103 000 000
4. Fortune Gas and Oil Inc
5. Roberts #2
6.
7. Morgan, OH
8. 30.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company
1. 80–08758/07472
2. 34–115–21854–0014
3. 103 000 000
4. Fortune Gas and Oil Inc
5. Roberts #1
6.
7. Morgan, OH
8. 30.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company
1. 80–08759/07473
2. 34–121–22177–0014
3. 103 000 000
4. Tiger Oil Inc
5. Lee Crock #3
6.
7. Noble, OH
8. 20.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Co
1. 80–08760/07474
2. 34–119–24771–0014
3. 103 000 000
4. Tiger Oil Inc
5. Steven Sims #1 well
6.
7. Muskingum, OH
8. 10.0 million cubic feet
9. December 5, 1979
10. National Gas & Oil Corp
1. 80–08761/07475
2. 34–059–22632–0014
3. 103 000 000
4. Charles L Wood
5. Wood #1
6.
7. Guernsey, OH
8. 12.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Co
1. 80–08762/07476
2. 34–151–23060–0014
3. 103 000 000
4. Lomak Petroleum Inc
5. D Rohr #1
6.
7. Stark, OH
8. 50.0 million cubic feet
9. December 5, 1979
10.
1. 80–08763/07477
2. 34–119–24815–0014
3. 103 000 000
4. Carl E Smith
5. Thompson (Eleanor Smith Carrick #2)
6.
7. Muskingum, OH
8. 5.0 million cubic feet
9. December 5, 1979
10. National Gas & Oil Corp
1. 80–08764/07478

2. 34–127–24128–0014
3. 103 000 000
4. Altheirs Oil Inc
5. Seidell #1
6.
7. Perry, OH
8. 8.0 million cubic feet
9. December 5, 1979
10. Columbia Gas of Ohio Inc

1. 80–08765/07488
2. 34–119–24793–0014
3. 103 000 000
4. Clinton Oil Co
5. M Schweitzer #3
6.
7. Muskingum, OH
8. 20.0 million cubic feet
9. December 5, 1979
10.

1. 80–08766/07489
2. 34–119–24863–0014
3. 103 000 000
4. The Clinton Oil Co
5. M Schweitzer #4
6.
7. Muskingum, OH
8. 20.0 million cubic feet
9. December 5, 1979
10.

1. 80–08767/07490
2. 34–059–22435–0014
3. 103 000 000
4. New Frontier Exploration Inc
5. B Blaine Lowe #1
6.
7. Guernsey, OH
8. 26.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company

1. 80–08768/07491
2. 34–031–23593–0014
3. 103 000 000
4. Jadoil Inc
5. Victor R Croft #1
6.
7. Coshocton, OH
8. 18.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company

1. 80–08769/07492
2. 34–157–23414–0014
3. 103 000 000
4. Floyd E Kimble dba Red Hill Dev
5. W Myers #1
6.
7. Tuscarawas, OH
8. 30.0 million cubic feet
9. December 5, 1979
10.

1. 80–08770/07493
2. 34–157–23404–0014
3. 103 000 000
4. Floyd E Kimble dba Red Hill Dev
5. C Newton #1
6.
7. Tuscarawas, OH
8. 30.0 million cubic feet
9. December 5, 1979
10.

1. 80–08771/07494
2. 34–111–21897–0014
3. 103 000 000
4. Drillers Petroleum Corp
5. Homer J Burkhart #2
6.
7. Monroe, OH
8. 52.0 million cubic feet
9. December 5, 1979
10.

1. 80–08772/07495
2. 34–155–21261–0014
3. 103 000 000
4. Tower Energy Corp
5. T Johnson #1
6.
7. Trumbull, OH
8. 50.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission Corp

1. 80–08773/07496
2. 34–155–21218–0014
3. 103 000 000
4. Tower Energy Corp
5. A Zelenak #1
6.
7. Trumbull, OH
8. 50.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission Corp

1. 80–08774/07497
2. 34–155–21262–0014
3. 103 000 000
4. Tower Energy Corp
5. T Johnson #2
6.
7. Trumbull, OH
8. 50.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission Corp

1. 80–08775/07498
2. 34–053–20453–0014
3. 103 000 000
4. Altheirs Oil Inc
5. Lewis Scott #1
6. Cheshire Tup
7. Gallia, OH
8. 9.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission Corp

1. 80–08776/07499
2. 34–053–20463–0014
3. 103 000 000
4. Altheirs Oil Inc
5. Harold Mack #1
6. Cheshire Tup
7. Gallia, OH
8. 8.5 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission Corp

1. 80–08777/07500
2. 34–127–24401–0014
3. 103 000 000
4. Altheirs Oil Inc
5. Frank Folk #1
6. Clayton Tup
7. Perry, OH
8. 7.0 million cubic feet
9. December 5, 1979
10. Foraker Gas

1. 80–08778/07501
2. 34–127–24336–0014
3. 103 000 000
4. Altheirs Oil Inc
5. Sunday Creek Coal Co #5
6. Coal Twp
7. Perry, OH
8. 5.0 million cubic feet
9. December 5, 1979
10. Nico-Fibers Inc

1. 80–08779/07502
2. 34–127–24421–0014
3. 103 000 000
4. Altheirs Oil Inc
5. Frank Folk #3
6. Clayton Twp
7. Perry, OH
8. 8.0 million cubic feet
9. December 5, 1979
10. Foraker Gas

1. 80–08780/07503
2. 34–053–20431–0014
3. 103 000 000
4. Altheirs Oil Inc
5. Roy Herman #1
6. Cheshire Twp
7. Gallia, OH
8. 8.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission Corp

1. 80–08781/07504
2. 34–053–20490–0014
3. 103 000 000
4. Altheirs Oil Inc
5. Charles Wise #1
6. Cheshire Twp
7. Gallia, OH
8. 7.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission Corp

1. 80–08782/07505
2. 34–127–24348–0014
3. 103 000 000
4. Oak Dale Drilling Co
5. Hanson #5
6.
7. Perry, OH
8. 10.0 million cubic feet
9. December 5, 1979
10. National Gas & Oil Corp

1. 80–08783/07506
2. 34–155–21237–0014
3. 103 000 000
4. Janco Ltd Partnership 1979–2
5. Goldberg Farms Inc #1
6.
7. Trumbull, OH
8. 450.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Trans Corp

1. 80–08784/07507
2. 34–155–21236–0014
3. 103 000 000
4. Janco Ltd Partnership 1979–2
5. Goldberg Farms Inc #2
6.
7. Trumbull, OH
8. 400.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Trans Corp

1. 80–08785/07508
2. 34–155–21184–0014
3. 103 000 000
4. Janco Ltd Partnership 1979–1
5. Windsor Ford #3 A
6.
7. Trumbull, OH
8. 300.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Trans Corp

1. 80–08786/07509
2. 34–075–22263–0014
3. 103 000 000
4. Ohio Titan Energy Ltd Ptnr 1979–2
5. Owen D Yoder #1
6.

7. Holmes, OH
8. 400.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Trans Corp
1. 80-08787/07510
2. 34-075-22209-0014
3. 103 000 000
4. Ohio Titan Energy Ltd Ptnr 1979-1
5. Atlee J Miller #1
6.
7. Holmes, OH
8. 500.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Trans Corp
1. 80-08788/07511
2. 34-155-21182-0014
3. 103 000 000
4. Janco Ltd Partnership 1979-1
5. Windsor Ford #5A
6.
7. Trumbull, OH
8. 300.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Trans Corp
1. 80-08789/07512
2. 34-155-11830-0140
3. 103 000 000
4. Janco Ltd Partnership 1979-1
5. Windsor Ford 4-A
6.
7. Trumbull, OH
8. 285.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Trans Corp
1. 80-08790/07513
2. 34-075-22212-0014
3. 103 000 000
4. Oiltech Inc
5. Paul Moritz #2-A
6.
7. Holmes, OH
8. 400.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Trans Corp
1. 80-08791/07514
2. 34-075-22190-0014
3. 103 000 000
4. Oiltech Inc
5. Paul Moritz #1
6.
7. Holmes, OH
8. .0 million cubic feet
9. December 5, 1979
10. Columbia Gas Trans Corp
1. 80-08792/07515
2. 34-075-22266-0014
3. 103 000 000
4. Ohio Titan Energy Ltd Ptnr 1979-3
5. Atlee J Miller #2
6.
7. Holmes, OH
8. 450.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Trans Corp
1. 80-08793/07516
2. 34-075-22265-0014
3. 103 000 000
4. Ohio Titan Energy Ltd Ptnr 1979-2
5. Raymond J Miller #1
6.
7. Holmes, OH
8. 370.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Trans Corp
1. 80-08794/07517
2. 34-169-21977-0014
3. 103 000 000
4. Oiltech Inc
5. Joseph Strazan #2
6.
7. Wayne, OH
8. 750.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company
1. 80-08795/07518
2. 34-169-21976-0014
3. 103 000 000
4. Oiltech Inc
5. Joseph Strasan #1
6.
7. Wayne, OH
8. 500.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Co
1. 80-08796/07519
2. 34-075-22164-0014
3. 103 000 000
4. Discovery Oil Ltd
5. Smith Flying S Ranch-Priority #6
6.
7. Holmes, OH
8. 350.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Trans Corp
1. 80-08797/07520
2. 34-075-22191-0014
3. 103 000 000
4. Oiltech Inc
5. Paul Moritz #3-A
6.
7. Holmes, OH
8. 750.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Trans Corp
1. 80-08798/07550
2. 34-169-22213-0014
3. 103 000 000
4. Kenoil
5. Farmers Sportsmans Assoc Inc #1
6.
7. Wayne, OH
8. 5.9 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission Corp
1. 80-08799/07551
2. 34-083-22480-0014
3. 103 000 000
4. Kenoil
5. G & T Reynolds #3
6.
7. Knox, OH
8. 4.5 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission Corp
1. 80-08800/07552
2. 34-007-20986-0014
3. 103 000 000
4. Petroleum Energy Producing Corp
5. S Norton #1
6.
7. Ashtabula, OH
8. 25.0 million cubic feet
9. December 5, 1979
10.
1. 80-08801/07553
2. 34-167-23208-0014
3. 108 000 000
4. Carl Heinrich
5. R Pottmeyer—1
6.
7. Washington, OH
8. .0 million cubic feet
9. December 6, 1979
10. River Gas Co
1. 80-08802/07554
2. 34-167-22837-0014
3. 108 000 000
4. Carl Heinrich
5. H Reichardt—1
6.
7. Washington, OH
8. 2.8 million cubic feet
9. December 5, 1979
10. River Gas Co
1. 80-08803/07555
2. 34-167-12600-0140
3. 108 000 000
4. Carl Heinrich
5. H C Christy—1
6.
7. Washington, OH
8. 2.8 million cubic feet
9. December 5, 1979
10. River Gas Co
1. 80-08804/07556
2. 34-167-21534-0014
3. 108 000 000
4. Carl Heinrich
5. E E Bender—1
6.
7. Washington, OH
8. .5 million cubic feet
9. December 5, 1979
10. River Gas Co
1. 80-08805/07557
2. 34-167-21514-0014
3. 108 000 000
4. Carl Heinrich
5. Z Vadakin—1
6.
7. Washington, OH
8. 2.6 million cubic feet
9. December 5, 1979
10. River Gas Co
1. 80-08806/07558
2. 34-167-23202-0014
3. 108 000 000
4. Carl Heinrich
5. H F Wittekind—1
6.
7. Washington, OH
8. 3.5 million cubic feet
9. December 5, 1979
10. River Gas Co
1. 80-08807/07559
2. 34-167-22916-0014
3. 108 000 000
4. Carl Heinrich
5. P Ulmer—1
6.
7. Washington, OH
8. 4.1 million cubic feet
9. December 5, 1979
10. River Gas Co
1. 80-08808/07560
2. 34-167-23211-0014
3. 108 000 000
4. Carl Heinrich
5. J E Becker—1
6.
7. Washington, OH
8. 2.1 million cubic feet
9. December 5, 1979
10. River Gas Co
1. 80-08809/07561

2. 34–167–22251–0014
3. 108 000 000
4. Carl Heinrich
5. Schott 3
6.
7. Washington, OH
8. .6 million cubic feet
9. December 5, 1979
10. River Gas Co

1. 80–08810/07562
2. 34–167–21902–0014
3. 108 000 000
4. Carl Heinrich
5. Schott #1
6.
7. Washington, OH
8. .6 million cubic feet
9. December 5, 1979
10. River Gas Co

1. 80–08811/07563
2. 34–167–21939–0014
3. 108 000 000
4. Carl Heinrich
5. R E Dickson—2
6.
7. Washington, OH
8. 1.0 million cubic feet
9. December 5, 1979
10. Dickson Rendering Co

1. 80–08812/07564
2. 34–167–27900–0140
3. 108 000 000
4. Carl Heinrich
5. R E Dickson—1
6.
7. Washington, OH
8. 2.0 million cubic feet
9. December 5, 1979
10. Dickson Rendering Co

1. 80–08813/07565
2. 34–151–22999–0014
3. 103 000 000
4. Orion Energy Corp
5. Ruegg #1
6.
7. Stark, OH
8. 14.0 million cubic feet
9. December 5, 1979
10.

1. 80–08814/07566
2. 34–151–23006–0014
3. 103 000 000
4. Orion Energy Corp
5. Speicher #1
6.
7. Stark, OH
8. 10.0 million cubic feet
9. December 5, 1979
10.

1. 80–08815/07567
2. 34–127–24414–0014
3. 103 000 000
4. John Tansky
5. George Patrick #1
6.
7. Perry, OH
8. 8.0 million cubic feet
9. December 5, 1979
10.

1. 80–08816/07
2. 34–073–22190–0014
3. 103 000 000
4. Reliance Management Co
5. E Bailey Strong #1
6.
7. Hocking, OH
8. 8.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission Corp

1. 80–08817/07569
2. 34–127–24429–0014
3. 103 000 000
4. Jerry C Olds
5. Adcock #5
6.
7. Perry, OH
8. .0 million cubic feet
9. December 5, 1979
10. Enterprise Gas & Oil Inc

1. 80–08818/07570
2. 34–169–22205–0014
3. 103 000 000
4. Jerry C Olds
5. D Schrock #1–A
6.
7. Wayne, OH
8. .0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission

1. 80–08819/07584
2. 34–031–23406–0014
3. 103 000 000
4. Cameron Limited Partnership
5. Fred Weekley #1
6.
7. Coshocton, OH
8. 28.0 million cubic feet
9. December 5, 1979
10.

1. 80–08820/07585
2. 34–167–24629–0014
3. 103 000 000
4. Farrell Oil Company
5. Matheny #2
6.
7. Washington, OH
8. 10.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission Corp

1. 80–08821/07603
2. 34–053–20457–0014
3. 103 000 000
4. Adams Drilling Company
5. James Shaver #1
6.
7. Gallia, OH
8. 4.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission Corp

1. 80–08822/07604
2. 34–053–20454–0014
3. 103 000 000
4. Adams Drilling Company
5. Francis Rife #1
6.
7. Gallia, OH
8. 4.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission Corp

1. 80–08823/07610
2. 34–151–23000–0014
3. 103 000 000
4. Orion Energy Corp
5. Ruegg #2
6.
7. Stark, OH
8. 11.0 million cubic feet
9. December 5, 1979
10.

1. 80–08824/07611
2. 34–167–24814–0014
3. 103 000 000
4. Whipple Run Oil & Gas Corp
5. R Hille #1
6. Archers Fork
7. Washington, OH
8. 73.0 million cubic feet
9. December 5, 1979
10.

1. 80–08825/07612
2. 34–167–24813–0014
3. 103 000 000
4. Whipple Run Oil & Gas Corp
5. H Patterson #1
6. Archers Fork
7. Washington, OH
8. 182.5 million cubic feet
9. December 5, 1979
10.

1. 80–08826/07613
2. 34–031–23584–0014
3. 103 000 000
4. John C Mason
5. Russel McGrady #1
6.
7. Coshocton, OH
8. 18.0 million cubic feet
9. December 5, 1979
10. Cincinnati Gas & Electric

1. 80–08827/07614
2. 34–059–22634–0014
3. 103 000 000
4. Enterprise Gas & Oil Inc
5. Roberts #2
6.
7. Guernsey, OH
8. 36.5 million cubic feet
9. December 5, 1979
10.

1. 80–08828/07615
2. 34–019–21290–0014
3. 103 000 000
4. Enterprise Gas & Oil Inc
5. Clark-Morrison #5–E
6.
7. Carroll, OH
8. 36.5 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company

1. 80–08829/07616
2. 34–019–21283–0014
3. 103 000 000
4. Enterprise Gas & Oil Inc
5. E Smith #1
6.
7. Carroll, OH
8. 18.3 million cubic feet
9. December 5, 1979
10. East Ohio Gas Co

1. 80–08830/07653
2. 34–167–24677–0014
3. 103 000 000
4. C W Riggs Inc
5. Johnson-Thorniley #1
6. Reno Field
7. Washington, OH
8. 14.0 million cubic feet
9. December 5, 1979
10.

1. 80–08831/07654
2. 34–167–24569–0014
3. 103 000 000
4. C W Riggs Inc
5. R Hill #1
6. Reno Field

7. Washington, OH
8. 18.0 million cubic feet
9. December 5, 1979
10.

1. 80–08832/07655
2. 34–167–24557–0014
3. 103 000 000
4. C W Riggs Inc
5. W Hiener #1
6. Reno Field
7. Washington, OH
8. 10.0 million cubic feet
9. December 5, 1979
10.

1. 80–08833/07656
2. 34–111–21890–0014
3. 103 000 000
4. Washington Energy Ltd
5. Donald Howell #1
6.
7. Monroe, OH
8. 23.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission Co

1. 80–08834/07657
2. 34–167–24556–0014
3. 103 000 000
4. C W Riggs Inc
5. W Hiener #2
6. Reno Field
7. Washington, OH
8. 14.0 million cubic feet
9. December 5, 1979
10.

1. 80–08835/07659
2. 34–167–24837–0014
3. 103 000 000
4. C W Riggs Inc
5. Strickler Unit #1
6. Reno Field
7. Washington, OH
8. 13.0 million cubic feet
9. December 5, 1979
10.

1. 80–08836/07660
2. 34–167–24660–0014
3. 103 000 000
4. C W Riggs Inc
5. D Ullman #1
6. Reno Field
7. Washington, OH
8. 18.0 million cubic feet
9. December 5, 1979
10.

1. 80–08837/07661
2. 34–167–24884–0014
3. 103 000 000
4. C W Riggs Inc
5. Zoller #1
6. Reno Field
7. Washington, OH
8. 18.0 million cubic feet
9. December 5, 1979
10.

1. 80–08838/07665
2. 34–075–22237–0014
3. 103 000 000
4. Bands Company Inc
5. Clinton Johnston #1
6.
7. Holmes, OH
8. 300.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission Corp

1. 80–08839/07666
2. 34–153–20705–0014
3. 103 000 000
4. K S T Oil & Gas Co Inc
5. Hevener Unit #1
6.
7. Summit, OH
8. 36.0 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company

1. 80–08840/07671
2. 34–167–24475–0014
3. 103 000 000
4. C W Riggs Inc
5. E Theobald #1
6. Reno Field
7. Washington, OH
8. 20.0 million cubic feet
9. December 5, 1979
10.

1. 80–08841/07672
2. 34–167–24476–0014
3. 103 000 000
4. C W Riggs Inc
5. E Theobald #2
6. Reno Field
7. Washington, OH
8. 18.0 million cubic feet
9. December 5, 1979
10.

1. 80–08842/07674
2. 34–167–24535–0014
3. 103 000 000
4. C W Riggs Inc
5. McKitrick #3
6. Reno Field
7. Washington, OH
8. 17.5 million cubic feet
9. December 5, 1979
10.

1. 80–08843/07675
2. 34–167–24834–0014
3. 103 000 000
4. C W Riggs Inc
5. G McGregor #1
6.
7. Washington, OH
8. 36.0 million cubic feet
9. December 5, 1979
10.

1. 80–08844/07676
2. 34–167–24580–0014
3. 103 000 000
4. C W Riggs Inc
5. J Riley #1
6.
7. Washington, OH
8. 73.0 million cubic feet
9. December 5, 1979
10.

1. 80–08845/07677
2. 34–167–24916–0014
3. 103 000 000
4. C W Riggs Inc
5. R Long #1
6.
7. Washington, OH
8. 14.0 million cubic feet
9. December 5, 1979
10.

1. 80–08846/07678
2. 34–167–24609–0014
3. 103 000 000
4. C W Riggs Inc
5. P Smith #2
6. Reno Field
7. Washington, OH
8. 15.0 million cubic feet
9. December 5, 1979
10.

1. 80–08847/07679
2. 34–167–24333–0014
3. 103 000 000
4. L&M Exploration Inc
5. Bernard Strahler #4
6.
7. Washington, OH
8. 12.8 million cubic feet
9. December 5, 1979
10. Gas Transport Inc

1. 80–08848/07680
2. 34–167–24332–0014
3. 103 000 000
4. L&M Exploration Inc
5. Bernard Strahler #3
6.
7. Washington, OH
8. 12.8 million cubic feet
9. December 5, 1979
10. Gas Transport Inc

1. 80–08849/07681
2. 34–167–24331–0014
3. 103 000 000
4. L&M Exploration Inc
5. Bernard Strahler #5
6.
7. Washington, OH
8. 12.8 million cubic feet
9. December 5, 1979
10. Gas Transport Inc

1. 80–08850/07682
2. 34–167–24330–0014
3. 103 000 000
4. L&M Exploration Inc
5. Bernard Strahler #6
6.
7. Washington, OH
8. 12.8 million cubic feet
9. December 5, 1979
10. Gas Transport Inc

1. 80–08851/07683
2. 34–119–24770–0014
3. 103 000 000
4. The Benatty Corporation
5. Mabel Dailey #6
6.
7. Muskingum, OH
8. 25.0 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission

1. 80–08852/07684
2. 34–083–22655–0014
3. 103 000 000
4. The Oxford Oil Co
5. Bolen-Barker #1
6.
7. Knox, OH
8. 10.0 million cubic feet
9. December 5, 1979
10.

1. 80–08853/07685
2. 34–119–24262–0014
3. 103 000 000
4. The Oxford Oil Co
5. Richard & Wanda Watson #4
6.
7. Muskingum, OH
8. 9.0 million cubic feet
9. December 5, 1979
10.

1. 80–08854/07686

2. 34–119–24878–0014
3. 103 000 000
4. The Oxford Oil Co
5. Ross Wise #1
6.
7. Muskingum, OH
8. 10.0 million cubic feet
9. December 5, 1979
10.

1. 80–08855/07689
2. 34–075–22230–0014
3. 103 000 000
4. Morgan-Pennington Inc
5. Snyder & Fishinger No 1
6.
7. Holmes, OH
8. 7.3 million cubic feet
9. December 5, 1979
10. Columbia Gas Transmission Corp

1. 80–08856/07690
2. 34–115–21835–0014
3. 103 000 000
4. Temple Oil & Gas Co
5. Ernest Bell #6
6.
7. Morgan, OH
8. 9.0 million cubic feet
9. December 5, 1979
10.

1. 80–08697/02259
2. 34–155–20776–0014
3. 108 000 000
4. Flint Oil & Gas Inc
5. (2122) Florence Baugher #1
6.
7. Trumbull, OH
8. 16.8 million cubic feet
9. December 5, 1979
10. East Ohio Gas Company

Oklahoma Corporation Commission

1. Control Number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or Block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80–08858/00821
2. 35–009–20243–0000
3. 102 103 000
4. El Paso Natural Gas Company
5. Evans #1
6. Elk City
7. Beckham, OK
8. 365.0 million cubic feet
9. December 6, 1979
10. El Paso Natural Gas Company

1. 80–08859/01174
2. 35–071–00000–0000
3. 108 000 000
4. Kansas Gas Purchasing
5. Glenny B #1
6. Blackwell
7. Kay, OK
8. 16.6 million cubic feet
9. December 6, 1979
10. Cities Service Gas Company

1. 80–08860/01147
2. 35–047–21371–0000
3. 103 000 000
4. Harper Oil Company
5. Hoge #2
6. Sooner Trend
7. Garfield, OK
8. 91.0 million cubic feet
9. December 6, 1979
10. Arkansas Louisiana Gas Co

1. 80–08861/01128
2. 35–047–21382–0000
3. 103 000 000
4. Harper Oil Company
5. Noble Long #1
6. Sooner Trend
7. Garfield, OK
8. 73.0 million cubic feet
9. December 6, 1979
10. Arkansas Louisiana Gas Company Exxon Corp

1. 80–08862/01107
2. 35–073–22093–0000
3. 103 000 000
4. Harper Oil Company
5. Fred Brown #1
6. Sooner Trend
7. Kingfisher, OK
8. 58.0 million cubic feet
9. December 6, 1979
10. Phillips Petroleum Company

1. 80–08863/01074
2. 35–017–21049–0000
3. 102 000 000
4. Continental Oil Company
5. Wilds 1–2
6. E El Reno
7. Canadian, OK
8. 100.3 million cubic feet
9. December 6, 1979
10. Cities Service Gas Company

1. 80–08864/01073
2. 35–017–21016–0000
3. 102 000 000
4. Continental Oil Company
5. Wilds 1–1
6. E El Reno
7. Canadian, OK
8. 91.2 million cubic feet
9. December 6, 1979
10. Cities Service Gas

1. 80–08865/01087
2. 35–129–20246–0000
3. 102 000 000
4. Arkla Exploration Company
5. Hickey #1–32
6. Midway
7. Roger Mills, OK
8. 653.0 million cubic feet
9. December 6, 1979
10. Arkansas Louisiana Gas Company

1. 80–08866/01086
2. 35–129–20323–0000
3. 102 000 000
4. Arkla Exploration Company
5. Selby Hooper #2–4
6. Midway
7. Roger Mills, OK
8. 389.0 million cubic feet
9. December 6, 1979
10. Arkansas Louisiana Gas Company

1. 80–08867/01085
2. 35–129–20305–0000
3. 102 000 000
4. Arkla Exploration Company
5. Selby Hooper #1–5
6. Midway
7. Roger Mills, OK
8. 414.0 million cubic feet
9. December 6, 1979
10. Arkansas Louisiana Gas Company

1. 80–08868/01015
2. 35–007–21319–0000
3. 103 000 000
4. J M Huber Corporation
5. Heintz B #1
6. N W Greenough
7. Beaver, OK
8. 15.6 million cubic feet
9. December 6, 1979
10. Panhandle Eastern Pipe Line Co

1. 80–08869/01171
2. 35–151–35303–0000
3. 108 000 000
4. Texaco Inc
5. Bertha Miller Unit #1
6. Waynoka NE
7. Woods, OK
8. 12.0 million cubic feet
9. December 6, 1979
10. Cities Service Gas Company

1. 80–08870/00783
2. 35–029–20182–0000
3. 103 000 000
4. Tenneco Oil Company
5. English Robert 1–9
6. Centrahoma
7. Coal, OK
8. 190.0 million cubic feet
9. December 6, 1979
10. Arkansas Louisiana Gas Company

1. 80–08871/00691
2. 35–047–21669–0000
3. 103 000 000
4. Rodman Petroleum Corporation
5. Amy #24–1
6. Sooner Trend
7. Garfield, OK
8. .0 million cubic feet
9. December 6, 1979
10. Phillips Petroleum Company

1. 80–08872/00378
2. 35–151–00000–0000
3. 103 000 000
4. S Keith Tuthill & Bill J Barbee
5. Miller #1–16
6. East Brace
7. Woods, OK
8. 120.0 million cubic feet
9. December 6, 1979
10. Panhandle Eastern Pipe Line

1. 80–08873/00656
2. 35–073–22075–0000
3. 103 000 000
4. Rodman Petroleum Corporation
5. Oppel #29–1
6. Sooner Trend
7. Kingfisher, OK
8. 109.5 million cubic feet
9. December 6, 1979
10. Phillips Petroleum Company

South Dakota Department of Natural Resource Development

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. Purchasers(s)

1. 80–08857
2. 40–063–20197–0000
3. 108 000 000
4. Alma McCutchin
5. 1–28 Heikkila
6. West Short Pine Hills
7. Harding, SD
8. 9.0 million cubic feet
9. November 21,, 1979
10. Montana Dakota Utilities Co

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. 80–08875
2. 47–059–20806–0000
3. 108 000 000 Denied
4. Lasco Production Co
5. Mingo Well #1
6. Harvey
7. Mingo, WV
8. .0 million cubic feet
9. November 5, 1979
10. Columbia Gas

1. 80–08876
2. 47–043–21381–0000
3. 108 000 000 Denied
4. Ed Smith & D F Smith
5. UFG MIN N–1–1
6. Harts CR
7. Lincoln, WV
8. 8.8 million cubic feet
9. November 5, 1979
10. Columbia Gas

1. 80–08877
2. 47–043–20621–0000
3. 108 000 000 Denied
4. F D Smith & D F Smith
5. Well No 5666
6. Jefferson
7. Lincoln, WV
8. .0 million cubic feet
9. November 5, 1979
10. Columbia Gas Co

1. 80–08878
2. 47–013–01406–0000
3. 108 000 000 Denied
4. Roy G Hildreth et al
5. Wiant Gas Company #1
6. Lee District
7. Calhoun, WV
8. .0 million cubic feet
9. November 5, 1979
10. Consolidated Gas Supply Co

1. 80–08879
2. 47–085–04309–0000
3. 108 000 000 Denied
4. Perkins Oil & Gas Inc
5. Creed Collins #1–4342
6. Bunds Creek
7. Ritchie, WV
8. 3.0 million cubic feet
9. November 5, 1979
10. Equitable Gas

1. 80–08880
2. 47–047–00506–0000
3. 108 000 000 Denied
4. Consolidated Gas Supply Corp
5. Pocohontas Linnd Corp 11380
6. Pineville Field Area A–59442
7. McDowell, WV
8. 15.0 million cubic feet
9. November 8, 1979
10. General System Purchasers

1. 80–08881
2. 47–021–01108–0000
3. 108 000 000 Denied
4. Consolidated Gas Supply Corp
5. Louis Bennett 10170
6. West Virginia other A–85772
7. Gilmer, WV
8. 20.0 million cubic feet
9. November 8, 1979
10. General System Purchasers

1. 80–08882
2. 47–005–00150–0000
3. 108 000 000 Denied
4. Pennzoil Company
5. Hopkins T J #3
6. Washington
7. Boone, WV
8. .2 million cubic feet
9. November 26, 1979
10. Consolidated Gas Supply Corp

1. 80–08883
2. 47–005–00556–0000
3. 108 000 000 Denied
4. Pennzoil Company
5. White Minnie #2
6. Crook
7. Boone, WV
8. .0 million cubic feet
9. November 26, 1979
10. Consolidated Gas Supply Corp

1. 80–08884
2. 47–045–01026–0000
3. 108 000 000 Denied
4. Penzoil Company
5. Yawkey-Freeman #9
6. Logan District
7. Logan, WV
8. .0 million cubic feet
9. November 26, 1979
10. Consolidated Gas Supply Corp

1. 80–08885
2. 47–005–01222–0000
3. 108 000 000 Denied
4. Pennzoil Company
5. A B Chambers #2
6. Scott District
7. Boone, WV
8. .3 million cubic feet
9. November 26, 1979
10. Consolidated Gas Supply Corp

1. 80–08886
2. 47–005–01223–0000
3. 108 000 000 Denied
4. Pennzoil Company
5. A B Chambers #3
6. Scott District
7. Boone, WV
8. .9 million cubic feet
9. November 26, 1979
10. Consolidated Gas Supply Corp

1. 80–08887
2. 47–033–01806–0000
3. 108 000 000 Denied
4. Pennzoil Company
5. B F Nuzum #3
6. Clay
7. Harrison, WV
8. .0 million cubic feet
9. November 26, 1979
10. Consolidated Gas Supply Corp

1. 80–08888
2. 47–033–01848–0000
3. 108 000 000 Denied
4. Pennzoil Company
5. App Thompson #2
6. Clay
7. Harrison, WV
8. .0 million cubic feet
9. November 26, 1979
10. Consolidated Gas Supply Corp

1. 80–08889
2. 47–033–01854–0000
3. 108 000 000 Denied
4. Pennzoil Company
5. J H Thompson #5
6. Clay
7. Harrison, WV
8. .0 million cubic feet
9. November 26, 1979
10. Consolidated Gas Supply Corp

1. 80–08890
2. 47–017–02191–0000
3. 108 000 000 Denied
4. Pennzoil Company
5. J A Bode No 1
6. Cove
7. Doddridge, WV
8. .5 million cubic feet
9. November 26, 1979
10. Consolidated Gas Supply Corp

1. 80–08891
2. 47–021–03362–0000
3. 108 000 000 Denied
4. Pennzoil Company
5. Scott Mason #4
6. Troy
7. Gilmer, WV
8. .0 million cubic feet
9. November 26, 1979
10. Consolidated Gas Supply Corp

1. 80–08892
2. 47–085–04077–0000
3. 108 000 000 Denied
4. Pennzoil Company
5. L M Parks #1
6. Murphy District
7. Ritchie, WV
8. .0 million cubic feet
9. November 26, 1979
10. Consolidated Gas Supply Corp

1. 80–08893
2. 47–039–00301–0000
3. 108 000 000 Denied
4. Devon Corporation
5. #0–20 E E Walker
6. Sissonsville
7. Kanawha, WV
8. 2.5 million cubic feet
9. December 4, 1979
10. Cities Service

1. 80–08894
2. 47–007–70634–0000
3. 108 000 000 Denied
4. Jones Oil and Gas Company
5. William Brown No 3
6. Gilmer
7. Braxton, WV
8. 2.0 million cubic feet
9. December 4, 1979
10. Consolidated Gas Supply Corp

1. 80–08895

2. 47–085–20080–0000
3. 108 000 000 Denied
4. R & S Gas Company
5. J W Hefner No 1
6. Murphy District
7. Ritchie, WV
8. 8.0 million cubic feet
9. December 4, 1979
10.

1. 80–08896
2. 47–085–24312–F000
3. 108 000 000 Denied
4. R & S Gas Company
5. A D Riddle No 2
6. Murphy District
7. Ritchie, WV
8. 18.0 million cubic feet
9. December 4, 1979
10. Cabot Corporation

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 on or before February 8, 1980.

Please reference the FERC control number in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80–2203 Filed 1–23–80; 8:45 am]

BILLING CODE 6450–01–M

[No. 132]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

January 11, 1980.

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.

Kansas Corporation Commission

1. Control Number (FERC/State)
2. API Well number
3. Section of NGPA
4. Operator
5. Well Name
6. Field or OCS area name
7. County, State or Block NO.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80–08897/K–79–0411
2. 15–151–20144–0000
3. 102 000 000
4. Texas Oil & Gas Corp
5. Schumacher #1
6. Harper Ranch
7. Comanche, KS
8. 109.5 million cubic feet
9. December 7, 1979
10. Northern Natural Gas

1. 80–08898/K–79–0359
2. 15–175–20338–0000
3. 102 000 000
4. Anadarko Production Company
5. Shuck A No 1
6. Shuck
7. Seward, KS
8. 38.0 million cubic feet
9. December 7, 1979
10. Cimarron-Quinque

1. 80–08899/K–79–0355
2. 15–129–20353–0000
3. 102 000 000
4. Anadarko Production Co
5. E P Lewis B No 1
6. Taloga
7. Morton, KS
8. 48.0 million cubic feet
9. December 7, 1979
10. Panhandle Eastern Pipeline Co

1. 80–08900/K–79–0361
2. 15–175–20364–0000
3. 102 000 000
4. Anadarko Production Co
5. Cosgrove A No 1
6. Shuck
7. Seward, KS
8. 34.0 million cubic feet
9. December 7, 1979
10. Cimarron-Quinque A Div of APC

1. 80–08901/K–79–0405
2. 15–175–20344–0000
3. 102 000 000
4. Anadarko Production Co
5. Guttridge B No 1
6. Shuck
7. Seward, KS
8. 43.0 million cubic feet
9. December 7, 1979
10. Cimarron-Quinque A Div of APC

1. 80–08902/K–79–0458
2. 15–175–00000–0000
3. 102 000 000
4. Anadarko Production Company
5. Guttridge A–4
6. Shuck
7. Seward, KS
8. .0 million cubic feet
9. December 7, 1979
10. Cimarron-Quinque a Div of APC

1. 80–08903/K–79–0462
2. 15–129–20313–0000
3. 102 000 000
4. Anadarko Production Company
5. Cheokee B No 1
6. Santa Fe Trail—Cimarron Valley
7. Morton, KS
8. 35.0 million cubic feet
9. December 7, 1979
10. Cimarron-Quinque a Div of APC

1. 80–08904/K–79–0406
2. 15–129–20221–0000
3. 102 000 000
4. Anadarko Production Company
5. Low H No 1
6. Cimarron Valley
7. Morton, KS
8. .0 million cubic feet
9. December 7, 1979
10. Cimarron-Quinque a Div of APC

1. 80–08905/K–79–0408*
2. 15–129–20021–0000
3. 102 000 000
4. Anadarko Production Company
5. Low H No 1
6. Cimarron Valley
7. Morton, KS
8. 21.0 million cubic feet
9. December 7, 1979
10. Cimarron-Quinque a Div of APC

1. 80–08906/K–79–0403
2. 15–175–20356–0000
3. 102 000 000
4. Anadarko Production Company
5. Shuck A No 2
6. Shuck
7. Seward, KS
8. 50.0 million cubic feet
9. December 7, 1979
10. Cimarron-Quinque a Div of APC

1. 80–08907/K–79–0415
2. 15–151–20589–0000
3. 102 000 000
4. Texas Oil & Gas Corp
5. Armitstead B #1
6. Brandt
7. Pratt, KS
8. 109.5 million cubic feet
9. December 7, 1979
10.

1. 80–08908/K–79–1414
2. 15–151–20578–0000
3. 102 000 000
4. Texas Oil & Gas Corp
5. Armitstead A #1
6. Brandt
7. Pratt, KS
8. 109.5 million cubic feet
9. December 7, 1979
10.

1. 80–08909/K–79–0402
2. 15–175–20361–0000
3. 102 000 000
4. Anadarko Production Company
5. Fincham A No 3
6. Shuck
7. Seward, KS
8. 23.0 million cubic feet
9. December 7, 1979
10. Cimarron-Quinque

1. 80–08910/K–79–0401
2. 15–175–20370–0000
3. 102 000 000
4. Anadarko Production Company
5. Guttridge C–2
6. Shuck
7. Seward, KS
8. .0 million cubic feet
9. December 7, 1979
10. Cimarron-Quinque

1. 80–08911/K–79–0418
2. 15–007–20670–0000
3. 102 000 000
4. Texas Oil & Gas Corp
5. Hull B #1
6. W Skinner
7. Barber, KS
8. 4380.0 million cubic feet
9. December 7, 1979
10.

1. 80–08912/K–79–0416

2. 15–151–20600–0000
3. 102 000 000
4. Texas Oil & Gas Corp
5. Armitstead C #1
6. Brandt
7. Pratt, KS
8. 109.5 million cubic feet
9. December 7, 1979
10.

1. 80–08913/K–79–0459
2. 15–175–00000–0000
3. 102 000 000
4. Anadarko Production Company
5. Guttride A No 4
6. Shuck
7. Seward, KS
8. .0 million cubic feet
9. December 7, 1979
10. Cimarron-Quinque

1. 80–08926/K–79–0523
2. 15–059–20159–0000
3. 102 000 000
4. Glacier Petroleum Co Inc
5. Hudelson #1
6. Pomona
7. Franklin, KS
8. 44.4 million cubic feet
9. December 7, 1979
10. Cities Service Gas Co., Franklin Pipeline Inc

1. 80–08958/K–79–0461
2. 15–129–30313–0000
3. 102 000 000
4. Anadarko Production Company
5. Cherokee B No 1
6. Santa Fe Trail—Cimarron Valley
7. Morton, KS
8. 63.4 million cubic feet
9. December 7, 1979
10. Cimarron-Quinque

1. 80–08959/K–79–0360
2. 15–175–20376–0000
3. 102 000 000
4. Anadarko Production Company
5. Pitman A–1
6. Shuck
7. Seward, KS
8. 30.0 million cubic feet
9. December 7, 1979
10. Cimarron-Quinque

1. 80–08984/K–79–0407
2. 15–175–20327–0000
3. 102 000 000
4. Anadarko Production Company
5. Gutridge A No 3
6. Shuck
7. Seward, KS
8. 105.0 million cubic feet
9. December 7, 1979
10. Cimarron-Quinque a Div of APC

1. 80–08985/K–79–0413
2. 15–033–20721–0000
3. 102 000 000
4. Texas Oil & Gas Corp
5. McMoran #2
6. NW Yellowstone
7. Comanche, KS
8. 912.5 million cubic feet
9. December 7, 1979
10. Delhi Gas Pipeline Corp

Michigan Department of Natural Resources

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. Purchasers(s)

1. 80–08914
2. 21–099–32480–0000
3. 102–000–000
4. Reef Petroleum Corporation
5. Bolen-Belzyt #1–32
6. Richmond 32
7. Macomb, MI
8. 182.5 million cubic feet
9. December 6, 1979
10. Southeastern Michigan Gas Company

1. 80–08915
2. 21–025–33128–0000
3. 102–000–000
4. Reef Petroleum Corporation
5. Frederick Schmidt #1–27
6. Clarence 27
7. Calhoun, MI
8. 54.8 million cubic feet
9. December 6, 1979
10. Southeastern Michigan Gas Company

1. 80–08916
2. 21–147–32293–0000
3. 102–000–000
4. Reef Petroleum Corporation
5. Anna Wronski #1–4
6. Columbus 4
7. St Clair, MI
8. 182.5 million cubic feet
9. December 6, 1979
10. Michigan Consolidated Gas Company

New Mexico Department od Energy and Minerals, Oil Conservation Division

1. Control number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchasers(s)

1. 80–09022
2. 30–025–26377–0000
3. 103–000–000
4. Phillips Petroleum Company
5. E Vac GB/SA Unit TR 2717 #007
6. Vacuum Grayburg/San Andres
7. Lea, NM
8. 21.0 million cubic feet
9. December 10, 1979
10. El Paso Natural Gas Company

1. 80–09023
2. 30–025–26376–0000
3. 103–000–000
4. Phillips Petroleum Company
5. E Vac GB/SA Unit TR 2622 #001
6. Vacuum Grayburg/San Andres
7. Lea, NM
8. 8.0 million cubic feet
9. December 10, 1979
10. El Paso Natural Gas Company

1. 80–09024
2. 30–025–26388–0000
3. 103–000–000
4. Phillips Petroleum Company
5. E Vac GB/SA Unit TR 3236 #005
6. Vacuum Grayburg/San Andres
7. Lea, NM
8. 14.0 million cubic feet
9. December 10, 1979
10. El Paso Natural Gas Company

1. 80–09025
2. 30–025–26428–0000
3. 103–000–000
4. Warren Petroleum Co A Div of Gulf
5. Scarborough Estate Well #9
6. Brunson Granite Wash South
7. Lea, NM
8. .0 million cubic feet
9. December 10, 1979
10. El Paso Natural Gas Company

1. 80–09026
2. 30–025–26286–0000
3. 103–000–000
4. Warren Petroleum Co A Div of Gulf
5. Alice Paddock Well #8
6. Wantz Granite Wash
7. Lea, NM
8. .0 million cubic feet
9. December 10, 1979
10. El Paso Natural Gas Company

Oklahoma Corporation Commission

1. Control number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchasers(s)

1. 80–08960/00435
2. 35–009–35590–0000
3. 108–000–000
4. El Paso Natural Gas Co
5. Bliss No 1
6. Erick South
7. Beckham, OK
8. .0 million cubic feet
9. December 7, 1979
10. El Paso Natural Gas Co

1. 80–08961/03098
2. 35–149–20048–0000
3. 107–000–000
4. El Paso Natural Gas Co
5. Kilhoffer #1
6. Elk City Springer
7. Washita, OK
8. 3650.0 million cubic feet
9. December 7, 1979
10. El Paso Natural Gas Co

1. 80–089620/03267
2. 35–009–20273–0000
3. 107–000–000
4. El Paso Natural Gas Co
5. Coy #2
6. Elk City Morrow Upper
7. Beckham, OK
8. 823.0 million cubic feet
9. December 7, 1979
10. El Paso Natural Gas Co

1. 80–08963/01030
2. 35–111–20483–0000
3. 108–000–000
4. Tamarack Petroleum Company Inc
5. Kerr #2
6. Henryetta District
7. Okmulgee, OK
8. 25.0 million cubic feet

9. December 7, 1979
10. Phillips Petroleum Company
1. 80-08964/01117
2. 35-047-21326-0000
3. 103-000-000
4. Texaco Inc
5. Lee Eckhardt No 2
6. Sooner Trend
7. Garfield, OK
8. 18.0 million cubic feet
9. December 7, 1979
10. Panhandle Eastern Pipe Line Co Oklahoma Natural Gas Co
1. 80-08965/01181
2. 35-059-20648-0000
3. 103-000-000
4. Sun Oil Company (Delaware)
5. State of Oklahoma Q Well No 2
6. Mocane-Laverne
7. Harper, OK
8. 28.0 million cubic feet
9. December 7, 1979
10. Colorado Interstate Gas Company
1. 80-08967/01119
2. 35-093-21329-0000
3. 103-000-000
4. Pacific Oil & Gas Co
5. Boston No 1
6. Bado
7. Major, OK
8. 85.0 million cubic feet
9. December 7, 1979
10. Phillips Petroleum Company
1. 80-08968/01173
2. 35-059-20697-0000
3. 103-000-000
4. Sunrise Exploration
5. Miller C #1-26
6. Boiling Springs
7. Harper, OK
8. .0 million cubic feet
9. December 7, 1979
10. Michigan-Wisconsin Pipeline Co
1. 80-08969/01182
2. 35-059-20620-0000
3. 103-000-000
4. Arco Oil and Gas Company
5. Cady Wilmot #2
6. Laverne
7. Harper, OK
8. 365.0 million cubic feet
9. December 7, 1979
10. Michigan Wisconsin Pipeline Company
1. 80-08970/01184
2. 35-059-20621-0000
3. 103 000 000
4. Sun Oil Company (Delaware)
5. Robertson A Well #1-L
6. Mocane-Laverne
7. Harper OK
8. 660.0 million cubic feet
9. December 7, 1979
10. Michigan Wisconsin Pipeline Company
1. 80-08971/01170
2. 35-151-50027-0000
3. 108 000 000
4. Texaco Inc
5. Viola Clemence Unit No 1
6. Waynoka NE
7. Woods OK
8. 12.0 million cubic feet
9. December 7, 1979
10. Cities Service Gas Co
1. 80-08972/00373
2. 35-047-21383-0000
3. 103 000 000
4. Ladd Petroleum Corporation
5. Hays Everett #2
6. Enid NE
7. Garfield OK
8. 46.0 million cubic feet
9. December 7, 1979
10. Cities Service Gas Company
1. 80-08974/00368
2. 35-047-21247-0000
3. 103 000 000
4. Ladd Petroleum Corporation
5. Click #2D
6. Enid NE
7. Garfield OK
8. 217.0 million cubic feet
9. December 7, 1979
10. Cities Service Gas Company
1. 80-08975/01101
2. 35-045-20705-0000
3. 103 000 000
4. C F Braun & Co
5. State 1-5
6. S E Harmon Section 5-18N-22W
7. Ellis OK
8. 100.0 million cubic feet
9. December 7, 1979
10. Northern Natural Gas Company
1. 80-08976/00813
2. 35-071-21157-0000
3. 103 000 000
4. Demco Oil & Gas Company
5. Fender #1
6. Unnamed
7. Kay OK
8. 27.4 million cubic feet
9. December 7, 1979
10. Chase Exploration Corporation Chase Gathering Systems Inc Cities Service Gas Co
1. 80-08977/01161
2. 35-003-20591-0000
3. 103 000 000
4. Arco Oil and Gas Company
5. Mary Pekrul #1
6. Ringwood
7. Alfalfa OK
8. 21.5 million cubic feet
9. December 7, 1979
10. Union Texas Petroleum Co
1. 80-08978/01118
2. 35-047-21327-0000
3. 103 000 000
4. Texaco Inc
5. R R Glass No 2
6. Sooner Trend
7. Garfield OK
8. 18.0 million cubic feet
9. December 7, 1979
10. Panhandle Eastern P/L Co Oklahoma Natural Gas Corp
1. 80-08979/01116
2. 35-047-21325-0000
3. 103 000 000
4. Texaco Inc
5. Theresa Strain No 2
6. Sooner Trend
7. Garfield OK
8. 175.0 million cubic feet
9. December 7, 1979
10. Panhandle Eastern P/L Co Oklahoma Natural Gas Co
1. 80-08980/04891
2. 35-015-20789-0000
3. 107 000 000
4. Continental Oil Company
5. Moore No 1
6. Ft Cobb
7. Caddo OK
8. 196.2 million cubic feet
9. December 7, 1979
10.
1. 80-08981/01185
2. 35-059-20621-0000
3. 103 000 000
4. Sun Oil Company (Del)
5. Robertson A Well #1-U
6. Mocane-Laverne
7. Harper OK
8. 1645.0 million cubic feet
9. December 7, 1979
10. Michigan Wisconsin P/L Co
1. 80-08982/04279
2. 35-039-20222-0000
3. 107 000 000
4. Natomas North America Inc
5. Schmidt No 1
6. Wildcat
7. Custer OK
8. .0 million cubic feet
9. December 7, 1979
10. Delhi Gas Pipeline Corporation
1. 80-08983/01103
2. 35-045-20634-0000
3. 103 000 000
4. Natomas North America Inc
5. McCarter #1-1
6. Peek NE
7. Ellis OK
8. 66.0 million cubic feet
9. December 7, 1979
10. Northern Natural Gas Company
1. 80-08966/00367
2. 35-047-00000-0000
3. 103
4. Ladd Petroleum Corp
5. Click #3
6. Enid NE
7. Garfield OK
8. 144.0 million cubic feet
9. December 7, 1979
10. Cities Service Gas Co
1. 80-08973/00375
2. 35-047-21551-0000
3. 103
4. Ladd Petroleum Corp
5. Maxey #2
6. Enid NE
7. Garfield OK
8. 37.8 million cubic feet
9. December 7, 1979
10. Cities Service 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. 80-08917/06699
2. 42-179-00000-0000
3. 108 000 000
4. R W Adams & Son

5. Evans Well ID #26444
6. East Panhandle Field
7. Gray TX
8. 15.2 million cubic feet
9. December 7, 1979
10. Phillips Petroleum

1. 80–08918/06520
2. 42–421–00000–0000
3. 108 000 000
4. Adams & McGahey
5. Eck Well ID #31327
6. Panhandle Field
7. Sherman TX
8. 7.3 million cubic feet
9. December 7, 1979
10. Phillips Petroleum

1. 80–08919/06519
2. 42–179–00000–0000
3. 108 000 000
4. Adams & McGahey
5. Rob Well ID #25785
6. East Panhandle Field
7. Gray TX
8. 9.1 million cubic feet
9. December 7, 1979
10. Coltexo

1. 80–08920/06518
2. 42–179–00000–0000
3. 108 000 000
4. Adams & McGahey
5. Haynes Well ID #25784
6. East Panhandle Field
7. Gray TX
8. 4.4 million cubic feet
9. December 7, 1979
10. Coltexo

1. 80–08921/06517
2. 42–179–00000–0000
3. 108 000 000
4. Adams & McGahey
5. Taylor #1 Well ID #43039
6. West Panhandle Field
7. Gray TX
8. 21.2 million cubic feet
9. December 7, 1979
10. Phillips Petroleum Company

1. 80–08922/06476
2. 42–421–00000–0000
3. 108 000 000
4. Adams & McGahey
5. Smitty Well ID #27816
6. Panhandle Field
7. Sherman TX
8. 9.4 million cubic feet
9. December 7, 1979
10. Phillips Petroleum

1. 80–08923/06475
2. 42–421–00000–0000
3. 108 000 000
4. Adams & McGahey
5. Hamilton Well ID #27815
6. Panhandle Field
7. Sherman TX
8. 6.2 million cubic feet
9. December 7, 1979
10. Phillips Petroleum

1. 80–08924/06474
2. 42–195–00000–0000
3. 108 000 000
4. Adams & McGahey
5. Jo Well ID #27313
6. Panhandle Field
7. Hansford TX
8. 14.0 million cubic feet
9. December 7, 1979
10. Phillips Petroleum

1. 80–08925/00601
2. 42–421–00000–0000
3. 108 000 000
4. Adams & McGahey
5. Hardy #1 Well ID #27361
6. Panhandle Field
7. Sherman TX
8. 9.3 million cubic feet
9. December 7, 1979
10. Phillips Petroleum Company

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. Purchase(s)

1. 80–08927
2. 47–013–02422–0000
3. 108 000 000
4. E M and W E Smith
5. Solomon Holpp No 2
6. Sheridan District
7. Calhoun WV
8. 2.5 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80–08928
2. 47–013–02330–0000
3. 108 000 000
4. Walter E Smith
5. George Bigler No 4
6. Sheridan District
7. Calhoun WV
8. 2.1 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80–08929
2. 47–013–02309–0000
3. 108 000 000
4. Walter E Smith
5. George Bigler Well No 3
6. Sheridan
7. Calhoun WV
8. 2.1 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80–08930
2. 47–013–02284–0000
3. 108 000 000
4. Walter E Smith
5. E W Gainer well No 3
6. Sherman District
7. Calhoun WV
8. 1.3 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80–08931
2. 47–013–02257–0000
3. 108 000 000
4. Walter E Smith
5. John G Rogers well No 4
6. Sheridan
7. Calhoun WV
8. 1.7 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80–08932
2. 47–013–02189–0000
3. 108 000 000
4. Walter E Smith
5. I Parson Martin well No 3
6. Sheridan
7. Calhoun WV
8. 2.8 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80–08933
2. 47–013–02300–0000
3. 108 000 000
4. Smith and Barker Oil & Gas Co Inc
5. Francis Earlewine No 4
6. Sherman District
7. Calhoun WV
8. 1.4 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80–08934
2. 47–013–02382–0000
3. 108 000 000
4. Smith and Barker Oil & Gas Co Inc
5. Emma Francis well No 4
6. Sherman District
7. Calhoun WV
8. 1.3 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80–08935
2. 47–013–02323–0000
3. 108 000 000
4. Smith and Barker Oil & Gas Co Inc
5. Fred Kelley well No 3
6. Sherman District
7. Calhoun WV
8. 1.6 million cubic feet
9. December 5, 1979
10. Consolidated Gas Supply Corp

1. 80–08936
2. 47–013–02472–0000
3. 108 000 000
4. Smith and Barker Oil & Gas Co Inc
5. S P Bell No 3
6. Sherman District
7. Calhoun WV
8. 2.9 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80–08937
2. 47–013–02414–0000
3. 108 000 000
4. Smith and Barker Oil & Gas Co Inc
5. S P Bell well No 2
6. Sherman District
7. Calhoun WV
8. 5.3 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80–08938
2. 47–059–20046–0000
3. 108 000 000
4. W E Burchett Jr
5. Damron No 1
6. Kermit District
7. Mingo WV
8. 13.4 million cubic feet
9. December 7, 1979
10. Columbia Gas Transmission Corp

1. 80–08939
2. 47–059–20210–0000
3. 108 000 000
4. W E Burchett Jr
5. Logan Cannel No 2
6. Harvey District

7. Mingo WV
8. 14.3 million cubic feet
9. December 7, 1979
10. Columbia Gas Transmission Corp

1. 80-08940
2. 47-013-02062-0000
3. 108 000 000
4. Smith and Barker Oil & Gas Co Inc
5. Okey & Lewis Ball well No 1
6. Sherman District
7. Calhoun WV
8. 1.8 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80-08941
2. 47-013-02313-0000
3. 108 000 000
4. Smith and Barker Oil & Gas Co Inc
5. Fred Kelley No 2
6. Sherman District
7. Calhoun WV
8. 2.1 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80-08942
2. 47-059-20439-0000
3. 108 000 000
4. W E Burchett Jr
5. Logan Cannel No 15
6. Harvey District
7. Mingo WV
8. 2.9 million cubic feet
9. December 7, 1979
10. Columbia Gas Transmission Corp

1. 80-08943
2. 47-013-01765-0000
3. 108 000 000
4. Smith and Barker Oil & Gas Co Inc
5. S P Bell Well No 1
6. Sherman District
7. Calhoun WV
8. 2.4 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80-08944
2. 47-013-01817-0000
3. 108 000 000
4. Smith and Barker Oil & Gas Co Inc
5. Emma Francis No 1
6. Sherman District
7. Calhoun WV
8. 1.6 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80-08945
2. 47-013-01874-0000
3. 108 000 000
4. Smith and Barker Oil & Gas Co Inc
5. Emma & Barker well No 2
6. Sherman District
7. Calhoun WV
8. 1.2 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80-08946
2. 47-013-01981-0000
3. 108 000 000
4. Smith and Barker Oil & Gas Co Inc
5. Emma Francis well No 3
6. Sherman District
7. Calhoun WV
8. 1.5 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80-08947
2. 47-013-01790-0000
3. 108 000 000
4. Smith and Barker Oil & Gas Co Inc
5. Francis Earlewine No 2
6. Sherman District
7. Calhoun WV
8. 1.4 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80-08948
2. 47-013-02296-0000
3. 108 000 000
4. Smith and Barker Oil & Gas Co Inc
5. Francis Earlewine No 3 (John Ward No 3)
6. Sherman District
7. Calhoun WV
8. 1.3 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80-08949
2. 47-059-20144-0000
3. 108 000 000
4. W E Burchett Jr
5. Nighbert No 2
6. Kermit District
7. Mingo WV
8. 4.9 million cubic feet
9. December 7, 1979
10. Columbia Gas Transmission Corp

1. 80-08950
2. 47-059-20194-0000
3. 108 000 000
4. W E Burchett Jr
5. Logan Cannel No 1
6. Harvey District
7. Mingo WV
8. 14.3 million cubic feet
9. December 7, 1979
10. Columbia Gas Transmission Corp

1. 80-08951
2. 47-059-20126-0000
3. 108 000 000
4. W E Burchett Jr
5. Farley No 1
6. Kermit District
7. Mingo WV
8. 13.9 million cubic feet
9. December 7, 1979
10. Columbia Gas Transmission Corp

1. 80-08952
2. 47-059-20277-0000
3. 108 000 000
4. W E Burchett Jr
5. Logan Cannel No 10
6. Harvey District
7. Mingo WV
8. .8 million cubic feet
9. December 7, 1979
10. Columbia Gas Transmission Corp

1. 80-08953
2. 47-059-20322-0000
3. 108 000 000
4. W E Burchett Jr
5. Logan Cannel No 11
6. Kermit District
7. Mingo WV
8. 12.9 million cubic feet
9. December 7, 1979
10. Columbia Gas Transmission Corp

1. 80-08954
2. 47-059-20348-0000
3. 108 000 000
4. W E Burchett Jr
5. Logan Cannel No 12
6. Harvey District
7. Mingo WV
8. 12.9 million cubic feet
9. December 7, 1979
10. Columbia Gas Transmission Corp

1. 80-08955
2. 47-059-20431-0000
3. 108 000 000
4. W E Burchett Jr
5. Logan Cannel No 16
6. Harvey District
7. Mingo WV
8. 12.9 million cubic feet
9. December 7, 1979
10. Columbia Gas Transmission Corp

1. 80-08956
2. 47-059-20053-0000
3. 108 000 000
4. W E Burchett Jr
5. Preece #1
6. Kermit District
7. Mingo, WV
8. 6.5 million cubic feet
9. December 7, 1979
10. Columbia Gas Transmission Corp

1. 80-08957
2. 47-059-20125-0000
3. 108 000 000
4. W E Burchett Jr
5. Nighbert #1
6. Kermit District
7. Mingo, WV
8. 4.9 million cubic feet
9. December 7, 1979
10. Columbia Gas Transmission Corp

1. 80-08986
2. 47-013-02641-0000
3. 108 000 000
4. Walter S Smith
5. Solomon Holpp Well #4
6 Sheridan
7. Calhoun, WV
8. 3.3 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80-08987
2. 47-013-01764-0000
3. 108 000 000
4. Smith & Barker Oil & Gas Co Inc
5. Laverne Marris No 1
6. Sherman District
7. Calhoun, WV
8. 2.9 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80-08988
2. 47-013-01763-0000
3. 108 000 000
4. Smith & Barker Oil & Gas Co Inc
5. D A Kimble No 1
6. Sherman District
7. Calhoun, WV
8. 4.9 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80-08989
2. 47-013-01736-0000
3. 108 000 000
4. Smith & Barker Oil & Gas Co Inc
5. William Yoak No 1
6. Sherman
7. Calhoun, WV
8. 3.3 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80-08990

2. 47–013–01665–0000
3. 108 000 000
4. Smith & Barker Oil & Gas Co Inc
5. Francis Earlewine No 1
6. Sherman District
7. Calhoun, WV
8. 1.2 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80–08991
2. 47–013–01814–0000
3. 108 000 000
4. Smith & Barker Oil & Gas Co Inc
5. D A Kimble No 2
6. Sherman District
7. Calhoun, WV
8. 2.8 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80–08992
2. 47–013–01634–0000
3. 108 000 000
4. Smith & Barker Oil & Gas Co Inc
5. Fred Kelley No 1
6. Sherman District
7. Calhoun, WV
8. 1.6 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80–08993
2. 47–013–01598–0000
3. 108 000 000
4. Smith & Barker Oil & Gas Co Inc
5. Carr Shaffer Well #1
6. Lee District
7. Calhoun, WV
8. 2.3 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80–08994
2. 47–013–01596–0000
3. 108 000 000
4. Smith & Barker Oil & Gas Co Inc
5. J T McWilliams No 1
6. Sherman District
7. Calhoun, WV
8. 1.5 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80–08995
2. 47–013–01560–0000
3. 108 000 000
4. Smith & Barker Oil & Gas Co Inc
5. Willis Divers No 1
6. Sherman District
7. Calhoun, WV
8. .9 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80–08996
2. 47–013–01560–0000
3. 108 000 000
4. Smith & Barker Oil & Gas Co Inc
5. Willis Divers No 1
6. Sherman District
7. Calhoun, WV
8. .9 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80–08997
2. 47–013–01534–0000
3. 108 000 000
4. Smith & Barker Oil & Gas Co Inc
5. Carr Shaffer Well #1
6. Lee District
7. Calhoun, WV
8. 1.0 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80–08998
2. 47–013–01520–0000
3. 108 000 000
4. Smith & Barker Oil & Gas Co Inc
5. A M Bennett #3
6. Sherman District
7. Calhoun, WV
8. 1.0 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80–08999
2. 47–013–01492–0000
3. 108 000 000
4. Smith & Barker Oil & Gas Co Inc
5. A M Bennett No 2
6. Sherman District
7. Calhoun, WV
8. 1.0 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80–09000
2. 47–013–01479–0000
3. 108 000 000
4. Smith & Barker Oil & Gas Co Inc
5. Mae Leach Well #2
6. Lee District
7. Calhoun, WV
8. 1.0 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80–09001
2. 47–013–01452–0000
3. 108 000 000
4. Smith & Barker Oil & Gas Co Inc
5. A M Bennett No 1
6. Sherman Djstrict
7. Calhoun, WV
8. 1.0 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80–09002
2. 47–013–01434–0000
3. 108 000 000
4. Smith & Barker Oil & Gas Co Inc
5. Tressie Booher Well #2
6. Lee District
7. Calhoun, WV
8. .7 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80–09003
2. 47–039–00636–0000
3. 108 000 000
4. Jackson Development Co Inc
5. H C Dickinson #21
6. Malden
7. Kanawha, WV
8. 3.4 million cubic feet
9. December 5, 1979
10. Consolidated Gas Supply Corp

1. 80–09004
2. 47–039–00046–0000
3. 108 000 000
4. Jackson Development Co Inc
5. H C Dickinson #11
6. Malden
7. Kanawha, WV
8. 3.4 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80–09005
2. 47–039–00047–0000
3. 108 000 000
4. Jackson Development Co Inc
5. H C Dickinson #10
6. Malden
7. Kanawha, WV
8. 3.4 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80–09006
2. 47–039–00151–0000
3. 108 000 000
4. Jackson Development Co Inc
5. H C Dickinson #17
6. Malden
7. Kanawha, WV
8. 3.4 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80–09007
2. 47–039–00176–0000
3. 108 000 000
4. Jackson Development Co Inc
5. H C Dickinson #13
6. Malden
7. Kanawha, WV
8. 3.4 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80–09008
2. 47–039–00601–0000
3. 108 000 000
4. Jackson Development Co Inc
5. H C Dickinson #20
6. Malden
7. Kanawha, WV
8. 3.4 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80–09009
2. 47–059–20209–0000
3. 108 000 000
4. W E Burchett Jr
5. Logan Cannel #3
6. Harvey District
7. Mingo, WV
8. 14.3 million cubic feet
9. December 7, 1979
10. Columbia Gas Transmission Corp

1. 80–09010
2. 47–059–20223–0000
3. 108 000 000
4. W E Burchett Jr
5. Logan Cannel #4
6. Harvey District
7. Mingo, WV
8. 2.7 million cubic feet
9. December 7, 1979
10. Columbia Gas Transmission Corp

1. 80–09011
2. 47–059–20224–0000
3. 108 000 000
4. W E Burchett Jr
5. Logan Cannel #5
6. Harvey District
7. Mingo, WV
8. 2.7 million cubic feet
9. December 7, 1979
10. Columbia Gas Transmission Corp

1. 80–09012
2. 47–059–20274–0000
3. 108 000 000
4. W E Burchett Jr
5. Logan Cannel #7
6. Harvey District

7. Mingo, WV
8. .8 million cubic feet
9. December 7, 1979
10. Columbia Gas Transmission Corp

1. 80–09013
2. 47–059–20273–0000
3. 108 000 000
4. W E Burchett Jr
5. Logan Cannel #6
6. Harvey District
7. Mingo, WV
8. .8 million cubic feet
9. December 7, 1979
10. Columbia Gas Transmission Corp

1. 80–09014
2. 47–59–20275–0000
3. 108 000 000
4. W E Burchett Jr
5. Logan Cannel #8
6. Harvey District
7. Mingo WV
8. .8 million cubic feet
9. December 7, 1979
10. Columbia Gas Transmission Corp

1. 80–09015
2. 47–059–00276–0000
3. 108 000 000
4. W E Burchett Jr
5. Logan Cannel #9
6. Harvey District
7. Mingo WV
8. .8 million cubic feet
9. December 7, 1979
10. Columbia Gas Transmission Corp

1. 80–09016
2. 47–039–02014–0000
3. 108 000 000
4. Jackson Development Co Inc
5. Margaret Y Dickinson #27
6. Malden
7. Kanawha WV
8. 3.4 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80–09017
2. 47–039–02024–0000
3. 108 000 000
4. Jackson Development Co Inc
5. Margaret Y Dickinson #28
6. Malden
7. Kanawha WV
8. 3.4 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80–09018
2. 47–039–01924–0000
3. 108 000 000
4. Jackson Development Co Inc
5. Margaret Y Dickinson #25
6. Malden
7. Kanawha WV
8. 3.4 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80–09019
2. 47–039–01903–0000
3. 108 000 000
4. Jackson Development Co Inc
5. Margaret Y Dickinson #22
6. Malden
7. Kanawha WV
8. 3.4 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80–09020
2. 47–039–01954–0000
3. 108 000 000
4. Jackson Development Co Inc
5. Prichard #23
6. Malden
7. Kanawha WV
8. 8.1 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80–09021
2. 47–039–01973–0000
3. 108 000 000
4. Jackson Development Co Inc
5. Margaret Y Dickinson #25
6. Malden
7. Kanawha WV
8. 3.4 million cubic feet
9. December 7, 1979
10. Consolidated Gas Supply Corp

1. 80–09027
2. 47–013–02634–0000
3. 108 000 000
4. Midget Oil Co
5. Bennington Well No 3
6. Rush Run
7. Calhoun WV
8. 3.0 million cubic feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09028
2. 47–013–02639–0000
3. 108 000 000
4. Midget Oil Co
5. Parsons Well No 6
6. Rush Run
7. Calhoun WV
8. 2.3 million cubic feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09029
2. 47–079–20574–0000
3. 108 000 000
4. Spartan Gas Company
5. Layton-Simms 1–S–99
6. Scott
7. Putnam WV
8. 13.2 million cubic feet
9. December 10, 1979
10. Union Oil & Gas Inc

1. 80–09030
2. 47–079–20646–0000
3. 108 000 000
4. Spartan Gas Company
5. Elizabeth Ford 1–S–105
6. Buffalo
7. Putnam WV
8. 12.7 million cubic feet
9. December 10, 1979
10. Union Oil & Gas Inc

1. 80–09031
2. 47–079–20666–0000
3. 108 000 000
4. Spartan Gas Company
5. H E Fruth 1–S–108
6. Union
7. Putnam WV
8. 5.1 million cubic feet
9. December 10, 1979
10. Union Oil & Gas Inc

1. 80–09032
2. 47–079–20680–0000
3. 108 000 000
4. Spartan Gas Company
5. Cabot McLean 1–S–111
6. Buffalo
7. Putnam WV
8. 12.0 million cubic feet
9. December 10, 1979
10. Union Oil & Gas Inc

1. 80–09033
2. 47–079–20691–0000
3. 108 000 000
4. Spartan Gas Company
5. Cleve Dunlap #1–S–118
6. Buffalo
7. Putnam WV
8. 8.4 million cubic feet
9. December 10, 1979
10. Union Oil & Gas Inc

1. 80–09034
2. 47–079–20809–0000
3. 108 000 000
4. Spartan Gas Company
5. Cabot Amherst 1–S–174
6. Red House
7. Putnam WV
8. 14.0 million cubic feet
9. December 10, 1979
10. Devon Corporation

1. 80–09035
2. 47–079–20811–0000
3. 108 000 000
4. Spartan Gas Company
5. Cabot Amherst 2–S–175
6. Red House
7. Putnam WV
8. 14.0 million cubic feet
9. December 10, 1979
10. Devon Corporation

1. 80–09036
2. 47–079–20813–0000
3. 108 000 000
4. Spartan Gas Company
5. Cabot Amherst 4–S–177
6. Red House
7. Putnam WV
8. 14.0 million cubic feet
9. December 10, 1979
10. Devon Corporation

1. 80–09037
2. 47–079–20834–0000
3. 108 000 000
4. Spartan Gas Company
5. Charles Casto 1–S–182
6. Union
7. Putnam WV
8. 10.4 million cubic feet
9. December 10, 1979
10. Devon Corporation

1. 80–09038
2. 47–079–20832–0000
3. 108 000 000
4. Spartan Gas Company
5. Cleve Dunlap 2–S–181
6. Buffalo
7. Putnam WV
8. 4.8 million cubic feet
9. December 10, 1979
10. Union Oil & Gas Inc

1. 80–09039
2. 47–079–20841–0000
3. 108 000 000
4. Spartan Gas Company
5. Elton Maddox 1–S–183
6. Scott
7. Putnam WV
8. 9.5 million cubic feet
9. December 10, 1979
10. Union Oil & Gas Inc

1. 80–09040

2. 47–013–01989–CALO
3. 108 000 000
4. C G & R Oil & Gas Co
5. Schoolcraft #1
6. Schoolcraft
7. Calhoun WV
8. 3.3 million cubic feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09041
2. 47–021–01153–GILO
3. 108 000 000
4. C G & R Oil & Gas Co
5. Cooper & Fling #1
6. Cooper-Fling
7. Gilmer WV
8. 4.8 million cubic feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09042
2. 47–021–01156–GILO
3. 108 000 000
4. C G & R Oil & Gas Co
5. Ansel B Byrd #1
6. Ansel B Byrd
7. Gilmer WV
8. 2.6 million cubic feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09043
2. 47–079–20842–0000
3. 108 000 000
4. Spartan Gas Company
5. Henry Parsely 1–S–184
6. Scott
7. Putnam WV
8. 5.3 million cubic feet
9. December 10, 1979
10. Union Oil & Gas Inc

1. 80–09044
2. 47–079–20814–0000
3. 108 000 000
4. Spartan Gas Company
5. Cabot Amherst 5–S–178
6. Red House
7. Putnam WV
8. 14.0 million cubic feet
9. December 10, 1979
10. Devon Corporation

1. 80–09045
2. 47–079–20812–0000
3. 108 000 000
4. Spartan Gas Company
5. Cabot Amherst 3–S–176
6. Red House
7. Putnam WV
8. 14.0 million cubic feet
9. December 10, 1979
10. Devon Corporation

1. 80–09046
2. 47–079–20701–0000
3. 108 000 000
4. Spartan Gas Company
5. Cabot McLean #2–S–119
6. Union
7. Putnam WV
8. 9.6 million cubic feet
9. December 10, 1979
10. Union Oil & Gas Inc

1. 80–09047
2. 47–079–20652–0000
3. 108 000 000
4. Spartan Gas Company
5. Jane Abbott 1–S–106
6. Scott
7. Putnam WV
8. 5.4 million cubic feet
9. December 10, 1979
10. Union Oil & Gas Inc

1. 80–09048
2. 47–021–01174–GILO
3. 108 000 000
4. C G & R Oil & Gas Co
5. A H Cooper #1
6. A H Cooper
7. Gilmer WV
8. 3.1 million cubic feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09049
2. 47–021–01222–GILO
3. 108–000–000
4. C G & R Oil & Gas Co
5. Matella Cooper #1
6. Matella Cooper
7. Gilmer, WV
8. 2.4 million cubic feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09050
2. 47–021–01237–GILO
3. 108–000–000
4. C G & R Oil & Gas Co
5. Matella Cooper #2
6. Matella Cooper
7. Gilmer, WV
8. .8 million cubic feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09051
2. 47–021–01270–GILO
3. 108–000–000
4. C G & R Oil & Gas Co
5. A H Cooper #2
6. A H Cooper
7. Gilmer, WV
8. 1.0 million cubic feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09052
2. 47–021–01312–GILO
3. 108–000–000
4. C G & R Oil & Gas Co
5. Russell McQuain #2
6. Russell McQuain
7. Gilmer, WV
8. 1.9 million cubic feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09053
2. 47–021–01313–GILO
3. 108–000–000
4. C G & R Oil & Gas Co
5. Russell McQuain #1
6. Russell McQuain
7. Gilmer, WV
8. 2.5 million cubic feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–090054
2. 47–099–20615–0000
3. 108–000–000
4. W E Burchett Jr
5. Ezra Adkins #3
6. Grant District
7. Wayne, WV
8. 2.4 million cubic feet
9. December 10, 1979
10. Columbia Gas Transmission Corp

1. 80–09055
2. 47–099–20614–0000
3. 108–000–000
4. W E Burchett Jr
5. Ezra Adkins #2
6. Grant District
7. Wayne, WV
8. 2.4 million cubic feet
9. December 10, 1979
10. Columbia Gas Transmission Corp

1. 80–09056
2. 47–099–20613–0000
3. 108–000–000
4. W E Burchett Jr
5. Ezra Adkins #1
6. Grant District
7. Wayne, WV
8. 2.4 million cubic feet
9. December 10, 1979
10. Columbia Gas Transmission Corp

1. 80–09057
2. 47–099–20552–0000
3. 108–000–000
4. W E Burchett Jr
5. Honaker #3
6. Grant District
7. Wayne, WV
8. 6.9 million cubic feet
9. December 10, 1979
10. Columbia Gas Transmission Corp

1. 80–09058
2. 47–099–20531–000
3. 108–000–000
4. W E Burchett Jr
5. Adkins #2
6. Grant District
7. Wayne, WV
8. 6.4 million cubic feet
9. December 10, 1979
10. Columbia Gas Transmission Corp

1. 80–09059
2. 47–099–20530–0000
3. 108–000–000
4. W E Burchett Jr
5. Honaker #2
6. Grant District
7. Wayne, WV
8. 6.9 million cubic feet
9. December 10, 1979
10. Columbia Gas Transmission Corp

1. 80–09060
2. 47–085–00857–RED0
3. 108–000–000
4. Perkins Oil & Gas Inc
5. Dolly Thomas (C Wilson) #5
6. Bonds Creek
7. Ritchie, WV
8. 2.6 million cubic feet
9. December 10, 1979
10. Equitable Gas

1. 80–09061
2. 47–039–00016–0000
3. 108–000–000
4. Jackson Development Co Inc
5. H C Dickinson #12
6. Malden
7. Kanawha, WV
8. 3.4 million cubic feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09062
2. 47–043–21085–0000
3. 108–000–000
4. Jackson Development Corp
5. A C Pauley #1
6. Duval

7. Lincoln, WV
8. 3.8 million cubic feet
9. December 10, 1979
10. Pennzoil

1. 80–09063
2. 47–039–21803–0000
3. 108–000–000
4. Jackson Development Co Inc
5. Floyd B Conner #1
6. Elk
7. Kanawha, WV
8. 3.9 million cubic feet
9. December 10, 1979
10. Columbia Gas Transmission Corp

1. 80–09064
2. 47–039–21797–0000
3. 108–000–000
4. Jackson Development Co Inc
5. M W Stricker #1
6. Elk
7. Kanawha, WV
8. 1.4 million cubic feet
9. December 10, 1979
10. Columbia Gas Transmission Corp

1. 80–09065
2. 47–085–00508–DD00
3. 108–000–000
4. Perkins Oil & Gas Inc
5. Bryson Garner #1
6. Bryson Garner (North Fork Hughes R)
7. Ritchie, WV
8. 1.3 million cubic feet
9. December 10, 1979
10. Consolidated Gas Supply

1. 80–09066
2. 47–085–04295–0000
3. 108–000–000
4. Perkins Oil & Gas Inc
5. Dolly Thomas #4 (or Wilson #4)
6. Bonds Creek
7. Ritchie, WV
8. 4.0 million cubic feet
9. December 10, 1979
10. Equitable Gas

1. 80–09067
2. 47–085–04012–0000
3. 108–000–000
4. Perkins Oil & Gas Inc
5. Margaret Thomas Well #4112
6. Marsh Run
7. Ritchie, WV
8. 3.0 million cubic feet
9. December 10, 1979
10. Equitable Gas

1. 80–09068
2. 47–085–02224–0000
3. 108–000–000
4. Perkins Oil & Gas Inc
5. J H Poole #1 RIT–2224–DD
6. Buck Run
7. Ritchie, WV
8. 2.8 million cubic feet
9. December 10, 1979
10. Equitable Gas

1. 80–09069
2. 47–039–00017–0000
3. 108–000–000
4. Jackson Development Co Inc
5. H C Dickinson #9
6. Malden
7. Kanawha, WV
8. 3.4 million cubic feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09070
2. 47–007–00434–0000
3. 108–000–000
4. Gerald D Jones
5. G B Howell #2
6. Rosedale
7. Braxton, WV
8. 6.3 million cubic feet
9. December 10, 1979
10. Equitable Gas Company

1. 80–09071
2. 47–007–00442–0000
3. 108–000–000
4. Gerald D Jones
5. G B Howell #3
6. Rosedale
7. Braxton, WV
8. 7.0 million cubic feet
9. December 10, 1979
10. Equitable Gas Company

1. 80–09072
2. 47–021–22863–0000
3. 108–000–000
4. Industrial Gas Associates
5. Bowyer Heirs No. 1—GIL 2863
6. Troy District
7. Gilmer, WV
8. 7.0 million cubic feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09073
2. 47–085–23777–0000
3. 108–000–000
4. Industrial Gas Associates
5. H L Brissey No. 1—RIT 3777
6. Union District
7. Ritchie, WV
8. 6.0 million cubic feet
9. December 10, 1979
10. Equitable Gas

1. 80–09074
2. 47–085–23786–0000
3. 108–000–000
4. Industrial Gas Associates
5. Russell Wilson No. 2—RIT 3786
6. Union District
7. Ritchie, WV
8. 6.0 million cubic feet
9. December 10, 1979
10. Carnegie Natural Gas Co

1. 80–09075
2. 47–085–03785–0000
3. 108–000–000
4. Industrial Gas Associates
5. C Simmons No. 1—RIT 3785
6. Union District
7. Ritchie, WV
8. 6.0 million cubic feet
9. December 10, 1979
10. Columbia Gas Transmission Corp

1. 80–09076
2. 47–015–20517–0000
3. 108–000–000
4. A A Pursley
5. W M Manshaw #1
6. Big Seyemore
7. Clay, WV
8. .4 million cubic feet
9. December 10, 1979
10. Southeastern Gas Company

1. 80–09077
2. 47–017–21662–0000
3. 108–000–000
4. A A Pursley
5. Bernard Fisher (Fisher Musk) #1
6. Lower Run
7. Doddridge, WV
8. 3.1 million cubic feet
9. December 10, 1979
10. Equitable Gas

1. 80–09078
2. 47–007–00433–0000
3. 108–000–000
4. Gerald D Jones
5. G B Howell #1
6. Rosedale
7. Braxton, WV
8. 5.7 million cubic feet
9. December 10, 1979
10. Equitable Gas Company

1. 80–09079
2. 47–013–01207–0000
3. 108 000 000
4. Roy G Hildreth Et Al
5. A B Starcher #1
6. Lee District
7. Calhoun, WV
8. .3 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09080
2. 47–085–03778–0000
3. 108 000 000
4. Industrial Gas Associates
5. K Godfrey No 1 RIT 3778
6. Union District
7. Richie, WV
8. 5.5 Million Cubic Feet
9. December 10, 1979
10. Carnegie Natural Gas Co

1. 80–09081
2. 47–085–23779–0000
3. 108 000 000
4. Industrial Gas Associates
5. Russell Wilson No 1—RIT 3779
6. Union District
7. Richie, WV
8. 6.0 Million Cubic Feet
9. December 10, 1979
10. Carnegie Natural Gas Co

1. 80–09082
2. 47–105–20162–0000
3. 108 000 000
4. A A Pursley
5. Jehu McVey #1
6. Right Reedy
7. Wirt, WV
8. 2.7 Million Cubic Feet
9. December 10, 1979
10. Cabot Corporation

1. 80–09084
2. 47–097–20725–0000
3. 108 000 000
4. A A Pursley
5. C R Wilson
6. Banks
7. Upsher, WV
8. 7.5 Million Cubic Feet
9. December 10, 1979
10. Columbia Gas Transmission Corp

1. 80–09085
2. 47–013–01214–0000
3. 108 000 000
4. Gerald D Jones
5. H F Deweese #1
6. Sams Run
7. Calhoun, WV
8. 2.8 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09086

2. 47–013–02583–0000
3. 108 000 000
4. Gerald D Jones
5. Curtis Wallbrown #3
6. Sams Run
7. Calhoun, WV
8. 3.6 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09087
2. 47–013–02557–0000
3. 108 000 000
4. Midget Oil Company
5. Butler Well No 4
6. Rush Run
7. Calhoun, WV
8. 2.3 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09088
2. 47–013–02558–0000
3. 108 000 000
4. Midget Oil Company
5. Parsons Well No 5
6. Rush Run
7. Calhoun, WV
8. 2.3 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09089
2. 47–013–02532–0000
3. 108 000 000
4. Midget Oil Company
5. Parsons Well No 4
6. Rush Run
7. Calhoun, WV
8. 2.3 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09090
2. 47–013–02534–0000
3. 108 000 000
4. Midget Oil Company
5. Bennington Well No 2
6. Rush Run
7. Calhoun, WV
8. 3.0 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09091
2. 47–013–02526–0000
3. 108 000 000
4. Midget Oil Company
5. Butler Well No 3
6. Rush Run
7. Calhoun, WV
8. .2 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09092
2. 47–013–02521–0000
3. 108 000 000
4. Midget Oil Company
5. Jones No 1
6. Rush Run
7. Calhoun, WV
8. 8.6 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09093
2. 47–013–00384–0000
3. 108 000 000
4. Midget Oil Company
5. Bennington Well No 1
6. Rush Run
7. Calhoun, WV
8. 2.6 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09094
2. 47–021–01337–Gilo
3. 108 000 000
4. C G & R Oil & Gas Co
5. Angus Frederick #1
6. Chlories Bennett
7. Gilmer, WV
8. 1.3 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09095
2. 47–021–01349–Gilo
3. 108 000 000
4. C G & R Oil & Gas Co
5. Clay Lang #1
6. Rosa Langford
7. Gilmer, WV
8. 1.1 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09096
2. 47–021–01527–Gilo
3. 108 000 000
4. C G & R Oil & Gas Co
5. Aubra Cunningham #1
6. Audrey Cunningham
7. Gilmer, WV
8. 2.1 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09097
2. 47–021–01393–Gilo
3. 108 000 000
4. C G & R Oil & Gas Co
5. Ansel B Byrd #2
6. Asel B Byrd #2
7. Gilmer, WV
8. .9 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09098
2. 47–021–01545–Gilo
3. 108 000 000
4. C G & R Oil & Gas Co
5. Willie Lang #1
6. Willie Lang
7. Gilmer, WV
8. 2.1 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09099
2. 47–085–02628–Rito
3. 108 000 000
4. C G & R Oil & Gas Co
5. Hayhurst Heirs #2
6. Hayhurst
7. Ritchie, WV
8. 4.0 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09100
2. 47–085–02646–Rito
3. 108 000 000
4. C G & R Oil & Gas Co
5. Hayhurst Heirs #3
6. Hayhurst
7. Ritchie, WV
8. 1.6 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09101
2. 47–085–02856–Rito
3. 108 000 000
4. C G & R Oil & Gas Co
5. Hayhurst Heirs #1
6. Hayhurst
7. Ritchie, WV
8. 1.0 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09102
2. 47–015–20687–0000
3. 108 000 000
4. Seneca Upshur Petroleum Co
5. Lydin Lee Harrison #1
6. Henry
7. Clay, WV
8. 8.0 Million Cubic Feet
9. December 10, 1979
10. Columbia Gas Supply Corp

1. 80–09103
2. 47–041–21934–0000
3. 108 000 000
4. Seneca-Upshur Petroleum Co
5. Doris Kerns #1
6. Collins Settlement
7. Lewis, WV
8. 2.0 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09104
2. 47–041–21935–0000
3. 108 000 000
4. Seneca-Upshur Petroleum Co
5. Robert E Smith #1
6. Collins Settlement
7. Lewis, WV
8. 9.0 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09105
2. 47–041–21939–0000
3. 108 000 000
4. Seneca-Upshur Petroleum Co
5. Robert E Smith #1
6. Collins Settlement
7. Lewis, WV
8. 8.0 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09106
2. 47–041–21942–0000
3. 108 000 000
4. Seneca-Upshur Petroleum Co
5. Robert E Smith #1
6. Collins Settlement
7. Lewis, WV
8. 4.0 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09107
2. 47–041–21949–0000
3. 108 000 000
4. Seneca-Upshur Petroleum Co
5. John S Groves #1
6. Court House
7. Lewis, WV
8. 13.0 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09108
2. 47–097–21527–0000
3. 108 000 000
4. Seneca-Upshur Petroleum Co
5. Stickley Casto #1
6. Warren

7. Upshur, WV
8. 2.0 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09109
2. 47–097–21535–0000
3. 108 000 000
4. Seneca-Upshur Petroleum Co
5. J L Tenney #1
6. Washington
7. Upshur, WV
8. .4 Million Cubic Feet
9. December 10, 1979
10. Equitable Gas Co

1. 80–09110
2. 47–097–21538–0000
3. 108 000 000
4. Seneca-Upshur Petroleum Co
5. R E Norval #1
6. Washington
7. Upshur WV
8. 4.0 Million Cubic Feet
9. December 10, 1979
10. Equitable Gas Co

1. 80–09111
2. 47–097–21539–0000
3. 108 000 000
4. Seneca-Upshur Petroleum Co
5. Lelah Wamsley #1
6. Washington
7. Upshur WV
8. 4.0 Million Cubic Feet
9. December 10, 1979
10. Equitable Gas Co

1. 80–09112
2. 47–097–21544–0000
3. 108 000 000
4. Seneca-Upshur Petroleum Co
5. Paul Shaw #1
6. Washington
7. Upshur WV
8. 4.0 Million Cubic Feet
9. December 10, 1979
10. Equitable Gas Co

1. 80–09113
2. 47–097–21574–0000
3. 108 000 000
4. Seneca-Upshur Petroleum Co
5. J M Huber #3
6. Washington
7. Upshur WV
8. 5.0 Million Cubic Feet
9. December 10, 1979
10. Equitable Gas Co

1. 80–09114
2. 47–097–21589–0000
3. 108 000 000
4. Seneca-Upshur Petroleum Co
5. J H Hinkle #1
6. Washington
7. Upshur WV
8. 14.0 Million Cubic Feet
9. December 10, 1979
10. Equitable Gas Co

1. 80–09115
2. 47–097–21591–0000
3. 108 000 000
4. Seneca-Upshur Petroleum Co
5. J M Huber #1
6. Washington
7. Upshur WV
8. 6.0 Million Cubic Feet
9. December 10, 1979
10. Equitable Gas Co

1. 80–09116
2. 47–097–21592–0000
3. 108 000 000
4. Seneca-Upshur Petroleum Co
5. J M Huber #2
6. Washington
7. Upshur WV
8. 6.0 Million Cubic Feet
9. December 10, 1979
10. Equitable Gas Co

1. 80–09117
2. 47–097–21595–0000
3. 108 000 000
4. Seneca-Upshur Petroleum Co
5. J M Huber #5
6. Washington
7. Upshur WV
8. 2.0 Million Cubic Feet
9. December 10, 1979
10. Equitable Gas Co

1. 80–09118
2. 47–097–21596–0000
3. 108 000 000
4. Seneca-Upshur Petroleum Co
5. J M Huber #4
6. Washington
7. Upshur WV
8. 4.0 Million Cubic Feet
9. December 10, 1979
10. Equitable Gas Co

1. 80–09119
2. 47–097–21601–0000
3. 108 000 000
4. Seneca-Upshur Petroleum Co
5. J M Huber #6
6. Washington
7. Upshur WV
8. 2.0 Million Cubic Feet
9. December 10, 1979
10. Equitable Gas Co

1. 80–09120
2. 47–097–21602–0000
3. 108 000 000
4. Seneca-Upshur Petroleum Co
5. J M Huber #7
6. Washington
7. Upshur WV
8. 3.0 Million Cubic Feet
9. December 10, 1979
10. Equitable Gas Co

1. 80–09121
2. 47–097–21606–0000
3. 108 000 000
4. Seneca-Upshur Petroleum Co
5. J M Huber #9
6. Washington
7. Upshur WV
8. .2 Million Cubic Feet
9. December 10, 1979
10. Equitable Gas Co

1. 80–09122
2. 47–097–21607–0000
3. 108 000 000
4. Seneca-Upshur Petroleum Co
5. J M Huber #10
6. Washington
7. Upshur WV
8. 1.0 Million Cubic Feet
9. December 10, 1979
10. Equitable Gas Co

1. 80–09123
2. 47–097–21620–0000
3. 108 000 000
4. Seneca-Upshur Petroleum Co
5. Harrison-Ritchie #1
6. Washington
7. Upshur WV
8. 4.0 Million Cubic Feet
9. December 10, 1979
10. Equitable Gas Co

1. 80–09124
2. 47–097–21611–0000
3. 108 000 000
4. Seneca-Upshur Petroleum Co
5. Albert F Linger #1
6. Washington
7. Upshur WV
8. 2.0 Million Cubic Feet
9. December 10, 1979
10. Equitable Gas Co

1. 80–09125
2. 47–097–21621–0000
3. 108 000 000
4. Seneca-Upshur Petroleum Co
5. Harrison-Ritchie #2
6. Washington
7. Upshur WV
8. 4.0 Million Cubic Feet
9. December 10, 1979
10. Equitable Gas Co

1. 80–09126
2. 47–097–21627–0000
3. 108 000 000
4. Seneca-Upshur Petroleum Co
5. J M Huber #13
6. Washington
7. Upshur WV
8. 2.0 Million Cubic Feet
9. December 10, 1979
10. Equitable Gas Co

1. 80–09127
2. 47–099–20497–0000
3. 108 000 000
4. W E Burchett Jr
5. Adkins #1
6. Grant District
7. Wayne WV
8. 6.4 Million Cubic Feet
9. December 10, 1979
10. Columbia Gas Transmission Corp

1. 80–09128
2. 47–095–00349–0000
3. 108 000 000
4. Perkins Oil & Gas Inc
5. Lelia Washburn #1
6. Short Run
7. Tyler WV
8. 1.7 Million Cubic Feet
9. December 10, 1979
10. Equitable Gas Co

1. 80–09129
2. 47–039–22640–0000
3. 108 000 000
4. Jackson Development Co Inc
5. Margaret Dickinson #1–10
6. Malden
7. Kanawha WV
8. 15.4 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09130
2. 47–013–01826–0000
3. 108 000 000
4. Smith & Baker Oil & Gas Co Inc
5. G B Francis Well #1
6. Sherman District
7. Calhoun WV
8. .6 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09131

2. 47–059–20462–0000
3. 108 000 000
4. W E Burchett Jr
5. Nighbert #3
6. Kermitt District
7. Mingo WV
8. 14.6 Million Cubic Feet
9. December 10, 1979
10. Columbia Gas Transmission Corp

1. 80–09132
2. 47–099–20494–0000
3. 108 000 000
4. W E Burchett Jr
5. Honaker #1
6. Grant District
7. Wayne WV
8. 6.9 Million Cubic Feet
9. December 10, 1979
10. Columbia Gas Transmission Corp

1. 80–09133
2. 47–013–00544–0000
3. 108 000 000
4. Midget Oil Company
5. Butler Well No 1
6. Rush Run
7. Calhoun WV
8. 2.0 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09134
2. 47–013–00976–0000
3. 108 000 000
4. Midget Oil Company
5. Parsons Well No 3
6. Rush Run
7. Calhoun WV
8. 2.0 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09135
2. 47–013–00459–0000
3. 108 000 000
4. Midget Oil Company
5. Parsons Well No 2
6. Rush Run
7. Calhoun WV
8. 2.0 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09136
2. 47–013–00448–0000
3. 108 000 000
4. Midget Oil Company
5. Parsons Well No 1
6. Rush Run
7. Calhoun WV
8. 2.0 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp

1. 80–09137
2. 47–013–22615–0000
3. 108 000 000
4. Industrial Gas Associates
5. Frank Bell #1 Cal 2615
6. Sheridan District
7. Calhoun WV
8. 2.5 Million Cubic Feet
9. December 10, 1979
10. Cabot Corporation

1. 80–09138
2. 47–099–00847–0000
3. 108 000 000
4. H H Lusher
5. Harlan & J B Booten Way–847
6. Millers Fork
7. Wayne WV
8. 8.3 Million Cubic Feet
9. December 10, 1979
10. Gas Supply Corporation

1. 80–09139
2. 47–099–00799–0000
3. 108 000 000
4. H H Lusher & Sons
5. Lonnie Booten Way–799
6. Millers Fork
7. Wayne WV
8. .0 Million Cubic Feet
9. December 10, 1979
10. Gas Supply Corporation

1. 80–09140
2. 47–099–00722–0000
3. 108–000–000
4. H H Lusher
5. Roy Lockhart Way–722
6. Wilson Creek
7. Wayne WV
8. .0 Million Cubic Feet
9. December 10, 1979
10. Gas Supply Corporation

1. 80–09141
2. 47–099–00638–0000
3. 108–000–000
4. H H Lusher & Sons
5. William Booten Way–638
6. Millers Fork
7. Wayne WV
8. 3.0 Million Cubic Feet
9. December 10, 1979
10. Gas Supply Corporation

1. 80–09142
2. 47–041–20170–PFRA
3. 108–000–000
4. James H Hall
5. Bitner No. 1
6. Hackers Creek
7. Lewis WV
8. 17.8 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp.

1. 80–09143
2. 47–021–02599–0000
3. 108–000–000
4. D W Stonestreet
5. Kate Woofter No. 3 47–021–2599
6. Kate Woofter No. 3
7. Gilmer (021) WV
8. 7.4 Million Cubic Feet
9. December 10, 1979
10. Carnegie Natural Gas Company

1. 80–09144
2. 47–013–00799–0000
3. 108–000–000
4. Gerald D Jones
5. P G Deweese No. 1
6. Sams Run
7. Calhoun WV
8. 2.8 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp.

1. 80–09145
2. 47–035–21049–0000
3. 108–000–000
4. A A Pursley
5. Virgil L Finch No. 1
6. Copper Fork
7. Jackson WV
8. 13.6 Million Cubic Feet
9. December 10, 1979
10. Gas Transport Inc.

1. 80–09146
2. 47–013–00607–0000
3. 108–000–000
4. Roy G Hildreth Jr.
5. Edwin Starcher Heirs No. 1
6. Lee District
7. Calhoun WV
8. .6 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply

1. 80–09147
2. 47–013–00775–0000
3. 108–000–000
4. Gerald D Jones
5. Curtis Wallbrown No. 1
6. Sams Run
7. Calhoun WV
8. 1.8 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp.

1. 80–09148
2. 47–013–01184–0000
3. 108–000–000
4. Gerald D Jones
5. Curtis Wallbrown No. 2
6. Sams Run
7. Calhoun WV
8. 8.2 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp.

1. 80–09149
2. 47–013–20929–0000
3. 108–000–000
4. A A Pursley
5. J B Huffman
6. Russett
7. Calhoun WV
8. 4.4 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Corporation

1. 80–09150
2. 47–041–20587–0000
3. 108–000–000
4. James H Hall
5. Maxwell No. 1
6. Hackers Creek
7. Lewis WV
8. 2.9 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp.

1. 80–09151
2. 47–013–01093–0000
3. 108–000–000
4. Roy G Hildreth Jr
5. E Starcher No. 1
6. Lee District
7. Calhoun WV
8. 4.5 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas

1. 80–09152
2. 47–013–01074–0000
3. 108–000–000
4. Roy G Hildreth Jr
5. Everest Starcher Lease
6. Lee District
7. Calhoun WV
8. 4.2 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply

1. 80–09153
2. 47–021–21645–0000
3. 108–000–000
4. A A Pursley
5. J W Cunningham No. 1
6. Dekalb District

7. Gilmer WV
8. 5.0 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp.

1. 80-09154
2. 47-041-20359-0000
3. 108-000-000
4. A A Pursley
5. D B Wilfong
6. Court House
7. Lewis WV
8. 6.4 Million Cubic Feet
9. December 15, 1979
10. Consolidated Gas Supply Corp.

1. 80-09155
2. 47-041-20367-0000
3. 108-000-000
4. A A Pursley
5. M McLaughlin (Marie Daggett Et. al.)
6. Court House
7. Lewis WV
8. 8.7 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp.

1. 80-09156
2. 47-041-21388-0000
3. 108-000-000
4. A A Pursley
5. S B Mullinex No. 2-A
6. Canoe Run (Collins Settlement)
7. Lewis WV
8. 3.6 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply Corp.

1. 80-09157
2. 47-013-00274-0000
3. 108-000-000
4. Roy G Hildreth Jr
5. C C Starcher No. 1
6. Lee District
7. Calhoun WV
8. 1.4 Million Cubic Feet
9. December 10, 1979
10. Consolidated Gas Supply

1. 80-09083
2. 47-085-22609
3. 108
4. A A Pursley
5. A H Tate No. 2
6. Union District
7. Ritchie WV
8. 0.8 Million Cubic Feet
9. December 10, 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 such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission, on or before February 8, 1980.

Please reference the Ferc control number in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-2204 Filed 1-23-80; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP80-66]

Grand Bay Co.; Proposed Changes In FERC Gas Tariff

January 17, 1980.

Take notice that Grand Bay Company, on January 11, 1978, tendered for filing proposed changes in its FERC Gas Tariff for compression service rendered. The proposed changes would increase revenues from jurisdictional service by $813,890 based on the 12-month period ending October 31, 1978.

Grand Bay states that this filing reflects rate increases in accordance with Article III of the contract between Grand Bay Company and its jurisdictional customers tendered for filing as the Grand Bay Company rate schedule on November 15, 1977.

Grand Bay requests that the Commission waive the regulation requiring 30-day notice, and requests an effective date for the rate change of the date of filing.

Grand Bay further requests a waiver of any of the Commission's rules and regulations as may be required.

Copies of the filing were served on the company's jurisdictional customers.

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 should be filed on or before January 31, 1980. 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.

Kennth F. Plumb,

Secretary.

[FR Doc. 80-2200 Filed 1-23-80; 8:45 am]

BILLING CODE 6450-01-M

[Dockets Nos. E-9520 and ER77-531]

Illinois Power Co.; Order on Remand Directing the Refund of Rate Increase Payments

Issued: January 9, 1980.

Before Commissioners: Charles B. Curtis, Chairman; Georgiana Sheldon, Matthew Holden, Jr., and George R. Hall.

On August 21, 1979, the United States Court of Appeals for the District of Columbia Circuit issued an opinion in *City of Oglesby* v. *FERC*, No. 76-1585, reversing in part and remanding certain orders of the Federal Power Commission in Docket No. E-9520 which had accepted for filing, suspended and made effective as of January 1, 1976, a rate increase proposed by Illinois Power Company for its wholesale customers, the City of Oglesby and the Village of Ladd.[1] The Commission rejected the customers' arguments that they have fixed-rate contracts with Illinois Power which, under the *Serra-Mobile* doctrine,[2] protect them from rate increases.

The court of appeals found that the FPC's construction of Oglesby's and Ladd's wholesale power contracts was in error and held that no rate increase could become effective as to these customers until its justness and reasonableness had first been determined by the Commission pursuant to Section 206 of the Federal Power Act. *City of Oglesby* v. *FERC, supra* (mimeo at 25-29). An opinion on the justness and reasonableness of the rate increase proposed in Docket No. E-9520 was issued by this Commission, as successor to the FPC, on August 1, 1977.[3] According to the mandate of the court of appeals, all increased rate revenues collected from Ladd prior to that date must be refunded, with interest computed pursuant to Commission Order Nos. 47 and 47-A. Refunds with interest to Oglesby extend to May 18, 1977, the date on which its contract expired.

While the customers' petition for review of orders in Docket No. E-9520 was *pendente lite*, Illinois Power

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[1] Order accepting and suspending proposed rate increase, allowing intervention and setting procedures (October 29, 1975).

[2] *United Gas Pipe Line Co.* v. *Mobile Service Co.*, 350 U.S. 332 (1956); and *Federal Power Commission* v. *Sierra Pacific Power Co.* 350 U.S. 348 (1956). The FPC made this determination in a separate order denying the customers' motion to reject the filing (March 8, 1976), *rehearing granted in part and denied in part*, (May 7, 1976), *rehearing denied* (June 25, 1976).

[3] Opinion No. 816. A subsequent order was issued on January 9, 1979, which granted the intervenors' application for rehearing concerning restrictive terms and conditions of the Illinois Power tariff unrelated to rate level.

tendered a second rate increase with the FPC in Docket No. ER77–531. By order of September 23, 1977, the FPC accepted this second increase for filing and made it effective, after suspension, on March 1, 1978, subject to refund at the outcome of the proceeding. Relying on the precedent of Docket No. E–9520, the FPC again rejected the contentions of Oglesby and Ladd that the filing should be rejected pursuant to the *Sierra-Mobile* doctrine. Thereafter, by order issued on July 25, 1978, this Commission permitted Illinois Power to implement, as of March 1, 1978, lower rates contained in a settlement offer made by the utility to its wholesale customers, pending resolution of Docket No. ER77–531 by settlement or by Commission opinion. The lower rates were, of course, implemented subject to refund. As of today, Docket No. ER77–531 has neither been settled nor decided by Commission opinion. Under the mandate of *City of Oglesby* v. *FERC, supra*, therefore, Illinois Power is not entitled to any increased rate revenues collected from Ladd pursuant to either Commission order in that docket.

Accordingly, we shall order the immediate refund of increased rate revenues collected by Illinois Power from Oglesby and Ladd pursuant to the proposed rate increase in Docket No. E9520 prior to May 18, 1977, and August 1, 1977, respectively.[4] Also, we shall act *sua sponte* to vacate the orders of September 23, 1977, and July 25, 1978, which permitted Illinois Power to collect any rate increase, tendered in Docket No. ER77–531 for application to Ladd, prior to the issuance of a Commission opinion in that proceeding. Appropriate refunds must also be made of increased revenues relating to this proposed rate increase, with interest computed pursuant to Order Nos. 47 and 47–A.[5]

The Commission orders: (A) The orders of September 23, 1977, and July 25, 1978, issued in Docket No. ER77–531, are hereby vacated insofar as they made any rate proposed by Illinois Power Company effective to the Village of Ladd, subject to refund during the pendency of that case, before expiration of the Ladd contract.

(B) Within 14 days of the issuance of this order Illinois Power Company shall refund to the City of Oglesby and the Village of Ladd, with interest calculated pursuant to Commission Order Nos. 47 and 47–A, all increased revenues unlawfully collected pursuant to proposed rate increases filed in Docket Nos. E–9520 and ER77–531. Simultaneously, Illinois Power Company shall file with the Commission a complete report of these refunds.

(C) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80–2201 Filed 1–23–80; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. ER80–183]

Indiana & Michigan Electric Co.; Changes in Rates and Charges

January 18, 1980.

The filing company submits the following:

Take notice that American Electric Power Service Corporation (AEP) on Jan. 14, 1980 tendered for filing on behalf of its affilitate Indiana & Michigan Electric Company (I&M), Modification No. 13 dated January 1, 1980 to the Interconnection Agreement dated December 30, 1960 between Indianapolis Power & Light Company and Indiana & Michigan Electric Company, I&M's Rate Schedule FERC No. 21.

Sections 1 and 3 of Modification No. 13 provide for an increase in the demand charge for Short Term Power and Limited Term Power from $0.70 to $0.85 per kilowatt per week and $3.75 to $4.50 per kilowatt per month respectively. Sections 2 and 4 provide for an increase in the Short Term Power and Limited Term Power transmission charges from $0.175 to $0.240 per kilowatt per week and $0.75 to $1.00 per kilowatt per month respectively both schedules proposed to become effective January 7, 1980.

Applicant states that since the use of Short Term Power cannot be accurately estimated, for the twelve months period succeeding the date of filing, it is impossible to estimate the increase in revenues resulting from its modification for such period. Applicant's Exhibit I which was included with the filing of this modification, demonstrate that the increase in revenues which would have resulted had the modification been in effect during the twelve-month period ending October 1979 would have been $1,181,785.71 (i.e., from $24,482,620.93 to $25,664,406.64).

Copies of the filing were served upon Indianapolis Power & Light Company, the Public Service Commission of Indiana and the Michigan Public Service Commission.

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, N. Capitol Street, 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 February 8, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken. 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. 80–2202 Filed 1–23–80; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. RP80–65]

Michigan Wisconsin Pipe Line Co.; Petition for Issuance of an Order

January 17, 1980.

Take notice that on January 10, 1980, Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) filed a Petition for Issuance of an Order pursuant to Section 16 of the Natural Gas Act as amended and Section 1.7 of the Commission's Rules of Practice and Procedure (18 CFR 1.7) thereunder, to authorize it to continue rate base treatment of certain advance payments which it made to Cities Service Oil Company and Cities Service Company (Cities Service) in 1974 and 1976, all as more fully set forth in the petition which is on file with the Commission and available for public inspection.

The petition indicates that Michigan Wisconsin advanced an aggregate of $2,197,863 to Cities Service to obtain the dedication of gas reserves underlying High Island Area Blocks A–355 and A–356 in offshore Texas. The petition further indicates that commencement of production from the aforementioned blocks has been delayed beyond the expiration of a five year period, and that absent the order requested by the instant petition, Michigan Wisconsin will be required to transfer the advances

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[4] August 1, 1977, the date of the final Commission opinion on rate level, is the date as of which increased rates for Ladd may become effective. *See, Federal Power Commission* v. *Sierra Pacific Power Company, supra* note 2 350 U.S. at 353. The hearing record on which this opinion is based was compiled pursuant to Section 206 of the Act, as well a Sections 205, 307, 308 and 309 thereof.

[5] On December 27 and 28, 1979, Illinois Power filed so-called statements of compliance in Docket Nos. ER77–531 and E–9520, respectively. However, no refunds have been made and interest calculations in these documents are either lacking or incomplete. The company is directed to make the refunds, with interest, and to file refund reports for each customer which show interest amounts and interest compounding calculations for each month's excess revenues.

from Account No. 166 and cease rate base treatment thereof.

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 February 1, 1980. 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 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. 80-2205 Filed 1-23-80; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-642, et al.]

Missouri Utilities Co.; Filing of Contract Revisions

January 17, 1980.

The filing Company submits the following:

Take notice that Missouri Utilities Company on December 27, 1979, tendered for filing revised pages of the existing electric service agreements between Missouri Utilities Company and the Missouri Cities of Kennett and Malden.

The revised pages were tendered for filling pursuant to ordering paragraph (E) of the Commission's November 5, 1979, Order Accepting For Filing And Suspending Proposed Service Agreement And Consolidating Procedures issued in docket No. ER79-642, *et al.*, to eliminate language that restricted the Cities' resale of power and energy supplied under the agreements to regain users only.

Copies of the filing were served upon Missouri Utilities Company's jurisdictional customers and the Missouri Public Service Commission.

Any person desiring to be heard or to protest 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 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 February 8, 1980. Protests will be considered by the Commission 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 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. 80-2206 Filed 1-23-80; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER80-182]

Northern Indiana Public Service Co.; Tariff Change and Supplements to Service Agreements

January 17, 1980.

The filing company submits the following:

Take notice that on January 11, 1980, Northern Indiana Public Service Company (NIPSCo) tendered for filing Second Revised Sheet No. 3 to its FERC Electric Service Tariff—Third Revised Volume No. 1 which has been revised to include the additional delivery points for Kosciusko County Rural Electric Membership Corporation—Webster South and for the City of Rensselaer. Northern Indiana Public Service Company also tendered for filing the following:

Exhibit B-7, a supplement to the Service Agreement between NIPSCo and Jasper County Rural Electric Membership Corporation, which covers the supply of electric energy for resale at a delivery point located in Keener Township, Jasper County, Indiana.

Copies of this filing were served upon all customers receiving electric service under NIPSCO's FERC Electric Service Tariff—Third Revised Volume No. 1 and the Public Service Commission of Indiana.

Any person desiring to be heard or to 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 February 4, 1980. 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. 80-2207 Filed 1-23-80; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER80-186]

Ohio Power Co.; Changes in Rates and Charges

January 18, 1980.

The filing company submits the following:

Take notice that American Electric Power Service Corporation (AEP) on January 15, 1980 tendered for filing on behalf of its affiliate, Ohio Power Company (Ohio), Supplement No. 8 dated November 9, 1979 to the Interconnection Agreement dated January 1, 1952, between Ohio and Ohio Edison Company, designated Ohio Rate Schedule FERC No. 25.

Supplement No. 8 provides for an increase in the Demand Charge for Short Term Power and Limited Term Power from $0.70/kW-week and $3.75/kW-month to $0.85/kW-week and $4.50/kW-month respectively. Supplement No. 8 also provides for an increase in the transmission charges for third party Short Term and Limited Term Power transactions from $0.175/kW-week and $0.75/kW-month to $0.240/kW-week and $1.00/kW-month respectively, both schedules proposed to become effective March 10, 1980. Applicant states that since the use of Short Term Power cannot be accurately estimated, for the twelve-month period succeeding the date of filing, it is impossible to estimate the increase in revenues resulting from this supplement for such period. Applicant's Exhibit I and II which were included with the filing of this Supplement, demonstrate that the increase in revenues which would have resulted had the Supplement been in effect during the twelve-month period ending December 1979, would have been a) for Short Term Power $648,142.85 i.e., from $15,238,057.10 to $15,886,199.95 and b) for Limited Term Power $75,000.00 i.e., from $1,235,755.50 to $1,310,755.50.

Copies of the filing were served upon Ohio Edison Company and the Public Utilities Commission of Ohio.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest said application with the Federal Energy Regulatory Commission, 825 N. Capitol Street, 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 February 8, 1980. 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. 80-2208 Filed 1-23-80; 8:45 am]

BILLING CODE 6450-01-M

[Docket No ER80-187]

Ohio Power Co.; Changes in Rates and Charges

January 18, 1980.

The filing company submits the following:

Take notice that American Electric Power Service Corporation (AEP) on January 15, 1980, tendered for filing on behalf of its affiliate Ohio Power Company (Ohio Power), Modification No. 3 dated November 15, 1979 to the Operating Agreement dated December 1, 1965, between Ohio Power Company and the Toledo Edison Company designated Ohio Power Rate Schedule FERC No. 35.

Section 1 of Modification No. 3 provides for an increase in the demand charge for Short Term Power from $0.70 to $0.85 per kilowatt per week and Section 3 provides for an increase in the demand charge for Limited Term Power from $3.75 to $4.50 per kilowatt per month. Section 2 of Modification No. 3 provides for an increase in the transmission charge for third party Short Term Power transactions from $0.175 per kilowatt per week to $0.240 per kilowatt per week and Section 4 provides for an increase in the transmission charge for third party Limited Term transactions from $0.75 per kilowatt per month to $1.00 per kilowatt per month, both changes proposed to become effective March 10, 1980.

Applicant states that since the use of Short Term Power and Limited Term Power Service cannot be accurately estimated, it is impossible to estimate the increase in revenues resulting from the Modification. Applicant's Exhibits I and II which were included with the filing of this Modification, demonstrate that the increase in revenues, which would have resulted had the modification been in effect during the twelve-month period ending December 1979, would have been (a) for Short Term Power $493,750.00 (i.e., from $12,918,197.76 to $13,411,947.75) and (b) for Limited Term Power $150,000.00 (i.e., from $3,550,536.20 to $3,700,536.20).

Copies of the filing were served upon The Toledo Edison Company and Public Utilities Commission of Ohio.

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 N. Capitol Street, 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 protest should be filed on or before February 8, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken. 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. 80-2209 Filed 1-23-80; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER80-184]

Oklahoma Gas & Electric Co.; Superseding Contract Filing

January 18, 1980.

The filing company submits the following:

Take notice that on January 15, 1980, Oklahoma Gas and Electric Company (OG&E) tendered for filing a new Agreement intended to supersede OG&E's Rate Schedule FERC No. 105. This Agreement is the contract between OG&E and Gulf States Utilities Company (GSU). The new Agreement is identical to the old Agreement, except for the demand charge, and provides for the sale of 150 MW of Contract Capacity from OG&E to GSU for the year 1980.

OG&E proposes an effective date of January 1, 1980, and therefore requests waiver of the Commission's notice requirements.

OG&E states that copies of the filing were served upon Gulf States Utilities Company, Arkansas Power & Light Company, Louisiana Power & Light Company, Central Louisiana Electric Company, the Corporation Commission of the State of Oklahoma, and the Arkansas Public Service Commission.

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. 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 February 8, 1980. 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 intenvene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-2210 Filed 1-23-80; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER80-185]

Oklahoma Gas & Electric Co.; Superseding Contract Filing

January 18, 1980.

The filing company submits the following:

Take notice that on january 15, 1980, Oklahoma Gas and Electric Company (OG&E) tendered for filing a new Agreement intended to supersede OG&E's Rate Schedule FERC No. 104. This Agreement is the contact between OG&E and the Southwestern Power Administration (SWPA). The new Agreement is identical to the old Agreement, and provides for the sale of Replacement Energy and Emergency Service by OG&E to SWPA.

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 Capital 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 Feb. 8, 1980. 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. 80-2211 Filed 1-23-80; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RE80-29]

Power Authority of the State of New York; Application for Exemption

January 17, 1980.

Take notice that Power Authority of the State of New York (Power Authority), on November 20, 1979, filed an application for exemption from certain requirements of Part 290 of the Commission's regulations (Order 48, 44 FR 58687). Exemption is sought from the requirement to file, on or before November 1, 1980, information on the costs of providing electric service as specified in Sections 290.202(a), 290.303(a)(c), 290.401(a), 290.402(b), and 290.403(a)(4) of Part 290 of the Commission's regulations issued pursuant to Section 133 of PURPA.

In its application for exemption, Power Authority states that it should not be required to file the specified data for the following reasons:

(1) Under Section 290.202(a): "The Authority simply does not have the wherewithal to perform the massive analytical work necessitated by the provision. The Authority proposes instead to select one or more weekdays and weekend days for each month of the reporting period which are representative of cost incurrence."

(2) Under Section 290.303(a) & (c): "Despite the massive amount of work necessary to perform these calculations, the results may not be 'typical,' as the resulting averages may be distorted by the inclusion of unrepresentative data. The purposes of § 133 can be achieved at far less cost by allowing the Authority to select one or more weekdays and weekend days for each month of the reporting period which are representative of cost incurrence."

(3) Under Section 290.401(a): "The Authority's system load data are reported on a 60-minute integrated basis; however, a substantial number of its various customer groups have load data which are metered on a 30-minute integrated basis. Reprocessing of the customer data to yield 60-minute integrated demands would be a time consuming, expensive computational task and would lessen the accuracy of the data."

(4) Under Section 290.402(b): "For the same reasons given in support of the request for exemption from § 290.303(c) above with respect to pool marginal energy cost data, the Authority submits that it would be inappropriate to require the Authority to file New York Power Pool load data, which is not relevant to the Authority's own operations."

(5) Under Section 290.403(a)(4): "The Authority requests an exemption from adherence to the definition of typical day loads for the reporting period for the same reasons set forth above in its request for exemption from reporting marginal energy cost data for typical days in the reporting period."

Copies of the application for exemption are on file with the Commission and are available for public inspection. The commission's regulations require that said utility also apply to any State regulatory authority having jurisdiction over it to have the application published in any official State publication in which electric rate change applications are usually noticed, and that a summary of the application be published in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before February 29, 1980.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-2212 Filed 1-23-80; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER80-180]

Public Service Electric & Gas Co.; Filing

January 18, 1980.

The filing Company submits the following:

Take notice that Public Service Electric and Gas Company on January 2, 1980, tendered for filing an Electric Service Agreements with the Boroughs of Milltown and South River dated January 3, 1980.

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, 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 and 1.10). All such protests should be filed on or before February 8, 1980. Protests will be considered by the Commission in determining the appropriate actions 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. 80-2213 Filed 1-23-80; 8:45 am]

BILLING CODE 6450-01-M

[Docket Nos. G-11762, et al.]

Sun Oil Co., et al.; Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

January 17, 1980.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before January 25, 1980, 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.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where 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 Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

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[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft.[3]	Pressure base
C-11762 B, Feb. 22, 1977	Sun Oil Co., P.O. Box 20, Dallas, Tex. 75221	Northern Natural Gas Co., Harper Ranch field, Clark County, Kans.	Depleted	
C179—628 A, Aug. 24, 1979	Marathon Oil Co., 539 South Main Street, Findlay, Ohio 45840.	Michigan Wisconsin Pipe Line Co., Blocks A-474 and A-489, High Island area, offshore Louisiana.	[1]	15.025
C179—633 A, Aug. 30, 1979	Cotton Petroleum Co., 4200 One Williams Center, Tulsa, Okla. 74103.	Michigan Wisconsin Pipe Line Co., Caddo County, Okla.	[2]	14.65
C180—152 B, Dec. 31, 1979	Jack M. Allen and Johnye M. Voiles, a partnership, Allen Building, Box 1046, Perryton, Tex. 79070.	Natural Gas Pipeline Co. of America, Lips field, Roberts and Ochiltree Counties, Tex.	[3]	
C180—153 B, Dec. 31, 1979	Jack M. Allen and Johnye M. Voiles, Allen Building, Box 1046, Perryton, Tex. 79070.	Natural Gas Pipeline Co. of America, Lips field, Roberts and Ochiltree Counties, Tex.	[3]	
C180—154 B, Dec. 31, 1979	Jack M. Allen and Johnye M. Voiles	Natural Gas Pipeline Co. of America, Lips field, Roberts and Ochiltree Counties, Tex.	[3]	

[1] Applicant is filing under gas purchase contract dated July 19, 1979.
[2] Applicant is filing under gas purchase contract dated Sept. 27, 1978.
[3] No sales have been made under contract; pipeline unable to take gas due to low well pressures; dwindling reserves make compression unfeasible. Applicant expresses urgency because gas is being vented to atmosphere in conjunction with oil production; wells face risk of being ordered shut-in by Texas Railraod Commission which would result in loss of oil and gas leases.

Filing code: A—Initial Services. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 80-2214 Filed 1-23-80; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. GP80-26]

Trunkline Gas Co.; Third Party-Protests [1]

January 18, 1980.

Take notice that in accordance with the procedures established by the Federal Energy Regulatory Commission (Commission) in Order No. 23-B [2] and "Order on Rehearing of Order No. 23-B [3] the staff of the Commission protested on October 15, 1979, the assertion by the Trunkline Gas Company (Trunkline) and certain producers that the contracts identified in staff's protest constitute contractual authority for the producers to charge and collect certain applicable maximum lawful prices under the Natural Gas Policy Act of 1978 (NGPA).

Staff stated that the language of the contracts listed in Appendix A of this notice does not constitute contractual authority for the producer to increase prices to the extent claimed by Trunkline in the evidentiary submission it filed pursuant to 18 CFR § 154.94(j).

Take further notice that the State of Michigan (Michigan) and the Michigan Public Service Commission (Michigan P.S.C.) filed a joint third-party protest on November 5, 1979. This joint protest asserts that the contracts listed in Appendix B do not constitute contractual authority for the producers to increase prices to the applicable NGPA maximum lawful price. The position taken by Michigan and Michigan P.S.C. has been adopted and incorporated in a protest filed by Associated Gas Distributors on November 5, 1979.

In addition, the Kansas State Corporation Commission filed on November 5, 1979, a protest (1) adopting and incorporating the protest of Michigan and Michigan P.S.C. and (2) further requesting that certain clauses added by amendment to contracts listed in Appendix B be declared null and void for lack of consideration.

Any person, other than the pipeline and the seller, desiring to be heard or to make any response with respect to these protests should file with the Commission, on or before February 4, 1980, a petition to intervene in acordance with 18 C.F.R. § 1.8. The seller need not file for intervention because under 18 C.F.R. § 154.94(j)(4)(ii), the seller in the first sale is automatically joined as a party.

Kenneth F. Plumb,

Secretary.

Appendix A

Producer	Rate schedule No. or contract date
AGOIL Inc	8-22-78
Anadarko Production Co	4-4-77
Anadarko Production Co	241
Anadarko Production Co	249
Anadarko Production Co	251
Chevron USA, Inc	44
Crystal Oil Co	12-20-77
Davis Oil Co	6-24-78
Diamond Shamrock	87
Diamond Shamrock	4-4-77
Diamond Shamrock	92
Diamond Shamrock	97
Florida Gas Exploration Co	27
Gulf Oil Company	548
Hamilton Brothers Oil Co	1, 2 and 5
Ocean Production Co	17
Placid Oil Co	59
Sunny Field Oil & Gas, Ltd	6-7-71
Great Southern Oil & Gas Co. Inc	1-4-71
Getty Oil Co	251
Resources Investment Group	7-11-78
Harvey V. Risien	12-15-77
Shell Oil Co	338
Sun Oil Co	587
Sun Oil Co	602
TEPCO Engineering Inc	6-28-78
Texas Pacific Oil Co., Inc	123
Duer Wagner, Jr	10-22-76
Exxon Co. U.S.A	468

Appendix B

Seller	Rate schedule number	Date
Regis Gas Systems, Inc	3	12/1/58
Atlantic Richfield Co	328	9/28/66
Mullins & Prichard	SPC	8/1/68
Hunt Industries	11	5/31/74
Chevron U.S.A., Inc	44	4/4/69
Shell Oil Co	358	11/1/68
Amoco Production Co	509	12/21/67
Chevron U.S.A., Inc	52	1/5/70
Superior Oil Co	148	1/15/71
Trans-Ocean Oil, Inc	23	2/3/71
Amoco Production Co	29	4/1/73
Amoco Production Co	259	9/2/58
Exxon Co., U.S.A	281	1/22/60
Exxon Co., U.S.A	272	2/10/61
Exxon Co., U.S.A	347	3/6/64
Exxon Co., U.S.A	373	1/29/65
Mobil Oil Corp	411	8/20/65
Mobil Oil Exploration & Production SE Inc	391	11/11/66
Mobil Oil Exploration & Production SE Inc	510	2/27/76
Mobil Oil Exploration & Production SE Inc	518	4/2/76
Exxon Co., U.S.A	571	8/11/76
Exxon Co., U.S.A	568	9/3/76
Exxon Co., U.S.A	606	10/11/77
Exxon Co., U.S.A	608	10/31/77
Exxon Co., U.S.A	621	4/12/78
Centura Inc	SPC	7/20/78
Shell Oil Co	428	1/11/78
Amerada Hess Corp	14	8/20/48
Superior Oil Co	1	1/19/49
Gen'l Crude Oil Co	SPC	2/14/53
Prairie Production Company	SPC	4/10/72
Amoco Production Co	747	8/8/77
Mobil Oil Corp	52	1/1/76
Mobil Oil Exploration & Production SE Inc	521	8/9/76
Superior Oil Co	3	6/11/48
Superior Oil Co	222	7/21/48
Superior Oil Co	222	8/2/48
Tenneco Oil Co	141	11/3/54
Sohio Nat'l Resouces Co	5	5/26/52
Fred W. Shield	SPC	3/10/61
Penzoil Producing Co	70	2/9/55

[1] The term "third party protest" refers to a protest filed by a party who is not a party to the contract which is protested.

[2] "Order Adopting Final Regulations and Establishing Protest Procedure", Docket No. RM79-22, issued June 21, 1979.

[3] Docket No. RM79-22, issued August 6, 1979.

Seller	Rate schedule number	Date
Union Oil Co. of Cal	42	6/17/58
Union Oil Co. of Cal	61	6/17/58
Union Oil Co. of Cal	85	6/17/58
Gulf Oil Corp	219	2/27/61
Sun Oil Co	201	6/22/65
Union Oil Co. of Cal	158	9/1/65
Superior Oil Co	29	2/28/66
Superior Oil Co	121	2/13/67
Ladd Petroleum Co	11	4/19/67
Amoco Production Co	503	9/1/67
Crystal Oil Co 1/29/67	SPC	
Superior Oil Co	129	2/15/68
Exchange Oil & Gas	9	5/2/68
Getty Oil Co	176	12/9/68
Continental Oil Co	348	12/6/68
Atlantic Richfield Co	625	12/23/68
Cities Service Oil Co	312	12/23/68
Solatex Petroleum Co	SPC	1/29/69
Prairie Producing Co	3	3/21/69
George Mitchell & Asso. Inc	37	5/11/70
Tenneco Oil Co	270	1/1/71
Great Southern Oil & Gas Co	SPC	1/4/71
Getty Oil Co	186	1/5/71
Sunnyfield Oil & Gas Ltd	SPC	6/7/71
McMoran Exploration Co	SPC	7/19/71
Continental Oil Co	373	9/21/71
Cities Service Oil Co	380	9/21/71
Paul M. Tace	SPC	9/28/71
Norwegian Oil Corp	SPC	10/22/71
Texas Oil & Gas Corp	97	11/19/71
Logue & Patterson, Inc	SPC	1/6/72
Monsanto Co	103	1/11/72
Mitchell Energy & Development Corp	41	2/4/72
West Petroleum Corp	SPC	7/12/72
Victoria Equipment & Supply Co	SPC	11/20/72
Sun Oil Co	518	4/8/73
Sun Oil Co	519	4/18/73
Sun Oil Co	517	4/18/73
Lewis B. Howard	SPC	5/16/73
Clark Oil Producing Co	SPC	6/15/73
Diamond Shamrock Corp	66	7/16/73
Diamond Shamrock Corp	65	7/16/73
Diamond Shamrock Corp	67	7/16/73
Anadarko Production Co	205	7/19/73
Anadarko Production Co	204	7/19/73
Anadarko Production Co	203	7/19/73
EIF Aquitaine Inc	SPC	8/15/73
Neil E. Hanson	SPC	6/8/73
Placid Oil Co	59	5/31/74
Getty Oil Co	251	5/31/74
Highland Resources, Inc	SPC	5/31/74
Hamilton Bros. Oil Co	1	5/31/74
Hamilton Bros. Oil Co	5	5/31/74
Hamilton Bros. Exploration Co	1	5/31/74
Hamilton Bros. Exploration Co	2	5/31/74
Gulf Oil Co	548	5/31/74
Atlantic Richfield Co	684	8/19/74
Continental Oil Co	412	8/23/74
Cities Service Oil Co	410	9/3/74
Kirby Petroleum Co	SPC	8/27/74
Continental Oil Co	284	12/22/75
Clark Oil Producing Co	SPC	5/3/76
Clark Oil Producing Co	SPC	11/11/76
Sun Oil Co	587	4/4/77
Diamond Shamrock Corp	78	4/4/77
Anadarko Production Co	232	4/4/77
Texas Pacific Oil Co. Inc	123	4/4/77
Ocean Production Co	17	5/25/77
Furth Oil Co	SPC	7/7/77
Florida Gas Exploration Co	27	8/29/77
Sun Oil Co	602	2/10/78
Anadarko Production Co	241	2/15/78
Diamond Shamrock Corp	87	4/18/78
Sun Oil Co	pending	5/23/78
Tepco Engineering, Inc	SPC	6/28/78
Resources Investment Corp	SPC	7/11/78
Andarko Production Co	249	7/25/78
Sun Oil Co	pending	8/17/78
Diamond Shamrock Corp	92	9/12/78
Andarko Production Co	pending	1/11/79
Diamond Shamrock Corp	97	4/2/79
Anadarko Production Co	251	4/30/79
Cities Service Oil Co	1	1/26/49
Nicklos Oil & Gas Co	SPC	8/20/58
Tribal Oil Co	SPC	7/15/74
Damson Oil Corp	SPC	3/10/75
C. F. Brown & Co	SPC	5/19/76
Northcott Exploration Co., Inc	SPC	5/31/76
William F. Powell	SPC	9/1/76
Duer Wagner, Jr	SPC	10/22/76
Tee Oil, Inc	SPC	11/1/76
Beverly Miller Somners	SPC	7/6/76
C & K Marine Production Co	SPC	6/20/77
H. C. Price Co	SPC	7/15/77
Dinero Oil Co	SPC	11/29/77
Harvey V. Risien	SPC	12/15/77
Crystal Oil Co	SPC	12/20/77
Atlantic Richfield Co	516	3/20/52
Atlantic Richfield Co	517	6/2/52
American Petro-Fina Co. of Texas	30	4/13/76
Coastal States Gas Producing Co	47	4/14/76
Coastal States Gas Producing Co	1	4/14/76
Pennzoil Producing Co	80	3/9/56
Sun Oil Co	89	3/21/75
Cities Service Oil Co	134	9/4/59
Signal Petroleum	5	6/3/68
Sun Oil Co	447	8/1/66
Prairie Producing Co	SPC	7/24/67
Getty Oil Co	211	8/21/74
Cities Service Oil Co	425	6/1/75
Getty Oil Co	213	6/11/75
Atlantic Richfield Co	693	6/12/75
Continental Oil Co	420	6/12/75
Union Oil Co. of Cal	222	7/23/75
Atlantic Richfield Co	375	8/9/76
Texas Oil & Gas Corp	SPC	8/1/77
Torro Resources, Inc	43	10/27/77
Loe Pipe Yard, Inc	SPC	12/1/77
Davis Oil Co	SPC	4/24/78
Forest Oil Corp	46	6/20/78
Don H. Ford	SPC	7/27/78
Nimrod R. Price	SPC	9/15/78
Agoil Inc	SPC	8/22/78
J. N. Pratt & W. R. Dean DBA Pool & Hooper Oil Properties	SPC	4/29/52
J. N. Pratt & W. R. Dean DBA Pool & Hooper Oil Properties	SPC	7/2/52
Estate of H. L. Hunt	1	1/1/76
Estate of H. L. Hunt	2	1/1/76
Estate of H. L. Hunt	13	1/1/76
Estate of H. L. Hunt	525	1/1/76
Mobil Oil Corp	41	1/1/77
Amoco Production Co	258	6/26/58
Amoco Production Co	388	6/26/58
Amoco Production Co	393	6/26/58
Aminoil Development Inc	2	10/28/75
Mesa Petroleum Co	71	10/28/75
Chevron U.S.A. Inc	95	3/4/76
Chevron U.S.A. Inc	97	7/30/76
Getty Oil Co	142	8/4/65
Phillips Petroleum Co	489	3/15/71
Phillips Petroleum Co	489	4/29/77
Exxon Co., U.S.A.	468	7/9/69
Exxon Corp	564	7/9/75

[FR Doc. 80-2216 Filed 1-23-80; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER80-188]

Vermont Electric Power Co., Inc.; Rate Schedule Filing

January 18, 1980.

The filing company submits the following:

Take notice that on January 15, 1980, Vermont Electric Power Company, Inc. (VELCO) tendered for filing a rate schedule for transmission service between VELCO and Washington Electric Cooperative, Inc. for the period May 1, 1978 through June 30, 1985, Vermont Marble Company for the period July 1, 1978 through June 30, 1985, the Village of Swanton for the period November 1, 1979 through June 30, 1985, for the transmission of electricity purchased by the buyer other than from the State of Vermont or VELCO.

VELCO states that the service to be rendered under this rate schedule is the provision of VELCO's transmission facilities to the Electric Power Department of the three Vermont utilities named in the rate schedule for the transmission of bulk power purchased by the Vermont utilities from utilities outside of Vermont from points of interconnection of VELCO's facilities with the transmission facilities of other companies. The quantities of power transmitted by VELCO under this rate schedule and the "estimated monthly charges" are as follows:

Purchasers	Kilowatts	Estimated monthly charges
Washington Electric Cooperative, Inc	1,000	$1,250
Vermont Marble Co	2,000	2,500
Village of Swanton	1,200	1,500

VELCO further states that as a result of unavoidable delay in resolving certain aspects of negotiations for this rate schedule, VELCO was not able to file the schedule in a timely manner. In addition, the need to submit the contracts, which make up this rate schedule, to the Vermont Public Service Board for approval by the Board pursuant to § 2.5 of the Power Transmission Contract. As a result of these circumstances, VELCO could not comply with the notice requirements of § 35.3 of the regulations. Therefore, VELCO requests that the Commission waive the notice requirements under § 35.11 since the circumstances described constitute a good cause for a waiver. According to VELCO, approval of these contracts was granted by the Vermont Public Service Board.

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 February 8, 1980. 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. 80-2217 Filed 1-23-80; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1397-5]

Data Collection Activities

The purpose of this notice is to identify certain data collection activities to be undertaken by the United States Environmental Protection Agency (EPA) during the six month period January 1, 1980 through June 30, 1980 for specific industrial point source categories. Prior notification will alert affected industries that potential questionnaires and/or analytical sampling surveys are forthcomng and enable them to participate in the rulemaking activities.

The following list of industrial categories is organized by type of data collection activity; i.e., economic assessment, analytical sampling, or technical assessment. Data collected through these surveys will be used in supporting and establishing effluent limitations guidelines as required under Sections 301, 304, 306 and 307 of the Clean Water Act.

These activities are subject to Office of Management and Budget (OMB) approval in accordance with OMB Clearance No. 158–R–0160 and are published twice yearly in the **Federal Register.** Notification is also a requirement for OMB concurrence under the federal Reports Act (144 U.S.C. 3501 et seq.)

Several data collection activities mentioned in this notice were contained in EPA's **Federal Register** notice of Data Collection Activities dated August 1, 1979. Data collection activities repeated in this notice did not commence during the previous reporting period August 1, 1979 through December 31, 1979.

Questions concerning economic surveys should be directed to the appropriate project officer at the following address: U.S. Environmental Protection Agency, Office of Water Planning and Standards, Office of Analysis and Evaluation (WH–586), 401 M Street SW., Washington, D.C. 20460.

Questions concerning technical or analytical sampling surveys should be directed to the appropriate project officer at the following address: U.S. Environmental Protection Agency, Office of Water Planning and Standards, Effluent Guidelines Division (WH–552), 401 M Street SW., Washington, D.C. 20460.

Dated: January 18, 1980.

James N. Smith,

Acting Assistant Administrator for Water and Waste Management.

Economic Assessment

Copper and Brass Fabricating
Estimated Number of Plants in Sample: 150
Approximate Response Burden in Total Manhours Per Plant: 40
Project Officer: Harold D. Lester (202) 426–6217

Mechanical Products/Electroplating
Estimated Number of Plants in Sample: 3000
Approximate Response Burden in Total Manhours Per Plant: 0.25
Project Officer: Louis DuPuis (202) 755–7733

Analytical Sampling

Asbestos Self Sampling
Estimated Number of Plants in Sample: 200
Approximate Response Burden in Total Manhours Per Plant: 6
Project Officer: Priscilla Holtzclaw (202) 426–7770

Canned and Preserved Fruits and Vegetables processing
Estimated Number of Plants in Sample: 10
Approximate Response Burden in Total Manhours Per Plant: 40
Project Officer: Donald F. Anderson (202) 426–2497

Coal Mining
Subcategory: Regrade-Revegetation
Estimated Number of Mines in Sample: 30
Approximate Response Burden in Total Manhours Per Mine: 150
Project Officer: Dennis Ruddy (202) 426–2707

Electrical and Electronic Components
Estimated Number of Plants in Sample: 15
Approximate Response Burden in Total Manhours Per Plant: 12
Project Officer: Richard J. Kinch (202) 426–4617

Iron and Steel Manufacturing
Estimated Number of Plants in Sample: 15
Approximate Response Burden in Total Manhours Per Plant: 30
Project Officer: Edward L. Dulaney (202) 426–2586

Iron and Steel Manufacturing
Estimated Number of Plants in Sample: 15
Approximate Response Burden in Total Manhours Per Plant: 50
Project Officer: Edward L. Dulaney (202) 426–2586

Mineral Mining (40 CFR 426)
Subcategory: Crushed Stone
Estimated Number of Mines in Sample: 10
Approximate Response Burden in Total Manhours Per Mine: 4
Project Officer: Ronald M. Kirby (202) 426–7770

Nonferrous Metals
Estimated Number of Plants in Sample: 25
Approximate Response Burden in Total Manhours Per Plant: 20
Project Officer: Patricia E. Williams (202) 426–2586

Nonferrous Metals Forming
Estimated Number of Plants in Sample: 20
Approximate Response Burden in Total Manhours Per Plant: 20
Project Officer: Patricia E. Williams (202) 426–2586

Organic Chemicals Manufacturing
Estimated Number of Plants in Sample: 20
Approximate Response Burden in Total Manhours Per Plant: 40
Project Officer: Paul Fahrenthold (202) 426–2497

Organic Chemicals Manufacturing (Phase II)
Estimated Number of Plants in Sample: 50
Approximate Response Burden in Total Manhours Per Plant: 30
Project Officer: Paul Cassidy (202) 426–2497

Plastics Forming
Estimated Number of Plants in Sample: 20
Approximate Response Burden in Total Manhours Per Plant: 20
Project Officer: Robert Hardy (202) 426–2586

Plastics and Synthetics
Estimated Number of Plants in Sample: 20
Approximate Response Burden in Total Manhours Per Plant: 40
Project Officer: Hugh Wise (202) 426–2497

Publicly Owned Treatment Works
Estimated Number of Plants in Sample: 22
Approximate Response Burden in Total Manhours Per Plant: 5
Project Officer: Authur Shattuck (202) 426–2497

Textile Mills
Estimated Number of Mills in Sample; 15
Approximate Response Burden in Total Manhours Per Mill: 8
Project Officer: James R. Berlow (202) 426–2554

Technical Assessment

Canned and Preserved Fruits and Vegetables Processing
Estimated Number of Plants in Sample: 400
Approximate Response Burden in Total Manhours Per Plant: 8
Project Officer: Donald F. Anderson (202) 426–2497

Coal Liquefaction and Gasification
Estimated Number of Plants in Sample: 50
Approximate Response Burden in Total Manhours Per Plant: 40
Project Officer: John Lum (202) 426–2707

Dairy Products Processing Industry
Estimated Number of Plants in Sample: 650
Approximate Response Burden in Total Manhours Per Plant: 1
Project Officer: William M. Sonnett (202) 426–2497

Electrical and Electronic Components
Estimated Number of Plants in Sample: 200
Approximate Response Burden in Total Manhours Per Plant: 4
Project Officer: Richard J. Kinch (202) 426–4617

Electrical and Electronic Components
Subcategory: Basis Material manufacturers (SIC 3339 and 3674)
Estimated Number of Plants in Sample: 17
Approximate Response Burden in Total Manhours Per Plant: 10
Project Officer: Richard J. Kinch (202) 426–4617

Electrical and Electronic Components
Subcategory: Capacitors
Estimated Number of Plants in Sample: 150
Approximate Response Burden in Total Manhours Per Plant: 8
Project Officer: Richard J. Kinch (202) 426–4617

Electrical and Electronic Components
Subcategory: Carbon and Graphite Products
Estimated Number of Plants in Sample: 42
Approximate Response Burden in Total Manhours Per Plant: 0.50
Project Officer: Richard J. Kinch (202) 426–4617

Electrical and Electronic Components
Subcategory: Crystals and Crystal Devices (SIC 3679)

Estimated Number of Plants in Sample: 50
Approximate Response Burden in Total Manhours Per Plant: 8
Project Officer: Richard J. Kinch (202) 426–4617
Electrical and Electronic Components
Subcategory: Electron Tubes, Incandescent Lamps, Fluorescent Tubes
Estimated Number of Plants in Sample: 50
Approximate Response Burden in Total Manhours Per Plant: 8
Project Officer: Richard J. Kinch (202) 426–4617
Electrical and Electronic Components
Subcategories: Insulated Wire and Cable, Switchgear (Motors, Generators, and Alternators), Ferrite Devices, Resistance Heaters, Electrical and Electronic Components Assembly, Filled Transformers, Insulators (Excluding Mica and Ceramic)
Estimated Number of Plants in Sample: 250
Approximate Response Burden in Total Manhours Per Plant: 0.50
Project Officer: Richard J. Kinch (202) 426–4617
Electrical and Electronic Components
Subcategory: Resistance Heaters
Estimated Number of Plants in Sample: 45
Approximate Response Burden in Total Manhours Per Plant: 1
Project Officer: Richard J. Kinch (202) 426–4617
Electrical and Electronic Components
Subcategory: Semiconductor Device Manufacturers (SIC 3674)
Estimated Number of Plants in Sample: 210
Approximate Response Burden in Total Manhours Per Plant: 16
Project Officer: Richard J. Kinch (202) 426–4617
Electrical and Electronic Components
Subcategory: TV Picture Tubes
Estimated Number of Plants in Sample: 40
Approximate Response Burden in Total Manhours Per Plant: 8
Project Officer: Richard J. Kinch (202) 426–4617
Electroplating
Estimated Number of Plants in Sample: 150
Approximate Response Burden in Total Manhours Per Plant: 8
Project Officer: Richard J. Kinch (202) 426–4617
Gasohol
Estimated Number of Plants in Sample: 40
Approximate Response Burden in Total Manhours Per Plant: 40
Project Officer: John Lum (202) 426–2707
Meat Products
Subcategory: Simple Slaughterhouse, Complex Slaughterhouse, Low-Processing Packinghouse, High-Processing Packinghouse
Estimated Number of Plants in Sample: 250
Approximate Response Burden in Total Manhours Per Plant: 0.25
Project Officer: Calvin Dysinger (202) 426–7770
Mechanical Products
Estimated Number of Plants in Sample: 50
Approximate Response Burden in Total Manhours Per Plant: 8
Project Officer: Richard J. Kinch (202) 426–4617
Mechanical Products
Subcategory: Metal Powder Production
Estimated Number of Plants in Sample: 75
Approximate Response Burden in Total Manhours Per Plant: 10
Project Officer: Richard J. Kinch (202) 426–4617
Nonferrous Metals
Subcategory: Secondary Precious Metals
Estimated Number of Plants in Sample: 350
Approximate Response Burden in Total Manhours Per Plant: 1
Project Officer: Patricia E. Williams (202) 426–2586
Nonferrous Metals Forming
Estimated Number of Plants in Sample: 500
Approximate Response Burden in Total Manhours Per Plant: 4
Project Officer: Patricia E. Williams (202) 426–2586
Ore Mining and Dressing
Estimated Number of Plants in Sample: 20
Approximate Response Burden in Total Manhours Per Plant: 6
Project Officer: B. Matthew Jarret (202) 426–2707
Organic Chemicals Manufacturing
Estimated Number of Plants in Sample: 40
Approximate Response Burden in Total Manhours Per Plant: 40
Project Officer: Paul Fahrenthold (202) 426–2497
Organic Chemicals, Plastics, and Synthetics Manufacturing
Estimated Number of Plants in Sample: 400
Approximate Response Burden in Total Manhours Per Plant: 10
Project Officer: Elwood Forsht (202) 426–2497
Pesticide Manufacturing
Estimated Number of Plants in Sample: 125
Approximate Response Burden in Total Manhours Per Plant: 10
Project Officer: Elwood Forsht (202) 426–2497
Pesticide Manufacturing
Subcategory: Pesticide Formulators and Packagers
Estimated Number of Plants in Sample: 200
Approximate Response Burden in Total Manhours Per Plant: 20
Project Officer: George Jett (202) 426–2497
Pesticide Manufacturing
Estimated Number of Plants in Sample: 70
Approximate Response Burden in Total Manhours Per Plant: 10
Project Officer: George Jett (202) 426–2497
Petroleum Refining
Estimated Number of Plants in Sample: 45
Approximate Response Burden in Total Manhours Per Plant: 80
Project Officer: John Lum (202) 426–2707
Pharmaceutical Manufacturing
Estimated Number of Plants in Sample: 50
Approximate Response Burden in Total Manhours Per Plant: 30
Project Officer: Joseph S. Vitalis (202) 426–2497
Pharmaceutical Manufacturing
Estimated Number of Plants in Sample: 200
Approximate Response Burden in Total Manhours Per Plant: 10
Project Officer: Elwood Forsht (202) 426–2497

Identify sources and quantify volumes of hazardous waste, identify management and waste disposal practices.

Photographic Equipment and Supplies
Estimated Number of Plants in Sample: 27
Approximate Response Burden in Total Manhours Per Plant: 8
Project Officer: Richard J. Kinch (202) 426–4617
Plastics and Synthetics
Estimated Number of Plants in Sample: 40
Approximate Response Burden in Total Manhours Per Plant: 40
Project Officer: Hugh Wise (202) 426–2497
Rubber Manufacturing
Estimated Number of Plants in Sample: 30
Approximate Response Burden in Total Manhours Per Plant: 30
Project Officer: Joseph Vitalis (202) 426–2497
Rubber Manufacturing
Estimated Number of Plants in Sample: 200
Approximate Response Burden in Total Manhours Per Plant: 10
Project Officer: Elwood Forsht (202) 426–2497

Identify sources and quantify volumes of hazardous waste, identify management and waste disposal practices.

Soap and Detergent Manufacturing
Estimated Number of Plants in Sample: 300
Approximate Response Burden in Total Manhours Per Plant: 8
Project Officer: Calvin Dysinger (202) 426–7770
Steam Electric
Estimated Number of Plants in Sample: 40
Approximate Response Burden in Total Manhours Per Plant: 20
Project Officer: John Lum (202) 426–2707
Textile Mills
Estimated Number of Mills in Sample: 214
Approximate Response Burden in Total Manhours Per Mill: 0.20
Project Officer: James R. Berlow (202) 426–2554
Timber Products Processing
Estimated Number of Plants in Sample: 30
Approximate Response Burden in Total Manhours Per Plant: 1
Project Officer: Richard E. Williams (202) 426–2554

[FR Doc. 80–2219 Filed 1–23–80; 8:45 am]
BILLING CODE 6560–01–M

[FRL 1398–3]

Science Advisory Board, Ecology Committee; Meeting

Under Pub. L. 92–463, notice is hereby given that a meeting of the Ecology Committee of the Science Advisory Board will be held on February 11 and 12, 1980, beginning at 9:00 a.m., in the Administrator's Conference Room, Room 1101, West Tower, Waterside Mall, 401 M Street, S.W., Washington, D.C.

This is the twenty-first meeting of the Ecology Committee. The agenda includes a briefing on the organizational structure of the Office of Environmental Processes and Effects Research and the tasks assigned; a discussion of the potentials for strengthening the Office of Environmental Processes and Effects Research activities; an update on the Integrated Pest Management Program; a briefing on the Chesapeake Bay Research Program; a report on the Acid Rain Coordination Committee, Council

for Environmental Quality; a discussion on the use of artificial substrates in monitoring; consideration of monitoring marine ecosystems; and member items of interest.

The meeting is open to the public. Because of the limited seating capacity of the meeting room, all members of the public desiring to attend must preregister no later than February 6, 1980, and receive a confirmed reservation from Dr. J. Frances Allen, Executive Secretary, Ecology Committee, or Ms. Anita Najera (202) 472–9444.

Dated: January 17, 1980.

Richard M. Dowd,

Staff Director.

[FR Doc. 80-2228 Filed 1-23-80; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1207]

Petitions for Reconsideration of Actions in Rulemaking Proceedings Filed

Correction

In FR Doc. 80–1295, published on page 2902, on Tuesday, January 15, 1980, the following corrections should be made:

(1) The heading should be corrected to read as above;

(2) In the "NOTE" at the end of the table, in the second line, the last sentence should be corrected to read: "Replies to an opposition must be filed within 10 days after time for filing oppositions has expired."

BILLING CODE 1505-01-M

FEDERAL RESERVE SYSTEM

American National Corp.; Formation of Bank Holding Company

American National Corporation, Omaha, Nebraska, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 100 percent (less directors' qualifying shares) of the voting shares of American National Bank, Omaha, Nebraska. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than February 19, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 18, 1980.

Theodore E. Allison,

Secretary of the Board.

[FR Doc. 80-2254 Filed 1-23-80; 8:45 am]

BILLING CODE 6210-01-M

The Bank Holding Co. of Santa Fe; Formation of Bank Holding Company

The Bank Holding Company of Santa Fe, Santa Fe, New Mexico, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of the Bank of Santa Fe, Santa Fe, New Mexico. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than February 19, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 18, 1980.

Theodore E. Allison,

Secretary of the Board.

[FR Doc. 80-2255 Filed 1-23-80; 8:45 am]

BILLING CODE 6210-01-M

First Ohio Bancshares, Inc.; Formation of Bank Holding Company

First Ohio Bancshares, Inc., Toledo, Ohio, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 100 per cent (less directors' qualifying shares) of the voting shares of successor by merger to The National Bank of Toledo, Toledo, Ohio. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Cleveland. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than February 19, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 27, 1979.

Theodore E. Allison,

Secretary of the Board.

[FR Doc. 80-2259 Filed 1-23-80; 8:45 am]

BILLING CODE 6210-01-M

Van Buren Bancorporation; Formation of Bank Holding Company

Van Buren Bancorporation, Keosauqua, Iowa, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Farmers State Bank, Keosauqua, Iowa. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than February 19, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 18, 1980.

Theodore E. Allison,

Secretary of the Board.

[FR Doc. 80-2261 Filed 1-23-80; 8:45 am]

BILLING CODE 6210-01-M

Deutsche Bank AG et al.; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8))

and § 225.4(b)(1) of the Board's Regulation Y (12 CFR § 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than February 19, 1980.

A. *Federal Reserve Bank of New York* (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

Deutsche Bank AG, Frankfurt, West Germany (financing activities; continental United States): to open five new regional offices for its 50% owned indirect subsidiary, Fiat Credit Corporation (which is presently engaged in the business of dealer inventory financing for dealers of affiliates of Fiat S.p.A in the United States and retail financing for purchasers and lessees of products from such dealers), as follows: (a) an office in the Pittsburgh, Pennsylvania metropolitan area serving the Eastern Region consisting of the states of Maine, Vermont, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Ohio, West Virginia, Virginia, Maryland, Delaware, District of Columbia and Kentucky; (b) an office in the Atlanta, Georgia metropolitan area serving the Southeastern Region consisting of the states of Tennessee, North Carolina, South Carolina, Georgia, Alabama, Arkansas, Florida, Mississippi and Louisiana; (c) an office in the Chicago, Illinois metropolitan area serving the Central Region consisting of the states of North Dakota, South Dakota, Kansas, Nebraska, Missouri, Iowa, Minnesota, Wisconsin, Illinois, Michigan and Indiana; (d) an office in the Dallas, Texas metropolitan area serving the Southeastern Region consisting of the states of Colorado, Arizona, New Mexico, Oklahoma and Texas; and (e) an office in the San Francisco, California metropolitan area serving the Western Region consisting of the states of California, Oregon, Nevada, Idaho, Washington, Montana, Wyoming and Utah.

B. *Federal Reserve Bank of Cleveland* (Harry W. Hunning, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

Pittsburgh National Corporation, Pittsburgh, Pennsylvania, (finance activities; Indiana, Kentucky, Michigan, Ohio): to engage through its subsidiary, Pittsburgh National Leasing Corporation, Pittsburgh, Pennsylvania, in making or acquiring for its own account or for the accounts of others, loans and other extensions of credit principally in the form of finance leasing. Such activities will be conducted in Pittsburgh, Pennsylvania, and Columbus, Ohio serving Springfield, Cincinnati, Toledo, Dayton, and Lancaster, Ohio; Louisville, Kentucky; Indianapolis and Ft. Wayne, Indiana and Detroit, Michigan.

C. *Federal Reserve Bank of Kansas City* (John F. Zoellner, Vice President) 925 Grant Avenue, Kansas City, Missouri 64198:

Peoples Savings, Inc., Ottowa, Kansas (portfolio investment advising activities; Kansas): to engage in acting as investment or financial advisor to the extent of providing portfolio investment advice to other persons pursuant to 12 CFR 225.4(a)(5)(iii). These activities would be conducted at an office in Ottowa, Kansas, serving Franklin County, Kansas.

D. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, January 16, 1980.

Theodore E. Allision,

Secretary of the Board.

[FR Doc. 80-2256 Filed 1-23-80; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Early Termination of the Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Devon Corporation is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of certain of its assets by Southland Royalty Corporation. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by Devon. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: January 16, 1980.

FOR FURTHER INFORMATION CONTACT: Joan S. Truitt, Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202-523-3894).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80-2197 Filed 1-23-80; 8:45 am]

BILLING CODE 6750-01-M

Early Termination of Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: The Marley Company is granted early termination of the waiting period provided by law and the premerger notification rules with respect to its proposed acquisition of certain voting securities of Wylain, Inc. The

grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to requests for early termination submitted by both parties to the transaction. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: January 11, 1980.

FOR FURTHER INFORMATION CONTACT: Joan S. Truitt, Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202–523–3894).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act and § 803.11 of the rules implementing the Act permit the agencies, in individual cases, to terminate this waiting period prior to its expiration and require that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80–2196 Filed 1–23–80; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

[E–80–1]

Delegation of Authority to the Secretary of Defense

1. *Purpose.* This delegation authorizes the Secretary of Defense to represent, in conjunction with the Administrator of General Services, the consumer interests of the executive agencies of the Federal Government in proceedings before the Public Service Commission of Maryland involving electric and gas utility rates.

2. *Effective date.* This delegation is effective immediately.

3. *Delegation.*

a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the Federal executive agencies before the Public Service Commission of Maryland involving the application of the Baltimore Gas and Electric Company for gas and electric rate increases. The authority delegated to the Secretary of Defense shall be exercised concurrently with the Administrator of General Services.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

Dated: January 11, 1980.

R. G. Freeman III,

Administrator of General Services.

[FR Doc. 80–2241 Filed 1–23–80; 8:45 am]

BILLING CODE 6820–AM–M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

Indian Education; Acceptance of Nominations for Membership on the National Advisory Council on Indian Education; Closing Date

1. *Introduction.* In accordance with 20 U.S.C. 1221g, "National Advisory Council on Indian Education", notice is hereby given that nominations of Indians, as defined below, will be accepted by the Commissioner of Education from Indian tribes and organizations in order to make to the President of the United States recommendations of individuals for membership on the National Advisory Council on Indian Education. The Council consists of fifteen (15) members appointed by the President from lists of nominees furnished, from time to time, by Indian tribes and organizations, and who must represent diverse geographic areas of the country.

(Pub. L. 92–318, section 442(a), 20 U.S.C. 1221g(a))

Nominations submitted to the Commissioner of Education by Indian tribes and organizations must be received no later than March 7, 1980. Nominations are being requested in order to make recommendations for five (5) membership positions, which will begin on September 30, 1980. Each Presidential appointment will be for a term of three years ending September 29, 1983.

(20 U.S.C. 1233b(a)(1))

2. *Definition.* "Indian" means any individual who (a) is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized by the State in which they reside, or who is a descendant, in the first or second degree, of any such member, or (b) is considered by the Secretary of the Interior to be an Indian for any purpose, or (c) is an Eskimo or Aleut or other Alaska Native.

(Pub. L. 92–318, section 453(a), 20 U.S.C. 1221h(a))

3. *Functions of the Council.* The Council is directed to: (a) Submit to the Commissioner of Education a list of nominees for the position of Deputy Commissioner of Indian Education;

(20 U.S.C. 1221f(a))

(b) Advise the Commissioner of Education with respect to the administration (including the development of regulations and of administrative practices and policies) of any program in which Indian children or adults participate from which they can benefit, including Title III of the Act of September 30, 1950 (Pub. L. 81–874) and section 1005 of Title X of the Elementary and Secondary Education Act of 1965 (both as added by Title IV of Pub. L. 92–318 and as amended), and with respect to adequate funding thereof;

(c) Review applications for assistance under Title III of the Act of September 30, 1950 (Pub. L. 81–874), section 1005 of Title X of the Elementary and Secondary Education Act of 1965, and section 316 of the Adult Education Act (all as added by Title IV of Pub. L. 92–318 and as amended), and make recommendations to the Commissioner with respect to their approval;

(d) Evaluate programs and projects carried out under any program of the Department of Health, Education, and Welfare in which Indian children or adults can participate or from which they can benefit, and disseminate the results of such evaluations;

(e) Provide technical assistance to local educational agencies and to Indian educational agencies, institutions, and organizations to assist them in improving the education of Indian children;

(f) Assist the Commissioner in developing criteria and regulations for the administration and evaluation of grants made under section 303(b) of the Act of September 30, 1950 (Pub. L. 81–874) (as added by Title IV, Part A, of Pub. L. 92–318); and

(g) Submit to the Congress not later than June 30 of each year a report on its activities, including any

recommendations it may deem necessary for the improvement of Federal education programs in which Indian children or adults participate, or from which they can benefit, and including a statement of the Council's recommendations to the Commissioner with respect to the funding of any such programs.

(Pub. L. 92–318, section 442(b); 20 U.S.C. 1221g(b))

4. *Nomination categories.* Nominations submitted to the Commissioner of Education should be made according to the following categories: (a) *Professional educators.* Indians with active experience as professionals in the areas of early childhood, elementary, secondary, higher, special, vocational, and adult education, such as, teachers, professors, administrators, specialists (e.g., curriculum, language, math, etc.), counselors, and researchers.

(b) *Laypersons involved in education.* Indians with active experience as laypersons involved with education such as school board members, Parent-Teacher association members, parents of school-age children, or those with other lay involvement.

(c) *Students.* Indians who are college students or who have reached their junior year of high school at the time of nomination.

(d) *Individuals with other than education experience.* Indians who do not have education experience, preferably those individuals who have experience in a field involving Indian affairs.

5. *Nomination review procedure.* The Deputy Commissioner of Indian Education will gather members of the Office of Indian Education staff to screen nominations received and address appropriate criteria including those set out below. A list of recommended individuals will be compiled as a result of this screening and will be forwarded to the Commissioner of Education for review. This list will be accompanied by a list of all individuals nominated.

The Commissioner of Education will make recommendations to the Secretary of Health, Education, and Welfare and forward the list of recommended individuals, as well as the complete list of all individuals nominated.

The Secretary of Health, Education, and Welfare will then make recommendations to the President of the United States and forward a list of recommended individuals, as well as the complete list of all individuals nominated, for the President's review and necessary action.

6. *Criteria for recommendations.* To maintain a balanced representation on the Council, priority consideration will be given to nominees in categories other than professional educators. Every effort will be made to recommend individuals representing diverse geographic areas of the country, particularly from those areas with large Indian populations. Consideration will also be given to the balance on the Council in terms of sex, and urban and rural (reservation and non-reservation) representation during the screening process.

The following factors will be considered in selecting individuals to be recommended for appointment: Indian education experience; general education experience; education expertise in the areas of early childhood, elementary, vocational, special and adult education; education background; previous council or committee experience; honors and awards received; and organizational memberships.

Nominees will also be considered on the basis of their knowledge of an experience with both local community and national issues.

7. *Nomination procedure.* Nominations must be submitted to the Commissioner of Education on Office of Education Form OE–543, which may be obtained by writing or telephoning the Office of Indian Education, U.S. Office of Education, FOB–6, Room 2177, 400 Maryland Avenue, S.W., Washington, D.C. 20202, telephone 202–245–8060.

(a) Nominations delivered by mail. A nomination sent by mail must be addressed as above and mailed on or before March 7, 1980. The use of registered or at least first class mail is encouraged. Proof of mailing must consist of a legible U.S. Postal Service dated postmark or a legible mail receipt with the date of mailing stamped by the U.S. Postal Service. Private metered postmarks or mail receipts will not be accepted without a legible date stamped by the U.S. Postal Service.

Note.—The U.S. Postal Service does not uniformly provide a dated postmark. Nominating Indian tribes or organizations should check with the local post office before relying on this method.

Each late nominating Indian tribe or organization will be notified that its nomination will not be considered in the current recommendations.

(b) Nominations delivered by hand. A nomination to be hand delivered must be taken to the Office of Indian Education, Room 2177, Federal Office Building Six, 400 Maryland Avenue, S.W., Washington, D.C. Hand-delivered nominations will be accepted daily between the hours of 7:30 a.m. and 4:00 p.m., Washington, D.C., time, except Saturdays, Sundays, and Federal holidays. Nominations will not be accepted after 4:00 p.m. on March 7, 1980.

8. *Incomplete forms.* Incomplete forms will be returned to the nominating Indian tribe or organization accompanied by a checklist detailing informaton necessary for completion. Completed forms must be returned to the Office of Indian Education no later than March 7, 1980, or fifteen (15) days after the date on the checklist (whichever is later), in order to be considered for recommendation by the Commissioner. Proof of mailing will be the same as stated in paragraph 7 above.

William L. Smith,

U.S. Commissioner of Education.

[FR Doc. 80–2247 Filed 1–23–80; 8:45 am]

BILLING CODE 4110–02–M

National Advisory Council on the Education of Disadvantaged Children; Committee Meeting

Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, section 10(a)(2), notice is hereby given that the Committee on Special Projects of the National Advisory Council on the Education will meet on Sunday, February 10, 1980 from 9 a.m. until 4:30 p.m. The meeting will be held in the Council office, Suite 1012, 425-13th Street, N.W., Washington, D.C.

The National Advisory Council on the Education of Disadvantaged Children is established under section 148 of the Elementary and Secondary Education Act (20 U.S.C. 2852) to advise the President and the Congress on the effectiveness of compensatory education to improve the educational attainment of disadvantaged children.

This committee meeting is for the purpose of reviewing the Council's first draft of the Special Report on the Federal Administration of Title I, ESEA: HEW's Response to Changes Set Forth in the Education Amendments of 1978.

The committee meeting will be open to the public. Because of limited space all persons wishing to attend should call for reservations by February 1, 1980, area code 202/724–0114 and speak with Mrs. Haywood.

Records shall be kept of all Council proceedings and shall be available for public inspection at the office of the National Advisory Council on the Education of Disadvantaged Children, located at 425-13th St., N.W., Suite 1012, Washington, D.C. 20004.

Signed at Washington, D.C. on January 21, 1980.

Gloria B. Strickland,

Acting Executive Director.

[FR Doc. 80-2286 Filed 1-23-80; 8:45 am]

BILLING CODE 4110-02-M

Teacher Centers Program; Extended Closing Dates for Transmittal of Applications for Fiscal Year 1980 and for Appeals to the Commissioner

On August 23, 1979, a notice of closing dates for transmittal of applications for grants awarded by the U.S. Office of Education was published in the **Federal Register.** That notice, which covered most Office of Education programs including the Teacher Centers Program, stated that application forms and program information packages, for grants under the Teacher Centers Program, were expected to be ready for mailing by November 30, 1979. However, those materials were not ready for mailing on that date. Therefore, in order to give prospective applicants at least 60 days during which to prepare and submit their applications, the Office of Education is now amending the August 23, 1979 notice of closing dates for grants under the Teacher Centers Program. Apart from the changed dates in this amended notice, the information contained in the August 23, 1979 notice of closing dates remains unchanged.

I. *Extended Closing Dates for New Projects under the Teacher Centers Program and for Projects that first received funding under the Teacher Centers Program in Fiscal Year 1979.*

A. *Closing date for transmittal of applications to State educational agencies:* To be assured of consideration for funding, applications for new awards and non-competing continuation awards (for projects that first received funding in Fiscal Year 1979) must be mailed or hand delivered to the appropriate State educational agency by March 17, 1980. All applications must be submitted to the State educational agency of the State in which the applicant is located, for review by that agency.

B. *Closing date for transmittal of applications to USOE:* To be assured of consideration for funding, applications referred to in "A" above must be mailed or hand delivered to the Office of Education by April 7, 1980.

II. *Extended Closing Dates for Projects that first received funding under the Teacher Centers Program in Fiscal Year 1978.*

A. *Closing dates for transmittal of applications for non-competing continuation awards to State educational agencies:* Applications for non-competing continuation awards (for projects that first received funding in Fiscal Year 1978) must be mailed or hand delivered to the appropriate State educational agency by March 31, 1980.

B. *Closing date for transmittal of applications to USOE:* To be assured of consideration for funding, applications referred to in "A" above must be mailed or hand delivered to the Office of Education by April 21, 1980.

III. *Appeals to the Commissioner.* Applicants whose applications are not transmitted to the U.S. Office of Education by the appropriate State educational agency may appeal to the U.S. Commissioner of Education to request further consideration by the State educational agency. In the event of such an appeal, the Commissioner must request further consideration and the State educational agency must then transmit the application to the Commissioner.

A. Such an appeal, by an applicant for a new project or a project that first received funding under the Teacher Centers Program in Fiscal Year 1979, must be signed by an authorized individual for the applicant, and must be received at the address given below under "Further Information" by April 14, 1980. A copy of the appeal should be sent simultaneously to the appropriate State educational agency.

B. Such an appeal, by an applicant that first received funding under the Teacher Centers Program in Fiscal Year 1978, must be signed by an authorized official for the applicant, and must be received at the address given below under "Further Information" by April 28, 1980. A copy of the appeal should be sent simultaneously to the appropriate State educational agency.

C. The Commissioner hereby requests further consideration, by the appropriate State educational agencies, of any and all applications for which an appeal is taken, and further requests the State educational agencies to transmit those applications for new projects or for projects that first received funding in FY 1979, to the U.S. Office of Education Application Control Center by April 21, 1980; and request the State educational agencies to transmit those applications for projects that first received funding in FY 1978, to the same application control center by May 5, 1980.

D. *Further Information and Application Forms:* For further information and application forms contact Dr. Allen Schmieder, Teacher Centers Program, Division of Educational Systems Development, U.S. Office of Education (Room 819, Riviere Building), 400 Maryland Avenue, S.W., Washington, D.C. 20202 Telephone (202) 653-5839.

(20 U.S.C. 1119a)

Dated: January 21, 1980.

(Catalog of Federal Domestic Assistance No. 13.416; Teacher Centers Program)

William L. Smith,

U.S. Commissioner of Education.

[FR Doc. 80-2185 Filed 1-23-80; 8:45 am]

BILLING CODE 4110-02-M

Indochina Refugee Children Assistance Program

AGENCY: Office of Education, HEW.

ACTION: Notice of Closing Date for Transmittal of Applications for Fiscal Year 1980.

Applications are invited for grants under the Indochina Refugee Children Assistance Program.

Authority for this program is contained in Title II of the Indochina Refugee Children Assistance Act of 1976, as amended by Pub. L. 95-561 (20 U.S.C. 1211b)

Eligible applicants are State educational agencies (SEAs).

The purpose of this program is to provide grants to SEAs to assist local educational agencies (LEAs) to provide educational services to eligible Indochinese refugee children.

CLOSING DATE FOR TRANSMITTAL OF APPLICATIONS: Applications for grants must be mailed or hand delivered on or before February 27, 1980.

APPLICATIONS DELIVERED BY MAIL: An application sent by mail must be addressed to Mr. James H. Lockhart, Acting Director, Indochinese Refugee Children Assistance Staff, U.S. Office of Education, 400 Maryland Avenue S.W. (FOB-6, Room 2189), Washington, D.C. 20202.

An applicant SEA must show proof of mailing consisting of one of the following:

(a) A legibility dated U.S. Postal Service postmark.

(b) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(c) A dated shipping label, invoice, or receipt from a commercial carrier.

(d) Any other proof of mailing acceptable to the U.S. Commissioner of Education.

If an application is sent through the U.S. Postal Service, the Commissioner does not accept either of the following as proof of mailing:

(a) A private metered postmark.

(b) A mail receipt that is not dated by the U.S. Postal Service.

An applicant SEA should note that the U.S. Postal Service does not uniformly

provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant SEA is encouraged to use registered or at least first class mail. Each late applicant SEA will be notified that its application will not be considered.

APPLICATIONS DELIVERED BY HAND: An application that is hand delivered must be taken to the U.S. Office of Education, Indochinese Refugee Children Assistance Staff, U.S. Office of Education, 400 Maryland Avenue, S.W. (FOB–6, Room 2189), Washington, D.C. 20202.

The Indochinese Refugee Children Assistance Staff will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

PROGRAM INFORMATION: Grants are made to SEAs generally for the purpose of making subgrants to the local educational agencies to provide educational services to eligible Indochinese refugee children. Grants are made available under authority of Pub. L. 94–405, as amended by Pub. L. 95–561, and the program regulations, as revised in Fiscal Year 1980 (45 CFR Part 122a).

AVAILABLE FUNDS: It is expected that approximately $12,000,000 will be available for the Indochina Refugee Children Assistance Program in FY 1980.

APPLICATION FORMS: Application forms and instructions will be mailed to all SEAs. Additional forms and instructions may be obtained by writing to the U.S. Office of Education, Indochinese Refugee Children Assistance Staff, 400 Maryland Avenue, S.W. (FOB–6, Room 2189), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program application package.

SPECIAL PROCEDURES: In accordance with § 122a.6 of the final regulations, notice is hereby given that State education agencies shall count eligible children in the State as of January 17, 1980.

APPLICABLE REGULATIONS: The regulations applicable to this program are:

(a) General Provisions Regulations for Office of Education Programs (45 CFR 100b.55), as in effect October 1, 1979; and

(b) Indochina Refugee Children Assistance Program Regulations (45 CFR Part 122a).

FURTHER INFORMATION: For further information, contact: Mr. James H. Lockhart, Acting Director, Indochinese Refugee Children Assistance Staff.

Citation of Legal Authority

The reader will find a citation of statutory or other legal authority in parentheses on the line following each substantive provision.

(Catalog of Federal Domestic Assistance No. 13.596, Indochina Refugee Children Assistance Act)

Dated: January 18, 1980.

William L. Smith,

U.S. Commissioner of Education.

[FR Doc. 80–2263 Filed 1–23–80; 8:45 am]

BILLING CODE 4110–02–M

Health Services Administration

Interagency Committee on Emergency Medical Services; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of February 1980:

Name: Interagency Committee on Emergency Medical Services.

Date and time: February 20, 1980, 9:00 a.m.

Place: Conference Room F, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open for entire meeting.

Purpose: The Committee coordinates and provides for the communication and exchange of information among all Federal programs and activities relating to emergency medical services, and carries out its responsibilities under section 1206(c).

The Committee will develop and publish: (1) A coordinated, comprehensive Federal emergency medical services funding and resource-sharing plan, designed to promote the coordination between, and enhance the effectiveness of Federal, State, and local funding and operation of programs and agencies relating to emergency medical services and related activities (including communication and transportation systems of public safety agencies). (2) A description of sources of Federal support for the purchase of vehicles and communications equipment and for training activities related to emergency medical services. (3) Recommended uniform standards of quality, health, and safety with respect to all equipment (including communications and transportation equipment) and training related to emergency medical services.

Agenda: The items include: (1) Status report on the new EMS Legislation (Pub. L. 96–142); (2) Outline of the specific responsibility of the EMS Work Groups (Training, Communication, and Transportation); (3) Briefing by Federal Emergency Management Administration; (4) Briefing on preliminary planning between EMS and the Human Organ Transplant Program; and (5) A review of issues impacting EMS Systems Development Conference, January 30–February 1, Baltimore, Maryland, with emphasis on the issues discussed.

The meeting is open to the public for observation. Anyone wishing to attend, obtain the roster of members, minutes of meeting, or other relevant information should contact Mr. Lee Shuck, Division of Emergency Medical Services, Bureau of Medical Services, Suite 11–64D, 6525 Belcrest Road, Hyattsville, Maryland 20782, Telephone (301) 436–6284. Public seating is limited to forty (40). Please contact at least 72 hours before the meeting.

Agenda items are subject to change as priorities dictate.

Dated: January 16, 1980.

William H. Aspden, Jr.,

Associate Administrator for Management.

[FR Doc. 80–2253 Filed 1–23–80; 8:45 am]

BILLING CODE 4110–84–M

Office of the Secretary

Secretary's Advisory Committee on the Rights and Responsibilities of Women; Meeting

The Secretary's Advisory Committee on the Rights and Responsibilities of Women, which is established to provide advice to the Secretary of Health, Education, and Welfare on the impact of the policies, programs, and activities of the Department on the status of women, will meet on Thursday, February 21, 1980, from 9:30 A.M. to 5:00 P.M., and Friday, February 22, 1980 from 10:00 A.M. to 8:00 P.M., in Room 1083 Federal Building, 19th and Stout Streets, Denver, Colorado 80294. The agenda will include a discussion of domestic violence, adolescent pregnancy and HEW programs with Federal Regional officials.

Further information on the Committee may be obtained from: Cheryl Yamamoto, Executive Secretary, telephone 202 245–8454. These meetings are open to the public.

Dated: January 18, 1980.

Cheryl Yamamoto,

Executive Secretary, Secretary's Advisory Committee on the Rights and Responsibilities of Women.

[FR Doc. 80–2187 Filed 1–23–80; 8:45 am]

BILLING CODE 4110–12–M

Delegation of Authority

The following memorandum was issued by the Secretary of the Department of Health, Education, and Welfare to the Commissioner of Education for the purpose of delegating

the authority for issuing education regulations.

The text of the memorandum is reprinted below for public information.

Dated: January 17, 1980.

Glenn Kamber,

Director, Regulations Management Unit Executive Secretariat.

January 16, 1980.

Memorandum for the Commissioner of Education

Subject: Issuance of Regulations.

Effective immediately, I will no longer exercise the authority of the Secretary to approve regulations issued by the Commissioner of Education to carry out functions vested by statute in the Commissioner. You may, therefore, issue such regulations, in accordance with law, without the approval of the Secretary.

Patricia Roberts Harris

[FR Doc. 80-2132 Filed 1-23-80; 8:45 am]

BILLING CODE 4110-12-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-80-970]

Privacy Act of 1974; New Systems of Records

AGENCY: Department of Housing and Urban Development.

ACTION: Notification of new systems of records.

SUMMARY: The Department is giving notice of two new systems of records it intends to maintain which are subject to the Privacy Act of 1974.

EFFECTIVE DATE: The systems shall become effective without further notice 30 calendar days from the publication date of this notice unless comments are received on or before that date which would result in a contrary determination.

ADDRESS: Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Robert English, Departmental Privacy Act Officer, Telephone 202-557-0605. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The systems are: (1) Mobile Home Standards Complaint, Production and Compliance Analysis System (HUD/DEPT-61) which will contain information about consumers who have registered complaints regarding mobile homes, (2) Income Certification Evaluation Data Files (HUD/PD&R-8) which will contain information on tenants of Section 8, Section 236, and Public Housing projects. A new system report was filed with the Speaker of the House, the President of the Senate and the Office of Management and Budget on November 5, 1979. The prefatory statement containing General Routine Uses applicable to all of the Department's systems of records was published at 44 FR 72288 (December 13, 1979). Appendix A, which lists the addresses of HUD's field offices was published at 44 FR 72307 (December 13, 1979).

HUD/DEPT-61

SYSTEM NAME:

Mobile Home Standards Complaint, Production and Compliance Analysis System

SYSTEM LOCATION:

Headquarters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Consumers who have registered complaints regarding mobile homes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, telephone number of purchaser; information on mobile home purchased (make, model, serial number, date of purchase, location, dealer's name, and complaints or problems).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

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

See routine uses paragraphs of preferatory statement. Other routine uses: to HUD-approved State Administrative Agencies who participate in enforcement of the Federal Mobile Home Construction and Safety Standards Program—for assisting in the enforcement of the Mobile Home Construction and Safety Standards Act, and handling of consumer complaints.

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

STORAGE:

In file folders, card boxes, and on magnetic tape/disc/drum.

RETRIEVABILITY:

By purchaser name; by mobile home make, model, serial number, date of purchase, location, dealer's name, complaint or problem.

SAFEGUARDS:

Manual records are kept in lockable file cabinets; computer records are maintained in secured facilities. Access to either type of record is limited to authorized personnel.

RETENTION AND DISPOSAL:

Records are retained during active status, a period not to exceed five years. Following the active period, hard-copy records may be disposed of or retired to a Federal Records Center. Automated data will be erased or retired to storage.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Organization and Management Information, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the Headquarters location, in accordance with 24 CFR Part 16. This location is given in Appendix A.

RECORD ACCESS PROCEDURES:

The department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at the Headquarters location. This location is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) in relation to contesting contents of records, the Privacy Act Officer at the Headquarters location. This location is given in Appendix A; (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

RECORD SOURCE CATEGORIES:

Subject individuals who have registered complaints.

HUD/PD&R-8

SYSTEM NAME:

Income Certification Evaluation Data Files.

SYSTEM LOCATION:

Applied Management Science, Inc., Silver Spring, MD.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Tenants of Section 8, Section 236, and Public Housing projects. Projects are selected randomly from a subset of all projects, tenants are selected randomly from the set of all tenants of the projects thus sampled.

CATEGORIES OF RECORDS IN THE SYSTEM:

Family identification (name, address, Social Security Number), household demographics (age, sex, family size, income and income sources, length of tenure), verification of income data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title V, Sections 501 and 502 of the Housing and Community Development Act of 1970, P.L. 91–609.

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

See routine uses paragraphs of prefatory statement. Other routine uses: Applied Management Science, Inc.—to carry out objectives of study.

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

STORAGE:

In file folders and on magnetic tape/disc/drum.

RETRIEVABILITY:

Name, address, Social Security Number.

SAFEGUARDS:

Manual files will be kept in lockable cabinets in a secured area; computer records will be maintained in a separate secured area. Access to either type of record will be limited to authorized personnel.

RETENTION AND DISPOSAL:

All records will be destroyed at the completion of the study.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Organization and Management Information, Dept. of HUD, 451 Seventh Street, S.W., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the Headquarters location, in accordance with 24 CFR Part 16. This location is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at the Headquarters location. This location is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) in relation to contesting contents of records, the Privacy Act Officer at the Headquarters location. This location is given in Appendix A; (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

RECORD SOURCE CATEGORIES:

Subject, Income Sources.

Authority: 5 U.S.C. 552a, 88 Stat. 1896; Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Issued at Washington, D.C., January 17, 1980.

William A. Medina,

Assistant Secretary for Administration.

[FR Doc. 80–2284 Filed 1–23–80; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Serial No. I–841]

Idaho; Partial Termination of Proposed Withdrawal and Reservation of Lands

January 15, 1980.

Notice of an application Serial No. I–841, for withdrawal and reservation of lands was published as Federal Register Document No. 67–1770 on page 2979 of the issue for February 16, 1967. The Bureau of Reclamation has canceled its application insofar as it involved the lands described below. Therefore, pursuant to the regulations contained in 43 CFR, Subpart 2091, such lands will be at 10:00 a.m. on February 22, 1980, relieved of the segregative effect of the above-mentioned application.

The lands involved in this notice of termination are:

Boise Meridian, Idaho

T. 11 S., R. 16 E.
- Sec. 34, NE¼NW¼NE¼, S½NW¼NE¼, SW¼NE¼, NE¼SE¼, N½NW¼SE¼, E½SE¼NW¼SE¼, E½W½SE¼NW¼SE¼;
- Sec. 35, W½W½NW¼, W½E½W½NW¼, NW¼SW¼, N½N½N½SW¼SW¼,N½NE¼SW¼, N½S½NE¼SW¼, N½S½S½NE¼SW¼, W½NW¼SE¼, W½E½NW¼SE¼.

T. 12 S., R. 16 E.
- Sec. 1, S½NE¼, SE¼NW¼, NE¼SW¼NW¼, NE¼NW¼SW¼NW¼, NE¼SE¼SW¼NW¼,N½SE¼, N½NE¼SW¼SE¼, NE¼NE¼SW¼, N½NW¼NE¼SW¼, NE¼SE¼NE¼SW¼, SE¼SE¼;
- Sec. 2, SE¼NE¼, N½NE¼SW¼NE¼, SE¼NE¼SW¼NE¼, NE¼SE¼SW¼NE¼, N½NW¼NE¼SE¼, NE¼NE¼SE¼, N½NW¼NE¼SE¼, SE¼NW¼NE¼SE¼, S½SW¼;
- Sec. 3, W½E½SE¼NW¼, W½SE¼NW¼, NE¼SW¼, N½NW¼SW¼, N½S½NW¼SW¼, W½SE¼, SE¼NE¼SE¼, E½SE¼SE¼;
- Sec. 10, S½S½NE¼, S½N½S½NE¼, S½N½NW¼, S½N½N½NW¼, N½NW¼NW¼NW¼, SE¼NW¼;
- Sec. 11, E½SE¼NE¼, SW¼NE¼NW¼, S½NW¼NW¼, W½SE¼NW¼, NE¼SE¼, W½SE¼SW¼SE¼, W½NE¼SW¼;
- Sec. 13, W½NW¼SW¼NW¼, SW¼SW¼NW¼, NW¼NE¼NW¼ SW¼, S½NE¼NW¼SW¼, SE¼NW¼SW¼, W½NW¼SW¼, S½SE¼SW¼, S½N½SE¼SW¼.

T. 11 S., R. 17 E.
- Sec. 19, S½NE¼SE¼, S½N½NE¼SE¼;
- Sec. 20, SW¼SE¼SE¼, W½SE¼SW¼, W½SE¼SE¼SW¼, S½NW¼NW¼ SW¼, SW¼NW¼SW¼, W½SE¼ NW¼SW¼, SE¼SE¼NW¼ SW¼;
- Sec. 34, W½NE¼, E½NE¼NW¼, NE¼SE¼NW¼, N½SE¼SE¼NW¼, N½S½SE¼SE¼NW¼, W½W½SW¼ NW¼, SE¼NE¼SW¼, E½SW¼NE¼ SW¼, E½W½SW¼NE¼SW¼, W½NW¼SW¼, W½SE¼NW¼SW¼, SE¼SW¼SW¼, S½SW¼SW¼SW¼, SE¼SW¼, S½NW¼SE¼, NE¼NW¼SE¼, E½NW¼NW¼SE¼, SW¼SE¼;
- Sec. 35, SW¼NE¼, N½NE¼SW¼, N½S½NE¼SW¼, N½S½S½NE¼ SW¼, W½SE¼.

T. 12 S., R. 17 E.
- Sec. 3, N½NE¼, SE¼SW¼, SE¼;
- Sec. 6, E½SE¼SW¼;
- Sec. 7, E½NE¼NW¼;
- Sec. 8, W½E½SE¼NE¼, W½SE¼NE¼;
- Sec. 9, NW¼NE¼NW¼, N½SW¼NE¼ NW¼, SW¼SW¼NE¼NW¼;
- Sec. 10, E½SE¼NE¼, E½W½SE¼NE¼, NE¼SE¼, E½SE¼NW¼SE¼, E½W½SE¼NW¼SE¼, E½SW¼SE¼;
- Sec. 12, E½NW¼NE¼, SW¼NE¼, E½NE¼SW¼, SE¼SW¼;
- Sec. 13, NE¼;
- Sec. 14, N½NE¼, NE¼NW¼, SW¼;
- Sec. 15, SE¼SE¼, E½NW¼NE¼.

T. 12 S., R. 19 E.
- Sec. 2, N½SW¼;
- Sec. 3, NW¼SE¼, N½SW¼;
- Sec. 4, S½NW¼, NE¼SE¼;
- Sec. 5, S½NE¼, SE¼NW¼.

The area described aggregates 3372.50 acres in Twin Falls County.

Vincent S. Strobel,

Chief, Branch of L&M Operations.

[FR Doc. 80–2242 Filed 1–23–80; 8:45 am]

BILLING CODE 4310–84–M

Intergovernmental Planning Program; South Atlantic Regional Technical Working Group; Meeting

As authorized by the Secretary of the Interior and pursuant to 43 CFR 1784 and 43 U.S.C. 1739(d), a meeting of the Intergovernmental Planning Program's (IPP) South Atlantic Regional Technical Working Group will be held on February 26, 27, and 28, 1980. The meeting

location is Room 556, The Peachtree Baker Federal Building, 275 Peachtree Street, NE, Atlanta, Georgia. Meeting times are as follows:

A. February 26: 1:00 p.m.–4:00 p.m.
B. February 27: 8:30 a.m.–4:30 p.m.
C. February 28: 8:30 a.m.–11:00 a.m.

Agenda items are: The Regional Studies Plan; Update of South Atlantic Leasing Activities; Other Information Bases; Oil and Gas Resource Development; Post-Sale Activities; Mexican Oil Spill; South Atlantic Oil Spill Planning; Summary of Intergovernmental Planning Program for South Atlantic Region; and the Regional Transportation Management Plan for CY 1980.

The meeting is open to the public and interested persons may make oral or written presentations. Summary minutes and a taped transcript of the meeting will be available for public inspection 60 days after the meeting at the New Orleans OCS Office, Hale Boggs Federal Building, 500 Camp Street, Suite 841, New Orleans, La. 70130.

Further information in regard to this meeting can be obtained from Sydney H. Verinder at the above office, telephone number (504) 589–6541.

John L. Rankin,

Manager, New Orleans Outer Continental Shelf Office.

January 16, 1980.

[FR Doc. 80–2243 Filed 1–23–80; 8:45 am]

BILLING CODE 4310–84–M

[OR 12177]

Oregon; Opportunity for Public Hearing and Publication of Corrected Notice of Proposed Withdrawal

The Bureau of Land Management, Department of the Interior, on February 13, 1974, filed application Serial No. OR 12177 for the withdrawal of lands to establish the Albert Rim scenic corridor. A notice of the proposed withdrawal was published in the **Federal Register** on May 14, 1974, Vol. 39, page 94, FR Doc. 74–11065.

The notice is hereby corrected as to the approximate total acreage and as to the land described in Section 15, T. 33 S., R. 22 E.

The lands proposed for withdrawal are described as follows:

Willamette Meridian

T. 34 S., R. 21 E.,
Sec. 1, lots 1, 2, and 3;
Sec. 12, lots 1 to 4, inclusive;
Sec. 13, lots 1 to 4, inclusive;
Sec. 24, lots 1 to 4, inclusive;
Sec. 25, lots 1 to 4, inclusive;
T. 35 S., R. 21 E.,
Sec. 1, lot 1, S½NE¼, and S½;
Sec. 2, lots 1 and 2, and SE¼SE¼;
Sec. 11, lots 1 to 4, inclusive, NE¼NE¼, S½NE¼, E½SW¼, and SE¼;
Sec. 12, NW¼NE¼, NW¼, NE¼SW¼, and W½SW½;
Sec. 13, W½NW¼;
Sec. 14, N½, N½S½, and S½SW¼;
Sec. 15, lots 1 to 4, inclusive, SE¼NE¼, and SE¼;
Sec. 22, lots 1, 2, NE¼, E½NW¼, and S½;
Sec. 23, N½NW¼;
Sec. 27, lots 1 to 4, inclusive, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
Sec. 28, E½, SE¼NW¼, and NE¼SW¼;
Sec. 33, E½;
Sec. 34, W½E½, and W½.
T. 36 S., R. 21 E.,
Sec. 3, lots 2, 3, SW¼NE¼, SE¼NW¼, E½SW¼, and W½SE¼;
Sec. 10, E½, and E½NW¼;
Sec. 11, lot 4;
Sec. 15, E½.
T. 33 S., R. 22 E.,
Sec. 3, lots 2, 3, SW¼NE¼, SE¼NW¼, E½SW¼, and W½SE¼;
Sec. 9, E½SW¼, and SE¼;
Sec. 10, NE¼, E½NW¼, SW¼, and W½SE¼;
Sec. 15, NE¼NW¼, and W½W½;
Sec. 16, E½, and E½W½;
Sec. 20, lot 6, SE¼NE¼, SE¼SW¼, and SE¼;
Sec. 21, NE¼NE¼, W½NE¼, NW¼, N½SW¼, and SW¼SW¼;
Sec. 29, NE¼NE¼, W½NE¼, and W½;
Sec. 30, lots 1 to 4, inclusive, and SE¼SE¼;
Sec. 31, lots 1 to 4, inclusive, NE¼NE¼, S½NE¼, and SE¼;
Sec. 32, N½NW¼, SW¼NW¼, and NW¼SW¼.
T. 34 S., R. 22 E.,
Sec. 6, lots 2 to 8, inclusive, SW¼NE¼, SE¼NW¼, E½SW¼, and NW¼SE¼;
Sec. 7, lots 1 to 4, inclusive, and E½W½;
Sec. 18, lots 1 to 4, inclusive, SW¼NE¼, E½W½, and W½SE¼;
Sec. 19, lots 1 to 4, inclusive, NW¼NE¼, and E½W½;
Sec. 30, lots 1 to 4, inclusive, and E½W½;
Sec. 31, lots 1 to 4, inclusive, and E½W½.
T. 35 S., R. 22 E.,
Sec. 6, lots 3 to 7, inclusive, and SE¼NW¼.

The areas described aggregate 12,477.49 acres in Lake County, Oregon.

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2754, notice is hereby given that an opportunity for a public hearing is afforded in connection with the pending withdrawal application. All interested persons who desire to be heard on the proposed withdrawal must file a written request for a hearing with the State Director, Bureau of Land Management, at the address shown below, on or before March 3, 1980. Notice of the public hearing will be published in the **Federal Register**, giving the time and place of such hearing. The hearing will be scheduled and conducted in accordance with BLM Manual Sec. 2351.16B. All previous comments submitted in connection with the withdrawal application have been included in the record and will be considered in making a final determination on the application.

In lieu of or in addition to attendance at a scheduled public hearing, written comments or objections to the pending withdrawal application may be filed with the undersigned authorized officer of the Bureau of Land Management on or before March 3, 1980.

The above described lands are temporarily segregated from the operation of the public land laws, including the mining laws, but not the mineral leasing laws, to the extent that the withdrawal applied for, if and when effected, would prevent any form of disposal or appropriation under such laws. Current administrative jurisdiction over the segregated lands will not be affected by the temporary segregation. In accordance with section 204(g) of the Federal Land Policy and Management Act of 1976 the segregative effect of the pending withdrawal application will terminate on October 20, 1991, unless sooner terminated by action of the Secretary of the Interior.

All communications (except public hearing requests) in connection with this pending withdrawal application should be addressed to the undersigned officer, Bureau of Land Management, Department of the Interior, P.O. Box 2965, Portland, Oregon 97208.

Dated: January 10, 1980.

David E. Sinclair,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 80–2244 Filed 1–23–80; 8:45 am]

BILLING CODE 4310–84–M

[Wyoming 70518]

Wyoming; Order Providing for Opening of National Forest Lands

January 16, 1980.

The Federal Power Commission and its successor, the Federal Energy Regulatory Commission, issued the following orders vacating withdrawals of National Forest lands for power projects made pursuant to section 24 of The Federal Power Act:

Order of July 6, 1967 (FR 32, Page 10395; FR Doc. 67–8100)—Project Nos. 104 and 1314.
Order of August 6, 1976 (FR 41, Page 31858; FR Doc. 76–23757)—Project No. 1307.
Order of February 6, 1978 (FR 43, Pages 6311–6312; FR Doc. 78–3987)—Project Nos. 1021, 1226, 1606, and 1772.
Order of February 13, 1978 (FR 43, Page 7359; FR Doc. 78–4615)—Project Nos. 220 and 691.
Order of March 29, 1978 (FR 43, Pages 14354–14355; FR Doc. 78–8912)—Project Nos. 1203 and 1241.

National Forest Lands affected by the above orders include:

Sixth Principal Meridian, Wyoming

Shoshone National Forest

1. Project Nos. 104 and 1314.

T. 52 N., R. 108 W.,
Sec. 21, SE¼NE¼, N½SE¼, SE¼SE¼;
Sec. 22, W½SW¼.

The area described contains 240 acres, more or less.

2. Project No. 1307.

T. 52 N., R. 109 W.,
Approximately 2 acres lying within the NW¼ of Section 12 along Grinnell Creek, a tributary of the Shoshone River, as depicted on the map designated Exhibit "F", submitted to The Federal Power Commission for Project FPC No. 1307–1.

3. Project No. 1021.

T. 52 N., R. 109 W.,
Approximately 3 acres lying within the following described lands as depicted on filings submitted to The Federal Power Commission for Project No. 1021: Sec. 2, SW¼SW¼;
Sec. 3, SE¼SE¼;
Sec. 10, NE¼NE¼;
Sec. 11, NW¼NW¼.

4. Project No. 1606.

The application for Project No. 1606 was incomplete. The only land description given was that the project was to be located on Spring Creek, a small tributary of the Shoshone River, 47 miles west of Cody, in Park County, Wyoming.

5. Project Nos. 1203 and 1241.

T. 30 N. R. 100 W.,
Sec. 5, lots 1, 2, 3, S½SW¼, W½SW¼;
Sec. 6, lot 7, E½SW¼.
T. 31 N., R. 100 W.,
Sec. 28, S½SW¼;
Sec. 32, SE¼SE¼;
Sec. 33, NE¼NW¼, W½W½.
T. 30 N., R. 101 W.,
Sec. 1, lots 3, 4, 6, 7, 9, 10, 11, S½NW¼, SW¼NE¼;
Sec. 2, lots 1, 2, 3;
Sec. 11, NE¼NE¼, NE¼SE¼, S½SW¼.
Sec. 12, lots 1, 2, 3, 4, 5, SW¼.

The area described contains approximately 1722 acres.

Big Horn National Forest

6. Project No. 1226.

T. 53 N., R. 89 W.,
Sec. 7, NW¼SE¼, N½SW¼.
T. 53 N., R. 90 W.,
Sec. 12, N½SE¼.

The area described contains 200 acres, more or less.

7. Project No. 1772.

T. 48 N. R. 87 W.,
Sec. 34, NW¼SW¼.

The project includes approximately 1 acre within the above described subdivision.

Medicine Bow National Forest

8. Project Nos. 220 and 691.

T. 15 N., R. 78 W.,
Sec. 8, SE¼NW¼, SW¼ (excluding patented mineral lands).

The area described contains approximately 200 acres.

The Forest Service has prepared an Environmental Assessment for this opening order and the Regional Forester, Rocky Mountain Region, issued a Decision Notice and Finding of No Significant Impact on November 13, 1979.

At 10:00 a.m. on March 1, 1980, the above described lands shall be open to such forms of appropriation as may by law be made of National Forest land.

Inquiries concerning the lands should be addressed to the U.S.D.A. Forest Service, 11177 West 8th Avenue, P.O. Box 25127, Lakewood, Colorado 80225.

Harold G. Stinchcomb,

Chief of Lands and Minerals Operations.

[FR Doc. 80-2245 Filed 1-23-80; 8:45 am]

BILLING CODE 4310-84-M

[OR 16905 (Wash.)]

Washington; Proposed Withdrawal and Reservation of Lands

The Department of Agriculture, U.S. Forest Service, on October 12, 1976, filed application Serial No. OR 16905 (Wash.) for withdrawal of the following described lands from location and entry under the mining laws, subject to valid existing rights:

Willamette Meridian, Gifford Pinchot National Forest

Steamboat Mountain Research Natural Area

A tract of land lying within small portions of unsurveyed Tps. 7 and 8 N., R. 8 E., and 7 and 8 N., R. 9 E., the boundary of which is described as follows:

Beginning at the Steamboat Mountain Lookout Station in SE¼SE¼NE¼, Sec. 31, T. 8 N., R. 9 E., Willamette Meridian;
Thence southerly along a spur ridge to a point where Steamboat Mountain trail crosses the spur ridge;
Thence easterly along Steamboat Mountain trail to the Steamboat Mountain quarry road;
Thence southwesterly along the Steamboat Mountain quarry road, 200 feet from the centerline, approximately 2⅛ miles to its junction with Forest Road 123;
Thence westerly along Forest Road 123, 200 feet from the centerline, approximately 1 mile to its junction with Forest Road N819;
Thence northwesterly along Forest Road N819, 200 feet from the centerline, for approximately ½ mile to its junction with Forest Road N845;
Thence northerly along Forest Road N845, 200 feet from the centerline, approximately ⅛ mile to its junction with Forest Road N846;
Thence northerly along a line N. 73° E. for about ½ mile to a point on Forest Road N846;
Thence easterly along Forest Road N846, 200 feet from the centerline, for approximately ¾ mile to its terminus (end of gravelled road on the eastern edge of the clearcut in the SE¼ of Sec. 25, T. 8 N., R. 8 E., W.M.);
Thence northerly along the edge of the clearcut to the 4,400 foot contour;
Thence easterly along the 4,400 foot contour for approximately ⅝ mile to the top of a rock escarpment;
Thence along the top of the escarpment for approximately 1 mile to the Steamboat Mountain Lookout site and the place of beginning.

The area described contains approximately 1,400 acres in Skamania County, Washington.

The site is a mountain peak, established in 1973 as a research natural area for observation and study of the natural, undisturbed ecological succession in the ponderosa pine and larch-pine-fir forest types. The applicant desires the withdrawal for protection of the scientific and educational values of the area.

On or before March 4, 1980, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer to the Bureau of Land Management.

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976, notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal. All interested persons who desire to be heard on the proposed withdrawal must submit a written request for a hearing to the State Director, Bureau of Land Management, at the address shown below, on or before March 4, 1980. Notice of the public hearing will be published in the **Federal Register** giving the time and place of such hearing. The public hearing will be scheduled and conducted in accordance with BLM Manual, Sec. 2351.16B.

The Department of the Interior's regulations provide that the authorized officer of the BLM will undertake such investigations as are necessary to determine the existing and potential demands for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of assuring that the area sought is the minimum essential to meet the applicants needs, providing for the maximum concurrent utilization of the lands for purposes other than the applicant's and reaching agreement on the concurrent management of the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn and reserved as requested by the applicant agency. The

determination of the Secretary on the application will be published in the Federal Register. The Secretary's determination shall, in a proper case, be subject to the provisions of section 204(c) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2752.

The above-described lands are temporarily segregated from the operation of the public land laws, including the mining laws, to the extent that the withdrawal applied for, if and when effected, would prevent any form of disposal or appropriation under such laws. Current administrative jurisdiction over the segregated lands will not be affected by the temporary segregation. The segregative effect of the application shall terminate on October 20, 1991, unless sooner terminated by action of the Secretary of the Interior.

All communications (except public hearing requests) in connection with this proposed withdrawal should be addressed to the undersigned officer, Bureau of Land Management, Department of the Interior, P.O. Box 2965, Portland, Oregon 97208.

Dated: January 15, 1980.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 80-2151 Filed 1-23-80; 8:45 am]

BILLING CODE 4310-84-M

Utah and Colorado; Correction Notice

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice to change the location of the Uinta-Southwestern Utah Regional Coal Team meeting.

SUMMARY: In the Federal Register of December 21, 1979, a notice appeared on pages 75730–75731 announcing that the Uinta-Southwestern Utah Regional Coal Team would meet February 5–7, 1980, at the Utah State Office, Bureau of Land Management, Room 1400, University Club Building, 136 East South Temple, Salt Lake City, Utah. This correction notice is to inform the public that the location of the regional coal team meeting has been changed to Room 128, Salt Palace, 100 South West Temple, Salt Lake City, Utah. The time, dates, and purpose of the meeting remain unchanged.

FOR FURTHER INFORMATION CONTACT: Edward F. Spang, Regional Coal Team Chairperson, (702) 784–5451.

Ed Hastey,

Associate Director.

[FR Doc. 80-2154 Filed 1-23-80; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

National Institute of Justice; Solicitation of Proposals

The National Institute of Justice is soliciting preliminary proposals for research on the program of crime causation. A single 18-month grant or cooperative agreement of $445,000 (maximum) will be awarded to support research aimed at building and testing theories of crime causation. Additional support beyond the initial 18-month period is anticipated. The long-range goal of the research is the development of knowledge that is relevant to the prevention of crime and delinquency.

To maximize competion for this award, both profit-making and non-profit organizations are eligible to apply. Preliminary proposals must be post-marked no later than May 1 to be eligible for the competitive award. Copies of the solicitation may be obtained by sending a mailing label to: Solicitation Request, Interdisciplinary Research on the Causes of Crime and Delinquency (Solicitation No. 80–112), National Criminal Justice Reference Service, Box 6000, Rockville, Maryland 20850.

Additional information may be obtained by contacting: Dr. Patrick Langan, National Institute of Justice, 633 Indiana Ave., N.W., Washington, D.C. 20531, (301) 492–9126.

Dated: January 15, 1980.

Harry M. Bratt,

Primary and Principal Assistant to the Acting Director, NIJ.

[FR Doc. 80-2150 Filed 1-23-80; 8:45 am]

BILLING CODE 4410-18-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Graphics Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a meeting of the Federal Graphics Advisory Panel to the National Council on the Arts will be held February 21, 1980, from 9:30 a.m.-4:30 p.m., in Room 1125 or 1426, Columbia Plaza Office Building, 2401 E St. NW, Washington, D.C.

This meeting will be open to the public on a space available basis. The topic for discussion will be graphic material of the Department of Education (formerly of the Department of Health, Education, and Welfare).

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634–6070.

John H. Clark

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 80-2246 Filed 1-23-80; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Behavioral and Neural Sciences; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee for Anthropology.
Date and time: February 14–15–16, 1980—9:00 a.m. til 5:00 p.m.
Place: National Science Foundation, 1800 G Street NW., Room 628, Washington, D.C. 20550.
Type of meeting: Closed.
Contact person: Dr. John E. Yellen, Program Director for Anthropology NSF, Room 320, Washington, D.C. 20550 (202) 632–4208.
Purpose of subcommittee: To provide advice and recommendations concerning support for research in anthropology.
Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature—including technical information, financial data (such as salaries), and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) & (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

January 21, 1980.

[FR Doc. 80-2164 Filed 1-23-80; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for PCM, Subcommittee on Genetic Biology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting.

Name: Subcommittee on Genetic Biology of the Advisory Committee for Physiology, Cellular & Molecular Biology.
Date and time: February 14–16, 1980—9:00 a.m.–5:00 p.m.
Place: Room 321, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.
Type of meeting: Closed.
Contact person: Dr. Philip D. Harriman, Program Director, Genetic Biology Program, Room 326, National Science Foundation, Washington, D.C. 20550, telephone (202) 632–5985.
Purpose of subcommittee: To provide advice and recommendations concerning support for research in genetic biology.
Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reasons for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winlker,
Committee Management Coordinator.
January 21, 1980.
[FR Doc. 80–2165 Filed 1–23–80; 8:45 am]
BILLING CODE 7555–01–M

Advisory Committee for Science Education; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Science Education.
Date and time: February 14, 1980—9:00 a.m. to 5:00 p.m.; February 15, 1980—9:00 a.m. to 12:30 p.m.
Place: National Science Foundation, Room 730, 1800 G Street NW., Washington, D.C. 20550.
Type of meeting: Open.
Contact person: Dr. Alphonse Buccino, Director, Office of Program Integration, Room W–660, National Science Foundation, Washington, D.C. 20550 (202) 282—7947.
Purpose of committee: To provide advice on science education activities.
Agenda: Results of the January presentation to the National Science Board and implications for planning; progress of program oversight activities.
Summary Minutes. May be obtained from contact person, Dr. Alphonse Buccino, at the above address.

M. Rebecca Winkler,
Committee Management Coordinator.
January 21, 1980.
[FR Doc. 80–2166 Filed 1–23–80; 8:45 am]
BILLING CODE 7555–01–M

Advisory Committee on Special Research Equipment (2-Year and 4-Year Colleges); Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee on Special Research Equipment (2-Year and 4-Year Colleges).
Date and time: February 14 and 15, 1980, 9:00 a.m.—5:00 p.m. each day.
Place: National Science Foundation, 1800 G Street, N.W. Rooms 421, 338 and 543, Washington, D.C. 20550.
Type of meeting: Closed.
Contact person: Dr. Howard H. Hines, Science Associate, Office of Planning and Resources Management, Division of Budget and Program Analysis, Room 428, National Science Foundation, Washington, D.C. (202) 632–5876.
Purpose of subcommittee: To provide advice and recommendations concerning support for research equipment for colleges and universities without doctoral program in sciences and engineering (or having only very small doctoral programs).
Agenda: To review and evaluate research equipment proposals as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: January 21, 1980.

M. Rebecca Winkler,
Committee Management Coordinator.
[FR Doc. 80–2169 Filed 1–23–80; 8:45 am]
BILLING CODE 7555–01–M

International Decade of Ocean Exploration Ad Hoc Subcommittee; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting.

Name: Ad Hoc Subcommittee on the Shelf Sediment Dynamics Project, of the Advisory Committee for Ocean Sciences.
Date and time: February 13 and 14, 1980—8:30 a.m. to 5:00 p.m.
Place: Room 643, National Science Foundation, Washington, D.C.
Type of meeting: Closed.
Contact person: Dr. Bruce Malfait, International Decade of Ocean Exploration Section, Room 605, National Science Foundation, Washington, D.C. 20550, telephone (202) 632–7356.
Purpose of ad hoc subcommittee: To provide the IDOE Ad Hoc Subcommittee members with additional expertise in the review and evaluation of proposals relating to oceanographic research related to Sediment Dynamics Project.
Agenda: Detailed review and evaluation of proposals for support of the Shelf Sediment Dynamics Project.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, July 6, 1979.

M. Rebecca Winkler,
Committee Management Coordinator.
January 21, 1980.
[FR Doc. 80–2167 Filed 1–23–80; 8:45 am]
BILLING CODE 7550–01–M

Subcommittee for Earthquake Hazards Mitigation (EHM) of the Advisory Committee for Engineering and Applied Science; Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee for Earthquake Hazards Mitigation of the Advisory Committee for Engineering and Applied Science.
Date and time: February 14, 1980, 9:00 A.M. to 3:30 P.M.
Place: Room 540, National Science Foundation, 1800 G Street N.W., Washington, D.C. 20550.
Type of meeting: Open.
Contact person: Dr. William Hakala, Program Manager, Division of Problem-Focused Research, Room 1132, NSF, Washington, D.C. 20550 (202) 632–3116.
Summary minutes: May be obtained from the Contact Person at the above address.

Agenda: 9:00–9:30 a.m.: Welcome by Dr. Jack Sanderson and Introduction—9:30–10:15 a.m.: Examination of Total Federal Research Efforts in Earthquake Research; 10:15–11:00 a.m.: Discussion of FY 1980 EHM Program Initiatives; 11:00–12:00 a.m.: Outlook for EHM Program for Fiscal Years 1981–1984; 12:00–1:00 p.m.: Lunch; 1:00–2:30 p.m.: Subcommittee Recommendations Regarding Fiscal Year 1981–1984 Initiatives; 2:30–3:30 p.m.: Definition of Issues to be addressed by the EHM Subcommittee at future meetings; 3:30: Adjournment.

M. Rebecca Winkler,

Committee Management Coordinator.

January 21, 1980.

[FR Doc. 80-2168 Filed 1-23-80; 8:45 am]

BILLING CODE 7555-01-M

Subcommittee on Metabolic Biology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463 the National Science Foundation announces the following meeting:

Name: Subcommittee on Metabolic Biology of the Advisory Committee for Physiology, Cellular, and Metabolic Biology.

Date and time: February 14, and 15, 1980; 9:00 a.m. to 5:00 p.m. each day.

Place: Room 643, National Science Foundation, 1800 G St. NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Elijah B. Romanoff, Program Director, Metabolic Biology Program, Room 331, National Science Foundation, Washington, D.C. 20550, Telephone: (202) 632-4312.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in Metabolic Biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section (10)d of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

January 21, 1980.

[FR Doc. 80-2162 Filed 1-23-80; 8:45 am]

BILLING CODE 7555-01-M

Subcommittee on Political Science of the Advisory Committee for Social and Economic Science; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee on Political Science of the Advisory Committee for Social and Economic Science.

Date and time: February 15–16, 1980—9:00 a.m. to 5:00 p.m. each day.

Place: Room 628, National Science Foundation, 1800 G St. NW., Washington, D.C. 20050.

Type of meeting: Closed, 9:00 a.m. to 5:00 p.m., February 15–16, 1980.

Contact person: Dr. Gerald C. Wright, Jr., Program Director, Political Science Program, Room 312, National Science Foundation, Washington, D.C. 20550, Telephone (202) 632–4348.

Purpose of subcommittee: To provide advice and recommendations concerning research in Political Science.

Agenda: Closed: to review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: January 21, 1980.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 80-2163 Filed 1-23-80; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50-528A, STN 50-529A and STN 50-530A]

Arizona Public Service Co., et al.[1]; Receipt of Operating License Application and Request for Antitrust Information

Arizona Public Service Company, et al,[1] acting for itself and the four other owners of the Palo Verde Nuclear Generating Station, Units 1, 2 and 3, filed the general information portion and antitrust information of an application for operating licenses. This information was filed pursuant to Part 2.101 of the Commission Rules and Regulations and is in connection with the owners' plans to operate three pressurized water reactors in Maricopa County, Arizona. The portion of the application filed contains antitrust information for review pursuant to NRC Regulatory Guide 9.3 to determine whether there have been any significant changes since the completion of the antitrust review at the construction permit stage.

On completion of staff antitrust review of the above-named application, the Director of Nuclear Reactor Regulation will issue an initial finding as to whether there have been "significant changes" under section 105c(2) of the Act. A copy of this finding will be published in the **Federal Register** and will be sent to the Washington and local public document rooms and to those persons providing comments or information in response to this notice. If the initial finding concludes that there have not been any significant changes, requests for reevaluation may be submitted for a period of 60 days after the date of the **Federal Register** notice. The results of any reevaluations that are requested will also be published in the **Federal Register** and copies sent to the Washington and local public document rooms.

A copy of the general information portion of the application for operating licenses and the antitrust information submitted is available for public examination and copying for a fee at the Commission's Public Document Room, 1717 H Street, NW, Washington, DC 20555 and in the local public document room at the Phoenix Public Library, Science and Industry Section, 12 East McDowell Road, Phoenix, Arizona.

Any person who desires additional information regarding the matter covered by this notice or who wished to have his views considered with respect to significant changes related to antitrust matters which have occurred in the licensees' activities since the construction permit antitrust reviews for the above-named plant should submit such requests for information or views to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Chief, Antitrust and Indemnity Group, Office of Nuclear Reactor Regulation, on or before March 3, 1980.

Dated at Bethesda, Maryland, this 17th day of December 1979.

[1] Salt River Project Agricultural Improvement and Power District, Southern California Edison Company, El Paso Electric Company, Public Service Company of New Mexico.

For the Nuclear Regulatory Commission.

Olan D. Parr,

Chief, Light Water Reactors, Branch No. 3, Division of Project Management.

[FR Doc. 80-3 Filed 1-2-80; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-373 and 50-374]

Commonwealth Edison Co., LaSalle County Station, Units No. 1 and No. 2; Order Extending Construction Completion Dates

Commonwealth Edison Company is the holder of Construction Permits Nos. CPPR-99 and CPPR-100 issued by the Atomic Energy Commission* on September 10, 1973, for the construction of the LaSalle County Station, Units No. 1 and No. 2, presently under construction at the applicant's site in Brookfield Township, LaSalle County, Illinois.

On September 24, 1979, the applicant requested an extension of the latest completion dates because construction has been delayed due to:

(1) A labor strike and work stoppage;

(2) Insufficient craft manpower;

(3) Modifications in the suppression pool as a result of staff criteria, and

(4) Additional requirements by the staff in the area of fire protection and testing.

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's evaluation dated January 11, 1980.

The preparation of an environmental impact statement for this particular action is not warranted because there will be no environmental impact attributable to the actions authorized by the Order other than that which has already been predicted and described in the Commission's Final Environmental Statement-Operating License Stage for the LaSalle facility, published in November 1978, and the Final Environmental Statement-Construction Permit Stage, published in February 1973. A Negative Declaration and an Environmental Impact Appraisal have been prepared and are available, as are the above stated documents, for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the local public document room established for the LaSalle facility in the Illinois Valley Community College Library, Rural Route No. 1, Oglesby, Illinois 16348.

It is hereby ordered that the latest completion date for CPPR-99 be extended from March 31, 1980 to June 30, 1981 and for CPPR-100 from December 31, 1980 to March 31, 1982.

Date of Issuance: January 17, 1980.

For the Nuclear Regulatory Commission.

D. F. Ross, Jr.,

Acting Director, Division of Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 80-2230 Filed 1-23-80; 8:45 am]

BILLING CODE 7590-01-M

*Effective January 20, 1975, the Atomic Energy Commission became the Nuclear Regulatory Commission and permits in effect on that day were continued under the authority of the Nuclear Regulatory Commission.

Draft Regulatory Guide; Issuance and Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, TP 914-4 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Measurement of Radiation Levels on Surfaces of Packages of Radioactive Materials" and is intended for Division 7, "Transportation." This guide is being developed to describe a method acceptable to the NRC staff for measuring radiation levels on surfaces of packages of radioactive materials as required by the Commission's regulations. It includes a simple correction for the package-detector geometry.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Comments on both drafts should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, by March 25, 1980.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 17th day of January 1980.

For the Nuclear Regulatory Commission.

Guy A. Arlotto,

Director, Division of Engineering Standards, Office of Standards Development.

[FR Doc. 80-2232 Filed 1-23-80; 8:45 am]

BILLING CODE 7590-01-M

Memorandum of Understanding Between NRC and FEMA To Accomplish a Prompt Improvement in Radiological Emergency Planning and Preparedness

The Nuclear Regulatory Commission (NRC) and the Federal Emergency Management Agency (FEMA) have entered into a memorandum of understanding which delineates each agency's lead responsibilities in radiological emergency preparedness. This memorandum responds to a directive from the President dated December 7, 1979 which defined areas of responsibility for emergency preparedness for the two agencies.

Copies of the memorandum are available for public inspection at the NRC Public Document Room, 1717 H Street, N.W., Washington, D.C. Copies of the memorandum may be obtained by writing to Joseph M. Felton, Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone: 301-492-7211. Included with

the memorandum, but not published herewith, are two attachments, (A) FEMA/NRC Steering Committee and (B) Duties of NRC Personnel Detailed to FEMA through June, 1980.

The text of the memorandum of understanding is set forth below:

Background and Purpose

This memorandum of understanding establishes a framework of cooperation between the Federal Emergency Management Agency (FEMA) and the Nuclear Regulatory Commission (NRC) in radiological emergency response planning matters, so that their mutual efforts will be directed toward more effective plans and related preparedness measures at and in the vicinity of nuclear reactors, fuel cycle facilities which are subject to 10 CFR Part 50 Appendix E, and certain other fuel cycle and materials licensees which have potential for significant accidental off-site radiological releases. The memorandum is responsive to the President's decision of December 7, 1979, that FEMA will take the lead in off-site planning and response, his request that NRC assist FEMA in carrying out this role and the NRC's continuing statutory responsibility for the radiological health and safety of the public.

Separate memoranda will be negotiated covering NRC/FEMA cooperation and responsibilities in response to an actual emergency and Public Information activities. In addition, an agreement has already been reached between the NRC and FEMA on September 11, 1979, that chairmanship of the Federal Interagency Central Coordinating Committee should be transferred from NRC to FEMA. This agreement was transmitted to other Federal agencies by a joint letter from the Chairman of NRC and the Director of FEMA. The NRC and FEMA also agreed in principle on September 11, 1979, to the idea of joint participation in the review, assessment and concurrence with regard to State and local emergency response plans. That agreement will be implemented by FEMA coordinating all Federal planning and by FEMA's taking the lead for developing a program for assessing State and local emergency response plans in all elements of off-site radiological emergency planning, and for making findings and determinations as to the adequacy and capability of implementing State and local plans, and to make those findings and determinations available to NRC. The NRC shall review those FEMA findings and determinations for the purpose of making determinations on the overall state of emergency preparedness for issuance of licenses or shutdowns of operating reactors. The NRC proposal to require concurrence in State and local emergency response plans is described in the proposed emergency planning rule (44 FR 75167, December 19, 1979). This arrangement will make the FEMA staff responsible for evaluating the adequacy of State and local plans and for assuring that the plans are capable of implementation on a continuing basis, and will therefore substantially avoid duplicative efforts by NRC staff.

II. Authorities and Responsibilities

FEMA—Executive Order 12148 charges the Director, FEMA, with establishing policy for and coordinating all civil emergency planning and assistance functions for Executive agencies (Section 2–101). It also provides that "The Director shall represent the President in working with State and local governments and private sector to stimulate vigorous participation in civil emergency preparedness mitigation, response, and recovery programs." (Section 2–104).

On December 7, 1979, the President, in response to the recommendations of the Kemeny Commission on the accident at Three Mile Island, directed that FEMA assume lead responsibility for all off-site nuclear emergency planning and response.

Specifically, the FEMA responsibilities with respect to emergency preparedness as they relate to NRC are:

1. To take the lead in off-site emergency planning and review and assess State and local emergency plans for adequacy.

2. To complete by June 1980, the review of State and local emergency plans in those States affected by operating reactors.

3. To complete, as soon as possible, the review of State and local emergency plans in those States affected by plants scheduled for operation in the near future.

4. To make findings and determinations as to whether State and local emergency plans are adequate and capable of implementation (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications and equipment adequacy).

5. To assume responsibility for emergency preparedness training of State and local officials.

6. To develop and issue an updated series of interagency assignments which would delineate respective agency capabilities and responsibilities and define procedures for coordination and direction for emergency planning and response.

NRC—The Atomic Energy Act of 1954, as amended, requires that the NRC grant licenses only if the health and safety of the public is adequately protected. While the Atomic Energy Act does not specifically require emergency plans and related preparedness measures, the NRC has required consideration of overall emergency preparedness as a part of the licensing process.

10 CFR 50.34 and Appendix E to 10 CFR Part 50 include requirements for the licensee emergency plans. In a Federal Register Notice dated December 24, 1975, entitled "Radiological Incident Emergency Response Planning: Fixed Facilities and Transportation" (40 FR 59494), the Federal Preparedness Agency, a predecessor of FEMA, outlined responsibilities of various Federal agencies in providing assistance to State and local governments in their radiological emergency response planning. Both FEMA and NRC recognize that these responsibilities are undergoing reevaluation and that this memorandum of understanding will require reissuance of that Federal Register Notice.

Specifically, the NRC responsibilities for emergency preparedness are:

1. To assess licensee emergency plans for adequacy.

2. To verify that licensee emergency plans are adequately implemented (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications and equipment adequacy).

3. To review the FEMA findings and determinations on the adequacy and capability of implementation of State and local plans.

4. To make decisions with regard to the overall state of emergency preparedness (i.e., integration of emergency preparedness on-site as determined by the NRC and off-site as determined by FEMA and reviewed by NRC) and issuance of operating licenses or shut down of operating reactors.

III. Areas of Cooperation

A. NRC Licensing Reviews

FEMA will provide support for NRC reactor, fuel facility and material licensing reviews, as requested, with regard to the assessment of the adequacy of State and local response plans for accidental radiological releases. This will include timely submittal of a letter evaluation suitable for inclusion in NRC safety evaluation reports.

FEMA will provide NRC with an independent assessment of evacuation

times around 12 reactor sites which have the highest population density within the 10 mile emergency planning zone or are mutually agreed upon by FEMA and NRC. FEMA and NRC agree to discuss future arrangements for similar assessments to be performed by FEMA at other sites with operating reactors and at points currently under construction.

Substantially prior to the time that a FEMA evaluation is required with regard to fuel facility and material license review, NRC will supply FEMA with a listing of all fuel and material licensees, identify those with potential for significant accidental off-site radiological releases and for those NRC will submit to FEMA the emergency plans as they are completed.

FEMA routine support will include providing assessments of State and local plans related to reactor Construction Permit and Operating License reviews and continuing assessments of State and local plans during the facility lifetime. To support its findings and assessments, FEMA will make expert witnesses available before the Commission, the NRC Advisory Committee on Reactor Safeguards, NRC hearing boards and administrative law judges, any court actions, and during any related discovery proceedings. Nothing in this document shall be construed in any way to diminish NRC's responsibility for protecting the radiological health and safety of the public.

B. FEMA Review of State and Local Plans

NRC will assist in the development and review of State and local plans through its membership on the Regional Advisory Committees. FEMA will chair the Regional Advisory Committees.

C. Evaluation of Exercises

FEMA and NRC will cooperate in determining exercise requirements for joint licensee, State, local and Federal exercises and will jointly observe and evaluate such exercises. NRC and FEMA will also jointly agree upon the set of exercise scenarios from which the scenario for a particular exercise will be selected.

D. Emergency Preparedness Guidance

NRC has lead responsibility for the development of emergency preparedness guidance for licensees. FEMA has lead responsibility for the development of emergency preparedness guidance for State and local agencies.

NRC and FEMA recognize the need for an integrated assessment of the degree of emergency preparedness by NRC licensees and State and local governments. NRC and FEMA will each, therefore, provide opportunity for the other agency to review and comment on emergency preparedness guidance prior to adoption as formal agency guidance.

E. Training of State and Local Officials

FEMA will assume lead responsibility for emergency preparedness training of State and local officials. NRC will cooperate in assuring existing NRC sponsored training programs are impacted to the minimum extent during the period January to June, 1980. NRC will inform OMB in writing of its intention to pass responsibility to FEMA for its current training program for State and local officials during FY 1980 and will support FEMA in requesting OMB to transfer the training budget to FEMA in years after FY 1980.

F. Ongoing NRC Programs

Ongoing NRC programs that are related to State and local emergency planning and preparedness that are supported by FY 80 funds, will continue without interruption unless modifications are recommended to the NRC by the FEMA/NRC Steering Committee. (See IV.4 below).

G. Public Information Programs

FEMA will take the lead in developing public information programs. NRC will assist FEMA by reviewing for accuracy educational materials concerning radiation and its hazards for information regarding appropriate actions to be taken by the general public in the event of an accident involving radioactive materials. A separate memorandum of understanding will be negotiated for Public Information activities.

IV. Near-Term Cooperative Measures

In order to achieve a prompt improvement in the state of emergency preparedness at and around nuclear power facilities, and because of the need for an integrated assessment of the degree of preparedness, FEMA and NRC recognize the need for especially close working relationship over the next six months. To this end, FEMA and NRC agree to the following mode of operation through June of 1980.

1. NRC staff will proceed with the evaluation team review of emergency preparedness at each power reactor and will publish Safety Evaluations on each plant.

2. FEMA will provide members to participate with NRC staff on the evaluation teams. The FEMA team members will participate in the preparation of assessments of the off-site plans along with NRC. Team members will perform according to the procedures described in NRC Steeing Committee Memorandum dated November 23, 1979, subject: Guidance on Team Reviews.

3. FEMA will provide an interim evaluation of the adequacy of State and local preparedness associated with each power reactor suitable for attachment to the NRC Safety Evaluation. FEMA will report to NRC on the schedules of State and local governments to upgrade their plans and will prepare a final evaluation when the upgraded plans are completed.

4. The NRC interoffice Steering Committee on Emergency Preparedness will be expanded to an NRC/FEMA Steering Committee consisting of equal number of members to represent each agency with one vote per agency. Where the Steering Committee cannot agree on the resolution of an issue, the issue will be referred to NRC and FEMA management. The NRC members will have lead responsibility for licensee preparedness and the FEMA members will have lead responsibility for State and local preparedness. The Steering Committee will oversee the evaluation team review activities and develop upgraded acceptance criteria for licensee, State and local emergency preparedness. NRC and FEMA will then consider and adopt criteria, as appropriate, in their respective jurisdictions. (See Attachment 1).

5. To permit the orderly transfer from NRC to FEMA of the lead responsibility for evaluating State and local plans and preparedness, the NRC staff who had been performing this function will be assigned through June 1980 to work directly with FEMA. Those incidental activities, such as responding to correspondence that would normally be handled by the NRC's State Programs Emergency Preparedness Staff will continue to be handled by these personnel while assigned to FEMA. (See Attachment 2).

6. NRC will ensure continuation of NRC computer and automatic data processing support (including TERA record keeping system support) to the NRC staff personnel detailed to FEMA.

7. NRC Program Support funds specifically identified in the FY 80 budget (including supplemental), for the emergency preparedness function of NRC's Office of State Programs, and NRC FY 80 travel funds in the amount of $25,000 will be maintained as is, and continue to be managed by the NRC staff detailed to FEMA, to ensure that ongoing programs affecting State and local government emergency preparedness are not interrupted.

V. Working Arrangements

A. The normal point of contract for implementation of the points in this agreement will be the NRC/FEMA Steering Committee.

B. The Steering Committee will establish the day-to-day procedures for carrying out the arrangements of this memorandum.

VI. Term of Agreement

A. This agreement shall be effective as of January 14, 1980 and shall continue in effect through September, 1980, unless terminated by either party upon 120 days' notice in writing.

B. Amendments or modifications to this Agreement may be made upon written agreement by both parties to the Agreement.

Approved for the U.S. Nuclear Regulatory Commission.

Lee V. Gossick,

Executive Director for Operations.

Dated: January 11, 1980.

Approved for the U.S. Federal Emergency Management Agency.

Frank Camm,

Associate Director for Plans and Preparedness.

Dated: January 11, 1980.

Attachments:

1. FEMA/NRC Steering Committee
2. Duties of NRC Personnel Detailed to FEMA through June 1980.

(5 U.S.C. 552(a))

Dated at Bethesda, Md., this 17th day of January 1980. For the Nuclear Regulatory Commission.

Lee V. Gossick,

Executive Director for Operations.

[FR Doc. 80-2233 Filed 1-23-80; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-373 and 50-374]

Negative Declaration Supporting an Order Extending Construction Completion Dates for LaSalle County Station Unit Nos. 1 and 2

The U.S. Nuclear Regulatory Commission (the Commission) has issued an Order amending Construction Permits CPPR-99 and CPPR-100, issued to Commonwealth Edison Company for the LaSalle County Station, Unit Nos. 1 and 2, located in LaSalle County, Illinois. The Order extends the latest constuction completion dates from March 31, 1980 to June 30, 1981 for Unit No. 1 and from December 31, 1980 to June 30, 1982 for Unit No. 2.

The Commission has prepared an environmental impact appraisal for the amendment and has concluded that an environmental impact statement for this particular 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 facility dated February 1973 and as amended through subsequent hearings.

For further details with respect to this action, see (1) the application for amendment dated September 24, 1979, and (2) the Commission's Environmental Impact Appraisal. Both items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, DC and at the Illinois Valley Community College, Rural Route #1, Oglesby, Illinois 61348. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Site Safety and Environmental Analysis.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland this 26th day of December, 1979.

Ronald L. Ballard,

Chief, Environmental Projects Branch 1, Division of Site Safety and Environmental Analysis.

[FR Doc. 80-2231 Filed 1-23-80; 8:45 am]

BILLING CODE 7590-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

[N-AR 80-4]

Accident Reports, Safety Recommendations and Responses; Availability

Aircraft Accident Reports

American Airlines, Inc., DC-10-10, N110AA, Chicago-O'Hare International Airport, Chicago, Illinois, May 25, 1979 (NTSB-AAR-79-17).—The National Transportation Safety Board on January 14 made available copies of its formal investigation report on the Nation's worst aviation disaster. About 1504 c.d.t. last May 25, American Airlines, Inc., Flight 191, a McDonnell-Douglas DC-10-10 aircraft, crashed into an open field just short of a trailer park about 4,600 ft northwest of the departure end of runway 32R at O'Hare. All 271 persons on board were killed; two persons on the ground were killed, and two others were injured.

Investigation showed that Flight 191 was taking off from runway 32R. The weather was clear and the visibility was 15 miles. During the takeoff rotation, the left engine and pylon assembly and about 3 ft of the leading edge of the left wing separated from the aircraft and fell to the runway. Flight 191 continued to climb to about 325 ft above the ground and then began to roll to the left. The aircraft continued to roll to the left until the wings were past the vertical position, and during the roll, the aircraft's nose pitched down below the horizon. Flight 191 crashed into the open field and the wreckage scattered into an adjacent trailer park. The aircraft was destroyed in the crash and subsequent fire. An old aircraft hangar, several automobiles, and a mobile home were destroyed.

The Safety Board determined that the probable cause of this accident was the asymmetricall stall and the ensuing roll of the aircraft because of the uncommanded retraction of the left wing outboard leading edge slats and the loss of stall warning and slat disagreement indication systems resulting from maintenance-induced damage leading to the separation of the No. 1 engine and pylon assembly at a critical point during takeoff. The separation resulted from damage by improper maintenance procedures which led to failure of the pylon structure.

Contributing to the cause of the accident were the vulnerability of the design of the pylon attach points to maintenance damage; the vulnerability of the design of the lading edge slat system to the damage which produced asymmetry; deficiencies in Federal Aviation Administration surveillance and reporting systems which failed to detect and prevent the use of improper maintenance procedures; deficiencies in the practices and communications among the operators, the manufacturer, and the FAA which failed to determine and disseminate the particulars regarding previous maintenance damage incidents; and the intolerance of prescribed operational procedures to this unique emergency.

As a result of its investigation of this accident, the Safety Board issued 12 recommendations to the Federal Aviation Administration—four last summer during the early phases of the investigation and eight on December 21 at the time of adoption of the investigation report. Recommendation A-79-41, calling for immediate inspection of pylon attach points on all DC-10s, was issued last May 21 (44 FR 32756, June 7, 1979). A-79-45 and 46, issued last June 4, called for immediate inspection of all DC-10s in which an engine pylon assembly had been removed and reinstalled for damage to the wing-mounted pylon aft bulkhead (A-79-45) and for FAA maintenance inspectors to immediately discontinue lowering and raising the pylon with the

engine still attached (A–79–46). (44 FR 34222, June 14, 1979.) Recommendation A–79–52 called for immediate notification of States responsible for regulating foreign air carriers operating DC–10s to require appropriate structural inspections of engine pylons following engine failures involving significant imbalance conditions or severe side loads. (44 FR 39319, July 5, 1979.) Recommendations A–79–98 through 105 concerned certification, surveillance, maintenance and operational procedures. (See 45 FR 862, January 3, 1980.)

Aircraft Accident Reports, Brief Format, U.S. Civil Aviation, Issue No. 1, 1979 Accidents (NTSB–BA–79–5).—Now available are copies of the Safety Board's first volume in its series of brief reports on general aviation accidents which occurred last year. The 299 accidents contained in this publication represent a random selection. This publication is issued irregularly, normally 15 times each year. The brief format presents the facts, conditions circumstances, and probable cause(s) for each accident. Additional statistical information is tabulated by injury index, injuries, and causal factors.

The Safety Board, in Press Release SB 79–103 covering Issue No. 1, reminded general aviation pilots once again that this is the season of potential dangers in winter weather flying. High winds, freezing temperatures, ice, or snow, singly or in combination, are causal factors found in most winter accidents. Cited was the crash involving a Cessna Citation jet aircraft at Logan Airport, Boston, Mass., last February. In addition to the pilot's failure to maintain directional control during takeoff, the Safety Board also found that blowing snow, which obscured the pilot's vision during the night takeoff, was a factor in that accident. The Board said that the "blowing snow" factor in the Boston accident can occur at any snow-covered airport in the northern States and that wind forces on some snow compositions can create "instant instrument" conditions during otherwise visual takeoffs and landings.

Note.—The brief reports in Issue No. 1 contain essential information; more detailed date may be obtained form the original factural reports on file in the Washington office of the Safety Board. Upon request, factual reports will be reproduced commercially at an average cost of 7 cents per page for printed matter, $1 per page for black-and-white photographs, and $1.50 per page for color photographs, plus postage. Requests concerning aircraft accident report briefs should include (1) date and place of occurrence, (2) type of aircraft and registration number, and (3) name of pilot. Address requests to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

Copies of Issue No. 1 May be purchased from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22151.

Safety Recommendation Letters

Aviation

A–80–1 and 2.—Last March 10 a Swift Aire Line, Inc., Aerospatiale Nord 262 ditched in Santa Monica Bay after experiencing the loss of both engines shortly after takeoff form Los Angeles (Calif.) International Airport. After liftoff from runway 24L, the right propeller autofeathered and the right engine shut down. Seconds later the pilot apparently mis-identified the filed engine and inadvertently shut down the left engine.

During its investigation, the Safety Board found that the pilots were not able to restart the left engine because they had failed to place the propeller lever in the feather position. Propeller feathering is necessary before an engine can be restarted successfully on the Nord 262 aircraft. At the time of the accident, there was no guidance in the company's Nord 262 operations manual indicating the urgency of setting the propeller control lever at "feather" while performing the post-autofeather procedure in order to perform a successful engine restart. After the accident this deficiency was correct in Swift Aire's operations manual; however, to the Board's knowledge, no other Nord 262 operators have initiated manual changes of this nature. This accident might have been prevented had the flightcrew been aware of the need to place the propeller lever in the feather position after engine shutdown since sufficient time was available for a successful restart.

Also during investigation of the Swift Aire accident, the Safety Board learned that during cold weather operations Ransome Airlines had experienced numerous autofeather problems during Nord 262 engine runups and ground rolls for takeoff. Corrective action for some of these incidents required draining water from the autofeather propeller pressure hose. As a result of these autofeather checks before the first flight of the day when the air temperature is below 0° C. This procedure reportedly has greatly reduced the number of autofeather problems previously experienced by this airline. Use of the procedure indicates to the pilot that there is no blockage of the propeller feathering system and minimizes an inadvertent activation of the autofeather system during takeoff which could be caused by trapped pressure in the airframe pitot system.

Accordingly, on January 11 the Safety Board recommended that the Federal Aviation Administration:

Require changes to the Nord 262 operations manuals that (1) alert the flightcrew to the fact that an airborne engine restart is not possible unless the propeller has been feathered, and (2) provide guidance to the flightcrew regarding the urgency of completing the full engine shutdown procedure after the loss of an engine. (A–80–1)

Require a change to the Nord 262 operations manuals that specifies an engine runup and autofeather check before any flight when the air temperature is below 0° C. (A–80–2)

A–80–3 and 4.—A Tennessee Airways Cessna 402, being operated as an air taxi, was in cruising flight last May 30 when the pilot felt a "shudder" in the airframe. He reduced power and as the airspeed slowed to 110 mph the shudder stopped. The pilot diverted to Shelby, N.C., and during the landing approach, with the landing gear down and full flaps extended, the shudder began again at 95 mph and continued throughout the landing. Examination of the aircraft revealed that the elevator trim tab actuator jackscrew, Part Number 1260074–4, could be moved in and out without rotating it. The trim tab actuator assembly was taken to Cessna Aircraft Company, Wichita, Kans., and examined. Examination revealed that the jackscrew o-ring packing had deteriorated and the jackscrew threads were rusted and badly worn because of a lack of lubrication.

The Safety Board notes that the Service Manual requires a trim tab "free play" inspection every 100 hours. However, the condition of the packing is not ascertained during this inspection procedure. The interval between actuator lubrication is 1,500 hours; this long interval is adequate only if the packing remains in good condition. Examination of the aircraft records indicated that the total aircraft time was 2,042 hours. The Safety Board could not determine when the actuator was last lubricated. A check of service difficulty records showed four other possible cases of this type of distress on Cessna model 402 aircraft. Also, the Board understands that similar actuators are used in the aileron and rudder systems on this aircraft and on other Cessna aircraft. Since a divergent tail flutter with subsequent aircraft damage can be caused by a free tab, the Safety Board on January 10 recommended that the Federal Aviation Administration:

Inform all operators about the possibility and effects of a deteriorated o-ring packing on trim tab actuators on Cessna aircraft in

General Aviation Airworthiness Alerts, Advisory Circular 43-16. (A-80-3)

Review the present inspection criteria for inspection and lubrication of the elevator trim tab actuators and other similar actuators on Cessna 402's and prescribe more stringent criteria if they are not adequate to prevent failure of the actuator due to corrosion or inadequate lubrication. (A-80-4)

A-80-5 through 7.—In another recommendation letter also forwarded to the Federal Aviation Administration on January 11, the Safety Board noted that during 1978 there were at least 19 accidents or incidents involving various models of high wing Cessna aircraft in which engine power was lost because of water in the fuel. Many of these are documented at the FAA Maintenance Analysis Center in Oklahoma City.

Typical of these is an accident which occurred at Cape Girardeau, Mo., on August 30, 1978. The Cessna 182 crashed while maneuvering for an emergency landing after loss of engine power. Investigation revealed water in both the carburetor and fuel strainer. This model airplane had the fuel strainer drain control knob located inside the cabin so that the operator could not see the fuel as it was drained. Also there were no quick-drain valves installed in the sumps. The pilot stated that he "drained the strainer three times"; however, it was apparent that he did not have a full understanding of the proper way to eliminate water from the fuel lines and sumps.

Owners' manuals for Cessna 160, 172, 182, 210 for model years from 1957 to 1977 were reviewed. This review showed that there are inadequate instructions and descriptions as to the proper method of eliminating water from the fuel system.

The Safety Board discussed fuel contamination in some detail in its 1974 Special Study of General Aviation Accidents Involving Fuel Starvation. At that time, the Board made recommendations to FAA (A-74-35 and A-74-36) directed to making more specific, detailed information available to pilots. Both FAA and the General Aviation Manufacturers Association agreed with the intent of the recommendations. However, except for reissuance of Advisory Circular 20-43C in October 1976 in limited distribution, the Safety Board is not aware of any effort on the part of either FAA or the manufacturers to make such information available. The Board believes that Advisory Circular 20-43C presents the kind of explanation and details which pilots need in order to properly purge water from their airplane's fuel systems. The Board also believes that the same type of information should be provided in Airplane Flight Manuals or Owner's manuals. Accordingly, the Safety Board recommends that FAA:

Distribute among general aviation pilots and operators the information in Advisory Circular 20-43C concerned with eliminating water from fuel. (A-80-5)

Require that all Accident Prevention Specialists in FAA Distribution Offices make elimination of water from fuel systems an item for special emphasis in their contacts with general aviation pilots and operators. (A-80-6)

Require that Cessna include in Pilots Operating Handbooks or Flight Manuals for all its aircraft models a detailed discussion of, and specific instructions for, the detection and elimination of water from the fuel systems of these aircraft. (A-80-7)

All of the above aviation safety recommendations are designated "Class II, Priority Action."

Highway

H-80-2 through 4 and H-80-5 and 6.—On February 7, 1979, the driver of a tractor-semitrailer traveling east on I-70 at New Stanton, Pa., lost control of his vehicle and plunged down an embankment just east of a bridge spanning Legislative Route 117. The driver was killed and the truck was destroyed. It was snowing at the time and the temperature was below freezing. Below-freezing temperatures and precipitation had resulted in frost heaves throughout the area. At the bridge, the ice lifted the concrete pavement adjacent to the expansion joints 3 to 4 inches above the bridge deck. The condition was accentuated by the 40° skew of the bridge. The usual short-term maintenance practice is to feather the rise with bituminous material. No such feathering was in place at this location nor were there signs warning of the hazardous condition. Two other accidents occurred at this site within 2 days as a result of the frost heave.

Investigation showed that supervisory highway maintenance personnel had ridden over the bridge at the accident site daily and had failed to notice or report the condition. After the accident, only the eastbound lanes were feathered; the westbound lanes were not feathered until after Safety Board investigators visited the Pennsylvania Department of Transportation's county maintenance office the week after the fatal accident. Had feathering or adequate warning devices been in place, these accidents might have been prevented.

Since frost heaves at specific locations cannot be predicted, active surveillance by highway personnel during winter months is vital. The State's regional highway office has a night patrol, which is basically responsible for reporting on snow and ice conditions and aiding disabled or stranded motorists. Safety benefits could be increased significantly by instructing and training patrolmen to report existing and potentially hazardous highway conditions. Likewise, all other employees of the Pennsylvania Department of Transportation, especially maintenance personnel in supervisory positions, should be aware of the importance of recognizing in their everyday activities, and reporting, existing or potentially hazardous highway conditions.

In the Safety Board's October 9, 1979, response to notice of proposed rulemaking, "Interstate Maintenance Guidelines," FHWA Docket No. 78-43 Notice 2, the Safety Board supported the American Association of State Highway and Transportation Officials (AASHTO) Yellow Book statement that maintenance personnel are frontline observers of highway conditions and they can and should become more active in improving highway safety. The Board's review of the training courses available to the States through Federal Highway Administration, Institute of Transportation Engineers, and AASHTO did not identify any that will serve this purpose. Therefore, on January 10 the Safety Board recommended that the Federal Highway Administration:

Require the States to establish a program which will assure prompt identification, reporting and correction of hazardous highway conditions. (H-80-2)

Develop a course for use by State and local highway officials to train maintenance personnel to recognize hazardous highway conditions and the need to report them. (H-80-3)

Require the States to include in their annual interstate maintenance program a description of the planned training for maintenance personnel. (H-80-4)

Also on January 10, and as a result of the same accident, the Safety Board by separate letter recommended that the Pennsylvania Department of Transportation:

Establish a program which will assure prompt identification, reporting and correction of hazardous highway conditions. (H-80-5)

Establish a program which will ensure that the State's maintenance and night patrol personnel are trained to recognize hazardous highway conditions as they develop. (H-80-6)

Each of the above highway safety recommendations is designated "Class II, Priority Action."

Railroad

R-79-78 through 81 and R-79-82 through 85.—Last July 31 Union Pacific

Railroad Company (UPRR) freight train No. GRX 31 derailed at Granite, Wyo. The train was moving on main track No. 2 at 75 mph when the second and third locomotive units derailed and overturned in a 3°05.8' curve, separated from the lead locomotive unit, destroyed the track, and caused the following 81 freight cars to derail. Two locomotive units were damaged heavily, 80 freight cars were destroyed, and two overpass bridges of Interstate 80 were damaged extensively. Total damage was estimated at $5 million.

The Safety Board notes that after cresting Sherman Hill, the engineer was not able to control the speed of the train. An engineer working in Granite Yard observed the train passing him at an estimated speed of 65 mph with brakes applied on only the three locomotive units and first six cars. The Board believes that a closed angle cock existed in the trainline which prevented the passage of air and an application of the train brakes from the lead locomotive unit beyond the sixth car. According to UPRR timetable instructions, air brake retainer valves were required to be used on the train. However, the engineer did not request their use, and the conductor did not require them.

Removal of the brake pipe flow indicators from UPRR locomotives eliminated a tool the engineer had to inform him about the air flow in the brake pipe. With proper monitoring of the brake pipe flow indicator during the application and release of the automatic brake, the Safety Board believes that the engineer could have detected a blockage in the air brake system and could have corrected it before descending Sherman Hill.

UPRR rules hold the conductor and engineer equally responsible for the safety of the train and for compliance with the rules. The railroad also requires that other crewmembers take immediate action to stop the train, using the emergency brake valve if the speed of the train must be reduced and the engineer and conductor fail to do so. As the train descended Sherman Hill, the train attained a speed of 40 mph within 6 miles and 50 mph within 8 miles. The speed continued to increase to 60 mph and then to 75 mph, 15 miles below the top of Sherman Hill. Tests conducted after derailment indicated that if the conductor or flagman had applied the train brakes in emergency from the caboose, even when the train was traveling at 60 mph—40 mph over the authorized speed—the train would have stopped.

The Safety Board noted during the investigation that the conductor appeared to be confused on the proper allowable speed for the train. The Board believes that the failure of the crewmembers to understand and apply the rules indicates a lack of monitoring by UPRR supervision of crew compliance with the train operating rules.

As a result of its investigation of this accident, the Safety Board on January 10 recommended that the Union Pacific Railroad Company:

Instruct employees who make train brake tests in the test requirements of the Federal Power Brake Regulations, 49 CFR Part 232, and establish monitoring procedures to insure that the tests are conducted properly. (R–79–78)

Review the operating rules examination and retesting procedures to insure that employees properly understand the requirements of the operating rules and timetable instructions. (R–79–79)

Establish a monitoring system for rule compliance of employees operating trains. (R–79–80)

Equip locomotives with brake pipe flow indicators to enable engineers to measure trainline air flow. (R–79–81)

In a separate letter, also forwarded January 10, to the Federal Railroad Administration, the Safety Board stated that observations made of car inspectors performing brake tests at Rawlins following the accident disclosed that they drove alongside the train in a motorized vehicle at a speed too fast to check the angle cock handles and brake valve cutout cock handles. They were unable to observe the brake cylinders mounted in the brake beams or on the opposite side of the car. The vehicle was driven on a road which ended about six cars behind the locomotive, and no one was observed making inspections of the cars beyond the road. After interviewing the car inspector who performed the air brake test on GRX 31 and his supervisor, it was obvious that the employees were not trained thoroughly in their duties nor did the supervisors require them to perform the air brake test in accordance with Federal Power Brake Regulations, 49 CFR Part 232. Accordingly, the Safety Board recommended that the Federal Railroad Administration:

Enforce the requirements for testing train brakes in accordance with the Federal Power Brake Regulations, 49 CFR Part 232, on the Union Pacific Railroad. (R–79–82)

Issue regulations to require railroads to establish a system for regular instruction and testing of employee's knowledge of the operating rules. (R–79–83)

Review the monitoring system for rule compliance on the Union Pacific Railroad to insure that their supervision can adequately enforce the rules to provide a safe and efficient operation. (R–79–84)

Study the feasibility of requiring locomotives to be equipped with brake pipe flow indicators to enable engineers to measure trainline air flow. (R–79–85)

Each of the above railroad safety recommendations is designated "Class II, Priority Action." Copies of the Safety Board's formal report on investigation of this accident are being prepared for distribution and will be available in the near future.

R–80–1.—A "Class I, Urgent Action" recommendation was directed on January 11 by the Safety Board to the Southeastern Pennsylvania Transportation Authority (SEPTA) in connection with the ongoing investigation of the fire which occurred November 12, 1979, in the passenger compartment of SEPTA car No. 204 near the 69th Street Terminal in Upper Darby, Pa. The single-unit car had just departed the terminal in northbound service to Bryn Mawr on the former Philadelphia and Western Railroad's high-speed rapid transit line. The motorman and 72 passengers were aboard the 62-seat car. Of the 53 passengers injured, 30 were hospitalized.

Car No. 204 is one of 10 cars designated as "Bullet" cars that SEPTA is using. They are of aluminum construction and have wooden floors and were manufactured by the Brill Company in 1931. Double seats with reversible backs are located along each side. Electric car heaters are located along the bottom of each side wall near the floor. Access to the car is by folding doors located at each end of the car which are controlled by the motorman.

The Safety Board notes that the cars are electrically propelled by 600-volt direct current collected from a third rail adjacent to the track by contact shoes mounted on each truck. A 25,000 circular mil copper cable covered with rubber insulation, located within the passenger compartment in the left side wall behind the electric heaters, transmits the 600-volt direct current to the controller for operation of the car. The seats and heaters must be removed from the left side to repair or inspect the cable.

The motorman stated that when the car departed the 69th Street Terminal, smoke was detected in the passenger compartment along the left side near the front of the car. In the past, SEPTA has had problems with heaters smoking on these cars, and the motorman assumed that a heater was causing the smoke. The motorman did not believe the problem to be serious and thought that he would be able to continue to the next station, about 1.5 miles away, for an inspection to determine the cause. However, the car filled rapidly with smoke and fire was detected, leading the motorman to stop and discharge the

passengers before reaching the next station.

The Board stated that an examination of the car after the fire was extinguished disclosed that the power cable was burned rearward from where it entered the car for a distance of 18 inches. The first and second seats along the left side were burned and the side of the car was damaged. An examination of the remaining portion of the cable disclosed that the insulation was deteriorated. It is apparent that the fire started in the power cable and quickly spread to the car's interior. If this cable had been placed in a conduit and mounted on the outside of the car, as is done on other self-propelled cars, the failure of the cable most probably would not have set the interior of the car on fire. Accordingly, the Safety Board has recommended that SEPTA:

Remove the 600-volt d.c. power cables from the interiors of all Brill Electric cars, mount them on the cars' exteriors, and take any necessary additional steps so that a failure of the cable will not ignite combustible materials. (R–80–1)

Responses to Safety Recommendations

Aviation

A–79–73 and 74.—Letter of January 8 from the Federal Aviation Administration is in response to recommendations issued as a result of investigation of the midair collision involving a Pacific Southwest Airlines Boeing 727 and a Cessna 172 at San Diego, Calif., September 25, 1978. (See 44 FR 60181, October 18, 1979.) The recommendations addressed the issue of pilots' understanding the relationship of their responsibility and the air traffic controller's responsibility when a pilot accepts a maintain-visual-separation clearance.

Recommendation A–79–73 asked FAA to require all air carrier companies and commercial operators to test their pilots recurrently on ATC radar procedures, radar services, pilot/controller relationships, and ATC clearances. FAA agrees that pilots must be aware of their responsibilities when they accept a "maintain visual separation" clearance, but believes that FAA's control of air carrier and commercial operators' training programs is adequate through the principal operations inspectors (POI) assigned to the individual operators. FAA proposes to issue appropriate bulletins requesting the POI's to ensure that interrelationships of the pilot and controller roles and responsibilities are covered in each operator's recurrent training program. The bulletins will be issued by the end of March 1980.

Recommendation A–79–74 called for a method to ensure that all general aviation pilots are tested periodically on ATC radar procedures, radar services, pilot/controller relationships, and ATC clearances as appropriate to their operations. FAA notes that 14 CFR 61.57, "Recent Flight Experience: Pilot in Command," presently includes language which provides for a flight review, including ATC procedures which adequately covers pilot/controller relationships while still providing flexibility to the person giving the review to deal with the pilot's individual needs. This individual treatment is further emphasized by industry guidance material on the Biennial Flight Review (BFR) such as that published by the National Association of Flight Instructors, widely used for the conduct of BFR's by flight instructors.

FAA reports that its Office of Flight Operations will work with the Air Traffic Service in developing a presentation for the Accident Prevention Program to educate general aviation pilots on available radar services and will discuss pilot/controller relationships and ATC clearances for pilots operating under visual flight rules.

Absent additional information indicating a significant shortcoming in general aviation pilot/controller relationships, FAA believes that the current regulations provide a satisfactory level of regulation and flexibility to permit the intent of recommendation A–79–74 to be accomplished.

A–79–106 and 107.—The Federal Aviation Administration on January 7 responded to recommendations issued by the Safety Board following two near inflight collisions last November near Lindbergh Airport in the San Diego, Calif., Terminal Radar Service Area (TRSA). Recommendation A–79–106 asked FAA to immediately exercise its emergency authority and impose mandatory requirements that all pilots communicate with San Diego approach control and receive an appropriate ATC clearance, on a first-come, first-served basis, before entering the San Diego TRSA—this to be identified as an interim action until a Terminal Control Area (TCA) is implemented. Recommendation A–79–107 asked FAA to expedite the establishment and implementation of a Group II TCA at San Diego, with the special requirement that aircraft utilizing the airspace be equipped with an operating Mode-C Altitude Encoding Transponder. The recommendations were issued December 28, 1979. Both near inflight collisions cited involved airliners and private aircraft. (See 45 FR 2116, January 10, 1980.)

FAA's January 7 response notes that earlier—October 18, 1978—the Safety Board had recommended a TRSA at Lindbergh Airport and establishment of TCA's in San Diego and wherever else they were needed. FAA followed these recommendations by putting a TRSA into operation at Lindbergh Field on April 19, 1979, and setting out to install TCAs at 38 locations throughout the country. One of these was San Diego, and the **Federal Register** of December 6, 1979, carried a notice of proposed rulemaking to that effect; public comment period was 60 days. The FAA Administrator states:

The law does not provide us the luxury of moving more rapidly than this. Perhaps this is just as well, for public participation in the deliberative process allows us to come up with the safest and least burdensome TCA configuration for each site, as well as letting us weigh environmental and economic factors. It also lets us make major changes in the air traffic rules with safety, by giving us the time to educate pilots and controllers in their new responsibilities.

But I am afraid that your December recommendation for an immediate TRSA at San Diego risks creating confusion that would detract from safety, not add to it. Your recommendation would create what amounts to a new form of controlled airspace, with unfamiliar requirements suddenly laid on both pilots and controllers. I don't feel we should undertake so drastic a change without a period of public education. There should be time, too, for changes in charts and other aeronautical publications.

Even then there would be problems. Before planes could enter this new type of airspace, controllers would have to identify and issue clearance to them, although many of the aircraft would not be carrying transponders. This would lead to dangerous concentrations of uncontrolled aircraft just outside the TRSA, waiting for controllers to identify them on the radar screen by ordering their pilots to perform turns. This would be greatly increase the burden on contollers, as well as causing inconveniences and waste of fuel.

Concerning the Board's recommendations regarding mandatory carriage of an altitude reporting (Mode C) transponder, FAA says this is a separate issue, and states, "To adopt it for San Diego now would only slow down the current regulatory process. Besides, if it is a good idea for San Diego, it should apply to other Group II TCAs as well, and should be considered in a broader context." This issue is a part of FAA's overall airspace review now underway.

On January 11 the Safety Board provided FAA with comments on the January 7 response to recommendations A–79–106 and 107, as well as comments on the Airline Owners and Pilots Association (AOPA) Petition Notice No.

PR 79–13 (Docket No. 19829, 44 FR 70177, December 6, 1979) which proposes the establishment and use of safety corridors by terminal area traffic operating and to and from San Diego.

The Safety Board does not share AOPA's belief that the proposal is a better alternative than FAA's TCA proposal. The corridor concept is too restrictive for practical use and does not provide the flexibility needed by Air Traffic Control (ATC) to effectively control all air traffic utilizing the San Diego airspace. The safety hazard requires that separation service be provided to all users of the terminal airspace operating under ATC. The board believes that the narrow confines of the proposed corridors would restrict the controller's capability to provide such services, increase his workload, and under certain circumstances create more operational problems for ATC than the proposed corridors would resolve.

With reference to recommendation A–79–107, the Safety Board believes that the policy followed by FAA over the years of developing TCA's has proven to be effective, and the Board supports noice of proposed rulemaking No. 79–17, "Proposed Group II Terminal Control Area—San Diego, California," published December 6, 1979, 44 FR 70181. However, the Board continues to believe that promulgation of the final rule should be expedited and that an additional requirement for Mode-C altitude encoding transponders for all aircraft should be adopted. The Board's emergency recommendations were prompted by the belief that a particularly hazardous condition exists in the San Diego area. Both AOPA's Petition No. PR 79–13 and FAA's NPRM No. 79–17 are consistent with the Board's contention that there is a need for operational changes in the San Diego terminal area to assure safe and efficient use of the local airspace.

The Board does not agree with FAA's contention that the subject recommendations would create a new form of controlled airspace. The Board proposes no changes in the dimensions of the present TRSA or the proposed Group II TCA. With regard to the recommendation A–79–106, the only "unfamiliar requirement" which would be levied on both pilots and controllers would be a requirement that pilots establish communications with the controllers before entering the TRSA. The Board's recent investigations of near collisions at San Diego reveal that these incidents more usually have involved pilots who either do not choose to avail themselves of the operational separation service or enter the TRSA before contact ATC, leaving the controller little time to react should a conflict arise. The Board notes that its recommended mandatory communications requirement does not constitute a drastic change nor would the change require an extended period of public education—it involves only the San Diego terminal area where the existence of a serious problem is unduly recognized. Changes in charts and other aeronautical publications would certainly be needed, but the need for such changes does not, in the Board's opinion, constitute sufficient cause to maintain the status quo in the San Diego area.

The Board notes that an AOPA official has estimated that 90 percent of all general aviation pilots who operate in the San Diego area communicate with ATC. The other 10 percent may never choose to use the TRSA airspace for one reason or another, such as not having radios aboard or not needing to transit the airspace. However, the Board states, even a full 10 percent increase in communications workload should neither result in an intolerable burden on controllers no an inconvenience and waste of fuel for the users of the airspace. With reference to the incidents cited in safety recommendations A–79–106 and 107, both small airplanes departed Montgomery Airport and climbed into the TRSA, and this seems to be the source of most of the conflicts. The Board says that FAA's concern for the probalbility of "dangerous concentrations of uncontrolled aircraft just outside of the TRSA" would seem to be speculative. The Board's concern for the probability of a collision between controlled and uncontrolled traffic just inside the TRSA is based on the Board's review of actual near collisions in the San Diego area.

In three cases involving mid-air near collision reports at San Diego, an air carrier aircraft was descending under ATC control in the TRSA on a downwind leg for a landing on runway 27 at Lindbergh Field. In each case a general aviation aircraft had departed Montgomery Airport and was climbing eastbound on approximately the same heading as the air carrier. In each of the three incidents, the general aviation aircraft was being overtaken by the air carrier aircraft and conflict occurred within the designated TRSA airspace. In two of these incidents, the pilots of the general aviation aircraft had penetrated the TRSA airspace and contacted approach control just before the reported incident. In one instance, the pilot was not in radio contact with approach control.

If this potentially dangerous situation is to be resolved, the Safety Board believes it is essential that pilots who find it necessary to enter the TRSA airspace communicate with San Diego Approach Control before entering so that their presence is known to the controller. The knowledge of their impending presence would allow the controller sufficient time to provide traffic advisories or to issue appropriate instructions to the aircraft so that effective separation is maintained.

The Safety Board believes that the needs of the users would be better served by a mandatory requirement or an altitude reporting (Mode-C) transponder at San Diego. If a need for this requirement should arise at other Group II TCA's, the Board is confident that normal rulemaking procedures will identify such a need.

While FAA fulfillment of the Board's recommendations may require withdrawing the current NPRM, the Board believes that in view of the dangerous situation at San Diego, FAA should choose to expedite this action by whatever means are at its disposal. Meanwhile, The Board considers FAA's response to recommendations A–79–106 and 107 as "open—Unacceptable Action."

Note.—Single copies of the Safety Board's accident reports are available without charge, as long as limited supplies last. Copies of recommendation letters issued by the Board, response letters and related correspondence are also available free of charge. All requests for copies must be in writing, identified by report or recommendation number. Address inquiries to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

Multiple copies of accident reports issued by the Board may be purchased from the Naitonal Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22151.

(49 U.S.C. 1903(a)(2), 1906)

Margaret L. Fisher,

Federal Register Liaison Officer.

January 21, 1980.

[FR Doc. 80–2272 Filed 1–23–80; 8:45 am]

BILLING CODE 4910–58–M

OFFICE OF MANAGEMENT AND BUDGET

President's Commission for a National Agenda for the Eighties; Meetings

January 18, 1980.

AGENCY: Office of Management and Budget.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given that the third

meeting of the President's Commission for a National Agenda for the Eighties is scheduled to be held from 9 a.m. to 6 p.m., February 5, 1980, in the Amphitheatre, 2nd Floor, East, Federal Home Loan Bank Building, 17th and G Streets, Northwest, Washington, D.C.

The purpose of the meetings is to complete formulation of an agenda identifying issues for further study by the Commission.

Because of limited space, those interested in attending are asked to call the Commission's office beforehand. Available seats will be assigned on a first-come basis.

The meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT:

Mr. Dick Wegman or Mr. Claude Barfield, President's Commission for a National Agenda for the Eighties, 744 Jackson Place NW., Washington, D.C. (202) 275–0616.

David R. Leuthold,

Budget and Management Officer.

[FR Doc. 80–2172 Filed 1–23–80; 8:45 am]

BILLING CODE 3110–01–M

Agency Forms Under Review

Background

January 21, 1980.

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Federal Reports Act (44 USC, Chapter 35). Departments and agencies use a number of techniques including public hearings to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibility under the Act also considers comments on the forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

Every Monday and Thursday OMB publishes a list of the agency forms received for review since the last list was published. The list has all the entries for one agency together and grouped into new forms, revisions, extensions, or reinstatements. Some forms listed as revisions may only have a change in the number of respondents or a reestimate of the time needed to fill them out rather than any change to the content of the form. The agency clearance officer can tell you the nature of any particular revision you are interested in. Each entry contains the following information:

The name and telephone number of the agency clearance officer (from whom a copy of the form and supporting documents is available);

The office of the agency issuing this form;

The title of the form;

The agency form number, if applicable;

How often the form must be filled out;

Who will be required or asked to report;

An estimate of the number of forms that will be filled out;

An estimate of the total number of hours needed to fill out the form; and

The name and telephone number of the person or office responsible for OMB review.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. Our usual practice is not to take any action on proposed reporting requirements until at least 10 working days after notice in the **Federal Register** but occasionally the public interest requires more rapid action.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review. If you experience difficulty in obtaining the information you need in reasonable time, please advise the OMB reviewer to whom the report is assigned. Comments and questions about the items on this list should be directed to the OMB reviewer or office listed at the end of each entry.

If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer of your intent as early as possible.

The timing and format of this notice have been changed to make the publication of the notice predictable and to give a clearer explanation of this process to the public. If you have comments and suggestions for further improvements to this notice, please send them to Stanley E. Morris, Deputy Associate Director for Regulatory Policy and Reports Management, Office of Management and Budget, 726 Jackson Place, Northwest, Washington, D.C. 20503.

DEPARTMENT OF AGRICULTURE

Agency Clearance Officer—Richard J. Schrimper—447–6201

Revisions

Food Safety and Quality Service
Standards and Weight Classes for shell eggs (7 CFR 2856)
Other (see SF–83)
Egg packers and dealers, 52,077 responses; 1,296 hours
Charles A. Ellett, 395–5080

DEPARTMENT OF COMMERCE

Agency Clearance Officer—Edward Michals—377–3627

New Forms

National Bureau of Standards
Message Format Standard Survey of Users
NBS–1137B
Single time
Commercial users of computer based message service, 12 responses; 21 hours
Richard Sheppard, 395–3211

National Bureau of Standards
ADP Floppy Disk System Parameter Standards and Market Survey
NBS–1136 sector 1 & 2
Single time
Floppy disks system vendors, 75 responses; 150 hours
Richard Sheppard, 395–3211

National Bureau of Standards
Message Format Standard Survey of Vendors
NBS–1137A
Single time
Computer based message service vendors, 18 responses; 32 hours
Richard Sheppard, 395–3211

Revisions

Bureau of the Census
Converted Flexible Materials for Packaging and Other
Uses
MQ–26F
Quarterly
Paper, film, foil converters (manufacturers), 1,300 responses; 650 hours
Office of Federal Statistical Policy and Standard, 673–7974

Bureau of the Census
Construction Machinery (shipments)
MQ–35D
Quarterly
Construction machinery manufacturers, 776 responses; 518 hours
Office of Federal Statistical Policy and Standard, 673–7974

Bureau of the Census
Current Trade Report
B–300 & B–301

Monthly
Merchant wholesalers, 65,980 responses, 11,876 hours
Office of Federal Statistical Policy and Standard, 673–7974

Reinstatements

Bureau of the Census
Fibrous Glass (production and shipments)
MA–32J
Annually
Manufacturers of fibrous glass, 37 responses; 19 hours
Office of Federal Statistical Policy and Standard, 673–7974

Bureau of the Census
Survey of Builder Production Plans
SOC–900B
Single time
Builders of residential construction, 1,400 responses; 235 hours
Office of Federal Statistical Policy and Standard, 673–7974

DEPARTMENT OF DEFENSE

Agency Clearance Officer—John V. Wenderoth—697–1195

New Forms

Department of the Air Force
Request for Supply Item Identification Information
On Occasion
Air Force Contractors, 35 responses; 175 hours
Richard Sheppard, 395–3211

DEPARTMENT OF ENERGY

Agency Clearance Officer—John Gross—633–9118

Extensions

Initial Report of First Sales of Natural Gas Under Section 105 of the Natural Gas Policy Act, Existing Intrastate Contracts
FERC–123
Single time
Natural gas producers and pipelines, 50,000 responses; 12,500 hours
Jefferson B. Hill, 395–5867

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Agency Clearance Officer—William Riley—245–6511

Revisions

Health Services Administration
Evaluation of Applicant (for residency training)
HSA–201
On occasion
Individuals in medical and dental professions, 1,000 responses; 175 hours
Richard Eisinger, 395–3214

Social Security Administration
Quality Review Questionnaires and Desk Review
SSA–2930, 2931, 2932, 4659, and L9292
Semi-annually
Beneficiaries receiving title II payments, 4,400 responses; 1,686 hours
Barbara F. Young, 395–6132

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Agency Clearance Officer—Robert G. Masarsky—755–5184

Extensions

Housing Production and Mortgage Credit
Application for Insurance—Supplementary Loan
FHA–3201–A
On occasion
Cooperative project mortgagors, 190 responses; 95 hours
Arnold Strasser, 395–5080

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Agency Clearance Officer—Robert G. Masarsky—755–5184

Reinstatements

Housing Management
Recertification of Family Income and Composition—Section 235(J)
FHA–3161
Other (see SF–83)
Homeowners receiving financial assistance, 2,750 responses; 1,375 hours
Arnold Strasser, 395–5080

Housing Production and Mortgage Credit
Supplement to Subscription Agreement for Cooperative Housing Applicants Under Sections 213 and 221(D)(3)
FHA 3232A
On occasion
Applicants for membership in a housing cooperative, 10,000 responses; 5,000 hours
Arnold Strasser, 395–5080

Housing Production and Mortgage Credit
Application—Project Mortgage Insurance/NH–ICF
FHA 2013 2013–NH–ICF 2013 Hosp
On occasion
Project Sponsors, 8,000 responses; 24,000 hours
Arnold Strasser, 395–5080

Housing Production and Mortgage Credit
Requisition for Advance of Flexible Subsidy Funds
HUD–9823A, 9823B, and 9824A
On occasion
Project owners/managers, 14,000 responses; 9,500 hours
Arnold Strasser, 395–5080

Office of the Secretary
Project Improvement Program, Budget Worksheet, and Review Report
9835, 9835A and B, 9824, 9834, and 9834A and B
Annually
Project owners/managers, 3,500 responses; 7,000 hours
Arnold Strasser, 309–5080

DEPARTMENT OF JUSTICE

Agency Clearance Officer—Donald E. Larue—633–3526

New Forms

Law Enforcement Assistance Administration
Correctional Standards Accreditation Program Personnel
Survey
LEAA 3400
Single time
Adult correctional facility personnel, 550 responses; 385 hours
Lavern V. Collins, 395–3214

DEPARTMENT OF LABOR

Agency Clearance Officer—Philip M. Oliver—523–6341

Reinstatements

Bureau of International Labor Affairs
Standard Questionnaire for Manufacturing Firms
ILAB–235 A/B
On occasion
Manfacturers, 1,000 responses; 10,000 hours
Arnold Strasser, 395–5080

DEPARTMENT OF THE TREASURY

Agency Clearance Officer—Floyd I. Sandlin—376–0436

Revisions

Bureau of Customs
Certificate of Origin
Customs 3229
On occasion
Importers/exporter and their representatives, 1,860 responses; 465 hours
Susan B. Geiger, 395–5867

UNITED STATES INTERNATIONAL TRADE COMMISSION

Agency Clearance Officer—Charles Ervin—523–0267

New Forms

Producers' Questionnaire for Inv—Corn Starch and Potato Starch [1]

[1] These reports will be acted on before normal 10-day period. The clearance of these questionnaires on an expedited basis is necessary in order for the International Trade Commission to complete its investigation concerning these products within the statutory time limits.

Single time
Potato and corn processors, 24 responses; 432 hours
Marsha D. Traynham, 395–6140

Importers' Questionnaires-Certain Scales and Weighing Machinery from Japan (inv. 701–TA–7) [1]
Single time
Importers of certain scales and weighing machinery, 14 responses; 140 hours
Marsha D. Traynham, 395–6140

Importers' Questionnaire for Inv—Corn Starch and Potato Starch [1]
Single time
Importers of Corn and Potato Starch derivatives, 42 responses; 840 hours
Marsha D. Traynham, 395–6140

Importers' Questionnaire for Inv—Corn Starch and Potato Starch [1]
Single time
Purchasers of dextrines and either corn or potato products, 58 responses; 580 hours
Marsha D. Traynham, 395–6140

Importers' Questionnaire of Melamine Crystals [1]
Single time
Importers of melamine crystals, 20 reponses; 100 hours
Marsha D. Traynham, 395–6140

Producers' Questionnaire Certain Scales and Weighing Machinery (Inv. 701–TA–7) [1]
Single time
Producers of certain scales and weighing machinery, 36 responses; 360 hours
Marsha D. Traynham, 395–6140

VETERANS ADMINISTRATION

Agency Clearance Officer—R. C. Whitt—389–2282

Revisions

Veterans Application for Compensation and Pension
21–526
On occasion
Veterans, 250,000 responses; 250,000 hours
Richard Eisinger, 395–3214

[FR Doc. 80–2266 Filed 1–23–80; 8:45 am]

BILLING CODE 3110–01–M

Privacy Act; New Systems

The purpose of this notice is to give members of the public an opportunity to comment on Federal agency proposals to establish or alter personal data systems subject to the Privacy Act of 1974.

The Act states that "each system shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effects on such proposal on the privacy and other personal or property rights of individuals . . ."

OMB policies implementing this provision require agencies to submit reports on proposed new or altered systems to Congress and OMB 60 days prior to the issuance of any data collection forms or instructions, 60 days before entering any personal information into the new or altered systems, or 60 days prior to the issuance of any requests for proposals for computer and communications systems or services to support such systems—whichever is earlier.

The following reports on new or altered systems were received by OMB between December 31, 1979 through January 11, 1980. Inquiries or comments on the proposed new systems or changes to existing systems should be directed to the designated agency point-of-contact and a copy of any written comments provided to OMB. The 60 day advance notice period begins on the report date indicated.

Department of Commerce

System Name:

Property Accountability Files.

Report Date:

December 18, 1979.

Point-of-Contact:

Mr. John S. Boyd, Office of Organization and Management Systems, U.S. Department of Commerce, Washington, D.C. 20230.

Summary:

The National Bureau of Standards proposes to amend a system of records because it is automating its Library book inventory system. After manual file conversion, subsequent borrowing information will be collected, stored and retrieved by machine.

System Name:

Personnel, Payroll, Travel, and Attendance Records of the Regional Fishery Management Councils.

Report Date:

December 13, 1979.

Point-of-Contact:

Mr. Donald S. Budowsky, Office of Organization and Management Systems, U.S. Department of Commerce, Washington, D.C. 20230.

Summary:

The Department of Commerce proposes to establish a new system of records for the collection and maintenance of personal data in the administrative records of the Regional Fishery Management Councils. Records will include personnel, payroll, travel, and time and attendance records.

Federal Emergency Management Agency

System Name:

Student Application Records, National Fire Academy.

Point-of-Contact:

Mr. Bill Combs, Director, Office of Public Affairs, Federal Emergency Management Agency, 1725 I Street NW., Washington, D.C. 20472.

Report Date:

December 27, 1979.

Summary:

The Federal Emergency Management Agency proposes to establish a new system of records to contain forms and other information submitted by prospective students of the National Fire Academy. The agency will use the information to determine student eligibility. FEMA is asking for a waiver of the 60 day period for advance notice to the Office of Management and Budget and the Congress to enable them to operate the system at once. The agency asserts that delay in operating the system would delay the initial class of the Academy, denying the public trained fire prevention specialists.

Department of Housing and Urban Development

System Name:

Claims Collection Records System.

Report Date:

December 21, 1979.

Point-of-Contact:

Mr. Robert English, Departmental Privacy Act Officer, Department of Housing and Urban Development, Washington, D.C. 20410.

Summary:

The Department of Housing and Urban Development proposes to establish a new system of records to contain information about individuals who are delinquent in their debts to the Department. The purpose of the system is to accumulate necessary documentation to reflect the basis of each claim, the collection actions taken, and responses received from the debtor. The claim file will serve as the basis for establishing, recording, and reporting claims HUD has against others under

the Federal Claims Collection Act of 1966. It will be the basis for claims collection activity by Claims Collection Officers throughout the Department.

David R. Leuthold,

Budget and Management.

[FR Doc. 80-2285 Filed 1-23-80; 8:45 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-16513; File No. SR-BSE-79-3]

Boston Stock Exchange, Inc.; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on December 26, 1979, the Boston Stock Exchange, Inc. ("BSE") filed with the Securities and Exchange Commission a proposed rule change as follows:

Text of the Proposed Rule Change

Chapter II of the Rules of the BSE would be amended by the addition of a New Section 32, as follows:

Section 32. Orders subject to section 11(a) of the Securities Exchange Act of 1934

(a) No member or member organization shall effect any transaction in any security on the Exchange for his or its account, the account of an associated person, or an account with respect to which the member, member organization or an associated person thereof exercises investment discretion. For the purposes of this Rule, the term "associated person" has the meaning set forth in Section 3(a)(21) of the Securities Exchange Act of 1934 (the Act).

(b) The provisions of paragraph (a) of this Rule shall not apply to transactions effected pursuant to the exemptions contained in Section 11(a)(1)(A) through (H) of the Act, or a rule adopted thereunder.

(c) No bid or offer made by a member on an order for the account of such member or member organization subject to Section 11(a)(1)(G) of the Act and Rule 11a1-1(T) thereunder shall be entitled to priority over, parity with or precedence based on size over any order which is for the account of a person who is not a member, member organization or an associated person thereof.

(d) Immediately before executing an order pursuant to Section 11(a)(1)(G) of the Act and Rule 11a1-1(T) thereunder, a member (other than the specialist in such security) shall clearly announce or otherwise indicate to the specialist and to other members then present in the trading Crowd in such security that he is representing an order to be executed pursuant to Section 11(a)(1)(G) of the Act and Rule 11a1-1(T) thereunder.

(e) Every order subject to the provisions of Section 11(a)(1)(G) of the Act and Rule 11a1-1(T) thereunder shall bear an identifying notation on the board slip that will enable the executing member to disclose to other members that the order is subject to those provisions.

BSE's Statement of the Purpose of the Proposed Rule Change

The purpose of this proposal is to conform the Rules of the Exchange to the requirements of Section 11a(1) of the Securities Exchange Act of 1934.

BSE's Statement of the Basis Under the Act of the Proposed Rule Change

The basis under the Act for the proposed change is Section 6(b)(5). The proposed rule change deals with effecting transactions on the Exchange Floor by members for their own accounts, the account of an associated person, or for an account over which a member organization or associated person thereof exercises investment discretion.

BSE's Statement on Comments Received From Members, Participants or Others on the Proposed Rule Change

No comments were solicited or received with respect to the proposed rule change.

BSE's Statement on Burden on Competiton

No burden on competition is preceived by adoption of the proposed rule change.

On or before February 28, 1980, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted within 21 days of the date of this publication.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

January 17, 1980.

[FR Doc. 80-2182 Filed 1-23-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 16504; SR-CSE-79-6]

Cincinnati Stock Exchange; Order Approving Proposed Rule Change

January 16, 1980.

On December 11, 1979, the Cincinnati Stock Exchange ("CSE"), 205 Dixie Terminal Building, Cincinnati, Ohio 45202, filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of proposed rule change which provides criteria for delisting securities from the CSE where such delisting is desired by the issuer.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by issuance of a Commission Release (Securities Exchange Act Release No. 16411, December 7, 1979), 18 SEC Docket 1318 (December 26, 1979) and by publication in the **Federal Register** (44 FR 72684, December 14, 1979). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to securities exchanges and in particular, the requirement of Section 6 and the rules and regulations thereunder. In particular, the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act in that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in

securities, and, in general, to protect investors and the public interest.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-2180 Filed 1-23-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 16503; SR-MSE-79-17]

Midwest Stock Exchange, Inc.; Order Approving Proposed Rule Change

January 16, 1980.

On November 1, 1979, the Midwest Stock Exchange, Incorporated ("MSE"), 120 South LaSalle Street, Chicago, Illinois 60603, filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which adopts a set of rules that would conform its present rules on arbitration [1] to the Uniform Code of Arbitration ("Code") [2] which was drafted by the Securities Industry Conference on Arbitration ("SICA") [3] and which provides arbitration procedures for the settlement of disputes arising between customers and broker-dealers.

The SICA members consist of: the American Stock Exchange, Inc.; the Boston Stock Exchange, Incorporated; the Chicago Board Options Exchange, Incorporated; the Cincinnati Stock Exchange; the Midwest Stock Exchange, Incorporated; the Municipal Securities Rulemaking Board; the National Association of Securities Dealers, Inc.; the New York Stock Exchange, Inc.; the Pacific Stock Exchange, Incorporated; the Philadelphia Stock Exchange, Inc., as well as the Securities Industry Association and three public representatives. The proposal revokes the present MSE arbitration rules and adopts the entire Code as new MSE Rule 24. The proposal also incorporates the simplified arbitration procedures that were drafted by the SICA and adopted by the MSE on December 8, 1978, [4] regarding small claims not exceeding $2,500. [5] Additionally, new MSE Rule 23 provides that the Code shall apply to resolve disputes between MSE members.

A primary purpose of this proposal is to provide investors with a simple and inexpensive procedure for resolution of their controversies with broker-dealers who are members of the CSE. Further, the proposal anticipates that the Code will be adopted by other self-regulatory organizations thereby providing a uniform system of arbitration throughout the securities industry. [6]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by issuance of a Commission Release (Securities Exchange Act Release No. 16440 (December 19, 1979), 18 SEC Docket 13864 (January 2, 1980)), and by publication in the **Federal Register** (44 FR 26899 (December 28, 1979)). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to securities exchanges and in particular, the requirements of Section 6(b)(5) of the Act that the rules of an exchange be designed to promote just and equitable principles of trade. [7]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-2178 Filed 1-23-80; 8:45 am]

BILLING CODE 8010-01-M

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[1] For the MSE's current arbitration rules, *see* MSE Rules 23-24.

[2] The Code was published on December 28, 1979, as the *Second report of the Securities Industry Conference on Arbitration to the Securities and Exchange Commission.*

[3] The SICA was organized on April 5, 1977, pursuant to the Commission's stated position that there was a need to implement a nationwide investor dispute resolution system. *See* Securities Exchange Act Release No. 12528 (June 9, 1976), 9 SEC Docket 833 (June 23, 1976), 41 FR 23803 (June 11, 1976); Securities Exchange Act Release No. 13470 (April 26, 1977), 12 SEC Docket 186 (May 10, 1977), 42 FR 23892 (May 11, 1977).

[4] Securities Exchange Act Release No. 15390, 14 SEC Docket 985 (December 26, 1978).

[5] *See* new MSE Rule 24, Section 2.

[6] The Code has already been adopted by the New York Stock Exchange, Inc. *See* Securities Exchange Act Release No. 16390 (November 30, 1979), 18 SEC Docket 1197 (December 18, 1979), 44 FR 70616 (December 7, 1979). Several other self-regulatory organizations are now in the process of adopting it.

[7] The Commission emphasizes, however, that notwithstanding the proposed rule change, arbitration clauses contained in customers' agreements that purport to bind customers to arbitrate all future disputes raising claims under the Federal securities laws cannot be enforced against those customers who choose to obtain a judicial determined of such claims. *See* Securities Exchange Act Release No. 15984 (July 2, 1979), 17 SEC Docket 1167 (July 17, 1979), 44 FR 40462 (July 10, 1979).

[Release No. 16468; SR-MSE-79-22]

Midwest Stock Exchange, Inc.; Filing of Proposed Rule Change and Order Approving Proposed Rule Change

January 4, 1980.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act"), notice is hereby given that on December 28, 1979, the Midwest Stock Exchange, Inc. ("MSE") 120 South LaSalle Street, Chicago, IL 60603 filed with the Commission copies of a proposed rule change which would provide for a full-time compensated Chairman of the Board of Governors, appointed by the Board to serve at its pleasure, as Chief Executive Officer of the MSE. Currently, the Chairman is elected annually by a membership vote. The chairman would appoint the President, subject to Board approval, to serve as Chief Operating Officer at the pleasure of the Board. Presently, the President is appointed annually and acts as the Chief Executive Officer of the MSE. Neither the Chairman nor the President may be a member of the MSE, or affiliated in any way with a member organization, during his incumbency.

The following sections of the MSE Constitution would be amended to accomplish these changes, and other modifications necessary to ensure internal consistency: Article II, section 6, Article III, sections 1, 2 and 6, Article IV, section 2, 4, 5, 8, 9, 18, 21 and 22, Article V, sections 1 and 4, Article VI, sections 1, 2, 3, 4 and 5, Article VI, section 1.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-MSE-79-25.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street NW., Washington, D.C.

The Commission finds that the proposed rule change is consistent with

the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6(b)(1) of the Act relating to the organization of the Exchange and its capacity to carry out the purposes of the Act, and Section 6(b)(3) of the Act relating to assuring fair representation of exchange members in the selection of directors and the administration of its affairs, and the rules and regulations thereunder. The proposed rule change is intended to provide for continuity of executive leadership at the MSE and was necessitated by the demands of conducting the business of the MSE in a manner conducive to making a smooth transition to the national market system.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in order enable the MSE to select a new Chairman under the proposed amendments at its Board Meeting on January 18, 1980.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-2181 Filed 1-23-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-16505; File No. SR-PHLX 79-10]

Philadelphia Stock Exchange, Inc.; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 June 4, 1975), notice is hereby given that on November 14, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change, as follows:

Exchange's Statement of Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX"), pursuant to Rule 19b-4 of the Securities Exchange Act of 1934 ("Act"), proposes a rule change concerning the listing, or admission to dealings and delisting or removal from dealings of securities it trades.

Basis and Purpose Under the Act for Proposed Rule Change

The purpose of the proposed rule change is to file, pursuant to Rule 19b-4, the standards PHLX uses to list or admit to dealings and delist or remove from dealings the securities it trades.

The basis for the proposed rule change is found in Section 6(b)(5) of the Act which provides, in pertinent part, that the rules of the Exchange be designed to facilitate transactions in securities and to protect investors and the public interest.

Comments were neither solicited nor received.

The PHLX has determined that the proposed rule change will not impose any burden on competition.

Within 35 days of the date of publication of this notice in the **Federal Register**, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before February 14, 1980.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

January 16, 1980.

Exhibit A—File No. SR-PHLX 79-10

(Brackets indicate words to be deleted and italics indicate words to be added.)

Rule 801 (Old Rule 801 is renumbered 802)

Only such securities, rights or warrants pertaining to securities and securities on a "when issued" or "when distributed" basis as shall have been approved by the Board of Governors for listing or admission to unlisted trading privileges shall be dealt in on the Exchange.

Rule 802

[The Committee may list or admit to dealings on an "issued", "when issued" or "when distributed" basis

(a) direct obligations of or obligations guaranteed as to principal or interest by the United States, or any State or political subdivision thereof;

(b) direct obligations of any agency or instrumentality of the United States, or of any State or political subdivision thereof;

(c) securities of an issuer having securities already listed on the Exchange;

(d) certificates of deposit, rights to subscribe, and other securities issued in exchange for or growing out of securities already listed or admitted to dealings on the Exchange;

(e) securities listed and registered on another national securities exchange.]

The Committee shall receive and consider all applications for the listing of securities and the admitting of securities to dealings.

Rule 803

[The Committee shall submit to the Board of Governors with its recommendations any application acceptable to the Committee for the listing or admission to dealings of a security which the Committee is not authorized by these Rules to list or to admit to dealings.]

All applications for admitting securities to the list shall be in the form prescribed by the Board. In order for securities of any class to be considered for listing, the issuer shall have:

(a)(1) In the case of common stock, at least 250,000 shares issued and outstanding and a minimum market value of issued and outstanding shares of at least $500,000, exclusive of concentrated holdings and those of officers and directors;

(2) At least 1,000 holders of record;

(3) Demonstrated net earnings after taxes for two of the last three years immediately preceding the listing application;

(4) Total net tangible assets of $1,000,000.

(b)(1) In the case of warrants, at least 250,000 outstanding, exclusive of

concentrated holdings and those of officers and directors;

(2) At least 500 holders of a class of equity securities which would otherwise be eligible for listing.

(c)(1) In the case of preferred stock, at least 200,000 shares outstanding, exclusive of concentrated holdings and those of officers and directors;

(2) At least 250 holders of record;

(3) At least 500 holders of a class of equity securities which would otherwise be eligible for listing.

(d)(1) In the case of bonds, a principal amount outstanding of at least $1,000,000;

(2) An aggregate market value of at least $1,000,000;

(3) At least 250 holders of record and, in the case of convertible debt, a larger distribution may be required.

The foregoing standards are guidelines and are not mandatory in each case. They will be considered by the Exchange in judging the qualifications of each applicant.

Rule 804. [The Committee may remove from the List or suspend from dealings] (Sections (a) through (g) of old Rule 804 are renumbered as Sections (b)(1) through (7) of Rule 805)

(a) The Board may suspend dealings in any security admitted to the list or institute proceedings to remove a security from the list.

(b) An issuer proposing to withdraw a security from listing on the Exchange shall submit the following:

A certified copy of a resolution adopted by the Board of Directors of the issuer authorizing withdrawal from listing and registration and a statement setting forth in detail the reasons for the proposed withdrawal and the facts in support thereof.

The issuer may be required to submit the proposed withdrawal to the security holders for their vote at a meeting for which proxies are solicited provided the stock is not also listed on another Exchange having similar requirements.

Rule 805

[In the absence of special circumstances, a security considered by the Exchange to be eligible for continued listing will not be removed from the list upon request or application of the issuer, unless the proposed withdrawal from listing is approved by the security holders at a meeting at which a substantial percentage of the outstanding amount of the particular security is represented, without objection to the proposed withdrawal from a substantial number of individual holders of the particular security; provided, however, that the Exchange will not oppose delisting action by the issuer of a security listed on the Exchange if

(1) The Exchange shall have denied the listing of an additional amount of such security within the preceding 30 days, and

(2) following such action by the Exchange, delisting has been approved by a majority of the company's directors then in office and the company has notified stockholders, in form satisfactory to the Exchange, of the proposed delisting prior to the filing of the delisting application and at least 30 days in advance of the date delisting is effected.]

The Exchange does not rate or evaluate any security dealt in on the Exchange. In making a determination concerning listing and delisting it acts upon information furnished it by the issuer and it does not verify this information from independent sources or gather independent information about issuers whose securities are dealt in on the Exchange. The securities of a company will be subject to suspension and/or withdrawal from listing and registration as a listed issue if any of the following conditions are found to exist:

(b)(1) matured or redeemed securities, including securites which have come to evidence merely the right to receive cash or other securities;

(2) securities in substitution for which other securities are being listed;

(3) securities of which the outstanding amount has, in the opinion of the Committee, been so reduced as to make further dealings therein on the Exchange inadvisable;

(4) securities as to which notice deemed by [said] *the* Committee to be authoritative has been received that they are without value;

(5) securities for which facilities for transfer or registration are no longer available;

(6) securities as to which registration or exemption pursuant to the Securities Exchange Act of 1934 is no longer effective;

(7) securities the distribution of which [in the opinion of the Committee] is so inadequate as to make further dealings therein on the Exchange inadvisable.

(c)(1) In the case of common stock, publicly held shares, exclusive of concentrated holdings and those of officers and directors, are less than 100,000 shares held by less than 300 shareholders of record;

(2) Aggregate market value of publicly held shares is less than $250,000 for a period of a year;

(3) Total assets are less than $1,000,000.

(d)(1) In the case of preferred stock, publicly held shares, exclusive of concentrated holdings and those of officers and directors, are less than 50,000 shares held by less than 100 shareholders of record with an aggregate market value of less than $500,000;

(2) Issuer does not have a class of equity securities held by 500 or more persons;

(3) Issuer does not have total assets of at least $1,000,000.

(e)(1) In the case of bonds, publicly held aggregate prinicpal amount outstanding is less than $500,000, having a market value of less than $250,000;

(2) Issuer does not have a class of equity securities held by 500 or more persons;

(3) Issuer does not have total assets of at least $1,000,000.

The foregoing standards are guidelines and are not mandatory in each case. The Exchange may determine that the suspension or withdrawal of a security may be deferred for good cause.

Rule 806. *Pursuant to Rules 802 through 805, the Board may delegate to the Committee, in respect to securities, the authority to list, admit to dealings, suspend from dealings and remove from the list*

The Committee is authorized to certify to the Securities and Exchange Commission the approval of the Exchange of the listing and registration of securities and the admission of securities to dealings, and to file applications on behalf of the Exchange for the removal of securities from listing and registration and from dealings.

[FR Doc. 80-2183 Filed 1-23-80; 8:45 am]
BILLING CODE 8010-01-M

[File No. 1-5729]

Vulcan, Inc.; Common Stock, Par Value $1.50; Application To Withdraw From Listing and Registration

January 16, 1980.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 (the "Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex") and the Philadelphia Stock Exchange, Inc. ("Phlx").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

1. Vulcan, Inc. (the "Company") common stock became listed and registered on Amex on October 5, 1967, and as of December 29, 1969, became listed and registered on Phlx.

2. As of December 7, 1978, the Company's common stock also became listed and registered on the New York Stock Exchange, Inc. ("NYSE"). Simultaneously, Amex and Phlx suspended trading in the issue pursuant to rule 12d2–1 of the Act.

3. The Company determined that the direct and indirect costs and the possibility of market fragmentation do not justify maintaining listings of the shares on all three exchanges.

This application relates solely to withdrawal of the common stock from listing and registration on both the Amex and Phlx, and shall have no effect upon the continued listing of such stock on the NYSE. Neither Amex or Phlx has posed any objection in this matter.

Any interested person may, on or before January 30, 1980, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. An order granting the application will be issued after the date mentioned above, on the basis of the application and any other information furnished to the Commission, unless it orders a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80–2179 Filed 1–23–80; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 16502; SR–AMEX–79–15]

American Stock Exchange, Inc.; Order Approving Proposed Rule Change

January 16, 1980.

In the matter of American Stock Exchange, Inc., 86 Trinity Place, New York, N.Y. 10006.

On November 7, 1979, the American Stock Exchange ("Amex") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b–4 thereunder, copies of a proposed rule change which adopts a set of rules that would conform its present rules on arbitration[1] to the Uniform Code of Arbitration ("Code")[2] which was drafted by the Securities Industry Conference on Arbitration ("SICA")[3] and which provides arbitration procedures for the settlement of disputes arising between customers and broker-dealers.

The proposal revokes the present Amex arbitration rules and adopts the entire Code as new Amex Rules 601–619. The proposal also incorporates the simplified arbitration procedures that were drafted by the SICA and adopted by the Amex on May 4, 1978,[4] regarding small claims not exceeding $2500.[5]

A primary purpose of this proposal is to provide investors with a simple and inexpensive procedure for resolution of their controversies with broker-dealers who are members of the Amex. Further, the proposal anticipates that the Code will be adopted by other self-regulatory organizations thereby providing a uniform system of arbitration throughout the securities industry.[6]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by issuance of a Commission Release (Securities Exchange Act Release No. 16442 (December 19, 1979), 18 SEC Docket 1386 (January 2, 1980)), and by publication in the **Federal Register** (44 FR 76896 (December 28, 1979)). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to securities exchanges and, in particular, the requirements of Section 6(b)(5) of the Act that the rules of an exchange be designed to promote just and equitable principles of trade.[7]

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80–2334 Filed 1–23–80; 8:45 am]

BILLING CODE 8010–01–M

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[1] For the Amex's current arbitration rules, *see* Amex Rules 601–610.

[2] The Code was published on December 28, 1979, as the *Second Report of the Securities Industry Conference on Arbitration to the Securities and Exchange Commission.*

[3] The SICA was organized on April 5, 1977, pursuant to the Commission's stated position that there was a need to implement a nationwide investor dispute resolution system. *See* Securities Exchange Act Release No. 12528 (June 9, 1976), 9 SEC Docket 833 (June 23, 1976), 41 FR 23803 (June 11, 1976); Securities Exchange Act Release No. 13470 (April 26, 1977), 12 SEC Docket 186 (May 10, 1977), 42 FR 23892 (May 11, 1977).

The SICA members consist of: the American Stock Exchange, Inc.; the Boston Stock Exchange, Incorporated; the Chicago Board Options Exchange, Incorporated; the Cincinnati Stock Exchange; the Midwest Stock Exchange, Incorporated; the Municipal Securities Rulemaking Board; the National Association of Securities Dealers, Inc.; the New York Stock Exchange, Inc.; the Pacific Stock Exchange, Incorporated; the Philadelphia Stock Exchange, Inc., as well as the Securities Industry Association and three public representatives.

[4] Securities Exchange Act Release No. 14737, 14 SEC Docket 985 (May 10, 1978), 43 FR 20585 (May 12, 1978).

[5] *See* new Amex Rule 619.

[6] The Code has already been adopted by the New York Stock Exchange, Inc. *See* Securities Exchange Act Release No. 16390 (November 30, 1979), 18 SEC Docket 1197 (December 18, 1979), 44 FR 70616 (December 7, 1979). Several other self-regulatory organizations are now in the process of adopting it.

[7] The Commission emphasizes, however, that notwithstanding the proposed rule change, arbitration clauses contained in customers' agreements that purport to bind customers to arbitrate all future disputes raising claims under the federal securities laws cannot be enforced against those customers who choose to obtain a judicial determination of such claims. *See* Securities Exchange Act Release No. 15984 (July 2, 1979), 17 SEC Docket 1167 (July 17, 1979), 44 FR 40462 (July 10, 1979).

[Release No. 21397; 70–5838]

Arkansas-Missouri Power Co.; Notice of Post-Effective Amendment Regarding Issuance and Sale of Short-Term Bank Notes

January 17, 1980.

Notice is hereby given that Arkansas-Missouri Power Company ("Arkansas-Missouri"), 405 West Park Street, Blytheville, Arkansas 72315, a wholly-owned subsidiary of Middle South Utilities, Inc., a registered holding company, has filed with this Commission a further post-effective amendment to the declaration in this proceeding pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transactions. All interested persons are referred to the amended declaration, which is summarized below, for a complete statement of the proposed transactions.

By orders in this proceeding dated May 4, 1976, April 19, 1977, April 12, 1978, and February 23, 1979 (HCAR Nos. 19511, 19993, 20501, and 20929), Arkansas-Missouri was authorized to issue and sell, from time to time until February 23, 1980, up to $5,500,000 of unsecured, short-term promissory notes to Worthen Bank & Trust Company, Little Rock, Arkansas, for the account of a group of participating banks. As of January 7, 1980, $5,000,000 of such notes were outstanding.

It is now proposed that Arkansas-Missouri issue and sell to Worthen Bank & Trust Company, for the account of a

group of participating banks, from time to time during the period commencing on the effective date of the supplemental order herein and continuing for one year thereafter, up to $5,500,000 of unsecured, short-term promissory notes. The notes will be payable in not more than 270 days from the date of issuance and may be renewed from time to time, but will mature not later than one year from said effective date. As the notes mature, they will be renewed or repaid out of funds then available to the company. The notes will, at the option of the company, be prepayable in whole or in part, at any time without premium or penalty. The names of the participating banks and the estimated maximum amounts of their respective participations in the new borrowings to be made by Arkansas-Missouri are to be supplied by amendment.

It is stated that the notes will bear interest, payable quarterly and at maturity, on the unpaid principal amount thereof at the prime commercial loan rate of Chemical Bank, New York, New York, in effect from time to time on borrowings having a 90-day maturity by responsible and substantial corporate borrowers; provided, however, that such rate will not exceed the maximum rate of interest chargeable to corporate borrowers under applicable laws. On the basis of Chemical Bank's prime commercial loan rate of 15¼ percent per annum in effect on January 7, 1980, Arkansas-Missouri's cost of money in respect to the proposed borrowings would be 15¼ percent per annum. Arkansas-Missouri will not be required to maintain any compensating balances with, or pay any commitment fee to, any of the participating banks in connection with the proposed borrowings.

Arkansas-Missouri will apply the net proceeds received from the new borrowings to the payment at or prior to maturity of the then outstanding bank borrowings referred to above (estimated at that time to aggregate $5,000,000), to the company's construction program, and to other corporate purpose. It is stated that the proposed new borrowings will be in addition to other bank borrowings by the company from the First National Bank in Little Rock, Arkansas, which will total not in excess of $10,500,000 outstanding at any one time (File Nos. 70–6255 and 70–6388). Arkansas-Missouri presently intends to repay the proposed notes with the proceeds of permanent financing or with other available funds.

It is represented that no special or separable expenses are anticipated in connection with the proposed notes and that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than February 15, 1980, 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 the post-effective amendment 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 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 declaration, as amended or as it may be further amended, may be 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 or 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. 80–2338 Filed 1–23–80; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 21398; 70–6255]

Arkansas-Missouri Power Co.; Notice of Post-Effective Amendment Regarding Issuance and Sale of Short-Term Bank Notes

January 17, 1980.

Notice is hereby given that Arkansas-Missouri Power Company ("Arkansas-Missouri"), 405 West Park Street, Blytheville, Arkansas 72315, a wholly-owned subsidiary of Middle South Utilities, Inc., a registered holding company, has filed with this Commission a post-effective amendment to the declaration in this proceeding pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transactions. All interested persons are referred to the amended declaration, which is summarized below, for a complete statement of the proposed transactions.

By order in this proceeding dated February 23, 1979 (HCAR No. 20930), Arkansas-Missouri was authorized to issue and sell from time to time until February 23, 1980, up to $5,500,000 of unsecured, short-term promissory notes to the First National Bank in Little Rock, Arkansas, for the account of a group of participating banks. As of January 7, 1980, $4,000,000 of such notes were outstanding.

It is now proposed that Arkansas-Missouri issue and sell to the First National Bank in Little Rock, for the account of a group of participating banks, from time to time during the period commencing on the effective date of the supplemental order herein and continuing for one year thereafter, up to $5,500,000 of unsecured, short-term promissory notes. The notes will be payable in not more than 270 days from the date of issuance and may be renewed from time to time, but will mature not later than one year from said effective date. As the notes mature, they will be renewed or repaid out of funds then available to the company. The notes will at the option of the company, be prepayable in whole or in part, at any time without premium or penalty. The names of the participating banks and the estimated maximum amounts of their respective participations in the new borrowings to be made by Arkansas-Missouri are to be supplied by amendment.

It is stated that the notes will bear interest, payable quarterly and at maturity, on the unpaid principal amount thereof at the prime commercial loan rate of Chemical Bank, New York, New York, in effect from time to time on borrowings having a 90-day maturity by responsible and substantial corporate borrowers; provided, however, that such rate will not exceed the maximum rate of interest chargeable to corporate borrowers under applicable laws. On the basis of Chemical Bank's prime commercial loan rate of 15¼ percent per annum in effect on January 7, 1980, Arkansas-Missouri's cost of money in respect to the proposed borrowings would be 15¼ percent per annum. Arkansas-Missouri will not be required to maintain any compensating balances with, or pay any commitment fee to, any of the participating banks in connection with the proposed borrowings.

Arkansas-Missouri will apply the net proceeds received from the new borrowings to the payment at or prior to maturity of the then outstanding bank borrowings referred to above (estimated at that time to aggregate $4,000,000), to

the company's construction program, and to other corporate purpose. It is stated that the proposed new borrowings will be in addition to other bank borrowings by the company from the First National Bank in Little Rock, Arkansas, which will total not in excess of $5,000,000 outstanding at any one time (File No. 70–6388) and from Worthen Bank and Trust Company, Little Rock, Arkansas, which will total not in excess of $5,500,000 outstanding at any one time (File No. 70–5838). Arkansas-Missouri presently intends to repay the proposed notes with the proceeds of permanent financing or with other available funds.

It is represented that no special or separable expenses are anticipated in connection with the proposed notes and that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than February 15, 1980, 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 the post-effective amendment 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 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 declaration, as amended or as it may be further amended, may be 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 or 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. 80–2339 Filed 1–23–80; 8:45 am]

BILLING CODE 8010–01–M

Dynamics Research Corp.; Notice of Application To Withdraw From Listing and Registration

January 16, 1980.

In the matter of Dynamics Research Corporation Common Stock, Par Value $.10, File No. 1–7348; Securities Exchange Act of 1934 Section 12(d).

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 (the "Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

1. Dynamics Research Corp. (the "Company") common stock became listed and registered on the Boston Stock Exchange in June 1967.

2. Company management has determined that its shareholders' interest will be adequately served if trading in its common stock reverts to the over-the-counter market because of the limited volume of trading on its common stock on the BSE and the expenses of maintaining the common stock listing thereon.

Any interested person may, on or before January 30, 1980, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80–2332 Filed 1–23–80; 8:45 am]

BILLING CODE 8010–01–M

Hi-Shear Industries, Inc.; Notice of Application To Withdraw From Listing and Registration

January 16, 1980.

In the matter of Hi-Shear Industries, Inc. Common Stock, Par Value $.10; File No. 1–7633; Securities Exchange Act of 1934 section 12(d).

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 (the "Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

1. Hi-Shear Industries, Inc. (the "Company") common stock became listed and registered on the Amex on March 12, 1977, and, as of December 4, 1979, also became listed and registered on the New York Stock Exchange, Inc. ("NYSE"). On the latter date, Amex suspended trading in the issue pursuant to Rule 12d2–1 of the Act.

2. The Company determined that the direct and indirect costs and the possibility of market fragmentation do not justify maintaining listings of the shares on both the Amex and NYSE.

This application relates solely to withdrawal of the common stock from listing and registration on the Amex and shall have no effect upon the continued listing of such stock on the NYSE. The Amex has posed no objection in this matter.

Any interested person may, on or before January 30, 1980, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. An order granting the application will be issued after the date mentioned above, on the basis of the application and any other information furnished to the Commission, unless it orders a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80–2331 Filed 1–23–80; 8:45 am]

BILLING CODE 8010–01–M

Napco Industries, Inc.; Notice of Application To Withdraw From Listing and

January 16, 1980.

In the matter of Napco Industries, Inc. Common Stock, Par Value $1.00; File No. 1–1281; Securities Exchange Act of 1934 Section 12(d).

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 (the "Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

1. Napco Industries, Inc. (the "Company") common stock became listed and registered on Amex on January 13, 1958, and, as of December 10, 1979, also became listed and registered on the New York Stock Exchange, Inc. ("NYSE"). On the latter date, Amex suspended trading in the issue pursuant to Rule 12d2–1 of the Act.

2. The Company determined that the direct and indirect costs and the possibility of market fragmentation do not justify maintaining listings of the shares on both the Amex and NYSE.

This application relates solely to withdrawal of the common stock from listing and registration on the Amex and shall have no effect upon the continued listing of such stock on the NYSE. The Amex has posed no objection in this matter.

Any interested person may, on or before January 30, 1980, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. An order granting the application will be issued after the date mentioned above, on the basis of the application and any other information furnished to the Commission, unless it orders a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-2330 Filed 1-23-80; 8:45 am]

BILLING CODE 8010-01-M

[Release 34-16508; File No. SR-NASD-79-14]

National Association of Securities Dealers, Inc.; Proposed Rule Change by Self-Regulatory Organization

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94–29, 16 (June 4, 1975) notice is hereby given on December 4, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Change

Text of Proposed Rule Change

The following is the full text of a proposed amendment to the Uniform Practice Code of the National Association of Securities Dealers, Inc. (Association). This amendment constitutes a completely new section of the Uniform Practice Code. New languager is underlined:

Section 64: Liability for Uncompared Transactions

(a) All Association members which are participants, as defined in section 3(a)(24) of the Securities Exchagne Act of 1934, or clear through a participant in a registered clearing agency with a continuous net settlement capability shall be subject to this section.

(b) A participant which is an Association member or any participant clearing for a firm which is an Association member shall have no further liability for an over-the-counter transaction which it submits for comparison to a registered clearing agency with a continuous net settlement capability either for the Association member participant's own account or for the account of an Association member, if the transaction does not compare within fifteen (15) business days after the trade date. "No further liability" shall mean that, after fifteen (15) business days after the trade date of the transaction, the submitting participant shall have no obligation to make delivery if the transaction was a sale, or no obligation to receive and pay for delivery, if the transaction was a buy. Notwithstanding this, the submitting participant and the offsetting participant shall not be prevented from continuing, after fifteen (15) business days after the trade date, to take any available steps to compare the transaction.

(c) During the period between the trade date of the transaction and fifteen (15) business days thereafter, the submitting participant shall in good faith utilize all the rules and procedures of the respective registered clearing agencies to compare the transaction and shall additionally follow the usual industry practices to do so.

(d) The submitting participant during and after the period of the trade date and the fifteen (15) business days thereafter shall keep and preserve adequate records pursuant to applicable Securities and Exchange Commission rules in order to identify the transaction and its disposition.

Purpose of Proposed Rule Change

The proposed amendment to the Uniform Practice Code will accomplish the following:

The OTC comparison process at clearing corporations is the activity whereby brokers on both sides of a trade submit their OTC member to member trade information to the clearing agency to ascertain whether the trade information matches. If the purchasing and selling participants submit matching trade information there is a comparison of the trade. If one side fails to submit trade information or inaccurate trade information is submitted, an uncompared trade results. In addition, clearing corporations have procedures describing the steps to be taken to adjust the uncompared trade status to compared trade status. However, these procedures, as well as street practice, fail to provide an ultimate resolution for uncompared trades after the usual steps have been exhausted. Usually, the reason one side fails to submit to comparison is benign; however, occasionally the inaction is based on the desire of one party to unfairly position themselves to their financial advantage during the period of uncertainty (e.g., if the quoted price declines, they fail to bring the trade in for comparison). The proposed section fills the gap in existing practices and procedures by removing the confusion and uncertainty that currently exists in these instances and reducing any resultant opportunity to take unfair advantage.

Proposed section 64 is designed to establish an acceptable resolution for uncompared or problem trades after a reasonable amount of time, i.e., fifteen (15) business days, after the trade date. Under the proposed section, members are given protection against future financial liability after the 15 business day period, but are also permitted after this period to use any available steps to compare the trade. Members may also use any available grievance procedure, including arbitration, to resolve any dispute which may arise in connection with the proposed rule.

Basis Under the Act for Proposed Rule Change

Section 15A(b)(6) of the Act provides in pertinent part that the rules of the Association be designed "to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating,

clearing, settling, processing information with respect to, and facilitating transactions in securities. . . ." section 17A(a)(1) of the Act states the Congressional findings that the "prompt and accurate clearance and settlement of securities transactions . . . are necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors" and that "[i]nefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors." The Commission is directed by section 17A(a)(2) of the Act "to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities" and to carry out the aforementioned Congressional findings. The proposed amendment will facilitate the statutory objectives stated hereinabove by eliminating the uncertainty which relates to an uncompared trade after a reasonable period of time has elapsed, thereby facilitating the work of registered clearing agencies and encouraging the prompt comparison of all trades. Specifically, it will promote just and equitable principles of trade, coordinate the prompt, accurate and efficient clearing and settling of securities transactions and facilitate securities transactions.

Comments Received From Members, Participants or Others of the Proposed Rule Change

Because Article XIV, Section 1 of the Association's By-Laws authorizes the Board of Governors alone to prescribe the rule amendments proposed herein, comments of the membership on the proposed amendment were not solicited nor received.

Burden on Competition

The proposed rules will provide greater certainty in the securities processing system and otherwise will meet the statutory goals of promoting just and equitable principles of trade, coordination in the prompt, accurate and efficient clearing and settling of securities transactions and facilitating securities transactions in general. The Association does not perceive any burden on competition resulting from the proposed rule change.

On or before February 28, 1980, or within such longer period (i) as the Commission may designate up to ninety (90) days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six (6) copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of the filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before February 14, 1980.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

January 16, 1980.

[FR Doc. 80-2329 Filed 1-23-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-16514; File No. SR-NSCC-79-18]

National Securities Clearing Corp.; Proposed Rule Changes by Self-Regulatory Organization

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 14 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on January 3, 1980, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change, which shall only be effective for one year from the date of publication in the **Federal Register**, consists of the procedures attached hereto as Exhibit 1, which procedures describe how National Securities Clearing Corporation (NSCC) will now effect borrowing of securities to meet system needs.

Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change is as follows:

NSCC's general corporate powers permit NSCC to borrow securities. NSCC presently borrows securities to meet certain needs of its system to clear and settle securities transactions. Situations arising under NSCC's Rules where such borrowing occurs include the Order Out Service (Section VI of the SCC Division Procedures) and CNS buy-ins (Section 7 of Rule 11 of the SCC Division).

NSCC is automating the procedures attendant to the actual mechanics of borrowing securities under these circumstances in the manner detailed in the attached procedures.

The proposed rule change relates to NSCC's capacity to facilities the prompt and accurate clearance and settlement of securities transactions for which it is responsible by providing specific procedures to be followed in connection with NSCC borrowing securities, under existing authority, to meet the needs of the NSCC system for clearance and settlement. All participants were advised by Important Notice dated November 23, 1979 of the proposed procedures.

No comments on the proposed rule change have been received.

The Corporation does not perceive that the proposed rule change would constitute a burden on competition.

The foregoing rule change has become effective, pursuant to section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions

should refer to the file number referenced in the caption above and should be submitted on or before February 14, 1980.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

January 18, 1980.

Exhibit 1.—NSCC Automated Stock Borrow Procedures

In the course of daily operations, NSCC's CNS System often has a priority need for stock (or bonds) that exceeds the shares made available via participant deliveries to clearing. This need can arise from several sources, including the satisfaction of participants priority requests for allocation, buy-ins submitted by participants, and the need to deliver against omnibus positions with other clearing corporations created as a result of interface transactions.

In order to improve the efficiency of the clearing system in dealing with these situations, NSCC's Board has authorized the implementation of limited automated stock borrow procedures (the Stock Borrow Program) to satisfy priority needs for stock that are not filled via normal deliveries from participants.

Firms wishing to participate in the program will notify NSCC each day of the securities they have on deposit at DTC that are available to be borrowed by the Clearing Corporation. After NSCC's nighttime processing of regular deliveries, any priority needs remaining unsatisfied will be borrowed from participants. Any shares borrowed will be entered into a special CNS sub-account and the participant will be advanced the full market value of the shares borrowed until they are returned. Borrowed stock will be returned through normal long allocation against the special sub-account as shares become available.

More specifically, the processing steps will be as follows:

1. Each day, firms wishing to participate in the program will inform NSCC of the number of shares of each security in their general unpledged account at DTC that are available to be borrowed. This information, in the form of blotters, cards or magnetic tape, must be submitted to the Clearing Corporation by the time set by the Clearing Corporation. To facilitate the borrowing of physical securities for the settlement of interface balance orders, NSCC will also accept availability information on non-DTC eligible securities that are in the participant's possession. Data to be submitted to indicate availability will be broker number, CUSIP number, available shares, and a location code to indicate whether DTC or physical. Availability information submitted earlier in the day can be modified up until the cut-off time set by the Clearing Corporation by completing and returning a special change form.

2. After regular nighttime allocation processing, NSCC will attempt to borrow any priority needs for stock that still remain unsatisfied. Borrowing will be done versus the participants that have indicated an availability in each security. The full amount indicated as available by a participant will be untilized prior to borrowing anything from the next selected participant in sequence.

3. When stock is borrowed, NSCC will create miscellaneous activity updates to the participant's CNS account to record the borrow. The number of shares borrowed will be journaled short against the participant's 9000 sub-account and long versus the participant's 6000 sub-account. A CNS short cover from the participant's 9000 sub-account will automatically occur against the shares on deposit in its DTC account, thus advancing the participant the market value of the stock. The long position in the participant's 6000 sub-account will reflect the shares borrowed by NSCC, and will be marked to the market daily.

4. Shares borrowed will be paid back, and the participant charged back at current market prices, through normal allocation to the participant's 6000 sub-account. Borrows will be returned when regular short deliveries for a day exceed all priority needs and all regular fails of the same age or older.

5. In addition to the regular return of borrowed stock, the Stock Borrow Program will provide a priority close-out procedure where a participant requires the return of securities borrowed by NSCC in order to meet the "customer securities segregation" requirements of SEC Rule 15c3-3. In such instances, members will issue manual recall instructions to NSCC and put themselves on high allocation priority. If the borrow has not been returned by the fifth day after the participant submits the recall instructions, the broker may initiate buy-in procedures by submitting a Notice of Buy-In.

6. The only fees to participants for this program will be normal short cover (when a borrow is made) and long allocation (when a borrow is returned) charges.

[FR Doc. 80-2336 Filed 1-23-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-16507; File No. SR-NYSE-79-49]

New York Stock Exchange, Inc.; Proposed Rule Change by Self-Regulatory Organization

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on December 5, 1979, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission a proposed rule change as follows:

NYSE's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed changes to Article XI, Sections 3, 5(a) and 5(b) of the NYSE Constitution, and to NYSE Rules 313, 314.12 and 475, the proceeds of the transfer of a membership of an equity member (one of the 1366 seatholders), who is associated as a member with a member organization, will no longer be subjected by Exchange Rule to the claims of all creditors of such member organization, but will continue to be available for sums owed the Exchange and debts arising from Floor contracts.

NYSE's Statement of the Purpose of the Proposed Rule Change

Pursuant to the present so-called "use and proceeds" requirement, each equity member who is associated with a member organization as a member is required to agree in writing, in a document filed with the Exchange, that he contributes the use of his membership to the organization and that, insofar as may be necessary for the protection of creditors of the organization and subject to the Constitution and Rules of the Exchange, the proceeds of the transfer of his membership shall be an asset of the member organization. The proposed rule change amends the requirement, to remove the claims of creditors of member organizations from its scope, thereby limiting its applicability to sums owed the Exchange and debts arising from Floor contracts of the member and any member organization with which such member is associated.

The Exchange believes that the amendment is warranted by the changing nature of the Exchange community and securities industry in general for the following reasons:

(1) Annual and leased memberships are not subject to the "use and proceeds" requirement because they are not transferrable and generate no proceeds to be placed at the risk of a member organization's business. Instead, they are currently required to satisfy a $25,000 financial responsibility requirement which is available exclusively for sums due the Exchange or arising from Floor contracts. Third party creditors are not beneficiaries of this financial responsibility requirement. The resulting unequal treatment of different categories of membership would be alleviated by the proposed amendments.

(2) The Exchange does not feel it should be placed in the position of determining the validity of general creditor claims and establishing priorities for payment. It believes such claims are more properly disposed of by the courts.

(3) The creation of the Securities Investor Protection Corporation (SIPC) as well as industry wide standards such as the SEC Uniform Net Capital Rule, provide customers with effective and uniform protection.

(4) The exposure of a membership to the full risk of a member organization's

business, i.e. to matters which extend beyond its direct relationship with the Exchange or which directly arise from Floor contracts, is more properly a business decision to be determined by negotiation between a member and his member organization.

Such determination should more appropriately be made on a voluntary rather than a compulsory basis.

In addition to the above substantive changes to the "use and proceeds" requirements, the proposed rule change would make certain minor technical changes to Article XI of the NYSE Constitution and to NYSE Rule 313.

NYSE's Statement of the Basis Under the Act for the Proposed Rule Change

The bases under the Act for the proposed Constitutional and Rule changes are Sections 6(b)(2) and 6(b)(5). As indicated above, inequities presently exist in the application of the "use and proceeds" requirement among different categories of Exchange membership. This is likely to cause reluctance on the part of certain equity members to associate themselves or continue association with a member organization. The proposed change would alleviate these inequities and remove impediments to members' association and continuation of association with member organizations.

The present inequities in the application of the "use and proceeds" requirement between equity and annual/lessee members may be inconsistent with Section 6(b)(5) in that unfair discrimination among the different categories of Exchange members is likely. The proposed change would remove this impediment. Determining the validity of general creditor claims and establishing priorities for payment is a matter which should more properly be governed by operation of law rather than Exchange Rule. Such determinations are not related to the purposes of the Act or the administration of the Exchange. In addition, whether or not a membership is placed fully at the risk of a member organization's business is a business decision properly to be determined by negotiation between a member and his organization which also does not relate to the purposes of the Act or the administration of the Exchange.

NYSE's Statement on Comments Received from Members, Participants or Others

No comments were solicited or received by the NYSE with respect to the Constitutional or Rule amendments.

NYSE's Statement of Burden on Competition

The NYSE believes that the proposed rule change imposes no burden on competition.

On or before February 28, 1980, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before February 14, 1980.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

January 16, 1980.

[FR Doc. 80-2184 Filed 1-23-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-16512; File No. SR-OCC-30-1]

Options Clearing Corporation; Proposed Rule Change By Self-Regulatory Organizations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on January 3, 1980, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would delete certain obsolete provisions in OCC Rules 803 and 804, dealing with assignment and allocation of exercise notices, and would set forth in the form of a rule, OCC's policy of not assigning exercise notices to short positions for which closing transactions have been executed.

Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change is as follows:

The primary purpose of the proposed rule change is to delete certain obsolete provisions from OCC Rules 803 and 804, which deal with the assignment and allocation of exercise notices, respectively.

Rule 803, which requires OCC to assign exercise notices to Clearing Members on a random basis, currently permits OCC to depart from a purely random assignment procedure in two respects. Under Rule 803(a), OCC may use its best efforts to assign block-size exercise notices (25 or more contracts) to block-size short positions, and to assign exercise notices of less than block size to short positions of less than block size. Under Rule 803(b), OCC may classify short positions, for assignment purposes, into separate sub-groups based on form of margin (*i.e.*, specific deposits, escrow deposits, etc.). OCC does not currently utilize the assignment procedures contemplated by Rules 803(a) and (b), and has no intention of doing so within the foreseeable future. OCC therefore proposes to delete those provisions.

In addition, the proposed amendment to Rule 803 would specifically set forth, in the form of a rule, OCC's policy (disclosed at p. 28 of OCC's prospectus dated October 29, 1979) of not assigning exercise notices to short positions for which closing transactions have been executed and are awaiting settlement, but have not yet reached settlement.

Rule 804, which governs the allocation of exercise notices by Clearing Members, currently requires that exercise notices be assigned on a first in, first out basis, a random selection basis, "or another allocation method that is fair and equitable . . . and consistent with Exchange Rules." In response to paragraph I.A.1.m. of Securities Exchange Act Release No. 15575 (February 22, 1979), the Exchanges have each filed proposed rule changes that would prohibit Exchange members from using any allocation method other than first in, first out or random

selection. Upon approval of those rule changes, the reference in OCC's Rule 804 to other allocation methods will become obsolete. OCC therefore proposes to delete that reference.

The proposed rule change relates to the protection of investors and the public interest.

Comments were not and are not intended to be solicited with respect to the proposed rule changes.

OCC does not believe that the proposed rule changes would impose any burden on competition.

On or before February 28, 1980, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C., 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before February 14, 1980.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

January 17, 1980.

Exhibit 1.—Text of Proposed Rule Change

Amendment to Rule 803[1]

Assignment of Exercise Notices to Clearing Members

Rule 803. Exercise notices accepted by the Corporation shall be assigned in accordance with the Corporation's procedures of random selection to Clearing Members with open short positions in the series of options involved, provided that: [the Corporation may:

(a) use its best efforts to assign an exercise notice of block size to a Clearing Member with an open short position of block size and to assign an exercise notice of less than block size to a Clearing Member with an open short position of less than block size;

(b) classify each short position into separate sub-groups based on the form of margin (i.e., escrow deposits, specific deposits or other); and

(c)] *(a) the Corporation may* assign an exercise notice to a Clearing Member in respect of an opening writing transaction made by such Clearing Member on the day on which the exercise notice was accepted by the Corporation[.]; *and*

(b) the Corporation shall not assign an exercise notice to a Clearing Member in respect of any open short position after the Corporation has received a report of a matched trade for a closing purchase transaction which, upon acceptance by the Corporation, will eliminate such short position, unless and until such closing purchase transaction is rejected by the Corporation.

[As used herein an exercise notice in respect of 25 or more option contracts of the same series shall be deemed to be of block size and that portion of an open short position that resulted from one Exchange transaction in respect of 25 or more option contracts of the same series shall be deemed to be of block size.

Subject to the provisions of the By-Laws, exercise notices accepted by the Corporation shall be assigned at or before 7:00 A.M. Chicago Time (8:00 A.M. Eastern Time) on the following business day. Assignments shall be dated and effective as of such following business day. A Clearing Member to which an exercise notice is assigned shall be notified thereof, and the Clearing Member submitting such exercise notice shall (subject to the provisions of Rule 913) be notified of the identity of the Assigned Clearing Member, through deposit of Delivery Advices in their respective locked boxes as soon as practicable after such notice is assigned by the Corporation.

Amendment to Rule 804[2]

Allocation of Exercise Notice

Rule 804. Each Clearing Member shall establish fixed procedures for the allocation of exercise notices assigned in respect of short positions in the Clearing Member's accounts to specific option contracts included in such short positions. The allocation shall be on a "first in, first out" basis[,], *or* on a basis of random selection [, or another allocation method that is fair and equitable to the persons for whom such accounts are maintained and] consistent with Exchange Rules. During the term of any restriction imposed on a Clearing Member pursuant to Rule 305, the Chairman or the President may require the Clearing Member to report to the Corporation, not later than 8:00 A.M. Central Time (9:00 A.M. Eastern Time) on each business day, the name and address of each writer to whom the Clearing Member allocated an exercise notice assigned to the Clearing Member on the preceding business day. Such reports shall indicate, for each writer, the series of options for which an exercise notice was allocated and the number of contracts included in the allocation, and shall state whether any specific deposit or escrow deposit has been made in respect of such writer's short position in such series of options.

[FR Doc. 80-2335 Filed 1-23-80; 8:45 am]

BILLING CODE 8010-01-M

[1] The only prior rule filings under 19b-4 with respect to rule 803 were File No. SR-OCC-75-2, approved in Release No. 34-12186 (March 10, 1976) and File No. SR-OCC-76-8, approved in Release No. 34-12937 (October 29, 1976).

[2] The only prior rule filings under 19b-4 with respect to Rule 804 were File No. SR-OCC-75-6, approved in Release No. 34-12060 (January 28, 1976) and File No. SR-OCC-78-5, approved in Release No. 34-16180 (September 11, 1979).

[Release No. 34-16515; File No. SR-PSE-79-18]

Pacific Stock Exchange, Inc.; Proposed Rule Change By Self-Regulatory Organization

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-24, 16 (June 4, 1975), notice is hereby given that on December 18, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Exchange's Statement of the Terms of Substance of the Proposed Rule Change

Equity Floor Procedure Advice 1-A

Subject: Floor Decorum

In accordance with the Basic Principles, Policies, and Procedures adopted by the Exchange to facilitate trading on its Equity Trading Floors, the Joint Floor Trading Committee has directed that all Trading Floor Personnel wear appropriate business attire. It is, therefore, necessary that the following requirements be adhered to:

(1) *All male floor personnel shall wear appropriate slacks, shirt, tie and appropriate footwear.*

(2) *All female floor personnel shall wear either an appropriate dress, coordinated pantsuit, or skirt and blouse/sweater and appropriate footwear.*

(3) *Sun dresses, blue jeans, tank top shirts, tennis shoes, beach sandals or similar leisure attire shall not be considered appropriate business attire.*

The Joint Floor Trading Committee with the approval of the Board of Governors has authorized the staff of the Exchange to implement, enforce and maintain a Fine Schedule for noncompliance with the Policy requiring male Trading Floor Personnel to wear a tie at all times while on the Trading Floor as follows:

First Offense, $25.00.
Second Offense, $100.00.
Third and Subsequent Offenses, $500.00.

In the event that a Floor Official determines that the policies and procedures adopted by the Exchange have been violated he may issue a Floor Citation which (1) will apprise the person accused of violating Exchange rules and/or procedures of the offense charged, and (2) the Floor Official will ask the person to indicate by his signature on the Citation whether he consents to the imposition of the fine set forth on the Citation.

A Floor Official may in his discretion request the Compliance Department to issue a Floor Citation in accordance with the procedure set forth in this rule.

The following procedures apply for persons who do not consent to the imposition of the fine set forth on the Floor Citation:

(a) *Submission of Application to Exchange.—A person who does not consent to the imposition of a fine set forth on a Floor Citation and who desires to have an opportunity to be heard with respect to such action or to have such action reviewed shall file a written application with the Secretary of the Exchange within five days after such action has been taken. The application shall state the action complained of, the specific reasons why the applicant takes exception to such action, and the relief sought. In addition, the application shall indicate whether the applicant requests a hearing in connection with the action taken by the Exchange. If the applicant does not request a hearing, the application shall be considered a request for review only.*

(b) *Procedure Following Application for Hearing and Review:*

(1) *Applications for hearing and review in connection with the issuance of Floor Citations shall be referred to the Floor Trading Committee of the Exchange empowered with the authority to review the matter. The Committee shall appoint a hearing panel composed of three members of the Committee. The panel so appointed shall be furnished with all material considered by the Exchange in connection with its initial action.*

(2) *The decision of the panel following the hearing shall be made in writing and shall be sent to the persons requesting a hearing or review. Such decision shall contain a concise statement setting forth the specific grounds on which the decision of the panel is based as well as a statement setting forth the reasons supporting the conclusions of the panel.*

The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of the advice is to prescribe standards for appropriate dress and to set forth in specific terms the amounts of fines to be imposed on male Floor personnel for failure to wear ties while on the trading floor.

The advice has been adopted in order to further promote just and equitable principles of trade as set forth in section 6(b)(5) of the Securities Exchange Act of 1934 as amended. The procedures set forth will further assure the maintenance of a fair and orderly market and the protection of investors and the public interest by promoting public confidence in the operations of the Exchange.

Comments have neither been solicited nor received from members, participants or others on the proposed rule change.

The proposed rule change imposes no burden on competition.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before February 14, 1980.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

January 18, 1980.

[FR Doc. 80-2337 Filed 1-23-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-16506; File No. SR-PHLX 79-14]

Philadelphia Stock Exchange, Inc.; Proposed Rule Change by Self-Regulatory Organization

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 June 4, 1975, notice is hereby given that on December 21, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Exchange's Statement of Terms and Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. hereby proposes to amend, pursuant to PHLX Rule 1058, the Regulation and Assessment Schedule.

Basis and Purpose Under the Act for Proposed Rule Change

The purpose of the proposed rule change is to provide for the general health, safety, and welfare of those who work on the PHLX options trading floor by prohibiting smoking at all times and alcoholic beverages during regular business hours.

The proposed rule relates solely to the working conditions on the PHLX options trading floor and is not inconsistent with the Securities Exchange Act of 1934 ("Act").

Comments were neither solicited nor received concerning the proposed rule change.

The PHLX believes that the proposed rule change does not impose any burden on competition.

The foregoing rule change has become effective, pursuant to section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Secuirities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 "L" Street, N.W., Washington, D.C.

Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before February 14, 1980.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

January 16, 1980.

[FR Doc. 80-2333 Filed 1-23-80; 8:45 am]

BILLING CODE 8010-01-M

[Release 11021; (812-4568)]

Putnam Daily Dividend Trust, et al.; Notice of Filing of Application Pursuant to Section 17(b) of the Act To Exempt a Proposed Merger From Section 17(a) of the Act, Pursuant to Section 17(d) of the Act and Rule 17d-1 Thereunder To Permit Participation in Such Merger and Pursuant to Section 6(c) of the Act To Exempt an Issuance of Securities From Rule 22c-1 Thereunder

January 15, 1980.

Notice is hereby given that Putnam Daily Dividend Trust ("Putnam"), 265 Franklin Street, Boston, Massachusetts 02110, and Trinwall Cash Reserve, Inc. ("Trinwall"), 61 Broadway, New York, New York 10006, both open-end, diversified management investment companies registered under the Investment Company Act of 1940 ("Act"), Marsh & McLennan Management Company ("Marsh & McLennan") and Eberstadt Fund Management, Inc. ("Eberstadt") (collectively "Applicants") filed an application on November 9, 1979, and an amendment thereto on January 7, 1980, for an order (1) pursuant to section 17(b) of the Act, exempting the proposed purchase by Putnam of the assets of Trinwall from the provisions of section 17(a) of the Act, (2) pursuant to section 17(d) of the Act and Rule 17d-1 thereunder, permitting Marsh & McLennan and Eberstadt to assume certain expenses and liabilities of Putnam and Trinwall incurred in connection with the transaction, and (3) pursuant to section 6(c) of the Act, exempting the issuance of Putnam shares from Rule 22c-1 under the Act. 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.

Applicants represent that, on September 30, 1979, the total net assets of Putnam were approximately $51 million. Putnam's investment adviser is The Putnam Management Company, Inc. ("Putnam Management"), which is a wholly-owned subsidiary of Marsh & McLennan, a holding company. According to the application, Putnam Management charges Putnam a fee which, on an annual basis, is .5 of 1% of Putnam's average net assets but that during Putnam's start-up period, Putnam Management has agreed voluntarily to limit Putnam's expenses to .75% of average daily net assets for each year, or shorter period, if such limitation is terminated. For the fiscal year ending December 31, 1978, Applicants state that the compensation payable by Putnam to Putnam Management was reduced from $68,049 to $4,764 because of such expense limitation. The application states that Putnam's investment objectives is to seek a high rate of current income consistent with preservation of capital and maintenance of liquidity.

Applicants further represent that, on September 30, 1979, the total net assets of Trinwall were approximately $17 million. Trinwall's investment adviser is Eberstadt, which is also a wholly-owned subsidiary of Marsh & McLennan. According to the application, Eberstadt charges Trinwall a fee, which on an annual basis, is .5 of 1% of the first $100 million of average net assets but that through July 31, 1980, Eberstadt has undertaken to reduce its fee or reimburse Trinwall to the extent that for any month Trinwall's expenses exceed one-twelfth of .75% of average daily net assets. According to the application, for fiscal years ending July 31, 1977, 1978 and 1979, Eberstadt absorbed expenses of Trinwall amounting to $49,849, $39,787 and $39,432, respectively. Eberstadt has advised Trinwall that it is unwilling to continue to manage Trinwall's assets on the same basis because of the expenses Eberstadt has been required to absorb. The application states that Trinwall's investment objective is to preserve capital and to maximize liquidity and current income yield.

Applicants represent that they have entered into an agreement whereby Putnam proposes to acquire substantially all of the assets of Trinwall (expected to exceed 95%) in exchange for Putnam shares. Applicants state that Trinwall will dissolve and liquidate following the exchange. Trinwall will distribute to its shareholders, in exchange for their shares of Trinwall, the Putnam shares it receives upon the transfer of its assets to Putnam, together with the assets not transferred, if any. Applicants state that each Trinwall shareholder will be entitled to receive that portion of the Putnam shares to be received by Trinwall that the number of Trinwall shares owned by each shareholder bears to the number of Trinwall shares outstanding on the exchange date. The exchange will be done on the basis of net asset value and such computation with respect to Trinwall's assets will be made at the close of business on the business day next preceding the exchange date. The application states that Putnam's shares have a constant net asset value of $1.00 per share. According to the application, the value of the Trinwall assets to be acquired by Putnam and the value of Putnam shares to be issued therefor will be determined in the manner in which Putnam determines the value of its own assets. According to the application, no adjustments will be made in the basis of the exchange to account for realized and unrealized gains and losses because (1) neither Trinwall nor Putnam experiences significant realized or unrealized gains or losses on its investments and (2) each fund's daily declaration of net income includes all realized short-term gains and losses on each fund's portfolio investments. Applicants state that the reorganization will be submitted to Trinwall's shareholders for approval. Applicants represent that the reorganization is subject to several further conditions, including satisfactory opinions of counsel and any necessary approvals by the Commission.

Applicants state that Eberstadt will reimburse Putnam and Trinwall for expenses incurred in connection with the transaction other than expenses which Putnam customarily incurs in connection with the issuance and sale of its shares and other than expenses of Trinwall incident to an annual shareholder meeting. Eberstadt has also agreed to indemnify and save harmless Trinwall and its officers, directors and shareholders against all expenses, losses, claims, damages and liabilities arising before or after the exchange date, other than any Trinwall liability or obligation reflected on its statement of net assets as of the valuation date. Applicants state that there are no such known expenses, losses, claims, damages or liabilities. The application further states that, notwithstanding the foregoing, Eberstadt shall not be obligated to make aggregate payments pursuant to the above indemnity to the extent such payments, together with all payments made by Eberstadt with

respect to expenses of Trinwall, exceed the lesser of (a) $1,000,000 or (b) the excess of (i) the fair market value of the Trinwall assets conveyed to Putnam over (ii) 80% of the fair market value of all the properties and assets of Trinwall immediately prior to the exchange. Eberstadt has also agreed to indemnify, without limit, Putnam and Trinwall with respect to state securities laws liabilities, if any, although no such liabilities are known to exist. The application states that Marsh & McLennan will unconditionally guarantee Eberstadt's performance of its obligations noted above. The application states further that no liabilities for which Eberstadt has agreed to indemnify any person as aforesaid, are known to exist.

Section 17(a) of the Act provides that it is unlawful for any affiliated person of a registered investment company or affiliated person of such person, acting as principal, knowingly to sell to or purchase from such company any security or other property. Section 17(b) of the Act, however, provides that the Commission may exempt a proposed transaction from section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Section 2(a)(3) of the Act provides, in part, that an affiliated person of another person means any person directly or indirectly controlling, controlled by, or under common control with, such other person. Applicants state, without conceding, that Putnam and Trinwall may be affiliated persons of each other because the investment advisers of each fund are wholly-owned subsidiaries of Marsh & McLennan.

Applicants submit that the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person concerned. Applicants submit that the exchange will be done on the basis of the asset values of Putnam and Trinwall, that the costs of the transaction will be borne by Eberstadt, as described above, and that Marsh & McLennan will guarantee such obligations of Eberstadt's. Applicants also assert that Trinwall's directors, including a majority of directors who are not interested persons of Trinwall or Eberstadt, have determined that the transaction is in the best interests of Trinwall's shareholders. It is submitted that such shareholders will become shareholders in a fund approximately three times larger than Trinwall and that such greater size will tend to result in lower expense ratios for Trinwall shareholders. Applicants state further that Trinwall shareholders will benefit indirectly from greater diversification possible by Putnam's larger portfolio. According to the application, the Putnam trustees, including a majority who are not interested persons of Putnam or Putnam Management, have determined that the transaction is in the best interests of Putnam and will not result in any dilution of existing shareholders' interests. Applicants assert that the transaction will increase the size of Putnam's assets by approximately one-third and will result in certain economies of scale, tending to reduce Putnam's expense ratio. Applicants submit that the proposed merger is consistent with the investment objectives and policies of Putnam and Trinwall.

Section 17(d) of the Act and Rule 17d–1 thereunder prohibit, in part, any affiliated person of a registered investment company or any affiliated person of such person, from effecting any transaction in which such investment company is a joint participant, unless an application has been filed with the Commission and has been granted by order. In passing upon such application, the Commission will consider whether the participation of such registered company in such arrangement, on the basis proposed, is consistent with the provisions, policies and purposes of the Act, and the extent to which such participation is on a basis different from, or less advantageous than, that of other participants. Section 2(a)(3) of the Act also provides, in part, that an affiliated person of an investment company means any investment adviser thereof.

Applicants state that Eberstadt and Putnam Management are affiliated persons of Trinwall and Putnam, respectively, and that since Eberstadt is also an affiliated person of Putnam Management, Eberstadt is an affiliated person of an affiliated person of Putnam. Applicants state further that Marsh & McLennan is an affiliated person of Eberstadt and Putnam Management and is thus an affiliated person of an affiliated person of Putnam and Trinwall. Applicants submit that Trinwall and Putnam may be deemed affiliated persons of each other.

Applicants submit that, as to the expense reimbursements, indemnification provisions and guarantee arrangements, summarized above, to the extent the participation by Putnam and Trinwall is different from that of Marsh & McLennan and Eberstadt and that of each other, Putnam's and Trinwall's participation is at least as advantageous as that of Marsh & McLennan and Eberstadt and that of each other. Accordingly, Applicants request that the Commission issue an order permitting the transaction to the extent necessary.

Section 22(c) of the Act and Rule 22c–1 thereunder prohibit registered investment companies from issuing redeemable securities except at a price based on the current net asset value of such securities which is next computed after receipt of an order to purchase. Section 6(c) authorizes the Commission, upon application, to exempt any transaction from any provision of the Act or any rule thereunder, if it finds that 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.

Putnam states that the valuation of Trinwall's assets will be determined as of the close of business on the business day next preceding the exchange date, which procedure may be in violation of Rule 22c–1. According to the application, such computation can be made only after the close of business when both portfolios can be fully valued. The application states that the computation of the value of Trinwall's shares at such time will not present any of the potential for abuse that Rule 22c–1 is intended to avoid. Applicants assert that the grant of the order requested is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the Act.

Notice is further given that any interested person may, not later than February 6, 1980 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 addresses stated above. Proof of such service (by affidavit, or in 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. 80-2328 Filed 1-23-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11022; (812-4567)]

Putnam Income Fund, Inc., et al.; Notice of Filing of Application Pursuant to Section 17(b) of the Act To Exempt a Proposed Merger From Section 17(a) of the Act, Pursuant to Section 17(d) of the Act and Rule 17d-1 Thereunder To Permit Participation in Such Merger and Pursuant to Section 6(c) of the Act To Exempt an Issuance of Securities From Rule 22c-1 Thereunder

January 15, 1980.

Notice is hereby given that The Putnam Income Fund, Inc. ("Putnam"), 265 Franklin Street, Boston, Massachusetts 02110, Trinwall Bond Fund, Inc. ("Trinwall"), 61 Broadway, New York, New York 10006, Marsh & McLennan Management Company ("M & M Management") 265 Franklin Street, Boston, Massachusetts 02110, and Eberstadt Fund Management, Inc. ("EFM"), 61 Broadway, New York, New York 10006, (collectively, "Applicants") filed an application of November 9, 1979, and an amendment thereto on January 7, 1980, for an order (1) pursuant to section 17(b) of the Act, exempting the proposed purchase by Putnam of the assets of Trinwall from the provisions of section 17(a) of the Act, (2) pursuant to section 17(d) of the Act and Rule 17d-1 thereunder, permitting M & M Management and EFM to assume certain expenses and liabilities of Putnam and Trinwall incurred in connection with the transaction, and (3) pursuant to section 6(c) of the Act, exempting the issuance of Putnam shares from Rule 22c-1 under the Act. 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.

Applicants state that, as of July 31, 1979, Putnam had net assets of approximately $172 million. Putnam's investment adviser is The Putnam Management Company, Inc. ("Putnam Management"), which is a wholly-owned subsidiary of M & M Management, a holding company.

Applicants state that, as of July 31, 1979, Trinwall had net assets of approximately $9.1 million. Trinwall's investment adviser is EFM, also a wholly-owned subsidiary of M & M Management. According to the application, EFM charges Trinwall a fee equal to .5 of 1% of the first $100 million of average net assets (which is reduced for average net assets in excess of $100 million); provided, however, EFM has undertaken that for the period through July 31, 1980, if Trinwall's total expenses for any month exceed one-twelfth of .75% of average daily net assets, EFM will reduce its fee or reimburse Trinwall by the amount of such excess. Applicants represent that, for Trinwall's fiscal years ending July 31, 1977, 1978 and 1979, EFM absorbed expenses of Trinwall of $26,793, $26,196 and $25,965, respectively. According to the application, EFM has advised Trinwall that, because of the expenses it has been required to absorb, it is unwilling to continue to manage Trinwall's assets.

Applicants state that pursuant to the Articles of Transfer and Agreement and Plan of Reorganization dated October 31, 1979 ("Agreement"), Putnam will acquire substantially all of the assets and properties of Trinwall in exchange for shares of Putnam and that, following the exchange of Trinwall's assets for Putnam's stock, Trinwall will dissolve and liquidate. Applicants further state that, as part of the liquidation distribution, Trinwall will distribute to its shareholders in exchange for their shares of Trinwall capital stock the Putnam shares it receives upon the transfer of its assets to Putnam, together with the assets which it has not transferred to Putnam, if any. The Agreement states that the value of the assets of Trinwall to be acquired by Putnam and the value of Putnam shares to be issued therefor will be determined by Putnam in the manner in which Putnam would determine the value of its own assets. The application states that the reorganization will be submitted for approval by the holders of a majority of the outstanding shares of Trinwall and that the acquisition would be consummated shortly thereafter. In addition to such approval, consummation of the reorganization is subject to other conditions, including satisfactory opinions of counsel, and any necessary approvals of the Commission.

The Agreement further provides that Putnam will not assume any liabilities of Trinwall in connection with the acquisition of Trinwall's assets and the subsequent dissolution of Trinwall or otherwise, but that, whether or not the transactions contemplated by the Agreement are consummated, EFM will pay, or cause to be paid, all expenses incurred by Trinwall and Putnam in connection with the reorganization, other than those expenses which Putnam customarily incurs in connection with the issuance and sale of its shares and except that EFM shall not be required to pay or cause to be paid those expenses of Trinwall incident to an annual meeting of shareholders involving the election of directors and appointment of auditors.

The Agreement also states that EFM will indemnify and hold harmless Trinwall and its directors, officers and shareholders against expenses, losses, claims, damages and liabilities relating to any liability or obligation of Trinwall existing on the exchange date or arising thereafter, other than any liability or obligation of Trinwall reflected in Trinwall's statement of net assets as of the valuation time and except that EFM shall not be obligated to make aggregate payments pursuant to the foregoing indemnity to the extent that such payments, together with all payments made by EFM with respect to expenses of Trinwall (as described above), exceed the lesser of (a) $1,000,000 or (B) the excess of (i) the fair market value of the properties and assets of Trinwall acquired by Putnam over (ii) 80% of the fair market value of all of the properties and assets of Trinwall immediately prior to the exchange. EFM will also indemnify and hold harmless Putnam and Trinwall against any expenses, losses, claims, damages, and liabilities incurred by Putnam or Trinwall relating to any violations or alleged violations by Trinwall, EFM or Putnam Fund Distributors, Inc. of any state securities laws.

The Agreement states that M & M Management will unconditionally guarantee the performance by EFM of its obligations as aforesaid. Applicants represent that no such liabilities, contingent or otherwise for which EFM has agreed to so indemnify any person are known to exist.

Section 22(c) of the Act and Rule 22c-1(a) thereunder prohibit registered investment companies from issuing redeemable securities except at a price based on the current net asset value of such securities which is next computed after receipt of an order to purchase.

Section 6(c) of the Act authorizes the Commission, upon application, to exempt any transaction from any provision of the Act or of any rule thereunder, if it finds that 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.

The Agreement contemplates that the assets of Trinwall and Putnam would be valued on a Friday and that the issuance of shares of Putnam in exchange for assets of Trinwall would occur on the following Monday. Thus, for purposes of the application only, Applicants submit that the "forward pricing" requirement of Rule 22c–1 may not be met.

Applicants contend that it would be impracticable to comply with Rule 22c–1, because the number of Putnam shares to be issued on the exchange date will be determined by dividing the net asset value per share of Putnam into the total net assets of Trinwall available for acquisition. Such computation can be made only after the close of business when both portfolios can be fully valued. Applicants further contend that valuation of Putnam's assets at the close of business on the business day next preceding the exchange date will be fair to the shareholders of Putnam and Trinwall, and will not present any of the potential for abuse that Rule 22c–1 is intended to avoid. Pursuant to section 6(c) of the Act, Applicants request that the Commission issue and order exempting Putnam from the provisions of Rule 22c–1 to the extent necessary to enable valuations to be made at the time set forth above.

Section 17(a) of the Act provides that it is unalwful for any affiliated person of a registered investment company, or any affiliated person of such an affiliated person, acting as principal, knowingly to sell to or purchase from such registered company any security or other property. Section 17(b) of the Act, however, provides that the Commission may exempt a proposed transaction from section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

Applicants assert that, under certain circumstances, it is possible that two or more investment companies having the same investment adviser, or investment advisers under common control, may be deemed to be affiliated persons of each other by virtue of section 2(a)(3)(C) of the Act. Putnam's and Trinwall's investment advisers are wholly-owned subsidiaries of M & M Management. Applicants state, however, that Putnam and Trinwall are managed separately by their respective investment advisers (EFM and Trinwall being located in New York and Putnam Managment and Putnam being located in Boston) without consultation with each other and have no directors or officers in common. Applicants further state that EFM and Putnam Management have no directors in common and, except for the Treasurer, Controller, Secretary and Assistant Secretary of each company (none of whom has responsibility for investments or related matters), have no officers in common. Nevertheless because Trinwall and Putnam might be deemed "affiliated persons" of each other and any disposition of portfolio securities by Trinwall to Putnam or any acquisition by Putnam of portfolio securities of Trinwall pursuant to the Agreement might be deemed to be prohibited by section 17(a) of the Act, Applicants, without admitting that Trinwall and Putnam are affiliated persons of each other, ask that the Commission exempt the transaction from the prohibition of section 17(a) of the Act pursuant to section 17(b) of the Act.

The terms of the Agreement provide that the acquisition of Trinwall's assets by Putnam shall be accomplished on the basis of the relative net assets values of the funds. Applicants represent that no adjustment is to be made in the computation of Putnam or Trinwall's net asset value on account of any relative differences between unrealized depreciation in each fund, or other relevant factors, it having been determined that there was no identifiable and quantifiable detriment to the shareholders of either fund that would warrant such adjustment. Applicants state that all costs of the transaction (with the exception of those expenses of Trinwall's incident to an annual meeting of shareowners involving the election of directors and appointment of auditors and those expenses of Putnam normally incurred in connection with the issuance and sale of its shares) will be borne by EFM, and that its obligation is guaranteed by M & M Management.

Applicants expect that the shareholders of Trinwall will benefit from certain economies of scale inherent in becoming shareholders of Putnam and, in addition, that Trinwall shareholders will indirectly benefit from the greater diversification of security holdings possible in Putnam's larger portfolio. Although the Trinwall shareholders who desire to make additional investments will experience an increase in sales charge, the Trinwall directors believe that the advantages to Trinwall shareholders outweigh any disadvantage represented by the increased sales charge for further investments.

Applicants state that the transaction is considered to be in the interest of the Putnam shareholders because (a) many of Putnam's expenses are fixed in nature and the increase in size of Putnam's assets by approximately 5% will tend to result in certain economies of scale tending to further reduce Putnam's expense ratio; (b) Putnam is currently in a net redemption posture with respect to the sale of its shares—the assets to be acquired from Trinwall will be useful in meeting such redemptions without the necessity of raising cash by selling off portions of large round lot units of bonds which are generally owned by Putnam; and (c) under current market conditions, the sale by Putnam of any securities acquired by Trinwall will result in the realization of losses which will be available to offset possible future realized gains at a time when Putnam's current carryforward losses will have expired. Applicants state that Putnam's directors, including a majority of its disinterested directors, have determined that the transaction is in the interests of its shareholders. Applicants assert that the proposed merger is consistent with the investment objectives and policies of both Putnam and Trinwall. Putnam's investment objective is to seek high current income consistent with what is believed to be prudent risk, while Trinwall's objective is to provide a high current income yield consistent with preservation of capital.

Applicants state that the Trinwall directors have evaluated certain policies and practices utilized by or available to Putnam in seeking its investment objective which differ from certain of Trinwall's policies and practices and do not believe that such policies and practices, in light of Putnam's record of performance, represent material differences in Putnam's investment objective as compared to that of Trinwall or are disadvantageous to Trinwall shareholders. Further, Trinwall's board of directors, including a majority of its disinterested directors, has determined that the proposed transaction is in the best interests of Trinwall.

Applicants assert that in accordance with section 17(b) of the Act, the terms

of the proposed transaction are reasonable and fair to Putnam and Trinwall and do not involve overreaching by any person concerned, and that the proposed transaction is consistent with the investment policies of each fund, and with the purposes of the Act.

Rule 17d–1 under the Act provides, in pertinent part, that no affiliated person of any registered investment company and no affiliated person of such person shall participate in, or effect any transaction in connection with a joint enterprise in which such registered investment company is a participant unless an application regarding such joint enterprise has been filed with the Commission and has been granted by an order. In passing upon such application, the Commission will consider whether the participation of such registered investment company is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of the other participants.

EFM and Putnam Management are affiliated persons of Trinwall and Putnam, respectively, under section 2(a)(3)(E) of the Act. Because EFM is also an affiliated person of Putnam Management under section 2(a)(3)(C) of the Act, it is an affiliated person of an affiliated person of Putnam. M & M Management is an affiliated person of EFM and Putnam Management under section 2(a)(3) (A) and (C) of the Act and is thus an affiliated person of an affiliated person of both Putnam and Trinwall. In addition, Applicants state that it is possible that Trinwall and Putnam may be deemed affiliated persons of each other.

Applicants assert that to the extent that Putnam's and Trinwall's participation in the transaction will be different from that of M & M Management and EFM and that of each other, Putnam's and Trinwall's participation will be at least as advantageous as that of M & M Management, EFM and that of each other. In this regard, Applicants state that, while M & M Management and EFM will be relieved indirectly and directly, respectively, of a management obligation which has proved unprofitable to fulfill, M & M Management and EFM, as described above, will bear substantially all the expenses of the transaction. Further, with respect to Putnam and Trinwall, Applicants consider the transaction to be advantageous to Putnam and Trinwall for the reasons set forth above. Accordingly, Applicants request that the Commission issue an order permitting the transaction to the extent necessary.

Notice is further given that any interested person may, not later than February 6, 1980 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 addresses 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. 80–2327 Filed 1–23–80; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 80–06]

Intent To Prepare an Environmental Impact Statement—Proposed Mississippi River Bridge, Gramercy-Wallace, St. James and St. John the Baptist Parishes, La.

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the U.S. Coast Guard, as lead agency, is preparing an Environmental Impact Statement (EIS) for the proposed bridge project over the Mississippi River at mile 146.0. The Corps of Engineers will be a cooperating agency.

This notice of intent is published as required by regulations of the Council on Environmental Quality in Title 40, Code of Federal Regulations, § 1501.7.

The proposed project involves construction of a truss-span bridge and uncontrolled access approaches, extending from LA 3127 on the west bank to U.S. 61 on the east bank, for a distance of 6.14 miles. Primary reason for the project is to greatly increase the safety of cross-river travel by eliminating the passenger/vehicular ferries currently operating on this reach of the river. Other reasons are to:

(a) Establish a dependable and fully available river crossing for use at any time.

(b) Realize increased mobility and reduced travel times for cross-river vehicular traffic, both private and public.

(c) Achieve a more equitable economic and social balance between the east bank and west bank communities of the river parishes of St. James and St. John the Baptist.

(d) Strengthen the bonds between portions of the river parishes separated by the Mississippi.

(e) Facilitate on-going commercial and industrial development on the west bank.

Significant issues to be evaluated, based upon the completed scoping process, include displacement of residents and disturbance of existing settlement patterns, changes in land use and traffic access patterns, taking of habitat, and impacts on cultural resources and navigation.

Alternates being considered are no-build; ferry removal; and, three alignment alternates, two downstream and one upstream. The alignment alternates are located at Reserve-Edgard, mile 137.5; Garyville-Columbia, mile 140.8; and, Paulina-Vacherie, mile 148.1. Each alignment alternate would involve a bridge and approaches similar to the proposed alignment.

The official responsible for the preparation of the EIS and to whom comments should be addressed is: Joseph Irico, Chief, Bridge Administration Branch, Eighth Coast Guard District, 500 Camp Street, New Orleans, Louisiana 70130. Telephone: FTS 682–2965; Commercial (504) 589–2965.

Dated: January 15, 1980.

W. E. Caldwell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc. 80–2271 Filed 1–23–80; 8:45 am]

BILLING CODE 4910–14–M

National Highway Traffic Safety Administration

National Accident Sampling System Advisory Committee; Establishment and First Public Meeting

Notice is hereby given of the establishment of the National Accident Sampling System (NASS) Advisory Committee under the sponsorship of the National Highway Traffic Safety Administration (NHTSA). The objectives of the Committee are to periodically review the status of the NASS program providing the Administrator, NHTSA, with guidance on highway safety data needs and making recommendations concerning NASS data collection, storage, retrieval, analysis, and future plans. The Committee is composed of members selected from among representatives from automobile manufacturers, insurance companies, the medical and legal professions, State enforcement and highway safety offices, highway safety researchers, statistical sampling experts, traffic engineers, State and local agencies responsible for the design, construction, and maintenance of highways, and other users of highway safety data.

The members appointed to the NASS Committee are: Susan P. Baker, Associate Professor, The Johns Hopkins School of Public Health, Baltimore, Maryland, who will be the Committee's Chairperson; Dr. B. J. Campbell, Director, Highway Safety Research Center, The University of North Carolina, Chapel Hill, North Carolina; John W. Garrett, Manager, Accident Research Division, Calspan Field Services, Inc., Buffalo, New York; Marie D. Eldridge, Administrator, National Center for Education Statistics, U.S. Department of Health, Education and Welfare, Washington, D.C.; Garrie John Losee, Deputy Associate Director, Cooperative Health Statistics System, National Center for Health Statistics, Hyattsville, Maryland; Jack L. Recht, Manager of the Statistics Department, National Safety Council, Chicago, Illinois; Dr. Basil Y. Scott, Statistician and Research Analyst, Education Department, Albany, New York; Harold L. Michael, Head, School of Civil Engineering, Purdue University, West Lafayette, Indiana; Woodrow W. Rankin, Director, Transportation and Safety Division, Highway Users Federation, Washington, D.C.; Lana R. Batts, Director, Economics and Planning, American Trucking Associations, Inc., Washington, D.C.; Ralph V. Durham, Director, Safety and Health Department, International Brotherhood of Teamsters, Washington, D.C.; Honorable John E. Moss, Chairman of the Board, First Commercial Bank, Sacramento, California; Archie G. Richardson, Jr., President, Automobile Owners Action Council, Washington, D.C.; Arline R. Rininger, Section Engineer, Supervisor of Field Accident Research, General Motors Corporation, Milford, Michigan; John Versace, Executive Engineer, Safety Research, Ford Motor Company, Dearborn, Michigan; Brian O'Neill, Vice President, Research, Insurance Institute for Highway Safety, Washington, D.C.; Dr. Brian D. Blackbourne, Deputy Chief Medical Examiner, D.C. Department of Human Resources, Washington, D.C.; Dr. Alan M. Nahum, Professor of Surgery/Chief, Division of Otholarynogology, University of California School of Medicine, San Diego, California; Dr. Julian A. Waller, Chairman, Department of Epidemiology and Environmental Health; University of Vermont, Burlington, Vermont; Thomas K. Wilka, Attorney, Burns, Hagen & Wilka, Sioux Falls, South Dakota; John J. Zogby, Deputy Secretary for Safety Administration, Pennsylvania Department of Transportation, Harrisburg, Pennsylvania; Gerald W. Clemons, Deputy Commissioner, California Highway Patrol, Sacramento, California; Thomas S. Smith, Superintendent, Maryland State Police, Pikesville, Maryland.

All meetings of the Committee will be open to the public. Notice of time and place and outline agenda of all meetings will be published in the **Federal Register** well in advance of all meetings.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. I), notice is hereby given of the first meeting of the NASS Advisory Committee to be held on February 25 and 26, 1980, at the Sheraton National Hotel, Columbia Pike and Washington Boulevard, Arlington, Virginia. The meetings will start at 9:00 a.m. on both days and the agenda will consist of NHTSA staff briefings on the NASS program status on the first morning, followed by special interest subcommittee meetings thereafter.

Attendance is open to the interested public, but limited to the space available. With the approval of the Chairperson, members of the public may present a written statement to the Committee at any time.

This meeting is subject to the approval of the appropriate DOT officials. Additional information may be obtained from the NHTSA Executive Secretary, Room 5221, 400 Seventh Street, S.W., Washington, D.C. 20590, telephone 202–426–2872.

Issued in Washington, D.C. on: January 21, 1980.

Wm. H. Marsh,

Executive Secretary.

[FR Doc. 80–2251 Filed 1–23–80; 8:45 am]

BILLING CODE 4910–59–M

National Highway Safety Advisory Committee; Field Trip

The National Highway Safety Advisory Committee's Special Study Group on Emergency Medical Services (EMS) is planning field trips to Atlanta, Georgia, on February 11; Omaha, Nebraska, on February 13; and Sacramento, California, on February 15. The members will meet with legislators; State EMS Directors and representatives of Fireman and Ambulance Associations (volunteer and paid); fire and police officials; safety committees, interested consumer groups and individuals. The members are exploring the feasibility of recommending that EMS be established as a third emergency service (police and fire being the other two), so that they can make recommendations to the U.S. Department of Transportation on future departmental policy regarding EMS.

A report on the field trips will be made by the Chairperson at the June meeting of the full Advisory Committee. The arrangements for the visits are being made by the appropriate NHTSA Regional Offices and the States Governors' Highway Safety Representatives.

These field trips are subject to the approval of the appropriate DOT officials.

Additional information may be obtained from the NHTSA Executive Secretary, Room 5221, 400 Seventh Street, S.W., Washington, D.C. 20590, telephone 202–426–2872.

Issued in Washington, D.C.: January 21, 1980.

Wm. H. Marsh,

Executive Secretary.

[FR Doc. 80–2252 Filed 1–23–80; 8:45 am]

BILLING CODE 4910–59–M

Midas Series 2000 Motorhomes; Rescheduling of Public Proceeding

On January 3, 1980 (45 FR 869), the NHTSA published notice of a public proceeding in the above-captioned matter, to be held on Wednesday, January 30, 1980. Due to prior commitments of the manufacturers and its attorneys, the NHTSA has rescheduled the proceeding for February 5, 1980 at 10:00 a.m. in room 2230, Department of Transportation Building, 400 7th Street, SW., Washington, D.C.

Interested persons are invited to participate through written or oral presentations. Persons wishing to make oral presentations are requested to notify Mrs. Gail Willis, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, room 6113, Nassif Building, 400 7th Street, SW., Washington, D.C. 20590, telephone 202–426–2832, before close of business on January 31, 1980.

(Sec. 113, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1402); delegations of authority at 49 CFR 1.51 and 49 CFR 501.8.)

Issued on January 15, 1980.

Lynn L. Bradford,

Associate Administrator for Enforcement.

[FR Doc. 80–1916 Filed 1–23–80, 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration

Technical Pipeline Safety Standards Committee; Notice of Advisory Committee Charter

This notice announces the renewal of the Technical Pipeline Safety Standards Committee under section 14 of the Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) and sets forth the new charter of the Committee prepared in accordance with section 9 of that Act.

The purpose of the Technical Pipeline Safety Standards Committee is to review proposed gas pipeline safety standards and report to the Associate Director for Pipeline Safety Regulation, on the technical feasibility, reasonableness, and practicability of each such proposal. The Committee may propose safety standards to the Associate Director for his consideration for gas pipeline facilities.

It has been determined that renewal of the Technical Pipeline Safety Standards Committee is in the public interest in connection with the performance of duties imposed by law on the Department under section 4 of the Natural Gas Pipeline Safety Act of 1968 (82 Stat. 720; 49 U.S.C. 1671 *et seq.*).

The new charter reflects recent amendments to section 4 of that Act made by the Pipeline Safety Act of 1979 (Pub. L. 96–129, November 30, 1979), in regard to Committee objectives and duties, qualification for membership, frequency of meetings, and compensation. In addition, the new charter contains administrative changes in regard to tenure of members and appointment of officers.

The charter of the Committee is set forth below.

Charter—Technical Pipeline Safety Standards Committee

1. *Purpose.* This charter of the Technical Pipeline Safety Standards Committee is prepared and renewed in accordance with the Federal Advisory Committee Act enacted October 6, 1972.

2. *Background.* Section 4 of the Natural Gas Pipeline Safety Act of 1968 (NGPSA) authorizes the establishment and prescribes the duties of the Technical Pipeline Safety Standards Committee. The Committee was established on January 2, 1969, by the appointment of 15 members. Since its establishment, the Committee has met from time to time to review and report on proposed Federal gas pipeline safety standards submitted to it by the Department.

3. *Sponsor.* The Office of Pipeline Safety Regulation is the Committee sponsor. The Associate Director for Pipeline Safety Regulation of the Materials Transportation Bureau is designated the Executive Director of the Committee and shall be the Department of Transportation (DOT) official authorized to call or adjourn meetings, approve the agenda, and otherwise monitor the Committee's meetings and progress.

4. *Committee Objectives and Duties.* The Associate Director for Pipeline Safety Regulation shall submit to the Committee for its consideration any notice of proposed gas pipeline safety standards published in the **Federal Register** (including both new standards and amendments to existing standards). Within 90 days after receipt by the Committee of any such proposal, the Committee shall prepare a report on the technical feasibility, reasonableness, and practicability of the proposal. Each report by the Committee, including any minority views, shall, if timely made, be published and form a part of the proceedings for the promulgation of standards. The Director, Materials Transportation Bureau, may prescribe a final standard at any time after the 90th day after a proposal's submission to the Committee, whether or not the Committee has reported on such proposal. The Committee may propose safety standards to the Associate Director for his consideration for gas pipeline facilities. The Associate Director shall not be bound by conclusions of the Committee, but in the event that the conclusions of the majority of the current members of the Committee are rejected, the reasons for rejection shall be incorporated in the preamble published with the final rule (NGPSA, Section 4, and 49 CFR 1.53). The Committee may also review and report on other matters related to the Department's gas pipeline safety rulemaking function as are presented by the Associate Director.

5. *Membership.*—a. The Committee shall be composed of 15 members, each of whom shall be appointed by the Secretary, after consultation with public and private agencies concerned with the technical aspect of the transportation of gas or the operation of pipeline facilities. Members shall be appointed on the basis of the experience in the safety regulation of the transportation of gas and of pipeline facilities, or their training, experience, or knowledge in one or more fields of engeering applied in the transportation of gas or the operation of pipeline facilities to evaluate gas pipeline safety standards, as follows:

(1) Five members shall be selected from Federal, State, or local governmental agencies, and two of the five shall be State commissioners selected after consultation with representatives of the national organization of State commissions;

(2) Four members shall be selected from the natural gas industry, after consultation with industry representatives, and not less than three of the four shall be currently engaged in the active operation of natural gas pipelines; and

(3) Six members shall be selected from the general public.

b. The membership shall be fairly balanced in terms of the points of view represented, and the advice and recommendations of the Committee shall be the result of its independent judgment (FACA, section 5(b)(2) and (3)).

c. Members are appointed for a term of 3 years except that a member may serve until his successor is appointed, but for not more than a total of 6 years.

6. *Appointment of officers.* At the first meeting of each calendar year, the Associate Director shall appoint a Chairman and Vice-Chairman, and the Committee shall, by majority vote of the members present, elect a Secretary. These three officers, who will serve until their successors are appointed, shall constitute an executive committee.

7. *Meetings and procedures.*

a. *Calling meetings.* The Associate Director for Pipeline Safety Regulation shall approve in advance the scheduling and agenda of each Committee meeting (FACA, section 10(f)). The Committee may recommend agenda items to the Associate Director. A designated officer or employee of the Federal government shall attend each Committee meeting, and is authorized to adjourn the meeting

whenever he determines it to be in the public interest (FACA, section 10(e)).

b. *Presiding at meetings.* The Chairman shall preside at all meetings of the Committee and of the Executive Committee, except that the Associate Director or his delegate may preside whenever the Committee is, at the request of an official of the Department of Transportation, advising the Department on matters other than notices of proposed rulemaking. The Vice-Chairman shall assume and perform the duties of the Chairman in the event of his absence. A majority of the current members of the Committee must be present at a meeting to perform the Committee's statutory duties.

c. *Duties of Secretary.* The Committee Secretary shall, as directed by the Chairman, monitor records, summarize activities, prepare and process letter ballots, and prepare reports for submission to the Associate Director. In the absence of the Secretary, the Chairman appoints a member of the Committee to perform the duties of the Secretary.

d. *Notice of meetings.* Notice of each Committee meeting shall be published in the **Federal Register** at least 15 days in advance of the meeting, except in emergency situations. Other forms of notice are to be used to the extent practicable (FACA, section 10(a)(2)).

e. *Frequency of Committee meetings.* The Committee meets at least once every 6 months. In addition, Committee members may be polled or asked for comments on notices of proposed rulemaking or other matters at any time without formally assembling at one place.

f. *Public participation.* Each Committee meeting shall be open to the public, and interested persons shall be permitted to attend, appear before, or file written statements with the Committee, subject to the limitations contained in the exceptions to the Freedom of Information Act (5 U.S.C. 552(b)), and also subject to reasonable rules prescribed concerning availability of space, time, etc. (FACA, section 10(a)(1) and (3)).

g. *Minutes.* Detailed minutes of each Committee meeting shall be kept and certified to by the Committee Chairman. The minutes shall contain a record of the persons participating, a complete and accurate description of the matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the Committee (FACA, section 10(c)).

h. *Availability of records.* The records, reports, transcripts, minutes, and other documents of the Committee shall be available for public inspection and copying at the Office of Pipeline Safety Regulation, 400 Seventh Street, S.W., Washington, D.C. 20590, subject to the limitations contained in the exceptions to the Freedom of Information Act, 5 U.S.C. 552(b) (FACA, section 10(b)).

8. *Compensation.* Members of the Committee other than Federal employees shall be compensated at the rate of $150 per day (including travel time) when engaged in the actual duties of the Committee. All members, while away from their homes or regular places of business, shall be allowed travel expenses, including per diem in lieu of subsistence.

9. *Duration of the Committee.* Under the provisions of the Natural Gas Pipeline Safety Act, the Committee's purposes are continuing in nature; therefore, the Committee has an indefinite duration. The Committee itself must be renewed at successive 2-year intervals by the appropriate action of the Secretary (FACA, section 14(c)).

10. *Administrative Support.* The Associate Director for Pipeline Safety Regulation is responsible for providing office space, equipment, supplies, clerical help, and other administrative and financial support for the Committee.

11. *Annual Operating Cost.* Estimated annual operating cost is approximately $15,000 for salaries, travel, and recording the proceedings, plus about one-eighth person-year of staff support.

12. *Public Interest.* The formation and use of the Technical Pipeline Safety Standards Committee is determined to be in the public interest in connection with the performance of duties imposed on the Department by law. In fact, the Natural Gas Pipeline Safety Act of 1968 specifically requires the DOT to submit all proposed gas pipeline safety standards to the Committee as part of the proceedings for the promulgation of such standards.

13. *Filing Date. December 16, 1979*— This is the effective date of the charter which will expire 2 years from that date unless sooner terminated.

Cesar De Leon,

Associate Director for Pipeline Safety Regulation, Materials Transportation Bureau.

[FR Doc. 80-1914 Filed 1-23-80; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 4 (Rev. 10)]

Revenue Representatives; Delegation of Authority

AGENCY: Internal Revenue Service, Department of the Treasury.

ACTION: Delegation of Authority.

SUMMARY: Limits to Grade GS–7 the authority of Revenue Representatives to serve any properly issued summons. The text of the delegation order appears below.

EFFECTIVE DATE: February 1, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Donald R. Schumacher, Internal Revenue Service, 1111 Constitution Avenue, NW., Room 7527, Washington, DC 20224

J. R. Starkey,

Director, Collection Division.

February 1, 1980.

Subject

Authority to Issue Summonses, to Administer Oaths and Certify, and to Perform Other Functions

1(a) The authorities granted to the Commissioner of Internal Revenue by 26 CFR 301.7602–1(b), 301.7603–1, 301.7604–1 and 301.7605–1(a) and the authorities contained in Section 7609 of the Internal Revenue Code of 1954 and vested in the Commissioner of Internal Revenue Service by Treasury Department Order No. 150–37, dated March 17, 1955, to issue summonses; to set the time and place for appearance; to serve summonses; to take testimony under oath of the person summoned; to receive and examine books, papers, records or other data produced in compliance with the summons; to enforce summonses; to apply for court orders approving the service of John Doe Summonses issued under Section 7609(f) of the Internal Revenue Code; and to apply for court orders suspending the notice requirements in the case of summonses issued under Section 7609(g) of the Internal Revenue Code, are delegated to the officers and employees of the Internal Revenue Service specified in paragraphs 1(b), 1(c), and 1(d) of this Order and subject to the limitations stated in paragraphs 1(b), 1(c), 1(d), and 6 of this Order.

(b) The authorities to issue summonses and to perform the other functions related thereto specified in paragraph 1(a) of this Order, are delegated to all District Directors, the Director of International Operations, and the following officers and

employees, provided that the authority to issue a summons in which the proper name or names of the taxpayer or taxpayers is not identified because unknown or unidentifiable (hereinafter called a "John Doe" summons) may be exercised only by said officers and employees and by them only after obtaining preissuance legal review by Regional Counsel, Deputy Regional Counsel (General Litigation) or District Counsel, or the Director, General Litigation Division in the case of Inspection.

(1) *Inspection:* Assistant Commissioner and Director, Internal Security Division.

(2) *District Criminal Investigations:* Chief of Division, except this authority in streamlined districts is limited to the District Director.

(3) *International Operations:* Chiefs of Divisions.

(4) *District Collection Activity:* Chief of Division, except this authority in streamlined districts is limited to the District Director.

(5) *District Examination:* Chief of Division, except this authority in streamlined districts is limited to the District Director.

(6) *District Employee Plans and Exempt Organizations:* Chief of Division.

(c) The authorities to issue summonses except "John Doe" summonses, and to perform other functions related thereto specified in paragraph 1(a) of this Order, are delegated to the following officers and employees:

(1) *Inspection:* Regional Inspectors and Assistant Regional Inspectors (Internal Security) and Chief, Investigations Branch.

(2) *District Criminal Investigation:* Assistant Chief of Division; Chiefs of Branches; and Group Managers.

(3) *International Operations:* Assistant Director; Chiefs of Branches; Case Managers; and Group Managers.

(4) *District Collection Activity:* Assistant Chief of Division; Chiefs of Collection Section; Chiefs of Field Branches and Office Branches; Chiefs, Special Procedures Staffs; Chiefs Technical and Office Compliance Branches and Groups and Group Managers.

(5) *District Examination:* Chiefs of Branches, Case Managers, Group Managers and, in streamlined districts Chiefs, Examination Section.

(6) *District Employee Plans and Exempt Organizations:* Group Managers.

(d) The authority to issue summonses except "John Doe" summonses and to perform the other functions related thereto specified in paragraph 1(a) of this Order is delegated to the following officers and employees except that in the instance of a summons to a third party witness, the issuing officer's case manager, group manager, or any supervisory official above that level, has in advance personally authorized the issuance of the summons. Such authorization shall be manifested by the signature of the authorizing officer on the face of the original and all copies of the summons or by a statement on the face of the original and all copies of the summons, signed by the issuing officer, that he/she had prior authorization to issue said summons and stating the name and title of the authorizing official and the date of authorization.

(1) *International Operations:* Internal Revenue Agents; Attorneys, Estate Tax; Estate Tax Examiners; Special Agents; Revenue Service and Assistant Revenue Service Representatives; Tax Auditors; and Revenue Officers, GS–9 and above.

(2) *District Criminal Investigation:* Special Agents.

(3) *District Collection:* Revenue Officers, GS–9 and above.

(4) *District Examination:* Internal Revenue Agents; Tax Auditors; Attorneys, Estate Tax; and Estate Tax Examiners.

(5) *District Employee Plans and Exempt Organizations:* Internal Revenue Agents; Tax Law Specialists; and Tax Auditors.

(e) Each of the officers and employees referred to in paragraphs 1(b), 1(c) and 1(d) of this Order may serve a summons whether it is issued by him/her or another official.

(f) Revenue Representatives, GS–7, and Revenue Officers, who are assigned to the District Collection Activity and to International Operations may serve any summons issued by the officers and employees referred to in paragraphs 1(b), 1(c) and 1(d) of this Order.

2. Each of the officers and employees referred to in paragraphs 1(b), 1(c), and 1(d) of this Order authorized to issue summonses, is delegated the authority under 26 CFR 301.7602–1(b) to designate any other officer or employee of the Internal Revenue Service referred to in paragraph 4(b) of this Order, as the individual before whom a person summoned pursuant to Section 7602 of the Internal Revenue Code shall appear. Any such other officer or employee of the Internal Revenue Service when so designated in a summons is authorized to take testimony under oath of the person summoned and to receive and examine books, papers, records or other data produced in compliance with the summons.

3. Internal Security Inspectors are delegated the authority under 26 CFR 301.7603–1 to serve summonses issued in accordance with this Order by any of the officers and employees of the Inspection Service referred to in paragraphs 1(b)(1) and 1(c)(1) of this Order even though Internal Security Inspectors do not have the authority to issue summonses.

4(a). The authorities granted to the Commissioner of Internal Revenue by 26 CFR 301.7602–1(a), and 301.7605–1(a) to examine books, papers, records or other data, to take testimony under oath and to set the time and place of examination are delegated to the officers and employees of the Internal Revenue Service specified in paragraphs 4(b), 4(c), and 4(d) of this Order and subject to the limitations stated in paragraphs 4(c) and 6 of this Order.

(b) *General Designations.* (1) *Inspection:* Assistant Commissioner; Director, Internal Security Division; Director, Internal Audit Division; Regional Inspectors; Internal Auditors; and Internal Security Inspectors.

(2) *District Criminal Investigation:* Chief and Assistant Chief of Division; Chiefs of Branches; Group Managers; and Special Agents.

(3) *International Operations:* Director, Assistant Director; Chief of Divisions and Branches; Special Agents; Case Managers; Group Managers, Internal Revenue Agents; Attorneys, Estate Tax; Estate Tax Examiners; Revenue Service and Assistant Revenue Service Representatives; Tax Auditors; and Revenue Officers.

(4) *District Collection Activity:* Chiefs and Assistant Chiefs of Division; Chiefs of Field Branches and Office Branches; Chiefs, Special Procedures Staffs; Chiefs, Technical and Office Compliance Branches; Chiefs, Collection Section; Chiefs, Technical and Office Compliance Branches and Groups; Group Managers and Revenue Officers.

(5) *District Examination:* Chiefs of Division; Chiefs of Examination Sections; Chiefs of Examination Branches; Case Managers; Group Managers; Internal Revenue Agents; Tax Auditors; Attorneys, Estate Tax; and Estate Tax Examiners.

(6) *District Employee Plans and Exempt Organization:* Chief of Division; Chief, Examination Branch; Chief, Technical Staff; Group Managers; Internal Revenue Agents; Tax Law Specialists; and Tax Auditors.

(7) *Service Center:* Chief, Compliance Division; Chief, Examination Branch; Chief, Collection Branch; Chief, Criminal Investigation Branch; Revenue Agents; Tax Auditors; Tax Examiners in the

correspondence examination function; and Special Agents.

(c) District Directors, Service Center Directors, Regional Inspectors, the Chief of Investigation Branch, and the Director of International Operations may redelegate the authority under 4(a) of this Order to Law Clerks (Estate Tax), aides or trainees, respectively, for the positions of Revenue Agent, Tax Auditor, Tax Examiner in the Service Center Correspondence and Processing function, Tax Law Specialists, Revenue Officer, Internal Auditor, Internal Security Inspector, Attorney (Estate Tax) and Special Agent, provided that each such Law Clerk (Estate Tax), aide or trainee shall exercise said authority only under the direct supervision, respectively, as applicable of a Revenue Agent, Tax Auditor, Tax Examiner in the Service Center Correspondence and Processing function, Tax Law Specialist, Revenue Officer, Special Agent, Internal Auditor or Internal Security Inspector or Attorney (Estate Tax).

(d) District Directors may redelegate the authority under 4(a) of this Order to Revenue Representatives and Office Collection Representatives.

5. Under the authority granted to the Commissioner of Internal Revenue by 26 CFR 301.7622-1, the officers and employees of the Internal Revenue Service referred to in paragraphs 1(b), 1(c), 1(d), and 4(b) and 4(c) of this Order are designated to administer oaths and affirmations and to certify to such papers as may be necessary under the internal revenue laws and regulations *except* that the authority to certify shall not be construed as applying to those papers or documents the certification of which is authorized by separate order or directive. Revenue Representatives and Office Collection Representatives referred to in paragraph 4(d) of this Order are not designated to administer oaths or to perform the other functions mentioned in this paragraph, except that Revenue Representatives, GS-7, are authorized to certify the method and manner of service, and the method and manner of giving notice, when performing the functions and duties contained in paragraph 1(f) of this order.

6. The authority delegated herein may not be redelegated except as provided in paragraphs 4(c) and 4(d).

7. This Order supersedes Delegation Order No. 4 (Rev. 9), issued June 27, 1979.

Jerome Kurtz,

Commissioner.

[FR Doc. 80-2267 Filed 1-23-80; 8:45 am]

BILLING CODE 4830-01-M

Office of the Secretary

United States and Austria To Discuss Income and Estate and Gift Tax Treaties

The Treasury Department today announced that representatives of the United States and Austria will conduct exploratory talks in Austria during the week of February 18 with a view to beginning negotiations of an estate and gift tax treaty between the two countries. Discussions will be based upon the United States Model Estate and Gift Tax Treaty of 1979 and will consider the allocation of taxing jurisdiction between the two countries on the basis of citizenship, domicile, and location of property, in order to avoid double taxation. Rules for resolving the issue of domicile will also be discussed.

Representatives will also discuss modernization of the existing income tax treaty between the United States and Austria, which has been in effect since 1957, with a view to bringing it into line with the 1977 U.S. and OECD model treaties.

The Treasury invites persons wishing to submit comments concerning either the income tax convention or the proposed estate and gift tax convention to write to H. David Rosenbloom, International Tax Counsel, U.S. Department of the Treasury, Room 3064, Washington, D.C. 20220.

Dated: January 18, 1980.

Donald C. Lubick,

Assistant Secretary (Tax Policy).

[FR Doc. 80-2190 Filed 1-23-80; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Station Committee on Educational Allowances; Meeting

Notice is hereby hiven pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on February 19, 1980, at 1 p.m., the Veterans Administration Regional Office Station Committee on Educational Allowances shall at Estes Kefauver Federal Building—U.S. Courthouse, Room A-220, 110 Ninth Avenue, South, Nashville, Tennsessee, conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in Millington Beauty School, 7905 "C" Street, Millington, Tennessee, should be discontinued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the Committee at that time and place.

Dated: January 16, 1980.

R. S. Bielak,

Director, VA Regional Office, 110 Ninth Avenue, South Nashville, Tennessee.

[FR Doc. 80-2152 Filed 1-23-80; 8:45 am]

BILLING CODE 8320-01-M

INTERSTATE COMMERCE COMMISSION

[I.C.C. Order No. 59 Under Service Order No. 1344]

Chesapeake & Ohio Railway Co.; Rerouting Traffic

To: All railroads.

In the opinion of Joel E. Burns, agent, The Chesapeake and Ohio Railway Company, Operator, is unable to promptly transport traffic offered for movement over its line between Ludington, Michigan, and Milwaukee, Wisconsin, via car ferry, because of adverse weather conditions on Lake Michigan.

It is ordered, (a) *Rerouting traffic.* The Chesapeake and Ohio Railway Company, Operator, being unable to promptly transport traffic offered for movement over its lines between Ludington, Michigan, and Milwaukee, Wisconsin, via car ferry, because of adverse weather conditions on Lake Michigan, that line and its connections are authorized to divert or reroute such traffic via any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were

applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 11:30 a.m., January 11, 1980.

(g) *Expiration date.* This order shall expire at 11:59 p.m., January 13, 1980, unless otherwise modified, amended or vacated.

This order shall be served upon the association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., January 11, 1980.

Interstate Commerce Commission.

Joel E. Burns,

Agent.

[FR Doc. 80-2177 Filed 1-23-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Temporary Authority Applications

Correction

In FR Doc. 79-39541, appearing on page 76903, in the issue of Friday, December 28, 1979, make the following correction:

In "MC 107012 (Sub-458TA)," page 76903, third column, last paragraph, sixth line, the word "*cartridge*", should have read "*cartridges*".

BILLING CODE 1505-01-M

Permanent Authority Decisions; Decision—Notice

Correction

In FR Doc. 79-33792, appearing on page 62990, in the issue of Thursday, November 1, 1979, make the following correction:

In "MC 138882 (Sub-258F)", page 62992, third column, last paragraph, thirteenth line, "Harrisburg" should read "Harrisonburg".

BILLING CODE 1505-01-M

[Vol. No. 199]

Permanent Authority Decisions; Decision-Notice

Correction

In FR Doc. 79-36709, published at page 68544, on Thursday, November 29, 1979, on page 68558, in the third column, in the second paragraph "MC 145425 (Sub-2F)" should be corrected to read "MC 145420 (Sub-2F)".

BILLING CODE 1505-01-M

Permanent Authority Decisions

The following applications, filed on or after March 1, 1979, 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 petition for intervention, either in support of or in opposition 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.** Protests (such as were allowed to filings prior to March 1, 1979) *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 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, including the extent, if any, to which petitioner (a) has solicited the traffic or business of those supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited trafic or business identical to any part of that sought by applicant within the affected marketplace. The Commission will also consider (a) the nature and extent of the property, financial, or other interest of the petitioner, (b) the effect of the decision which may be rendered upon petitioner's interest, (c) the availability of other means by which the petitioner's interest might be protected, (d) the extent to which petitioner's interest will be represented by other parties, (e) the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and (f) the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable compliance with the requirements of the rule may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission indicating the specific rule under which the petition to intervene is being filed, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Section 247(f) provides, in part, that an applicant which does not intend to timely 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.

If an applicant has introduced rates as an issue it is noted. Upon request, an applicant must provide a copy of the tentative rate schedule to any protestant.

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 administrative 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 exception of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service 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 States Code, and the Commission's regulation. 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 following decision-notices within 30 days after publication, or the application shall stand denied.

Note.—All application are for authority to operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, except as otherwise noted.

Volume No. 108

Decided: June 22, 1979.

By the Commission, Review Board Number 2, Members Boyle, Eaton, and Liberman.

MC 488 (Sub-11F), filed January 30, 1979, previously noticed in FR issue of July 25, 1979. Applicant: BREMAN'S EXPRESS CO., a corporation, 318 Haymaker Road, Monroeville, PA 15146. Representative: Edward Goldberg, 1408 Law & Finance Building, Pittsburgh, PA 15219. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *refractory products* (except in bulk), and (2) *materials and supplies* used in the manufacture and installation of refractories, between (a) those points in WV on and north of U.S. Hwy 50, and (b) those points in OH on and east of a line beginning at Cleveland, OH, and extending over Interstate Hwy 77 to junction U.S. Hwy 21 near Akron, then over U.S. Hwy 21 to, junction Interstate Hwy 77, near Strasburg, then over Interstate Hwy 77 to the OH–WV State line, on the one hand, and on the other, the facilities of North American Refractories in Clearfield County, PA. (Hearing site: Pittsburgh, PA.)

Note.—This republication changes the territory from nonradial to radial.

Volume No. 258

Decided: Dec. 20, 1979.

By the Commission, Review Board Number 2, Members Boyle, Eaton, and Liberman.

MC 1824 (Sub-99F), filed June 25, 1979. Applicant: PRESTON TRUCKING COMPANY, INC., 151 Easton Blvd., Preston, MD 21655. Representative: Charles S. Perry (same address as applicant). Transporting *petroleum, petroleum products, vehicle body sealer,* and *sound deadener compounds* (except commodities in bulk), from Congo and St. Marys, WV, and Elenton, Farmers Valley, and New Kensington, PA, to points in IL, IN, MD, MI, OH, VA, and WI. (Hearing site: Washington, DC.)

MC 1824 (Sub-100F), filed June 25, 1979. Applicant: PRESTON TRUCKING COMPANY, INC., 151 Easton Blvd., Preston, MD 21655. Representative: Charles S. Perry (same address as applicant). Transporting *petroleum and petroleum products* (except commodities in bulk), from Rouseville, Reno, and Oil City, PA, to points in MD, VA, and DC. (Hearing site: Washington, DC.)

MC 14215 (Sub-53F), filed June 25, 1979. Applicant: SMITH TRUCK SERVICE, INC., P.O. Box 1329, Steubenville, OH 43952. Representative: John L. Alden, 1396 West Fifth Ave., P.O. Box 12241, Columbus, OH 43212. Transporting (1) *iron and steel articles,* (a) from the facilities of Wheeling-Pittsburgh Steel Corporation, at (i) Canfield, Martins Ferry, Mingo Junction, Steubenville, and Yorkville, OH, and (ii) Beech Bottom, Benwood, Follansbee, and Wheeling, WV, to points in KY, MD, VA, and WV, and (b) from the facilities of Wheeling-Pittsburgh Steel Corporation, at Allenport and Monessen, PA, to points in KY, MD, VA, and WV, and (2) *materials, equipment, and supplies* used in the manufacture of the commodities in (1) above (except commodities in bulk, in tank vehicles), in the reverse direction. (Hearing site: Columbus, OH, or Washington, DC.)

MC 60014 (Sub-127F), filed June 25, 1979. Applicant: AERO TRUCKING, INC., Box 308, Monroeville, PA 15146. Representative: A. Charles Tell, 100 East Broad St., Columbus, OH 43215. Transporting *concrete roof tile,* and *accessories* for concrete roof tile, from the facilities of Monier Company, at or near (a) Duncanville, TX, and (b) Lakeland, FL, to those points in the United States in and east of MT, WY, CO, and NM. (Hearing site: Washington, DC.)

MC 61825 (Sub-110F), filed June 25, 1979. Applicant: ROY STONE TRANSFER CORPORATION, V. C. Drive, P.O. Box 385, Collinsville, VA 24078. Representative: John D. Stone (same address as applicant). Transporting (1) *paper and paper products, chemicals, building materials, and plastic and plastic products,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), between points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Union Camp Corporation. (Hearing site: Washington, DC.)

MC 71593 (Sub-51F), filed December 14, 1979. Applicant: FORWARDERS TRANSPORT, INC., 1608 East Second Street, Scotch Plains, NJ 07076. Representative: John Duncan Varda, 121 South Pinckney Street, Madison, WI 53703. Transporting *such commodities* as are dealt in and used by manufacturers and converters of paper and paper products (except commodities in bulk), from the facilities of Nekoosa Papers Inc., in Little River County, AR, to points in IA and KY. (Hearing site: Chicago, IL, or Washington, DC.)

MC 105984 (Sub-24F), filed June 24, 1979. Applicant: JOHN B. BARBOUR TRUCKING COMPANY, a Corporation, P.O. Box 577, Iowa Park, TX 76367. Representative: Bernard H. English, 6270 Firth Rd., Fort Worth, TX 76116. Transporting *bentonite clay,* in bags, from the facilities of Dresser Industries, Inc., at or near Greybull, WY, to points in AR, IL, IN, KS, KY, LA, MI, NM, OH, OK, TX, GA, WV, and RI. (Hearing site: Dallas or Houston, TX.)

MC 106674 (Sub-402F), filed June 25, 1979. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson (same address as applicant). Transporting *sand, gravel, and stone,* from points in the United States (except AK and HI), to points in CA, and those points in the United States in and east of TX, OK, KS, NE, SD, and ND. (Hearing site: Chicago, IL, or Indianapolis, IN.)

MC 106674 (Sub-403F), filed June 25, 1979. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson (same address as applicant). Transporting *lime, limestone, and limestone products,* from the facilities of Pfizer, Inc., and Quigley Co., in Sandusky County, OH, to points in IL, IN, KY, MD, MI, PA, VA, WV, and DC. (Hearing site: Chicago, IL, or Indianapolis, IN.)

MC 109124 (Sub-87F), filed June 25, 1979. Applicant: SENTLE TRUCKING CORPORATION, P.O. Box 7850, Toledo, OH 43619. Representative: James M. Burtch, 100 E. Broad Street, Suite 1800, Columbus, OH 43215. Transporting *lime, limestone, and limestone products,* from Carey, OH, to points in AL, DE, GA, KS, MD, MN, NC, SC, RI, TX, VA, and DC. (Hearing site: Columbus, OH.)

MC 111545 (Sub-286F), filed June 21, 1979. Applicant: HOME TRANSPORTATION COMPANY, INC., P.O. Box 6426, Station A, Marietta, GA 30065. Representative: Robert E. Born (same address as above). Transporting (1) *plastic pipe, plastic fittings, and plastic connections, and (2) materials, supplies and accessories used in the manufacture and installation of (1) above* (except commodities in bulk, in tank vehicles) between Cleveland, OH, Stone Mountain, GA and Sun Valley, Bakersfield and Santa Ana, CA, on the one hand, and, on the other, points in CA, and those points in the United States in and east of MN, IA, NE, KS, OK, and TX. (Hearing site: Washington, DC, or Los Angeles, CA.)

MC 112304 (Sub-197F), filed June 25, 1979. Applicant: ACE DORAN HAULING & RIGGING CO., a corporation, 1601 Blue Rock St., Cincinnati, OH 45223. Representative: John D. Herbert (same address as applicant). Transporting (1)(a) *metal products, agriculture implements,* and *buildings,* and (b) *parts and accessories* for the commodities named in (1)(a) above, from the facilities of The Binkley Company, in Montgomery and Warren Counties, MO, to points in the United States (except AK and HI), and (2) *materials and supplies* used in the manufacture, distribution, and installation of the commodities named in (1) above, in the reverse direction, restricted in (1) above to the transportation of traffic originating at the named facilities. (Hearing site: St. Louis, MO, or Washington, DC.)

MC 113434 (Sub-131F), filed April 24, 1979. Applicant: GRA-BELL TRUCK LINE, INC., A-5253 144th Ave., Holland, MI 49423. Representative: Wilhemina Boersma, 1600 First Federal Bldg., Detroit, MI 48226. Transporting *such commodities* as are dealt in by manufacturers of glass and glass products, between the facilities of (a) Anchor Hocking Corporation; (b) Amerock Corporation; (c) Plastics, Inc.; (d) Shenango China; (e) Phoenix Glass Co.; and (f) Moldcraft, Inc., at points in IL, IN, MD, OH, PA, and WV, on the one hand, and, on the other, points in IA, IL, IN, KY, MD, MI, OH, PA, WI, and WV. (Hearing site: Columbus, OH, or Detroit, MI.)

MC 114725 (Sub-104F), filed June 25, 1979. Applicant: WYNNE TRANSPORT SERVICE, INC., 2222 N. 11th St., Omaha, NE 68110. Representative: Donald L. Stern, Suite 610, 7171 Mercy Rd., Omaha, NE 68106. Transporting *tallow,* from the (1) facilities of Iowa Beef Processors, Inc., at or near (a) Dakota City and West Point, NE, (b) Denison and Fort Dodge, IA, (c) Emporia, KS, and (d) Luverne, MN, to points in IL, IN, OH, TN, and TX, and (2) from the facilities of Iowa Beef Processors, Inc., at or near Emporia, KS, to points in OK, restricted in (1) and (2) above to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Omaha, NE, or Sioux City, IA.)

MC 119315 (Sub-28F), filed June 25, 1979. Applicant: FREIGHTWAY CORPORATION, 131 Matzinger Rd., Toledo, OH 43612. Representative: Paul F. Berry, 275 East State St., Columbus, OH 43215. Transporting (1) *pentaerythritol* and *sodium formate* (except commodities in bulk), and (2) *equipment, materials, and supplies* used in the manufacture of the commodities named in (1) above (except commodities in bulk), between Toledo, OH, on the one hand, and, on the other, those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Columbus, OH.)

MC 119384 (Sub-32F), filed June 25, 1979. Applicant: MORTON TRUCK LINES, INC., 101 West Willis Avenue, Perry, IA 50220. Representative: Robert R. Rydell, 1020 Savings and Loan Bldg., Des Moines, IA 50220. Transporting *meats, meat products and meat by-products, articles distributed by meat-packing houses,* and *such commodities* as are used by meat packers in the conduct of their business when destined to and for use by meat packers, as described in sections A, C, and D of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766, (except commodities in bulk and hides), between the facilities of (a) Lauridsen Foods, Inc., at or near Britt, IA, and (b) Armour and Company, at Mason City, IA, on the one hand, and, on the other, points in MN, WI, MI, OH, IN, IL, MO, KS, and NE, restricted to the transportation of traffic originating at and destined to the indicated points. (Hearing site: Des Moines, IA, or Minneapolis, MN.)

MC 125985 (Sub-30F), filed June 25, 1979. Applicant: AUTO DRIVEAWAY COMPANY, a Corporation, 310 S. Michigan Ave., Chicago, IL 60604. Representative: Daniel B. Johnson, 4304 East-West Highway, Washington, DC 20014. Transporting *trucks,* in initial and secondary movements, in driveaway service, (a) from points in Cook County, IL, to points in Suffolk County, NY, and (b) from points in Suffolk County, NY, to points in the United States (except AK and HI). (Hearing site: Chicago, IL.)

MC 125985 (Sub-31F), filed June 25, 1979. Applicant: AUTO DRIVEAWAY COMPANY, 310 S. Michigan Avenue, Chicago, IL 60604. Representative: Daniel B. Johnson, 4304 East-West Highway, Washington, DC 20014. Transporting *motor homes* and *automobiles,* in secondary movements, in truckaway service, between points in Adams County, IN, on the one hand, and, on the other, points in the United States (including AK, but excluding HI). (Hearing site: Chicago IL.)

MC 125985 (Sub-32F), filed June 25, 1979. Applicant: AUTO DRIVEAWAY COMPANY, a Corporation, 310 S. Michigan Ave., Chicago, IL 60604. Representative: Daniel B. Johnson, 4304 East-West Highway, Washington, DC 20014. Transporting *self-propelled motor vehicles* in secondary movements, in driveaway service, between points in AR, CA, LA, NM, OK, UT, and WY. (Hearing site: Houston, TX.)

MC 127705 (Sub-86F), filed June 20, 1979. Applicant: KREVDA BROS. EXPRESS, INC., P.O. Drawer J, Knox, PA 16232. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting (1) *such commodities* as are dealt in by manufacturers and distributors of glass, chinaware, and plastic products, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in NJ, MD, VA, WV, KY, IL, IN, OH, PA, DE, NY, MO, IA, WI, and MI, restricted to the transportation of traffic originating at or destined to the facilities of Anchor Hocking Corporation, Mold Craft, Inc., Amerock Corporation, and The Phoenix Glass Company. (Hearing site: Columbus, OH, or Washington, DC.)

MC 128235 (Sub-24F), filed June 25, 1979. Applicant: AL JOHNSON TRUCKING, INC., 1516 Marshall N.E., Minneapolis, MN 55413. Representative:

Earl Hacking, 1700 New Brighton Blvd., Minneapolis, MN 55413. Transporting *malt beverages,* in containers, from Chippewa, Falls, WI, to Raleigh, NC. (Hearing site: Minneapolis or St. Louis, MN.)

MC 129455 (Sub-39F), filed June 21, 1979. Applicant: CARRETTA TRUCKING INC., South 160, Route 17 North, Paramus, NJ 07652. Representative: Charles J. Williams, 1815 Front St., Scotch Plains, NJ 07076. To operate as a *contract carrier,* by motor vehicle, in interstate of foreign commerce, over irregular routes, transporting (1) *drugs* and *toilet preparations* (except commodities in bulk) and (2) *materials, equipment, and supplies* used in the manfacture and distribution of the commodities named in (1) above, (except commodities in bulk), (a) between St. Louis, MO, Raleigh, NC, and Hillside, NJ, and (b) from points in the United States (except AK and HI), to Raleigh, NC, under continuing contract(s) with Bristol-Myers Products, of Hillside, NJ. (Hearing site: New York, NY.)

Note.—Dual operations may be involved.

MC 133095 (Sub-256F), filed May 21, 1979. Applicant: TEXAS-CONTINENTAL EXPRESS, INC., P.O. Box 434, Euless, TX 76039. Representative: Kim G. Meyer, P.O. Box 56387, Atlanta, GA 30343. Transporting (1) *paper* and *paper products,* and (2) *materials* used in the manufacture and distribution of the commodities named in (1) above, from the facilities of Scott Paper Company (a) at or near Pennsauken, NJ, and (b) in PA and WI, to points in MS, LA, and TX, restricted to the transportation of traffic originating at the named origins. (Hearing site: Mobile, AL, or Atlanta, GA.)

MC 133095 (Sub-260F), filed June 25, 1979. Applicant: TEXAS-CONTINENTAL EXPRESS, INC., P.O. Box 434, Euless, TX 76039. Representative: Hugh T. Matthews, 2340 Fidelity Union Tower, Dallas, TX 75201. Transporting *rough iron pipe fittings,* from Eastland and Frisco, TX, to points in the United States (except AK and HI). (Hearing site: Dallas, TX.)

MC 135154 (Sub-6F), filed March 28, 1979, published in the **Federal Register** issue of December 6, 1979. Applicant: BADGER LINES, INC., 3109 West Lisbon Ave., Milwaukee, WI 53208. Representative: William C. Dineen, 710 N. Plankinton Ave., Milwaukee, WI 53203. Transporting (1) *malt beverages* and *carbonated beverages,* (a) from Milwaukee, WI, to Davenport and Dubuque, IA, St. Louis, MO, and points in IL, and (b) from St. Louis, MO, to Milwaukee, WI; (2) *malt beverage containers,* and *carbonated beverage containers,* (a) from Davenport and Dubuque, IA, and points in IL, to Milwaukee, WI, and (b) between Milwaukee, WI, and St. Louis, MO; (3) *fermented malt beverages,* in containers, from Columbus, OH, to Milwaukee, WI; and (4) *malt beverages,* in containers, from the facilities of Miller Brewing Co., at Milwaukee, WI, to St. Charles, MO. Condition: Issuance of a certificate in this proceeding is subject to the prior or coincidental cancellation of permits in Nos. MC 29990 and MC 29990 Subs 1, 9, and 11. (Hearing site: Milwaukee, WI, to Chicago, IL.)

Note.—Dual operations may be involved. The purpose of this application is to convert the above noted motor contract carrier permits to a motor common carrier certificate. This republication corrects the first commodity description.

MC 135884 (Sub-18F), filed June 25, 1979. Applicant: CALDWELL TRUCKING, INC., Holdman Route, Pendleton, OR 97801. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, OR 97210. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *kitchen and bathroom cabinets,* from Caldwell, ID, to Burney, CA, under continuing contract(s) with Heritage Woodworking Co., of Burney, CA. (Hearing site: Portland, OR.)

MC 138875 (Sub-211F), filed June 22, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, a Corporation, 11900 Franklin Rd., Boise, ID 83705. Representative: F. L. Sigloh (same address as applicant). Transporting *lime, masonry materials, and masonry supplies* (except commodities in bulk), from points in UT, to points in ID, restricted to the transportation of traffic originating at the indicated origins and destined to the indicated destinations. (Hearing site: Boise, ID, or Washington, DC.)

MC 140665 (Sub-58F), filed June 25, 1979. Applicant: PRIME, INC., Route 1, Box 115–B, Urbana, MO 65767. Representative: Clayton Geer, P.O. Box 786, Ravenna, OH 44266. Transporting (1) *roof coatings, roofing cement, paint, petroleum oil and grease, rust preventing compounds, and caulking compounds,* and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), from Elkhart, IN, to points in AZ, CA, CO, NM, UT, NV, WY, MT, ID, OR, TX, and WA. (Hearing site: Cleveland, OH, or Washington, DC.)

MC 140665 (Sub-59F), filed June 25, 1979. Applicant: PRIME, INC., Route 1, Box 115–B, Urbana, MO 65767. Representative: Clayton Geer, P.O. Box 786, Ravenna, OH 44266. 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), from points in WA, to those points in the United States in and east of ND, SD, NE, CO, OK, and TX, restricted to the transportation of traffic having a prior movement by water. (Hearing site: Seattle, WA, or Washington, DC.)

MC 140835 (Sub-3F), filed June 25, 1979. Applicant: A. C. WRIGHT TRUCKING INC., Route 1, P.O. Box 35, Booneville, MS 38829. Representative: Johnny Davidson, Jr., Box 1456, 111 Highway 72 West, Corinth, MS 38834. Transporting *limestone, gravel, rock, sand, basic slag,* and *fertilizer,* in bulk, in dump vehicles, between points in AL, MS, and TN. CONDITION: Issuance of a certificate is subject to prior or coincidental cancellation of Certificate No. MC 140835 Sub 2, served March 28, 1977, at applicant's written request. (Hearing site: Corinth or Iuka, MS.)

MC 142315 (Sub-2F), filed June 18, 1979. Applicant: MEISLER CARTAGE, INC., 1103 East Franklin Street, Evansville, IN 47711. Representative: Warren C. Moberly, 777 Chamber of Commerce Building, 320 North Meridian Street, Indianapolis, IN 46204. 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), (1) between points in Sullivan, Greene, Monroe, Lawrence, Washington, Harrison, Crawford, Orange, Perry, Daviess, Martin, Dubois, Pike, Warrick, Spencer, Knox, Gibson, Vanderburgh, Posey, Floyd, and Clark Counties, IN, Clark, Coles, Cumberland, Effingham, Fayette, Marion, Jefferson, Franklin, Williamson, Johnson, Massac, Pope, Saline, Hamilton, Wayne, Clay, Jasper, Richland, Edwards, White, Gallatin, Hardin, Wabash, Lawrence, Crawford, Pulaski, Union, Jackson, and Perry Counties, IL, and Marshall, Trigg, Todd, Logan, Edmonson, Grayson, Breckinridge, Meade, Hancock, Ohio, Daviess, McLean, Hopkins, Muhlenburg, Butler, Christian, Webster, Henderson, Union, Crittenden, Caldwell, Livingston, Lyon, and McCracken Counties, KY, (2) between Evansville, IN, and St. Louis, MO, and restricted in both (1) and (2) above to the transportation of traffic

having a prior or subsequent movement by rail. (Hearing site: Indianapolis, IN, or Louisville, KY.)

MC 142464 (Sub-7F), filed June 25, 1979. Applicant: JOHN M. CHRISTOPHER, 3444 McCarty Lane, Lafayette, IN 47905. Representative: Brent E. Clary, P.O. Box 469, 68 Lafayette Bank & Trust Bldg., Lafayette, IN 47902. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, between St. Louis, MO, points in IN, IL, KY, and OH, and those in the lower peninsula of MI, under continuing contract(s) with Midwest Steel, Division of National Steel Corporation, of Portage, IN. (Hearing site: Chicago, IL.)

MC 142894 (Sub-2F), filed June 18, 1979. Applicant: MILLER DELIVERY SERVICE, INC., 227 North Main Street, Findlay, OH 15840. Representative: A. Charles Tell, 100 East Broad Street, Columbus, OH 43215. To operate as a *contract* 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 Findlay and Fostoria, OH, on the one hand, and, on the other, points in MI and OH, under continuing contract(s) with Bendix Autolite Corp., of Fostoria, OH, Centrex Corp., of Findlay, OH, and Superior Trim Company, of Findlay, OH. (Hearing site: Columbus, OH.)

MC 145054 (Sub-22F), filed June 25, 1979. Applicant: COORS TRANSPORTATION Co., a corporation, 5101 York St., Denver, CO 80216. Representative: Leslie R. Kehl, 1600 Lincoln Center, 1660 Lincoln St., Denver, CO 80264. Transporting *foodstuffs* (except commodities in bulk), from St. Louis, MO, to Kansas City, KS, Lincoln and Omaha, NE, and points in CO. (Hearing site: St. Louis, MO.)

Note.—Dual operations may be involved.

MC 145654 (Sub-1F), filed June 25, 1979. Applicant: RICAR, INC., 739 Mulberry, P.O. Box 07817, Columbus, OH 43207. Representative: Robert W. Gardier, Jr., 100 East Broad Street, Columbus, OH 43215. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *black steel sheets, tinplate*, and *rolled steel*, in coils, (a) from Yorkville, Canton, and Massillon, OH, and Weirton and Wheeling, WV, to Detroit, MI, and Chicago, IL, and (b) from Detroit, MI, to Chicago, IL, under continuing contract(s) with the Dana Corporation, Victor Division, of Chicago, IL. (Hearing site: Columbus, OH.)

MC 147364 (Sub-2F), filed June 25, 1979. Applicant: P. W. McCULLERS TRUCK BROKERS, INC., 6010 Avery St., Orlando, FL 32808. Representative: Elbert Brown, Jr., P.O. Box 1378, Altamonte Springs, FL 32701. To operate as a *contract carrier*, by motor vehicle, in foreign commerce only, over irregular routes, transporting *frozen fruit* and *frozen vegetables*, in vehicles equipped with mechanical refrigeration, between ports of entry on the international boundary line between the United States and Canada, at or near Houlton and Calais, ME, on the one hand, and, on the other, points in ME, MA, CT, NJ, NY, PA, RI, MD, VA, NC, SC, OH, GA, FL, AL, TN, MS, LA, TX, NM, AZ, CO, CA, MO, DE, NH, KS, and DC, under continuing contract(s) with C. M. McLean, Limited, of Charlottetown, Prince Edward Island, Canada. (Hearing site: Orlando or Jacksonville, FL.)

MC 147454F, filed June 18, 1979. Applicant: JAMES CONDOSTA, 807 Exeter Ave., West Pittston, PA 18643. Representative: Joseph F. Hoary, 121 South Main Street, Taylor, PA 18517. Transporting *scrap metal*, in dump vehicles, from Ellenville, NY, to Milton and Easton, PA. (Hearing site: New York, NY.)

MC 147594F, filed June 22, 1979. Applicant: SUNBIRD TRANSPORT INC., 990 Washington, St., Dedham, MA 02026. Representative: Francis W. McInerny, 1000 16th St., NW, Washington, DC 20036. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *building materials, plastic articles, and paper articles*, and (2) *materials, equipment, and supplies* used in the manufacture, distribution, and installation of the commodities named in (1) above (except commodities in bulk), between the facilities of Bird & Son, Inc., at or near (a) E. Walpole, Norwood, and Lawrence, MA, (b) Lewiston, ME, (c) Phillipsdale, RI, (d) Perth Amboy, NJ, (e) Franklin, OH, (f) Chicago, IL, (g) Bardstown and St. Matthews, KY, (h) Rockhill, MO, (i) Charleston Heights, SC, and (j) Shreveport, LA, on the one hand, and, on the other, those in the United States in and east of MN, IA, MO, KS, AR, and LA, under continuing contract(s) with Bird & Son, Inc., of Walpole, MA. (Hearing site: Washington, DC.)

MC 147624 (Sub-1F), filed June 25, 1979. Applicant: J C T, INC., 3176 Fir Oak Dr., Albany, OR 97321. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, OR 97210. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *wood products* and *lumber*, (2) *building materials* (except wood products and lumber), and (3) *materials and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above, between the facilities of Willamette Industries, Inc., at or near, Vancouver, WA, and in OR, on the one hand, and, on the other, points in CA, under continuing contract(s) with Willamette Industries, Inc., of Albany, OR. (Hearing site: Portland, OR.)

MC 148614 (Sub-1F), filed March 15, 1979, published in the **Federal Register** issue of August 30, 1979 as MC–135884 Sub 16F. Applicant: CALDWELL TRUCKING, INC., Holdman Route, Pendleton, OR 97801. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, OR 97210. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *plastic foam insulation* and *insulation supplies*, from the facilities of Vertex, Inc., at Oakland and Los Angeles, CA, to points in WA and OR. (Hearing site: Portland, OR.)

Note.—This republication indicates applicant's correct docket number and that dual operations may be involved.

Volume No. 264

Decided: December 27, 1979.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 69052 (Sub-37F), filed June 28, 1979. Applicant: REED TRUCKING CO., a corporation, P.O. Box 216, Milton, DE 19968. Representative: Edward G. Villalon, 1032 Pennsylvania Building, Pennsylvania Avenue and 13th St., NW, Washington, DC 20004. Transporting *dry chemicals* (except in bulk), from Syracuse, Buffalo, Niagara Falls and Seneca Falls, NY, to the facilities of Robinson Chemical Company, Inc., at Cambridge, MD. (Hearing site: Cambridge, MD, or Washington, DC.)

MC 80443 (Sub-26F), filed June 27, 1979. Applicant: OVERNITE EXPRESS, INC., 2550 Long Lake Road, Roseville, MN 55113. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. Transporting *Bentonite clay* from the facilities of American Colloid Company at or near Malta, MT, to points in the United States (except AK and HI). (Hearing site: Minneapolis or St. Paul, MN.)

MC 114273 (Sub-622F), filed June 27, 1979. Applicant: CRST, INC., P.O. Box

68, 3930 16 Avenue, SW., Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Transporting *plastic articles* from Louisiana, MO, to Cedar Rapids, IA, and Toledo, OH. (Hearing site: Chicago, IL, or Washington, DC.)

MC 123272 (Sub-37F), filed June 29, 1979. Applicant: FAST FREIGHT, INC., 9651 S. Ewing Avenue, Chicago, IL 60617. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602. Transporting (1) *foodstuffs* (except in bulk), from St. Henry, OH, to points in the United States in and east of ND, SD, NE, CO and NM, and (2) *materials and supplies* used in the manufacture of the commodities in (1) above (except commodities in bulk), in the reverse direction. (Hearing site: Chicago, IL.)

MC 128302 (Sub-14F), filed June 29, 1979. Applicant: THE MANFREDI MOTOR TRANSIT CO., a corporation, 11250 Kinsman Road, Newbury, OH 44065. Representative: John P. McMahon, 100 East Broad Street, Columbus, OH 43215. Transporting *liquid concrete admixtures,* in bulk, in tank vehicles, from Richmond, VA, to points in CT, DE, FL, GA, KY, ME, MD, MA, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, and DC. (Hearing site: Columbus, OH.)

Note.—Dual operations may be involved.

MC 139852 (Sub-3F), filed June 28, 1979. Applicant: E. C. BLACK, d.b.a. BLACK TRUCKING CO., Route 1, York, SC 29745. Representative: Joseph M. Epting, 1338 Main St., P.O. Box 11414, Columbia, SC 29211. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *chain link fence, fencing accessories, wire, pipes, tubing, gates and reinforcing concrete wire mesh,* from Rock Hill, SC, to points in GA and NC, and to those points in TN on and east of Interstate Hwy 65, under continuing contract(s) with National Fence Manufacturing Co., Inc., of Rock Hill, NC. (Hearing site: Columbia, SC, or Charlotte, NC.)

MC 144162 (Sub-9F), filed March 19, 1979. Applicant: TIME CONTRACT CARRIERS, INC. 17734 Sierra Hwy, Canyon Country, CA 91351. Representative: Milton W. Flack, 4311 Wilshire Blvd, Suite 300 Los Angeles, CA 90010. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *steel* office chairs, and wood office chairs, from the facilities of Ed Pauly & Associates, Inc., of Vernon, CA, to points in AZ, ID, NV, OR and WA, and (2) *materials, equipment and supplies* used in the manufacture, sale and distribution of the commodities named in (1) above, from points in IN, MI, OH and TN to points in AZ, CA, ID, NV, OR and WA, under continuing contract(s) with Ed Pauly & Associates, Inc., of Vernon, CA. (Hearing site: Los Angeles, CA.)

MC 144503 (Sub-17F), filed June 28, 1979. Applicant: ADAMS REFRIGERATED EXPRESS, INC., P.O. Box F, Forest Park, GA 30050. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Boulevard, Atlanta, GA 30349. Transporting *meats, meat products, meat byproducts, and articles distributed by meat-packing houses* 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 hides and commodities in bulk), from the facilities of Swift & Company at Marshalltown, Sioux City, and Glenwood, IA, to points in AL, FL, GA, LA, MS, NC, SC, and TN. (Hearing site: Atlanta, GA).

MC 144682 (Sub-23F), filed June 29, 1979. Applicant: R. R. STANLEY, 1738 Empire Central, Dallas, TX 75235. Representative: D. Paul Stafford, P.O. Box 45538, 1125 Exchange Park, Dallas, TX 75245. Transporting *foodstuffs* (except in bulk), from the facilities of American Home Foods, Division of American Home Products Corporation, at or near Vacaville, CA, to points in CO, OK, and TX. (Hearing site: Dallas, TX.)

Note.—Dual operations may be involved.

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Decided: Dec. 21, 1979.

By the Commission, Review Board Number 2, Members Boyle, Eaton, and Liberman.

MC 107403 (Sub-1230F), filed June 26, 1979. Applicant: MATLACK, INC., Ten West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same address as applicant). Transporting *liquid chemicals,* in bulk, in tank vehicles, from Midland and Bay City, MI, to points in the United States (except AK and HI). (Hearing site: Washington, DC.)

MC 111812 (Sub-655F), filed June 26, 1979. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57101. Representative: R. H. Jinks (same address as applicant). Transporting *printed matter,* from the facilities of Quad/Graphics, Inc., at or near Pewaukee, WI, to points in the United States (except AK and HI). (Hearing site: Chicago, IL or Milwaukee, WI.)

MC 111812 (Sub-656F), filed June 26, 1979. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57101. Representative: R. H. Jinks (same address as applicant). Transporting (1) *foodstuffs* (except commodities in bulk), from (a) Waukesha, WI, (b) Albany, GA, (c) Navasota, TX, and (d) points in Johnson County, KS, to points in the United States (except AK and HI); and (2) *materials, supplies, and equipment* used in the manufacture and distribution of foodstuffs (except commodities in bulk) in the reverse direction. (Hearing site: Chicago, IL or Milwaukee, WI.)

MC 114273 (Sub-621F), filed June 27, 1979. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Transporting *plastic articles* from the facilities of Louisiana Plastics, Inc., a subsidiary of Bemis Co., Inc., at Louisiana, MO, to Chambersburg, PA. (Hearing site: Chicago, IL, or Washington, DC.)

MC 119493 (Sub-307F), filed June 26, 1979. Applicant: MONKEM CO., INC., P.O. Box 1196, Joplin, MO 64801. Representative: Thomas D. Boone (same address as applicant). Transporting (1) *electrical equipment and lighting equipment,* (2) *parts for the commodities in (1) above,* and (3) *materials and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above, (except commodities in bulk), between Carthage, MO, on the one hand, and, on the other, those points in the United States in and east of MT, WY, CO, and NM. (Hearing site: Kansas City or Springfield, MO.)

MC 119493 (Sub-309F), filed June 26, 1979. Applicant: MONKEM CO., INC., P.O. Box 1196, Joplin, MO 64801. Representative: Thomas D. Boone (same address as applicant). Transporting *lumber,* and *wood products,* between points in KS and MO, on the one hand, and, on the other, points in AL, AR, GA, KY, LA, MS, NC, OK, SC, and TN. (Hearing site: Kansas City or Springfield, MO.)

MC 119522 (Sub-44F), filed June 27, 1979. Applicant: McLAIN TRUCKING, INC., 2425 Walton Street, P.O. Box 2159, Anderson, IN 46011. Representative: John B. Leatherman, Jr. (same address as applicant). Transporting *castings* between Indianapolis, IN and Dayton, OH. (Hearing site: Indianapolis, IN, or Dayton, OH.)

MC 123872 (Sub-106F), filed June 26, 1979. Applicant: W & L MOTOR LINES, INC., P.O. Box 3467, Hickory, NC 28601. Representative: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Boulevard, McLean, VA 22101. Transporting *new furniture and furniture parts,* (1) from points in

Rutherford County, NC, to points in CA, CO, IL, IA, KS, MN, NE, NM, OK, TX, and WI, and (2) from points in Caldwell County, NC, to points in OK, TX, and NM. (Hearing site: Charlotte, NC.)

Note.—Dual operations may be involved.

MC 136512 (Sub-16F), filed June 26, 1979. Applicant: SPACE CARRIERS, INC., 444 Lafayette Road, St. Paul, MN 55101. Representative: James E. Ballenthin, 630 Osborn Building, St. Paul, MN 55102. Transporting *such commodities* as are used in the manufacture of motor vehicles, from Syracuse and Ellicottville, NY, to St. Paul, MN. (Hearing site: Detroit, MI, or St. Paul, MN.)

MC 138882 (Sub-276F), filed June 26, 1979. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Drawer 707, Troy, AL 36081. Representative: John J. Dykema (same address as applicant). Transporting *construction materials,* and *supplies* used in the manufacture and distribution of construction materials (except commodities in bulk), between the facilities of the Celotex Corporation, at or near Quincy, IL, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Tampa, FL, or Birmingham, AL.)

MC 138882 (Sub-278F), filed June 26, 1979. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Drawer 707, Troy, AL 36081. Representative: John J. Dykema (same address as applicant). Transporting *construction materials,* and *supplies* used in the manufacture and distribution of construction materials (except commodities in bulk), from the facilities of the Celotex Corporation, at or near L'Anse, MI, to points in the United States (except AK and HI). (Hearing site: Tampa, FL or Birmingham, AL.)

MC 138882 (Sub-279F), filed June 26, 1979. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Drawer 707, Troy, AL 36081. Representative: John J. Dykema (same address as applicant). Transporting *construction materials,* and *supplies* used in the manufacture and distribution of construction materials, (except commodities in bulk), from the facilities of the Celotex Corporation, at or near Peoria, IL, to points in the United States (except AK and HI). (Hearing site: Tampa, FL or Birmingham, AL.)

MC 138882 (Sub-280F), filed June 26, 1979. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Drawer 707, Troy, AL 36081. Representative: John J. Dykema (same address as applicant). Transporting *construction materials,* and *supplies* used in the manufacture and distribution of construction materials, (except commodities in bulk), from the facilities of the Celotex Corporation, at or near Paris, TN, to points in the United States (except AK and HI). (Hearing site: Tampa, FL or Birmingham, AL.)

MC 138882 (Sub-281F), filed June 26, 1979. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Drawer 707, Troy, AL 36081. Representative: John J. Dykema (same address as applicant). Transporting *construction materials,* and *materials and supplies* used in the manufacture and distribution of construction materials (except commodities in bulk), between the facilities of the Celotex Corporation, at or near Pittston, PA, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Tampa, FL or Birmingham, AL.)

MC 142663 (Sub-3F), filed June 26, 1979. Applicant: SPRINGBROOK TRANSPORT, INC., P.O. Box 422, Springfield, PA 19064. Representative: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Boulevard, McLean, VA 22101. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *chemicals, drugs, petroleum and petroleum products, and plastics* (except commodities in bulk), from Wilmington and Newark, DE, Pasadena and Signal Bill, CA, Wheeling, IL, Baton Rouge, LA, Dighton, MA, Charlotte, NC, Bayonne and Linden, NJ, West Chester, PA, Memphis, TN, Marshall and Houston, TX, and Hopewell, VA, to points in the United States (except AK and HI); and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, in the reverse direction, under continuing contract(s) with ICI Americas, Inc., of Wilmington, DE. (Hearing site: Philadelphia, PA.)

MC 142743 (Sub-15F), filed June 26, 1979. Applicant: FAST FREIGHT SYSTEMS, INC., P.O. Box 132C, Tupelo, MS 38801. Representative: Martin J. Leavitt, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. Transporting (1) *refractories,* from points in Audrain and Callaway Counties, MO, to points in AL, AR, MS, and TN, and (2) *materials and supplies* used in the manufacture and installation of refractories, in the reverse direction. (Hearing site: Washington, DC or Atlanta, GA.)

MC 144442 (Sub-6F), filed June 26, 1979. Applicant: ESSEX EXPRESS, INC., 1200 Hammondville Road, Pompano Beach, FL 33060. Representative: Don A. Allen, 2550 M Street, NW, Washington, DC 20037. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *fresh meats,* from Miami and Tampa, FL, to points in NC, OH, PA, SC, VA, WI, GA, IL, IN, MI, NJ, NY, and MA, under continuing contract(s) with United Beef Packers, of Miami, FL. (Hearing site: Miami, FL or Washington, DC.)

Note.—Dual operations may be involved.

MC 145282 (Sub-2F), filed June 22, 1979. Applicant: FALCON TRANSPORT, INC., 666 Tifft Street, Buffalo, NY 14220. Representative: Robert D. Gunderman, Suite 710 Statler Building, Buffalo, NY 14202. Transporting (1) *general commodities* (except those of unusual value, classes A and B explosives, and those requiring special equipment), in containers or in trailers, having an immediately prior or subsequent movement by water, and (2) empty containers and trailer chassis, between the ports of entry on the international boundary line between the United States and Canada, on the Niagara River in NY, on the one hand, and, on the other, points in MD, OH, PA, NJ, NY, and WV. (Hearing site: Buffalo, NY.)

MC 147343 (Sub-2F), filed June 26, 1979. Applicant: TREADWAY CARRIERS, INC., P.O. Box 364, Westfield, IN 46074. Representative: Orville G. Lynch (same address as applicant). Transporting *electronic data processing machines, and materials* used in the manufacture of electronic data processing machines, between Westbrook, ME, Westboro, MA, Los Angeles and San Francisco, CA, Chicago, IL, Evansville, IN, New York, NY, Clayton, NC, and Austin, TX. Condition: The person or persons engaged in common control of applicant and other regulated carriers must file an application for approval of the common control under 49 U.S.C. 11343 or submit an affidavit indicating why such approval is necessary. (Hearing site: Indianapolis, IN or Boston, MA.)

MC 147552 (Sub-4F), filed June 27, 1979. Applicant: CAJUN CARTAGE AND WAREHOUSING CORP., 1205 St. Louis St., New Orleans, LA 70150. Representative: Thomas N. Willess, 1000 16th St., NW., Washington, DC 20036. Transporting *cleaning, scouring and washing compounds, and soap powder,* from the facilities of Procter and Gamble Distributing Company, at or near Alexandria, LA, to Lake Charles, LA, restricted to the transportation of traffic having a subsequent movement by water. (Hearing site: New Orleans, LA, or Washington, DC.)

(1) MC 32882 (Sub-110F), filed April 26, 1979. Applicant: MITCHELL BROS.

TRUCK LINES, a corporation, 3841 North Columbia Boulevard, Portland, OR 97217. Representative: Michael J. Norton, Suite 100–Commercial Club Building, P.O. Box 2135, Salt Lake City, UT 84110. (2) MC 125433 (Sub-249F), filed April 26, 1979. Applicant: F-B TRUCK LINE CO., a corporation, 1945 South Redwood Road, Salt Lake City, UT 84104 Representative: Michael J. Norton, Suite 100–Commercial Club Building, P.O. Box 2135, Salt Lake City, UT 84110. (3) MC 141532 (Sub-51F), filed October 22, 1979. Applicant: PACIFIC STATES TRANSPORT, INC., 3328 East Valley Road, Renton, WA 98055. Representative: Michael J. Norton, Suite 100–Commercial Club Building, P.O. Box 2135, Salt Lake City, UT 84110. (4) MC 141804 (Sub-214F), filed May 3, 1979. Applicant: WESTERN EXPRESS, division of INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Michael J. Norton, Suite 100–Commercial Club Building, P.O. Box 2135, Salt Lake City, UT 84110. (5) MC 143941 (Sub-3F), filed May 21, 1979. Applicant: UTILITIES INTERSTATE SERVICE, INC., 6899 Cherry Avenue, Long Beach, CA 90803. Representative: Michael J. Norton, Suite 100–Commercial Club Building, P.O. Box 2135, Salt Lake City, UT 84110. Transporting (1) *Aluminum, copper and steel wire,* (2) *aluminum, copper and steel cable,* (3) *aluminum, copper, and steel strands,* (4) *aluminum, copper, and steel rods,* (5) *reels* used in the distribution of the commodities in (1) through (4) above, and (6) equipment materials and supplies used in the manufacture of the commodities in (1) through (5) above, between Orange, Buena Park, Long Beach, Commerce, and San Jose, CA, Portland, OR, Arlington, TX, Harrisonville, MO, Sycamore, IL, Marion, IN, LaGrange, KY, Forest Park and Watkinsville, GA, and Eden and Tarboro, NC, on the one hand, and, on the other, points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Anaconda Company. (Hearing site: Los Angeles, or San Francisco, CA.)

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Decided: Jan. 14, 1980.

By the Commission, Review Board Number 1, Members Carleton and Jones. Member Joyce participating in part.

MC 200 (Sub-360F), filed June 20, 1979. Applicant: RISS INTERNATIONAL CORP., 903 Grand Ave., Kansas City, MO 64106. Representative: Ivan E. Moody (same address as applicant). Transporting *brass, bronze, and copper sheet,* in coils, from Cleveland, OH, to Trenton, MO. (Hearing site: Kansas City, MO.)

MC 42261 (Sub-147F), filed June 19, 1979. Applicant: LANGER TRANSPORT CORP., Box 305, Jersey City, NJ 07303. Representative: W. C. Mitchell, 370 Lexington Ave., New York, NY 10017. Transporting *petroleum products,* in bulk, in tank vehicles, from Paulsboro, NJ, to points in NC, SC, and WV. (Hearing site: New York, NY, or Washington, DC.)

MC 48441 (Sub-50F), filed June 18, 1979. Applicant: R.M.E. INC., P.O. Box 418, Streator, IL 61364. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh Street, NW, Washington, DC 20001. Transporting *glass containers,* from Lincoln, IL, to points in IA, IN, KY, MI, MO, and OH. (Hearing site: Chicago, IL.)

MC 52460 (Sub-247F), filed June 14, 1979. Applicant: ELLEX TRANSPORTATION, INC., 1420 W. 35th St., P.O. Box 9637, Tulsa, OK 74107. Representative: Wilburn L. Williamson, Suite 615-East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. Transporting *canned foodstuffs,* from points in Benton, Crawford and Washington Counties, AR, and Adair and Haskell Counties, OK to points in AL, FL, GA, KS, MO, MS, NC, SC, TN, and TX, restricted to the transportation of traffic originating at the facilities of Allen Canning Company. (Hearing site: Tulsa, OK.)

MC 60430 (Sub-28F), filed June 6, 1979. Applicant: FRIEDMAN'S EXPRESS, INC., P.O. Box 480, Wilkes-Barre, PA 18703. Representative: Stanley J. Gutkowski (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, 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), (1) between Northumberland and Williamsport, PA, (a) from Northumberland over PA Hwy 147 to junction U.S. Hwy 220, then over U.S. Hwy 220 to Williamsport and return over the same route, serving all intermediate points and serving Hughesville, Montgomery, Turbotville, and Watsontown, PA) as off-route points, and (b) from Williamsport over U.S. Hwy 15 to junction U.S. Hwy 11, then over U.S. Hwy 11 to Northumberland and return over the same route, serving all intermediate points, and (2) between Schuylkill Haven and Pine Grove, PA, over PA Hwy 443, serving all intermediate points. (Hearing site: Williamsport or Wilkes-Barre, PA.)

MC 67450 (Sub-90F), June 18, 1979. Applicant: PETERLIN CARTAGE CO., a corporation, 9651 S. Ewing Ave., Chicago, IL 60617. Representative: Joseph Winter, 29 South LaSalle St., Chicago, IL 60603. Transporting *sugar,* from points in LA, to St. Louis, MO, and points in IL, IN, KY, and OH. (Hearing site: Chicago, IL.)

MC 95490 (Sub-50F), June 15, 1979. Applicant: UNION CARTAGE COMPANY, a Corporation, 9A Southwest Cutoff, Worcester, MA 01604. Representative: Edward J. Kiley, 1730 M St., NW, Washington, DC 20036. Transporting *plastic articles,* from Leominster, MA, to Bridgeport, CT, Bethlehem and Scranton, PA, Baltimore and Halethorpe, MD, and Washington, DC. (Hearing site: Boston, MA, or Washington, DC.)

MC 103051 (Sub-480F), June 18, 1979. Applicant: FLEET TRANSPORT COMPANY, INC., 934—44th Ave., N. Nashville, TN 37209. Representative: Russell E. Stone, P.O. Box 90408, Nashville, TN 37209. Transporting *commodities,* in bulk, in tank vehicles, (1) between points in AL, FL, GA, NC, SC, and TN, and (2) between points in AL, FL, GA, NC, SC, and TN, on the one hand, and, on the other, those points in the United States in and east of ND, SD, NE, KS, OK, and TX. Dual operations may be involved. (Hearing site: Nashville, TN, or Atlanta, GA.)

MC 110420 (Sub-822F), June 14, 1979. Applicant: QUALITY CARRIERS, INC., P.O. Box 186, Pleasant Prairie, WI 53158. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg. 425—13th St., NW., Washington, DC 20004. Transporting *liquid chemicals,* in bulk, in tank vehicles, from the facilities of Sherex Chemical Company, Inc., at or near Mapleton, IL, to points in the United States (except AK and HI). (Hearing site: Chicago, IL., or Washington, DC.)

MC 11071 (Sub-16F), June 15, 1979. Applicant: CARROLL TRANSPORT, INC., 1702 Frick Bldg., Pittsburgh, PA 15219. Representative: Henry M. Wick, Jr., 2310 Grant Bldg., Pittsburgh, PA 15219. Transporting *iron and steel articles,* from (1) the facilities of Jones & Laughlin Steel Corporation, at Cleveland and Youngtown, OH, to points in the lower peninsula of MI, and (2) Warren, MI, to the facilities of Jones & Laughlin Steel Corporation, at Cleveland, OH. (Hearing site: Washington, DC, or Pittsburgh, PA.)

MC 111320 (Sub-74F), filed June 15, 1979. Applicant: KEEN TRANSPORT, INC., P.O. Box 1417, Hudson, OH 44236.

Representative: Michael Spurlock, 275 East State St., Columbus, OH 43215. Transporting (1) *construction and earth-moving equipment,* and (2) *parts* of the commodities described in (1) above, between Cleveland, OH, on the one hand, and, on the other, points in AZ, CA, CO, ID, MN, NM, NV, OR, UT, WA, and WY. (Hearing site: Columbus, OH.)

MC 112750 (Sub-351F), filed June 14, 1979. Applicant: PUROLATOR COURIER CORP., 3333 New Hyde Park, New Hyde Park, NY 11042. Representative: Elizabeth L. Henoch (same as the applicant). To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commercial papers, documents* and *written instruments,* (except currency, and negotiable securities), as are used in the business of banks and banking institutions, between Cincinnati, OH, on the one hand, and, on the other, points in Bell, Breathitt, Clay, Elliot, Estill, Floyd, Harlan, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, McCreary, Magoffin, Martin, Menifee, Morgan, Owsley, Perry, Pike, Powell, Pulaski, Rockcastle, Whitley and Wolfe Counties, KY. Under continuing contract(s) with banks and banking institutions. (Hearing site: Washington, DC.)

Note.—Dual operations may be involved.

MC 113300 (Sub-12F), filed June 14, 1979. Applicant: WILLIAM T. HERRON TRUCKING, INC., R.F.D. 3, Marietta, OH 45750. Representative: Andrew Jay Burkholder, 275 East State St., Columbus, OH 43215. Transporting *lime,* in bulk, from points in VA, KY, and WV (except those in Hancock, Brook, Ohio, and Marshall Counties), to points in OH and PA. (Hearing site: Columbus, OH.)

MC 113651 (Sub-307F), filed June 14, 1979. Applicant: INDIANA REFRIGERATOR LINES, INC., P.O. Box 552, Muncie, IN 47305. Representative: Glen L. Gissing (same address as applicant). Transporting *meats, meat products, meat by products,* and *articles distributed by meat-packing houses,* 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) between points in AL, FL, GA, LA, and MS, on the one hand, and, on the other, points in IA, IL, IN, MA, MI, MO, NJ, NY, OH, PA, and WI. (Hearing site: Dallas, TX, or Washington, DC.)

MC 114890 (Sub-96F), filed June 14, 1979. Applicant: COMMERCIAL CARTAGE CO., a corporation, 343 Axminster Dr., Fenton, MO 63026. Representative: David A. Cherry, P.O. Box 1540, Edmond, OK 73034. Transporting *barium sulfide slurry,* in bulk, in tank vehicles, from Coffeyville, KS, to Memphis, TN. (Hearing site: St. Louis or Joplin, MO.)

MC 117940 (Sub-349F), filed June 18, 1979. Applicant: NATIONWIDE CARRIERS, INC., P.O. Box 104, Maple Plain, MN 55359. Representative: Allan L. Timmerman, 5300 Highway 12, Maple Plain, MN 55359. Transporting *foodstuffs* (except in bulk), from the facilities of General Mills, Inc., at Chicago, IL, to Buffalo, NY, Mechanicsburg, PA, and points in IN, IA, MI, MN, MO, SD, and WI, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Minneapolis or St. Paul, MN.)

MC 119560 (Sub-21F), filed June 19, 1979. Applicant: SOUTHERN BULK HAULERS, INC., P.O. Box 278, Harleyville, SC 29448. Representative: Edward G. Villalon, 1032 Pennsylvania Bldg., Pennsylvania Ave., and 13th St., NW, Washington, DC 20004. Transporting *lumber and fiberboard,* from the facilities of Holly Hill Lumber Company, at Holly Hill and Walterboro, SC, to those points in the United States on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, thence northward along the western boundaries of Itasca and Koochiching Counties, MN, to the international boundary line between the United States and Canada. (Hearing site: Columbia, SC, or Washington, DC.)

MC 119641 (Sub-17OF), filed June 14, 1979. Applicant: RINGLE EXPRESS, INC., 450 East Ninth St., Fowler, IN 47944. Representative: Robert A. Kriscunas, 1301 Merchants Plaza, Indianapolis, IN 46204. Transporting (1) *zinc, zinc dross, zinc residue, and zinc skimmings,* and (2) *materials, equipment and supplies* used in the manufacture of zinc and zinc products, between the facilities of St. Joe Zinc Company, at Josephtown (Potter Township), PA, on the one hand, and on the other, points in IA, IL, IN, MI, MN, MO, OH, and WI. (Hearing site: Indianapolis, IN, or Chicago, IL.)

MC 119641 (Sub—173F), filed June 20, 1979. Applicant: RINGLE EXPRESS, INC., 450 E. Ninth St., Fowler, IN 47944. Representative: Alki E. Scopelitis, 1301 Merchants Plaza, Indianapolis, IN 46204. Transporting *lumber, lumber products, lumber mill products, forest products, and wood products,* from Greenville and Madison, GA, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Indianapolis, IN or Chicago, IL.)

MC 120631 (Sub-5F), filed June 15, 1979. Applicant: STEPHENS TRUCK LINE, INC., P.O. Box 484, Dickson, TN 37055. Representative: Roland M. Lowell, 618 United American Bank Bldg., Nashville, TN 37219. Transporting (1) *pneumatic tire valves,* (2) *parts* for pneumatic tire valves, (3) *materials and supplies* used in the manufacture of the commodities in (1) and (2) above, between the facilities of Scovill, Schrader Division at or near Dickson, TN, and Gadsden, AL, (4) *poly film and poly bags,* and (5) *materials and supplies* used in the manufacture of the commodities in (4) above, between LaGrange, GA, and points in Dickson County, TN. (Hearing site: Nashville, TN.)

MC 120761 (Sub-55F), filed June 20, 1979. Applicant: NEWMAN BROS. TRUCKING COMPANY, a Corporation, 6559 Midway Rd., P.O. Box 18728, Ft. Worth, TX 76118. Representative: R. E. Newman (same address as applicant). Transporting (1) *automotive lifts,* from Ft. Worth, TX, to points in the United States (except AK and HI), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of automotive lifts, in the reverse direction. (Hearing site: Dallas, TX, or Washington, DC.)

MC 120761 (Sub-57F), filed June 19, 1979. Applicant: NEWMAN BROS. TRUCKING COMPANY, a Corporation, 6559 Midway Rd., P.O. Box 18728, Fort Worth, TX 76118. Representative: Clint Oldham, 1108 Continental Life Bldg., Fort Worth, TX 76102. Transporting *iron and steel articles,* from the facilities of A. M. Castle & Co., at or near Franklin Park, IL, to Los Angeles, San Francisco and Fresno, CA, Wichita, KS, Baltimore, MD, Kansas City, MO, Galion and Cleveland, OH, Tulsa, OK, Salt Lake City, UT, and Milwaukee, WI. (Hearing site: Dallas, TX.)

MC 121101 (Sub-3F), filed June 19, 1979. Applicant: FORGE VILLAGE TRANSPORTATION CO., INC., 39 Central Ave., Ayer, MA 01432. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Transporting (1) *general commodities* (except commodities in bulk, household goods as defined by the Commission, classes A and B explosives, wool, wool products, those of unusual value, and those requiring special equipment), between points in MA, (2) *wool and wool products,* between Newton, MA, on the one hand, and, on the other, Brighton, Newton, Waltham, and Watertown, MA, (3) *paper,* from Tewksbury, MA, to points in CT and RI,

and (4) *printed matter, materials, equipment and supplies* used in the manufacture and distribution of printed matter (except commodities in bulk), between Brattleboro, VT, and points in MA, on the one hand, on the other, points in CT, IL, IN, KY, MA, MD, MI, MO, NJ, NY, OH, PA, RI, TN, VT, and VA. NOTE: The purpose of this application is (A) to convert applicant's Certificate of Registration in MC–121101 Sub 1, to a Certificate of Public Convenience and Necessity in parts (1) and (2) above, and (B) to apply for an extension of authority in parts (3) and (4) above. (Hearing site: Boston, MA.)

MC 124821 (Sub-49F), filed June 14, 1979. Applicant: GILCHRIST TRUCKING, INC., 105 North Keyser Ave., Old Forge, PA 18518. Representative: John W. Frame, Box 626, 2207 Old Gettysburg Rd. Camp Hill, PA 17011. Transporting (1) *television picture tubes*, (2) *parts for television picture tubes* and (3) *materials and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above, between Dunmore, PA, and Bloomington, IN. (Hearing site: Harrisburg, PA.)

MC 127651 (Sub-48F), filed April 26, 1979. Applicant: EVERETT G. ROEHL, INC., East 29th St., Box 7, Marshfield, WI 54449. Representative: Richard A. Westley, 4506 Regent, Suite 100, Madison, WI 53705. Transporting *malt beverages*, from St. Louis, MO, to Marshfield, WI. (Hearing site: Minneapolis, MN, or Milwaukee, WI.)

MC 127651 (Sub-49F), filed April 30, 1979. Applicant: EVERETT G. ROEHL, INC., East 29th St., Box 7, Marshfield, WI 54449. Representative: Richard A. Westley, 4506 Regent St., Suite 100, Madison, WI 53705. Transporting (1) *lawn and garden lime and gypsum*, and (2) *sand*, from the facilities of F. Hurlbut Company, at or near Green Bay, WI, to points in IL, IN, and MI. (Hearing site: Milwaukee, WI, or Chicago, IL.)

MC 127651 (Sub-50F), filed April 30, 1979. Applicant: EVERETT G. ROEHL, INC., East 29th St., Box 7, Marshfield, WI 54449. Representative: Richard A. Westley, 4506 Regent St., Suite 100, Madison, WI 53705. Transporting *particleboard*, from the facilities of Weyerhaeuser Company, at or near Marshfield, WI, to points in IN, MI, and OH. (Hearing site: Chicago, IL.)

MC 128030 (Sub-123F), filed June 18, 1979. Applicant: THE STOUT TRUCKING CO., INC., P.O. Box 98, Urbana, IL 61801. Representative: James R. Madler, 120 W. Madison St., Chicago, IL 60602. Transporting (1) *plastic containers*, from Danville, IL and Springdale, OH, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) above, in the reverse direction. (Hearing site: Chicago, IL.)

MC 128940 (Sub-41F), filed June 18, 1979. Applicant: RICHARD A. CRAWFORD, d.b.a. R. A. CRAWFORD TRUCKING SERVICE, P.O. Box 303, Gambrils, MD 21054. Representative: Edward N. Button, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *laboratory reagents and culture media*, from Cockeysville, MD, to points in AR, CO, IL, IA, KS, MN, NE, NM, NV, OK, OR, SC, UT, WA, WI, WV, and DC, under continuing contract(s) with BBL Micro Biological Systems, of Cockeysville, MD. (Hearing site: Washington, DC, or Baltimore, MD.)

MC 135410 (Sub-69F), filed June 14, 1979. Applicant: COURTNEY J. MUNSON, d.b.a. MUNSON TRUCKING, P.O. Box 266, Monmouth, IL 61462. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Ave., Park Ridge, IL 60068. Transporting (1) *welding materials and supplies*, (2) *electric motors, electric welders, and hand trucks*, and (3) *parts and accessories* for the commodities in (2) above, from the facilities of The Lincoln Electric Company, at Cleveland and Mentor, OH, to points in IA, IL, IN, MI, MO, PA, and WI. (Hearing site: Chicago, IL.)

MC 135410 (Sub-70F), filed June 14, 1979. Applicant: COURTNEY J. MUNSON, d.b.a. MUNSON TRUCKING, P.O. Box 266, Monmouth, IL 61462. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Ave., Park Ridge, IL 60068. Transporting *canned and preserved foodstuffs*, from the facilities of Heinz USA, Division of H. J. Heinz Company, at or near Muscatine and Iowa City, IA, to points in IL, IN, MI, MO, OH and PA, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 135410 (Sub-72F), filed June 20, 1979. Applicant: COURTNEY J. MUNSON, d.b.a. MUNSON TRUCKING, P.O. Box 266, Monmouth, IL 61462. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Ave., Park Ridge, IL 60068. Transporting (1) *paper and paper products*, and (2) *materials and supplies* used in the manufacture of the commodities in (1) above, between the facilities of International Paper Company, at or near Indianapolis, IN, on the one, hand, and, on the other, points in IL, IA, MI, MO, and OH, restricted to the transportation of traffic originating at or destined to the named facilities. (Hearing site: New York, NY or Washington, DC.)

MC 138841 (Sub-16F), filed June 15, 1979. Applicant: BLACK HILLS TRUCKING CO., a corporation, P.O. Box 2130, Rapid City, SD 57709. Representative: James W. Olson, P.O. Box 1552, Rapid City, SD 57709. Transporting (1) *beer and malt beverages*, from St. Louis, MO, and points in IL, NJ, MN, and WI, to Rapid City, SD, and (2) *soda pop*, from points in IL, NJ, MN, and WI, to Rapid City, SD. (Hearing site: Rapid City, SD.)

MC 143540 (Sub-18F), filed June 15, 1979. Applicant: MARINE TRANSPORT COMPANY, a corporation, P.O. Box 2142, Wilmington, NC 28402. Representative: Ralph McDonald, P.O. Box 2246, Raleigh, NC 27602. Transporting *soybean flour*, in bags, from the facilities of Ralston Purina Company, at or near (a) Hager City, WI, (b) Louisville, KY, (c) Memphis, TN, and (d) Red Wing, MN, to Wilmington, NC. (Hearing site: Wilmington, NC.)

MC 143621 (Sub-40F), filed June 15, 1979. Applicant: TENNESSEE STEEL HAULERS, INC., 901 5th Ave. North, P.O. Box 5748, Nashville, TN 37208. Representative: Sidney T. Stanley (same address as applicant). Transporting (1) *central heating and air conditioning units*, and (2) *accessories and parts* for the commodities in (1) above, from the facilities of Heil-Quaker Corp., at or near Nashville, TN, to points in the United States (except AK and HI). (Hearing site: Nashville, TN.)

MC 144330 (Sub-70F), filed June 18, 1979. Applicant: UTAH CARRIERS, INC., P.O. Box 1218 Freeport Center, Clearfield, UT 84016. Representative: Charles D. Midkiff (same address as applicant). Transporting *lumber, lumber mill products, and wood products* (except commodities in bulk), from points in ID, MT, OR, and WA to points in AR, AZ, CO, IL, IN, KS, MO, NM, OK, TX, UT, and WY, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Denver, CO.)

MC 144330 (Sub-71F), filed June 18, 1979. Applicant: UTAH CARRIERS, INC., P.O. Box 1218 Freeport Center, Clearfield, UT 84016. Representative: Charles D. Midkiff (same address as applicant). Transporting *lumber*, from points in TN, to points in CO, MT, and WY, restricted to the transportation of traffic originating at the named origins

and destined to the indicated destinations. (Hearing site: Denver, CO.)

MC 144570 (Sub-3F), filed June 18, 1979. Applicant: DIVERSIFIED CARRIERS, INC., 903 Sixth St., Rochester, MN 55901. Representative: D. Douglas Titus, Suite 510 Benson Bldg., Sioux City, IA 51101. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products, and meat byproducts, and articles distributed by meatpacking houses*, 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 hides and commodities in bulk), from the facilities of Iowa Beef Processors, Inc., at or near Luverne, MN, to points in FL, under continuing contract(s) with Iowa Beef Processors, Inc., of Dakota City, NE. (Hearing site: Minneapolis/St. Paul, MN, or Omaha, NE.)

MC 145950 (Sub-27F), filed June 14, 1979. Applicant: BAYWOOD TRANSPORT, INC., P.O. Box 2611, Waco, TX 76706. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St. NW., Washington, D.C. 20001. Transporting *fruit juice concentrates*, in vehicles equipped with mechanical refrigeration, from Ontario, CA, to points in AL, CT, GA, IA, IL, IN, LA, MA, MD, MI, MO, MS, NC, NJ, NY, OH, PA, SD, TX, VA, and WI. (Hearing Site: Los Angeles, CA.)

Note.—Dual operations may be involved.

MC 146071 (Sub-13F), filed June 15, 1979. Applicant: DEETZ TRUCKING, INC., P.O. Box 2, Straum, WI 54770. Representative: Charles J. Kimball, 350 Capitol Life Center, 1600 Sherman St., Denver, CA. 80203. Transporting *such commodities* as are dealt in or used by manufacturers, converters, and printers of paper and paper products (except commodities in bulk), between the facilities of Brown Company, at Eau Clair and Ladysmith, WI, on the one hand, and, on the other, points in the United States (except AK, HI and WI), restricted to the transportation of traffic originating at or destined to the named origins. (Hearing site: Chicago, IL.)

MC 146461 (Sub-2F), filed June 15, 1979. Applicant: J H TRUCKING, INC., Route 4, Box 112, Amarillo, TX 79119. Representative: Edward A. O'Donnell, 1004 29th St., Sioux City, IA 51104. Transporting *meats, meat products and meat by-products* and *articles distributed by meat-packing houses* as described in sections A and C of Appendix I to the report in *Description in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk, in tank vehicles), from the facilities of Thies Packing Co., Inc., at Great Bend and Wichita, KS, to points in AR, AZ, CA, CO, CT, DE, IA, ID, IL, IN, KY, MA, MD, MI, MN, MO, MT, NE, NH, NJ, NM, NV, NY, OH, OK, OR, PA, RI, TN, TX, UT, VA, VT, WA, WI, WV, WY, and DC, restricted to the transportation of traffic originating at named origins and destined to the indicated destinations (except traffic moving in foreign commerce). (Hearing site: Wichita, KS.)

MC 146890 (Sub-7F), filed June 19, 1979. Applicant: C & E TRANSPORT, INC., d.b.a. C. E. ZUMSTEIN CO., P.O. Box 27, Lewisburg, OH 45338. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. Transporting (1) *such commodities* as are dealt in by grocery and food business houses, and (2) *materials* and *supplies* used in the manufacture and distribution of the commodities in (1) above, between the facilities of Ralston Purina Company, at or near (a) Minneapolis, MN, (b) Clinton and Davenport, IA, (c) Battle Creek, MI, (d) Lancaster and Sharonville, OH, (e) Mechanicsburg, PA, (f) Dunkirks, NY, (g) Louisville, KY, and (h) Jersey City, NJ, on the one hand, and, on the other, those points in the United States in and east of MN, IA, MO, AR, LA (except LA, MS, AL, GA, FL, and SC). (Hearing site: St. Louis, MO.)

Note.—Dual operations may be involved.

MC 147581F, filed June 13, 1979. Applicant: RKM, INC., P.O. Box 201, 107 Eastman St., Easton, MA 02334. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *toilet preparations, cleaning compounds*, and *motor fuel water absorption and anti-icing compounds* (except commodities in bulk), from Holbrook, MA, to points in CT, GA, IL, MD, ME, NH, NJ, NY, PA, RI, VA, VT, WV, and DC, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities described in (1) above (except commodities in bulk), from points in NJ, NY, and PA, to Holbrook, MA, under continuing contract(s) with the Barcolene Company, of Holbrook, MA. (Hearing site: Boston, MA.)

MC 147571F, filed June 14, 1979. Applicant: TWIN RIVERS TRANSPORTATION COMPANY, a corporation, 500 Waukegan Road, Deerfield, IL 60015. Representative: Edward G. Bazelon, 39 South LaSalle St., Chicago, IL 60603. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *frozen foodstuffs, and materials, equipment and supplies* used in the manufacture and distribution of frozen foodstuffs (except commodities in bulk), (a) between the facilities of Kitchens of Sara Lee, Inc., at or near (i) Deerfield and Chicago, IL, and (ii) New Hampton, IA, on the one hand, and, on the other, points in the United States (except AK or HI), and (b) between the facilities of Idaho Frozen Food, Corp., at or near (iii) Nampa and Twin Falls, ID, and (iv) Clearfield, UT, on the one hand, and, on the other, points in the United States (except AK and HI), (2) *foodstuffs and materials, equipment and supplies* used in the manufacture and distribution of foodstuffs (except commodities in bulk), (a) between the facilities of Booth Fisheries Corporation, at (i) Portsmouth, NH, (ii) Lubec, ME, and (iii) Brownsville, TX, on the one hand, and, on the other, points in the United States (except AK and HI) and (b) between the facilities of Chef Pierre, Inc., at or near (iv) Traverse City and Grand Rapids, MI, and (v) Forest, MS, on the one hand, and, on the other, points in the United States (except AK and HI), (3) *flavorings, stabilizers, chocolate coatings, sticks, and paper products*, (except commodities in bulk), from Englewood, NJ, and City of Industry, CA, to Des Plaines, IL, Boston, MA, Green Bay, WI, Dallas, TX, Los Angeles, CA, and Tampa, FL, (4) *chocolate cocoa powder* (except in bulk) from Pennsauken, NJ, to City of Industry, CA, and (5) *sticks, fruit, fruit juice, and applesauce* (except commodities in bulk), from points in FL, ME, and WA, to Englewood, NJ, and City of Industry, CA, under continuing contracts in (1)(a) above with Kitchens of Sara Lee, Inc., of Deerfield, IL, in (b) with Idaho Frozen Foods Corp., of Twin Falls, ID, in (2)(a) with Booth Fisheries Corporation of Chicago, IL, in (b) with Chef Pierre, Inc., of Traverse City, MI, and in (3), (4), and (5) with Popsicle Industries, Inc., of Englewood, NJ. (Hearing site: Chicago, IL.)

MC 147580F, filed June 14, 1979. Applicant: DAVID ESPY TRUCKING, INC., 7007 Hudson River Dr., Tampa, FL 33619. Representative: David A. Townsend, 100 Madison St., Suite 301, Tampa, FL 33602. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting, *expandable polystyrene, in bulk* from Monaca, PA, to Mulberry and Sun City, FL, under a continuing contract(s) with

(1) Master Containers, Inc., of Mulberry, FL, and (2) Speedling, Inc., of Sun City, FL. (Hearing site: Tampa, FL.)

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Decided: Jan. 4, 1980.

By the Commission. Review Board Number 1, Members Carleton, Joyce and Jones.

MC 3468 (Sub-172F), filed June 25, 1979. Applicant: F. J. BOUTELL DRIVEAWAY CO., INC., 705 South Dort Highway, Flint, MI 48501. Representative: Harry C. Ames, Jr., Suite 805, 666 Eleventh Street NW., Washington, DC 20001. Transporting *automobiles, trucks, and chassis,* in secondary movements, from Providence, RI, to points in DE, MD, MA, MI, NJ, NY, OH, PA, WV, and DC. (Hearing site: New York, NY, or Washington, DC.)

MC 6078 (Sub-91F), filed June 22, 1979. Applicant: D. F. BAST, INC., 1425 North Maxwell Street, P.O. Box 2288, Allentown, PA 18001. Representative: James F. Maher, 1100 Four Penn Center Plaza, Philadelphia, PA 19103. Transporting *graphite, foundry facings, coke, and ground coal,* from Detroit, MI, to points in OH, PA, NY, NJ, DE, MD, CT, RI, MA, VT, NH, and ME. (Hearing site: Philadelphia, PA or Washington, DC.)

MC 73688 (Sub-98F), filed June 25, 1979. Applicant: SOUTHERN TRUCKING CORPORATION, P.O. Box 7195, 1500 Orenda Avenue, Memphis, TN 38107. Representative: Diane Price, Route 6, Box 15, North Little Rock, AR 72118. Transporting *iron and steel articles,* from the facilities of Arkansas Foundry Company at Little Rock, AR, to points in AL and GA. (Hearing site: Little Rock, AR.)

MC 78728 (Sub-4F), filed June 25, 1979. Applicant: EVERETT EXPRESS, INC., Hwy. 258, North Tarboro, NC 27886. Representative: James D. Dorn, P.O. Box 6274, Chesapeake, VA 23323. Transporting *building materials,* between Morehead City, NC, on the one hand, and, on the other, points in VA. (Hearing site: Raleigh, NC.)

MC 108119 (Sub-166F), filed June 21, 1979. Applicant: E. L. MURPHY TRUCKING COMPANY, a corporation, P.O. Box 43010, St. Paul, MN 55164. Representative: Andrew R. Clark, 100 First National Bank Building, Minneapolis, MN 55402. Transporting *energy recovery equipment,* from the facilities of Sunstrand Aviation, Division of Sunstrand Corporation, at or near Rockford, IL, to points in the United States (except AK and HI). (Hearing site: Chicago, IL.)

MC 113678 (Sub-821F), filed June 25, 1979. Applicant: CURTIS, INC., 4810 Pontiac Street, Commerce City, CO 80022. Representative: Roger M. Shaner (same address as applicant). Transporting *washing, cleaning, and scouring compounds, drugs and toilet preparations, paper articles, plastic articles, health care products, beauty products, health care equipment, beauty equipment, and foodstuffs,* (except commodities in bulk in tank vehicles), from La Mirada, CA to points in ID, MT, OR, UT, and WA. (Hearing site: Los Angeles, CA.)

MC 125689 (Sub-5F), filed June 25, 1979. Applicant: PEATTYVILLE TRANSPORT, INC., P.O. Box 357, Catlettsburg, KY 41129. Representative: Oakie G. Ford (same address as applicant). Transporting *roofing asphalt,* in packages, from Leach, KY, to points in IN, MD, OH, PA, TN, VA, and WV. (Hearing site: Charleston, WV.)

Note.—The person or persons who appear to be engaged in common control must either file an application under 49 U.S.C. 11343(a) or submit an affidavit indicating why such approval is unnecessary.

MC 126679 (Sub-13F), filed June 21, 1979. Applicant: DENNIS TRUCK LINES, INC., P.O. Box 189, Vidalia, GA 30474. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Blvd., Atlanta, GA 30349. Transporting *lumber, lumber products, wood, wood products, poles, pilings, and posts,* from points in NC and SC to points in AL, FL, and MS. (Hearing site: Atlanta, GA.)

MC 133189 (Sub-25F), filed June 22, 1979. Applicant: VANT TRANSFER, INC., 5075 Northeast Mulcare Drive, Minneapolis, MN 55421. Representative: John B. Van de North, Jr., 2200 First National Bank Building, St. Paul, MN 55101. Transporting (1) *iron and steel articles,* from the facilities ofc North Star Steel Company, at Monroe, MI, to points in the United States (excluding AK and HI); and (2) *materials, equipment and supplies* used in the manufacture of iron and steel articles (except commodities in bulk), in the reverse direction. (Hearing site: Minneapolis, MN, or Detroit, MI.)

MC 135598 (Sub-25F), filed June 22, 1979. Applicant: SHARKEY TRANSPORTATION, INC., P.O. Box 3156, Quincy, IL 62301. Representative: Carl L. Steiner, 39 South LaSalle Street, Chicago, IL 60603. Transporting (1) *air compressors, air compressor parts, power pumps, power pump parts, machine parts, internal combustion engines and rough castings* from the facilities of Gardner-Denver Company, at or near Quincy, IL, to points in CO, KS, NE, OK, TX, MN, MO, IA, LA, AR, MS, WI, TN, MI, IN, KY, AL, GA, SC, NC, VA, WV, OH, PA, NY, NJ, MD, CT, MA, and DC, and (2) *materials* used in the manufacture of air compressors, air compressor parts, power pumps, and power pump parts in the reverse directions. (Hearing site: Chicago, IL.)

Note.—Dual operations may be involved.

MC 140829 (Sub-274F), filed June 25, 1979. Applicant: CARGO, INC., P.O. Box 206, US Highway 20, Sioux City, IA 51102. Representative: David King (same address as applicant). Transporting (1) *petroleum and petroleum products,* in packages, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of petroleum and petroleum products (except commodities in bulk, in tank vehicles), from the facilities used by the Pennzoil Company, at or near Maryland Heights, MO, to points in AR, CO, IA, IL, KS, LA, MS, MO, NE, NM, ND, SD, and TX, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Washington, DC.)

Note.—Dual operations may be involved.

MC 141628 (Sub-3F), filed June 22, 1979. Applicant: OVEROAD CONTAINER SERVICE, INC., 3980 Quebec St., P.O. Box 7240, Denver, CO 80207. Representative: Rick Barker (same address as applicant). Transporting *games, toys, and children's vehicles* from the facilities of The ERTL Company, at Dyersville, IA to points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, and WY. (Hearing site: Des Moines, IA or Denver, CO.)

MC 142508 (Sub-86F), filed June 25, 1979. Applicant: NATIONAL TRANSPORTATION, INC., P.O. Box 37465, 10810 South 144th Street, Omaha, NE 68137. Representative: Lanny N. Fauss, P.O. Box 37096, Omaha, NE 68137. Transporting *canned goods,* from the facilities of Campbell Soup Company, at Chicago, IL to points in IN, KY, and MO, restricted to the transportation of traffic originating at named origin and destined to indicated destinations. (Hearing site: Chicago, IL, or Washington, DC.)

MC 144188 (Sub-7F), filed June 25, 1979. Applicant: P. L. LAWTON, INC., P.O. Box 325, Berwick, PA 18603. Representative: John M. Musselman, P.O. Box 1146, 410 North Third Street, Harrisburg, PA 17108. Transporting *such commodities* as are dealt in or used by grocery and food business houses (except commodities in bulk and frozen foods); between the facilities of Wise Foods Division of Borden Foods, Borden, Inc., in Columbia, Luzerne, and Lycoming Counties, PA, on the one hand, and, on the other, those points in the United States in and east of ND, SD, NE, KS, OK, and TX, restricted to the

transportation of traffic originating at or destined to named points. (Hearing site: Harrisburg, PA, or Washington, DC.)

Note.—Dual operations may be involved.

MC 146729 (Sub-2F), filed June 22, 1979. Applicant: JAMES S. HELWIG AND ALLEN L. GRIMLAND, d.b.a. H & G LEASING, 6331 Melody Lane, No. 1720, Dallas, TX 75231. Representative: Paul S. Angenend, P.O. Box 2207, 1806 Rio Grande, Austin, TX 78768. Transporting *motor truck coupler parts and trailer coupler parts,* from Holland, MI, and Denmark, SC, to the facilities of Holland Hitch of Texas, Inc., at or near Wylie, TX. (Hearing site: Dallas, TX, or Washington, DC.)

Note.—Dual operations may be involved.

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Decided: Jan. 11, 1980.

By the Commission, Review Board Number 1. Members, Carleton, Joyce and Jones.

MC 13134 (Sub-70F), filed June 22, 1979. Applicant: GRANT TRUCKING, INC., P.O. Box 256, Oak Hill, OH 45656. Representative: James M. Burtch, 100 E. Broad St., Suite 1800, Columbus, OH 43215. Transporting (1) *Building materials* and *insulating materials,* and (2) *materials* used in the manufacture and distribution of the commodities named in (1) above, between the facilities of CertainTeed Corporation, in Granville County, NC, on the one hand, and, on the other, points in KY, MD, OH, VA, WV, and DC. (Hearing site: Washington, D.C.)

MC 30844 (Sub-650F), filed: June 27, 1979. Applicant: KROBLIN REFRIGERATED XPRESS, INC., P.O. Box 5000, Waterloo, IA 50704, Representative: John P. Rhodes, P.O. Box 5000, Waterloo, IA 50704. Transporting *Frozen foodstuffs* between Indianapolis, IN, on the one hand, and, on the other, points in AL, AR, CO, CT, DE, FL, GA, IL, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, VT, VA, WV, WI, and DC, restricted to the transportation of traffic originating at or destined to the facilities of Monument Distribution Warehouse, Inc., at Indianapolis, IN. (Hearing: Chicago, IL.)

MC 39414 (Sub-18F), filed June 26, 1979. Applicant: TYLER TRUCK LINES, INC., 2824 Judge Rd., Oakfield, NY 14125. Representative: S. Michael Richards, P.O. Box 225, Webster, NY 14580. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *adhesives, building materials, composition boards, fabricated metal products, mineral fiber and mineral fiber products, paper, gypsum and gypsum products, paint and paint products,* and *lime* (except liquid in bulk), and (2) *materials and supplies* used in the manufacture, installation and distribution of the commodities in (1) above, (except commodities in bulk), between points in CT, DE, IL, IN, KY, MD, ME, MA, MI, NH, NJ, NY, NC, OH, PA, RI, VT, VA, WV, WI, and DC, under a continuing contract(s) with United States Gysum Company, of Chicago, IL. (Hearing site: Chicago, IL, or Buffalo, NY.)

MC 73165 (Sub-483F), filed June 27, 1979. Applicant: EAGLE MOTOR LINES, INC., 830 33rd St., North, Birmingham, AL 35202. Representative: R. CAMERON ROLLINS, P.O. Box 11086, Birmingham, AL 35202. Transporting *aircraft engines,* and *parts* for aircraft engines, between Millville, NJ, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Philadelphia, PA, or New Orleans, LA.)

MC 73165 (Sub-484F), filed June 27, 1979. Applicant: EAGLE MOTOR LINES, INC., 830 33rd St., North, Birmingham, AL 35202. Representative: R. CAMERON ROLLINS, P.O. Box 11086, Birmingham, AL 35202. Transporting *pipe and pipe fittings,* from Phillipsburg, NJ, to points in DE, MD, VA, WV, NC, SC, KY, TN, GA, AL, MS, FL, OH, and DC. (Hearing site: Philadelphia, PA, or New Orleans, LA.)

MC 73165 (Sub-485F), filed June 26, 1979. Applicant: EAGLE MOTOR LINES, INC., 830 33rd St., North, Birmingham, AL 35202. Representative: R. Cameron Rollins, P.O. Box 11086, Birmingham, AL 35202. Transporting (1) *aerators,* and (2) *parts and accessories* for aerators, from the facilities of DeLoach Plastics, at Sarasota, FL, to point in the United States (except IN, MI, and OH), and (2) *materials and supplies* used in the manufacture of the commodities in (1) above, in the reverse direction. (Hearing site: Tampa, FL, or New Orleans, LA.)

MC 73165 (Sub-486F), filed June 26, 1979. Applicant: EAGLE MOTOR LINES, INC., 830 33rd St., North, Birmingham, AL 35202. Representative: R. Cameron Rollins, P.O. Box 11086, Birmingham, AL 35202. Transporting *pipe and pipe fittings,* from the facilities of Charlotte Pipe & Foundry Co., at Charlotte and Bakers, NC, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX (except IN, MI, and OH). (Hearing site: Charlotte, NC, or Atlanta, GA.)

MC 101474 (Sub-26F), filed June 26, 1979. Applicant: RED TOP TRUCKING COMPANY, INC., 7020 Cline Ave., Hammond, IN 46323. Representative: Alki E. Scopelitis, 1301 Merchants Plaza, Indianapolis, IN 46204. Transporting (1) *commodities,* the transportation of which because of size or weight, requires the use of special equipment, and (2) *iron, steel, and aluminum articles,* (a) between points in IL, IN, IA, KY, MI, MN, MO, OH, and WI, and (b) between points in IL, IN, IA, KY, MI, MN, MO, OH, and WI, on the one hand, and, on the other, points in AL, AR, DE, FL, GA, KS, LA, MD, MS, NJ, NY, NC, OK, PA, SC, TN, TX, VA, and WV. (Hearing site: Indianapolis, IN, or Chicago, IL.)

MC 107295 (Sub-927F), filed June 26, 1979. Applicant: PRE-FAB TRANSIT CO., a corporation, P.O. Box 146, Farmer City, IL 61842. Representative: Mack Stephenson, 42 Fox Mill Lane, Springfield, IL 62707. Transporting *storage racks and storage rack parts,* from Pontiac, IL, to points in the United States (except AK and HI). (Hearing site: Chicago, IL.)

MC 111375 (Sub-112F), filed June 27, 1979. Applicant: PIRKLE REFRIGERATED FREIGHT LINES, INC., P.O. Box 3358, Madison, WI 53704. Representative: Warren W. Wallin, 10 S. LaSalle Street, Suite 1600, Chicago, IL 60603. Transporting *chemicals, toilet preparations, personal care products, buffing and polishing compounds* (except commodities in bulk), (a) between Melrose Park, IL, and Sparks, NV, and (b) between Sparks, NV, on the one hand, and, on the other, points in CA, OR, and WA. (Hearing site: Chicago, IL, or Madison, WI.)

MC 125254 (Sub-60F), filed June 11, 1979. Applicant: MORGAN TRUCKING CO., a corporation, P.O. Box 714, Muscatine, IA 52761. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. Transporting *grain products* (except commodities in bulk), from Muscatine, IA, to points in the United States (except AK and HI). (Hearing site: Des Moines, IA.)

MC 125335 (Sub-70F), filed June 28, 1979. Applicant: GOODWAY TRANSPORT, INC., P.O. Box 2283, York, PA 17405. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501. Transporting *Cheese and cheese products,* in vehicles equipped with mechanical refrigeration, from the facilities of Swift & Company, at or near Green Bay, Wausau, Marathon, Medford, Monroe, and Algoma, WI, to points in CT, DE, GA, KY, FL, MA, MD, ME, MI, NC, NH, NJ, NY, PA, RI, SC, TN, VA, VT, WV, AND DC. (Hearing site: Chicago, IL, or Harrisburg, PA.)

MC 134755 (Sub-195F), filed June 27, 1979. Applicant: CHARTER EXPRESS, INC., P.O. Box 3772, Springfield, MO 65804. Representative: Larry D. Knox,

600 Hubbell Building, Des Moines, IA 50309. Transporting (1) *iron, steel, zinc, and lead, articles* (except commodities in bulk) and (2) *construction materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), between points in AL, AR, CO, CT, DE, GA, IL, IN, IA, KS, KY, LA, MS, MD, MA, MI, MN, MO, NE, NJ, NM, NY, OH, OK, PA, TX, VA, WI, WV, and DC, restricted to the transportation of traffic originating at or destined to the facilities of Penn-Dixie Steel Corp. (Hearing site: Kansas City, MO.)

Note.—Dual operations may be involved.

MC 135725 (Sub-20F), filed June 28, 1979. Applicant: FRY TRUCKING INC., 507 W. 5th Street, Wilton, IA 52778. Representative: Kenneth F. Dudley, 1501 East Main Street, P.O. Box 279, Ottumwa, IA 52501. Transporting *feed and feed ingredients,* from Cedar Rapids, IA, to points in CA, KY, NC, SC, and TX. (Hearing site: Chicago, IL or Minneapolis, MN.)

MC 138885 (Sub-4F), filed June 22, 1979. Applicant: BALDWIN LEASING COMPANY, INC., 801 Industrial Blvd., Bay Minette, AL 36507. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *cabinets, moulding,* and *lumber,* and (2) *materials* used in the manufacture of cabinets, between Bay Minette, AL, on the one hand, and, on the other, points in the United States (except AK and HI), under a continuing contract(s) with (a) Southern Kitchens, division of W. N. Stuckey Moulding, of Bay Minette, AL, and (b) W. N. Stuckey Moulding, of Bay Minette, AL. (Hearing site: Mobile or Birmingham, AL.)

Note.—Dual operations may be involved.

MC 142715 (Sub-68F), filed June 26, 1979. Applicant: LENERTZ, INC., P.O. Box 141, South St. Paul, MN 55075. Representative: K. O. Petrick (same address as applicant). Transporting *frozen foodstuffs,* from Lake Odessa and points in Barry, Allegan and Oceana Counties, MI, to Philadelphia, PA, and points in Cumberland and Salem Counties, NJ, and (2) from points in Cumberland and Salem Counties, NJ, to points in OH, MI, IN, and IL, restricted in (1) and (2) above to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: St. Paul, MN.)

MC 144584 (Sub-5F), filed June 27, 1979. Applicant: WASHINGTON-CALIFORNIA EXPRESS, INC., 919 South McGarry St., Los Angeles, CA 90029. Representative: Joseph F. Hoary, 121 South Main St., Taylor, PA 18517. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *masonry supplies,* from Bethany, CT, to points in VA, WV, PA, MD, and DC, under continuing contract(s) with Laticrete International, Inc., of Woodbridge, CT. (Hearing site: Hartford, CT.)

Passengers

MC 145224 (Sub-8F), filed June 27, 1979. Applicant: ALL-CAL TOURS, INC., 1415 Sebastopol Rd., Santa Rosa, CA 95401. Representative: Eldon M. Johnson, 650 California St., Suite 2808, San Francisco, CA 94108. Transporting *passengers and their baggage,* in the same vehicle with passengers, in special and charter operations, beginning and ending at Gridley, CA, and points in Nevada County, CA, and extending to points in the United States (including AK but excluding HI). (Hearing site: San Francisco or Sacramento, CA.)

MC 145765 (Sub-3F), filed June 18, 1979. Applicant: WIEST TRUCKLINE, INC., 1305 6th Ave. SW., Jamestown, ND 58401. Representative: Charles E. Johnson, 418 East Rosser Ave., P.O. Box 1982, Bismarck, ND 58501. Transporting (1) *iron and steel articles,* (a) from the facilities of United States Steel Corporation, at or near (i) Gary, IN, and (ii) South Chicago, Joliet, and Waukegan, IL, to points in MN, (b) from Chicago, Sterling and Granite City, IL, Minneapolis and Duluth, MN, Wilton and Sioux City, IA, Green Bay, WI, Omaha, NE, Ashland, KY, and Sioux Falls, SD, to points in ND, and (c) from Fargo, ND, to Omaha, NE, Sioux Falls, SD, and Sioux City, IA, restricted in part (b) against the transportation of traffic destined to the facilities of Haybuster Manufacturing, Inc., at or near Jamestown, ND, and Summers Manufacturing Co., Inc., at Maddock, ND. (Hearing site: Fargo, SD, or Minneapolis, MN.)

Note.—Dual operations may be involved.

MC 147595F, filed June 25, 1979. Applicant: LYLE GUENTZEL TRUCKING, INC., d.b.a. G AND A TRUCKING, P.O. Box 316, Hibbing, MN 55746. Representative: John B. Van de North, Jr., 2200 First National Bank Building, St. Paul, MN 55101. 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 Minneapolis, MN, on the one hand, and, on the other, points in St. Louis County (except Duluth) and Itasca County (except Grant Rapids), MN. (Hearing site: Duluth or Minneapolis, MN.)

Volume No. 268

Decided: January 7, 1980.
By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

MC 47583 (Sub-101F), filed June 27, 1979. Applicant: TOLLIE FREIGHTWAYS, INC., 1020 Sunshine Road, Kansas City, KS 66115. Representative: D. S. Hults, P.O. box 225, Lawrence, KS 66044. Transporting *petroleum products* (except commodities in bulk), from the facilities of Mobil Oil Corporation, at or near Kansas City, KS, to points in AR, CA, CO, IL, IN, IA, KY, LA, MN, MO, NE, ND, OK, TN, TX, SD, and WY. (Hearing site: Kansas City, MO.)

MC 117883 (Sub-247F), filed June 11, 1979. Applicant: SUBLER TRANSFER, INC., P.O. Box 62, One Vista Drive, Versailles, OH 45380. Representative: Neil E. Hannan (same address as applicant). 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 the facilities of Louisville Freezer Center at Louisville, KY, on the one hand, and, on the other, points in CT, DE, IL, IN, IA, KS, KY, ME, MD, MA, MI, MO, NE, NH, NJ, NY, OH, PA, RI, VT, VA, WV, WI, and DC, restricted to the transportation of traffic originating at or destined to the facilities of Louisville Freezer Center. (Hearing site: Louisville, KY, or Washington, DC.)

MC 127303 (Sub-65F), filed June 27, 1979. Applicant: ZELLMER TRUCK LINES, INC., P.O. Box 343, Granville, IL 61326. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. Transporting *plastic articles* and *materials, equipment, and supplies* used in the manufacture of plastic articles (except commodities in bulk), between points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Mobil Chemical Company, Plastics Division of Macedon, NY. (Hearing site: Washington, DC.)

MC 138762 (Sub-35F), filed June 19, 1979. Applicant: MUNICIPAL TANK LINES LIMITED, P.O. Box 3500, Calgary, Alberta, Canada T2P 2P9. Representative: Richard H. Streeter, 1729 H Street NW., Washington, DC 20006. To operate as a *common carrier,* by motor vehicle, in foreign commerce

only, over irregular routes, transporting *nepheline syenite,* in bulk, in tank vehicles, from ports of entry on the international boundary line between the United States and Canada in MI to Hillsboro, IL. (Hearing site: Buffalo, NY or Washington, DC.)

MC 142083 (Sub-3F), filed June 26, 1979. Applicant: SPECIALTY CARRIER, INC., 596 Christman Street, P.O. Box 11229, Atlanta, GA 30310. Representative: Edward Malinzak, 900 Old Kent Building, Grand Rapids, MI 49503. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce only, over irregular routes, transporting *foodstuffs and articles* used in the manufacture, packaging, and distribution of foodstuffs (except in bulk, in tank vehicles), between the facilities of Country Home Bakery of the West, Inc., d/b/a/ Sue Ellen Hi-Country Kitchen at Denver, CO, to points in the United States (except AK and HI), under continuing contract(s) with Country Home Bakery of the West, Inc., d/b/a/ Sue Ellen Hi-Country Kitchen, of Denver, CO. (Hearing site: Washington, DC or Chicago, IL.)

MC 143183 (Sub-9F), filed June 27, 1979. Applicant: L. M. ROACH, d.b.a. D & L TRUCKING COMPANY, P.O. Box 1741, 145 Sampson Road, Wilmington, NC 28401. Representative: Ralph McDonald, P.O. box 2246, Raleigh, NC 27602. Transporting *urea* (except in bulk, in tank vehicles), from Wilmington, NC, to points in SC and VA. (Hearing site: Wilmington, NC.)

MC 147152 (Sub-4F), filed June 26, 1979. Applicant: GENERAL CARRIERS CORPORATION, 12425 East Florence Avenue, Santa Fe Springs, CA 90670. Representative: Miles L. Kavaller, 315 So. Beverly Drive, Suite 315, Beverly Hills, CA 90212. Transporting *materials and supplies* used in the manufacture of carpeting (except in bulk), from Turnersburg, NC, to Spartanburg, SC, Covington, VA, and points in GA to the facilities of Ozite Division, Brunswick Corporation, at Anaheim and Culver City, CA. (Hearing site: Los Angeles, CA.)

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-2175 Filed 1-23-80; 8:45 am]

BILLING CODE 7035-01-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 17
Thursday, January 24, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL COMMUNICATIONS COMMISSION.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m., Thursday, January 24, 1980.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Special closed meeting.

CHANGES IN THE MEETING: Change in time of meeting on WNAC–TV, Boston, Massachusetts (Docket Nos. 18759–18761).

The Federal Communications Commission previously announced on January 17, 1980, its intention to hold a closed meeting on Thursday, January 24, 1980, commencing at 9:30 A.M.

The time has been changed. The Special Closed meeting will commence at 10:30 A.M.

The prompt and orderly conduct of Commission business requires this change and no earlier announcement of the change was possible.

Additional information concerning this meeting may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 632–7260.

Issued: January 18, 1980.

[S–134–80 Filed 1–22–80; 10:58]

BILLING CODE 6712–01–M

2

FEDERAL DEPOSIT INSURANCE CORPORATION. Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, January 28, 1980, to consider the following matters:

Disposition of minutes of previous meetings.

Request by the Comptroller of the Currency for a report on the competitive factors involved in the proposed merger of The First National Bank of Ashland, Ashland, Ohio, and The Polk State Bank, Polk, Ohio.

Reports of committees and officers:

Report of the Comptroller regarding the Corporation's securities portfolio inventory as of December 31, 1979.

Minutes of the actions approved by the Committee on Liquidations, Loans and Purchases of Assets pursuant to authority delegated by the Board of Directors.

Reports of the Director of the Division of Bank Supervision with respect to applications or requests approved by him and the various Regional Directors pursuant to authority delegated by the Board of Directors.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located 550 17th Street, N.W., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: January 21, 1980.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S–137–80 Filed 1–22–80; 11:33 am]

BILLING CODE 6714–01–M

3

FEDERAL DEPOSIT INSURANCE CORPORATION. Notice of Changes in Subject Matter of Agency Meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, January 21, 1980, the Corporation's Board of Directors determined, on motion of Chairman Irvine H. Sprague, seconded by Director William M. Isaac (Appointive), concurred in by Director John G. Heimann (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following applications for Federal deposit insurance of United States branches of foreign banks:

National Bank of Greece, S.A., Athens, Greece, for its branches located at 168 North Michigan Avenue, Chicago, Illinois and 33 State Street, Boston, Massachusetts.

Bank of India, Bombay, India, for its branch located at 277 Park Avenue, New York, New York.

State Bank of India, Bombay, India, for its branches located at 10 South La Salle Street, Chicago, Illinois; 460 Park Avenue, New York, New York; and 42–08 Main Street, Flushing, New York.

Korea Exchange Bank, Seoul, Korea, for its Branch located at 33 Dearborn Street, Chicago, Illinois.

Standard Chartered Bank Limited, London, England, for its branch located at 9200 Sears Tower, 233 South Wacker Drive, Chicago, Illinois.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: January 21, 1980.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S–136–80 Filed 1–22–80; 11:32 am]

BILLING CODE 6714–01–M

4

FEDERAL DEPOSIT INSURANCE CORPORATION. Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, January 28, 1980, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of title 5, United States Code, to consider the following matters:

Application for Federal deposit insurance:

Asian International Bank, a proposed new bank, to be located at One World Trade Center, New York (Manhattan), New York, for Federal deposit insurance.

Application for consent to establish a branch:
Banco Commercial de Mayaguez, Mayaguez, Puerto Rico, for consent to establish a branch at 75 Corchado Street, Isabela, Puerto Rico.
Applications for consent to merge and establish branches:
The Pennsylvania Bank and Trust Company, Warren, Pennsylvania, an insured State nonmember bank, for reconsideration of a request for consent to merge under its charter and title with The Farmers National Bank of Conneautville, Conneautville, Pennsylvania, and to establish the sole office of The Farmers National Bank of Conneautville as a branch of the resultant bank.
The Buffalo Savings Bank, Buffalo, New York, an insured mutual savings bank, for consent to merge with Fillmore Savings and Loan Association, Buffalo, New York, under the charter and title of The Buffalo Savings Bank, and to establish the existing office and the approved, but unopened office of Fillmore Savings and Loan Association as branches of the resultant bank.
Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:
Case No. 44,203-L—Franklin National Bank, New York, New York.
Case No. 43,648-L (amended)—The Drovers' National Bank of Chicago, Chicago, Illinois.
Recommendations with respect to the initiation or termination of cease-and-desist proceedings, termination-of-insurance proceedings, or suspension or removal proceedings against certain insured banks or officers or directors thereof:
Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).
Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:
Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, N.W., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation at (202) 389-4425.

Dated: January 21, 1980.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[S-138-80 Filed 1-22-80; 11:34 am]
BILLING CODE 6714-01-M

5

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Tuesday, January 29, 1980 at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:
Compliance. Personnel.
* * * * *

DATE AND TIME: Wednesday, January 30, 1980 at 10 a.m.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: Special meeting for discussion of regulations.
* * * * *

DATE AND TIME: Thursday, January 31, 1980 at 10 a.m.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates for future meetings.
Correction and approval of minutes.
Certifications.
Advisory Opinions:
Draft AO 1979-79—Michael A. Fernandez, Assistant Treasurer, the National Committee for an Effective Congress.
Draft AO 1980-4—Robert Strauss, Chairman, Carter/Mondale Presidential Committee, Inc.
1980 Election and related matters.
Appropriations and budget.
Pending legislation.
Classification actions.
Routine administrative matters.

PERSON TO CONTACT FOR INFORMATION:
Mr. Fred Eiland, Public Information Officer, telephone: 202-523-4065.
Marjorie W. Emmons,
Secretary to the Commission.
[S-144-80 Filed 1-22-80; 3:18 pm]
BILLING CODE 6715-01-M

6

[FR No. 94]

FEDERAL ELECTION COMMISSION.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, January 24, 1980 at 10 a.m.

CHANGE IN MEETING: The following item has been added:

AOR 1979-58—Evan S. Dobelle, Carter/Mondale Presidential Committee, Inc.

PERSON TO CONTACT FOR INFORMATION:
Mr. Fred Eiland, Public Information Officer, telephone: 202-523-4065.
Marjorie W. Emmons,
Secretary to the Commission.
[S-142-80 Filed 1-22-80; 12:50 pm]
BILLING CODE 6715-01-M

7

FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 44, FR Page 3695, January 18, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m., January 23, 1930.

PLACE: 1700 G Street NW., sixth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Frank O. Bolling (202-377-6677).

CHANGES IN THE MEETING: The following items have been added to the agenda for the open meeting:

Amendment to Charter—County Federal Savings and Loan Association of Westport, Westport, Connecticut.
Kaneb Services Inc. (Southwestern Group Financial Inc.) Acquisition of World Savings of San Antonio and Merge with United Savings, Houston, Texas.

Announcement is being made at the earliest practicable time.

No. 311, January 22, 1980.
[S-143-80 Filed 1-22-80; 2:56 pm]
BILLING CODE 6720-01-M

8

[USITC SE-80-8]

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Thursday, February 7, 1980.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Microwave ovens (Inv. 731-TA-4)—briefing and vote (if necessary).
2. Rail passenger cars (Inv. 731-TA-5 and -6)— briefing and vote (if necessary).
3. Frozen potato products (Inv. 701-TA-3)—briefing and vote (if necessary).
4. Electric motors (Inv. 731-TA-7)—briefing and vote (if necessary).

CONTACT PERSON FOR MORE INFORMATION:
Kenneth R. Mason, Secretary (202) 523-0161.
[S-140-80 Filed 1-22-80; 11:40 am]
BILLING CODE 7020-02-M

9

[USITC SE-80-7]

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Tuesday, February 5, 1980.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints:

a. Poultry disk picking machines (Docket No. 621).

5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-141-80 Filed 1-22-80; 11:40 am]

BILLING CODE 7020-02-M

10

[NM-80-5]

NATIONAL TRANSPORTATION SAFETY BOARD.

TIME AND DATE: 9 a.m., Tuesday, February 5, 1980.

PLACE: NTSB Board Room, National Transportation Safety Board, 800 Independence Avenue SW., Washington, D.C. 20594.

STATUS: Open.

MATTER TO BE CONSIDERED: *Oral Argument* on the question of the Board's jurisdiction to consider, as an affirmative defense of a respondent, the filing of a report pursuant to the Aviation Safety Reporting Program (ASRP).

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming 202-472-6022.

January 22, 1980.

[S-139-80 Filed 1-22-80; 11:39 am]

BILLING CODE 4910-58-M

11

[OP0401]

PAROLE COMMISSION.

TIME AND PLACE: 9:30 a.m., Friday, January 25, 1980.

PLACE: Room 826A, 320 First Street NW., Washington, D.C. 20537.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Referrals from Regional Commissioners of approximately 18 cases in which inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSONS FOR MORE INFORMATION: A. Ronald Peterson, Analyst (202) 724-3094.

[S-135-80 Filed 1-22-80; 10:58 am]

BILLING CODE 4410-01-M

12

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of January 28, 1980, in Room 825, 500 North Capitol Street, Washington, D.C.

An open meeting will be held on Tuesday, January 29, 1980, at 9:30 a.m. Closed meetings will be held on Tuesday, January 29, 1980, immediately following the 9:30 a.m. open meeting and Wednesday, January 30, 1980, at 10:00 a.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402 (a)(4)(8)(9)(i) and (10).

Chairman Williams and Commissioners Loomis, Evans, Pollack, and Karmel determined to hold the aforesaid meetings in closed session.

The subject matter of the open meeting scheduled for Tuesday, January 29, 1980, at 9:30 a.m., will be:

1. Consideration of whether to authorize the issuance of an interpretive release on the application of the Securities Act of 1933 to employee benefit plans. For further information, please contact Peter J. Romeo at (202) 272-2573.
2. Consideration of whether to authorize publication of a release announcing the adoption of amendments to Rule 12b-25 under the Securities Exchange Act of 1934. For further information, please contact Bruce Mendelsohn at (202) 272-2589.
3. Consideration of whether to grant a request by Dresser Industries, Inc. that the Commission review the Division of Corporation Finance's determination concerning a shareholder proposal submitted to the Company by the Protestant Episcopal Church. For further information, please contact Michael Connell at (202) 272-2579.
4. Consideration of whether to grant a final order exempting Oppenheimer & Co., Inc. from provisions of Section 9(a) of the Investment Company Act of 1940. For further information, please contact Seigfreid Schoedel at (202) 272-2253.
5. Consideration of whether to grant a request by Skadden, Arps, Slate, Meagher & Flom for a waiver of imputed disqualification pursuant to 17 CFR 200.735-8(e). For further information, please contact Myrna Siegel at (202) 272-2430.

The subject matter of the closed meeting scheduled for Tuesday, January 29, 1980, immediately following the 9:30 a.m. open meeting, will be:

Personnel matter.

The subject matter of the closed meeting scheduled for Wednesday, January 30, 1980, at 10:30 a.m., will be:

Formal orders of investigation.
Litigation matter.
Settlement of administrative proceeding of an enforcement nature.
Institution of administrative proceeding of an enforcement nature.
Institution of injunctive action.
Freedom of Information Act appeal.
Administrative proceding of an enforcement nature.

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: Paul Lowenstein at (202) 272-2092.

January 22, 1980.

[S-145-80 Filed 1-22-80; 3:53 pm]

BILLING CODE 8010-01-M

13

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES. Notice of deletion of item to the January 14, 1980, agenda.

TIME AND DATE: 8:00 a.m., January 14, 1980.

PLACE: Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Maryland 20014.

SUBJECT: Deletion: (7)—Departmental Program Review.

STATUS: Open.

PERSON TO CONTACT: Frank M. Reynolds, Executive Secretary, 202-295-2111.

SUPPLEMENTARY INFORMATION: The Departmental Program Review scheduled for the January 14, 1980 agenda was deleted because of the illness of the speaker. Notice of the speaker's inability to appear was received at the time of the meeting and no earlier announcement was possible. Accordingly, this matter was announced at the time of the meeting and deleted from the agenda without objection.

January 18, 1980

H. E. Lofdahl,

Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

[S–133–80 Filed 1–22–80; 9:25 am]

BILLING CODE 3810–70–M

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Part II

Securities and Exchange Commission

Business Combination Transactions, Short Form for Registration and Amendment of Related Rules; General Revision of Regulation S-X; Uniform Instructions as to Financial Statements, Regulations S-X; and Integration of Securities Acts Disclosure Systems, Proposed Amendments to Annual Report Form

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 201, 230, 239, and 240

[Release, Nos. 33-6177 and 34-16497; File No. S7-817]

Business Combination Transactions—Proposed Short Form for Registration and Proposed Amendments of Related Rules

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is publishing for comment a proposed short form which may be used to register under the Securities Act of 1933 securities issued in business combination transactions which meet certain criteria. Specifically, the Commission is proposing for comment: (1) proposed Form S–15, an optional short form for registration under the Securities Act of securities issued in certain business combination transactions; (2) proposed amendments to certain provisions of Regulations 14A and 14C under the Securities Exchange Act of 1934 to provide that the informational and filing requirements of those regulations would be satisfied when Form S–15 is used to register securities under the Securities Act; and (3) proposed amendments to Rule 24 of the Commission's Rules of Practice and Rule 411 under the Securities Act of 1933 to permit the incorporation by reference of material contained in annual reports to shareholders furnished to the Commission pursuant to Rules 14a–3 and 14c–3 under the Exchange Act. These proposals are part of a coordinated rulemaking effort designed to further integrate disclosure requirements under the Federal securities laws.

DATE: Comments should be submitted on or before April 15, 1980.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7–817. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Catherine Collins (202–272–2589), Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The proposed Form S–15 and related amendments being published for comment today represent part of the Commission's continuing efforts to simplify the disclosure provided to investors, to reduce the burdens and costs which registration of securities under the Securities Act of 1933 (the "Securities Act") [15 U.S.C. 77a et seq.] imposes on issuers, and to integrate further the corporate disclosure requirements of the Securities Act and the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq.]. This rulemaking action is being proposed simultaneously with the Commission's publication for comment of (i) proposed amendments to Form 10–K [17 CFR 249.310] and Rule 14a–3 [17 CFR 240.14a–3] under the Exchange Act; (ii) proposed amendments to Regulation S–K [17 CFR 229.20] under the Securities Act and the Exchange Act; and (iii) a proposed addition to Regulation S–X [17 CFR Part 210] which would establish uniform financial statement instructions for certain forms and reports required to be filed pursuant to the Securities Act and the Exchange Act and various amendments to Regulation S–X which would eliminate, to the extent possible, the differences between the requirements of Regulation S–X and the requirements of Generally Accepted Accounting Principles. These proposals taken together constitute a major effort to achieve an integrated disclosure system under the Securities Act and the Exchange Act. Proposed Form S–15 relies to a great extent upon the amendments proposed in these three releases; accordingly, attention is directed to Securities Exchange Act Release No. 6176, January 15, 1980, Securities Act Release No. 6178, January 15, 1980, and Securities Act Release No. 6179, January 15, 1980, for a fuller understanding of proposed Form S–15 and its relationship with the Commission's move toward integrated and simplified disclosure requirements.

Proposed Form S–15 provides for an abbreviated prospectus to be delivered to security holders together with copies of the issuer's latest annual report to security holders, certain portions of which would be incorporated by reference into the registration statement. The form would be available for Securities Act registration of securities issued in certain business combination transactions where the acquiring company meets the conditions as to the use of Form S–7 (17 CFR 239.27).[1] This and the other conditions to the form's availability, the requirements of the proposed form, and the related rule amendments being proposed are discussed in greater detail below under "Synopsis of the Proposals."

Background

On September 27, 1976 (Securities Act Release No. 5744, 41 FR 43876), the Commission proposed for comment Form S–14A, an optional short form for registration under the Securities Act of securities to be issued in certain reclassification or business combinations. The Commission, mindful of the unwieldy (often 150 page) disclosure document involved in registration statements on Form S–14, had two goals in proposing Form S–14A: (1) simplifying the disclosure provided to investors and (2) reducing unnecessary burdens on issuers. The form was designed to be available where the issuer met the conditions for the use of Form S–7 and the securities were to be issued in a transaction of the type specified in Rule 145(a) (17 CFR 230.145(a)). The proposed form was based on the concept of "differential disclosure," that is, that investors need not be directly furnished all material information about an issuer before making an investment decision so long as other information is available to the markets and to investors in the form of annual, quarterly and periodic reports and proxy statements filed with the Commission. The concept would have been implemented by the use of a bifurcated prospectus. A short prospectus would have been required to be delivered to all security holders and would principally contain information involving the transaction in which the securities registered were to be issued. The second part of the registration statement would be filed with the Commission and would contain more detailed information about the issuer and the transaction. The second part would be incorporated by reference into the prospectus and delivered to shareholders upon request.

The public comments received on the 1976 proposal overwhelmingly supported the Commission's objectives. Several commentators furnished specific reasons why the full scale disclosure of Form S–14 (17 CFR 239.23) frequently imposes a burden not outweighed by corresponding benefits to investors.

[1] These conditions include a minimum earnings test and a requirement that the registrant has provided continuous disclosure to investors pursuant to the reporting requirements of Sections 13, 14 and 15(d) of the Exchange Act. *See* Note 6, *infra.*

Among the reasons mentioned were that: (1) individual investors may be better served by delivery of a readable and understandable disclosure document; (2) security holders are protected by state and federal law from over-reaching by the majority or by members of management or the Board of Directors; (3) the acquired company's shareholders are the beneficiaries of an agreement which is the result of extended negotiations; (4) adequate public information about the issuer may already be available; and (5) the transaction may not require the vote of shareholders of the acquired company or there may be a relatively small number of such shareholders.

The 1976 commentators did not believe, however, that the form as proposed would have achieved the goals of simplified disclosure and reduced costs because (1) the two part format would actually increase printing and preparation costs to issuers and (2) the uncertain potential liability for a short prospectus not itself containing all material information would discourage issuers from taking advantage of the short form.[2] Accordingly, the Commission decided not to adopt the form as proposed, or the amendments to related rules, and announced instead its intention to develop a new short registration form for the same purpose. This determination was announced in Securities Act Release No. 5806 (February 16, 1977) [42 FR 10855], which described the contemplated new form generally as one which would consist of a single abbreviated prospectus incorporating by reference substantial information already filed with the Commission pursuant to the reporting requirements of the Exchange Act and/or information contained in the issuer's annual report to security holders.

The proposed Form S–15 being published today reflects the Commission's on-going reexamination and reformulation of the disclosure requirements under the Securities Act and the Exchange Act with a view to further integrating those requirements. Specifically, the proposal would integrate the applicable disclosure provisions of these Acts in the registration of securities issued in certain types of business combination transactions. As was the case in Securities Act Release Nos. 5744 and 5806, *supra*, the Commission's intent in proposing Form S–15 is to provide a means for reducing registrants' costs in registering securities to be issued in business combinations and at the same time to provide to investors a simplified and more understandable disclosure document upon which to make decisions. The proposals published herein would accomplish these dual goals by restricting the use of the short form to those transactions in which the security holder's need for disclosure may be met by delivery of an abbreviated prospectus accompanied by the issuer's annual report to security holders. For liability purposes, pertinent information such as financial statements would be incorporated by reference into the registration statement from the annual report to security holders.

These proposals also reflect in part the recommendation of the Advisory Committee on Corporate Disclosure (the "Advisory Committee") that registration statements relating to the public offering of securities in an exchange offer or Rule 145(a) transaction should be shortened and simplified.[3] The Advisory Committee concurred with the Commission's objectives in proposing Form S–14A in 1976, stating that it saw no need for a detailed registration statement repeating information already available about the companies involved in the transaction and of which the professional investor/analyst is already aware. Further, the Advisory Committee pointed out that where the disclosure document actually reaches the individual investor, and requests him to make an investment decision without the benefit of an intermediary adviser, it should not be of a type which would overwhelm and confuse him.[4]

The Advisory Committee recommended that the Commission could achieve its objectives through further integration of the securities acts by incorporating Exchange Act reports by reference into the statutory prospectus under the Securities Act.

While the proposals published today take this approach, they do not go as far as was recommended by the Advisory Committee. Form S–15 is an interim measure and would only be available for registration of securities issued in the limited types of transactions discussed below, not in all business combinations and exchange offers.

If adopted, proposed Form S–15 would be in the nature of an experiment. The Commission will carefully watch the use and effects of the form to determine whether it is consistent with the Commission's responsibility to protect investors and safeguard the public interest in connection with the purchase and sale of securities. This will enable the Commission to consider the advisability of either expanding the types of transactions for which the form may be used or, if the protection of investors so requires, limiting the availability of the form.

Synopsis of the Proposals

The following brief synopsis is intended to assist interested parties in their understanding of the form and amendments proposed. Attention is direted to the text of the proposals for a more complete understanding.

I. *Availability of Form S–15.*— Proposed Form S–15 would be available only for registration of securities issued in transactions of the character specified in Rule 145 (a)(2) and (a)(3) or in an exchange offer for securities of another person where the exchange offer will result in acquisition of the other person by the issuer. The transaction must also meet the five conditions set forth in General Instruction A.

The first two conditions are designed to allow the form to be used only where relatively small companies are acquired by substantially larger companies. Under the first condition, the effect of the transaction must not be a change of more than 10% between the items listed in General Instruction A. 1(a) (gross sales and operating revenues, net income, etc.) for the issuer on a pro forma combined consoldiated basis giving effect to the transaction in question.[5] In addition, the total purchase price must not exceed 10% of the aggregate market value of voting stock held by unaffiliated shareholders.

The latter limitation, on the precentage of the non-affiliate "float," reflects the Commission's concern that an abbreviated prospectus may not be

[2] The commentators expressed concern that, where information summarized in or omitted from the short prospectus actually delivered but contained in the second part of the prospectus filed with the Commission is later found to be material, the issuer may be exposed to liability because the information was not contained in the distributed document.

[3] Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission ("Report"), House Committee on Interstate and Foreign Commerce, 95th Cong., 1st Sess. (1977), Committee Print 95–29 at 440–450.

[4] The Advisory Committee noted a study conducted by the Division of Corporation Finance in 1976 which found that the average length of Form S–14 registration statements filed with the Commission was 110 pages, with some exceeding 200 pages.

[5] The test for the effect of the transaction used in General Instruction A to proposed Form S–15 is similar in some respects to the tests set forth in Securities Act Release No. 4950 (February 20, 1969) for determining whether relief should be granted from the requirement for 3 year certified financial statements of companies acquired or to be acquired. It should be noted, however, (1) that the standards are not identical, (2) that the test in General Instruction A to proposed Form S–15 is to be used only for purposes of determining the availability of such form, and (3) that for all purposes other than Form S–15 availability and disclosure requirements the standards and positions expressed in Release No. 4950 remain changed.

appropriate when a transaction does not result in greater than a 10% change for the issuer on a pro forma basis but nevertheless may be large in terms of publicly traded shares and thus have a significant impact on the market price of the issuer's stock. Such disparity may indicate that the issuer is not sufficiently followed by market professionals to assure that previously filed material is reflected in the market price of the issuer's stock or that the sheer volume of shares issued in the proposed business combination may affect the market price of the issuer's securities. The Commission's concern is similar to that which prompted the limitation on the availability of Form S–16 (17 CFR 239.27) for primary offerings to offerings by issuers whose voting stock held by non-affiliates has an aggregate market value of at least $50 million. This limitation was imposed because the Commission believed that such a condition would provide some assurance that information about such companies would be widely disseminated in the market place and that securities analysts would follow such companies (*See* Securities Act Release No. 5923, April 11, 1978). These expected consequences of the "float" requirement were seen as was to help assure market reaction to material information about a company and thereby to reduce the need to provide that information directly to offerees at the time of the offering.

The Commission invites specific comment as to whether Form S–15 use should be prohibited where there is this disparity, and, if so, as to which condition would best achieve this end: (1) the proposed requirement, which is of an experimental nature, that would make the form unavailable if the total purchase price of the company being acquired exceeds 10% of the aggregate market value of the issuer's voting stock held by unaffiliated shareholders: (2) a flat requirement that the aggregate market value of the issuer's voting stock held by non-affiliates be of a certain minimum amount; or (3) any other condition which commentators may suggest. In addition, commentators are specifically invited to suggest what additional items of disclosure not required to be presented in the prospectus pursuant to proposed Form S–15 would be appropriate where such disparities exist.

Under the second condition, the issuer must meet the requirements for the use of Form S–7 [6] and must have furnished an annual report to its security holders pursuant to and meeting the requirements of Rule 14a–3 [17 CFR 240.14a–3] or Rule 14c–3 [17 CFR 240.14c–3] for its latest fiscal year.

The other conditions which must be met in order for propposed Form S–15 to be available are designed generally to ensure that the abbreviated prospectus is only used in transactions and under conditions where security holders will not suffer as a result of streamlined disclosure. These additional conditions are as follows.

(1) The boards of directors of both companies involved in the transaction must have approved the transaction.

(2) The prospectus must be delivered to security holders at least 20 days prior to the meeting date or, if there (General Instruction A 1.): (1) registration on Form S–14 or (2) registration on Form S–15 as proposed but with an additional requirement for presentation of pro forma summary information (Item 1(c)) and financial statements with respect to the transaction.

Because a Form S–15 prospectus would consist largely of information concerning the business combination itself and would contain only limited information concerning the issuer and other parties to the transaction, the Commission believes that such a prospectus would not be appropriate for use in connection with offers or sales of the registered securities to persons who are not security holders of a party to the transaction. Accordingly, proposed Form S–15 includes an instruction prohibiting use of the form for reoffers or resales by any affiliate of the issuer or any other persons who may be deemed to be underwriters of the securities. Instead, reoffers or resales of securities by such persons would have to be made pursuant to a registration statement under the Securities Act or pursuant to an appropriate exemption from the registration requirements of the Securities Act, such as Regulation A (17 CFR 230.251 to 262) or Rule 145(d) (17 CFR 230.145(d)). Because the issuer of the securities being registered must meet the requirements for the use of Form S–7 in order to use Proposed Form S–15, Form S–16 (17 CFR 239.27) would be available for secondary distributions of securities issued pursuant to the business combination transaction. Form S–16 imposes only abbreviated prospectus disclosure requirements and relies upon incorporation by reference of the issuer's Exchange Act filings. It is contemplated that, since the boards of directors of both companies will have approved the proposed transaction, arrangements can be made during negotiation for future Form S–16 registration for reoffers and resales by affiliates.

Proposed Form S–14A (Securities Act Release No. 5744, *supra*) contained a similar prohibition on use for reoffers and resales, and the Commission continues to believe such a restriction appropriate, especially in light of the experimental nature of proposed Form S–15. Comments are specifically invited, however, on the necessity for and any undue burdens imposed by this prohibition.

Proposed Form S–15 would not be available to registered investment companies. The Commission believes that the special circumstances of those companies warrant specific consideration as to their use of the proposed form. Comments are specifically invited as to whether proposed Form S–15 should be available to investment companies and, if so, how the conditions for their use of the form should be stated and what, if any, modifications would be appropriate in the items of proposed Form S–15.

II. *Relationship with Proxy or Information Rules.*—The proposed Form S–15 prospectus may serve as the proxy or information statement used in connection with the transaction and would be deemed to meet the informational and filing requirements of the proxy or information rules under Section 14 of the Exchange Act, and Regulations 14A and 14C (17 CFR 240.14a–1 to 14a–101 and 40.14c.1 to 14c–101) thereunder, where applicable to the transaction. All other provisions of those regulations will still apply.

III. *Information Required in the Prospectus.*—Proposed Form S–15 is designed to provide for a short, simpler prospectus which will be more comprehensible to ordinary investors. Registrants are used to present information in the prospectus as clearly and concisely as possible.

The proposed Form S–15 prospectus may be streamlined primarily because the issuer's latest annual report to security holders would be required to be delivered along with the prospectus. Disclosure regarding the issuer's business description, financial statements, industry segments, market price of securities and dividend policy,

[6] Generally, an issuer may use Form S–7 if it (a) has a class of securities registered under Section 12 (15 U.S.C. 78*l*) or is required to file reports pursuant to Section 15(d) (15 U.S.C. 78m) of the Exchange Act; (b) has been subject to the requirements of Section 12 or 15(d), and has filed all applicable reports, for 36 calendar months prior to the filing of the registration statement and has timely filed all required reports for the past twelve calendar months; (c) has not defaulted in payments on preferred stock, indebtedness for borrowed money or long-term leases during the past 36 months; and (d) has had consolidated net income of at least $250,000 for three of the last four fiscal years, including the most recent fiscal year.

selected financial data, and management's discussion and analysis would be incorporated by reference from the annual report rather than presented in the prospectus itself. In addition, if the acquired company is also a reporting company with a class of securities registered pursuant to Section 12 of the Exchange Act, its latest annual report to security holders also would be required to be delivered with the prospectus and the same items of disclosure would be incorporated by reference into the prospectus from that report.

The prospectus itself would be required to present only: a summary of the transaction placed in the front of the prospectus (Item 1); information regarding the terms of the transaction (Item 2); financial and other information concerning the acquired company if it is not a reporting company with a class of securities registered pursuant to Section 12 of the Exchange Act (Item 3); voting information and information on dissenters' rights, beneficial ownership of the issuer's securities, and the identity of both companies' executive officers and directors (Item 4); a description of the interests of any affiliates in the transaction (Item 5); and additional information as to subsequent material changes, changes in control and availability of reports and other information similar to that required by Item 8 of Form S–16 (17 CFR 239.27) (Item 6 and 7).

The disclosure called for by Item 4(c)(2) of the proposed form with respect to beneficial ownership is that required by Item 6(a) and 6(b) of Regulation S–K. The Commission invites specific comment on whether the beneficial ownership discloure required in Proposed Form S–15 should be limited to voting power alone instead of both voting and investment power as required by Item 6 of Regulation S–K.

The Commission recognizes that material changes or events, such as significant acquisitions, may have occurred subsequent to the close of the latest fiscal year reflected in the issuer's latest annual report to security holders. In such cases, the annual report required to be delivered with the prospectus may no longer adequately describe the business and financial status of the issuer. Accordingly, the Commission invites specific comment on which of the following alternatives would be preferable in such event: (1) require the issuer to use Form S–14; (2) require disclosure of the subsequent changes in the prospectus (proposed Item 6(a)) and delivery of the annual report with the prospectus; (3) provide issuers with the option of either (a) delivering the annual report and diclosing the subsequent material changes or (b) delivering only a prospectus, which would contain the same type of disclosure with respect to the issuer as is required by Rule 14a–3(b); or (4) provide any other means to address this matter.

Proposed Form S–15 would allow material being incorporated by reference to be dealt with in the prospectus only by means of the statement required by item 8 to the effect that the prospectus is accompanied by the annual report(s) to security holders and that certain information therefrom is incorporated by reference into the registration statement. As proposed, the detailed description of which pages and/or portions of the annual report(s) are incorporated by reference would be contained in Part II (Item 10) of the registration statement. While the Commission believes that this will help keep the prospectus a simple, readable document, specific comment is invited, however, on whether this detailed description of material incorporated by reference should be presented in the prospectus itself rather than in Part II.

IV. *Information Not Required in the Prospectus.*—Part II of proposed Form S–15 would be similar to the section part of other registration statement forms adopted for Securities Act registration of securities. It would be a part of the registration statement filed with the Commission but not delivered to security holders. In addition to the statement incorporating by reference required portions of the annual report(s) to security holders (Item 10(a)) as well as that incorporating portions of quarterly reports delivered with the prospectus (Item 10(b)), Part II also would require that the issuer's latest 10–K and other recent filings filed with the Commission, as well as those of the acquired company if the latter is subject to Exchange Act reporting requirements, be incorporated by reference (Item 10(c)). Part II also would require an undertaking by the issuer to deliver with each prospectus a copy of its latest annual report to security holders, a copy of the acquired company's annual report if material contained therein has been incorporated by reference and copies of the latest of any later quarterly reports on Form 10–Q distributed by the issuer or by the acquired company to security holders for periods subsequent to the end of the last fiscal year. Forms 10–K would only be required to be delivered upon the written request of the security holder. The remaining requirements of Part II would be a statement as to the interests of experts named in the registration statement (Item 11) and the listing and furnishing of certain exhibits (Item 12).

Proposed Form S–15 does not require that the issuer's latest proxy statement must be delivered along with the annual report to security holders and the prospectus. The proxy statement would contain disclosure concerning directors and executive officers (Item 3 of Regulation S–K), management remuneration (Item 4 of Regulation S–K), and security ownership of certain beneficial owners and management (Item 6 of Regulation S–K) that is not required to be included in the annual report to security holders. Item 4 of proposed Form S–15 would call for the same disclosure as to directors and executive officers and security ownership which would be contained in the proxy statement. Since disclosure as to management remuneration would not be delivered to security holders, however, the Commission invites specific comment on whether the issuer's latest proxy statement should be delivered with the prospectus.

The rationale for requiring Form(s) 10–K and 10–Q to be incorporated by reference into the registration statement is similar to that for the corresponding requirement in Form S–16 (17 CFR 239.27). Where companies are subject to and comply with the continuous reporting requirements of Section 13 of the Exchange Act, and the market's awareness of the information contained in such Exchange Act filings serves as a basis for abbreviated disclosure requirements in a Securities Act registration statement, then Securities Act liability should attach to those Exchange Act filings.

Proposed Form S–15 assumes that the Commission's presently outstanding proposal to incorporate uniform exhibit requirements into Item 8 of Regulation S–K will be adopted.[8] If for any reason this is not the case, or such adoption has not occurred at the time Form S–15 is considered for adoption, changes would be made in Item 12 of Form S–15 which would set forth exhibit requirements which are substantially the same as those contained in proposed Item 8 of Regulation S–K. These requirements are outlined in the following paragraph.

If proposed Item 8 of Regulation S–K relating to exhibit requirements has been adopted at such time as the Commission decides to adopt proposed Form S–15, then new Item 8 of Regulation S–K would be amended by adding a new column to Table I thereof

[8] *See* Securities Act Release No. 6149 (November 16, 1979).

indicating that the following exhibits would be required for filings on Form S–15: underwriting agreement; plan of acquisition, reorganization arrangement, liquidation or succession; instruments defining the rights of security holders; opinion re legality; opinion re tax matters; and material contracts.

V. *Proposed Related Amendments*—A. *Rules on Incorporation by Reference.*—Proposed Form S–15 requires incorporation by reference into the registration statement of certain information contained in the annual report to security holders. That report, prepared pursuant to Regulation 14A or 14C, particularly Rules 14a–3 or 14c–3 thereof, is furnished to the Commission for its information but is not deemed "filed" with the Commission.[9] The Commission is proposing amendments to Rule 24 of its Rules of Practice (17 CFR 201.24) and to Rule 411 (17 CFR 230.411) which would make clear that information contained in such reports, though the reports are not deemed filed with the Commission, nevertheless may be incorporated by reference into a registration statement filed pursuant to the Securities Act.

B. *Rules 14a–3, 14a–6, 14a–12, 14c–2, 14c–5.*—Exchange Act Rule 14a–3(a) (17 CFR 240.14a–3(a)) provides that no solicitation subject to the proxy rules shall be made unless each person solicited is concurrently furnished or has previously been furnished a written proxy statement containing the information specified in Schedule 14A (17 CFR 240.14a–101) under that Act. The Commission proposes to amend Rule 14a–3 to provide that material filed in a Form S–15 registration statement under the Securities Act containing the information required by that form would satisfy the requirements of the rule.

The Commission proposes to amend Exchange Act Rule 14a–6(j) (17 CFR 240.14a–6(j)) to provide that material filed in an S–15 registration statement under the Securities Act would satisfy the filing requirements of the proxy rules under the Exchange Act. This amendment would enable registrants to avoid filing copies of the registration statement as a proxy statement under the Exchange Act and paying a proxy filing fee.

Rule 14a–12 under the Exchange Act (17 CFR 240.14a–12) provides that solicitations in opposition to prior solicitations may be made before furnishing security holders a written proxy statement containing the information specified in Schedule 14A if certain conditions are met, including that no form of proxy be furnished to security holders prior to the time the written proxy statement required by Rule 14a–3(a) is furnished. Where a proxy statement then meeting the requirements of Schedule 14A has already been furnished to security holders, however, this latter condition is inapplicable.

Since the proposed amendment to Rule 14a–3(a) would provide that a proxy statement included in a registration statement filed under the Securities Act on Form S–15 could contain the information specified in that form in lieu of the information specified in Schedule 14A, the Commission proposes to amend Exchange Act Rule 14a–12(a) to refer to Rule 14a–3(a) and to delete the reference to Schedule 14A.

Rule 14c–2(a) under the Exchange Act (17 CFR 240.14c–2(a)) requires an issuer subject to the information rules to transmit to its security holders a written information statement containing the information specified in Schedule 14C. To provide similar treatment for proxy material and information statements, the Commission proposes to amend Rule 14c–2 to provide that material filed in a Form S–15 registration statement would satisfy the requirements of the rule.

In order to provide similar treatment for proxy material and information statements, the Commission proposes to amend Exchange Act Rule 14c–5(e) (17 CFR 240.14c–5(e)), to provide that material filed in a Form S–15 registration statement under the Securities Act would satisfy the filing requirements of Regulation 14C under the Exchange Act. In such instances, no information statement filing fee would be required.

Text of Proposals

It is proposed to amend 17 CFR Chapter II as follows:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. By adding § 239.29 to read as follows:

§ 239.29 Form S–15, optional form for registration of securities to be offered in certain business combination transactions.

Securities and Exchange Commission Form S–15, Registration Statement Under the Securities Act of 1933

(Exact name of issuer as specified in its charter)

(State or other jurisdiction of incorporation or organization)

(Standard industrial classification code number)

(I.R.S. Employer Identification No.)

(Address of principal executive offices, including Zip Code)

(Address of principal place of business)

Issuer's telephone number, including area code

(Name and address of agent for service)

Approximate date of commencement of the proposed sale of the securities to the public _____.

Calculation of Registration Fee

Title of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Form S–15—General Instructions

A. Rule as to Use of Form S–15

In addition to Form S–1 (§ 239.11) or Form S–14 (§ 239.23), Form S–15 may be used for registration under the Securities Act of 1933 of securities to be issued either (a) in a transaction of the type specified in Rule 145(a) (2) and (3); or (b) in an exchange offer for securities of another person if the voting securities sought to be acquired together with any securities owned by the issuer at the time of the filing of the registration statement will aggregate at least 80% of the outstanding voting power of each class of outstanding securities of the other person; if each of the following conditions is met:

1. (a) The change in each of the following items for the issuer on an historical basis compared to those for the issuer on a pro forma consolidated basis giving effect to the

[9] Rule 14a–3(c) (17 CFR 240.14a–3(c)) provides that: "Seven copies of the report sent to security holders pursuant to this rule shall be mailed to the Commission, solely for its information . . . . The report is not deemed . . . to be "filed" with the Commission or subject to this regulation otherwise than as provided in this rule, or to the liabilities of section 18 of the Act, except to the extent that the issuer specifically requests that it be treated as a part of the proxy soliciting material or incorporates it in the proxy statement by reference." Rule 14c–3(b) (17 CFR 240.14c–3(b)) contains a similar provision.

transaction does not exceed 10 percent for the latest fiscal year (with respect to items (i) and (ii)) and as of the end of the latest fiscal year (with respect to items (iii) and (iv)):

(i) gross sales and operating revenues;

(ii) net income;

(iii) total assets; and

(iv) total shareholder's equity.

(b) The total purchase price (market value of the securities being registered as of the date of filing the registration statement plus any additional cash consideration being offered) does not exceed 10% of the aggregate market value of the issuer's voting stock held by non-affiliates. The latter value shall be computed as of a date which is not more than 30 days prior to the date of filing the registration statement.

2. At the time of filing the registration statement, the issuer meets the requirements for the use of Form S–7 (§ 239.26), and has furnished an annual report to security holders pursuant to Rule 14a–3 (§ 240.14a–3) or Rule 14c–3 (§ 240.14c–3) for its latest fiscal year.

3. The transaction has been approved by the board of directors of the issuer and of the company being acquired.

4. The prospectus is delivered to the security holders whose vote, consent, or authorization is solicited at least 20 days prior to the date on which the meeting of such security holders is held or, if no such meeting is held, the date of such vote, consent, or authorization.

5. Neither the issuer nor the company being acquired engages in oil and gas related operations which exceed the criteria for exemption specified in § 210.3–18(k) of Regulation S–X.

6. Neither the issuer nor the acquired company is a registered investment company.

B. Application of General Rules and Regulations

Attention is directed to the General Rules and Regulations under the Act, particularly those comprising Regulation C [17 CFR 230.400 to 230.494]. That regulation contains general requirements regarding the preparation and filing of the registration statement. Rules 405, 411, 412, and 439 should be especially noted.

C. Documents Comprising Registration Statement

The registration statement shall consist of the facing sheet of the form, a prospectus containing the information called for by Part I, the information and undertaking called for by Part II, signatures, consents of experts, exhibits and any other information or documents filed as a part of the registration statement.

D. Compliance With Proxy or Information Rules

(a) If a corporation or other person submits to its security holders entitled to vote or consent a proposal to approve the transaction in which the securities being registered are to be issued, and such person's submission to its security holders is subject to Regulation 14A (§§ 240.14a–1 to 14a–101 of this chapter) or 14C (§§ 240.14c–1 to 14c–101) under the Securities Exchange Act of 1934, then the provisions of such regulations shall apply in all respects to such person's submission, except that (1) the prospectus may be in the form of a proxy or information statement and shall contain the information required by this form in lieu of that required by Schedule 14A (§ 240.14a–101 of this chapter) or 14C (§ 240.14c–101) of Regulation 14A or 14C under the Securities Exchange Act of 1934; and (2) copies of the preliminary and definitive proxy or information statement, form of proxy or other material filed as a part of the registration statement shall be deemed filed pursuant to the requirements of such regulations. All other soliciting material shall be filed in accordance with such regulations.

(b) If the proxy or information material sent to such security holders is not subject to Regulation 14A or 14C, all such material shall be filed as a part of the registration statement at the time the statement is filed or as an amendment thereto prior to the use of such material.

E. Unavailability of the Prospectus for Reoffers or Resales

The Form S–15 prospectus will not be available for reoffers or resales of securities acquired pursuant to this registration statement by affiliates of the issuer or any other persons who may be deemed underwriters of such securities.

F. Notice of Intention to File the Registration Statement

The issuer is requested to advise the Branch Chief in the Division of Corporation Finance who regularly reviews issuer's filings, by letter, of the intention to file a registration statement on Form S–15 as soon as possible prior to the actual filing thereof, and to indicate a contemplated filing date for such registration statement. Such pre-filing notice, which is intended to assist the Commission staff in its processing of registration statements, is optional on the part of the issuer and is not a condition to the use of Form S–15.

Part I. Information Required in the Prospectus

Item 1. Summary

Immediately following the cover page of the prospectus, set forth a summary containing the following:

(a) a brief description of the general nature of the business conducted by the issuer and by the acquired company;

(b) a brief description of the transaction pursuant to which the securities being registered are to be offered; and

(c) in comparative columnar form, comparative per share data adjusted to be presented on an equivalent share basis of the issuer and the acquired company, for the following items: (i) book value per share as of the date of the most recent balance sheet presented in response to Item 3 or incorporated by reference in response to Item 10; (ii) cash dividends declared per share during the last full fiscal year for which financial statements are presented in response to Item 3 or incorporated by reference in response to Item 10; (iii) net earnings per share; and (iv) market value of securities as of the day preceding public announcement of the proposed transaction, or, if none, as of the day preceding the day the agreement with respect to the transaction was entered into.

Item 2. Terms of the Transaction

(a) Give the name of the issuer of the securities to be registered, its complete mailing address, including the zip code, and the telephone number, including the area code, of its principal executive offices.

(b) Give the name of the acquired company, its complete mailing address, including the zip code, and the telephone number, including the area code, of its principal executive offices.

(c) Outline briefly the material features of the proposed transaction, including a description of the securities to be issued pursuant thereto. State the acquired company's reasons for engaging in the transaction, the federal income tax consequences thereof to the security holders of the acquired company, and the significant differences between the rights of those security holders and the rights of holders of the securities being offered.

(d) Briefly describe any restrictions on the issuer's present or future ability to pay dividends with respect to any class of securities. Disclose whether any dividends are in arrears or whether any defaults exist with respect to payment of principal or interest on any securities of the issuer or of the company being acquired and disclose the effect of the transaction pursuant to which the securities registered are to be offered on such arrears or defaults.

(e) Include a brief description by the company to be acquired or whose shares are subject to the exchange offer of any matter, not otherwise disclosed pursuant to another item of this form, which is material to the fairness of the transaction to unaffiliated security holders of the acquired company.

Item 3. Description of the Acquired Company

(a) If the company being acquired has a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934 and has furnished an annual report to security holders pursuant to Rule 14a–3 (§ 240.14a–3) or Rule 14c–3 (§ 240.14c–3) for its latest fiscal year, then portions of such annual report to security holders shall be incorporated by reference and shall be delivered in accordance with the provisions of Items 9 and 10 of this form.

(b) If the company being acquired either does not have a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934 or has not furnished an annual report to security holders pursuant to Rule 14a–3 (§ 240.14a–3) or Rule 14c–3 (§ 240.14c–3) for its latest fiscal year, then the following shall be set forth with respect to the acquired company:

(i) a brief description of the acquired company's business which indicates its general nature and scope;

(ii) market prices of securities and statement of dividend policy as required by Item 9 of Regulation S–K;

(iii) selected financial data as required by Item 10 of Regulation S–K;

(iv) management's discussion and analysis as required by Item 11 of Regulation S–K;

(v) financial statements as would have been required to be included in an annual report furnished to security holders pursuant to Rule 14a–3 (§ 240.14a–3) or Rule 14c–3

(§ 240.14c–3) had the company being acquired been required to prepare such a report; provided, however, the balance sheet for the year preceding the latest full fiscal year and the income statements for the two years preceding the latest full fiscal year need not be audited if they have not previously been audited; and

(vi) such quarterly financial information as would have been required had the acquired company been required to file reports on Form 10–Q (§ 249.308a) for the most recent quarter for which such a report would have been on file at the time the registration statement becomes effective.

Item 4. Voting Information

(a) If proxies, consents, or authorizations are to be solicited, include, where applicable, the information called for by the following items of Schedule 14A (§ 240.14a–101 of this chapter) of Regulation 14A under the Securities Exchange Act of 1934:

Item 1. Revocability of proxy;

Item 3. Persons making the solicitation;

Item 5. Voting securities and principal holders thereof;

Item 22. Vote required for approval.

(b) If proxies, consents, or authorizations are not to be solicited, include where applicable, the information called for by Items 5 and 22 of Schedule 14A and the following items of Schedule 14C (§ 240.14c–101 of this chapter) of Regulation 14C under the Securities Exchange Act of 1934:

Item 2. Statement that proxies are not solicited;

Item 3. Date, time and place of meeting.

(c) In addition to the information called for by paragraphs (a) and (b) above, in all cases include the following:

(i) *Dissenters' Rights of Appraisal.* Outline briefly appraisal or other similar rights of dissenters with respect to the proposed transaction and indicate any statutory procedure required to be followed by dissenting security holders in order to perfect such rights. Where such rights may be exercised only within a limited time after the date of adoption of a proposal, the filing of a charter amendment or other similar act, state whether the person solicited will be notified of such date.

Instruction. Indicate whether or not a security holder's failure to vote against a proposal will constitute a waiver of his appraisal or other similar rights and whether or not a vote against a proposal will be deemed to satisfy any notice requirements under State law with respect to appraisal rights. If the State law is unclear, state what position will be taken in regard to these matters.

(ii) *Beneficial Ownership.* Provide the information required by Items 6(a) and 6(b) of Regulation S–K (§ 229.20) with respect to both the issuer of the securities being registered and the company being acquired. No response to this paragraph (c)(2) is necessary to the extent that this information is already provided pursuant to paragraph (a) of this item.

(iii) *Executive Officers and Directors.* With respect to the issuer, provide the information required by Item 3 of Regulation S–K. With respect to the company being acquired, identify each of the executive officers and directors and indicate the principal occupation or employment of each such person and the name and principal business of any organization by which such person is so employed.

Item 5. Interest of Certain Persons in the Transaction

Describe briefly any material interest, direct or indirect, by security holdings or otherwise, of affiliates of the issuer and of the company being acquired, in the proposed transaction.

Instruction.—This item shall not apply to any interest arising from the ownership of securities of the issuer where the security holder receives no extra or special benefit not shared on a pro rata basis by all other holders of the same class.

Item 6. Addtional Information With Respect to the Issuer

(a) Describe any and all material changes in the issuer's affairs which have occurred since the end of the latest fiscal year for which certified financial statements were included in the annual report to security holders and which have not been described in the issuer's most recent report on Form 10–Q (§ 249.308a). Financial information may be required in the prospectus if the financial statements in the annual report to security holders do not reflect the results of a significant business combination accounted for as a pooling of interests or a change in accounting principles where such change requires a substantial retroactive restatement of financial statements.

(b) State that reports, proxy statements and other information filed by the issuer can be inspected and copied at the public reference facilities maintained by the Commission in Washington, D.C., and at certain of its Regional Offices, and state the current address of each such facility, and that copies of such material can be obtained from the Public Reference Section of the Commission, Washington, D.C. 20549 at prescribed rates.

(c) Name any national securities exchange on which the issuer's securities are listed, and state that reports, proxy statements and other information concerning the registrant can be inspected at such exchanges.

(d) Include an undertaking to provide without charge to each person to whom a prospectus is delivered, on the written request of such person, a copy of the issuer's Form 10–K(s) (§ 249.310) information from which is incorporated by reference in response to any item and indicate the name and address of the person to whom such a written request is to be directed.

Item 7. Additional Information With Respect to the Acquired Company

(a) Describe any and all changes in the acquired company's affairs which have occurred since the end of the latest fiscal year for which certified financial statements have been included either:

(i) in the acquired company's annual report to shareholders incorporated by reference and delivered pursuant to Items 9 and 10 of this form; or

(ii) in the prospectus as a result of the provisions of paragraph (b)(v) of Item 3 of this form.

Financial information may be required in the prospectus if such financial statements do not reflect the results of a significant business combination accounted for as a pooling of interests or a change in accounting principles where such change requires a substantial retroactive restatement of financial statements.

(b) Describe any changes in control of the acquired company which have occurred within thirty-six months prior to the filing date of the registration statement.

(c) If the acquired company has a class of securities registered under Section 12 of the Securities Exchange Act of 1934 or is required to file reports under Section 15(d) of that Act:

(i) state that reports and other information filed by the acquired company can be inspected and copied at the public reference facilities maintained by the Commission in Washington, D.C., and at certain of its Regional Offices, and state the current address of each such facility, and that copies of such material can be obtained from the Public Reference Section of the Commission, Washington, D.C. 20549 at prescribed rates;

(ii) name any national securities exchange on which the acquired company's securities are listed, and state that reports, proxy statements and other information concerning the acquired company can be inspected at such exchange; and

(iii) include an undertaking to provide without charge to each person to whom a prospectus is delivered, on the written request of such person, a copy of the acquired company's Form 10–K(s) (§ 249.310) information from which is incorporated by reference in response to any item and indicate the name and address of the person to whom such a written request is to be directed.

Item 8. Information Delivered and Incorporation by Reference

(a) A statement shall be made indicating that the prospectus is accompanied by the following documents:

(i) the issuer's annual report to security holders for its latest fiscal year and latest Form 10–Q, if any, filed with the Commission after the latest fiscal year; and

(ii) if the acquired company has a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934 and has furnished an annual report to security holders pursuant to and meeting the requirements of Rule 14a–3 (§ 240.14a–3) or Rule 14c–3 (§ 240.14c–3) for its latest fiscal year, such annual report and the latest Form 10–Q filed by the acquired company with the Commission after the latest fiscal year.

(b) A statement shall be made that certain information has been incorporated by reference, including but not limited to specified portions of the documents which accompany the prospectus. The issuer may also state, if it so chooses, that specifically described portions of documents which are not incorporated by reference are not a part of the registration statement. The description of portions which are incorporated by reference or which are excluded shall be made with clarity and in reasonable detail.

Part II. Information Not Required in Prospectus; Undertakings

Item 9. Undertaking To Transmit Certain Material

(a) The registration statement shall contain an undertaking, dated as of a date which is not more than twenty days prior to the effective date of the registration statement, substantially as follows:

"The undersigned issuer hereby undertakes to deliver or cause to be delivered with the prospectus to each person to whom the prospectus is sent or given by the issuer or by the acquired company:

(i) the issuer's annual report to security holders for its latest fiscal year;

(ii) the acquired company's annual report to security holders furnished pursuant to and meeting the requirements of Rule 14a–3 or Rule 14c–3 for its latest fiscal year;

(iii) the issuer's latest Form 10–Q; and

(iv) the acquired company's latest Form 10–Q."

However, if the issuer is not required to indicate in the prospectus in response to Item 8(a)(ii) of this form that the acquired company's annual report to security holders and latest Form 10–Q will accompany the prospectus, then paragraphs (ii) and (iv) of this undertaking may be omitted.

(b) All Form 10–Q(s) which accompany the prospectus and which are referred to in the issuer's undertaking made in accordance with paragraph (a) of this item shall be filed with the Commission on or before the earlier of the date of such undertaking or two business days prior to the effective date of the registration statement.

Item 10. Incorporation of Certain Information by Reference

(a) There shall be specifically incorporated by reference into the registration statement, by means of a statement to that effect in Part II filed with the Commission, the following information contained in the issuer's and acquired company's annual report(s) to security holders delivered with the prospectus pursuant to Item 9:

(1) description of business;

(2) certified financial statements furnished in accordance with the provisions of Rule 14a–3(b);

(3) information relating to industry segments, classes of similar products or services, foreign and domestic operations and export sales furnished in accordance with the provisions of paragraphs (b), (c)(1)(i) and (d) of Item 1 of Regulation S–K (§ 229.20);

(4) market price of the issuer's securities and statement of dividend policy furnished in accordance with Item 9 of Regulation S–K;

(5) selected financial data furnished in accordance with Item 10 of Regulation S–K; and

(6) Management's discussion and analysis furnished in accordance with Item 11 of Regulation S–K.

(b) There shall be specifically incorporated by reference into the registration statement, by means of a statement to that effect in Part II filed with the Commission, the issuer's and acquired company's Form 10–Q(s) delivered with the prospectus pursuant to Item 9.

(c) The following documents shall be specifically incorporated by reference into the registration statement, by means of a statement to that effect in Part II filed with the Commission:

(i) the issuer's Form 10–K for its latest fiscal year;

(ii) the acquired company's Form 10–K, if any, for its latest fiscal year; and

(iii) any reports filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 by the issuer or by the acquired company, other than Form 10–Q(s) incorporated under paragraph (b) of this item, on or after the end of the issuer's latest fiscal year and prior to the date the vote or consent solicited pursuant to the registration statement is final under applicable state law or, if no such vote or consent is solicited, the date the transaction described in the registration statement is fully consummated.

Item 11. Interest of Experts Named in Registration Statement

If any expert named in the registration statement as having prepared or certified any part thereof was employed for such a purpose on a contingent basis or, at the time of such preparation or certification or at any time thereafter, had a substantial interest in the issuer or any of its parents or subsidiaries or was connected with the registrant or any of its subsidiaries as a promoter, underwriter, voting trustee, director, officer or employee, furnish a brief statement of the nature of such contingent basis, interest or connection. Instruction. In the case of an accountant, any direct financial interest or any material indirect financial interest held during the period covered by the financial statements prepared or certified shall be deemed a "substantial interest" for the purpose of this item.

Item 12. Exhibits

Subject to the rules regarding incorporation by reference, the exhibits as required by Item 8 of Regulation S–K (17 CFR 229.20) shall be filed as a part of the registration statement. List all exhibits so filed and appropriately letter or number each exhibit for convenient reference. Exhibits incorporated by reference may bear the designation given in the previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits.

Signatures

Pursuant to the requirements of the Securities Act of 1933, the issuer has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of ————, State of ————, on ————, 19—.

(Issuer) ————

By (Signature and Title) ————

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) ————

(Title) ————

(Date) ————

Instructions

1. The registration statement shall be signed by the issuer, its principal executive officer or officers, its principal financial officer, it controller or principal accounting officer and by at least the majority of the board of directors or persons performing similar functions.

2. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement.

(Attention—the text of the following proposed amendments uses ►◄ arrows to indicate additions and [ ] bracket to indicate deletions.)

PART 201—RULES OF PRACTICE

2. By amending § 201.24 to read as follows:

§ 201.24 Incorporation by reference.

Where rules, regulations, or instructions to forms of the Commission permit incorporation by reference, a document may be so incorporated by reference to the specific document and ►, where the document being incorporated by reference has been filed with the Commission, ◄ to the prior filing in which such document was physically filed. Reference may not be made to any document which incorporates another document by reference if the pertinent portion of the document containing the information or financial statements to be incorporated by reference includes an incorporation by reference to another document. No document on file with the Commission for more than five years may be incorporated by reference except—

(a) Documents contained in registration statements which may be incorporated by reference as long as the registrant has a reporting requirement with the Commission;

(b) Documents that the registrant specifically identifies by physical location and by SEC file number reference, provided such materials have not been disposed of by the Commission pursuant to its Records Control Schedule (17 CFR 200.80f).

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

3. By amending paragraph (b) of § 230.411 to read as follows:

§ 230.411 Incorporation of certain information by reference.

* * * * *

(b) Any financial statement or part thereof filed with the Commission pursuant to any Act administered by the Commission ►, or any financial statement or part thereof contained in an annual report to security holders

prepared in compliance with Rule 14a–3 (§ 240.14a–3) or Rule 14c–3 (§ 240.14c–3), and furnished to security holders and mailed to the Commission in compliance with those rules, ◄ may be incorporated by reference in any registration statement if it substantially conforms to the requirements of the appropriate form and is not required to be included in the prospectus. However, a financial schedule incorporated by reference to an annual report filed with the Commission pursuant to any Act administered by it need not be certified, if such schedule was not required to be certified in connection with the filing of the annual report, any requirement of any registration form to the contrary notwithstanding.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1940

4. By amending paragraph (a) of § 240.14a–3 to read as follows:

§ 240.14a–3 Information to be furnished to security holder.

(a) No solicitation subject to this regulation shall be made unless each person solicited is concurrently furnished or has previously been furnished with a written proxy statement containing the information specified in Schedule 14A (§ 240.14a–101), ► or with a written proxy statement included in a registration statement filed under the Securities Act of 1933 on Form S–15 (§239.29 of this chapter) and containing the information specified in such form. ◄

* * * * *

5. By amending paragraph (j) of § 240.14a–6 to read as follows:

§ 240.14a–6 Material required to be filed.

* * * * *

(j) Notwithstanding the foregoing provisions of this section, any proxy statement, form of proxy or other soliciting material included in a registration statement filed under the Securities Act of 1933 on Form S–14 (§ 239.23 of this chapter) ► or Form S–15 (§ 239.29 of this chapter) ◄ shall be deemed filed both for the purposes of that Act and for the purposes of this section, but separate copies of such material need not be furnished pursuant to this section nor shall any fee be required under paragraph (i) of this section. However, any additional soliciting material used after the effective date of the registration statement on Form S–14 ► or Form S–15 ◄ shall be filed in accordance with this section but separate copies of such material need not be filed as an amendment of such registration statement.

* * * * *

6. By amending paragraph (a) of § 240.14a–12 to read as follows:

§ 240.14a–12 Solicitation prior to furnishing required proxy statement.

(a) Notwithstanding the provisions of Rule 14a–3(a) (§ 240.14a–3(a)), a solicitation (other than one subject to Rule 14a–11 (§ 240.14a–11)) may be made prior to furnishing security holders a written proxy statement meeting the requirements of Rule 14a–3(a) if—

(1) * * *

(2) No form of proxy is furnished to security holders prior to the time the written proxy statement required by Rule 14a–3(a) (§ 240.14a–3(a)) is furnished to security holders: *Provided, however,* That this paragraph (2) shall not apply where a proxy statement then meeting the requirements of [Schedule 14A (§ 240.14a–101)] ►Rule 14a–3(a)◄ has been furnished to security holders by or on behalf of the person making the solicitation.

* * * * *

7. By amending paragraph (a) of § 240.14c–2 to read as follows:

§ 240.14c–2 Distribution of information statement.

(a) In connection with every annual or other meeting of the holders of a class of securities registered pursuant to section 12 of the Act, including the taking of corporate action with the written authorization or consent of the holders of a class of securities so registered, the issuer of such securities shall transmit a written information statement containing the information specified in Schedule 14C (17 CFR 240.14c–1 et seq.)►, or a written information statement included in a registration statement filed under the Securities Act of 1933 on Form S–15 (§ 239.29 of this chapter) and containing the information specified in such form,◄ to every such security holder who is entitled to vote or give an authorization or consent in regard to any matter to be acted upon and from whom a proxy, authorization or consent is not solicited on behalf of the management of the issuer pursuant to section 14(a) of the Act: *Provided,* That in the case of a class of securities in unregistered or bearer form, such statement need be transmitted only to those security holders whose names are known to the issuer.

* * * * *

8. By amending paragraph (e) of § 240.14c–5 to read as follows:

§ 240.14c–5 Filing of information statement.

* * * * *

(e) Notwithstanding the foregoing provisions of this section, any information statement or other material included in a registration statement, filed under the Securities Act of 1933 on Form S–14 (§ 239.23 of this chapter) ►or Form S–15 (§ 239.29 of this chapter)◄ shall be deemed filed both for the purposes of that Act and for the purposes of this section, but separate copies of such material need not be furnished pursuant to this section, nor shall any fee be required under paragraph (a) of this section. However, any additional material used after the effective date of the registration statement on Form S–14 ►or Form S–15◄ shall be filed in accordance with this section but separate copies of such material need not be filed as an amendment of such registration statement.

(Secs. 6, 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 8, 68 Stat. 685; sec. 1, 79 Stat. 1051; 15 U.S.C. 77f, 77g, 77j, 77s(a); secs. 14(a), 23(a), 48 Stat. 985, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; sec. 5, 78 Stat. 569, 570; sec. 18, 89 Stat. 155; 15 U.S.C. 78n(a), 78w(a); secs. 12(e), 38(a), 54 Stat. 822, 841; 15 U.S.C. 80a–20(a), 80a–37(a).)

Statutory Authority for Proposals

The foregoing amendments to 17 CFR Parts 201, 230, 239, and 240 are proposed pursuant to the Securities Act of 1933, particularly Sections 6, 7, 10 and 19(a) thereof, and pursuant to Sections 14(a) and 23(a) of the Securities Exchange Act of 1934, Sections 12(e) and 20(a) of the Public Utility Holding Company Act of 1935, and Sections 20(a) and 38(a) of the Investment Company Act of 1940.

Pursuant to Section 23(a) of the Exchange Act, the Commission has considered the effect that the proposals would have on competition and is not aware, at this time, of any burdens that the proposals, if adopted, would impose on competition not necessary or appropriate in furtherance of the purposes of that Act. However, the Commission specifically invites comment as to the anti-competitive effects, if any, the proposals would likely engender.

By the Commission.

George A. Fitzsimmons,

Secretary.

January 15, 1980.

[FR Doc. 80–2026 Filed 1–23–80; 8:45 am]

BILLING CODE 8010–01–M

17 CFR Parts 210, 229 and 240

[Releases Nos. 33-6178, 34-16498, and 35-21393; IC-11019; File No. S7-818]

General Revision of Regulation S-X

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Commission is proposing a general revision of Articles 3 and 5 and the related sections of Article 12 of Regulation S-X ("S-X"). The changes in the content of S-X are being proposed to (i) eliminate rules which are presently duplicative of generally accepted accounting principles ("GAAP"), (ii) effect changes to recognize predominant current practice and changes in circumstances, (iii) clarify and modify requirements which are presently subject to differing interpretations, and (iv) expand certain requirements to improve financial reporting. These proposed changes have been structured in a manner to facilitate the integration of the Securities Act of 1933 and the Securities Exchange Act of 1934 by attaining greater uniformity between financial statements included in annual reports to shareholders and those prepared in accordance with S-X.

DATE: Comments should be submitted on or before April 30, 1980.

ADDRESSES: Comments should refer to File S7-818 and should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. All comments will be available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street, N.W., Washington, D.C. (File No. S7-818).

FOR FURTHER INFORMATION CONTACT: Arthur J. Schmeiser or Rita J. Gunter, Office of the Chief Accountant, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202-272-2133).

SUPPLEMENTARY INFORMATION:

I. Background

General

In 1940, the Securities and Exchange Commission issued Accounting Series Release ("ASR") No. 12, "Adoption of Regulation S-X." This regulation was a substitute for the several existing sets of accounting instructions which applied to the various forms. In general, it constituted a codification of existing instructions as to the form and content of financial statements. The regulation did not prescribe accounting methods, but rather stated requirements which were intended to elicit informative disclosures. In 1940, there was little available authoritative accounting literature. Indeed, the predecessor of the American Institute of Certified Public Accountants ("AICPA") only two years earlier had instituted a research program resulting in the publication of accounting principles in the form of Accounting Research Bulletins ("ARB's"). This was the first attempt by the accounting profession to formally promulgate standards. Consequently, the Commission considered it beneficial to have a regulation, such as S-X, with condensed requirements contained in one authoritative source.

Regulation S-X is subdivided into twelve articles. The first four articles contain rules of general application; namely, Application of Regulation S-X, Qualifications and Reports of Accountants, Rules of General Application and Consolidated and Combined Financial Statements. The next six articles prescribe the form and content of financial statements for, respectively, commercial and industrial companies (including companies in a development stage), investment companies, insurance companies, committees issuing certificates of deposit, bank holding companies and banks, and natural persons. The remaining two articles deal with the form and content of statements of shareholders' equity and source and application of funds and with the supplemental schedules.

Private Sector Initiatives

As previously mentioned, S-X was conceived at a time when GAAP was perceived to be less than a complete guide for financial accounting and reporting. However, since the initiation of S-X, the private sector through various organized bodies—the Accounting Principles Board ("APB"), other units of the AICPA and, most recently, the Financial Accounting Standards Board ("FASB")—has demonstrated an appropriate initiative in establishing and improving accounting standards. This initiative is supported by ASR No. 150, in which the Commission stated that financial statements which conform to standards set by the FASB will be presumed to have substantial authoritative support. Additionally, in its 1978 and 1979 "Report to Congress on the Accounting Profession and the Commission's Oversight Role," the Commission indicated that it continues to believe that the initiative for establishing and improving accounting standards should remain in the private sector, subject to Commission oversight.

The advances being made by the FASB toward improved financial accounting and reporting are evident in documents such as Statements of Financial Accounting Standards ("SFAS") Nos. 12, 14 and 33, addressing marketable securities, segments of a business, and the effects of changing prices, respectively. Further, the FASB has also initiated a Conceptual Framework Project which is anticipated to "establish the objectives and concepts . . . [to be] used in developing standards of financial accounting and reporting." [1] This endeavor includes projects such as "Reporting Earnings," "Funds Flow and Liquidity," "Elements of Financial Statements of Business Enterprises," "Accounting Recognition Criteria," and "Financial Statements/Financial Reporting." The Commission continues to support the efforts of the FASB in developing a conceptual framework.

Need for Revision

Similarly, the Advisory Committee on Corporate Disclosure [2] supported private sector standard setting in its report to the Commission, issued in November 1977, in which it recommended among other things, that:

A continuing goal of the Commission should be the elimination of rules of general applicability which cause differences between financial statements prepared in accordance with Regulation S-X and those prepared in accordance with GAAP. When the Commission requires an extension of disclosures beyond those required by GAAP because of an emerging problem, the reasons for the extension and the underlying accounting issues involved should be stated. The Commission should then ask the FASB to consider the issue. . . . the Commission should undertake the following:

1. Eliminate all financial statement disclosures required by Regulation S-X which duplicate those required in financial statements prepared in accordance with codified GAAP.

2. Critically review all disclosures of general applicability which are supplementary to those required by GAAP with the objective of eliminating disclosures which may not be necessary to users in making investment decisions.

In recent years, the Commission has pursued a policy of integration of

[1] "Statement of Financial Accounting Concepts No. 1, Objectives of Financial Reporting by Business Enterprises," issued in November 1978, is the first in a series of concept statements.

[2] An *ad hoc* committee established by the Securities and Exchange Commission for the purpose of assessing the adequacy of the corporate disclosure system.

registration and reporting requirements under the Securities Act of 1933 and Securities Exchange Act of 1934. The Commission believes integration of the requirements of these two Acts not only benefits registrants but also offers a more coherent reporting structure. In this connection, the Commission has recently undertaken the task of reexamining the present reporting and disclosures system focusing principally on the form, content and use of Form 10–K. This reexamination process has resulted in four separate but related projects. In addition to this project the other three endeavors are: (1) a project directed toward identification and deletion of duplicative and outmoded requirements of the present Form 10–K and a reassessment of the present management's discussion and analysis included in Form 10–K as well as in other registration and reporting forms; (2) a project to consider the feasibility of establishing uniform financial statement instructions applicable to most registration and reporting forms and to annual reports to security holders; and (3) a project to introduce a new streamlined disclosure form, Form S–15, for the registration of securities issued in certain merger and reorganization transactions.[3]

The most recent comprehensive revision of S–X was in 1972, which was prior to the last seven opinions issued by the APB and the establishment of the FASB. During the ensuing seven year period, the authoritative accounting literature has expanded dramatically and many of the requirements of S–X are now outdated. Accordingly, this proposed revision has been undertaken to:

1. Eliminate rules which are presently duplicative of GAAP;
2. Effect changes to recognize predominant current practice and changes in circumstances;
3. Clarify and modify requirements which are presently subject to differing interpretations; and
4. Expand certain requirements to improve financial reporting.

These proposed changes have been structured in a manner to facilitate the integration of the Securities Act of 1933 and the Securities Exchange Act of 1934 by attaining greater uniformity between financial statements included in annual reports to shareholders and those prepared in accordance with S–X.

Uniformity

Certain of the disclosure requirements of S–X presently exceed those of GAAP. Consequently, the content of the financial statements filed with the Commission frequently is somewhat different from that included in annual reports to shareholders. As mentioned previously, these proposed changes have been structured in a manner to facilitate the integration of the Securities Act of 1933 and the Securities Exchange Act of 1934 by attaining greater uniformity between financial statements included in annual reports to shareholders and those prepared in accordance with S–X. Therefore, this release addresses whether the disclosure requirements of S–X are of such significance and relevance that they should be required uniformly or, alternatively, that they do not have sufficient disclosure value to be retained.

S–X presently requires information which can be grouped into three distinct classes; namely, (i) disclosures which are important to all users of financial statements, (ii) disclosures which are important to a more limited, sophisticated group of users, and (iii) disclosures which have become of lesser value to any users or which duplicate GAAP. The Commission is proposing the following respective disposition in its rules of the requirements falling into these classifications: (i) required in all annual reports filed with the Commission or furnished to security holders; (ii) required in all annual reports filed with the Commission, but included in supplemental schedules; and (iii) not required at all.

Uniformity in the content of financial statements is a desirable objective which should result in decreased cost to preparers and increased understanding of users. The Commission believes that annual reports to shareholders should not be overburdened with information which, although important to meaningful analysis, is of little interest to the majority of users. A logical and accessible place for such supplemental information is the annual report on Form 10–K filed with the Commission. This analytical data would be included outside the primary financial statements; that is, in the supplemental schedules. By including the information in the Form 10–K schedules, it is available to those who require or desire such detail, and the cost of dissemination is reduced.

Accordingly, all disclosure requirements to be retained in present Articles 3 and 5 of S–X, other than the supplemental schedules, are proposed to be included in the annual reports to shareholders required by Rule 14a–3 of the Commission's proxy rules. The following are examples of items, which are not currently specifically required to be disclosed under GAAP although they often are presented in annual reports to shareholders, which would require disclosure:

(1) Restrictions on the payment of dividends.

(2) Types and amounts of income-tax timing differences, and a reconciliation of reported income and the provision for income taxes to taxable income and the income tax shown on tax returns.

(3) Warrants and rights.

(4) Disagreements with accountants.

(5) Separate presentation of and disclosures regarding redeemable preferred stock.

(6) Excess of replacement or current cost over the stated LIFO value of inventories.

(7) Weighted average interest rates on short term debt, maximum and average amounts outstanding, and unused lines of credit.

(8) Five year maturities of long-term debt.

(9) Related party transactions.

(10) Information regarding proved oil and gas reserves.

(11) Earnings applicable to common stock.

(12) Supplementary income statement information.

Certain other financial information is considered to be of significant importance to a limited number of users, as discussed above. Since these users (frequently analysts, investment advisers, etc.) are intermediaries for individuals who might otherwise be primary users, the needs of these users are also important. However, since this group is limited in size, it is not considered appropriate to require this information in annual reports to shareholders. It is proposed that such information only be required in the supplemental schedules to the Commission's forms thus making it accessible while at the same time holding costs to a minimum.

The following are examples of items which would be included in the schedules to the financial statements:

(1) Detailed information regarding marketable securities.

(2) Details of certain borrowings by related parties and others, including employees.

(3) Investments in and amounts due to or from affiliates.

(4) Components of property, plant and equipment (assets and accumulated depreciation, depletion or amortization) including additions and deletions by depreciation method, major classifications or other homogenous groups, as appropriate.

[3] Refer to Securities Act Release Nos. 33–6176, 33–6179, and 33–6177, respectively.

(5) Details of valuation accounts.

Supplemental Information

As mentioned previously the FASB is currently working on a project which is expected to identify operational criteria for use in determining the information to be disclosed inside or outside financial statements. Although this project is in its early stages, one attribute which may be associated with the distinction between financial statements and the broader issue of financial reporting is the level of auditor association.

Based upon the premise that information contained within the financial statements should be audited, the proposed rules would remove from S–X the requirement relating to unaudited information concerning selected quarterly financial data and place this requirement under Regulation S–K [4]

* * * * *

The next four sections discuss the proposed changes in the content of S–X.

Duplication of GAAP

The primary objective of this revision of S–X involves those requirements which are presently a direct or indirect duplication of GAAP. Consistent with the conclusions of the Advisory Committee, the Commission believes that S–X should provide a format outline for the preparation of financial statements.

A detailed discussion of those rules proposed to be eliminated because they duplicate GAAP is included in Section II of this proposal.

Predominant Current Practice and Changes in Circumstances

The significance of certain mandated disclosures may fade with the passage of time and changes in circumstances. Additionally, requirements included in rules other than GAAP may eliminate the need for a requirement. An example of this in Rule 3–16(n) with regard to stock option disclosures. The stock option information presently requires by S–X is very detailed. The rule was adopted in 1953 and since that time the APB, New York Stock Exchange, American Stock Exchange, and the Commission (management remuneration) have adopted rules that address this topic. The incremental disclosure value of the information required by S–X on stock options has become minimal. Therefore, this requirement is being proposed for elimination from S–X.

Clarification and Modification of Rules

A comprehensive revision of S–X provides the oportunity to clarify, modify and condense rules. The changes that are being proposed in this area are minor and involve such items as relocating and combining related rules, and making cosmetic changes to improve consistency. These proposed modifications are designed to simplify S–X and make it more understandable.

Expansion of Requirements

The Commission believes that there are certain disclosure areas that should be expanded beyond the present requirements of GAAP because of the informational value of the additional disclosures. The three principal items being proposed involve property, plant and equipment, income taxes and related party transactions.

Property, Plant and Equipment

Presently, with regard to property, plant and equipment, GAAP requires that enterprises disclose:

(1) Depreciation method.

(2) Asset balances by major class.

(3) Asset additions in the aggregate.

(4) Accumulated depreciation in the aggregate.

(5) Depreciation expense in the aggregate.

In addition, S–X requires disclosures of:[5]

(1) Method of valuation.

(2) Treatment of maintenance, repairs, renewals, and betterments.

(3) Method of adjusting accumulated depreciation at retirement or disposal including treatment of gain or loss.

(4) Depreciation rates by major class.

(5) Asset additions by major class.

(6) Asset deletions and other changes by major class and in the aggregate.

(7) Accumulated depreciation by major class.

(8) Depreciation expense by major class.

(9) Changes in accumulated depreciation from other than depreciation expense by major class and in the aggregate.

Although the data required is quite extensive, it frequently falls short of fulfilling the objectives of financial reporting set forth by the FASB in Concepts Statement No. 1.[6] There are several reasons for this deficiency. First, companies use different methods of depreciation (e.g. straight line, double declining balance or sum of the years digits) without identifying the classes of property, or the amounts of depreciation computed, using each method. Second, the classes of assets are often quite broad with regard to type of asset and depreciable life, especially for registrants with diversified business interests. For example, items classified as buildings may include one-level prefabricated structures with an estimated useful life of 10 years, and multi-floor steel and concrete structures with an estimated useful life of 50 years. In the area of equipment, heavy industrial equipment with a life of 20 years may be combined with high technology equipment such as computers, whose estimated useful life may not exceed 5 years. Third, much of the disclosure with regard to property, plant and equipment has become very general, resulting in loss of informational value. Fourth, policy disclosures with regard to asset lives and treatment of maintenance, repairs, renewals and betterments have been substantially ineffective.

Accordingly, the Commission is proposing rules which it believes will improve the quality of the information being presented. These proposed rules will conform the required financial statement disclosures for property, plant and equipment in S–X with GAAP, with any additional disclosures being included in the supplemental schedules. The proposed rules for the supplemental schedules would require disclosure of:

(1) Assets classified by depreciation, depletion or amortization method and thereunder by major classification.

(2) Fully depreciated, depleted or amortized assets which are still in use.

(3) By classification, the rate used in computing depreciation, depletion or amortization, and if more than one rate is used, the range and weighted average rate.

(4) Any asset or group of homogeneous assets (such as, computers, equipment used in a specific manufacturing process, warehouses, and office buildings) which comprises 25 percent or more of a major class of property, plant and equipment and the depreciation, depletion or amortization rate. This requirement, however, does not apply if the asset or group of homogeneous assets constitutes less than five percent of total assets.

[4] This proposed change does not pertain to present rule 210.3–18 concerning disclosures of certain oil and gas reserve information for which the audit requirement has been postponed for one year.

[5] Certain information is not required based on percentage calculations: these calculations primarily relate to Schedules V and VI, and Rules 12–06 and 12–07.

[6] "Financial reporting should provide information that is useful to present and potential investors and creditors and other users in making rational investment, credit, and similar decisions . . . [it] should provide information to help investors, creditors, and others assess the amounts, timing, and uncertainty of prospective net cash flows to the related enterprise." para. 34 and 37.

The disclosures which are being proposed are more detailed than the previous requirements. However, the Commission believes that property, plant and equipment is of such significance to most enterprises that this information should be available to sophisticated users to assist in making informed investment decisions. Accordingly, the proposed rules would require this information from registrants where such amounts are significant in relation to the size of the enterprise.

Income Taxes

In 1973 the Commission issued ASR No. 149 which adopted rules for improved disclosure of income tax expense. The requirements of that release include disclosure of the components of income tax expense, the reasons for timing differences between book and tax reporting resulting in deferred income taxes, and a reconciliation between the effective income tax rate indicated by the income statement and the statutory Federal income tax rate. These requirements have had a positive impact in enabling users of financial statements to better understand the basis for the registrant's tax accounting, including the degree to which, and the reasons why, the level of income tax expense incurred differs from the statutory rate. However, after observing the disclosures made by registrants under this rule, the Commission believes that certain refinements are appropriate in order to make the disclosure more comprehensive and understandable. In discussing these proposals, it is worthwhile to identify the missing information and the shortfalls of the present rule.

First, the present rule requires a reconciliation of a hypothetical amount (taxes derived by multiplying pretax book income by the Federal statutory rate, which is almost never comparable to the calculation that an enterprise makes in computing its taxes) to actual reported income tax expense, often in percentage terms only. Further, this reconciliation uses the accounting income tax provision which includes both domestic and foreign income tax expense, and although this analysis can be informative, it is frequently confusing.

Second, the required information regarding foreign income taxes is frequently insufficient for a thorough understanding of a company's current tax position. Although the amount of foreign income tax expense is presented, the amount of income related to that expense and the accompanying effective income tax rate are usually not disclosed. The Commission believes that information concerning foreign income and related taxes are of importance to investors.

Additionally, the available information related to items of permanent and timing differences between book income and tax income are frequently not presented in a comprehensible manner. These differences can significantly affect the amount of taxes payable currently or postponed to the future and, accordingly, affect the cash flow of an enterprise. Utilization of the comprehensive allocation method,[7] as required by APB Opinion No. 11, "Accounting for Income Taxes," makes it important that users understand both the components of the income tax provision and the related income amounts. Accordingly, information about items which create differences between book and tax income is important.

The proposed rule would require registrants to reconcile pretax income and income tax expense for both their Federal and foreign components, as reported in their financial statements, to Federal (foreign) taxable income and related income taxes anticipated to be reported on the registrant's Federal (foreign) income tax return. A summary of the actual tax computation showing amounts taxed at various rates, statutory, capital gains, etc., and the effect of offsetting credits, would be required. This reconciliation will provide the information discussed above in a more comprehensive, coherent and understandable manner. The Commission believes that this proposal should not have a significant cost burden since the information which would be required is already available because registrants need such information to calculate their current and deferred income tax provisions for purposes of financial reporting.

The following example of the reconciliation proposed to to be required is provided to assist in appraising the proposal.

Assumptions

The following facts apply to a hypothetical business corporation:

(1) Book income before tax—$2,000,000, comprised of the following:

Federal—$1,000,000
Foreign—$1,000,000

(2) Currently taxable income is computed as follows:

	Federal	Foreign
Book income	$1,000,000	$1,000,000
Less:		
Tax exempt income	100,000	
State & local taxes	50,000	
Timing differences:		
Accelerated depreciation	250,000	500,000
Deferred compensation	50,000	10,000
Other	5,000	
Taxable income	$545,000*	$490,000

*$100,000 of this amount is a result of capital gains.

(3) Reported income tax expense—$845,000, comprised of the following:

	Federal	State and local	Foreign
Current	$155,000	$50,000	$245,000
Deferred	140,000		255,000

(4) Available U.S. investment tax credits amount to $80,000. The entire amount can be utilized in the current year and the flow through method is used.

(5) Federal income tax rate is 46% on ordinary income and 30% on capital gains. The foreign income tax rate is 50% on all taxable income.

Proposed Reconciliation

	Income	Income tax expense
Per Books	$2,000,000	$845,000
Less:		
Foreign	1,000,000	500,000
Permanent differences		
Tax exempt income	100,000	
State and local taxes	50,000	50,000
Subtotal	850,000	295,000
Less:		
Timing differences:		
Accelerated depreciation	250,000	115,000
Deferred compensation	50,000	23,000
Other	5,000	2,000
	305,000	140,000
Per Federal tax return	545,000	155,000
Federal currently taxable income:		
At statutory rate (46%)	445,000	205,000
At capital gains rate (30%)	100,000	30,000
Less:		
Investment tax credits		80,000
Estimated to be reported on Federal income tax return	$545,000	$155,000
Components of Foreign:		
Per Books	$1,000,000	$500,000
Less:		
Permanent differences		
Timing differences:		
Accelerated depreciation	500,000	250,000
Other	10,000	5,000
	510,000	255,000
Per foreign tax return(s)	$490,000	$245,000

Related Party Transactions

In 1975 the Auditing Standards Executive Committee of the American Institute of Certified Public Accountants issued Statement on Auditing Standards No. 6 ("SAS No. 6"), "Related Party

[7] Comprehensive allocation is a concept which requires allocation of taxes to all timing differences in determining the income tax expense for the period.

Transactions," which "provides guidance on procedures that should be considered by the auditor when he is performing an examination of financial statements in accordance with generally accepted auditing standards to identify related party transactions and to satisfy himself as to the substance of and accounting for such transactions, including financial statement disclosure."

The current accounting literature refers to certain types of transactions between related parties in SFAS Nos. 13 and 14, "Accounting for Leases" and "Financial Reporting for Segments of a Business Enterprise," respectively; however, GAAP does not include any general accounting or reporting guidelines for these types of transactions. As a result, the Commission believes that it would be beneficial to integrate the disclosure requirements of SAS No. 6 into S–X and therefore these requirements are being proposed for inclusion in S–X. The definition of a related party (as set forth in SAS No. 6) is proposed to be included in the definition section of Article 1. It should be pointed out that the term "principal owner" as used in this definition looks only to the voting interest of the registrant, whereas the present S–X definition of "principal holder" looks to any class of equity security. While this difference in terms would appear to unduly limit the persons covered by the related party rule, such is not the case since the related party definition also covers a person who can exercise significant influence.

II. Discussion of Proposed Changes to the Rules

Article 3. Rules of General Application

In a concurrent release, the Commission is proposing to establish uniform financial statement instructions for most registration and reporting forms and annual reports to shareholders. To achieve a logical sequence, these instructions are proposed; to be included in a new Article 3 in addition to the requirements for consolidated financial statements, presently Article 4, which are proposed to be moved without amendment. The rules addressing general application, present Article 3, are proposed to be relocated to Article 4. Other changes are being proposed to the rules of general application and are discussed in the paragraphs which follow.

Article 3 is the section of S–X which now contains rules on the general content of financial statements for all registrants. The specific rules applicable to companies in certain specialized industries are contained in successive articles of the Regulation and such rules include both general and specific references to the rules in Article 3. As discussed above, significant changes are being proposed concerning the individual rules contained in Article 3. The following is a discussion of the proposed changes according to the type (four categories identified previously) of change. The tabular guide preceding the revised rules provides a summary of the changes which are being proposed.

Certain changes are being proposed to delete rules in Article 3 which duplicate requirements of GAAP. Some of the rules being proposed for deletion were included in S–X prior to the time GAAP contained a specific requirement for such disclosure. The present rules in Article 3 which are proposed for deletion (or partial deletion) since such requirement is also included in GAAP are as follows (designated by the present rule numbers):

1. Rule 3–07—*Changes in accounting principles and practices and retroactive adjustment of accounts.* Such requirements are contained in APB Opinion Nos. 9, "Reporting the Results of Operations," and 20, "Accounting Changes," and SFAS No. 16, "Prior Period Adjustments."

2. Rule 3–08—*Summary of accounting principles and practices.* Currently, disclosure of accounting principles and practices is required by APB Opinion No. 22, "Disclosure of Accounting Policies."

3. Rule 3–11—*Current assets* and Rule 3–12—*Current liabilities.* Definitions of these terms are contained in ARB No. 43, Chapter 3, "Working Capital." Additionally, the use of an operating cycle in excess of one year is also provided for otherein and the requirement to disclose such is contained in APB Opinion No. 22, "Disclosure of Accounting Policies." Other disclosures required by Rules 3–11 and 3–12 are proposed to be combined into one rule.

4. Rule 3–16(b)—*Principles of translation of items in foreign currencies.* SFAS No. 8, "Accounting for the Translation of Foreign Currency Transactions and Foreign Currency Financial Statements," now prescribes the accounting and reporting requirements for the translation of foreign currencies.

5. Rule 3–16(d)—*Intercompany profits and losses.* ARB No. 51, "Consolidated Financial Statements," and APB Opinion No. 18, "The Equity Method of Accounting for Investments in Common Stock," require that intercompany profits and losses be eliminated with respect to consolidated subsidiaries and equity investees. Disclosure of profits or losses not eliminated with respect to related parties, as well as affiliates, is a requirement of proposed Rule 4–11(1).

6. Rule 3–16(e)—*Defaults.* The portion of this rule dealing with the classification of an obligation to which a default or breach relates is proposed to be deleted since ARB No. 43, Chapter 3, "Working Capital," defines the term "current liabilities." There does not appear to be a sufficient reason to retain the second and third sentences of this rule since the current practice is to look to the terms of the agreement to determine the proper classification in the particular circumstances. However, commentators are specifically requested to comment on whether these two sentences do serve a clarifying purpose and should appropriately be retained.

7. Rule 3–16(f)—*Preferred shares.* The requirement to disclose the dividend rates, participation rights, call prices and dates, conversion terms and voting rights of securities outstanding is contained in APB Opinion No. 15, "Earnings per Share." Disclosure of arrearages of cumulative dividends is required by APB Opinion No. 9, "Reporting the Results of Operations." APB Opinion No. 10, "Omnibus Opinion–1966," requires disclosure of the liquidation preference of stocks; however, such disclosure is not required on the face of the balance sheet. Thus, this portion of the present rule is retained since the Commission believes this disclosure is of sufficient importance to be required on the face of the statement. The requirement to disclose any restriction upon retained earnings that arises from the fact that upon involuntary liquidation the aggregate preferences of preferred shares exceeds the par or stated value is also retained since there is no such requirement currently included in GAAP.

8. Rule 3–16(g)—*Pension and retirement plans.* This rule duplicates present GAAP requirements except for the requirement to disclose unfunded past service costs. APB Opinion No. 8, "Accounting for the Cost of Pension Plans," contains the present GAAP disclosure requirements for pension plans. An exposure draft entitled "Disclosure of Pension and Other Post-Retirement Benefit Information," has been issued by the FASB as a proposed amendment to APB Opinion No. 8. This proposal would require expanded disclosures about the financial status of pension plans. Accordingly, the existing rule in S–X is proposed to be deleted in its entirety with the expectation that the

FASB will adopt an acceptable final standard prior to the Commission's final action on these proposed rules.

9. Rule 3–16(i)—*Commitments and contingent liabilities.* The requirement to disclose commitments and contingencies is contained in SFAS No. 5, "Accounting for Contingencies."

10. Rule 3–16(l)—*Bases of revenue recognition.* APB Opinion No. 22, "Disclosure of Accounting Policies," requires disclosure of the significant accounting policies followed by a company, including disclosure of the principles relating to recognition of revenues.

11. Rule 3–16(q)—*Leased assets and lease commitments.* SFAS No. 13, "Accounting for Leases," established standards of financial accounting and reporting for leases. The Commission's rule is consistent with SFAS No. 13 requirements, except that it provides for an earlier effective date and for certain disclosures by rate-regulated enterprises. The proposed revisions to this rule simply eliminate the portions of the rule which duplicate the requirements of SFAS No. 13. The accelerated implementation requirements of the rule make its retention necessary since the effective date for retroactive application of SFAS No. 13 is for years beginning after December 31, 1980. The rule is also required because of the "as if" disclosures by rate-regulated companies.

The second type of proposed change which is being proposed in Article 3 results from predominant current practices and/or changes in circumstances. In some instances, reporting practices have changed or become better established; thus, the significance of certain rules has diminished. Therefore, the following rules are proposed for revision or deletion:

1. Rule 3–01(b)—*Form, order, and terminology.* The rule presently specifies that amounts be expressed in whole dollars, in thousands of dollars or in hundred thousands of dollars. A change is being proposed to specify that amounts be stated in whole dollars or in multiples thereof since some of the larger companies are beginning to present some disclosures in millions of dollars.

2. Rule 3–05—*Omission of names of certain subsidiaries.* In a concurrent release the Commission proposes to move to an exhibit the present Form 10–K requirement to list all subsidiaries. For this reason, this rule seems unnecessary.

3. Rule 3–06—*Additional information.* The first sentence of the present rule is proposed to be moved to Rule 3–01(a) and is discussed below (under the third type of proposed change). The second sentence of this rule is proposed for deletion since registrants are no longer allowed to use statements filed with other governmental agencies in lieu of the financial statements prescribed by S–X.

4. Rule 3–16(j)—*Bonus, profit sharing, and other similar plans.* This disclosure is being proposed for deletion because it is not generally of financial significance. If, in an unusual situation, this information is of significance to the financial statements, disclosure would be required by GAAP. When it affects management remuneration, this disclosure is substantially required outside the financial statements by Item 4 of Regulation S–K.

5. Rule 3–16(n)—*Capital stock optioned, sold, or offered for sale to directors, officers, and key employees.* Some of the disclosures required by this rule are presently required by GAAP and the remaining disclosures appear to be no longer necessary. This rule was adopted in 1953, a time when uniform accounting and disclosure requirements were much less complete. The Commission considered it inappropriate to prescribe the amount, if any, to be charged against income representing compensation to recipients of stock options since at that time there was no unanimity of opinion on this question. However, since that time APB opinion No. 25, "Accounting for Stock Issued to Employees," has been issued on the appropriate accounting method for stock options issued to employees. That opinion specifies the amount to be included in income statements and the timing of such charges. The supplemental disclosures are proposed for deletion because they are not generally of financial significance. If, in an unusual situation, this information is of significance to the financial statements, disclosure would be required by GAAP. When it affects management remuneration, this disclosure is substantially required outside the financial statements by Item 4 of Regulation S–K.

The third type of proposed change is that made to clarify the present rules which may be subject to various interpretations and/or to modify the rules or the location of such rules to enhance their simplicity and readability. The following proposed changes are of this type:

1. Rule 3–01(a)—*Form, order, and terminology.* The word "may" in the first sentence of this paragraph is proposed to be changed to "should" in an effort to be more definitive. An additional sentence is proposed to be added to this paragraph; however, this is simply a transfer of the first sentence from Rule 3–06 and does not represent a change in the present requirements.

2. Rule 3–03—*Inapplicable captions and omission of unrequired or inapplicable financial statements.* In paragraphs (a) and (b) of this rule the work "need" is proposed to be changed to "should" in an effort to be more definitive. The wording of paragraph (c) is also proposed to be revised to delete the specification of where the reason for the omission of a financial statement must be presented.

3. Rule 3–09—*Valuation and qualifying accounts.* An addition to this rule is being proposed to allow valuation and qualifying accounts to be presented parenthetically on the face of the balance sheet rather than requiring a separate deduction from assets to which they apply. The Commission continues to believe that disclosure of such amounts is of sufficient importance to be required on the face of the statement.

4. Rule 3–14—*Reacquired shares.* The wording in this rule has been revised to conform to the position taken in ASR No. 268, "Presentation in Financial Statements of 'Redeemable Preferred Stocks.'"

5. Rule 3–15—*Discount on capital shares.* This rule has also been revised to conform to the position taken in ASR No. 268.

6. Rule 3–16(t)—*Disclosure of selected quarterly financial date in notes to financial statements.* The Commission is proposing to relocate the disclosure required by this rule to Item 12 of Regulation S–K. Also related Rule 2–02(e) is proposed for deletion. This information would no longer be part of the financial statements; however, the Commission believes this information should be included in annual reports to shareholders, thus the Commission is also proposing an amendment to the proxy rules to accommodate this change. The Commission continues to believe that auditor association with this information is desirable and therefore is proposing this rule change with the expectation that the existing auditor association and review of this information will remain unchanged and that appropriate amendments to the auditing literature will be recommended and adopted.

The final type of proposed change to Article 3 is that made to improve certain financial reporting and disclosures. After considering certain disclosure rules presently in effect, the Commission believes that improvements can be made to the present requirements. The following is a discussion of the proposed changes:

1. Rule 3–13—*Reacquired evidences of indebtedness.* The wording of this rule has been proposed for modification including the addition of a requirement to state the purpose for which reacquired evidences of indebtedness, shown as an asset in the balance sheet, were acquired. The presentation of reacquired evidences of indebtedness as an asset is rare in practice; however, in such cases, complete explanations should be provided.

2. Rule 3–16—*General notes to financial statements.* The introductory paragraph to this rule is being proposed to be expanded to require appropriate note references on the face of the financial statements for disclosures contained in footnotes. The current rule requires note references for only the disclosures specifically required by Rule 3–16; however, the proposed rule would also apply to disclosures required by GAAP.

3. Rule 3–16(h)—*Restrictions which limit the availability of retained earnings for dividend purposes.* This rule is being proposed to be expanded to include a specific requirement to disclose any restriction on the payment of dividends including, (i) restrictions dependent on the achievement of certain levels of net income and (ii) payments by a subsidiary to its parent. The Commission believes that the current rule requires these disclosures; however, contrary positions have been argued. The expansion of this rule will clarify the Commission's intended requirements.

4. Rule 3–16(m)—*Depreciation, depletion, obsolescence and amortization.* This specific rule is proposed for deletion; however, certain of the present requirements, as well as certain disclosure requirements from Article 5, have been combined and included in a proposed schedule. The specifics of the proposed requirements are discussed below in connection with the schedule revisions. The requirement to disclose the accounting treatment for maintenance, repairs, renewals and betterments is proposed to be deleted. The Commission believes the general practice is for companies to expense maintenance and repairs and to capitalize renewals and betterments; however, if any other method is used, disclosure should be provided under the requirements of APB Opinion No. 22, "Disclosure of Accounting Policies." Thus, the present specific requirement is considered unnecessary.

5. Rule 3–16(o)—*Income tax expense.* The present rule is proposed to be revised to modify the format and expand the content of the disclosures. As discussed in section I (Background—Income Taxes, see example), the proposed revision is intended to present the composition of the company's current tax liability and to specifically associate with each component the income amounts that give rise to such tax provision. This proposed tax disclosure requires a reconciliation of the total tax expense and income before tax amounts to the currently payable Federal income tax expense and the income to be taxed currently. Aside from that change, the proposed rule requires information similar to that which is currently required in subparagraphs (1) and (3) of the existing rule.

The Commission is also inviting commentators to consider and respond to whether subparagraph (2) of Rule 3–16(o) should be retained and, if so, in what form. The Commission believes that information concerning future cash outlays for income taxes, that are anticipated to substantially exceed income tax expense, is important. Information concerning future cash requirements and an enterprise's liquidity are essential to users who are attempting to make rational investment or similar decisions. Although important, this is a difficult rule to enforce, since the omission of disclosure cannot be recognized until the year after the disclosure should have been presented. Therefore, in an attempt to make this rule more effective, comments with regard to retention and alteration are specifically requested.

6. Rule 4–11(l)(new)—*Transactions with related parties.* The purpose of this new proposed rule is to (1) incorporate the disclosure requirements of SAS No. 6, "Related Party Transactions," into S–X and (2) to combine within one rule all the current S–X requirements related to balances due to or from affiliates and to other transactions with affiliates. The Commission believes that this proposal will not change current disclosure practices concerning related party transactions. The present S–X requirements deal only with affiliates and are contained in Rules 3–16(d), 5–02.3, .10, .11, .25, .29, .31, and .32; and 5–03.1A, B, and C, .2A, B and C, .7, .8, and .17 of S–X. The disclosure requirements are now included in the proposed rule since the definition of related parties includes affiliates. The disclosure requirements contained in SAS No. 6 are being proposed to be included in S–X since GAAP does not include disclosure guidelines for transactions with related parties.

It should also be pointed out that Rule 3–16(r) (Interest cost) reflects the changes effected in Accounting Series Release No. 272, dated November 6, 1979. Reference is made to that release for a discussion of the recently adopted changes. With respect to Rule 3–17 (Current replacement cost information), reference is made to Accounting Series Release No. 271, dated October 23, 1979, in which the Commission announced its intention to delete the replacement cost rule for fiscal years ending on or after December 25, 1980. Since the deletion has been announced, the rule is not included in the text of the proposed rules below.

Article 5. Commercial and Industrial Companies

Article 5 contains line items for balance sheets and income statements which are to be filed by all registrants, except for registrants in certain specialized industries. (See Rule 5–01 for a list of excepted businesses.) As discussed above, the outline of the items to be included in the financial statements is being retained; however, significant changes are being proposed herein concerning the individual rules of Article 5. These proposed changes fall into the same four categories as used for Article 3 and are discussed below according to the type of change. The present rule numbers are used in this discussion; however, the tabular guide presented in section III of this release summarizes the proposed changes and sets forth the proposed new rule numbers.

The following is a discussion of the changes which are being proposed to delete the rules in Article 5 which duplicate GAAP:

1. Rule 5–02.2—*Marketable securities.* SFAS No. 12, "Accounting for Certaining Marketable Securities," prescribes the accounting required for certain marketable equity securities, thus obviating the need for such portion of this rule. Also, the first two sentences of this rule are unnecessary since GAAP defines a current asset. The proposed rule is revised specifically to cover current marketable securities which are other than equity securities (which are covered by SFAS No. 12).

2. Rule 5–02.5—*Unearned income.* APB Opinion No. 6, "Status of Accounting Research Bulletins," contains the requirement that such amounts be deducted from the related receivable.

3. Rule 5–02.6—*Inventories.* The first sentence of the first paragraph and the second paragraph under subparagraph (b) of this rule car proposed for deletion since such information is presently required by ARB No. 43, Chapter 4, "Investory Pricing."

4. Rule 5–02.12—*Other securities investments* and Rule 5–02.13—*Other investments.* The requirements of Rule 5–02.13 are being proposed for combination with Rule 5–02.12. Also, since SFAS No. 12, "Accounting for Certain Marketable Securities," prescribes the accounting and disclosure requirements for marketable equity securities, the rule has been revised to so indicate. The proposed rule is also revised to specify the disclosure necessary for non-current security investments (other than marketable equity securities) and other investments.

5. Rule 5–02.30—*Unamortized debt discount and premium.* APB Opinion No. 21, "Interest on Receivables and Payables," contains a disclosure requirement similar to this present rule.

6. Rule 5–02.35—*Deferred credits.* The last sentence of this rule is being proposed for deletion since separate current classification of deferred taxes is required by APB Opinion No. 11, "Accounting for Income Taxes."

7. Rule 5–02.36—*Reserves.* SFAS No. 5, "Accounting for Contingencies," sets forth the accounting and reporting requirements for loss contingencies.

8. Rule 5.03 (a) and (b). The nature of items to be included in the income statement is governed by APB Opinion Nos. 9 and 30, both titled "Reporting the Results of Operations," and also by SFAS No. 16, "Prior Period Adjustments."

9. Rule 5–03.3A—*Research and development expenses.* SFAS No. 2, "Accounting for Research and Development Costs," requires disclosure of research and development costs.

10. Rule 5–03.4—*Selling, general and administrative expenses.* The requirement to disclose unusual items is contained in APB Opinion No. 30, "Reporting the Results of Operations."

11. Rule 5–03.9—*Profits on securities* and Rule 5–03.12—*Losses on securities.* The requirements of these rules are contained in SFAS No. 12, "Accounting for Certain Marketable Securities," and APB Opinion No. 30, "Reporting the Results of Operations."

12. Rule 5–03.10—*Miscellaneous other income* and Rule 5–03.13—*Miscellaneous incomne deductions.* The information required by the last sentence of both these rules is presently contained in APB Opinion No. 30, "Reporting the Results of Operations."

13. Rule 5–03.11—*Interest and amortization of debt discount and expense.* The FASB recently issued SFAS No. 34, "Capitalization of Interest Cost," which established standards for capitalizing and disclosing interest costs; thus, the present requirement to separately disclose different types of interest expense appears to be no longer necessary or appropriate.

14. Rule 5–03.17—*Equity in earnings of unconsolidated subsidiaries and 50 percent or less owned persons.* APB Opinion No. 18, "The Equity Method of Accounting for Investments in Common Stock," prescribes the disclosures that are required when the equity method of accounting is used.

15. Rule 5–03.19—*Extraordinary items, less applicable tax.* The accounting and disclosure requirements for extraordinary items is contained in APB Opinion No. 30, "Reporting the results of Operations," and SFAS No. 4, "Reporting Gains and Losses from Extinguishment of Debt."

16. Rule 5–03.20—*Cumulative effects of changes in accounting principles.* APB Opinion No. 20, "Accounting Changes," enumerates the disclosure requirements of the cumulative effects of accounting changes.

17 Rule 5–03.22—*Earnings per share data.* The requirements for computing and disclosing earnings per share are contained in APB Opinion No. 15, "Earnings per Share," and No. 30, "Reporting the Results of Operations."

The second type of proposed change results from the changes necessitated by predominant current practices and/or changes in circumstances. The following proposed revisions or deletions are of this type:

1. Rule 5–02.1—*Cash and cash items.* The first two sentences of this rule are proposed to be revised to delete the list of cash items required to be separately disclosed. Disclosure of cash which is restricted as to withdrawal or usage and the description of the provisions of such restrictions continue to be considered relevant disclosures. This proposed rule has been revised accordingly.

2. Rule 5–02.4—*Allowances for doubtful accounts and notes receivable.* It common practice for companies to exclude from their receivables amounts which are known to be uncollectable; thus, this specific requirement is no longer necessary.

3. Rule 5–03.7—*Dividends.* The requirement to separately disclose dividends from different sources is being proposed for deletion since the amounts are not usually significant, but, if significant, current practice would necessitate disclosure. Also, if dividends from related parties are material, disclosure will be required by the proposed rule on related party transactions.

4. Rule 5–03.8—*Interest on securities.* The reasoning for proposing to delete the requirements of this rule is the same as for Rule 5–03.7 above.

The third type of proposed change is that made to clarify the present rules which may be subject to various interpretations and/or to modify the rules or the location of such rules to enhance the simplicity and readability of such requirements. The following proposed changes are of this type:

1. Rule 5–02.3—*Accounts and notes receivable.* Paragraphs (a) and (c) of this rule are being proposed to be revised to reflect the changes which result from adding a separate rule in Article 4 concerning related party transactions. Paragraph (b) is being proposed for transfer to revised Rule 4–07. Paragraphs (e), (f) and (g) are being proposed for revision to be presented in a more concise format; however, the requirements are unchanged.

2. Rule 5–02.7—*Other current assets.* The last sentence of this rule is proposed for deletion as being unnecessary.

3. Rule 5–02.16—*Intangible assets.* The list of the different types of intangible assets has been removed and the rule is proposed to require separate disclosure of items which exceed 5% of total assets. This proposed change is consistent with other rules in this article which use a 5% significance test. Also the proposed rule would add a specific requirement to explain significant additions or deletions during the period. This represents predominant practice and, therefore, should not require new disclosures. With the addition of this provision to the rule, the provisions of Schedules VII and VIII are being proposed for deletion.

4. Rule 5–02.18—*Other assets;* Rule 5–02.19—*Prepaid expenses and deferred charges;* Rule 5–02.20— *Preoperating expenses and similar deferrals;* Rule 5–02.21—*Deferred organization expense;* Rule 5–02.22—*Deferred debt expense;* and Rule 5–02.23—*Deferred commissions and expense on capital shares.* The rule concerning other assets is being proposed to combine all the above noted rules into one by simply requiring disclosure of any other asset (not includable in other captions) which exceeds 5% of total assets. The proposed rule would also require disclosure of significant additions or deletions during the period. The reason for such a proposed requirement is explained in the paragraph above.

5. Rule 5–02.25—*Accounts and notes payable.* Paragraph (a) of this rule is proposed for revision as a result of adding a separate rule in Article 4 on related party transactions.

6. Rule 5–02.26—*Accrued liabilities* and Rule 5–02.27—*Other current liabilities.* These two rules are effectively combined in a proposed rule,

and any item which exceeds 5% of total current liabilities would require separate disclosure.

7. Rule 5–02.32—*Other long-term debt,* and Rule 5–02.33—*Other liabilities.* These two rules are combined; thus, any other long-term liability in excess of 5% of total liabilities would require separate disclosure.

8. Rule 5–03(c). This proposed subparagraph has been rewritten as a result of the changes made in Rules 5–03.1 and .2 (see discussion below), but no change in the requirement is being proposed.

9. Rule 5–03.1A—*Net sales of tangible products;* Rule 5–03.1B—*Operating revenues of public utilities;* and Rule 5–03.1C—*Other revenues.* These present rules are proposed to be combined primarily to make the rules more readable and understandable. Additionally, a change is being proposed to lower the present percentage test for disclosing excise taxes from 10% to 1% of total sales and revenues. This change is being proposed since excise tax amounts which are less than 10% of sales and revenues are frequently significant to the reported tax amount which includes the corresponding excise tax expense.

10. Rule 5–03.2A—*Cost of tangible goods sold;* Rule 5–03.2B—*Operating expenses of public utilities,* and Rule 5–03.2C—*Costs and expenses applicable to other revenues.* The combination of these rules are for the same reason as stated in the paragraph above.

11. Rules 5–03.14 and 5.03.15 (new rule numbers) give effect to the GAAP requirements to disclose "income or loss from continuing operations" and "discontinued operations."

12. Rule 5–03.20 (new rule)—*Earnings applicable to common stock.* The requirement to disclose this amount is presently contained in the "Summary of Operations" items of the various Securities Act and Securities Exchange Act forms; however, the current requirements to present the summary of operations are proposed for deletion in a concurrent release. The Commission believes that disclosure of earnings applicable to common stock is important information and that such disclosure should be made in the income statement; therefore, this requirement is proposed to be transferred to Article 5. (It should also be noted that the requirement to present the ratio of earnings to fixed charges is also contained in the "Summary of Operations" items to certain forms. The Commission's staff is presently reviewing the existing requirements and expects to recommend that the Commission issue a concept release focusing on the calculation and utility of this ratio.)

The fourth type of proposed change to Article 5 is that made to improve present financial reporting and disclosure. The following changes are of this type:

1. Rule 5–02.10—*Securities of affiliates and other persons,* and Rule 5–02.11—*Indebtedness of affiliates and other persons—not current.* The specific requirements of these rules are proposed to be deleted and replaced with a reference to the proposed rule on related party transactions. This proposed rule significantly expands the present requirement to separately disclose investments in and receivables from affiliates.

2. Rule 5–02.14—*Property, plant and equipment.* The specific requirements relating to property, plant and equipment have been transferred to a proposed schedule and expanded. See the discussion below regarding the changes proposed to be made in Schedules V and VI.

3. Rule 5–02.29—*Bonds, mortgages and similar debt.* The specific requirement to separately disclose amounts owed to affiliates is being proposed to be deleted and replaced with a reference to the proposed rule on related party transactions.

4. Rule 5–02.31—*Indebtedness to affiliates and other persons—not current.* The specific requirements of this rule are being proposed to be deleted and replaced with a reference to the proposed new rule on related party transactions.

It should also be poined out that Rule 5–04 (What schedules are to be filed) is also proposed to be revised as a result of the changes proposed for Article 12. See below for a discussion of such proposed changes to the schedules except for Schedule XV (Other Securities) for which there is no corresponding rule in Article 12. This schedule is being proposed for deletion which is consistent with the elimination of Rules 12–10, 12–14 and 12–15. Schedule XV was intended to provide disclosures similar to those required by the above rules, but for other classes of securities.

Article 12. Form and Content of Schedules

Article 12 of the S–X prescribes the form and content of the schedules required by other Articles of S–X. The proposed changes to Article 12 fall into four categories discussed previously and are treated below according to the reason for the change. Corresponding changes are being proposed to other Articles of S–X and the Forms which are affected by the changes proposed to Article 12. Generally, the proposed revisions to other Articles of S–X and the Forms, as a result of changes in Article 12, involve the elimination of a requirement to provide disclosure required by a rule proposed for deletion or to otherwise conform disclosure requirements. The present rules in Article 12 which are proposed for deletion (or partial deletion) for this reason are as follows (designated by present rule numbers):

1. Rule 12–08—*Intangible Assets, Preoperating Expenses and Similar Deferrals* and Rule 12–09—*Accumulated Depreciation and Amortization of Intangible Assets.* APB Opinion No. 17, "Intangible Assets," establishes accounting and disclosure standards for intangible assets. Rule 12–08 is proposed to be deleted since proposed Rules 5–02.15 and 5–02.17 have been expanded to require disclosure of any significant additions or deletions of intangible assets or deferred charges, and proposed Rule 4–11(m) requires disclosure of depreciation and amortization of intangible assets, preoperating costs and similar deferrals.

The second type of change involves changes to conform to predominant current practice. The title of Rule 12–13 is being proposed for revision to eliminate the words "and reserves." The use of the word "reserve" to designate valuation and qualifying accounts is not consistent with current usage of terminology.

The third type of change being proposed is that made to enhance the simplicity and readability of the rule requirements by clarifying the rules which are presently subject to various interpretations. It is proposed that the following requirements be deleted from Article 12 since the disclosures sought are adequately provided by other rules:

1. Rule 12–10—*Bonds, mortgages and similar debt.* The Commission believes the disclosures required by Rule 5–02.29 and the proposed rule on related party transactions will adequately provide the relevant information presently sought by Rule 12–10.

2. Rule 12–14—*Capital shares.* The Commission believes that the disclosures prescribed by present Rules 5–02.38, .39, .40, .41 and the proposed rule on related party transactions will generally provide the disclosures sought by the present rule.

3. Rule 12–15—*Warrants or rights.* The essential requirements of this Rule are presently contained in Rule 3–16(p).

4. Rule 12–16—*Supplementary income statement information.* Rule 12–16 is

proposed for deletion; however, the present requirements which are not required by GAAP are proposed to be transferred to a disclosure rule in Article 4. The requirements to report rents and depreciation, depletion and amortization of property, plant and equipment are presently required by SFAS No. 13, "Accounting for Leases," and APB Opinion No. 12, "Omnibus Opinion-1967," respectively, and therefore are proposed to be deleted.

The fourth type of proposed change to Article 12 is being made to improve present financial reporting and disclosure. After considering the disclosure rules presently in effect, the Commission believes that improvements can be made in the disclosures provided. The following is a discussion of such proposed changes:

1. Rule 12–03—*Amounts receivable from underwriters, promoters, directors, officers, employees, and principal holders* and Rule 12–04—*Investment in, equity in earnings of, and dividends received from affiliates and other persons.* The scope of these rules are being proposed for expansion to encompass a broader group of persons defined as related parties in the auditing literature and to be consistent with new Rule 4–11(1) and the definition of related parties proposed in Rule 1–02(t). The Commission is also proposing that the reporting level of Rule 12–03 be revised from an aggregate indebtedness of $20,000 or 1 percent of total assets, whichever is less, to an aggregate indebtedness of $100,000 or 1 percent of total assets, whichever is less.

2. Rule 12–05—*Indebtedness of affiliates and other persons—not current.* Rule 12–05 is being proposed for expansion to also include the disclosures presently prescribed by Rule 12–11 and to require an analysis of changes in balances. The combination of the schedules prescribed by Rules 12–05 and 12–11 places related disclosures in juxtaposition. The analysis of the change in balances provides increased information concerning transactions between affiliates and other persons.

3. Rule 12–06—*Property, plant and equipment.* This rule is being proposed for expansion in several areas. Disclosure of additional information is being proposed concerning composition of assets, and the methods and rates of depreciation, depletion or amortization. In addition to disclosing property, plant and equipment by major classification, assets or homogeneous groups which comprise 25 percent or more of a major class of property, plant and equipment, and material amounts of fully depreciated assets still in service and idle assets are being proposed for disclosure in the schedule. By obtining a more detailed analysis of the composition of assets, more specific information will be provided with respect to additions and retirements or other dispositions of assets. More specific disclosure of the rates and methods of depreciation, depletion or amortization and the related charges to income in relationship to the related assets is also being proposed.

The proposed requirements of Rule 12–06 are intended to provide more meaningful information concerning investments in property, plant and equipment and charges for depreciation, depletion and amortization.

III. Reference Table of Rule Changes

The table which follows is presented to enable the reader to trace each of the current rules to its proposed rule number or to identify which current rules are being proposed for deletion. Very brief indications of the proposed changes are also provided. The discussions in section II of this release provide the detailed explanation of each proposed change and deletion. No discussion is provided for rules in which no changes are proposed. The table is intended only as a guide to go from the present to the proposed rule numbers; therefore, the proposed rules and the discussion of changes should also be read in conjunction with this table.

Present rule	Proposed rule
Article 3:	
210.3-01(a)	210.4-01(a) Minor wording revisions in the first sentence. Second sentence moved from present rule 210.3-06.
210.3-01(b)	210.4-01(b) First sentence revised. Second sentence deleted.
210.3-01(c)	210.4-01(c) No change.
210.3-02	210.4-02 No change.
210.3-03	210.4-03 Minor wording revision in paragraph (a). Paragraph (c) also revised
210.3-04	210.4-04 No change.
210.3-05	Deleted.
210.3-06	First sentence moved to 210.4-01(a). Second sentence deleted.
210.3-07	Deleted.
210.3-08	Deleted.
210.3-09	210.4-05 Minor revisions to rule.
210.3-10	210.4-06 No change.
210.3-11	210.4-07 Revised and present rule 210.3-12 combined with this rule.
210.3-12	Combined with present rule 210.3-11.
210.3-13	210.4-08 Minor revisions to rule.
210.3-14	210.4-09 Minor revisions to recognize changes made in ASR No. 268.
210.3-15	210.4-10 Minor revisions to recognize changes made in ASR No. 268.
210.3-16	210.4-11 Expanded to recognize GAAP requirements and to require appropriate cross-referencing to footnote disclosures.
210.3-16(a)	210.4-11(a) No change.
210.3-16(b)	Deleted.
210.3-16(c)	210.4-11(b) No change.
210.3-16(d)	Deleted.
210.3-16(e)	210.4-11(c) Minor revisions to rule.
210.3-16(f)	210.4-11(d) Subparagraphs (1), (2), (3)(i), and (3)(ii) deleted. Minor revisions to remainder of rule.
210.3-16(g)	Deleted.
210.3-16(h)	210.4-11(e) Requirements of the rule are clarified.
210.3-16(i)	Deleted.
210.3-16(j)	Deleted.
210.3-16(k)	210.4-11(f) No change.
210.3-16(l)	Deleted.–
210.3-16(m)	Deleted.
210.3-16(n)	Deleted.
210.3-16(o)	210.4-11(g) Subparagraphs (1) and (3) revised and expanded.
210.3-16(p)	210.4-11(h) No change.
210.3-16(q)	210.4-11(i) Most of the rule is deleted but the references to SFAS No. 13, "Accounting for Leases," continue the current requirements.
210.3-16(r)	210.4-11(j) No change from the rule adopted in Accounting Series Release No. 272 (November 6, 1979).
210.3-16(s)	210.4-11(k) No change.
210.3-16(t)	Moved to Item 12 of Regulation S-K.
210.3-17	210.4-12 No change but also see Accounting Series Release No. 271 (October 23, 1979).
210.3-18	210.4-13 No change.
Article 5:	
210.5-01	210.5-01 No change.
210.5-02	210.5-02 No change.
210.5-02.1	210.5-02.1 Minor revisions to the rule.
210.5-02.2	210.5-02.2 Revised to recognize current GAAP requirements
210.5-02.3	210.5-02.3 Subparagraphs (a) revised; (b) deleted; (c) deleted; (d) through (g) combined.
210.5-02.4	210.5-02.4 Caption only retained.
210.5-02.5	210.5-02.5 Caption only retained.
210.5-02.6	210.5-02.6 A portion of the first and second paragraphs of subparagraph (b) deleted.
210.5-02.7	210.5-02.7 Last sentence deleted.
210.5-02.8	210.5-02.8 Reference deleted.
210.5-02.9	210.5-02.9 No change.
210.5-02.10	210.5-02.10 Caption only retained with a reference to proposed rule 210.4-11(1) being added.
210.5-02.11	210.5-02.11 Caption only retained with a reference to proposed rule 210.4-11(1) being added.
210.5-02.12	210.5-02.12 Revised to recognize current GAAP requirements and to combine the requirements of present rule 210.5-02.13.
210.5-02.13	Deleted. Requirement combined with 210.5-02.12.
210.5-02.14	210.5-02.13 Subparagraph (a) revised; subparagraph (b) revised to delete part of next to last sentence and all of last sentence.
210.5-02.15	210.5-02.14 No change.
210.5-02.16	210.5-02.15 Present requirement revised and expanded.
210.5-02.17	210.5-02.16 No change.
210.5-02.18	210.5-02.17 Present requirement revised and expanded.
210.5-02.19	Deleted.
210.5-02.20	Deleted.
210.5-02.21	Deleted.
210.5-02.22	Deleted.
210.5-02.23	Deleted.
210.5-02.24	210.5-02.18 No change.
210.5-02.25	210.5-02.19 Minor revisions to subparagraph (a). No change in subparagraphs (b) and (c).
210.5-02.26	Deleted. Requirement combined with present rule 210.5-02.27.
210.5-02.27	210.5-02.20 Revised to also include the present requirements of 210.5-02.26.
210.5-02.28	210.5-02.21 No change.
210.5-02.29	210.5-02.22 Minor revisions in subparagraph (a); no change in subparagraph (b).
210.5-02.30	Deleted.
210.5-02.31	210.5-02.23 Caption only retained with a reference to proposed rule 210.4-11(l) being added.
210.5-02.32	Deleted.
210.5-02.33	210.5-02.24 No change.
210.5-02.34	210.5-02.25 No change.
210.5-02.35	210.5-02.26 Revised to delete last sentence.

Present rule	Proposed rule
210.5-02.36	Deleted.
210.5-02.37	210.5-02.27 No change.
210.5-02.38	210.5-02.28 No change.
210.5-02.39	210.5-02.29 No change.
210.5-02.40	210.5-02.30 No change.
210.5-02.41	210.5-02.31 No change.
210.5-02.42	210.5-02.32 No change.
210.5-03	210.5-03 Subparagraphs (a) and (b) deleted; minor revisions made to subparagraph (c).
210.5-03.1A	210.5-03.1 Minor revisions made and combined with present rules 210.5-03.1B and .1C.
210.5-03.2A	210.5-03.2 Minor revisions made and combined with present rules 210.5-03.2B and .2C.
210.5-03.3A	Deleted.
210.5-03.1B	210.5-03.1 See 210.5-03.1A above.
210.5-03.2B	210.5-03.2 See 210.5-03.2A above.
210.5-03.1C	210.5-03.1 See 210.5-03.1A above.
210.5-03.2C	210.5-03.2 See 210.5-03.2A above.
210.5-03.3	210.5-03.3 No change except for reference to preceding rules.
210.5-03.4	210.5-03.4 Caption only retained.
210.5-03.5	210.5-03.5 No change.
210.5-03.6	210.5-03.6 No change.
210.5-03.7	210.5-03.7 Revised and combined with present Rules 210.5-03.8, .9, and .10.
210.5-03.8	See 210.5-03.7 above.
210.5-03.9	See 210.5-03.7 above.
210.5-03.10	See 210.5-03.7 above.
210.5-03.11	210.5-03.8 Caption only retained.
210.5-03.12	210.5-03.9 Revised and combined with present rule 210.5-03.13.
210.5-03.13	210.5-03.9 Revised and combined with present rule 210.5-03.12.
210.5-03.14	210.5-03.10 No change.
210.5-n03.15	210.5-03.11 No change.
210.5-03.16	210.5-03.12 No change.
210.5-03.17	210.5-03.13 No change.
210.5-03.18	210.5-03.16 No change.
210.5-03.19	210.5-03.17 Caption only retained.
210.5-03.20	210.5-03.18 Caption only retained.
210.5-03.21	210.5-03.19 No change.
210.5-03.22	210.5-03.21 Caption only retained.
210.5-04	210.5-04 The changes made to this rule are as a result of the revisions made in Article 12 (see below) and a renumbering of schedules.
Article 12:	
210.12-01	210.12-01 No change.
210.12-02	210.12-02 No change.
210.12-03	210.12-03 Revised and expanded to include related parties.
210.12-04	210.12-04 Expanded to include related parties.
210.12-05	210.12-05 Format of schedule changed and combined with present 210.12-11.
210.12-06	210.12-06 Expanded and format revised.
210.12-07	210.12-07 No change.
210.12-08	Deleted.
210.12-09	Deleted.
210.12-10	Deleted.
210.12-11	Combined with 210.12-05 above.
210.12-12	210.12-08 No change.
210.12-13	210.12-09 Revised title.
210.12-14	Deleted.
210.12-15	Deleted.
210.12-16	Eliminated part of present disclosures and moved remaining requirements to proposed rule 210.4-11(m).
210.12-17	Previously revoked.
210.12-18	Previously revoked.
210.12-19	210.12-10 No change.
210.12-20	Previously revoked.
210.12-21	210.12-11 No change.
210.12-22	210.12-12 No change.
210.12-23	Previously revoked.
210.12-24	Previously revoked.
210.12-25	Previously revoked.
210.12-26	Previously revoked.
210.12-27	210.12-13 No change.
210.12-28	Previously revoked.
210.12-29	210.12-14 No change.
210.12-30	Previously revoked.
210.12-31	210.12-15 No change.
210.12-31a	210.12-16 No change.
210.12-32	Previously revoked.
210.12-33	210.12-17 No change.
210.12-34	210.12-18 No change.
210.12-35	210.12-19 No change.
210.12-36	210.12-20 No change.
210.12-37	210.12-21 No change.
210.12-38	210.12-22 No change.
210.12-39	210.12-23 No change.
210.12-40	210.12-24 No change.
210.12-41	210.12-25 No change.
210.12-42	210.12-26 No change.
210.12-43	210.12-27 No change.

The Commission recognizes that there are numerous cross-references in other articles of S-X to the rules which are proposed to be deleted, revised or renumbered in this release. Changes in such cross references are not being made in this release, but instead such changes will be made in conjunction with the adoption of final rules.

IV. Requests for Comments

All interested persons are invited to submit their views and comments concerning the amendments proposed herein in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. All comments should be received no later than April 30, 1980. Such communications should refer to File S7-818 and will be available for public inspection.

V. Text of Proposed Amendments

The Commission hereby proposes to amend 17 CFR Chapter II as follows:

PART 210—FORM AND CONTENT OF FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. By adding a new paragraph (t) to § 210.1-02 and by redesignating the former paragraphs (t) through (y).

§ 210.1-02 Definitions of terms used in Regulation S-X (17 CFR Part 210).

* * * * *

(t) *Related parties.* The term "related parties" means the registrant; its affiliates; principal owners, management, and members of their immediate families; entities for which investments are accounted for by the equity method; and any other party with which the reporting entity may deal when one party has the ability to significantly influence the mangement or operating policies of the other, to the extent that one of the transacting parties might be prevented from fully pursuing its own separate interests. Related parties also exist when another entity has the ability to significantly influence the management or operating policies of the transacting parties or when another entity has an ownership interest in one of the transacting parties and the ability to significantly influence the other, to the extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests. For purposes of this definition, the terms (1) "principal owner" means the owner(s) of record or known beneficial owner(s) of more than 10% of the voting interests of the reporting entity, and (2) "management" means any person(s) having responsibility for achieving the objectives of the organization and the concomitant authority to establish the policies and to make the decisions by which such objectives are to be pursued.

(u) No change from former paragraph (t).

(v) No change from former paragraph (u).

(w) No change from former paragraph (v).

(x) No change from former paragraph (w).

(y) No change from former paragraph (x).

(z) No change from former paragraph (y).

2. By deleting § 210.2-02(e).

§ 210.2-02 Accountants' reports.

* * * * *

(e) [Deleted.]

* * * * *

3. By revising Article 4, §§ 210.4-01 thru 210.4-13, to read as follows:

Rules of General Application

§ 210.4-01 Form, order, and terminology.

(a) Financial statements should be filed in such form and order, and should use such generally accepted terminology, as will best indicate their significance and character in the light of the provisions applicable thereto. The information required with respect to any statement shall be furnished as a minimum requirement to which shall be added such further material information as is necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.

(b) All money amounts required to be shown in financial statements may be expressed in whole dollars or multiples thereof, as appropriate: *Provided,* That, when stated in other than whole dollars, an indication to that effect is inserted immediately beneath the caption of the statement or schedule, at the top of the money columns, or at an appropriate point in narrative material.

(c) Negative amounts (red figures) shall be shown in brackets or parentheses and so described in the related caption, columnar heading or a note to the statement or schedule, as appropriate.

§ 210.4-02 Items not material.

If the amount which would otherwise be required to be shown with respect to any item is not material, it need not be separately set forth (but see Release No. AS-41).

§ 210.4-03 Inapplicable captions and omission of unrequired or inapplicable financial statements.

(a) No caption should be shown in any financial statement as to which the items and conditions are not present.

(b) Financial statements not required or inapplicable because the required matter is not present should not be filed.

(c) The reasons for the omission of any required financial statements shall be indicated.

§ 210.4-04 Omission of substantially identical notes.

If a note covering substantially the same subject matter is required was respect to two or more financial statements relating to the same or affiliated persons, for which separate sets of noted are presented, the required information may be shown in a note to only one of such statements: *Provided,* That a clear and specific reference thereto is made in each of the other statements with respect to which the note is required.

§ 210.4-05 Valuation and qualifying accounts.

Valuation and qualifying accounts shall be shown separately in financial statements as deductions from the specific assets to which they apply or parenthetically on the face of the statements.

§ 210.4-06 Basis of determining amounts—book value.

If an instruction requires a statement as to "the basis of determining the amount," the basis shall be stated specifically. The term "book value" will not be sufficiently explanatory unless, in a particular instruction, it is stated to be acceptable with respect to a particular item.

§ 210.4-07 Current assets and current liabilities.

If a company's normal operating cycle is longer than one year, generally recognized trade practices should be followed with respect to the inclusion or exclusion of items in current assets or current liabilities. An appropriate explanation of the circumstances should be made and, if practicable, an estimate given of the amount not realizable or payable within one year. The amounts maturing in each year (if practicable) along with the interest rates or range of rates shall also be disclosed. (See also Release No. AS-102.)

§ 210.4-08 Reacquired evidence of indebtedness.

Reacquired evidences of indebtedness shall be deducted from the appropriate liability caption. However, reacquired evidence of indebtedness held for pension and other special funds not related to the particular issues may be shown as assets: *Provided,* That there be stated the amount of such evidences of indebtedness, the cost thereof, the amount at which stated, and the purpose for which acquired.

§ 210.4-09 Reacquired shares.

Reacquired shares not retired shall be shown separately as a deduction from the applicable account(s) at either par, stated value, or cost, as appropriate or as circumstances require.

§ 210.4-10 Discount on shares.

Discount on shares, or any unamortized balance thereof, shall be shown separately as a deduction from the applicable account(s) as circumstances require.

§ 210.4-11 General notes to financial statements.

(See Release No. AS-4.)

It should be recognized that generally accepted accounting principles must be followed in preparing financial statements filed with the Commission. However, certain additional disclosures are required by this rule and other rules in this Regulation and, therefore, must also be included in the financial statements being filed.

If applicable to the person for which the financial statements are filed, the following shall be set forth on the face of the appropriate statement or in appropriately captioned notes. If disclosure is provided in a note, appropriate cross-references to the applicable notes should be contained on the face of the statement. Appropriate cross-references should also be made to the disclosures required by generally accepted accounting principles. The information shall be provided for each statement required to be filed, except that the information required by items (b), (c), (d), (e), (f), and (h) shall be provided as of the most recent audited balance sheet and any subsequent unaudited balance sheet being filed. When specific statements are presented separately, the pertinent notes shall accompany such statements unless cross-referencing is appropriate.

(a) *Principles of consolidation or combination.* With regard to consolidated or combined financial statements, refer to §§ 210.3A-01 to 3A-08 for requirements for supplemental information in notes to the financial statements.

(b) *Assets subject to lien.* Assets mortgaged, pledged, or otherwise subject to lien, and the approximate amounts thereof, shall be designated and the obligations collateralized briefly identified.

(c) *Default.* The facts and amounts concerning any default in principal, interest, sinking fund, or redemption provisions with respect to any issue of securities or credit agreements, or any breach of covenant of a related indenture or agreement, which default or breach existed at the date of the most recent balance sheet being filed and which has not been subsequently cured, shall be stated in the financial statements. If a default or breach exists but acceleration of the obligation has been waived for a stated period of time beyond the date of the most recent balance sheet being filed, state the amount of the obligation and the period of the waiver.

(d) *Preferred shares.* (1) Aggregate preferences on involuntary liquidation, if other than par or stated value, shall be shown parenthetically in the equity section of the balance sheet. (2) Disclosure shall be made of any restriction upon retained earnings that arises from the fact that upon involuntary liquidation the aggregate preferences of the preferred shares exceeds the par or stated value of such shares.

(e) *Restrictions which limit the availability of retained earnings or net income for dividend purposes (see Release No. AS-35).* Describe the most restrictive of any such restrictions, other than as reported in paragraph (d) of this section, but including any restriction on the payment of dividends of a subsidiary to the parent, indicating briefly its source, its pertinent provisions, and, where appropriate and determinable, the amount of retained earnings or net income (1) so restricted, or (2) free of such restrictions.

(f) *Significant changes in bonds, mortgages and similar debt.* Any significant changes in the authorized or issued amounts of bonds, mortgages and similar debt since the date of the latest balance sheet being filed for a particular person or group shall be stated.

(g) *Income tax expense.* (1) Amounts applicable to United States Federal income taxes, to foreign income taxes

and to other income taxes shall be stated separately for each major component of income tax expense. Amounts applicable to foreign or other income taxes each of which are less than five percent of the total of the major component need not be separately disclosed.

(2) If it is expected that the cash outlay for income taxes with respect to any of the succeeding three years will substantially exceed income tax expense for such year, that fact should be disclosed together with the approximate amount of the excess, the year (or years) of occurrence and the reasons therefor.

(3) Provide a reconciliation in comparative form between items (i) and (ii) (below) showing the estimated dollar amount for each of the items comprising the differences between such amounts.

(i) Reported income (loss) before income tax expense (benefit) and the related income tax expense (benefit).

(ii) Current Federal taxable income (loss) (anticipated to be reported on the appropriate tax form; this amount may be other than that which is applicable to U.S. Federal taxable income if the reporting entity is not a U.S. corporation) and the related current tax expense (benefit).

The reconciliation should commence with income and related income tax expense as reported in the financial statements; from these amounts should be deducted foreign income and related taxes, state and local income taxes, permanent differences, etc., arriving at a subtotal which constitutes reported income upon which taxes, relating to the reporting company's country of incorporation, are provided in the financial statements. From these totals, timing differences and their related tax effects should be deducted, arriving at the amounts identified in (ii) above. The components (i.e., permanent differences, timing differences, etc.) of foreign income and the related taxes, if applicable, should be shown separately. [An example of this format, see section I of this proposal, will be included with the final rules, if adopted.] The calculation of current tax expense should be presented indicating income multiplied by the applicable rate(s) (i.e., statutory rate, capital gains rate, or applicable foreign rates if the reporting person is a foreign entity) less applicable credits. If no individual reconciling item amounts to more than five percent of the amount computed by multiplying income before tax by the applicable statutory Federal income tax rate, and the total difference to be reconciled is less than five percent of such amount, no reconciliation need be provided unless it would be significant in appraising the trend of earnings. However, the calculation of the current tax expense should be presented. Reconciling items that are individually less than five percent of the computed amount may be aggregated in the reconciliation.

(h) *Warrants or rights outstanding.* Information with respect to warrants or rights outstanding at the date of the related balance sheet shall be set forth as follows:

(1) Title of issue of securities called for by warrants or rights.

(2) Aggregate amount of securities called for by warrants or rights outstanding.

(3) Date from which warrants or rights are exercisable.

(4) Price at which warrant or right is exercisable.

(i) *Leased assets and lease commitments.* (1) leased assets and lease commitments of regulated enterprises subject to the rate-making process. (i) Paragraph (1) of this section is applicable to all regulated enterprises subject to the rate-making process that do not record capital leases as assets with associated liabilities.

(ii) The following information shall be provided for capital leases covered by this rule:

(A) As of the date for each required balance sheet, the aggregate amounts of the assets and liabilities that would have been recorded in the accounts had all leases meeting the definition of a capital lease been recorded.

(B) For each period for which an income statement is required, the aggregate effect on expenses had all assets obtained through leases meeting the definition of a capital lease been recorded as assets with associated liabilities and any additional information management believes is necessary as to the rate-making process.

(2) Leased assets and lease commitments of enterprises which are not covered by paragraph (1). The financial statement requirements in SFAS No. 13, "Accounting for Leases," shall be applied in financial statements filed for fiscal years ended after December 24, 1978 with regard to all leases except for companies where a problem, as defined below, exists. The problem and its potential impact should be disclosed in the footnotes to the financial statements. For purposes of this paragraph "problem" is defined as: that situation where capitalization of capital leases as defined in SFAS No. 13 would result in the violation or probable future violation expected to occur prior to fiscal years beginning after December 31, 1980 of a restrictive clause in an existing loan indenture or other agreement.

(j) *Interest cost.* Disclosure shall be provided for each period for which an income statement is presented of the amount of interest cost incurred and the respective amounts expensed or capitalized.

(k) *Disagreements on accounting and financial disclosure matters.* If, (1) within the twenty-four months prior to the date of the most recent financial statements, a Form 8–K has been filed reporting a change of accountants, (2) included in the Form 8–K there was a reported disagreement on any matter of accounting principles or practices or financial statement disclosure, (3) during the fiscal year in which the change of accountants took place or during the subsequent fiscal year there have been any transactions or events similar to those which involved the reported disagreement, and (4) such transactions or events were material and were accounted for or disclosed in a manner different from that which the former accountants apparently would have concluded was required, state the existence and nature of the disagreement and also state the effect on the financial statements if the method had been followed which the former accountants apparently would have concluded was required. These disclosures need not be made if the method asserted by the former accountants ceases to be generally accepted because of authoritative standards or interpretations subsequently issued.

(l) *Transactions with related parties.*

(1) The financial statements filed shall disclose transactions with, investments in, and balances due to or from related parties that are material, individually or in the aggregate. This disclosure should include the following:

(i) The nature of the relationship(s).

(ii) A description of the transactions (summarized when appropriate) for the periods for which an income statement is presented, including amounts, if any, and such other information as is deemed necessary to an understanding of the effects on the financial statements.

(iii) The dollar volume of transactions and the effects of any change in the method of establishing terms from that used in the preceding period.

(iv) Amounts due to or from related parties and, if not otherwise apparent, the terms and manner of settlement.

(v) Amount of investments in related parties.

(2) In cases where separate financial statements are presented for the registrant, certain investees, or subsidiaries, separate disclosure shall

be made in such statements of the amounts in the related consolidated financial statements which are (i) eliminated and (ii) not eliminated. Also, any intercompany profits or losses resulting from transactions with related parties and not eliminated and the effects thereof shall be disclosed.

(3) Disclosure should be made on the face of the balance sheet, income statement, or statement of changes in financial position for any material related party receivable or payable; revenue, expense, gain or loss; or cash flows, respectively. Relevant details regarding these amounts should be provided in the footnotes.

(4) With respect to the classification of current amounts due from related parties, consideration should be given to the intent and the net current asset position of such related parties in determining whether such receivable justifies a current classification.

(m) *Supplementary income statement information.* The following information with respect to certain income statement items shall be disclosed in a note to the financial statements, if such item exceeds one percent of total sales and revenues as reported in the related income statement:

(1) Maintenance and repairs.

(2) Depreciation and amortization of intangible assets, preoperating costs and similar deferrals. (State separately each category of cost itemized.)

(3) Taxes, other than income taxes. (State separately each category of tax which exceeds one percent of total sales and revenues.)

(4) Royalties.

(5) Advertising costs. (Include all costs related to advertising the company's name, products or services in newspapers, periodicals or other advertising media.)

§ 210.4-12

No change from present Rule § 210.3-17.

§ 210.4-13

No change from present Rule § 210.3-18.

* * * * *

4. By amending Article 5 §§ 210.5-01 thru 210.5-04 to read as follows:

Commercial and Industrial Companies

§ 210.5-01 Application of §§ 210.5-01 to 210.5-04.

(a) Section 210.5-01 to 210.5-04 shall be applicable to financial statements filed for all persons except——

(1) Management investment companies (see §§ 210.6-01 to 210.6-10).

(2) Unit investment trusts (see §§ 210.6-10a to 210.6-13).

(3) Face amount certificate investment companies (see §§ 210.6-20 to 210.6-24).

(4) employee stock purchase, savings and similar plans (see §§ 210.6-30 to 210.6-34).

(5) Insurance companies other than title insurance companies (see §§ 210.7-01 to 210.7-06 and §§ 210.7a-01 to 210.7a-06).

(6) Committees issuing certificates of deposit (see §§ 210.8-01 to 210.8-03).

(7) Bank holding companies and banks (see §§ 210.9-01 to 210.9-05).

(8) Brokers and dealers when filing Forms X-17A-5 and X-17A-10 [§ 249.617[(see §§ 240.17a-5 and 240.17a-10 under the Securities Exchange Act of 1934).

(b) Companies in the development stage. Section 210.5A-02 prescribes additional information to be included in financial statements filed by companies in the development stage.

§ 210.5-02 Balance sheets.

Except as otherwise permitted by the Commission, the balance sheets filed for persons to whom this article is applicable shall comply with the following provisions [see § 210.4-01(a) and Release No. AS-41].

Assets and Other Debits

Current Assets, When Appropriate (see § 210.4-07)

§ 210.5-02.1 Cash and cash items.

Separate disclosure shall be made of the cash and cash items which are restricted as to withdrawal or usage. The provisions of any restrictions shall be described in a referenced footnote. Restrictions may include legally restricted deposits held as compensating balances, contracts entered into with others, or company statements of intention with regard to particular deposits (see also Release No. AS-148); however, time deposits and short-term certificates of deposit are not generally included in legally restricted deposits. In cases where compensating balance arrangements exist but are not agreements which legally restrict the use of cash amounts shown on the balance sheet, describe in the notes to the financial statements these arrangements and the amount involved, if determinable, for the most recent audited balance sheet required and for any subsequent unaudited balance sheet required in the notes to the financial statements. Compensating balances that are maintained under an agreement to assure future credit availability shall be disclosed in the notes to the financial statements along with the amount and terms of such agreement.

§ 210.5-02.2 Marketable securities.

The accounting and disclosure requirements for current marketable equity securities are specified by generally accepted accounting principles. With respect to all other current marketable securities, state, parenthetically or otherwise, the basis of determining the aggregate amount shown in the balance sheet, along with the alternatives of the aggregate cost or the aggregate market value at the balance sheet date.

§ 210.5-02.3 Accounts and notes receivable.

(a) State separately amounts receivable from (1) customers (trade); (2) related parties (see § 210.4-11(1); (3) underwriters, promoters, and employees (other than related parties) which arose in other than the ordinary course of business; and (4) others. (b) If the aggregate amount of notes receivable, exceeds 10 percent of the aggregate amount of receivables, the above information shall be set forth separately for accounts receivable and notes receivable. (c) If receivables include amounts due under long-term contracts (see § 210.5-02.6(d)), state separately in the balance sheet or in a note to the financial statements the following amounts:

(1) Balances billed but not paid by customers under retainage provisions in contracts.

(2) Amounts representing the recognized sales value of performance and such amounts that had not been billed and were not billable to customers at the date of the balance sheet. Inculde a general description of the prerequisites for billing.

(3) Billed or unbilled amounts representing claims or other similar items subject to uncertainty concerning their determination of ultimate realization. Include a description of the nature and status of the principal items comprising such amount.

(4) With respect to (1) through (3) above, also state the amounts included in each item which are expected to be collected after one year. Also state, by year, if practicable, when the amounts of retainage (see (1) above) are expected to be collected.

§ 210.5-02.4 Allowances for doubtful accounts and notes receivable.

§ 210.5-02.5 Unearned income.

§ 210.5-02.6 Inventories.

(a) State separately here, or in a note referred to herein, if practicable, the major classes of inventory such as: (1) finished goods; (2) inventoried costs relating to long-term contracts or

programs (see (d) below and § 210.4–07); (3) work in process (see § 210.4–07); (4) raw materials; and (5) supplies.

(b) The basis of determining the amounts shall be stated.

If "cost" is used to determine any portion of the inventory amounts, the description of this method shall include the nature of the cost elements included in inventory.

The method by which amounts are removed from inventory (e.g., "average cost," "first-in, first-out," "last-in, first-out," "estimated average cost per unit") shall be described. If the estimated average cost per unit is used as a basis to determine amounts removed from inventory under a total program or similar basis of accounting, the principal assumptions (including, where meaningful, the aggregate number of units expected to be delivered under the program, the number of units delivered to date and the number of units on order) shall be disclosed.

If any general and administrative costs are charged to inventory, state in a note to the financial statements the aggregate amount of the general and administrative costs inclurred in each period and the actual or estimated amount remaining in inventory at the date of each balance sheet.

(c) If the LIFO inventory method is used, the excess of replacement or current cost over stated LIFO value shall, if material, be stated parenthetically or in a note to the financial statements.

(d) For purposes of §§ 210.5–02.3 and 210.5–02.6, long-term contracts or programs include (1) all contracts or programs for which gross profits are recognized on a percentge-of-completion method of accounting or any variant thereof (e.g., delivered unit, cost to cost, physical completion), and (2) any contracts or programs accounted for on a completed contract basis of accounting where, in either case, the contracts or programs have associated with them material amounts of inventories or unbilled receivables and where such contracts or programs have been or are expected to be performed over a period of more than twelve months. Contracts or programs of shorter duration may also be included, if deemed appropriate.

For all long-term contracts or programs, the following information, if applicable, shall be stated in a note to the financial statements:

(i) The aggregate amount of manufacturing or production costs and any related deferred costs (e.g., initial tooling costs) which exceeds the aggregate estimated cost of all in-process and delivered units on the basis of the estimated average cost of all units expected to be produced under long-term contracts and programs not yet complete, as well as that portion of such amount which would not be absorbed in cost of sales based on existing firm orders at the latest balance sheet date. In addition, if practicable, disclose the amount of deferred costs by type of cost (e.g., initial tooling, deferred production, etc.).

(ii) The aggregate amount representing claims or other similar items subject to uncertainty concerning their determination or ultimate realization, and include a description of the nature and status of the principal items comprising such aggregate amount.

(iii) The amount of progress payments netted against inventory at the date of the balance sheet.

§ 210.5–02.7 Other current assets.

State separately any amounts in excess of five percent of total current assets.

§ 210.5–02.8 Prepaid expenses.

§ 210.5–02.9 Total current assets, when appropriate.

§ 210.5–02.10 Securities of related parties.

(See § 210.4–11(1).)

§ 210.5–02.11 Indebtedness of related parties—not current.

(See § 210.4–11(1).)

§ 210.5–02.12 Other investments.

The accounting and disclosure requirements for non-current marketable equity securities are specified by generally accepted accounting principles. With respect to other security investments and any other investment, state, parenthetically or otherwise, the basis of determining the aggregate amounts shown in the balance sheet, along with the alternate of the aggregate cost or aggregate market value at the balance sheet date.

§ 210.5–02.13 Property, plant and equipment.

(a) State the basis of determining the amounts.

(b) Tangible and intangible utility plant of a public utility company shall be segregated so as to show separately the original cost, plant acquisition adjustments, and plant adjustments, as required by the system of accounts prescribed by the applicable regulatory authorities. This rule shall not be applicable in respect to companies which are not required to make such a classification.

§ 210.5–02.14 Accumulated depreciation, depletion, and amortization of property, plant and equipment.

§ 210.5–02.15 Intangible assets.

State separately each class of such assets which is in excess of five percent of the total assets, along with the basis of determining the respective amounts. Any significant addition or deletion shall be explained in a note.

§ 210.5–02.16 Accumulated depreciation and amortization of intangible assets.

§ 210.5–02.17 Other assets.

State separately any other item not properly classed in one of the preceding asset captions which is in excess of five percent of total assets. Any significant addition or deletion should be explained in a note. With respect to any significant deferred charge, state the policy for deferral and amortization.

§ 210.5–02.18 Total assets and, when appropriate, other debits.

Liabilities and Stockholders' Equity

Current Liabilities, When Appropriate (See § 210.4–07)

§ 210.5–02.19 Accounts and notes payable.

(a) State separately amounts payable to (1) banks for borrowings; (2) factors or other financial institutions for borrowings; (3) holders of commercial paper; (4) trade creditors; (5) related parties (see § 210.4–11(1)); (6) underwriters, promoters, and employees (other than related parties); and (7) others.

(b) The weighted average interest rate and general terms (as well as formal provisions for the extension of the maturity) of each category of aggregate short-term borrowings (the sum of items (a)(1), (a)(2) and (a)(3) above) reflected on each balance sheet required shall be disclosed along with the maximum amount of aggregate short-term borrowings outstanding at any month end (or similar time period) during each period for which an end-of-period balance sheet is required. In addition, the approximate average aggregate short-term borrowings outstanding during the period and the approximate weighted average interest rate (and a brief description of the means used to compute such averages) for such aggregate short-term borrowings shall be disclosed in the notes to the financial statements.

(c) The amount and terms (including commitment fees and the conditions under which lines may be withdrawn) of unused lines of credit for short-term financing shall be disclosed, if

significant, in the notes to the financial statements. The amount of these lines of credit which support a commercial paper borrowing arrangement or similar arrangement shall be separately identified.

§ 210.5-02.20 Other current liabilities.

State separately any item in excess of 5 percent of total current liabilities. Such items may include, but are not limited to, ge a24ja2.041[11,32]accrued payrolls, accrued interest, taxes, indicating the current portion of deferred income taxes, and the current portion of long-term debt. Remaining items may be shown in one amount.

§ 210.5-02.21 Total current liabilities, when appropriate.

Long-Term Debt

§ 210.5-02.22 Bonds, mortgages and other long-term debt, including capitalized leases.

(a) State separately here, or in a note referred to herein, each issue or type of obligation and such information as will indicate (see § 210.4-08): (1) the general character of each type of debt including the rate of interest; (2) the date of maturity, or, if maturing serially, a brief indication of the serial maturities, such as "maturing serially from 1980 to 1990"; (3) if the payment of principal or interest is contingent, an appropriate indication of such contingency; (4) a brief indication of priority; (5) if convertible, the basis; and (6) the combined aggregate amount of maturities and sinking fund requirements for all issues, each year for the five years following the date of the balance sheet. For amounts owed to related parties, see § 210.4-11(1).

(b) The amount and terms (including commitment fees and the conditions under which commitments may be withdrawn) of unused commitments for long-term financing arrangements that would be disclosed under this rule if used shall be disclosed in the notes to the financial statements if significant.

§ 210.5-02.23 Indebtedness to related parties—noncurrent.

Include under this caption indebtedness to related parties as required under § 210.4-11(1).

§ 210.5-02.24 Other liabilities.

State separately any item not properly classified in one of the preceding liability captions which is in excess of 5 percent of total liabilities.

§ 210.5-02.25 Commitments and contingent liabilities.

§ 210.5-02.26 Deferred credits.

State separately amounts for (a) deferred income taxes, (b) deferred tax credits, and (c) material items of deferred income.

Minority Interests

§ 210.5-02.27 Minority interests in consolidated subsidiaries.

State separately in a note referred to herein amounts represented by preferred stock and the applicable dividend requirements if the preferred stock is material in relation to the consolidated stockholders' equity.

Redeemable Preferred Stocks

§ 210.5-02.28 Preferred stocks subject to mandatory redemption requirements or whose redemption is outside the control of the issuer.

(a) Include under this caption amounts applicable to any class of stock which has any of the following characteristics: (1) it is redeemable at a fixed or determinable price on a fixed or determinable date or dates, whether by operation of a sinking fund or otherwise; (2) it is redeemable at the option of the holder; or (3) it has conditions for redemption which are not solely within the control of the issuer, such as stocks which must be redeemed out of future earnings. Amounts attributable to preferred stock which is not redeemable or is redeemable solely at the option of the issuer shall be included under § 210.5-02.29 unless it meets one or more of the above criteria.

(b) State on the face of the balance sheet the title of each issue, the carrying amount, and redemption amount. Show also the dollar amount of any shares subscribed but unissued, and show the deduction of subscriptions receivable therefrom. If the carrying value is different from the redemption amount, describe the accounting treatment for such difference in the note required by § 210.5-02.28(c). State on the face of the balance sheet or in the note, referred to herein, for each issue, the number of shares authorized and the number of shares issued or outstanding, as appropriate [See §§ 210.4-09 and 210.4-10].

(c) State in a separate note captioned "Redeemable Preferred Stocks" (1) a general description of each issue, including its redemption features (e.g. sinking fund, at option of holders, out of future earnings) and the rights, if any, of holders in the event of default, including the effect, if any, on junior securities in the event a required dividend, sinking fund, or other redemption payment(s) is not made; (2) the combined aggregate amount of redemption requirements for all issues each year for the five years following the date of the latest balance sheet; and (3) the changes in each issue for each period for which an income statement is required to be filed. (See also § 210.4-11(d).]

(d) Securities reported under this caption are not to be included under a general heading "stockholders' equity" or combined in a total with items described in captions 29, 30 or 31 which follow.

Non-Redeemable Preferred Stocks

§ 210.5-02.29 Preferred stocks which are not redeemable or are redeemable solely at the option of the issuer.

State on the face of the balance sheet the title of each issue and the dollar amount thereof. Show also the dollar amount of any shares subscribed by unissued, and show the deduction of subscriptions receivable therefrom. State on the face of the balance sheet or in a note, for each issue, the number of shares authorized and the number of shares issued or outstanding, as appropriate [see §§ 210.4-09 and 210.4-10]. Show in a note or statement referred to herein the changes in each class of preferred shares reported under this caption for each period for which an income statement is required to be filed. (See also § 210.4-11(d).]

Common Stocks

§ 210.5-02.30 Common stocks.

For each class of common shares state, on the face of the balance sheet, the title of the issue, the number of shares authorized, the number of shares issued or outstanding, as appropriate (see §§ 210.4-09 and 210.4-10), and the dollar amount thereof, and, if convertible, the basis of conversion [see also § 210.4-11(d)]. Show also the dollar amount of any common shares subscribed but unissued, and show the deduction of subscriptions receivable thereform. Show in a note or statement referred to herein the changes in each class of common shares for each period for which an income statement is required to be filed.

Other Stockholders' Equity

§ 210.5-02.31 Other stockholders' equity.

(a) Separate captions shall be shown for (1) additional paid-in capital, (2) other additional capital and (3) retained earnings (i) appropriated and (ii) unappropriated. [See § 210.4-11(e).]

(b) If undistributed earnings of unconsolidated subsidiaries and 50 percent or less owned persons are included, state the amount in each

category parenthetically or in a note referred to herein.

(c) For a period of at least 10 years subsequent to the effective date of a quasi-reorganization, any description of retained earnings shall indicate the point in time from which the new retained earnings dates and for a period of at least three years shall indicate the total amount of the deficit eliminated.

(d) A summary of each account under this caption setting forth the information prescribed in Rule 11–02 [§ 210.11–02] shall be given in a note or statement referred to herein, for each period for which an income statement is required to be filed.

§ 210.5–02.32 Total liabilities and stockholders' equity.

§ 210.5–03 Income statements.

Except as otherwise permitted by the Commission, the income statements filed for persons to whom this article is applicable shall comply with the provisions of this rule (see § 210.4–01(a) and Release No. AS–41).

If income is derived from more than one of the subcaptions described under § 210.5–03.1, each class which is not more than 10 percent of the sum of the items may be combined with another class. If these items are combined, related costs and expenses as described under § 210.5–03.2 shall be combined in the same manner.

§ 210.5–03.1 Net sales and gross revenues.

State separately (a) net sales of tangible products (gross sales less discounts, returns and allowances), (b) operating revenues of public utilities or others; (c) income from rentals; (d) revenues from services; and (e) other revenues. Amounts earned from transactions with related parties shall be disclosed as required under § 210.4–11(1). A public utility company using a uniform system of accounts or a form for annual report prescribed by federal or state authorities, or a similar system or report, shall follow the general segregation of operating revenues and operating expenses reported under § 210.5–03.2 prescribed by such system or report. If the total of sales and revenues reported under this caption includes excise taxes in an amount equal to 1 percent or more of such total, the amount of such excise taxes shall be shown parenthetically or otherwise.

§ 210.5–03.2 Costs and expenses applicable to sales and revenues.

State separately the amount of (a) cost of tangible goods sold, (b) operating expenses of public utilities or others, (c) expenses applicable to rental income, (d) cost of services, and (e) expenses applicable to other revenues. Merchandising organizations, both wholesale and retail, may include occupancy and buying costs under caption 2(a). Amounts of costs and expenses incurred from transactions with related parties shall be disclosed as required under § 210.4–11(1).

§ 210.5–03.3 Other operating costs and expenses.

State separately any material amounts not included under caption 2 above.

§ 210.5–03.4 Selling, general and administrative expenses.

§ 210.5–03.5 Provision for doubtful accounts and notes.

§ 210.5–03.6 Other general expenses.

Include items not normally included in caption 4 above. State separately any material item.

§ 210.5–03.7 Non-operating income.

State separately amounts earned from (a) dividends, (b) interest on securities, (c) profits on securities (net of losses), and (d) miscellaneous other income. Amounts earned from transactions in securities of related parties shall be disclosed as required under § 210.4–11(1). Material amounts included under miscellaneous other income shall be separately stated, indicating clearly the nature of the transactions out of which the items arose.

§ 210.5–03.8 Interest and amortization of debt discount and expense.

§ 210.5–03.9 Non-operating expenses.

State separately amounts of (a) losses on securities (net or profits) and (b) miscellaneous income deductions. Material amounts included under miscellaneous income deductions shall be separately stated, indicating clearly the nature of the transactions out of which the items arose.

§ 210.5–03.10 Income or loss before income tax expense and appropriate items below.

§ 210.5–03.11 Income tax expense.

Include under this caption only taxes based on income (see § 210.4–11(g)).

§ 210.5–03.12 Minority interest in income of consolidated subsidiaries.

§ 210.5–03.13 Equity in earnings of unconsolidated subsidiaries and 50 percent or less owned persons.

State, parenthetically or in a note referred to herein, the amount of dividends received from such persons. If justified by the circumstances, this item may be presented in a different position and a different manner (see § 210.4–01(a)).

§ 210.5–03.14 Income or loss from continuing operations.

§ 210.5–03.15 Discontinued operations.

§ 210.5–03.16 Income or loss before extraordinary items and cumulative effects of changes in accounting principles.

§ 210.5–03.17 Extraordinary items, less applicable tax.

§ 210.5–03.18 Cumulative effects of changes in accounting principles.

§ 210.5–03.19 Net income or loss. (See § 210.5–02.31).

§ 210.5–03.20 Earnings applicable to common stock.

§ 210.5–03.21 Earnings per share date.

§ 210.5–04 What schedules are to be filed.

(a) Except as expressly provided otherwise in the applicable form—

(1) The schedules specified below in this section as Schedules I, VII, IX, X, and XI shall be filed as of the dates of the most recent audited balance sheet and any subsequent unaudited balance sheet being filed for each person or group.

(2) The schedules specified below in this section as Schedules II, III, IV, V, VI, and VIII shall be filed for each person or group for each of the latest two fiscal years preceding the date of the most recent audited balance sheet and for the interim period, if any, between the end of the most recent such fiscal year and the date of the most recent balance sheet being filed.

(b) When information is required in schedules for both the registrant and the registrant and its subsidiaries consolidated it may be presented in the form of a single schedule: *Provided,* That items pertaining to the registrant are separately shown and that such single schedule affords a properly summarized presentation of the facts. If the information required by any schedule (including the notes thereto) may be shown in the related financial statement or in a note thereto without making such statement unclear or confusing, that procedure may be followed and the schedule, ommitted.

(c) The schedules shall be examined by the independent accountant if the related financial statements are so examined.

Schedule I—Marketable securities—other investments. The schedule prescribed by § 210.12–02 shall be filed—

(1) In support of caption 2 of a balance sheet, if the greater of the aggregate cost or the aggregate market value of

marketable securities as of the balance sheet date constitutes 10 percent or more of total assets.

(2) In support of caption 12 of a balance sheet, if the greater of the aggregate cost or the aggregate market value of other investments as of the balance sheet date constitutes 10 percent or more of total assets.

(3) In support of captions 2 and 12 of a balance sheet, if the greater of the aggregate cost or aggregate market of other investments plus the greater of the aggregate cost of the aggregate market value of marketable securities as of the balance sheet date constitutes 15 percent or more of total assets.

(4) In support of captions 2 and 12 of a balance sheet, if the greater of the aggregate cost or aggregate market value of the securities as of the balance sheet date of any issuer reported under either caption 2 or caption 12 constitutes 2 percent or more of total assets.

Schedule II—Amounts receivable from related parties, and underwriters, promoters, and employees other than related parties. The schedule prescribed by § 210.12–03 shall be filed with respect to each person among related parties, and underwriters, promoters, and employees other than related parties, from whom an aggregate indebtedness of more than $100,000 or 1 percent of total assets, whichever is less, is owed, or at any time during the latest two fiscal years or for the interim period, if any, between the end of the most recent fiscal year and the date of the most recent balance sheet being filed, was owed. This schedule shall not include information which is prescribed by § 210.12–05. for the purposes of this schedule, exclude in the determination of the amount of indebtedness all amounts receivable from such persons for purchases subject to usual trade terms, for ordinary travel and expense advances and for other such items arising in the ordinary course of business.

Schedule III—Investments in, equity in earnings of, and dividends received from related parties. The schedule prescribed by § 210.12–04 shall be filed in support of caption 10 of each balance sheet. This schedule may be omitted if (1) neither the sum of captions 10 and 11 in the related balance sheet nor the amount of caption 23 in such balance sheet exceeds 5 percent of total assets as shown by the related balance sheet at either the beginning or end of the period or (2) there have been no material changes in the information required to be filed from that last previously reported.

Schedule IV—Indebtedness of and to related parties—not current. The schedule prescribed by § 210.12–05 shall be filed in support of captions 11 and 23 of each balance sheet; however, the required information may be presented separately on Schedule III. This schedule may be omitted if: (1) neither the sums of captions 10 and 11 in the related balance sheet nor the amount of caption 23 in such balance sheet exceeds 5 percent of total assets as shown by the related balance sheet at either the beginning or end of the period, or (2) there have been no material changes in the information required to be filed from that last perviously reported.

Schedule V—Property, plant and equipment. The schedule prescribed by § 210.12–06 shall be filed in support of caption 13 of each balance sheet, provided that this schedule may be omitted if the total shown by caption 13 does not exeed 5 percent of total assets as shown by the related balance sheet at both the beginning and end of the period and if neither the additions nor the deductions during the period exceeded 5 percent of total assets as shown by the related balance sheet at either the beginning or end of the period.

Schedule VI—Accumulated depreciation, depletion, and amortization of property, plant and equipment. The schedule prescribed by § 210.12–07 shall be filed in support of caption 14 of each balance sheet. This schedule may be omitted if Schedule V is omitted.

Schedule VII—Guarantees of securites of other issuers. The schedule prescribed by § 210.12–08 shall be filed with respect to any guarantees of securities of other issuers by the person for which the statement is filed.

Schedule VIII—Valuation and qualifying accounts. The schedule prescribed by § 210.12–09 shall be filed in support of valuation and qualifying accounts included in each balance sheet but not included in Schedule VI. (See § 210.4–02.)

Schedule IX—Real estate and accumulated depreciation. The schedule prescribed by § 210.12–26 shall be filed for real estate (and the related accumulated depreciation) held by persons a substantial portion of whose business is that of acquiring and holding for investment real estate or interests in real estate, or interests in other persons a substantial portion of whose business is that of acquiring and holding real estate or interests in real estate for investment. Real estate used in the business shall be excluded from the schedule.

Schedule X—Mortgage loans on real estate. The schedule prescribed by § 210.12–27 shall be filed by persons specified under Schedule X for investments in mortgage loans on real estate.

Schedule XI—Other investments. If there are any other investments, under caption 12 of § 210.5–02 or elsewhere in a balance sheet, not required to be included in Schedule I or III, there shall be set forth in a separate schedule information concerning such investments corresponding to that prescribed by Schedule I. This schedule may be omitted if the total amount of such other investments does not exceed 5 percent of total assets as shown by such balance sheet.

* * * * *

5. By amending Article 12, §§ 210.12–01 through 210.12–27 as follows:

Form and Content of Schedules

General

§ 210.12–01 Application of § 210.12–01 to § 210.12–27.

These sections prescribe the form and content of the schedules required by §§ 210.5–04, 210.6–10, 210.6–13, 210.6–24, 210.6–34, 210.7–06, 210.7A–06 and 210.9–05.

§ 210.12–02 Marketable securities—other investments.

No change from former schedule format.

§ 210.12–03 Amounts receivable from related parties and underwriters, promoters, and employees other than related parties.

No change from former schedule format.

§ 210.12–04 Investment in, equity in earnings of, and dividends from related parties.

No change from former schedule format. However, the term "related parties" is proposed to be substituted for "affiliates and other persons."

§ 210.12–05 Indebtedness of and to related parties—non current.

Col. A	Col. B	Col. C	Col. D	Col. E	Col. F	Col. G	Col. H	Col. I
		Indebtedness of					Indebtendess to	
Name of person (Note 1)	Balance at beginning	Additions (Note 2)	Deductions (Note 3)	Balance at end	Balance at beginning	Additions (Note 2)	Deductions (Note 3)	Balance at end

NOTE 1.—The person named shall be grouped as in the related schedule required for investments in related parties. The information called for shall be shown separately for any persons whose investments were shown separately in such related schedule.

NOTE 2.—For each person named in column A, explain in a note the nature and purpose of any increase during the period that is in excess of 10 percent of the related balance at either the beginning or end of the period.

NOTE 3.—If deduction was other than a receipt or disbursement of cash, explain.

§ 210.12–06 Property, plant and equipment (Note 1).

Col. A	Col. B	Col. C	Col. D	Col. E	Col. F	Col. G	Col. H
Clasification (Note 2)	Depreciation method (Note 3)	Depreciation rate range/average (Note 4)	Balance at beginning of period (Notes 2 and 5)	Additions at cost (Note 6)	Retirements (Note 7)	Other changes add (deduct) describe (Note 8)	Balance at end of period

NOTE1.—Comment briefly on: (a) any significant and unusual additions, abandonments, or retirements, or any significant and unusual changes in the general character and location, of principal plants and other important units, which occurred within the period. (b) the adjustment of accumulated depreciation, depletion, obsolescence and amortization at the time the properties are retired or otherwise disposed of, including the dispostion of any gain or loss on sale of such properties.

NOTE 2.—(a) Show separately nondepreciable assets and assets under construction; then show depreciable assets by depreciation, depletion, or amortization method used and thereunder by major classifications, such as buildings, machinery and equipment, leaseholds, or functional grouping. If such classification is not present or practicable, such classification as is present and practicable shall be used. The additions included in column E, however, shall be segregated in accordance with an appropriate classification. If property, plant and equipment abandoned is carried at other than a nominal amount indicate, if practicable, the amount thereof and state the reasons for such treatment. Property, plant and equipment which is fully depreciated, depleted or amortized or is carried at net estimated salvage value but is still being used, should either be included with the appropriate major classification or disclosed as one amount with the amount for each major classification stated in a note. Property, plant and equipment which is idle (other than temporarily), or is expected to be idle in excess of an operating cycle, should be stated separately, if material. Items of minor importance may be included under a miscellaneous caption. (b) Show separately any asset or homogeneous group of assets (such as computers, equipment used in a specific manufacturing process, warehouses, office buildings, etc.), which comprises 25 percent or more of a major class of property, plant and equipment. Provided, however, that the item need not be shown separately if it does not exceed 5 percent of total assets. (c) Public utility companies.—A public utility company shall classify, to the extent practicable, utility plant by the type of service rendered (such as electric, gas, transportation and water) and shall state separately under each of such service classifications the major subclassifications of utility plant accounts.

NOTE 3.—State the method(s) used in computing depreciation, depletion or amortization and the amount determined by each method. If more than one method of depreciation, depletion or amortization is used, the categorization specified in Note #2 shall be shown unless the method is used for less than 5 percent of total property, plant and equipment.

NOTE 4.—(a) State the rate used in computing depreciation, depletion or amortization if more than one rate is used, state the range and weighted average rate. If a unit of production method is used, state in a note (i) the percentage of original cost charged to expense in each of the past two years (ii) the amount of expense taken in the current period and (iii) the total original cost and remaining undepreciated, undepleted, or unamortized asset balances, or each such major class. (b) State for any asset or homogeneous group of assets (such as computers, equipment used in a specific manufacturing process, warehouses, office building, etc.), which comprises 25 percent or more of a major class of property, plant and equipment, the rate used in computing depreciation, depletion or amortization. If more than one rate is used for such assets, state the range and weighted average rate. If a unit of production method is used, state the percentage of original cost charged to expense in each of the past two years. This section (b) shall not apply if the asset or homogeneous group of assets constitutes less than five percent of total assets.

NOTE 5.—If neither the total additions nor total deductions during any of the periods covered by the schedules amount to more than 10 percent of the ending balance of that period and a statement to that effect is made, the information required by columns D, E, F, and G may be omitted for that period, provided that the totals of columns E and F are given in a note hereto and provided further that any information required by instructions 6, 7, and 8 shall be given and may be in summary form.

NOTE 6.—For each change in accounts in column E that represents anything other than an addition from acquisition, and for each change in that column that is in excess of 2 percent of total assets, at either the beginning or end of the period, state clearly the nature of the change and the other accounts affected. If cost of property additions represents other than cash expenditures, explain. If acquired from an affiliate at other than cost to the affiliate, show such cost, provided the acquisition by the affiliate was within two years prior to the acquisition by the person for which the statement is filed.

NOTE 7.—If changes in column F are stated at other than cost, explain if practicable.

NOTE 8.—State clearly the nature of the changes and the other accounts affected. If provision for depreciation, depletion and amortization of property, plant and equipment is credited in the books directly to the asset accounts, the amounts shall be stated in column G with explanations, including the accounts to which charged.

§ 210.12–07 Accumulated depreciation, depletion and amortization of property, plant and equipment.

No change from former schedule format.

§ 210.12–08 Guarantees of securities of other issuers.

No change from format of schedule formerly prescribed by § 210.12–12.

§ 210.12–09 Valuation and qualifying accounts.

No change from format of schedule formerly prescribed by §210.12–13.

For Management Investment Companies

§ 210.12-10 Investments in securities of unaffiliated issuers. [For management investment companies only]

No change from format of schedule formerly prescribed by § 210.12-19.

§ 210.12-11 Investments; other than securities. [For management investment companies only]

No change from format of schedule formerly prescribed by § 210.12-21.

§ 210.12-12 Investments in affiliates. [For management investment companies only]

No change from format of schedule formerly prescribed by § 210.12-22.

§ 210.12-13 Summary of investments—other than investments in affiliates. [For insurance companies]

No change from format of schedule formerly prescribed by § 210.12-27.

§ 210.12-14 Premiums, losses and claims, and policy acquisition costs. [For insurance companies other than life and title insurance companies]

No change from format of schedule formerly prescribed by § 210.12-29.

§ 210.12-15 Future policy benefits and insurance in force. [For insurance companies]

No change from format of schedule formerly prescribed by § 210.12-31.

§ 210.12-16 Deferred policy acquisition costs. [For insurance companies]

No change from format of schedule formerly prescribed by § 210.12-31a.

For Unit Investment Trusts, and for Those Unincorporated Management Investment Companies Which Are Issuers of Periodic Payment Plan Certificates

§ 210.12-17 Investments in securities.

No change from format of schedule formerly prescribed by § 210.12-33.

§ 210.12-18 Trust shares. [For all unit investment trusts, and for those unincorporated management investment companies which are issuers of periodic payment plan certificates].

No change from format of schedule formerly prescribed by § 210.12-34.

For Face-Amount Certificate Investment Companies

§ 210.12-19 Investments in securities of unaffiliated issuers.

No change from format of schedule formerly prescribed by § 210.12-35.

§ 210.12-20 Investments in and advances to affiliates and income thereon.

No change from format of schedule formerly prescribed by § 210.12-36.

§ 210.12-21 Mortgage loans on real estate and interest earned on mortgages.

No change from format of schedule formerly prescribed by § 210.12-37.

§ 210.12-22 Real estate owned and rental income.

No change from format of schedule formerly prescribed by § 210.12-38.

§ 210.12-23 Supplementary profit and loss information.

No change from format of schedule formerly prescribed by § 210.12-39.

§ 210.12-24 Certificate reserves.

No change from format of schedule formerly prescribed by § 210.12-40.

§ 210.12-25 Qualified assets on deposit.

No change from format of schedule formerly prescribed by § 210.12-41.

For Certain Real Estate Companies

§ 210.12-26 Real estate and accumulated depreciation [for certain real estate companies].

No change from format of schedule formerly prescribed by § 210.12-42.

§ 210.12-27 Mortgage loans on real estate [for certain real estate companies].

No change from format of schedule formerly prescribed by § 210.12-43.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934—REGULATION S-K

The Commission hereby proposes to add a new Item 12 to Regulation S-K.

§ 229.20 Information required in document.

* * * * *

Item 12. Supplementary financial information.

(a) *Selected quarterly financial data.*

(1) Exemption. This rule shall not apply to any registrant that does not meet both of the two following tests:

(i) First test. The registrant:

(A) Has securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934 (other than mutual life insurance companies); or

(B) Is an insurance company that is subject to the reporting requirements of section 15(d) of that Act and has securities which also meet the tests set forth in paragraphs (1)(i) (C)(*1*) and (C)(*2*) of this section; or

(C) Has securities registered pursuant to section 12(g) of that Act which also

(*1*) Are quoted on the National Association of Securities Dealers Automated Quotation System, and

(*2*) Meet the following criteria:

(*i*) Three or more dealers stand willing to, and do in fact make a market in such stock including making regularly published bona fide bids and offers for such stock for their own accounts; or the stock is registered on a securities exchange that is exempted by the Commission from registration as a national securities exchange pursuant to section 5 of the Securities Exchange Act of 1934.

(a–1) For purposes of this subsection, the insertion of quotations into the National Association of Securities Dealers Automated Quotation System by three or more dealers on at least 10 business days during the six month period immediately preceding the fiscal year for which the financial statements are required shall satisfy the requirement that three dealers be making a market.

(*ii*) There continue to be 800 or more holders of record as defined in Rule 12g5–1 [§ 240.12g5–1] under the Exchange Act, of the stock who are not officers, directors, or beneficial owners of 10 percent or more of the stock.

(*iii*) The issuer continues to be a U.S. corporation.

(*iv*) There are 300,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock.

(*v*) In addition, the issuer shall meet two of the three following requirements:

(a–1) The shares described in paragraph (1)(i)(C)(*2*)(*iv*) continue to have a market value of at least $2.5 million.

(a–2) The minimum representative bid price of such stock is at least $5 per share.

(a–3) The issuer continues to have at least $2.5 million of capital, surplus, and undivided profits.

Instructions. 1. The computation required by (*v*)(a–1) and (*v*)(a–2) shall be based on the average of the closing representative bid prices as reported by NASDAQ for the 20 business days immediately preceding the fiscal year for which the financial statements are required.

2. The computation required by (*v*)(a–3) shall be as at the last business day of the fiscal year immediately preceding the fiscal year for which the financial statements are required.

(ii) Second test. The registrant and its consolidated subsidiaries (A) have had a net income after taxes but before extraordinary items and the cumulative effect of a change in accounting, of at least $250,000 for each of the last three fiscal years; or (B) had total assets of at least $200,000,000 for the last fiscal year-end.

(2) Disclosure shall be made of net sales, gross profit (net sales less costs and expenses associated directly with or allocated to products sold or services rendered), income before extraordinary items and cumulative effect of a change in accounting, per share data based upon such income, and net income for each full quarter within the two most recent fiscal years and any subsequent interim period for which income statements are presented.

(3) When the data supplied in paragraph (2) of this section vary from the amounts previously reported on the Form 10–Q [17 CFR 249.308a] filed for any quarter, such as would be the case when a pooling of interests occurs or where an error is corrected, reconcile the amounts given with those previously reported describing the reason for the difference.

(4) Describe the effect of any disposals of segments of a business, and extraordinary, unusual or infrequently occurring items recognized in each full quarter within the two most recent fiscal years and any subsequent interim period for which income statements are presented, as well as the aggregate effect and the nature of year-end or other adjustments which are material to the results of that quarter.

(5) Paragraphs (1) through (4) of this rule shall not apply to a foreign private issuer not required to report quarterly financial information on Form 10–Q: *Provided, however,* That a foreign registrant which reports or is required to report interim financial information on Form 6–K shall disclose such data in the matter provided in paragraphs (1) through (4) with respect to the financial information reported on Form 6–K.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. By revising paragraph (b)(3) of § 240.14a–3 to read as follows:

§ 240.14a–3 Information to be furnished to security holders.

* * * * *

(b) * * *

(3) The report shall contain the supplementary financial information specified by Item 12 of Regulation S–K (17 CFR 229.20).

* * * * *

2. By revising paragraph (a)(3) of § 240.14c–3 to read as follows:

§ 240.14c–3 Annual report to be furnished security holders.

(a)* * *

(3) The report shall contain the supplementary financial information specified by Item 12 of Regulation S–K (17 CFR 229.20).

* * * * *

These amendments are proposed to be effective with respect to annual and interim periods ending after December 15, 1980, although earlier application is encouraged.

(Sections 6, 7, 8, 10, and 19(a) [15 U.S.C. 77f, 77g, 77h, 77j, 77s] of the Securities Act of 1933; Sections 12, 13, 15(d), and 23(a) [15 U.S.C. 78*l*, 78m, 78o(d), 78w] of the Securities Exchange Act of 1934; Sections 5(b), 14, and 20(a) [15 U.S.C. 79e, 79n, 79t] of the Public Utility Holding Company Act of 1935; Sections 8, 30, 31(c) and 38(a) [15 U.S.C. 80a–8, 80a–29, 80a–30(c), 80a–37(a)] of the Investment Company Act of 1940)

Pursuant to Section 23(a)(2) of the Securities Exchange Act, the Commission has considered the impact of these proposals on competition and is not aware at this time of any burden that such rule amendments, if adopted, would impose on competition. However, the Commission specifically invites comments as to the competitive impact of these proposals, if adopted.

In addition, the Commission is mindful of the cost to registrants and others of its proposals and recognizes its responsibilities to weigh with care the costs and benefits which result from its rules. Accordingly, the Commission specifically invites comments on the costs to registrants and others of the adoption of the proposals published herein.

By the Commission.

George A. Fitzsimmons,

Secretary.

January 15, 1980.

[FR Doc. 80–2027 Filed 1–23–80; 8:45 am]

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17 CFR Parts 210, 239, 240 and 249

[Releases Nos. 33–6179, 34–16499, and 35–21394; IC–11020; File No. S7–819]

Uniform Instructions as to Financial Statements—Regulation S–X

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Commission is proposing for comment amendments which, if adopted, would establish uniform instructions governing the periods to be covered by financial statements included in (1) most registration and reporting forms filed with the Commission under the Securities Act of 1933 and the Securities Exchange Act of 1934, and (2) annual reports to security holders furnished pursuant to the proxy rules. The proposed amendments would remove substantially all present instructions as to financial statements from the various registration and reporting forms and establish a centralized set of instructions in Regulation S–X. In addition, amendments are being proposed which would allow, in most cases, interim financial information included in registration statements to be presented in the same degree of detail as is required in quarterly reports filed on Form 10–Q under the Exchange Act. The proposed rules are intended to simplify the registration and reporting requirements under the Federal securities laws and further the integration of reporting under the 1933 and 1934 Acts.

DATE: Comments should be received by the Commission on or before April 30, 1980.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File S7–819. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Lawrence C. Best, Office of the Chief Accountant, Securities and Exchange Commission, Washington, D.C. 20549 (202–272–2130).

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is proposing for public comment amendments to existing rules which, if adopted, would (1) establish uniform instructions governing the periods to be covered by financial statements; (2) position a centralized set of instructions as to financial statements in a new Article 3 of Regulation S–X; and (3) reduce the burden of registration by allowing most reporting companies filing unaudited interim data under the Securities Act to provide condensed financial statements, in a Form 10–Q format, in lieu of complete financial statements and schedules.

Adoption of the rules proposed under this release would result in amendments to Forms S–1 [17 CFR 239.13], S–2 [17 CFR 239.12], S–3 [17 CFR 239.13], S–7 [17 CFR 239.26], S–8 [17 CFR 239.16b], S–11 [17 CFR 239.18], 10 [17 CFR 249.210], 10–K [17 CFR 249.310], Rule 14a–3 [17 CFR 240.14a–3], Schedule 14a [17 CFR 240.14a–1 *et seq.*], Rule 14c–3 [17 CFR 240.14c–3], and Regulation S–X [17 CFR 210] under the Securities Act of 1933 or the Securities Exchange Act of 1934.

I. Background

A. Integration of Reporting Under the Securities Acts

In recent years, the Commission has pursued a policy of integration of registration and reporting requirements under the Securities Act of 1933 ("Securities Act") and the Securities Exchange Act of 1934 ("Exchange Act," together, the "securities acts"). The Commission believes integration of the securities acts not only benefits registrants, but also offers a more coherent reporting structure. In this connection, the Commission has recently undertaken the task of reexamining the present reporting and disclosure system focusing principally on developing ways to improve and simplify the registration and reporting process. Initiatives to date have resulted in four separate but related projects: (1) a project directed toward developing the fundamental blueprints for a system of integration using principally the annual report to security holders as the key disclosure document; (2) a project to reevaluate requirements for financial statements focusing on issues such as the periods to be covered, the entities separately reported upon, and pro forma financial statements; (3) a review of Regulation S–X to identify ways to facilitate the integration of the securities acts and eliminate requirements which are unnecessary or duplicative when compared to existing generally accepted accounting principles; and (4) a project to design a short form for registration of securities in certain merger and reorganization transactions using concepts of integration envisoned by the project outlined in (1) above.

Each of these projects have progressed to the extent that the Commission, in four concurrent releases, is publishing for comment proposed rules which, if ultimately adopted, would have a significant impact on the overall registration and reporting process. The releases can be distinguished by the projects from which they evolve. One release encompasses the proposed revisions to Form 10–K, Regulation S–K and the proxy rules, and introduces the fundamental design of the integrated reporting system as currently envisioned by the Commission.[1] Another release contains proposed changes to Regulation S–X pertaining to those articles reexamined to date (Articles 3, 5 and related sections of 12).[2] A third release introduces a new streamlined disclosure form, Form S–15, designed as a short form for registration of securities in certain merger and reorganization transactions.[3] And, as the fourth, this release proposes amendments to establish uniform instructions to govern the periods for which financial statements are provided. All four releases relate to the overall goal of achieving a single integrated disclosure system. Each invites public comment and each should be read in the context of the proposed format for an integrated disclosure system as described more fully in the concurrent release on revision of Form 10–K.

B. Reexamination of Requirements To Provide Financial Statements

The integrated disclosure system envisioned by the Commission and introduced in the concurrent release on revision of Form 10–K would serve to combine the two present disclosure systems under the securities acts into a single disclosure framework. When fully operative it would eliminate duplicative disclosure by allowing periodic and other reports filed under the Exchange Act to also be used in registration statements filed under the Securities Act. In proposing such an integrated system, the Commission recognizes that the basic financial statement disclosures under the securities acts should not differ significantly and that present rules require revision to being about the degree of consistency needed for an integrated reporting structure.

Accordingly, with the objective of integration and therefore consistency in mind, the Commission is in the process of reexamining the present rules governing the financial statements included in (1) registration statements filed under the Securities Act; (2) periodic reports filed under the Exchange Act; and (3) annual reports to security holders furnished pursuant to the proxy rules. The principal issues being focused on include the appropriate periods for which financial statements should be provided; the significance and utility of separate financial statements for the parent company only, subsidiaries not consolidated, 50 percent or less owned persons, consolidated majority-owned subsidiaries engaged in diverse financial activities, and affiliates whose securities are pledged as collateral; and the objectives of pro forma financial statements, the appropriate methods to be used in their preparation, and the degree of detail necessary for sufficient disclosure of the effects of past and future successions to other businesses.

The first of these areas, the periods for which financial statements should be provided, has been given careful consideration and is the principal subject of the amendments proposed in this release. Studies of the other issues, regarding the requirements for separate financial statements and pro forma statements, have not yet been completed. To assist in its reevaluation of present rules regarding these other areas, the Commission, in addition to soliciting comments on the proposed amendments under this release, encourages commentators to also provide their views on existing rules governing preparation of parent company only financial statements, other separate financial statements referred to above, and pro forma financial statements. In providing comments, commentators should take into consideration the basic needs of investors as well as the proposed format for an integrated reporting system.

II. Discussion of Proposed Rules

A. Uniform Requirement for Periods To Be Covered by Financial Statements

Presently, the periods for which financial statements are required to be filed with the Commission vary depending on the particular registration or reporting form being filed. A registrant, for example, filing a registration statement on Form S–1 under the Securities Act is required to include statements of income and changes in financial position for three years and a balance sheet as of a recent date. A registrant filing a registration statement under the same act on Form S–7 is required to provide statements of income and changes in financial position for five years and a balance sheet as of a recent date. For registration of securities using Form S–8, a registrant must provide the financial statements required to be included in Form 10–K (under the 1934 Act) or in the annual report to security holders which include statements of income and changes in financial position for two years plus balance sheets as of the end of the most recent two fiscal years.

As registration and reporting requirements have evolved, differences in the rules have been created as to the periods for which financial disclosures are required. These differences, in part, have resulted from attempts to tailor disclosure requirements to the particular circumstances surrounding the use of the respective forms. Such differences in requirements have been a source of confusion for many and have contributed to the complexity of the present disclosure system.

The Commission, in connection with its reassessment of the present reporting

[1] Securities Act Release No. 6176.

[2] Securities Act Release No. 6178.

[3] Securities Act Release No. 6177.

and disclosure requirements, has questioned the necessity for these differences among various forms. Common to all investment decisions involving securities is the need for sufficient information to assess the financial health of the underlying issuer. Whether a potential investor is considering investing in a security traded on the open market or in one being registered for the first time, his method of analysis and evaluation is most likely very similar and his basic informational needs the same. It is, therefore, difficult to draw meaningful distinctions among the various registration and reporting forms to support the need for the financial statements to encompass differing periods of time. Although the nature of securities and the purpose of registration may differ in many respects and thus require certain disclosures tailored to the specific circumstances of the filing, the Commission believes that such varying circumstances may not warrant a variation among forms as to the periods to which primary financial statements relate.

The Commission believes that the present differences in requirements among the various forms, as to the periods to be covered by financial statements, may not be necessary and that a uniform requirement may be appropriate. The establishment of a uniform requirement would contribute significantly to the simplification of the present disclosure framework and would enhance the ability to further integrate reporting under the securities acts.

Accordingly, the Commission in connection with the other proposed changes to the present disclosure system, as contemplated by the concurrent release on revision of Form 10–K, is proposing for comment uniform instructions to govern the periods to which financial statements relate. The proposed rule would require, in all disclosure documents affected by this release, the inclusion of audited statements of income and changes in financial position for the most recent three fiscal years and audited balance sheets as of the end of the most recent two fiscal years. The proposed amendments would also remove substantially all of the present instructions as to financial statements from the individual forms and would position the revised requirements in Regulation S–X. The centralization of these instructions should serve to simplify present rules and enhance the ability to further integrate reporting under the securities acts.

In proposing a uniform requirement, the Commission recognizes that the views of investors may vary as to the appropriate number of years necessary for an informed investment decision. Some investors may view financial statements covering five years as a minimum while others may be satisfied with financial statements covering a lesser number of years. Still others may believe that the more historical information presented in a disclosure document the better protected they are as investors.

The Commission's responsibility, and therefore its objective, in structuring a disclosure framework is to ensure that the investing public is provided sufficient information upon which to premise investment decisions. The determination of what constitutes a sufficient degree of disclosure, given the broad application of a uniform requirement, is a difficult one. Moreover, any uniform rule based on sufficiency of disclosure must take into consideration the practical implications of compliance and refrain from mandating financial disclosure in excess of the minimum necessary to meet the needs of investors in general.

Two principal alternatives have been considered. Alternative one would require audited statements of income and changes in financial position for the most recent five fiscal years while alternative two, which is proposed in this release, would require such statements for only the three most recent fiscal years. In approving the proposal of a three-year income statement, the Commission considered the proposed changes to Regulation S–K contemplated by the concurrent release on revision of Form 10–K. In that release, the Commission is proposing to refocus "Management's Discussion and Analysis" from the results of operations, as presently disclosed in the summary of operations, to financial position, changes in financial position and results of operations as presented in the audited financial statements. Accordingly, the release also proposes the elimination of the present requirement to provide a five-year summary of operations.

Because the Commission believes that disclosure of five years of certain data, in many cases, may be necessary for an evaluation of trends, it proposes to retain a requirement for companies to supply certain data for a five-year period. On the other hand, the Commission believes that the information necessary for a disclosure of trends may be less than that encompassed by a complete set of financial statements. As a consequence, the Commission is proposing, in the concurrent release on revision of Form 10–K, an amendment to Regulation S–K requiring registrants to provide a summary of selected financial data which management believes best portrays trends in a company's operations. At a minimum, registrants would be required to include in the summary of selected financial data, for five years: net sales or operating revenue; income (loss) from continuing operations; income (loss) from continuing operations per common share; total assets; long-term obligations (including long-term debt, capital leases and redeemable preferred stock); working capital or some other appropriate measure of liquidity; and cash dividends declared per common share.

The proposed summary of selected financial date should generally provide investors sufficient information upon which to assess trends. It should also serve to eliminate the need for requiring complete financial statements for the earliest two years. Although the rules proposed herein would require an income statement covering the three most recent fiscal years, specific comments on the propriety of a five-year income statement requirement are invited.

Consideration was also given to the notion of using two years as a uniform requirement for statements of income and changes in financial position. A two-year requirement, however, was rejected on the basis that statements for two years would most likely not satisfy the needs of most users. To evaluate a company's operations in any given year, in terms of changes in operations, comparative data for the immediately preceding year is required. Accordingly, it is the Commission's view that a three-year requirement provides the minimum data necessary for an understanding of changes in performance for two years. A three-year requirement is also consistent with the periods presently required to be covered by "Management's Discussion and Analysis" and with the provision of the Securities Act of 1933.

Consistent with the emphasis being placed on increased use of annual reports and the integration of reporting under the securities acts, the proposed amendments extend to the proxy rules governing the distribution of annual reports to security holders. Since the proposed amendments represent an expansion of present requirements for reporting in annual reports to security holders, commentators are specifically invited to provide their views on any

anticipated increased costs which may be incurred in complying with the rules as proposed. In providing comments, consideration should be given to the proposed changes discussed in the concurrent releases on revision of Form 10–K and Regulation S–X and the emphasis which is being placed on the use of the annual report as a key document in integrating reporting under the securities acts.

B. Interim Financial Information—Age, Form and Content

In addition to proposing a uniform requirement for periods to be covered by audited financial statements, revisions are being proposed relating to the age, form and content of unaudited interim financial information required to be provided in registration statements. Under existing requirements of the various forms, a "90 day" or "six-month" rule must be followed to determine the age of financial information required to be filed. The proposed rules would revise and update these requirements to recognize quarterly reporting requirements under the Exchange Act and would ensure that information provided in registration statements under the Securities Act is at least as current as the data already required to be filed under the Exchange Act. As to form and content, changes are being proposed which should greatly reduce the burden on most registrants who are required to file interim financial information. The proposed amendments would in most cases eliminate the need to provide complete financial statements and schedules for interim periods and would allow interim data to be provided in the same degree of detail as is required under Form 10–Q.

Age of Financial Statements

The proposed uniform financial statement requirement would require audited balance sheets as of the end of the two most recent fiscal years and audited statements of income and changes in financial position for each of the most recent three fiscal years. Exceptions to this would occur under the proposed rules when filings, other than of Forms 10–K or 10, are made within 90 days after the registrant's fiscal year and the audited financial statements for the most recent fiscal year are not available. In these circumstances, the audited balance sheets may be as of the end of the two preceding years and audited statements of income and changes in financial position may be presented for each of the three fiscal years preceding the date of the most recent audited balance sheet presented. However, under these circumstances, an additional balance sheet would be required (which may be unaudited) as of a date within 90 days of the date of filing and unaudited statements of income and changes in financial position would be required on a comparative basis for the interim period between date of most recent audited balance sheet presented and date of most recent balance sheet filed.

Where a filing is not made within 90 days after the end of the registrant's fiscal year (or 120 days fort a filing on Form 10), the filing would be required to include an additional balance sheet (which may be unaudited) as of an interim date within 90 days prior to the date of filing, or 135 days if the tests described below are met. There would also be included unaudited statements of income and changes in financial position for the interim period between the end of the most recent fiscal year and the date of the most recent balance sheet filed as well as for the corresponding interim period of the preceding year.

Under the proposed amendments, if the registrant meets the "135 day" tests described below, (i) an additional balance sheet need not be provided for filings made after 90 days but before 135 days after the end of the fiscal year and (ii) the most recent balance sheet included in a filing, made after 134 days subsequent to the end of the fiscal year, may be as of a date within 135 days prior to the date of filing.

"135 Day" Tests:

(a) the filing includes audited financial statements as of the registrant's most recent fiscal year end;

(b) the registrant files annual and other reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and all reports (10–K, 10–O and 8–K) due at the time of filing have been filed; and

(c) no debt of the registrant is in default as to principal, interest or sinking fund provisions.

This new 135 day rule is being proposed primarily to update present rules to recognize quarterly reporting requirements under the Exchange Act. The existing six-month rule under Forms S–1, S–7, and S–11 has never been updated in recognition of requirements to file interim data on Form 10–Q. Applicable to registrants meeting certain conditions more restrictive than those proposed above, the six-month rule was originally adopted with Form S–1 prior to the inception of quarterly reporting requirements and was subsequently incorporated into Forms S–7 and S–11 without modification.

Presently, reporting companies are required to file unaudited interim financial information on Form 10–Q within 45 days of the end of each of the first three quarters of their fiscal year. Under present registration requirements a filing could conceivably be filed under the Securities Act with financial information less current than that already filed under the Exchange Act. Under the proposed amendments financial statements included in a registration statement would be required to be at least as current as any financial statements filed under the Exchange Act. Although the proposed amendments would require more current information than is required under the six-month rule, they would not require reporting companies to provide information any more current than is now required under the Exchange Act.

In addition to the above proposal of a 135 day rule, applicable to financial statements as of the filing date of a registration statement, financial statement updating requirements are also being proposed which focus on the age of financial statements at the effective date of a registration statement or at the proposed mailing date in the case of a proxy statement. Where the financial statements in a filing are as of a date more than 135 days prior to the expected effective date of the filing, or proposed mailing date in the case of a proxy statement, the proposed updating requirement would require the financial statements to be updated through the end of the latest fiscal quarter, on a comparative basis, in the same detail as required in quarterly reports filed pursuant to Section 13 or 15(d) of the Exchange Act. The Commission believes that such an updating requirement is needed to ensure that registration statements under the Securities Act contain information at least as current as that required to be filed under the Exchange Act. Moreover, the proposed updating requirement is generally consistent with present provisions included in "Guide 23" of "Guides for Preparation and Filing or Registration Statements." If the proposed amendments are ultimately adopted, "Guide 23" would be revised or eliminated.

Form and Content

In order to achieve a fully integrated disclosure system the Commission recognizes that the requirements under the Securities Act and the Exchange Act must ultimately be made consistent as to the form and content of financial statements presented for interim periods. Presently, the disclosure requirements for interim data under the two acts are significantly different. Interim or stub period information

included in registration statements under the Securities Act is required to be presented in full compliance with Regulation S–X, including complete financial statements and schedules. If separate financial statements, for annual periods, for the parent company only, unconsolidated subsidiaries or any 50 percent or less owned persons are required, complete financial statements and schedules for these entities are also required for interim periods. Under the Exchange Act the disclosure required for interim periods is significantly different as to the degree of detail and entities for which financial statements are provided. On a Form 10–Q only condensed financial statements, without schedules, are required for the registrant and its subsidiaries consolidated. In most cases parent company only financial statements are omitted and only summarized data is provided for significant unconsolidated subsidiaries and 50 percent or less owned persons.

To move toward greater consistency in requirements for disclosure of unaudited interim information, the Commission is proposing to allow reporting companies which meet the new 135 day tests to present financial statements for interim periods, in Securities Act filings, in the same degree of detail as is required by form 10–Q under the Exchange Act—condensed financial statements with schedules omitted. This proposed reduction in detail, however, would not eliminate the need to provide separate financial statements for entities for which annual financial statements may be required—parent company only, subsidiaries not consolidated, 50 percent or less owned persons, consolidated majority-owned subsidiaries engaged in diverse financial activities, and affiliates whose securities are pledged as collateral. As referred to earlier in this release, the Commission has not completed its studies regarding the significance and utility of these separate financial statements and therefore it would not be appropriate to eliminate the requirements for separate financial statements at this time. Consequently, under the proposed rules separate financial statements would continue to be required, but could be presented in the same degree of detail as is required by Form 10–Q. Other registrants, not meeting the new 135 day tests, would continue to be required to present complete financial statements and schedules for interim periods, as currently specified. Comments are specifically requested on whether this new 135 day test should be extended to all registrants.

Although the proposed rules regarding interim financial information would not result in total uniformity in disclosure under the Securities Act and the Exchange Act, they should significantly reduce the burden on most registrants required to prepare registration documents.

C. Instructions to Financial Statements Centralized in Regulation S–X

Instructions as to the financial statements to provided in a filing and the periods to be covered are presently located in the various registration and reporting forms. As previously mentioned, the proposed amendments would remove substantially all these instructions from the various forms and would position a centralized set of instructions in a new Article 3 of Regulation S–X. The Commission believes that the centralization of these instructions would facilitate the establishment of a uniform requirement for periods to be covered by financial statements and would simplify adoption of future amendments needed to further integrate reporting under the securities acts. If the proposed amendments are ultimately adopted, Regulation S–X which is now titled "Form and Content of Financial Statements" would be revised as "Form and Content of and Requirements for Financial Statements."

In proposing to relocate the instructions as to financial statements to Regulation S–X, it should be noted that no significant changes are being proposed at this time other than those relating to the periods to be covered by financial statements and those regarding the form and content of interim data in registration statements. One minor change however that should be considered by commentators relates to financial statements of development stage companies.

The proposed amendments would revise the present rules applicable to financial statements of development stage companies required to be filed on Form 10–K. Presently, when receipts and expenditures of a development stage company, each, do not exceed $5,000, the financial statements may be unaudited. The proposed rules would encompass financial statements of any inactive company and would raise the receipts and expenditures levels, each to $100,000. This proposal broadens and updates the present rules.

Text of Proposed Rules

PART 210—FORM AND CONTENT OF FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

* * * * *

Articles 3 and 4 are proposed to be amended by (1) renumbering the present Article 3 as Article 4, (2) renumbering the present § 210.4–01 through § 210.4–08 as § 210.3A–01 through § 210.3A–08, and (3) inserting new § 210.3–01 through § 210.3–16 as set forth below:

General Instructions as to Financial Statements

These instructions specify the balance sheets and statements of income and changes in financial position to be included in disclosure documents prepared in accordance with Regulation S–X. Other portions of Regulation S–X govern the examination, form and content of such financial statements, including the basis of consolidation and the schedules to be filed. The financial statements described below shall be audited unless otherwise indicated.

For filings under the Securities Act of 1933, attention is directed to § 230.411(b) regarding incorporation by reference to financial statements and to section 10(a)(3) of the Act regarding information required in the prospectus.

For filings under the Securities Exchange Act of 1934, attention is directed to § 240.12b–23 regarding incorporation by reference and § 240.12b–36 regarding use of financial statements filed under other acts.

§ 210.3–01 Balance sheets of the registrant.

There shall be filed for the registrant and its predecessors audited balance sheets as of the end of each of the two most recent fiscal years.

If the filing, other than a filing on Form 10–K or Form 10, is made within 90 days after the end of the registrant's fiscal year and the audited financial statements for the most recent fiscal year are not available, the balance sheets may be as of the end of the two preceding fiscal years and the filing shall include an additional balance sheet (which may be unaudited) as of a date within 90 days of the date of filing.

If the filing is not made within 90 days after the end of the registrant's fiscal year (or 120 days for filings on form 10), the filing shall also include an additional balance sheet (which may be unaudited)

as of a date within 90 days prior to the date of filing. If the registrant meets the tests set forth below, (a) an additional balance need not be provided for filings made after 90 days but before 135 days after the end of the fiscal year, and (b) the most recent balance sheet included in a filing, made after 134 days subsequent to the end of the fiscal year, may be as of a date within 135 days prior to the date of filing and need not be presented in greater detail than is required for quarterly reports filed pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934:

(1) The filing includes audited financial statements as of the registrant's most recent fiscal year end;

(2) The registrant files annual and other reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 and all reports due at the time of filing have been filed; and

(3) No debt of the registrant is in default as to principal, interest or sinking fund provisions.

Notwithstanding the above requirements, the most recent interim balance sheet included in a filing shall be at least as current as the most recent balance sheet filed with the Commission on form 10–Q.

§ 210.3–02 Statements of income and changes in financial position of the registrant.

There shall be filed for the registrant and its predecessors audited statements of income and changes in financial position for each of the three fiscal years preceding the date of the most recent audited balance sheet being filed.

In addition, for any interim period between the end of the most recent of such fiscal years and the date of the most recent balance sheet being filed, and for the corresponding period of the presceding fiscal year, statements of income and changes in financial position shall be provided. These interim financial statements may be unaudited. If the registrant meets all the tests under § 210.3–01 for inclusion of the most recent balance sheet as of a date within 135 days prior to the date of filing, the statements of income and changes in financial position required for interim periods need not presented in greater detail than is required for quarterly reports filed pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

See also the instructions under § 210.3–06.

§ 210.3–03 Omission of registrant's financial statments in certain cases.

Notwithstanding §§ 210.3–01 and 3–02 above, the individual financial statements of the registrant may be omitted if (a) consolidated financial statements of the registrant and one or more of its subsidiaries are being filed, (b) the conditions specified in either of the following paragraphs are met, and (c) the basis for the omission is stated in the index of financial statements filed.

(1) The registrant is primarily an operating company and all subsidiaries included in the consolidated financial statements being filed, in the aggregate, do not have minority equity interest and/or indebtedness to any person other than the registrant or its consolidated subsidiaries in amounts which together exceed 5 percent of the total assets as shown by the most recent year end consolidated balance sheet. Indebtedness incurred in the ordinary course of business which is not overdue and which matures within one year from the date of its creation, whether evidenced by securities or not, and indebtedness of subsidiaries which is collateralized by the registrant by guarantee, pledge, assignment or otherwise are to be excluded for the purpose of this determination.

(2) The registrant's total assets, exclusive of investments in and advances to its consolidated subsidiaries, as would be shown by its most recent year-end balance sheet if it were filed, constitute 75 percent or more of the total assets as shown by the most recent year-end consolidated balance sheet; and the registrant's total sales and revenues, exclusive of interest and dividends received from or its equity in the income of the consolidated subsidiaries, as would be shown by its income statement, for the most recent fiscal year if it were filed, constitute 75 percent or more of the total sales and revenues shown by the most recent annual consolidated income statement.

§ 210.3–04 Consolidated balance sheets.

There shall be filed consolidated balance sheets of the registrant and its subsidiaries as of the same dates and in the same detail as each balance sheet of the registrant filed pursuant to § 210.3–01. The consolidated balance sheets shall be audited if the registrant's balance sheet as of the same date is audited. If the registrant's balance sheets are omitted pursuant to § 210.3–03, the consolidated balance sheets being filed shall be as of the same dates and in the same detail as the balance sheets of the registrant which otherwise would be required and shall be audited if the corresponding balance sheet of the registrant would otherwise be required to be audited.

§ 210.3–05 Consolidated statements of income and statements of changes in financial position.

There shall be filed for the registrant and its subsidiaries audited statements of income and changes in financial position for each of the three fiscal years preceding the date of the most recent audited balance sheet being filed.

In addition, for any interim period between the end of the most recent of such fiscal years and the date of the most recent balance sheet being filed, and for the corresponding period of the preceding fiscal year, statements of income and changes in financial position shall be provided. Such interim financial statements may be unaudited. Further, if the registrant meets all the tests under § 210.3–01 for inclusion of the most recent balance sheet as of a date within 135 days prior to the date of filing, the statements of income and changes in financial position required for interim periods need not be presented in greater detail than is required for quarterly reports filed pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

§ 210.3–06 Instructions to registrant and consolidated income statement requirements.

(a) The statements required shall be prepared in compliance with the applicable requirements of this Regulation.

(b) If the registrant is engaged primarily (1) in the generation, transmission or distribution of electricity, the manufacture, mixing, transmission or distribution of gas, the supplying or distribution of water, or the furnishing of telephone or telegraph service; or (2) in holding securities of companies engaged in such businesses, it may at its option include statments of income and changes in financial position (which may be unaudited) for the twelve-month period ending on the date of the most recent balance sheet being filed, in lieu of the income statements for the interim periods specified.

(c) If a period or periods reported on include operations of a business prior to the date of acquisition, or for other reasons differ from reports previously issued for any period, the statements shall be reconciled as to sales or revenues and net income in the statement or in a note thereto with the amounts previously reported; *Provided, however,* That such reconciliations need not be made (1) if they have been made in filings with the Commission in prior years or (2) the financial statements which are being retroactively adjusted

have not previously been filed with the Commission or otherwise made public.

(d) In connection with any unaudited statement for an interim period a statement shall be made that all adjustments necessary to a fair statement of the results for such period have been included. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made; otherwise, there shall be furnished information describing in appropriate detail the nature and amount of any adjustments other than normal recurring adjustments entering into the determination of the results shown.

§ 210.3-07 Past successions to other businesses.

If, during the period for which its income statements are required, the registrant has by purchase or polling of interests suceeded to one or more businesses, the additions, eliminations and other changes effected in the succession shall be appropriately set forth in a note or supporting schedule to the balance sheets being filed, and, if a purchase has been effected during the most recent fiscal year or in a subsequent period, pro forma statements of income reflecting the combined operations of the entities shall be furnished in columnar form for the latest fiscal year and any comparable interim periods. In addition, if any purchased business or businesses, singly or in the aggregate, had major significance in relation to the registrant, audited income statements, separate or combined as appropriate, for such business or businesses shall be filed for such periods prior to the purchase as may be necessary when added to the time, if any, for which audited income statements after the purchase are filed to cover the equivalent of the period specified in §§ 210.3-02 and 3-05 above. The test of major significance shall be based on the tests used in the term "significant subsidiary" with substituted percentages (determined in comparison to the most recent annual consolidated financial statements of the registrant being filed) being utilized in relation to the period the businesses have been merged prior to the date of the registrant's most recent audited balance sheet as follows: (1) for one full year or less, no substitution; (2) more than one but less than two full years, 25 percent; and (3) two full years or more, 45 percent. If financial statements for an acquired business would not be required in the year of acquisition, they would not be required subsequently. (See Release No. 33-4950 with regard to audit requirements for such financial statements.)

This instruction shall not apply with respect to the registrant's succession to the business of any totally held subsidiary or to the succession of one or more businesses if such businesses, considered in the aggregate, would not meet the test of a significant subsidiary.

Information required by the foregoing instruction is nor required to be included in a filing on Form 10-K.

§ 210.3-08 Future successions to other businesses.

(a) If, after the date of the most recent balance sheet filed pursuant to § 210.3-01 or 3-04 above, the registrant by purchase or by pooling of interests has succeeded to or is about to succeed to one or more businesses or has acquired or is about to acquire an investment in a business the investment in which is required to be accounted for by the equity method, there shall be filed for such businesses financial statements, combined if appropriate, prepared in accordance with Regulation S-X. In addition, to reflect the succession to any businesses, there shall be filed in columnar form (1) a balance sheet of the registrant (or the registrant and its subsidiaries consolidated, if appropriate), (2) the balance sheets of the constituent businesses, (3) the changes to be effected in the succession, and (4) the pro forma balance sheet of the registrant giving effect to the plan of succession. There shall also be filed in columnar form pro forma statements of income for the periods for which the results of operations of the acquired business would have been included in the registrant's income statement for a pooling of interests or would have been presented on a pro forma basis for a purchase had the succession occurred on the date of the latest balance sheet filed. By a note to the financial statements or otherwise, a brief explanation of the changes shall be given.

(b) The acquisition of securities shall be deemed to be the acquistion of business if such securities give control of the business or combined with securities already held give such control. In addition, the acquisition of securities which will extend the registrant's control of a business shall be deemed the acquisition of the business if any of the securities being registered hereunder are to be offered in exchange for the securities to be acquired.

(c) No financial statements need be filed, however, for any business acquired or to be acquired or for any business in which an investment acquired or to be acquired is required to be accounted for by the equity method, from a totally held subsidiary. In addition, the statements of any one or more such businesses may be omitted if the businesses, considered in the aggregate, would not meet the test of a significant subsidiary; *Provided,* That the statements of any business may not be omitted where any of the securities being registered are to be offered in exchange for securities representing such business or for assets of such business.

Information required by the foregoing instruction is not required to be included in a filing on Form 10-K.

§ 210.3-09 Financial statements of subsidiaries not consolidated and 50 percent or less owned persons.

(a)(1) Subject to § 210.3A-03 regarding group financial statements and paragraphs (b) and (c) below, there shall be filed for each majority-owned subsidiary not consolidated and each 50 percent or less owned person for which the investment is accounted for by the equity method by the registrant or a consolidated subsidiary of the registrant the financial statements which would be required if each such subsidiary or other person were a registrant. Insofar as practicable, these financial statements shall be as of the same dates or for the same periods as those of the registrant.

(2) If it is impracticable to file financial statements of any subsidiary not consolidated or 50 percent or less owned person accounted for by the equity method as of a date within 90 days, or within 135 days if registrant's financial statements are permitted pursuant to § 210.3-01 to be filed as of a date within 135 days prior to the date of filing, there may be filed in lieu thereof audited financial statements of such subsidiary or other person as of the end of its most recent annual or semi-annual fiscal period preceding the date of filing the registration statement for which it is practicable to do so.

(b) *Summarized financial information.* Notwithstanding paragraph (a) above, summarized information as to assets, liabilities and results of operations may be presented on an individual or group basis in notes to the financial statements for all subsidiaries not consolidated and 50 percent or less owned persons accounted for by the equity method, except such subsidiaries or 50 percent or less owned persons which are individually significant under the tests specified in paragraph (c) below.

(c) *Omission of financial statements required by (a) and (b) above.* Notwithstanding paragraphs (a) and (b) there may be omitted all financial

statements of any one or more consolidated subsidiaries or 50 percent or less owned persons accounted for by the equity method, if in the aggregate (1) neither the registrant's and its other subsidiaries' investments in and advances to, nor their proportionate share of the total assets (after intercompany eliminations) of, such subsidiaries and other persons exceed 10 percent of the total assets as shown by the most recent year-end consolidated balance sheet; (2) the total sales and revenues (after intercompany eliminations) of such subsidiaries or other persons, reduced to the percentages of equity interests held by the registrant and its subsidiaries in such subsidiaries and other persons, do not exceed 10 percent of the total sales and revenues as shown by the most recent annual consolidated income statement; and (3) the registrant's and its other subsidiaries' equity in the income before income taxes and extraordinary items of the subsidiaries and other persons does not exceed 10 percent of such income of the registrant and consolidated subsidiaries for the most recent fiscal year; *Provided* That, if such income of the registrant and its consolidated subsidiaries for the last fiscal year is at least 10 percent lower than the average of such income for the last five fiscal years, such average income may be substituted in the determination.

§ 210.3–10 Financial statements of affiliates whose securities collateralize and issue registered or being registered.

(a) For each entity whose securities constitute a substantial portion of the collateral for any class of securities registered or being registered, there shall be filed the financial statements that would be required if the affiliate were a registrant. However, statements need not be filed pursuant to this instruction for any person whose statements are otherwise filed with the registration statement on an individual, consolidated or combined basis.

(b) For the purposes of this instruction, securities of a person shall be deemed to constitute a substantial portion of collateral if the aggregate principal amount, par value, or book value as shown by the books of the registrant, or market value, whichever is the greatest, of such securities equals 20 percent or more of the principal amount of the class secured thereby.

§ 210.3–11 Financial statements of an inactive registrant.

If a registrant is an inactive entity as defined below, the financial statements required by this regulation may be unaudited. An inactive entity is one meeting all of the following conditions:

(a) Gross receipts from all sources for the fiscal year are not in excess of $100,000;

(b) The registrant has not purchased or sold any or its own stock, granted options therefore, or levied assessments upon outstanding stock;

(c) Expenditures for all purposes for the fiscal year are not in excess of $100,000;

(d) No material change in the business has occurred during the fiscal year, including any bankruptcy, reorganization, readjustment or succession or any material acquisition or disposition of plants, mines, mining equipment, mine rights or leases; and

(e) No exchange upon which the shares are listed, or governmental authority having jurisdiction, requires the furnishing to it or the publication of, audited financial statements.

§ 210.3–12 Age of financial statements at effective date of registration statement or at mailing date of proxy statement.

If the financial statements in a filing are as of a date more than 135 days prior to the date the filing is expected to become effective, or proposed mailing data in the case of a proxy statement, the financial statements shall be supplemented with condensed financial statements through the end of the latest fiscal quarter on a comparative basis. Such condensed financial statements shall be presented in the same degree of detail as is required for quarterly reports filed pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

§ 210.3–13 Filing of other financial statements in certain cases.

The Commission may, upon the informal written request of the registrant, and where consistent with the protection of investors, permit the omission of one or more of the financial statements herein required or the filing in substitution therefor of appropriate statements of comparable character. The Commission may also by informal written notice require the filing of other financial statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of investors.

§ 210.3–14 Special instructions for real estate operations to be acquired.

If, during the period for which income statements are required, the registrant (a) has acquired one or more properties which in the aggregate are significant, or (b) since the date of the latest balance sheet required has acquired or proposes to acquire one or more properties which in the aggregate are significant, the following shall be furnished with respect to such properties:

(1) Audited income statements, for the three most recent fiscal years, which shall exclude items not comparable to the proposed future operation of the property such as mortgage interest, leasehold rental, depreciation, corporate expenses and Federal and state income taxes. Earnings per unit shall not be given in these statements.

(2) If the property is to be operated by the registrant, there shall be furnished a statement showing the estimated taxable operating results of the registrant based on the most recent twelve month period including such adjustments as can be factually supported. If the property is to be acquired subject to a net lease the estimated taxable operating results shall be based on the rent to be paid for the first year of the lease. In either case, the estimated amount of cash to be made available by operations shall be shown. There shall be stated in an introductory paragraph the principal assumptions which have been made in preparing the statements of estimated taxable operating results and cash to be made available by operations.

(3) If appropriate under the circumstances, there shall be given in tabular form for a limited number of years the estimated cash distribution per unit showing the portion thereof reportable as taxable income and the portion representing a return of capital together with an explanation of annual variations, if any. If taxable net income per unit will become greater than the cash available for distribution per unit, that fact and approximate year of occurrence shall be stated, if significant.

Information called for by the foregoing instruction is not required to be included in filings on Form 10–K.

§ 210.3–15 Special provision as to real estate investment trusts.

In lieu of the income statements required by § 210.5–03 there shall be filed statements of income and expense and statements of realized gain or loss on the properties and investments which shall generally conform with the requirements of §§ 210.6–04 and 6–05. In place of the balance sheet caption prescribed by § 210.5–02–39(a)(3) there shall be shown separately (a) the balance of undistributed net income and (b) accumulated net realized gain or loss on investments, and the statements of other stockholders' equity shall

generally conform to the requirements of § 210.6–07.

The trust's status as a "real estate investment trust" under applicable provisions of the Internal Revenue Code as amended shall be stated in a note referred to in the appropriate statements. Such note shall also indicate briefly the principal present assumptions on which the trust has relied in making or not making provisions for Federal income taxes.

The tax status of distributions per unit shall be stated (e.g., ordinary income, capital gain, return of capital).

§ 210.3–16 Reorganization of registrant.

(a) If, during the period for which its income statements are required, the registrant has emerged from a reorganization in which substantial changes occurred in its asset, liability, capital shares, other stockholders' equity or reserve accounts, a brief explanation of such changes shall be set forth in a note or supporting schedule to the balance sheets filed.

(b) If the registrant is about to emerge from such a reorganization, there shall be filed, in addition to the balance sheets of the registrant otherwise required, a balance sheet giving effect to the plan of reorganization. These balance sheets shall be set forth in such form, preferably columnar, as will show in related manner the balance sheet of the registrant prior to the reorganization, the changes to be effected in the reorganization and the balance sheet of the registrant after giving effect to the plan of reorganization. By a footnote or otherwise a brief explanation of the changes shall be given.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

* * * * *

1. Form S–1 is proposed to be amended by deleting Instructions as to Financial Statements and revising Item 19 to read as follows:

§ 239.11 Form S–1, registration statement under the Securities Act of 1933.

* * * * *

Item 19. Financial Statements

Include in the prospectus the financial statements required by Regulation S–X. Although all schedules required by Regulation S–X are to be included in the registration statement, all such schedules other than those prepared in accordance with Rules 12–27, 12–42 and 12–43 of the Regulation, may be omitted from the prospectus.

* * * * *

2. Form S–2 is proposed to be amended by revising Item 13 to read as follows:

§ 239.12 Form S–2, for shares of certain corporations in the development stage.

* * * * *

Item 13. Financial Statements

Include in the prospectus the financial statements required by Regulation S–X. Although all schedules required by Regulation S–X are to be included in the registration statement, all such schedules may be omitted from the prospectus.

* * * * *

3. Form S–3 is proposed to be amended by revising Item 12 to read as follows:

§ 239.13 Form S–3, for shares of mining corporations in the development stage.

* * * * *

Item 12. Financial Statements

Include in the prospectus the financial statements required by Regulation S–X. Although all schedules required by Regulation S–X are to be included in the registration statement, all such schedules may be omitted from the prospectus.

* * * * *

4. Form S–8 is proposed to be amended by revising Item 17 and paragraph (b) of Item 11 to read as follows:

§ 239.16b Form S–8, for registration under the Securities Act of 1933 of securities to be offered to employees pursuant to certain plans.

* * * * *

Item 17. Financial Statements of the Issuer

Include in the prospectus the financial statements required by Regulation S–X for the issuer and its subsidiaries consolidated. All schedules may be omitted from the registration statement except those prepared in accordance with Rules 12–27, 12–42 and 12–43 which shall be included in the prospectus.

Instruction. If the annual report of the issuer to its security holders for its last fiscal year includes audited financial statements substantially meeting the above requirements, such statements may be incorporated by reference in the prospectus. If such financial statements are incorporated by reference in the prospectus, copies of the annual report shall be filed as an exhibit of the registration statement and the accountant's certificate shall be manually signed on one of such copies.

* * * * *

(b) An audited statement of income and changes in plan equity for each of the latest three fiscal years of the plan (or such lesser period as the plan has been in existence).

* * * * *

5. Form S–11 is proposed to be amended by deleting Instructions to Financial Statements and revising Item 24 to read as follows:

§ 239.18 Form S–11, for registration under the Securities Act of 1933 of securities of certain real estate companies.

* * * * *

Item 24. Financial Statements

Include in the prospectus the financial statements required by Regulation S–X. Although all schedules required by Regulation S–X are to be included in the registration statement, all such schedules other than those prepared in accordance with Rules 12–19 (which replaces Rule 12–02 for this form), 12–42 and 12–43 of the Regulation may be omitted from the prospectus.

* * * * *

6. Form S–7 is proposed to be amended by deleting Item 6 and revising Item 11 to read as follows:

§ 239.26 Form S–7, for registration under the Securities Act of 1933 of securities of certain issuers.

* * * * *

Item 11. Financial Statements

Include in the prospectus all financial statements required by Regulation S–X. All schedules may be omitted from the registration statement except those prepared in accordance with rules 12–27, 12–42 and 12–43 which shall be included in the prospectus.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

* * * * *

1. Form 10 is proposed to be amended by deleting Instructions to Financial Statements and adding a new Item 17 to read as follows:

§ 249.210 Form 10, general form for registration of securities pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934.

* * * * *

Item 17. Financial Statements

Include in the registration statement all financial statements required by Regulation S–X.

* * * * *

2. Form 10–K is proposed to be amended by deleting the Instructions as to Financial Statements and revising the present Item 12. See proposed technical

amendments in the concurrent release on revision of Form 10–K (Securities Act Release No. 6176).

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

* * * * *

1. Rule 14a–3 is proposed to be amended by revising paragraphs (b)(1), (b)(2) and (b)(3). For proposed revision to paragraph (b)(3), see concurrent Securities Act Release No. 6178. Paragraphs (b)(1) and (b)(2) are proposed to be revised to read as follows:

§ 240.14a–3 Information to be furnished to security holders.

* * * * *

(b) * * *

(1) The report shall include the financial statements required by Regulation S–X for the registrant and its subsidiaries consolidated. Any financial statement schedules or exhibits which may otherwise be required in filings with the Commission may be omitted. Investment companies registered under the Investment Company Act of 1940 need include financial statements only for the last fiscal year.

(2) Financial statements and notes thereto shall be presented in roman type at least as large and as legible as 10-point modern type. If necessary for convenient presentation, the financial statements may be in roman type as large and as legible as 8-point modern type. All type shall be leaded at least 2-point.

* * * * *

2. Rule 14a–101 is proposed to be amended by revising Item 15 of Schedule 14A (§ 240.14a–101) to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 15. Financial Statements

If action is to be taken with respect to any matter specified in Item 12, 13 or 14 above, furnish the financial statements required by Regulation S–X. One copy of the definitive proxy statement filed with the Commission shall include a manually signed copy of the accountant's certificate.

The financial statements of an acquired company not subject to the reporting provisions of the Exchange Act required to be furnished pursuant to Regulation S–X shall be certified to the extent practicable. However, if the proxy statement is to be included in a filing on Form S–14, the financial statements of the acquired business must be certified for three years or must comply with the requirements of Securities Act Release No. 4950.

Notwithstanding the provisions of Regulation S–X, no schedules other than those prepared in accordance with Rules 12–27, 12–42 and 12–43 of that regulation need be furnished in the proxy statement.

Parent company only financial statements are not required to be filed unless necessary to make the financial statements not misleading.

* * * * *

3. Rule 14c–3 is proposed to be amended by revising paragraphs (a)(1), (a)(2) and (a)(3). For proposed revision to paragraph (a)(3), see concurrent Securities Act Release No. 6178. Paragraphs (a)(1) and (a)(2) are proposed to be revised to read as follows:

§ 240.14c–3 Annual report to be furnished security holders.

(a) * * *

(1) The report shall include the financial statements required by Regulation S–X for the registrant and its subsidiaries consolidated. Any financial statement schedules or exhibits which may otherwise be required in filings with the Commission may be omitted. Investment companies registered under the Investment Company Act of 1940 need include financial statements only for the last fiscal year.

(2) Financial statements and notes thereto shall be presented in roman type at least as large and as legible as 10-point modern type. If necessary for convenient presentation, the financial statements may be in roman type as large and as legible as 8-point modern type. All type shall be leaded at least 2-point.

* * * * *

Statutory Authority for Proposed Amendments

(Sections 6, 7, 8, 10 and 19(a) [15 U.S.C. 77f, 77g, 77h, 77j, 77s] of the Securities Act of 1933; Sections 12, 13, 15(d) and 23(a) [15 U.S.C. 78l, 78m, 78*o*(d), 78w] of the Securities Exchange Act of 1934; Sections 5(b), 14 and 20(a) [15 U.S.C. 79e, 79n, 79t] of the Public Utility Holding Company Act of 1935; Sections 8, 30, 31(c) and 38(a) [15 U.S.C. 80a–8, 80a–29, 80a–30(c), 80a–37(a)] of the Investment Company Act of 1940.)

The Commission is mindful of the cost to registrants and others of its proposals and recognizes its responsibilities to weigh with care the costs and benefits which result from its rules. Accordingly, the Commission specifically invites comments on the costs to registrants and others of the adoption of the proposals published herein.

Pursuant to Section 23(a)(2) of the Securities Exchange Act, the Commission specifically invites comments as to the competitive impact of these proposals, if adopted.

These amendments are proposed to be effective for filings made after December 15, 1980 with the provision that registrants may, at their option, apply the amended rules upon adoption.

All interested persons are invited to submit 10 copies of their views and comments on the foregoing to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549 on or before April 30, 1980. Such communications should refer to File S7–819 and will be available for public inspection.

By the Commission.

George A. Fitzsimmons,

Secretary.

January 15, 1980.

[FR Doc. 80–2028 Filed 1–23–80; 8:45 am]

BILLING CODE 8010–01–M

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17 CFR Parts 229, 231, 239, 240, 241, and 249

[Releases Nos. 33–6176 and 34–16496; File No. S7–816]

Proposed Amendments to Annual Report Form; Integration of Securities Acts Disclosure Systems

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is requesting comments on proposed amendments to the present annual report form required to be filed by most publicly-owned companies, Form 10–K, and on related forms, rules and guides under the Securities Act of 1933 and the Securities Exchange Act of 1934. The proposed revisions are part of a series of proposals intended to reduce disclosure burdens and to facilitate the integration of the disclosure systems under the two acts.

DATE: Comments must be received on or before April 15, 1980.

ADDRESS. All communications on the matters discussed in this release should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comments should refer to File No. S7–816 and will be available for public inspection.

FOR FURTHER INFORMATION CONTACT: William H. Carter (202/272–2604), or Mary Margaret W. Hammond (202/272–3059), Division of Corporation Finance,

Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission announced today the publication for comment of a revised Form 10–K, the annual report form required to be filed by most publicly-owned companies, and a number of related rule changes. The rule changes include amendments to Rules 14a–3 and Rule 14c–3, with respect to annual reports to security holders, and expansion of Regulation S–K to include three new items: Management's Discussion and Analysis of Financial Condition and Results of Operations, Selected Financial Data, and Market Price of the Registrant's Securities and Statement of Dividend Policy, an amendment to Regulation S–K Item 1, Description of Business, as well as proposed amendments to related forms, rules, and guides under the Securities Act of 1933 ("Securities Act") [15 U.S.C. 77a et seq.] and the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78a et seq.]. The proposed revisions of Form 10–K and related rule changes are part of a series of proposals intended to reduce the burdens of disclosure under the Securities Act and the Exchange Act. Three other releases also propose (1) uniform financial statement instructions for certain forms and reports required to be filed pursuant to the Securities Act and the Exchange Act; (2) amendments to Regulations S–X designed to eliminate, to the extent possible, the differences between the requirements of generally accepted accounting principles and those of Regulation S–X; and (3) a new simplified form for the registration of securities issued in certain merger and reorganization transactions.

Form 10–K

Introduction

The Commission is today proposing major changes in the Securities Act and Exchange Act disclosure systems. These changes are designed both to facilitate the integration of these two systems into the single disclosure system long advocated by many commentators [1] and to reduce current impediments to combining informal shareholder communications, such as annual reports to shareholders, with official Commission filings.

This release deals with format and content changes in the Form 10–K annual report. Under the proposed combined system it is anticipated that certain information called for by this form will be set forth in the registrant's annual report to shareholders. The annual report will become the principal resource for use in connection with most filings required for the registration of securities. This release also describes briefly how the integrated disclosure system will operate if the modifications proposed are adopted and where present duplicative disclosure will be eliminated.

Two separate releases being issued concurrently with this one contain proposals for changes in accounting disclosure requirements. One release proposes certain uniform instructions as to financial statements included in annual reports to security holders and in most registration and reporting forms filed under the securities Act and the Exchange Act.[2] The second release proposes changes to Regulation S–X designed to eliminate, to the extent possible, the differences between the requirements of Regulation S–X and generally accepted accounting principles.[3] These accounting proposals, if implemented, would eliminate a large number of technical impediments to integration, would reduce the need to duplicate or repeat substantially identical financial information in various filings and reports and would complement the related changes in the Form 10–K.

Finally, under cover of a fourth release a new simplified form for the registration of securities issued in certain merger and reorganization transactions has been proposed. This form, designated Form S–15, would be the first to utilize the annual report to shareholders as the principal integrating disclosure document.[4]

As currently envisioned by the Commission, an integrated disclosure system would eliminate duplicative disclosure by allowing periodic and other reports filed under the Exchange Act to be used in connection with the registration of securities under the Securities Act. One way to permit such use is by incorporating a filed Exchange Act report by reference into a Securities Act registration statement, as is permitted in the case of present Form S–16. Incorporation by reference, however, has limitations; there is not assurance that the mere reference to incorporated information will be meaningful to the recipient of a prospectus. With respect to seasoned, exchange-traded companies the disadvantages of the incorporation by reference technique generally appear to be outweighed by the likelihood that the information in the incorporated filings has been thoroughly analyzed and has been reflected in the price or rating of the securities which are being offered. Thus, the cost savings of incorporation is justified. However, the Commission has been reluctant to extend the incorporation by reference technique to offerings by companies which are neither seasoned nor exchange-traded because the analysis may be less thorough.

The Structure of the New Form 10–K

The proposed Form 10–K has been structured to permit integrated disclosure concepts to be implemented to some extent with respect to all registered companies, whether or not they are exchange-traded and whether or not they qualify to use Form S–16. In this regard, the principal feature of the proposed Form 10–K is the requirement that certain basic financial information must be set forth in a registrant's annual report to shareholders and that this information, in turn, must be incorporated by reference into the Form 10–K. this procedure assures that the annual report to shareholders will contain information which the Commission believes should be given maximum public exposure. If this information is then available to supplement other documents describing offerings, it will not be necessary to duplicate the information in those other documents.

Although the proposed Form 10–K is designed to promote the integration of the Securities Act and Exchange Act disclosure systems, which was the basic goal set forth in the report of the Advisory Committee on Corporate Disclosure ("Advisory Committee"), the restructured format of the proposed form does not follow that suggested by the Advisory Committee. The Advisory Committee recommended a relatively unstructured document which would encourage registrants to combine informal annual and quarterly reports to shareholders into single documents to be filed as Form 10–K's and 10–Q's. The proposed form continues to encourage the combination of formal and informal reports. However, by mandating that some information must be in a registrant's annual report to shareholders, some of the flexibility

[1] *See generally* Cohen, "Truth in Securities" Revisited, 79 Harv. L. Rev. 1340 (1966); SEC, *Disclosure to Investors (Wheat Report)* (1969); Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission, Committee Print 95–29, House Committee on Interstate and Foreign Commerce, 95th Cong., 1st sess., November 3, 1977 (Advisory Committee).

[2] Securities Act Release No. 6179, January 15, 1980.

[3] Securities Act Release No. 6178, January 15, 1980.

[4] Securities Act Release No. 6177, January 15, 1980.

advocated by the Advisory Committee will not be available. Moreover, the proposed form changes the emphasis from the Form 10–K to the shareholder report. As a result, where the Advisory Committee envisioned the Form 10–K as the document to be integrated with the Securities Act filing, the proposed form now looks to the shareholder report as the critical integrating document.

The principal reasons for changing the emphasis from the Form 10–K to the shareholder report have been twofold. First, the presently existing annual report to shareholders is a readable document which is designed to be delivered to shareholders. In contrast, since the present Form 10–K has not been primarily designed for delivery to shareholders, it has a structure and technical quality which, though useful for analytical purposes, is not generally considered to be as readable as the annual report to shareholders. Second, the Commission does not believe it would be appropriate at this time to mandate a totally combined Form 10–K and annual report to shareholders in order to produce the readable Form 10–K which would be needed to form the basis for integration. Such a mandate might be overly burdensome on some registrants and also might make Commission staff review more difficult.[5] Under these circumstances the Commission believes that it would be wise to move slowly while still encouraging combination on a voluntary basis. In the meantime, the detailed disclosure will remain available in the filed Form 10–K in order to supplement the more abbreviated presentation in the shareholder's report.

The Content of the New Form 10–K

To some extent the Commission's decision to refocus attention on the annual report to shareholders has resulted from an increasing conviction that the quality of such reports is generally high and that few changes would be required to meet existing disclosure standards. In this regard, an examination of existing Form 10–K requirements and the requirements of Rule 14a–3 (17 CFR 240.14a–3) indicate that only two major innovations are necessary to insure minimum content would be in the shareholder report so that it could be used in connection with Securities Act filings. First, the requirements for financial statements in Regulation S–X and in Commission forms must be standardized and any major differences with generally accepted accounting principles must be resolved. The Commission believes that the changes proposed under cover of the two separate releases which are being promulgated concurrently address these needs.[6] Second, a more meaningful analysis of the registrant's business and financial condition must be presented in order to capture, at least in summary form, some of the essential qualities of the detailed business description which is presently only set forth in the Form 10–K and in most Securities Act forms. The proposed form addresses the business description in two ways. First, it is expected that reliance on the abbreviated description in the annual report required under Rule 14(a)(3) (17 CFR 240.14a–3) in connection with Securities Act filings should result in some additional attention and detail. Second, a totally revised management's discussion and analysis of the issuer's financial statements, liquidity and capital resources is expected to add needed analysis.

It should be emphasized that the minimal content changes proposed by the Commission are not intended to change the basic structure or quality of existing shareholder reports. Indeed, the Commission believes that the communicative style of these reports is generally excellent and that, by and large, these reports do not include the type of boilerplate disclosures and disclaimers which frequently do appear in formal Commission filings. It is hoped that the type of attention to style which is evidenced by better examples of shareholder reports will continue to have a salutary effect on all of the report content whether or not the particular information is also a part of the Form 10–K.

Since implementation of the requirements needed to insure that the annual report to shareholders will have the required minimum content does not involve combining all of the information in the Form 10–K with that in the annual report to shareholders, the proposed Form 10–K has been divided into three information packages. The first package consists of the information which is to be included in the annual report to shareholders. This information includes market price data for the registrant's shares, a summary of selected financial data, three years of audited financial statements and management's discussion and analysis of the issuer's financial statements. The requirements relating to this information package are set forth in Part II of the revised form. The second package consists of the traditional proxy disclosure information relating to beneficial ownership, directors and executive officers, and management remuneration. Requirements relating to this informational package are set forth in Part III of the form. Finally, the third information package retains the detailed disclosure requirements relating to business, properties and legal proceedings and, in accordance with the Commission's recent proposals, includes scaled down requirements for exhibits.[7] This last package, which is detailed in Parts I and IV of the revised form, is to a great extent supplemental to the first two packages.

While the three packages of information set forth in the four parts of the proposed Form 10–K do not fully implement the Advisory Committee's recommendations as to information content, the basic content advocated by the Advisory Committee has been preserved. The Advisory Committee suggested a five part form including: (1) a fact sheet consisting principally of capsule financial data and a brief description of the registrant's business; (2) background information intended to report special risks and uncertainties and special or distinct features of the registrant's operations or industry; (3) an analysis of financial statements and forward-looking information; (4) information relating to management currently found in proxy materials; and (5) audited financial statements. The proposed Form 10–K would require substantially all of the information in parts (1), (3) and (5) of the Advisory Committee's form to be in the annual report to shareholders. Although a separate discussion of risk factors would not be required in the proposed Form 10–K,[8] Some of the other features of part (2) of the Advisory Committee report have been incorporated into a proposed new management's discussion and analysis of the financial statements. Finally, part (4) of the Advisory

[5] The inability to assure in all cases that there will be a single document which will be usable as a combined report to shareholders and Form 10–K arises primarily because of the Business, Properties and Legal Proceedings disclosures called for under Items 1, 2 and 5 of Regulation S–K and because of certain parent and subsidiary financial statements required by Regulation S–X. Although it is hoped that most registrants will have little difficulty in presenting these items in a combined document, there is considerable evidence that in some cases the sheer volume of the disclosure called for by these items would adversely impact the readability of the registrant's annual reports to shareholders.

[6] Securities Act Release Nos. 6179 and 6178, January 15, 1980.

[7] Securities Act of 1933 Release No. 6149 (November 16, 1979) [44 FR 67143].

[8] Notwithstanding the decision to exclude the discussion of risk factors in the Form 10–K which is applicable to all registrants, such a discussion may be included in certain of the revised Securities Act forms. In this context, however, the focus would be on the particular issuer and the circumstances of the offering.

Committee form relating to information usually contained in the registrant's proxy materials, which is Part II of the present form, becomes Part III of the proposed form.

The Proposed New Integrated Disclosure System

It is currently anticipated that the integrated disclosure concept with respect to registered companies will be implemented in three general categories or levels. The degree of disclosure and to some extent the means of dissemination of the disclosure documents would vary with respect to each level. First, with respect to certain exchange or other widely traded, solvent companies, a short form registration similar to the present S–16 form would be available. This form would incorporate the 10–K and subsequent reports by reference. These disclosure requirements would be premised upon a finding that more extensive disclosure requirements are neither necessary nor appropriate in the public interest or for the protection of investors, since information concerning the issuer is generally available in the marketplace and is properly reflected in the price of the securities being distributed. In light of this finding, there would be little need to gather the information into a single comprehensive document or package of documents or to make physical delivery of the entire information package to offerees or purchasers.

The second level would be solvent companies which had been subject to the reporting requirements of the Exchange Act for three or more years.[9] Securities Act registration could be accomplished by preparing a prospectus describing the distribution and by delivering that prospectus together with the issuer's most recent shareholder's annual and quarterly reports to offerees and purchasers, rather than delivering a prospectus combining all the information required by Form S–1.[10] These types of disclosure and delivery requirements would attempt to minimize duplicative reporting under the Securities Act and the Exchange Acts, but would not assume that previously reported information was necessarily reflected in securities prices or had otherwise reached offerees and purchasers.[11]

Finally, with respect to financially troubled companies and those which had been subject to the Exchange Act reporting requirements for less than three years, a full Securities Act registration statement along the lines of either present Form S–1 or Form S–18 would be required. This approach would reflect differing concerns relating to each of the two classes of companies for which full disclosure and delivery of a detailed propectus would be required. First, insofar as financially troubled companies would be involved, the concern would be that Exchange Act reports would be rapidly outdated and that risks relating to the possibility of insolvency would call for enhanced disclosure. Second, with respect to companies which did not have three years of reports under the Exchange Act reporting system, the concern would be that there would have been an inadequate opportunity to evaluate the quality and sophistication of those reports.[12]

Obviously, under the integrated disclosure system, there would be some exceptions which would not fit precisely into the three levels outlined above. For example, there is no doubt that the Commission's ongoing program to assist and to reduce the burdens upon small business would be continued. Accordingly, it is anticipated that in some cases even the lowered burdens of the new system might be modified and abbreiviated.

It is contemplated that the integrated disclosure system, utilizing the new Form 10–K and the annual report to shareholders, will neither increase nor decrease the liability of any person under current securities laws. Although the new Form 10–K does call for signatures from the registrant's principal executive officer or officers, its principal financial officer, its controller or principal accounting officer and by a majority of the board of directors, current legal authorities indicate that under certain circumstances these persons are presently responsible for inaccurate information filed under the existing Exchange Act disclosure system.[13] Additionally, because the type of information which is to be contained in the annual report to shareholders under the new system is not significantly more extensive than that presently required under Rule 14a–3 (17 CFR 240.14a–3), the new system is not expected to increase liability in this area but instead should merely reduce the duplicated disclosure in the Form 10–K. Finally, to the extent that the annual report to shareholders is to be used in connection with Securities Act filings, it should be understood that only those portions of the report which are also a part of the Form 10–K Would be incorporated into the filing and would therefore be subject to the liability provisions of Section 11 of the Securities Act.[14]

Background

In response to the recommendation of the Advisory Committee that Form 10–K be amended to eliminate unnecessary requirements, add new requirements, and present the information in more effective format, the Commission issued a release on August 16, 1978 [15] requesting comments both on Part I of the Existing Form 10–K and on the substantially revised Form 10–K format recommended by the Committee. One hundred and eight letters of comment were received.

While the comments were obviously carefully conceived and drafted, and a number of them are reflected in the provisions which follow (with express notations where such is the case), as a

[9] The three year qualification requirement would correspond to the uniform three year requirement for financial statements proposed in Release No. 33–6179.

[10] Comments from interested persons are also requested at this time as to whether delivery of the most recent proxy statement of the issuer concerning the election of directors should also be required in this situation. *See* the accompanying release proposing the new Form S–15, Securities Act Release No. 6177.

The Commission is aware that subsequent events may require issuers to include updating disclosures as to such events in the prospectus in addition to delivery of the annual and quarterly reports. *Id.* Release No. 33–6177.

[11] As has been previously indicated, under cover of a separate release the Commission concurrently has proposed for comment a new Form S–15 which incorporates many of the features which it is envisioned would be applied to second level companies. Thus, the new proposed Form S–15, which would cover securities registered in certain merger and acquisition transactions, contemplates streamlined disclosure of the transaction and relies on annual and quarterly reports to shareholders for specific business and financial information relating to the individual participants in the transaction.

[12] Although no final determination has been made, at the present time it is contemplated that the integrated disclosure forms would not continue present distinctions as to the size of the registered entity, except to the extent that small business considerations might be involved. Instead, the new system would focus on the quality of the information concerning the registrant and the degree to which that information had been disseminated to shareholders and to potential investors.

[13] *See, e.g., Securities and Exchange Commission* v. *Kalvex*, 425 F. Supp. 310 (S.D.N.Y. 1975); *Blakely* v. *Lisac*, 357 F. Supp. 255 (D. Ore. 1972); Exchange Act §20, 15 U.S.C. 78t.

[14] The Commission also believes that the commonly stated perception that disclosures made under the Securities Act must be more legalistic and less communicative is misperception. Differences in the Securities Act and the Exchange Act with respect to liability do not relate to the form or the lucidity of disclosure but only to the degree of care taken in making the disclosure. On balance, the Commission believes that the slight increased cost associated with a higher standard of care in some circumstances will be more than offset by corresponding general reductions in the volume of required disclosure.

[15] Securities Exchange Act of 1934 Release No. 15068 (August 16, 1978) [43 FR 37460].

whole there was not sufficient focus or agreement among the commentators to enable the Commission to draw any broad conclusions concerning either the existing Form 10–K or that recommended by the Advisory Committee.

The resultant proposed Form 10–K, described and set forth below, is a combination of changes resulting from the comments, staff studies, and other information sources. As is indicated above, the revisions were designed primarily to facilitate the implementation of an integrated disclosure system. However, may changes are also designed to promote a number of other important purposes, including:

(1) Elimination of unnecessary disclosure;

(2) Reduction of Commission staff review time;

(3) Preservation of Form 10–K as the basic information repository on a particular company; and

(4) Improvement of the quality of disclosure in shareholder communications to the extent consistent with registrants' prerogative to exercise reasonable discretion with respect to the format and content of the annual report to shareholders.

The following table presents, in outline form, the changes proposed in the existing Form 10–K:

Item and Status

General Instructions. Revised.

Part I

- Item 1. Business. Revised [In revised S–K Item 1].
- Item 2. Summary of Operations. Deleted [Replaced by Selection Financial Data, New Item 5].
- Item 3. Properties. Unchanged.
- Item 4. Parents and Subsidiaries. Deleted [But Replace by an Exhibit].
- Item 5. Legal Proceedings. Unchanged.
- Item 6. Increases and Decreases in Outstanding Securities and Indebtedness. Deleted.
- Item 7. Changes in Securities and Changes in Security for Registered Securities. Deleted.
- Item 8. Defaults Upon Senior Securities. Deleted.
- Item 9. Approximate Number of Equity Security Holders. Deleted [But Replaced by a Requirement in New S–K Item 9].
- Item 10. Submission of Matters to a Vote of Security Holders. Deleted.
- Item 11. Indemnification of Directors and Officers. Deleted.
- Item 12. Financial Statements, Exhibits filed, and Reports on Form 8–K. Revised.

Part II

- Item 13. Security Ownership of Certain Beneficial Owners and Managers. Unchanged.
- Item 14. Directors and Executive Officers of the Registrant. Unchanged.
- Item 15. Management Remuneration and Transactions. Unchanged.
- Signatures Revised.
- Instructions as to Financial Statements. Deleted [Replaced by New Item 7].
- Instructions as to Exhibits. Revised [Per New Regulation S–K Item 8]
- Supplemental Information. Unchanged.

The proposed new Form 10–K consists of four parts containing the items outlined below. The information required by Part I, at the registrant's option, may be supplied by incorporating the information from an annual report to shareholders furnished to the Commission pursuant to Rule 14a–3(b) or Rule 14c–3(a), provided the report contains the required disclosure. Conversely, the information required by Part II must be supplied by incorporating by reference from the annual report to shareholders if such report is available, and the information required by Part III must be supplied by incorporating by reference from the election of directors proxy statement (or information statement), if such statement is available.

Outline of Proposed Form 10–K

General Instructions

Part I

- Item 1. Business.
- Item 2. Properties.
- Item 3. Legal Proceedings.

Part II

- Item 4. Market for the Registrant's Securities and Statement of Dividend Policy.
- Item 5. Selected Financial Data.
- Item 6. Management's Discussion and Analysis of Financial Condition and Results of Operations.
- Item 7. Financial Statements.

Part III

- Item 8. Directors and Executive Officers of the Registrant.
- Item 9. Management Remuneration and Transactions.
- Item 10. Security Ownership of Certain Beneficial Owners and Management.

Part IV

- Item 11. Exhibits and Reports on Form 8–K.
- Signatures
- Supplemental Information

Discussion of Items in Proposed Form 10–K Which are Unchanged From Current Form 10–K

Item 2. Properties. [Item 3 of Current Form 10–K]

Except for the numbering this Item is unchanged from the existing Item 3, "Properties."

A thorough analysis was made of Item 2 of Regulation S–K. Consideration was made of such factors as the comments received on the Item when it was originally proposed for comment in May of 1977, as well as comments received on the existing Form 10–K in the Commission's release of August 16, 1978.[16] Accordingly, on the bases of the careful work that went into drafting Item 2, the Commission's short experience with the Item (since March 31, 1978), and the importance of maintaining the integrity of Regulation S–K with its attendant value to the integration of Form 10–K into Securities Act filings, the Commission believes Item 2 should not be revised at this time.

Item 3. Legal Proceedings. [Item 5 of Current Form 10–K]

Except for the numbering the Item is unchanged from the existing Item 5, "Legal Proceedings." The underlying Regulation S–K Item 5, "Legal Proceedings," was recently adopted (July 28, 1978) [17] and the Commission accordingly does not believe it is necessary to revisit this disclosure at the present time.

Item 8. Directors and Executive Officers of the Registrant. [Item 14 of Current Form 10–K]

Item 9. Management Remuneration and Transactions. [Item 15 of Current Form 10–K]

Item 10. Security Ownership of Certain Beneficial Owners and Management. [Item 13 of Current Form 10–K]

All three of these items have recently been the subject of the comment process, Item 9 (Item 15 of current Form 10–K; also Item 4 of Regulation S–K) having been adopted as recently as December 4, 1978.[18] Certain aspects of these items are still being reconsidered at the present time. Accordingly, the Commission does not feel it appropriate or necessary to propose amending these Items at this time.

Discussion of Items in Current Form 10–K Which are Deleted from Proposed Form 10–K

Item 2. Summary of Operations

The basis for deleting this Item is contained in the discussion of the new replacement Item 5 relating to selected financial data. Briefly, however, it is proposed to delete this item as a consequence of two basic decisions. First, the Commission believes that five year information is relevant primarily where it can be related to trends in the registrant's business. The current summary is not limited to this type of

[16] Securities Exchange Act of 1934 Release No. 15068 (August 16, 1978) [43 FR 37460].

[17] Securities Act of 1933 Release No. 5949 (July 28, 1978) [43 FR 34402].

[18] Securities Act of 1933 Release No. 6003 [43 FR 58181].

information about trends. Second, as a result of the change of focus of Management's Discussion and Analysis to a discussion of the financial statements, the summary of operations is no longer the subject of that discussion. Therefore, its presentation is no longer needed.[19]

Item 4. Parents and Subsidiaries

While the Advisory Committee's Form 10–K contains only a "list of all subsidiaries" as contrasted with the more detailed parent and subsidiary disclosure of Item 4 of the existing Form 10–K, a number of commentators felt that the list of all subsidiaries should not be required. After consideration the Commission has determined that the value of parent and subsidiary data is not sufficient to warrant its inclusion in Form 10–K itself and accordingly proposes the deletion of Item 4. On the other hand, the Commission does believe that occasional references to this data may be useful. Accordingly, a new exhibit requiring a list of all subsidiaries in the form suggested by the Advisory Committee has been proposed.

Item 6. Increases and Decreases in Outstanding Securities and Indebtedness

Item 7. Changes in Securities and Changes in Security for Registered Securities

Item 8. Defaults Upon Senior Securities

Item 10. Submission of Matters to a Vote of Security Holders

Item 11. Indemnification of Directors and Officers

The above five Items were omitted by the Advisory Committee from their Form 10–K and were the subject of an express inquiry in release No. 34–15068 as to their usefulness. A significant number of commentators agreed with the Advisory Committee that all of these Items should be deleted, either because the information called for is not generally useful (this was felt to be particularly true of Item 12, Indemnification of Directors and Officers) or because the information is available elsewhere (i.e., in Form 10's or in the financial statements). Several commentators indicated that this information would have to be disclosed either in the text or in the notes to the financial statements, if material, even if there is no specific item requirement covering the particular event or transaction. The Commission agrees with these commentators and accordingly proposes omitting these items from the revised Form 10–K.

Item 9. Approximate Number of Equity Security Holders

This item has been deleted, but the substance has been added to new Item 9 of Regulation S–K, which deals with market information concerning the registrant's securities and the registrant's dividend policy. The Commission believes that the information concerning the number of security holders will have greater utility in this context.

Discussion of Proposed Form 10–K Items and Instructions which Are New or are Revised From Current Form 10–K

General Instruction D. Signatures and Filing of Report

This instruction is proposed to be expanded to require that the Form now be signed on behalf of the issuer by the registrant's principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and by a least the majority of the board of directors or persons performing similar functions.

While the Commission is aware that this proposed change constitutes a significant expansion of the existing signature requirements, it does not believe that this expansion will have substantial legal effect. In the Commission's view the persons who would be required to sign the revised form are presently legally responsible for the information content of the existing form. Although it does appear that in most cases these persons are aware of their present responsibilities, there have been cases where a lack of awareness may have existed. Accordingly, it is believed that the proposed signature requirement will enhance director awareness of and participation in the preparation of the Form 10–K information.[20]

The Commission believes that an enhanced quality of disclosure in the Form 10–K and in shareholder reports will be necessary if the integration of disclosure under the Securities Act and the Exchange Act is to be achieved in a successful manner. To some extent increased director participation in the preparation of these documents should contribute to this goal. The Commission acknowledges, however, that director participation alone may not be enough. In this regard, the Division of Corporation Finance has recently announced its intention to devote greater resources to a review of filings made under the Exchange Act, including in particular Form 10–K's.

General Instruction H. Form 10–K Information Required To Be Incorporated by Reference

Three proposed revisions are set forth in this instruction. The first revision requires that the financial statements and certain other disclosures called for by Rule 14a–3 [17 CFR 240.14a–3] [or Rule 14c–3[17 CFR 240.14c–3]] contained in the annual report to shareholders must be incorporated by reference into the Form 10–K.[21] The second requires that the proxy or information statement for election of directors must be incorporated by reference into the Form 10–K. The third requires that any annual report to shareholders or proxy statement (information statement) incorporated by reference must be furnished to everyone who receives a copy of the Form 10–K from the registrant.

The required incorporation by reference of the annual report to shareholders and proxy statement (information statement) is motivated by a desire to reduce the number of different documents companies must file, to concurrently reduce the number of documents the Commission staff must review, and to make portions of the annual report to shareholders available for use in connection with Securities Act filings. The policy behind the delivery requirement for the annual report to the shareholders and the proxy statement (information statement) is simply to assure adequate dissemination of the

[19] If the Summary of Operations is deleted from Form 10–K, it is anticipated that technical changes will be adopted which also delete the Summary of Operations from the various other forms where it appears. Examples would be deletion of Item 6 of Form S–1 under the Securities Act and Item 2 of Form 10 under the Exchange Act.

[20] The Commission, of course, is aware that specific signature requirements are imposed under Section 6(a) of the Securities Act and that the Exchange Act contains no corresponding specific signature provision. The Commission does not believe that this omission in the Exchange Act precludes signature requirements for Exchange Act reports. Indeed, signature requirements have long been imposed with respect to filings made under Section 13(a), including the Form 10–K. In this regard it should be noted that the proposed Form 10–K requires each person to sign on behalf of the registrant and indicates that each person separately shall set forth the position held with the registrant.

[21] Pursuant to the proposed revised Rule 14a–3 (Rule 14c–3) and Items 7 and 11 of this proposed new Form 10–K, all financial statements required by Regulation S–X shall be included in the annual report to security holders (which is then incorporated by reference into the Form 10–K) except: (1) separate financial statements of the registrant only (where consolidated financial statements of the registrant and its subsidiaries are included); (2) separate financial statements of subsidiaries not consolidated and fifty percent or less owned persons; (3) separate financial statements of consolidated majority owned subsidiaries of the registrant engaged in diverse financial activities; (4) separate financial statements of affiliates whose securities are pledged as collateral; and (5) financial statement schedules.

information contained in those documents.

Item 1. Business

As presently constituted this item consists of the information required by Item 1 of the Regulation S–K, except that the discussion of the development of a registrant's business need only include developments since the beginning of the fiscal year.

It is proposed to amend paragraph (b) of Item 1 of S–K to reduce from five to three the number of years for which specific industry segment data must be supplied. This change is proposed to conform to the general decision to require financial statement and related information for a uniform three year period. Notwithstanding this proposed change, however, it should be noted that significant trend data might still be presented in the Selected Financial Data called for under Item 5 of the proposed Form 10–K, and some registrants might find it advisable to include five year selected segment data in that context.

A thorough analysis was made of the other provisions of Item 1 of Regulation S–K. Consideration was given to such factors as the comments received on the Item when it was originally proposed for comment in May of 1977, [22] as well as comments received on the existing Form 10–K in the Commission's release of August 16, 1978. While the terms of the Item are quite detailed and lengthy, a factor which has not gone unnoticed by some commentators, the actual disclosure required is not that rigid, as can be seen from an excerpt from part c(1) of the Item which provides: "The description of each such segment shall include the information specified in paragraphs (i) through (x) below *to the extent material to an understanding of the registrant's business taken as a whole.*" (Emphasis supplied). Accordingly, on the bases of the careful work that went into drafting Item 1, the Commission's short experience with the Item (since March 31, 1978), and the importance of maintaining the integrity of Regulation S–K into Securities Act filings, the Commission believes that no major revisions other than the one referred to above should be made at this time.

Notwithstanding the foregoing, however, the Commission believes that it would be appropriate for commentators to suggest any changes in the form or content of the business description which they may feel would be appropriate. In particular, commentators who do wish to suggest changes should consider the advisability of (1) requiring Item 1 disclosure to be included in annual reports to shareholders in its current form or as modified by proposed changes; or (2) conforming the present detailed segments reporting requirements in paragraph (b) of Item 1 to the similar but somewhat less extensive requirements in SFAS 14. [23]

Item 4. Market for the Registrant's Securities and Statement of Dividend Policy

Although this item is new to the Form 10–K and to Regulation S–K its contents are similar to that of paragraph (8) of Rule 14a–3 [17 CFR 240.14a–3] (which requires market price information to be included in the annual report to shareholders), to Guide 26 of the Guides for Preparation and Filing of Registration Statements under the Securities Act (which requires a statement of a registrant's dividend policy) and to Item 9 of present Form 10–K (which requires information as to the approximate number of equity security holders.) The language setting forth the proposed disclosure on market price information has been slightly amended to conform to identical disclosure requirements in Schedule 13E–3 (17 CFR 240.13e–100). Otherwise, the principal change which would be implemented if this item were adopted would be to move the item to Form S–K where it can more easily be referenced into other forms, if at a later date such a reference appears to be advisable.

The Commission is aware that the information requirements presently set forth in paragraph (8) of Rule 14a–3 (17 CFR 240.14a–3) have been criticized for not also requiring the presentation of industry or market data which may be used for comparison purposes. In light of this criticism the Commission would like commentators to consider whether the item should be expanded to require the presentation of market data either of a general nature or of an industry specific nature and whether, if such data were required, it should be presented in one or more specific graphic forms. For example, one such possibility might require the presentation in graphic form of individual company market data together with data relating to a standardized market performance index.

Item 5. Selected Financial Data

The summary of operations presently called for under Item 2 of Form 10–K has been deleted and in lieu thereof there has been inserted as Item 5 to the proposed form a requirement calling for Selected Financial Data. This new requirement is designed to present significant five year trend data relating to a registrant's revenues, income from continuing operations, liquidity and capital resources. Although a registrant would be permitted to include other financial information in addition to that specified, it would be expected that any presentation of additional information would not unnecessarily emphasize income or revenues as opposed to liquidity or capital resources.

The deletion of the present summary and the substitution of selected financial data reflects the Commission's concern that operations summaries have duplicated information otherwise available in income statements, have not presented significant trend information and may have unduly emphasized income over other enterprise performance measures. The Commission recognizes that a detailed specification of the contents or format of a summary might not cure the perceived deficiences. Accordingly, it is hoped that the proposal will strike a reasonable balance between specified content and a flexible approach which permits registrants to select that data which best indicates performance. In particular, those registrants who present the information relating to the impact of inflation and current prices on their business required by SFAS 33 [24] would be encouraged to combine the summary information required by SFAS 33 with the information by the proposed new item.

To a great extent the revised selected financial data follows the format suggested by the Advisory Committee and presented in Release 34–15068. The few revisions included have been made in response to the commentators' requests for increased flexibility in the form and content of the presentation. In particular, instructions relating to working capital have been included in response to suggestions that a traditional working capital measure may not always be appropriate for all businesses.

Item 6. Management's Discussion and Analysis of Financial Condition and Results of Operations

The proposed Form 10–K incorporates an entirely restructured management's discussion and analysis. Additionally, this item has been moved from the

[22] Securities Act of 1933 Release No. 5826 (May 10, 1977) [42 FR 26010]

[23] "Financial Reporting For Segments of A Business Enterprise."

[24] "Financial Reporting and Changing Prices."

Guides to become new Item 9 in Regulation S–K.[25]

The major features of the new proposal are as follows:

(1) The discussion is to be focused on the financial statements, and is no longer centered upon a summary of operations. Indeed, as has been indicated above, the summary of operations has been eliminated.

(2) The new item calls for inclusion in the discussion of three financial aspects of the registrant's business—liquidity, capital resources and results of operations.

(3) Within each area of the discussion there is emphasis upon favorable or unfavorable trends and upon the identification of significant events or uncertainties.

(4) Segment information is required only if, in the registrant's judgment, it is appropriate to an understanding of the registrant's business.

(5) Information concerning the effects of inflation and changing prices is required. However, those registrants which also are required to comply with SFAS 33 relating to the same subject may satisfy both the SFAS 33 requirements and the requirements of the proposed item with a single presentation.

(6) The percentage tests and line by line analysis encouraged by the present requirements contained in Guides 1 and 22 have been eliminated. However, instruction 4 to the proposed item does indicate that the causes for material changes in line items should be discussed.

(7) The new item would not specifically require projections or other forward-looking information, although instruction 7 would encourage the presentation of this type of information on a voluntary basis.

(8) No specific provisions with respect to the location of management's discussion have been included, except for the general requirement that the discussion must be included within the annual shareholders report.

The Commission is concerned that the disclosure elicited by the present requirements of Guides 1 and 22 is not fulfilling originally contemplated objectives. A statement of corporate objectives can be helpful to investors. The management discussion and analysis affords to management an opportunity to discuss the implication of numerical results on a realistic basis. In general, however, a disclosure format has developed whereby a discussion of implications is not presented. Instead, the percentage tests are applied without regard to any concept of materiality or significance to the registrant's business. Accordingly although some portions of the resulting discussion may be meaningful, the meaningful discussion is obscured by the inclusion of material which is of little relevance.

Secondly, the Commission is concerned that the focus of the requirements of Guides 1 and 22 is too narrow. In today's environment there is a growing need to analyze enterprise liquidity and capital resources, in addition to revenues and income. The narrow approach presently set forth in Guides 1 and 22 does not necessarily produce a discussion which will focus upon the financial condition of the enterprise as a whole.

Finally, the Commission, as it has indicated on a number of occasions, is concerned about the adequacy of disclosures with respect to the impact of inflation and changing prices on individual registrant's businesses. Although the Commission does not believe that it would be appropriate at this time to expand the applicability of SFAS 33 beyond that established by the Financial Accounting Standards Board, it does believe that all registrants, including those which are not required to present SFAS 33 information, should make some textual presentation with respect to these matters. In this regard the Commission believes that management's discussion and analysis should focus on translating what some believe to be potentially confusing information into a meaningful discussion of the effects of changing prices on the registrant's business. In some cases those registrants which are required to report under 33 may determine to display data in addition to that required in order to make the required data more meaningful. In any event, however, all registrants should take advantage of the opportunity to present the additional quantitative and qualitative information that they believe will be useful to investors in evaluating their companies.

The Commission believes that the revised discussion and analysis will be responsive to at least some of the concerns raised by the commentators in response to specific inquiries numbered 9, 10 and 11 set forth in Release No. 34–15068. For example, the commentators generally favored a structure that would broaden the scope of the analysis and which would eliminate the percentage tests. There were, however, dissenters from this view who felt that such a broadening of scope or the elimination of the percentage tests would leave registrants with insufficient guidance as to the matters requiring discussion. The revised proposal indicates the Commission's concurrence with the majority view. In response to the concerns of the minority, though, considerable detail as to the matters to be discussed has been included.

The commentators responding to Release No. 34–15068 also resisted the suggestion that the location of management's discussion should be specified. Again, the current proposals would follow the majority view. The Commission believes, however, in light of the new focus and substantial changes in the item, that it would be appropriate for the commentators to again address the issue as to whether or not a specific location of management's discussion and analysis should be prescribed.

The Commission is aware that several of the concepts included in the revised item may be controversial and that the proposed item requires the discussion of complex questions where no definitive answers may be available. Accordingly, it may be helpful for the commentators to address alternatives which might better achieve the Commission's goals or which would eliminate some of the controversy or complexity without decreasing the usefulness of the proposed discussion. In particular, commentators should address the following issues:

(1) In light of the fact that working capital is not always an appropriate measure of liquidity, should the Commission be more specific as to possible alternative presentations which would describe a registrant's liquidity position? If so, what alternatives should be offered?

(2) Is the requirement as to the presentation of segment information appropriate? Should this requirement be deleted or, conversely, should it be expanded?

In presenting comments it is hoped that the basic objectives of the revised discussion will be recognized. The management discussion gives the registrant an unusual opportunity to articulate its objectives and financial policies; to describe where it is headed and how it hopes to get there; and to establish and maintain credibility. Included in the management discussion should be factors about the particular business which management is in the best position to know. For each business, there is a limited set of critical variables which presents the pulse of the business. Management is in the best position to know what it is about its company that is important to the users

[25] Should the approach be adopted with regard to the Form 10–K it is expected that the new Item 9 of Regulation S–K will also be made a part of other Securities Act and Exchange Act forms, such as Form S–1 and Form 10.

of its reports, and management need not await the development of specific disclosure requirements by the Commission.

Item 7. Financial Statements

Concurrently with the publication of this release the Commission, under cover of a separate release, has proposed for comment uniform financial statement instructions and various amendments to Regulation S–X which are designed to facilitate the implementation of the proposed integrated disclosure system.[26] Although reference should be made to the two releases setting forth these proposals for full details, the principal goals of the proposed amendments are to adopt uniform three year income statement and statement of changes in financial position and two year balance sheet requirements for all registration forms and to eliminate, to the extent possible, the differences between the requirements of generally accepted accounting principles and those of Regulation S–X.

Although the Commission will consider these issues separately in the context of the two accounting releases, commentators should be aware that the issues raised by those releases are intimately related to those raised by the proposed amendments to Form 10–K.

Item 11. Exhibits and Reports on Form 8–K

Recently in Release No. 33–6149 [27] the Commission proposed extensive revisions in the general exhibit requirements applicable to all forms including the Form 10–K. The proposed form set forth below assumes the adoption of the proposed exhibit changes. Naturally, should the Commission decide not to implement some or all of the proposed exhibit changes a corresponding revision would be made in proposed Item 11. An addition has been made to this Item as proposed in Release No. 33–6149 to require that the financial statements and schedules which are required in the Form 10–K but which are not required in the annual report to shareholders pursuant to Rule 14a–3 (or Rule 14c–3), be filed as exhibits to the Form. The purpose of this change is to facilitate integration of the annual report to shareholders and the Form 10–K.

Finally, a new exhibit requiring the preparation of a list of the registrant's subsidiaries and setting forth limited data concerning subsidiaries has been added to the proposed new Item 8, Exhibits, of Regulation S–K. This list replaces Item 4 in the present Form 10–K. It is contemplated that this list would be repeated in each annual filing or an express reference to the most recent list filed would be included.

Amendments to Rule 14a–3 and Rule 14c–3—Discussion

The proposed changes in Rule 14a–3 and Rule 14c–3 are minimal and are basically technical in nature, that is, they are made to reflect other substantive rule and regulation amendments proposed in this release and the two accounting releases.[28] Subparagraphs (b)(1), (b)(2), and (b)(3) of Rule 14a–3 and subparagraphs (a)(1), (a)(2), and (a)(3) of Rule 14c–3 are amended to reflect the proposed new uniform Regulation S–X financial statement instructions. Subparagraph (b)(4) of Rule 14a–3 and subparagraph (a)(4) of Rule 14c–3 are revised to delete the reference to the summary of operations and to replace it with proposed Items 10 and 11 of Regulation S–K, Selected Financial Data and Management's Discussion and Analysis of Financial Condition and Results of Operations, respectively. The disclosure presently contained in subparagraph (b)(8) of Rule 14a–3 and subparagraph (a)(8) of Rule 14c–3 is deleted and a reference to the new Regulation S–K Item 9, Market Price of the Registrant's Securities and Statement of Dividend Policy, which is a revised and expanded version of that subparagraph, is inserted. Subparagraph (b)(9) of Rule 14a–3 and subparagraph (a)(9) of rule 14c–3 is expanded to indicate that if a registrant prepares an annual report to shareholders which meets all the Form 10–K disclosure requirements, it need not also supply a Form 10–K to requesting shareholders. Finally, subparagraph (c) of rule 14a–3 and subparagraph (b) of Rule 14c–3 are revised to reflect the fact that General Instruction H to the proposed Form 10–K requires that certain information from the annual report to shareholders be incorporated by reference into the Form 10–K and that such parts of the annual report are therefore "filed" for purposes of Section 18 of the Exchange Act.

Amendments to Guides for Preparation and Filing of Reports and Registration Statements Under the Securities Exchange Act of 1934

Guide No. 1 Summary of Operations

If the proposal to delete Item 2, Summary of Operations, from the Form 10–K is adopted, appropriate deletions would also be made from other Exchange forms and this Guide would be concurrently rescinded.

Guide No. 4 Integrated Reports to Shareholders

Depending upon the proposed changes to Form 10–K that are finally adopted, corresponding changes may be made in this Guide.

Amendments to Guides for Preparation and Filing of Registration Statements Under the Securities Act of 1933

Guide No. 22 Summary of Operations

If the proposal to delete Item 2, Summary of Operations, from the form 10–K is adopted, appropriate deletions would be made from other Securities Act forms and this Guide would be concurrently rescinded.

Guide No. 26 Statement of Dividend Policy

If proposed Item 9 of Regulation S–K, Market Price of the Registrant's Securities and Statement of Dividend Policy, is adopted, this Guide would be concurrently rescinded.

Text of Proposed Form and Rules

17 CFR Chapter II is proposed to be amended as follows:

1. By amending § 249.310 to read as follows:

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

§ 249.310 Form 10–K, annual report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

General Instructions

* * * * *

C. Preparation of Report.

(a) This form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report on paper meeting the requirements of Rule 12b–12. Except as provided in General Instruction H, the report shall contain the item numbers and captions of all items but the text of such items may be omitted. The answers to the items shall be prepared in the manner specified in Rule 12b–13.

* * * * *

D. Signature and Filing of Report.

* * * * *

The report shall be signed by the registrant, and on behalf of the registrant by its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and by at least the majority of the board of directors or persons performing similar functions. If

[26] Securities Act Release Nos. 6179 and 6178, January 15, 1980.

[27] November 16, 1979 [44 FR 67143].

[28] Securities Act Release Nos. 6178 and 6179, January 15, 1980.

the registrant is a foreign person, the registration statement shall also be signed by its authorized representative in the United States. The name of each person who signs the report shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the report.

* * * * *

H. Form 10–K Information Required to be Incorporated by Reference.

(a) The information called for by Part II of this form (Items 4 through 7) shall be incorporated by reference from the registrant's annual report to security holders furnished to the Commission pursuant to Rule 14a–3(b) or Rule 14c–3(a). The information so incorporated by reference shall be furnished to everyone who receives a copy from the registrant of its Form 10–K (except for security holders who have previously received the incorporated information).

(b) The information called for by Part III (Items 8 through 10) shall be incorporated by reference from the registrant's definitive proxy statement (filed pursuant to Regulation 14A) or definitive information statement (filled pursuant to Regulation 14C) which involves the election of directors. However, the information regarding executive officers called for by Item 3 of Regulation S–K may be included in Part I of Form 10–K. *See* Instruction 4 to Item 3(b) of Regulation S–K (17 CFR 229.20). The Part III information may, at the option of the registrant, be filed as an amendment to the report not later than 120 days after the end of the fiscal year covered by the report. Such amendment shall be filed under cover of Form 8. The information so incorporated by reference shall be furnished to everyone who receives from the registrant a copy of its Form 10–K (except for security holders who have previously received the incorporated information).

(c) The information required by Part I of this form (Items 1 through 3) may, at the registrant's option, be incorporated by reference from the registrant's annual report to security holders furnished to the Commission pursuant to Rule 14a–3(b) or Rule 14c–3(a).

(d) If, at the time the Form 10–K is due, the registrant is not required to furnish the Commission with an annual report to security holders pursuant to Rule 14a–3(b) or Rule 14c–3(a) or a proxy statement pursuant to Regulation 14A or an information statement pursuant to Regulation 14C which involves the election of directors, the information required by Parts II and III of this form (Items 4 through 10) shall be set forth in the form.

(e) No item numbers or captions of items need be contained in the material incorporated by reference into the report. However, the registrant's attention is directed to Rule 12b–23(e) regarding the specific disclosure required in the report concerning information incorporated by reference. When the registrant combines all of the information in Parts I and II of this form (Items 1 through 7) by reference from the registrant's annual report to security holders furnished to the Commission pursuant to Rule 14a–3(b) or Rule 14c–3(a) and all of the information in Part III of this form (Items 8 through 10) by reference from a definitive proxy statement or information statement involving the election of directors, then notwithstanding General Instruction C(a), this form shall consist of the facing page, the annual report to security holders, the proxy or information statement and the information, if any, required by Part IV of this form, signatures, and a cross reference sheet setting forth the item numbers and captions in Parts I, II and III of this form and the page or pages in the referenced materials where the corresponding information appears.

* * * * *

J. Issuers Filing on Form S–18.

If the issuer . . . in lieu of the information called for by Item 1, Business, and Item 9, Management Remuneration and Transactions, herein. Item 5, Selected Financial Data, may be omitted at the election of such issuer.

* * * * *

K. Omission of Information by Certain Wholly-Owned Subsidiaries.

(a) * * *

(1) All of the registrant's equity securities . . . as applicable, and which is named in conjunction with the registrant's description of its business;

(b) * * *

(1) Such registrants may omit the information called for by Item 5, Selected Financial Data, and Item 6, Management's Discussion and Analysis of Financial Condition and Results of Operations . . . .

(2) Such registrants may omit the list of subsidiaries exhibit called for by Item 8 of Regulation S–K (17 CFR 229.20).

(3) Such registrants may omit the information called for by the following otherwise required Items: Item 8, Directors and Executive Officers of the Registrant; Item 9, Management Remuneration and Transactions; and Item 10, Security Ownership of Certain Beneficial Owners and Management.

(4) In response to Item 1 . . . and in response to Item 2, Properties . . . .

Part I

[See General Instruction H(c)]

* * * * *

Item 2. Properties.

Information relating to properties shall be furnished in accordance with the provision of Item 2 of Regulation S–K (17 CFR 229.20).

Item 3. Legal Proceedings.

The description of legal proceedings shall include the information required by Item 5 of Regulation S–K (17 CFR 229.20).

Part II

[See General Instruction H(a)]

Item 4. Market for the Registrant's Securities and Statement of Dividend Policy.

Information relating to the market for the registrant's securities and the statement of dividend policy shall be furnished in accordance with the provisions of Item 9 of Regulation S–K (17 CFR 229.20).

Item 5. Selected Financial Data.

Selected financial data shall be furnished in accordance with the provisions of Item 10 of Regulation S–K (17 CFR 229.20).

Item 6. Management's Discussion and Analysis of Financial Condition and Results of Operations.

The management's discussion and analysis of financial condition and results of operations shall be furnished in accordance with the provisions of Item 11 of Regulation S–K (17 CFR 229.20).

Item 7. Financial Statements.

Financial statements meeting the requirements of Regulation S–X (17 CFR 210.1–02) shall be filed. Financial statements of the registrant and its subsidiaries consolidated [as required by Rule 14a–3(b)] shall be filed under this Item. Other financial statements and schedules required under Regulation S–X shall be filed as an exhibit pursuant to Item 11, Exhibits and Reports on Form 8–K, of this Form.

Part III

[See General Instruction H(b)]

Item 8. Directors and Executive Officers of the Registrant.

The description of directors and executive officers shall include the information required by Item 3 of Regulation S–K (17 CFR 229.20).

Item 9. Management Remuneration and Transactions.

The description of remuneration of directors and officers shall include the

information required by Item 4 of Regulation S–K (17 CFR 229.20).

Item 10. Security Ownership of Certain Beneficial Owners and Management.

The description of principal security holders and security holdings of management shall include the information required by Item 6 of Regulation S–K (17 CFR 229.20).

Part IV

Item 11. Exhibits and Reports on Form 8–K.

(a) * * *

(2) Exhibits, as required by Item 8 of Regulation S–K (17 CFR 229.20).

(b) * * *

(c) Registrants shall file, as exhibits to this Form, the financial statements required by Regulation S–X which are excluded from the annual report to shareholders by Rule 14a–3(b)(1), including (1) separate financial statements of the registrant only (where consolidated financial statements of the registrant and its subsidiaries are included); (2) separate financial statements of subsidiaries not consolidated and fifty percent or less owned persons; (3) separate financial statement of consolidated majority-owned subsidiaries of the registrant engaged in diverse financial activities; (4) separate financial statements of affiliates whose securities are pledged as collateral; and (5) financial statement schedules.

Signatures

[See General Instruction D]

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Registrant) _____

By (Signature and Title)* _____

Date _____

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

(Signature and Title)* _____

(Date) _____

* * * * *

(Signature and Title)* _____

(Date) _____

* Print the name and title of each signing officer and director under his signature.

Supplemental Information To Be Furnished With Reports Filed Pursuant to Section 15(d) of the Act by Issuers Which Have Not Registered Securities Pursuant to Section 12 of the Act

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934—REGULATIONS S–K

* * * * *

§ 229.20 [Amended]

2. By amending § 229.20 to amend Item 1 to read as follows:

Item 1. Description of business

(a) * * *

(b) Financial information about industry segments.

(1) Industry segments. State for each of the registrant's last three fiscal years or for each fiscal year the registrant has been engaged in business, whichever period is shorter * * *

* * * * *

3. By amending § 229.20 to amend Item 8 [as proposed in Securities Act of 1933 Release No. 6149 (November 16, 1979)] to read as follows:

Item 8. Exhibits.

(a) * * *

Table II Securities Exchange Act of 1934—Frequently Used Forms

* * * * *

(21) Subsidiaries of the registrant 10–K/x

(b) * * *

(21) List all subsidiaries of the registrant, the state or other jurisdiction of incorporation or organization of each, and the names under which such subsidiaries do business.

* * * * *

4. By amending § 229.20 by adding Item 9 to read as follows:

Item 9. Market price of the registrant's securities and statement of dividend policy.

Identify the principal market or markets in which the registrant's securities are being traded and, if a principal market for a class of securities is an exchange, state the high and low sales prices for the securities as reported in the consolidated transaction reporting system or, if not so reported, on such principal exchange for each quarterly period during the past two years. If the principal market for a class of securities is not an exchange, state the range of high and low bid quotations for each quarterly period during the past two years, the source of such quotations and, if there is no market for such securities (excluding limited or sporadic quotations), furnish a statement to that effect.

Set forth the approximate number of holders of each class of equity securities of the registrant as of a recent date.

State the frequency and amount of any dividends paid during the past two years with respect to each class of equity securities and briefly describe any restriction on the issuer's present or future ability to pay such dividends.

Instructions

1. Information need not be given with respect to outstanding non-transferable options and interests in employee plans or with respect to classes of securities which neither are registered under section 12 of the Exchange Act nor have given rise to a reporting requirement under section 15(d) of the Exchange Act.

2. The computation of the approximate number of holders of a class of equity securities may be based upon the number of record holders or may also include individual participants in security position listings. *See* Rule 17Ad–8 (17 CFR 240.17Ad–8). The method of computation which is chosen should be indicated.

3. Where a registrant has a record of paying no dividends although earnings indicate an ability to do so, the registrant should consider the question of its intention to pay cash dividends in the foreseeable future, and if no such intention exists, a statement of that fact should be set forth in the filing. Registrants which have a history of paying dividends are also strongly encouraged to indicate whether dividends will continue to be paid in the future. Such forward-looking information is expressly covered by the safe harbor rule for projections. *See* Securities Act Release No. 6084 (June 25, 1979) [44 FR 38810].

5. By amending § 229.20 by adding Item 10 to read as follows:

Item 10. Selected financial data.

Furnish in comparative columnar form a summary of selected financial data for the registrant, for

(1) each of the last five fiscal years of the registrant (or for the life of the registrant and its predecessors, if less), and

(2) any additional fiscal years necessary to keep the summary from being misleading.

Instructions

1. The purpose of the summary of selected financial data shall be to supply in a convenient and readable format selected data which highlights significant trends in the registrant's financial condition and results of operations.

2. Subject to appropriate variation to conform to the nature of the registrant's business, the following items shall be included in the summary: net sales or operating revenues; income (loss) from continuing operations; income (loss) from continuing operations per common share; working capital (except as is indicated in Instruction 3); total assets; and long-term obligations (including long-term debt, capital leases and redeemable preferred stock as defined in ASR 268) and cash dividends declared per common share. Registrants may include additional items which they believe would enhance an understanding of and would highlight trends in their financial condition and results of operations.

3. If the registrant believes that working capital is not a meaningful measure of liquidity, working capital may be omitted from the summary and in lieu thereof some other indicator or indicators shall be included.

4. Those registrants which are required to provide five year summary information in accordance with SFAS 33 may combine such information with the selected data and may modify the information presented to conform to the requirements of SFAS 33.

5. All references to the registrant in the summary and in these instructions shall mean the registrant and its consolidiated subsidiaries.

6. By amending §229.20 by adding Item 11 to read as follows:

Item 11. Management's discussion and analysis of financial condition and results of operations.

Discuss registrant's financial condition, changes in financial condition and results of operations. The discussion shall provide information as specified in paragraphs (a), (b) and (c) of this section with respect to liquidity, capital resources and results of operations, and may provide such other information which the registrant believes to be relevant to an understanding of its financial condition, changes in financial condition and results of operations. Where in the registrant's judgment a discussion of segment information would be appropriate to an understanding of the registrant's business, the discussion should focus on each reportable segment of the business and on the registrant as a whole.

(a) *Liquidity.*

State registrant's views of the extent to which working capital (the excess of current assets over current liabilities) is an appropriate indicator of the liquidity of its business. If working capital is not an appropriate indicator, state the basis or bases used by the registrant to measure its liquidity. Identify any known trends or any unusual demands, commitments, events or uncertainties resulting in or which are reasonably likely to result in liquidity increasing or decreasing in any material way. If a deficiency is identified, indicate the course of action which the registrant proposes to take to remedy the deficiency. Identify the separately describe internal and external sources of liquidity, and identify any unused sources of liquidity.

(b) *Capital resources.*

Describe any favorable or unfavorable trends in the registrant's capital resources. Indicate any changes in the mix and the relative cost of such resources. This discussion should consider changes between equity, debt and any off balance sheet financing arrangements.

Describe the registrant's material commitments for capital expenditures as of the end of the latest fiscal period, and indicate the general purpose of such commitments and the anticipated source of funds needed to fulfill such commitments.

(c) *Results of operations.*

Describe any unusual or infrequent events or transactions or any significant economic changes which materially affected the amount of reported income from continuing operations and, in each case, indicate the extent to which income was so affected. In addition, describe any other significant components of revenues or expense which, in the registrant's judgment, should be described in order to understand the registrant's results of operations.

Describe any identified trends or uncertainties which have had or which the registrant expects will have a favorable or unfavorable impact on net sales or revenues or income from continuing operations. If the registrant knows of events which will cause a material change in the relationship between costs and revenues (such as known future increases in costs of labor or materials or price increases or inventory adjustments) the change in the relationship should be disclosed.

To the extent that the financial statements disclose material increases in net sales or revenues, indicate the extent to which such increases are attributable to increases in prices or to increases in the volume or amount of goods or services being sold or to the introduction of new products or services.

For the most recent three year period, indicate the effect of inflation and changing prices on the registrant's net sales and revenues and on income from continuing operations.

Instructions.

1. The registrant's discussion and analysis should be of the financial statements and of other statistical data which the registrant believes will enhance a reader's understanding of financial condition, changes in financial condition or results of operations. Generally, the discussion should cover the three year period covered by the financial statements. However, where trend information is relevant, reference to the five year selected financial data appearing elsewhere may be helpful.

2. The purpose of the discussion and analysis should be to provide to investors and other users information relevant to an assessment of the financial condition and results of operations of the registrant as determined by evaluating the amounts and certainty of cash flows from operations and, if material, from outside sources. The information provided should include that which is available to the registrant without undue effort or expense but which is not obvious from the registrant's financial statements.

3. The registrant's discussion and analysis should specifically focus on events and uncertainties known to management which would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. This would include description and amounts of (a) matters which could have an impact on future operations and have not had an impact in the past, and (b) matters which have had an impact on reported operations and are not expected to have an impact upon future operations. When focusing on unusual events or transactions or significant economic changes the registrant should consider such items as unusually large promotion or research and development expenses or large price increases or decreases in basic resources.

4. Where the consolidated financial statements reveal material changes from year to year in one or more line items, the causes for the changes should be described; *provided, however,* if the causes for a change in one line item also relate to other line items, no repetition is required. Registrants need not recite the amounts of changes from year to year which are readily computable from the financial statements. The discussion should not merely repeat numerical data contained in the consolidated financial statements.

5. The term "liquidity" as used in paragraph (a) of this section refers to an

assessment of the ability of an enterprise to generate adequate amounts of cash to meet the enterprise's needs for cash. Liquidity should be assessed on both a long-term and short-term basis. Since liquidity relates directly to cash flows, it is recognized that balance sheet indicators such as "working capital" or "quick assets" may be inadequate. Registrants are asked to address the issue of liquidity in the context of their business or businesses. If the registrant believes that working capital may be a misleading measure of its liquidity, working capital need not be discussed but in lieu thereof some other indicator or indicators shall be presented.

6. Registrant's discussion of results of operations should identify any significant elements of the registrant's income or loss from continuing operations which do not arise from or are not necessarily representative of the registrant's ongoing business. Such items might include unusually large promotion or research and development expenses, unusually high or low export activities, identifiable costs associated with a business interruption caused by labor strikes or other events, or significant gains or losses from disposition of assets.

7. Registrants are encouraged but are not required to address future periods. It should be noted, however, that the disclosure of presently existing firm commitments for future material expenditures may be required, and such information should be distinguished from planned and uncommittted expenditures. Such forward-looking information is expressly covered by the safe harbor rule for projections. *See* Securities Act Release No. 6084 (June 25, 1979) [44 FR 38810].

8. Registrants which are required to provide explanations of supplementary information disclosed in accordance with SFAS 33 may combine such explanations with the registrant's discussion and analysis required pursuant to this provision. If such statement is combined, the supplementary information required by SFAS 33 shall be located in reasonable proximity to the discussion and analysis.

9. Registrants which are not required to provide explanations of supplementary information disclosed in accordance with SFAS 33 may discuss the effects of inflation and changes in prices in whatever manner appears appropriate under the circumstances. Although voluntary compliance with SFAS 33 is encouraged, it is not required.

10. All references to the registrant in the discussion and in these instructions shall mean the registrant and its consolidated subsidiaries.

7. By amending § 240.14a–3 to read as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§ 240.14a–3 Information to be furnished to security holders.

* * * * *

(b) * * *

(1) The report shall include the financial statements required by Regulation S–X for the registrant and its subsidiaries consolidated. Any financial statement schedules or exhibits which may otherwise be required in filings with the Commission may be omitted. Investment companies registered under the Investment Company Act of 1940 need include financial statements only for the last fiscal year.

(2) Financial statements and notes thereto shall be presented in roman type at least as large and as legible as 10-point modern type. If necessary for convenient presentation, the financial statements may be in roman type as large and as legible as 8-point modern type. All type shall be leaded at least 2-point.

(3) The report shall contain the supplementary financial information specified by Item 12 of Regulation S–K (17 CFR 229.20).

(4)(i) The report shall contain selected financial data in accordance with the provisions of Item 10 of Regulation S–K (17 CFR 229.20).

(ii) The report shall contain management's discussion and analysis of the issuer's financial condition and results of operations in accordance with the provisions of Item 11 of Regulation S–K (17 CFR 229.20).

* * * * *

(8) The report shall contain the market price of the issuer's securities and its statement of dividend policy in accordance with the provisions of Item 9 of Regulation S–K (17 CFR 229.20).

(9) * * * If the issuer's annual report to security holders complies with the the disclosure requirements of Form 10–K and is filed with the Commission in satisfaction of its Form 10–K filing requirements, such issuer need not furnish a separate Form 10–K to security holders who receive a copy of such annual report.

Note: * * *

* * * * *

(c) Seven copies of the report sent to security holders pursuant to this rule shall be mailed to the Commission, solely for its information, not later than the date on which such report is first sent or given to security holders or the date on which preliminary copies of solicitation material are filed with the Commission pursuant to Rule 14a–6(a), whichever date is later. The report is not deemed to be "soliciting material" or to be "filed" with the Commission or subject to this regulation otherwise than as provided in this rule, or to the liabilities of Section 18 of the Act, except to the extent that the issuer specifically requests that it be treated as a part of the proxy soliciting material or incorporates it in the proxy statement or other filed report by reference.

8. By amending § 240.14c–3 to read as follows:

§ 240.14c–3 Annual report to be furnished to security holders.

(a) * * *

(1) The report shall include the financial statements required by Regulation S–X for the registrant and its subsidiaries consolidated. Any financial statement schedules or exhibits which may otherwise be required in filings with the Commission may be omitted. Investment companies registered under the Investment Company Act of 1940 need include financial statements only for the last fiscal year.

(2) Financial statements and notes thereto shall be presented in roman type at least as large and as legible as 10-point modern type. If necessary for convenient presentation, the financial statements may be in roman type as large and as legible as 8-point modern type. All type shall be leaded at least 2-point.

(3) The report shall contain the supplementary financial information specified by Item 12 of Regulation S–K (17 CFR 229.20).

(4)(i) The report shall contain selected financial data in accordance with the provisions of Item 10 of Regulation S–K (17 CFR 229.20).

(ii) The report shall contain management's discussion and analysis of the issuer's financial condition and results of operations in accordance with the provisions of Item 11 of Regulation S–K (17 CFR 229.20).

* * * * *

(8) The report shall contain the market price of the issuer's securities and its statement of dividend policy in accordance with the provisions of Item 9 of Regulation S–K (17 CFR 229.20).

(9) * * * If the issuer's annual report to security holders complies with the disclosure requirements of Form 10–K and is filed with the Commission in satisfaction of its Form 10–K filing

requirements, such issuer need not furnish a separate Form 10–K to security holders who receive a copy of such annual report.

Note: * * *

* * * * *

(b) Seven copies of the report sent to security holders pursuant to this rule shall be mailed to the Commission, solely for its information, not later than the date on which such report is first sent or given to security holders or the date on which preliminary copies of the information statement are filed with the Commission pursuant to Rule 14c–5, whichever date is later. The report is not deemed to be "filed" with the Commission or subject to this regulation otherwise than as provided in this rule, or to the liabilities of Section 18 of the Act, except to the extent that the issuer specifically requests that it be treated as a part of the information statement or incorporates it in the information statement or other filed report by reference.

Comments

Any interested persons wishing to submit written comments on the proposals, as well as on other matters which might have an impact upon the proposals contained herein, are invited to do so. Mindful of its responsibilities to weigh with care the costs and benefits which result from its rules and form requirements, the Commission specifically invites comments on the cost to registrants and others of these proposals. In light of Section 23(a)(2) of the Exchange Act, the Commission also specifically invites comments as to any competitive impact of any changes in the disclosure requirements.

Authority

The amendments to the forms and guides prescribed under the Securities Act of 1933 are being proposed pursuant to the authority in Sections 6, 7, 8, 10 and 19(a) of the Act. The amendments to Rule 14a–3, Rule 14c–3, and the forms and guides prescribed under the Securities Exchange Act of 1934 are being proposed pursuant to the authority in Sections 12, 13, 15(d) and 23(a) of that Act. The amendments to Regulation S–K are being proposed pursuant to all of the 1933 and 1934 Act provisions referred to above.

(Secs. 6, 7, 8, 10, and 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; secs. 12, 13, 15(d), 23(a), 48 Stat. 892, 894, 895, 901; secs. 1, 8, 49 Stat. 1375, 1379; sec. 203(a), 49 stat. 704; sec. 202, 68 Stat. 686; secs. 3, 4, 6, 78 Stat. 565–568, 569, 570–574; secs. 1, 2, 82 Stat. 454; sec. 28(c), 84 Stat. 1435; secs. 1, 2, 84 Stat. 1497; sec. 105(b), 88 Stat. 1503, secs. 8, 9, 10, 89 Stat. 117, 118, 119; sec. 306(b), 90 Stat. 57; secs. 202, 203, 204, 91 Stat. 1494, 1498, 1499, 1500; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78*l*, 78m, 780(d), 78w(a))

By the Commission.

George A. Fitzsimmons,

Secretary.

January 15, 1980.

[FR Doc. 80–2025 Filed 1–23–80; 8:45 am]

BILLING CODE 8010–01–M

federal register

Thursday
January 24, 1980

Part III

Environmental Protection Agency

Proposed High-Altitude Emission Standards for 1982 and 1983 Model Year Light-Duty Motor Vehicles

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL-1378-5; Docket No. A-79-14]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Proposed High-Altitude Emission Standards for 1982 and 1983 Model Year Light-Duty Motor Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA is proposing to establish new exhaust and evaporative emission standards which are mandatory for 1982 and 1983 model year light-duty vehicles (LDVs) and light-duty trucks (LDTs) when sold for principal use at altitudes above 4,000 feet (1,219 meters). The Agency expects to promulgate, in the near future, a voluntary program for compliance with these standards by 1981 model year LDVs and LDTs. These vehicles shall be capable of complying with the applicable high altitude standards if tested at 5,400 feet (1,650 meters). Beginning in the 1982 model year, all vehicles manufactured for sale in the United States shall comply with these high-altitude standards or be capable of being modified to do so. All vehicles sold for principal use at high altitude must be in the configuration that provides for compliance with the high-altitude standards. Exemptions are to be allowed for low-power, high-fuel economy vehicles designed for use at low altitude and incapable of safe operation at high altitudes. The vehicle certification procedure proposed in this regulation requires manufacturers to assure compliance at 1,650 meters (5,400 feet).

DATES: EPA will hold two days of public hearings in Denver, Colorado, beginning at 9:30 a.m. (30 days or more after this Notice of Proposed Rulemaking is published in the **Federal Register**). Additional information on the hearing is contained in the Supplementary Information section of this NPRM.

EPA will consider comments received on or before 30 days from the date of the public hearing.

ADDRESSES: Interested persons may participate in this rulemaking by submitting written comments to: U.S. Environmental Protection Agency, Central Docket Section (A-130), ATTN: A-79-14, Waterside Mall, Room 2903B (EPA Library), 401 M Street SW., Washington, D.C. 20460.

Copies of material relevant to this rulemaking action are contained in Public Docket No. A-79-14 at the U.S. Environmental Protection Agency, Central Docket Section, Waterside Mall, Room 2903B (EPA Library), 401 M Street SW., Washington, D.C. 20460. The docket may be inspected between the hours of 8:00 a.m. to 4:00 p.m., Monday through Friday. A reasonable fee may be charged for copying services.

The exact location of the public hearing will be announced in a future issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Richard Wilcox, Emission Control Technology Division, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, 313-668-4390.

SUPPLEMENTARY INFORMATION: EPA has found that motor vehicles which demonstrate compliance with emission standards at low altitude produce as much as 50 percent more exhaust hydrocarbons (HC) and nearly 100 percent more carbon monoxide (CO) when tested at 5,000 feet above sea level. The Agency has also learned that, in most high-altitude urban areas, motor vehicles account for more than half of the total HC emissions and almost all of the CO emissions. These emission levels combine with summer sunlight and stable winter atmospheric conditions to cause numerous violations of the ambient air quality standards for oxidant and CO in high-altitude metropolitan areas.

During model year 1977, EPA regulations required that new light-duty motor vehicles intended for sale at high-altitude demonstrate compliance with the applicable emission standards at high altitude. One result of this requirement was that some motor vehicle manufacturers either chose not to or failed to certify for sale at high altitude, all of the models in their product lines. The limitation in the number of models available for sale in these areas generated an adverse reaction among the affected vehicle purchasers and automobile dealerships. With passage of the Clean Air Amendments of 1977, the Congress, in section 213 of those amendments (section 202(f) of the Clean Air Act, as amended), revoked the EPA high-altitude motor vehicle certification regulations, prohibited the establishment of any other regulations governing the sale or distribution of motor vehicles at high altitude before 1981, and required that, beginning with the 1984 model year, all new light-duty vehicles (LDVs) comply with the applicable emission standards regardless of the altitude at which they are sold.

For the interim period between model years 1981 and 1983, the Congress has given EPA authority to promulgate regulations affecting the distribution and sale of new motor vehicles at high altitude, including the establishment of high-altitude emission standards. Such standards, however, may not require a percentage reduction in vehicle emissions at high altitude that exceeds the comparable percent reduction provided by section 202(b) of the Act for LDV's (generally for HC and CO these standards could represent a 90 percent reduction from the 1970 high-altitude base-level). In no event, however, may numerically more stringent standards be established for high-altitude areas than are applicable under non-high-altitude conditions. For example, the EPA may not require an oxides of nitrogen (NO_x) standard numerically lower than the 1.0 gram per mile (g/mile) standard that will be in effect at low altitude in model year 1982.

Standards

The Clean Air Act Amendments established the limiting guideline for the value of the high-altitude LDV standards as a 90 percent reduction from uncontrolled vehicles tested at high altitude, but in no case may the numerical value of the standard be less than the low-altitude standard. Since NO_x emissions decrease as uncontrolled vehicles are driven to higher altitudes, a 90 percent NO_x reduction from these vehicles would be lower than the NO_x values determined for low altitude. Because the high-altitude standards may not be numerically less than the low-altitude standards, the present NO_x standards for the applicable model year and class of vehicle shall apply at all altitudes. For the HC and CO standards, a method for determining the 90 percent reduction was required.

EPA believes that Congress, in amending the high-altitude provisions of the Clean Air Act, intended that high-altitude LDV emission standards be determined by simply establishing a 90 percent reduction from a baseline fleet of representative high-altitude vehicles. Ideally, the same vehicle fleet which was used to establish the low-altitude standards should be used to determine the high-altitude baseline. Since this fleet no longer exists as tested, an alternate method was necessary.

Recent testing of a 1970 fleet of 25 light-duty vehicles was performed under the direction of the Motor Vehicle Manufacturers Association (MVMA) at low altitude (St. Louis, 600 feet), and at

high altitude (Denver, 5,400 feet).[1] The results of the MVMA tests yielded average fleet emissions of 2.85 g/mi HC and 20.45 g/mi CO at low altitude, and 4.47 g/mi HC and 64.4 g/mi CO at high altitude. The MVMA low-altitude baseline values compare with 4.1 g/mi HC and 34 g/mi CO which are generally accepted as the low altitude LDV baseline values. Because of the disparity between the two sets of low-altitude baseline values, EPA proposes determining the high-altitude exhaust emission standards by deriving a low-to-high altitude correction factor, which then can be applied to the existing low-altitude standards. Without using this factor, a simple 90 percent reduction from the MVMA baseline data would yield potential high-altitude standards of 0.45 g/mi HC and 6.4 g/mi CO. EPA believes that these standards would be more stringent than Congress envisioned.

In developing the correction factor, EPA assumes that the change in vehicle exhaust emissions is directly proportional to the change in altitude. Therefore, the relationship between light-duty vehicle emissions and altitude can be described by the equation:

$$\text{Emissions at altitude} = \text{Emissions at base altitude} + \left[\left(\frac{\text{Change in emission}}{\text{Change in altitude}}\right) \times \text{Change in altitude}\right]$$

If the emissions at low altitude are assumed to be the low-altitude baseline value, then high-altitude baselines can be established from:

$$\text{Baseline at altitude} = \text{Baseline at low altitude} + \left[\left(\frac{\text{Change in emission}}{\text{Change in altitude}}\right) \times \text{Change in altitude}\right]$$

As previously stated, the generally accepted low-altitude LDV baseline values are 4.1 g/mi HC and 34 g/mi CO. The average emissions for the MVMA fleet are 2.85 g/mi HC and 20.45 g/mi CO at the St. Louis altitude (600 feet), and 4.47 g/mi HC and 64.4 g/mi CO at the Denver altitude. Substituting the appropriate values into the equation yields:

$$\text{HC baseline at altitude} = 4.1 + \left[\left(\frac{4.47-2.85}{5400-600}\right)(5400-600)\right]$$

$$\text{HC high-altitude baseline} = 5.7$$

Taking a 90 percent reduction from this baseline yields a high-altitude HC standard of 0.57 g/mi (at 5400 feet).

Similarly for CO:

$$\text{CO baseline at altitude} = 34 + \left[\left(\frac{64.4-20.4}{5400-600}\right)(5400-600)\right]$$

$$\text{CO high-altitude baseline} = 78.$$

Again, taking a 90 percent reduction yields a high-altitude CO standard of 7.8 g/mi.

The proposed high-altitude standards for LDTs are determined in a different manner from the LDV high-altitude standards. EPA is proposing an alternative approach partially because Congress did not mandate, in the Clean Air Act, that the same methodology which is followed for LDVs must also be used to set equally stringent standards for LDTs. In addition, a different approach had to be found because no 1970 LDT baseline fleet tested at both high and low altitudes was available; therefore, the necessary data do not exist. The Agency's alternative methodology fully responds to the Congressional intent of significantly reducing high-altitude motor vehicle emissions.

The high-altitude LDT standards are found by using (1) data from a 1969 LDT baseline fleet which was tested at low-altitude, and (2) the absolute difference in the emissions of a 1970 LDV baseline fleet (MVMA vehicles) when tested at both high and low altitudes. If a proportional relationship is assumed between the standards and baseline emissions at high altitude, and the standards and baseline emissions at low altitude, the high-altitude standards can be determined from the following equation:

$$\text{Standards at altitude} = \left(\text{LDT baseline at low altitude} + \text{Change in LDV emissions}\right) \frac{\text{LDT low altitude standard}}{\text{LDT low altitude baseline}}$$

By deriving the LDT standards in this manner, EPA assumes that the absolute change in LDT and LDV exhaust emissions with altitude is the same. This assumption implies that the change in emissions with altitude is simply a function of enriching the fuel-air mixture of the carburetor, and is not significantly affected by the differences in weight or road load between the two categories of vehicles.

It is possible that this method could underestimate the increase in emissions from LDTs as a function of altitude and, therefore, result in a standard which is somewhat more stringent than the corresponding LDV standard. However, this small potential error is offset by the choice of the 1969 LDT baseline fleet. First, the LDT baseline vehicles were uncontrolled, while the LDV baseline vehicles were partially controlled. This means that the high-altitude LDTs will be less stringently controlled relative to high-altitude LDVs. Second, the LDT baseline vehicles were all heavier than 6,000 pounds gross vehicle weight (GVW), although the LDT class includes vehicles below this weight. Therefore, the baseline emissions upon which the LDT high-altitude standards are based, are relatively lenient compared to that which was used in the LDV regulations. Both of the above factors would make the high-altitude standards somewhat less stringent, thereby offsetting any potential error in the other direction.

The proposed LDT high-altitude standards can be determined with the following information. The 1969 LDT baseline emissions were 8 g/mi HC and 102 g/mi CO.[2] As previously stated, the 1970 LDV baseline values were 2.85 g/mi MC and 20.45 g/mi CO at low altitude, and 4.47 g/mi HC and 64.4 g/mi CO at high altitude. The high-to-low absolute differences are, therefore, 1.6 g/mi HC and 44 g/mi CO. For the 1982 LDT model year, the low-altitude standards will be 1.7 g/mi HC and 18 g/mi CO. Substituting these values into the above equation yields the following high-altitude standards for 1982 LDTs:

$$\text{HC high altitude standard} = (8+1.6)\frac{1.7}{8} = 2.0$$

$$\text{CO high altitude standard} = (102+44)\frac{18}{102} = 26$$

For the 1983 LDT model year, the low-altitude standards have been proposed to be 0.8 g/mi HC and 10 g/mi CO. Therefore, the proposed 1983 LDT high-altitude standards are:

$$\text{HC high altitude standard} = (18+1.6)\frac{0.8}{8} = 1.0$$

$$\text{CO high altitude standard} = (102+44)\frac{10}{102} = 14$$

The Agency derived the required evaporative emission standards for high altitude by using a ratio concept. This ratio was obtained from a theoretical analysis rather than vehicle tests data.[3] The high-to-low ratio for evaporative emissions was determined to be 1.3. The following table summarizes the proposed standards at the reference altitude.

[1] Draft Society of Automotive Engineers paper by J. B. Edwards, et al., dated June 11, 1979 and entitled "1970 Passenger Car High Altitude Emission Baseline."

[2] EPA Report No. SDSB–79–23 by L. D. Ragsdale, dated July 1979 and entitled "1969 Light-Duty Truck Baseline Program and 1983 Emission Standards Development."

[3] Technical Report by M. Leiferman, SDSB, ECTD, OMSAPC dated January 1979.

Proposed Standards at Reference Altitude of 5,400 Feet (Denver Test Site)

	HC[4]	CO[4]	NO_x[4]	Evap.[5]
LDV 1982-1983.....	0.57	7.8	[6]1.0	2.6
LDT 1982..	2.1	26	2.3	2.6
LDT 1983..	1.1	14	[7]LAS	2.6

[4] Grams per mile.
[5] Grams per test.
[6] For 1982, vehicles made by American Motors Corporation must meet a standard of 2.0 g/mi NO_x.
[7] LAS—Low-altitude standard (standards to be determined in a separate action).

It should be noted that the LDT standards being proposed by EPA under a separate rulemaking action for the 1983 model year may extend the definition of useful life for LDTs. If EPA adopts those proposed regulations as final, the 1983 high-altitude standards would also apply over the extended useful life.

In an analysis of the leadtime which is currently available to manufacturers, the Agency concluded that high-altitude regulations cannot be fully implemented before the 1981 model year vehicles begin initial certification. This short lead time will make it impossible for some manufacturers to certify every model which they expect to offer for sale in high-altitude areas. However, the severity of atmospheric pollution in these areas justifies control of high-altitude vehicle emissions as early as is feasible. Therefore, recognizing the lead time situation, and at the same time the need to take immediate action to safeguard the public health, EPA will shortly promulgate a voluntary compliance program for the 1981 model year, followed by full implementation of the high-altitude regulations in the 1982 and 1983 model years as proposed here.

Control Strategy

For model year 1977, EPA regulations required manufacturers to certify motor vehicles sold for principal use at high altitude (above 4,000 feet) to conform with the applicable standards under high-altitude test conditions. One result of this requirement was that manufacturers produced separate vehicle configurations for sale at high altitude. Due to the low percentage of sales represented in high-altitude areas (approximately 3.0 percent of nationwide volume), manufacturers chose to produce for sale at high altitude, only a portion of their total product line. As a result, although total sales were not affected, there was a limit to the number of models which were made available by manufacturers to dealers in these areas. Adverse reaction to this situation was one of the reasons Congress revoked the 1977 model year EPA high-altitude regulations.

To avoid this problem with the 1982 and 1983 regulations, EPA is proposing an alternative control strategy. The Agency proposes to require essentially all subject vehicles, regardless of where they are sold, to meet or to be *capable* of being modified at a reasonable cost to meet high-altitude standards. Some vehicles may be capable of meeting the applicable standards at all altitudes, while others may require an adjustment, different calibration, new part, or replacement of parts before being sold at high altitude. Since every new vehicle would be certified for sale at high altitude, there should be no reason for manufacturers not to make their full product line available, and the hardware costs of the controls will be applied only to those vehicles sold for principal use at high altitude.

It is possible, however, that some low-power vehicles would drive satisfactorily and give good fuel economy at low altitude, but would not have sufficient power to perform safely or meet emission requirements at high altitude. These vehicles are not normally sold at high altitude at present. To avoid this potential loss of fuel-efficient vehicles, certain criteria for exemptions are being proposed which will allow low-powered, high fuel economy vehicles to be certified for principal use at low altitude only. Exemptions could occur when:

1. Such vehicles would be designed specifically for low altitude application and would not be offered for sale at high altitudes even in the absence of the requirements of this regulation (due to unacceptable performance, such as safety problems when operated at high altitude);

2. The performance (acceleration) of such vehicles would be worse when tested at high altitude than the vehicles with minimum performance offered by the manufacturers when tested at low altitude; and

3. The manufacturer must provide a warning to the ultimate purchaser that the vehicle has insufficient power for safe operation at high altitude.

EPA invites comments, with supporting evidence, addressing the degree to which manufacturers might actually be required to stop producing those vehicles if specific allowances are not made. Comments are also requested on the appropriateness of the proposed approach or alternative criteria that would allow the continued sale of such vehicles at low altitude.

The definition of "high altitude" used in the 1977 high-altitude regulations has been adopted for this proposed action. Namely, the regulations require that vehicles sold for principal use in designated high-altitude areas comply with the stated emission standards when tested at 1,650 meters (5,400 feet). A designated high-altitude area is any county with a substantial portion of its area located above 1,219 meters (4,000 feet).

Light-Duty Trucks

The Agency has included light-duty trucks in this action because they represent a significant proportion of the light-duty motor vehicle fleet. In the mountain states where these emission controls are needed, new truck registrations represent 35 percent of the total new motor vehicle registrations, and approximately 85 percent of all truck sales are light-duty trucks. With this large a truck population in the high-altitude states and the fact that their emissions are much greater than light-duty vehicles, it is important that this class be included in the 1982 and 1983 regulations if the desired air quality improvements are to be realized.

Technology Requirements

In model year 1982, EPA expects the automobile industry to employ emission control systems which use three-way catalytic converters ("catalysts") with oxygen-sensor controlled feedback fuel systems on 90 percent of the light-duty vehicles. The three-way catalyst is a device which operates in the exhaust stream of the vehicle. It employs noble metals (typically Platinum and Rhodium) to act as catalysts to chemical reactions which aid in lowering the emission levels of all three regulated pollutants (HC, CO, and NOx), thus the term three-way catalyst. The noble metals promote the oxidation of HC and CO to form H_2O (water) and CO_2 (carbon dioxide). At the same time, NOx emissions are reduced (oxygen is taken away) to result in emissions of N_2 (nitrogen) andO_2 (oxygen).

For this emission control system to operate properly, it is necessary to control the air-fuel ratio which enters the combustion chamber to approximately stoichiometric conditions. (That is, the proportion of fuel-to-air is kept as close as possible to the mixture [approximately 1 part of fuel to 15 parts of air] at which, under ideal conditions, complete combustion of the fuel would take place and would yield only carbon dioxide and water as combustion products). Therefore, manufacturers have developed fuel metering systems to maintain the air-fuel ratio near stoichiometric. This has been accomplished by placing a sensor in the engine exhaust which monitors

the air-fuel ratio by measuring oxygen in the exhaust (O_2 sensor signals the fuel system either to add or substract fuel to regain the stoichiometric air-fuel ratio). This is the oxygen sensor controlled feedback fuel system.

The combination of the three-way catalyst and the O_2 sensor feedback fuel system is very effective at lowering emissions. At the same time, this system tends to be effective at compensating for changes in altitude. As altitude increases, less air will enter for each part of fuel than would occur at sea level. The O_2 sensor will note this excursion from a stoichiometric air-fuel ratio, and the fuel system will then be directed to meter less fuel until the stoichiometric ratio is once again attained. Thus, the emissions of the vehicle will be maintained at a low level even as the air density changes with altitude changes. EPA believes that the high-altitude standards will assure that these emission control systems are designed and calibrated for the full range of altitudes where emission reductions are required.

The Agency anticipates that the balance of the model year 1982 fleet (i.e., 10 percent of the light-duty vehicles and all light-duty trucks) will use either oxidation catalysts or no catalyst at all to control emissions.

Oxidation catalysts are located in the exhaust stream, as are the three-way catalysts. However, the catalytic properties of this device do not promote the reduction of NO_x emissions. Instead, this device only aids in the oxidation of HC and CO.

Because this catalyst does not control emission of NO_x, for which precise air-fuel metering is essential, the air-fuel ratio entering the engine does not have to be maintained at stoichiometric. Therefore, manufacturers do not use oxygen-sensor controlled feedback fuel systems on these vehicles, and generally the fuel metering is calibrated for optimum performance at a fixed barometric pressure.

Similarly, those vehicles which do not use catalysts at all generally employ a fixed calibration fuel system. These vehicles rely upon a combination of other devices to assure that emissions of HC, CO, and NO_x are minimized.

Because these non-three-way systems use fixed-point calibrations for their fuel metering systems, the air-fuel ratio becomes richer (more fuel per unit of air) as the altitude increases. This tends to result in higher emissions of HC and CO at higher altitude. Thus, for these vehicles to comply with emission standards at high altitude, the manufacturers will need to add compensating devices which will maintain the air-fuel ration at a constant value as altitude varies.

Economic Impact

EPA believes that compliance with the proposed high-altitude standards under the two-vehicle strategy will not require extensive redevelopment of the emission control devices presently planned by the manufacturers for use in 1982 and 1983.

It is expected that a simple recalibration of the open-loop portion of the three-way systems (i.e., those operating modes such as cold start and power enrichment when the feed-back control is disengaged), to account for high-altitude operation will be sufficient to assure compliance with the standards. Thus, EPA anticipates no additional compliance costs for the three-way systems. Non-three-way systems, however, do not have the inherent capabilities to modulate the air-fuel ratio in response to changing altitude. Therefore, the non-three-way vehicles sold at high altitude must use aneroid (pressure sensing) devices to assure compliance with the standards at high altitude.

Generally, EPA believes that one aneroid will operate an air bleed to the engine which will assure a proper air-fuel ratio; this device will be attached to the intake system and will provide additional air. In addition to the aneroid used to modulate the air-fuel ratio, some vehicles will require additional compensation (e.g., spark advance, transmission shift speeds, deceleration devices, EGR system). EPA has assumed in its analysis that one-half of these vehicles will require an average of two such devices in addition to the fuel control aneroid for a total of three. Thus, for the total fleet of non-three-way equipped vehicles, EPA projects that each vehicle will need an average of two aneroid devices.

EPA estimates that the aneroid devices for non-three-way systems will cost an average of $10 each including development, manufacturing, installation and profit. No additional cost is required for development of the three-way systems since manufacturers are already demonstrating the capability of achieving the proposed high-altitude standards. Sales projections indicate a total national sale of 23 million light-duty vehicles and 6.6 million light-duty trucks during model years 1982 and 1983; approximately 3 percent of these sales will be made at high altitude, and one-third of those sales will be non-three-way equipped vehicles. Based on these projections, EPA estimates the total cost of the devices on non-three-way vehicles will be $8.0 million. Additionally, the Agency projects a maximum certification cost of $2.3 million for the two-year life of the standards, giving a total program cost of $10.3 million. Based on this estimate of the economic impact, EPA does not believe that the proposed standards will have any significant effect on the supply of, or demand for, motor vehicles in the nation, or in high-altitude regions. The Agency also does not expect the capital requirements of the industry to be adversely impacted. The aneroid devices are not significantly different from devices already in existence, and will probably be purchased from independent vendors with existing capacity. Comments are invited on this issue.

As stated earlier, this proposed regulation includes the provision that all vehicles manufactured for sale in the United States shall comply with the high-altitude standards or be capable of being modified to do so. A maximum charge of $40 (1979 dollars) is being established by EPA for modifying a motor vehicle to comply with the applicable standards at high altitudes. This upper limit will ensure that the owner of such a vehicle will not be burdened with excessive costs. The maximum fee will include the costs of parts and labor which may be required to modify new cars before they are sold or to modify in-use vehicles whether the changes are performed at a dealership or an independent repair facility. In the future, as the value of money changes, the maximum allowable charge must also change so that the relative cost of modifying a vehicle remains the same. After reviewing several alternatives, the Agency concluded that the Consumer Price Index for all Urban Consumers (CPI–U) is the most appropriate time-value escalator.

High-altitude modifications can be made either when a motor vehicle is new, or after it has already been in service. Therefore, it is important that the price index reflect these categories. The CPI–U includes suitable indices for both new cars, and automobile maintenance and repairs. Relative to one another, these indices were weighted about 70% and 30%, respectively, in the January 1979 CPI.[8] This proportion is used in the following equation to find the maximum allowable cost (C) in any future year (i).

[8] The consumer price index is published monthly by the Bureau of Labor Statistics, Department of Labor. Weighting factors are published in January of each calendar year.

$$C_i = 40 \frac{(0.3 \times R_i) + (0.7 \times N_i)}{(0.3 \times R_{1979}) + (0.7 \times N_{1979})}$$

Where:

C_i = Maximum allowable cost to the consumer for modifying a vehicle that had its emission-data vehicle fleet selected in the [i]th calendar year;

R_i = automobile maintenance and repair consumer price index for January of the calendar year in which the emission-data vehicles are selected;

N_i = new car consumer price index for Jaunuary of the calendar year in which the emission-data vehicles are selected;

R_{1979} = automotive maintenance and repair consumer price index (CPI–U) for January 1979; and

N_{1979} = new car consumer price index for January 1979.

Comments which address the appropriateness of this cost escalating procedure are invited.

Air Quality Benefits

The severity of the air pollution problems in the larger, high-altitude cities dictates the need for the regulation. According to the Council on Environmental Quality, Denver was second only to Los Angeles in the number of days in 1975 when national ambient air quality standards were violated. Albuquerque was tied for third. Denver, Salt Lake City, and Albuquerque are rapidly growing, automobile-oriented cities. The meteorological conditions for these cities, frequent winter inversions and abundant summer sunshine, in combination with the high altitude and extensive dependence on the automobile, result in air quality problems that belie the size of the cities. (Denver, largest of the three, is only the 24th largest metropolitan area in the nation.) It is important that the emission control systems used on high-altitude vehicles be designed and calibrated to operate as efficiently as possible to reduce the severity of high-altitude air quality problems.

Projected emissions of CO and HC for Denver with and without the proposed standards are shown below for selected years. These are based on vehicle-miles-traveled per day (VMT) of 20.5 million for 1980, 21 million for 1982, and 24 million for 1987, in addition to the fleet emission rates presented in Table IV–11 of the Environmental Impact Statement—Background Document (VMT/Day × Emission Rates = Daily Emissions). The years 1982 and 1987 were chosen because the Clean Air Act requires attainment of the CO and oxidant standards by 1982. An extension of up to 1987 can be allowed if all reasonable control measures will not attain the standards by that date. In calculating emissions with the 1982 and 1983 high-altitude standards, light-duty vehicles and light-duty trucks are affected by the standards, heavy-duty trucks are not. Forty tons per day of stationary source hydrocarbon emissions are included in the hydrocarbon emission totals for all years.

Denver Area Emissions

(Tons per day)

	1980		1982		1987	
	HC	CO	HC	CO	HC	CO
Baseline	236.1	1930.2	195.8	1633.6	135.0	984.9
With Stds	236.1	1930.2	195.3	1625.9	134.2	965.1
Reductions:						
Tons per day.			0.5	7.7	0.8	19.8
Percent			0.3	0.5	0.6	2.0

These estimated reductions are comparable in magnitude with other control strategies, which combined together provide a significant reduction in emissions. The estimates assumed the introduction of nationwide control technology designed to meet low-altitude standards but providing some degree of control when the vehicles are operated at high altitudes. Should other technologies, which do not have high-altitude compensation, be utilized for achieving future low-altitude standards, or should the compensating systems not be developed to their full control capability, the uncontrolled high-altitude emissions would be much higher. This would result in substantially higher air quality benefits for the proposed action.

Cost Effectiveness

The cost effectiveness of the high-altitude standards was determined by dividing the total cost by the expected emissions reduction. The cost per ton of emissions reduced by these proposed standards is $5 for CO and $170 for HC. These figures are substantially lower than comparable figures for other implemented or proposed control strategies which range up to about $150 per ton for CO and $955 per ton for HC.

Vehicle Compliance

The effect of the proposed regulations is to require that all new vehicles meet both high- and low-altitude emission standards for their useful life, or at least be capable of being modified to do so. EPA examined three possible options for requiring demonstration of compliance with the standards. The first and simplest option considered by EPA would require only that manufacturers provide statements of compliance. The second option would require manufacturers to provide supporting data and/or technical evaluations with their statements of compliance. The third option would require a demonstration of compliance at high altitude. The Agency concluded that the most appropriate approach to assuring compliance of vehicles at high altitude is to require testing at 5,400 feet ± 300 feet (1,620 meters ± meters) only. This alternative takes advantage of the availability of existing test facilities in the Denver area. Manufacturers of vehicles requiring adjustments or modifications to meet the high-altitude standards must submit descriptions of the recommended changes to the Administrator for approval as part of the certification process.

The proposed regulation provides the Administrator with two options in selecting emission-data vehicles for testing at high altitude. Vehicles may be chosen from any of the vehicles selected for low-altitude testing, or one additional vehicle per engine system combination for high-altitude testing may be selected if certain configurations are not represented in the low-altitude selections. While the proposed rules provide broad selection criteria, EPA expects that the number of vehicles actually chosen for testing will be small and limited to vehicles which, in the Agency's engineering judgment, are likely to have poor emission performance at high altitude. Comments are invited regarding more specific selection criteria and certification options.

The Agency may also require manufacturers to perform assembly-line testing (Selective Enforcement Audits) at high-altitude locations.

The regulations would provide that one certificate of conformity covers a vehicle regardless of whether it is to be sold for principal use at high or low altitude. The regulations would provide, however, that a vehicle sold to an ultimate purchaser, for principal use at high altitude, would not be covered by a certificate of conformity if not actually equipped and adjusted to meet high-altitude standards. Therefore, such a sale or delivery by a vehicle manufacturer or its agent would constitute a violation of section 203(a)(1) of the Act.

A violation would not occur upon sale of a low-altitude vehicle at a high-altitude location where the manufacturer or its agent has taken reasonable and prudent steps to ascertain that the place of principal use is not a designated high-altitude location, or upon the sale of such a vehicle at a low-altitude location where the manufacturer or his agent has no reason to believe that the vehicle will be

used principally in a designated high-altitude location.

The Agency will not consider it a violation of section 203(a)(1) of the Act for a vehicle manufacturer to sell a high-altitude vehicle for principal use at low-altitude locations. However, the Agency intends to monitor high-altitude vehicles which are operating at low-altitude. Recall investigations will be initiated if there are data to indicate that high-altitude vehicles do not comply with emission standards at low altitude, and recalls will be considered where appropriate. Moreover, any such vehicle which does not meet applicable emission standards at low altitude will render the manufacturer liable under the emission warranties of section 207 of the Act.

Parameter Adjustment

EPA anticipates that some interested parties may be concerned with the effect parameter adjustment regulations could have on the production of high-altitude vehicle configurations. The Agency finds the two sets of regulations are completely compatible, although the existence of parameter adjustment regulations may increase the cost of the high-altitude regulations in some instances.

Manufacturers are expected to produce high- and low-altitude configurations which comply with both sets of regulations in one of three ways:

1. Automatic altitude compensating devices (aneroids) and control systems (three-way catalyst) will reduce emissions without adjustable parameters;

2. In instances where the Administrator has designated a parameter as an "adjustable parameter," the high- and low-altitude standards will be met within the range of adjustability; and

3. In instances where the standards cannot be met within the range of adjustability for a designated parameter, separate high-altitude parts will be be allowed and made available provided the service can be performed at a dealership or an independent repair facility for less than the $40 (1978 dollars) maximum charge.

Comments are invited with regard to implementing high-altitude regulations when parameter adjustment regulations are in effect.

Advance Notice of Proposed Rulemaking.

On May 11, 1979 an Advance Notice of Proposed Rulemaking (ANPRM) was published in the Federal Register (44 CFR 27700) for the purpose of informing the public that the EPA was developing high-altitude emission standards. The ANRPM solicited comments from the public relevant to such actions. During the latter stages of the EPA review process for this NPRM, comments were received from Ford Motor Company and the Recreation Vehicle Industry Association. The comments generally concerned the need for the high-altitude standards, the levels of the standards, their applicability, and lead time. All of the issues had been addressed to some extent in the NPRM development process prior to receiving the comments. The comments will be reviewed again later along with the NPRM comments. To delay publication of the NPRM for a more detailed evaluation would cause substantial delay and significantly compromise the effectiveness of this limited model year regulation.

Public Hearings and Comment Procedures

The first day of public hearings will be devoted exclusively to the provisions of this NPRM, i.e., the interim high-altitude standards for 1982 and 1983 light-duty motor vehicles. The second day of public hearings will be held to gather additional information concerning the high-altitude emission regulations for light-duty motor vehicles manufactured during or after model year 1984 as mandated by Congress in Section 206 of the Clean Air Act, as amended. The hearing on the 1984 high-altitude regulations is not part of a formal rulemaking action; it is intended to increase public partcipation in the initial stages of developing the future standards. Additional information on the hearings will be announced soon in the Federal Register.

During the final rulemaking on the 1982 and 1983 interim high-altitude regulations, EPA will consider comments received on or before 30 days from the date of the public hearing.

We request that, to the extent possible, comments be submitted prior to the hearing. It is EPA's intention to assure all interested parties an opportunity to study all information which may become the basis for EPA's final action in this proceeding. Accordingly, the Agency will not consider in this rulemaking any information which cannot be made publicly available. Parties who wish to submit information in response to this Notice of Proposed Rulemaking are cautioned that EPA will not consider, but will return to the commentor, any comments which are claimed, in whole or in part, to be confidential.

Evaluation Plan

Because of the fixed three-year life span of the regulations proposed in this action, the Agency is not planning to review it subsequent to its ultimate promulgation. However, at the time when regulations pertaining to high-altitude emission standards for 1984 and subsequent model years are promulgated, the Agency will put forward a plan for the review of the efficacy of that rulemaking action, to be completed within five years after its promulgation.

Reporting and Recordkeeping Requirements

Under the EPA's new "sunset" policy for reporting requirements in regulations, the reporting requirements in this regulation will automatically expire five years from the date of promulgation, unless EPA takes affirmative action to extend them. To accomplish this, a provision automatically terminating the reporting requirements at that time will be included in the text of the final regulation.

Regulatory Analysis

The Administrator has determined that this action is a "significant" regulation. The Agency has prepared a document entitled; "Draft Environmental Impact Statement/Background Document: 1982–1983 High-Altitude Emission Standards," which satisfies the requirements for analyses called for by Executive Order 12044, and sections 202(f)(3) and 317 of the amended Clean Air Act. Anyone may review and reproduce this document in the EPA Central Docket Section. Copies are also available upon request from the Office of Mobile Source Air Pollution Control, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460.

1. The table of contents for Subpart A of Part 86 is amended by the addition of the following sections:

Subpart A—General Provisions for Emission Regulations for 1977 and Later Model Year New Light-Duty Vehicles, 1977 and Later Model Year New Light-Duty Trucks, and for 1977 and Later Model Year New Heavy-Duty Engines

* * * * *

Sec.

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The text of the proposed rule reads as follows:

Subpart A—General Provisions for Emission Regulations for 1977 Later Model Year New Light-Duty Vehicles, 1977 and Later Model Year New Light-Duty Trucks, and for 1977 and Later Model Year New Heavy-Duty Engines

1a. A new § 86.082–1 is added. This section is identical to § 86.078–1 except that paragraph (c) is deleted.

§ 86.082–1 General applicability.

(a) The provisions of this subpart apply to 1982 and later model year new gasoline-fueled and Diesel light-duty vehicles, 1982 and later model year new gasoline-fueled and Diesel light-duty trucks and 1982 and later model year new gasoline-fueled and Diesel heavy-duty engines.

(b) *Optional applicability.* A manufacturer may request to certify any heavy-duty vehicle 10,000 pounds GVWR or less as a light-duty truck: Heavy-duty vehicle provisions do not apply to such a vehicle.

2. Section 86.082–2 is added. This section is identical to § 86.080–2 with the addition of the term "high-altitude reference points."

§ 86.082–2 Definitions.

(a) The definitions in this section apply to this subpart and also to Subparts B, D, H, I, and J.

(b) As used in this subpart all terms not defined herein shall have the meaning given them in the Act:

"Accuracy" means the difference between a measurement and true value.

"Act" means Part A of title II of the Clean Air Act, 42 U.S.C. 1857 f–1 through f–7, as amended by Pub. L. 91–604.

"Administrator" means the Administrator of the Environmental Protection Agency or his authorized representative.

"Auxiliary Emission Control Device (ADCD)" means any element of design which senses temperature, vehicle speed, engine RPM, transmission gear, manifold vacuum, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system.

"Basic engine" means a unique combination of manufacturer, engine displacement, number of cylinders, fuel system (as distinguished by number of carburetor barrels or use of fuel injection), catalyst usage, and other engine and emission control system characteristics specified by the Administrator.

"Basic vehicle frontal area" means the area enclosed by the geometric projections of the basic vehicle along the longitudinal axis, which includes tires but excludes mirrors and air deflectors, onto a plane perpendicular to the longitudinal axis of the vehicle.

"Body style" means a level of commonality in vehicle construction as defined by number of doors and roof treatment (e.g., Sedan, Convertible, Fastback, Hatchback).

"Body type" means a name denoting a group of vehicles that are either in the same car line or in different car lines provided the only reasons the vehicles qualify to be considered in different car lines is that they are produced by separate divisions of a single manufacturer.

"Calibration" means the set of specifications, including tolerances, unique to a particular design, version, or application of a component or components assembly capable of functionally describing its operation over its working range.

"Calibrating gas" means a gas of known concentration which is used to establish the response curve of an analyzer.

"Carline" means a name denoting a group of vehicles within a make or car division which has a degree of commonality in construction (e.g., body, chassis). Carline does not consider any level of decor or opulence and is not generally distinguished by characteristics as roof line, number of doors, seats or windows except for station wagons or light-duty trucks. Station wagons and light-duty trucks are considered to be different carlines than passenger cars.

"Configuration" means a subclassification of an engine-system combination on the bais of engine code, inertia weight class, transmission type and gear ratios, real axle ration, and other parameters which may be designated by the Administrator.

"Crankcase emissions" means airborne substances emitted to the atmosphere from any portion of the engine crankcase ventilation or lubrication systems.

"Curb-idle" for manual transmission code heavy-duty engines means the manufacturer's recommended engine speed with the transmission in neutral or with the clutch disengaged. For Automatic transmission code heavy-duty engines, curb-idle means the manufacturer's recommended engine speed with the automatic transmission in gear and the output shaft stalled.

"Defeat device" means an AECD that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal urban vehicle operation and use, unless (1) such conditions are substantially included in the Federal emission test procedure, or (2) the need for the AECD is justified in terms of protecting the vehicle against damage or accident, or (3) the AECD does not go beyond the requirements of engine starting.

"Diurnal breathing loss" means fuel evaporative emissions as a result of the daily range in temperature

"Drivetrain configuration" means a unique combination of engine code, transmission configuration and axle ration.

"Dynamometer-idle" for automatic transmission code heavy-duty engines means the manufacturer's recommended engine speed without a transmission that simulates the recommended engine speed with a transmission and with the transmission in neutral.

"Engine code" means a unique combination, within an engine-system combination, of displacement, carburetor (or fuel injection) calibration, choke calibration, distributor calibration, auxiliary emission control devices and other engine and emission control system components specified by the Administrator.

"Engine family" means the basic classification unit of a manufacturer's product line used for the purpose of test fleet selection and determined in accordance with § 86.077–24.

"Engine-system combination" means an engine family-exhaust emission control system combination.

"EPA Enforcement Officer" means any officer or employee of the Environmental Protection Agency so designated in writing by the Administrator (or by his designee).

"Exhaust emissions" means substances emitted to the atmosphere from any opening from the exhaust port of a motor vehicle engine.

"Evaporative emission code" means a unique combination in an evaporative emission family-evaporative emission control system combination, of purge system calibrations, fuel tank and carburetor bowl vent calibrations and other fuel system and evaporative emission control system components and calibrations specified by the Administrator.

"Evaporative emissions" means hydrocarbons emitted into the atmosphere from a motor vehicle, other than exhaust and crankcase emissions.

"Evaporative vehicle configuration" means a unique combination of basic engine, engine code, body type, and evaporative emission code.

"Fuel evaporative emissions" means vaporized fuel emitted into the atmosphere from the fuel system of a motor vehicle.

"Fuel system" means the combination of fuel tank, fuel pump, fuel lines, and carburetor, or fuel injection components, and includes all fuel system vents and fuel evaporative emission control systems.

"Gross vehicle weight" means the value specified by the manufacturer as the loaded weight of a single vehicle.

"Gross vehicle weight rating (GVWR)" means the value specified by the manufacturer as the maximum design loaded weight of a single vehicle.

"Hang-up" refers to the process of hydrocarbon molecules being absorbed, condensed, or by any other method removed from the sample flow prior to reaching the instrument detector. It also refers to any subsequent desorption of the molecules into the sample flow when they are assumed to be absent.

"Heavy-duty engine" means any engine which the engine manufacturer could reasonably expect to be used for motive power in a heavy-duty vehicle.

"Heavy-duty vehicle" means any motor vehicle rated at more than 8,500 pounds GVWR or that has a vehicle curb weight of more than 6,000 pounds or that has a basic vehicle frontal area in excess of 45 square feet.

"High-altitude" means any elevation over 1,219 meters (4,000 feet).

"High-altitude conditions" means a test altitude of 1,585 meters (5,200 feet), plus or minus 274 meters (900 feet), or equivalent observed barometric test conditions of 83.48 kPa (24.72 inches Hg), plus or minus 2.77 kPa (0.82 inches Hg): *Provided,* That the Administrator may approve conditions other than those specified herein on the basis of a written application by the manufacturer.

"High-altitude reference point" means an elevation of 1,620 meters (5,400 feet) plus or minus 100 meters (330 feet), or equivalent observed barometric test conditions of 82 kPa (24.2 inches Hg), plus or minus 1 kPa (0.30 inches Hg).

"Hot soak losses" means evaporative emissions after termination of engine operation.

"Incomplete truck" means any truck which does not have the primary load carrying device or container attached.

"Inertia weight class" means the class, which is a group of test weights, into which a vehicle is grouped based on its loaded vehicle weight in accordance with the provisions of Part 86.

"Intermediate speed" means peak torque speed if peak torque speed occurs between 60 and 75 percent of rated speed. If the peak torque speed is less than 60 percent of rated speed, intermediate speed means 60 percent of rated speed. If the peak torque speed is greater than 75 percent of rated speed, intermediate speed means 75 percent of rated speed.

"Light-duty truck" means any motor vehicle rated at 8,500 pounds GVWR or less which has a vehicle curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less, which is:

(1) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or

(2) Designed primarily for transportation of persons and has a capacity of more than 12 persons, or

(3) Available with special features enabling off-street or off-highway operation and use.

"Light-duty vehicle" means a passenger car or passenger car derivative capable of seating 12 passengers or less.

"Loaded vehicle weight" means the vehicle curb weight of a light-duty vehicle or light-duty truck plus 300 pounds.

"Malfunction" means not operating according to specifications (e.g., those specifications listed in the application for certification).

"Maximum rated horsepower" means the maximum brake horsepower output of an engine as stated by the manufacturer in his sales and service literature and his application for certification under § 86.077–21.

"Maximum rated torque" means the maximum torque produced by an engine as stated by the manufacturer in his sales and service literature and his application for certification under § 86.077–21.

"Military engine" means any engine manufactured solely for the Department of Defense to meet military specifications.

"Model" means a specific combination of carline, body style, and drivetrain configuration.

"Model type" means a unique combination of carline, basic engine, and transmission class.

"Model year" means the manufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year: *Provided,* That if the manufacturer has no annual production period, the term "model year" shall mean the calendar year.

"Nominal fuel tank capacity" means the volume of the fuel tank(s), specified by the manufacturer to the nearest tenth of a U.S. gallon, which may be filled with fuel from the fuel tank filler inlet.

"Opacity" means the fraction of a beam of light, expressed in percent, which fails to penetrate a plume of smoke.

"Option" means any available equipment or feature not standard equipment on a model.

"Oxides or nitrogen" means the sum of the nitric oxide and nitrogen dioxide contained in a gas sample as if the nitric oxide were in the form of nitrogen dioxide.

"Peak torque speed" means the speed at which an engine develops maximum torque.

"Percent load" means the fraction of the maximum available torque at a specified engine speed.

"Precision" means the standard deviation of replicated measurements.

"Rated speed" means the speed at which the manufacturer specifies the maximum rated horsepower of an engine.

"Running loss" means fuel evaporative emissions resulting from an average trip in an urban area or the simulation of such a trip.

"Scheduled maintenance" means any adjustment, repair, removal, disassembly, cleaning, or replacement of vehicle components or systems which is performed on a periodic basis to prevent part failure or vehicle (if the engine were installed in a vehicle) malfunction.

"Smoke" means the matter in the exhaust emissions which obscures the transmission of light.

"Span gas" means a gas of known concentration which is used routinely to set the output level of an analyzer.

"Standard equipment" means those features or equipment which are marketed on a vehicle over which the purchaser can exercise no choice.

"System" includes any motor vehicle engine modification which controls or causes the reduction of substances emitted from motor vehicles.

"Tank fuel volume" means the volume of fuel in the fuel tank(s), which is determined by taking the manufacturer's nominal fuel tank(s) capacity and multiplying by 0.40, the result being rounded using ASTM E29–67 to the nearest tenth of a U.S. gallon.

"Test weight" means the weight, within an inertia weight class, which is used in the dynamometer testing of a vehicle, and which is based on its loaded vehicle weight in accordance with the provisions of Part 86.

"Throttle" means the mechanical linkage which either directly or indirectly controls the fuel flow to the engine.

"Transmission class" means the basic type of transmission, e.g., manual, automatic, semi-automatic.

"Transmission configuration" means a unique combination, within a transmission class, of the number of the forward gears and, if applicable, overdrive. The Administrator may further subdivide a transmission configuration (based on such criteria as gear ratios, torque convertor multiplication ratio, stall speed and shift calibration, etc.), if he determines that significant fuel economy or exhaust emission differences exist within that transmission configuration.

"Unscheduled maintenance" means any adjustment, repair, removal, disassembly, cleaning, or replacement of vehicle components or systems which is performed to correct a part failure or vehicle (if the engine were installed in a vehicle malfunction.

"Useful life" means:

(1) For light-duty vehicles and light-duty trucks a period of use of 5 years or 50,000 miles, whichever first occurs.

(2) For gasoline-fueled heavy-duty engines a period of use of 5 years or 50,000 miles of vehicle operation or 1,500 hours of engine operation (or an equivalent period of 1,500 hours of dynamometer operation), whichever first occurs.

(3) For diesel heavy-duty engines a period of use of 5 years or 100,000 miles of vehicle operation or 3,000 hours of engine operation (or an equivalent period of 1,000 hours of dynamometer operation), whichever first occurs.

"Van" means a light-duty truck having an integral enclosure, fully enclosing the driver compartment and load-carrying device, and having no body sections protruding more than 30 inches ahead of the leading edge of the windshield.

"Vehicle configuration" means unique combination of basic engine, engine code, inertia weight class, transmission configuration and axle ratio.

"Vehicle curb weight" means the actual or the manufacturer's estimated weight of the vehicle in operational status with all standard equipment, and weight of fuel at nominal tank capacity, and the weight of optional equipment computed in accordance with § 86.082–24; incomplete light-duty trucks shall have vehicle curb weight specified by the manufacturer.

"Zero (0) hours" means the point after normal assembly line operations and adjustments are completed and before one (1) additional operating hour has been accumulated.

"Zero (0) miles" means that point after initial engine starting (not to exeed 10 miles of vehicle operations, or one hour of engine operation) at which normal assembly line operations and adjustments are completed.

3. Section 86.082–8 is added. This section is identical to § 86.081–8 with the addition of high-altitude standards in paragraphs (d) through (h).

§ 86.082–8 Emission standards for 1982 model year light-duty vehicles.

(a)(1) Exhaust emissions from 1982 and later model year light-duty vehicles shall not exceed:

(i) *Hydrocarbons.* 0.41 grams per vehicle mile;

(ii) *Carbon monoxide.* 3.4 grams per vehicle mile;

(iii) *Oxides of nitrogen.* 1.0 gram per vehicle mile, except that oxides of nitrogen emissions from 1982 light-duty vehicles manufactured by American Motors Corporations shall not exceed 2.0 grams per vehicle mile.

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over a driving schedule as set forth in subpart B of this part and measured and calculated in accordance with those procedures.

(b)(1) Fuel evaporative emissions from 1982 and later model year gasoline-fueled light-duty vehicles shall not exceed:

(i) *Hydrocarbons.* 2.0 grams per test.

(2) The standard set forth in paragraph (b)(1) of this section refers to a composite sample of the fuel evaporative emissions collected under the conditions set forth in subpart B of this part and measured in accordance with those procedures.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any 1982 and later model year gasoline-fueled light-duty vehicle.

(d) The standards set forth in paragraphs (a) through (c) of this section shall apply for vehicles sold by dealers for principal use below 1,219 meters (4,000 feet) altitude.

(e)(1) Model year 1982 and 1983 light-duty vehicles sold for principal use at designated high-altitude locations shall be capable of meeting the following exhaust emission standards when tested at the high-altitude reference point.

(i) *Hydrocarbons.* 0.57 grams per vehicle mile;

(ii) *Carbon monoxide.* 7.8 grams per vehicle mile;

(iii) *Oxides of nitrogen.* 1.0 gram per vehicle mile, except that oxides of nitrogen emissions from 1982 light-duty vehicles manufactured by American Motors Corporation shall not exceed 2.0 grams per vehicle mile.

(2) The standards set forth in paragraph (e)(1) of this section refer to the exhaust emitted over a driving schedule as set forth in Subpart B of this part and measured and calculated in accordance with those procedures.

(f)(1) Fuel evaporative emissions from 1982 and 1983 model year gasoline-fueled light-duty vehicles sold for principal use at designated high-altitude areas shall not exceed 2.6 gram per test when tested at the high-altitude reference point.

(2) The standard set forth in paragraph (f)(1) of this section refers to a composite sample of the fuel evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

(g) No crankcase emissions shall be discharged into the ambient atmosphere from any 1982 and 1983 model year gasoline-fueled light-duty vehicles sold by dealers for principal use at or above 1,219 meters (4,000 feet) altitude.

(h)(1) All light-duty vehicles shall be capable (by initial design, adjustment, or modification) of meeting the applicable emission standards set forth in this section for any altitude of operation. Such adjustments and modifications shall:

(i) Be capable of being effectively performed by commercial repair facilities.

(ii) Not exceed an incremental cost to the ultimate purchaser or any subsequent purchaser of $40 in 1979 dollars, whether incurred as an additional cost of the new high-altitude vehicle, or incurred through modifications performed after initial purchase. The maximum allowable charge for each vehicle shall be calculated by using the Consumer Price Index for all Urban Consumers (CPI–U) published by the Bureau of Labor Statistics, U.S. Department of Labor, as follows:

$$C_i = 40 \frac{(0.3 \times R_i) + (0.7 \times N_i)}{(0.3 \times 231.3) + (0.7 \times 161.2)}$$

Where:

C_i = maximum allowable cost to the consumer for modifying a vehicle that had its emission-data vehicle fleet selected in the [i]th calendar year;

R_i = automobile maintenance and repair consumer price index (CPI-U) for January of the calendar year in which the emission-data vehicles are selected; and

N_i = new car consumer price index (CPI-U) for January of the calendar year in which the emission-data vehicles are selected.

(iii) All adjustments and modifications recommended by the manufacturer to be performed on vehicles to satisfy this requirement must be approved in advance by EPA in accordance with § 86.078–22.

(2) Waivers exempting vehicles from the high-altitude compliance requirement may be granted by the Administrator for vehicles designed for high fuel economy through the application of low-power engines. Such waivers will be granted based on a petition by the manufacturer that:

(i) Such vehicles were designed specifically for low altitude application and would not be offered for sale at high altitudes even in the absence of the requirements of this section (due to unacceptable performance (i.e., safety problems) when operated at high altitude);

(ii) The performance (acceleration) of such vehicle would be worse when tested at 1,650 meters (5,400 feet) elevation, than the vehicle with the minimum performance offered by the manufacturer when tested at low altitude.

(iii) The manufacturer must state to EPA that the vehicle has insufficient power to operate safely at high altitudes and provide such warning to the ultimate purchaser via a label on the vehicle and in the owner's manual.

4. Section 86.082–9 is added. This section is identical to § 86.081–9 with the addition of high-altitude standards in paragraphs (d) through (h).

§ 86.082–9 Emission standards for 1982 model year light-duty trucks.

(a)(1) Exhaust emissions from 1982 and later model year light-duty trucks shall not exceed:

(i) *Hydrocarbons.* 1.7 grams per vehicle mile;

(ii) *Carbon monoxide.* 18 grams per vehicle mile;

(iii) *Oxides of nitorgen.* 2.3 grams per vehicle mile.

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over a driving schedule as set forth in subpart B of this part and measured and calculated in accordance with those procedures.

(b)(1) Evaporative emissions from 1982 and later model year gasoline-fueled light-duty trucks shall not exceed:

(i) *Hydrocarbons.* 2.0 grams per test.

(2) The standard set forth in paragraph (b)(1) of this section refers to a composite sample of the evaporative emissions collected under the conditions set forth in subpart B of this part and measured in accordance with those procedures.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any 1982 and later model year gasoline-fueled light-duty truck.

(d) The standards set forth in paragraphs (a) through (c) of this section shall apply for trucks sold by dealers for principal use below 1,219 meters (4,000 feet) altitude.

(e)(1) Model year from 1982 light-duty trucks sold for principal use at designated high-altitude locations shall be capable of meeting the following exhaust emission standards when tested at the high-altitude reference point.

(i) *Hydrocarbons.* 2.0 grams per vehicle mile;

(ii) *Carbon monoxide.* 26.0 grams per vehicle mile;

(iii) *Oxides of nitrogen.* 2.3 grams per vehicle mile.

(2) Exhaust emissions from 1983 model year light-duty trucks sold for principal use at designated high-altitude locations shall be capable of meeting the following standards when tested at the high-altitude reference point.

(i) *Hydrocarbons.* 1.0 grams per vehicle mile;

(ii) *Carbon monoxide.* 14 grams per vehicle mile;

(iii) *Oxides of nitrogen.* 2.3 grams per vehicle mile.

(3) The standards set forth in paragraph (e)(1) and (2) of this section refer to the exhaust emitted over a driving schedule as set forth in Subpart B of this part and measured and calculated in accordance with those procedures.

(f)(1) Fuel evaporative emissions from 1982 and 1983 model year gasoline-fueled light-duty trucks sold for principal use at designated high-altitude areas shall not exceed 2.6 grams per test when tested at the high-altitude reference point.

(2) The standard set forth in paragraph (f)(1) of this section refers to a composite sample of the fuel evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

(g) No crankcase emissions shall be discharged into the ambient atmosphere from any 1982 and 1983 model year gasoline-fueled light-duty trucks sold by dealers for principal use at or above, 1,219 meters (4,000 feet) altitude.

(h) All light-duty trucks shall be capable (by initial design, adjustment, or modification) of meeting the applicable emission standards set forth in this section for any altitude of operation. Such adjustments and modifications shall:

(i) Be capable of being effectively performed by commercial repair facilities;

(ii) Not exceed an incremental cost to the ultimate purchaser or any subsequent purchaser of $40 in 1979 dollars, whether incurred as an additional cost of the new high-altitude vehicle, or incurred through modifications performed after initial purchase. The maximum allowable charge for each vehicle shall be calculated by using the Consumer Price Index for all Urban Consumers (CPI–U) published by the Bureau of Labor Statistics, U.S. Department of Labor, as follows.

$$C_i = 40\,\frac{(0.3\times R_i)+(0.7\times N_i)}{(0.3\times 231.3)+(0.7\times 161.2)}$$

Where:

C_i = maximum allowable cost to the consumer for modifying a vehicle that had its emission-data vehicle fleet selected in the [i]th calendar year;

R_i = automobile maintenance and repair consumer price index (CPI–U) for January of the calendar year in which the emission-data vehicles are selected; and

N_i = new car consumer index (CPI–U) for January of the calendar year in which the emission-data vehicles are selected.

(iii) All adjustments and modifications recommended by the manufacturer to be performed on vehicles to satisfy this requirement must be approved in advance by EPA in accordance with § 86.078–22.

5. Section 86.082–21 is added. This section is identical to § 86.079–21 except for paragraphs (a), (b)(2), (5)(i), and (5)(ii).

§ 86.082–21 Application for certification.

(a) A separate application for a certification of conformity shall be made for each set of standards (except for high-altitude standards) and each class of new motor vehicle engines. Such application shall be made to the Administrator by the manufacturer and shall be updated and corrected by amendment.

(b) The application shall be in writing, signed by an authorized representative of the manufacturer, and shall include the following:

(1)(i) *All vehicles and engines.* Identification and description of the vehicles (or engines) covered by the application and a description of their engine (vehicles only), emission control system and fuel system components. This shall include a detailed description of each auxiliary emission control device (AECD) to be installed in or on any certification test vehicle (or certification test engine).

(ii) *Light-duty vehicles and light-duty trucks only.* (A) The manufacturer shall

provide to the Administrator in the preliminary application for certification:

(*1*) A list of those parameters which are physically capable of being adjusted (including those adjustable parameters for which access is difficult) and that, if adjusted to settings other than the manufacturer's recommended setting, may affect emissions;

(*2*) A specification of the manufacturer's intended physically adjustable range of each such parameter, and the production tolerances of the limits or stops used to establish the physically adjustable range;

(*3*) A description of the limits or stops used to establish the manufacturer's intended physically adjustable range of each adjustable parameter, or any other means used to inhibit an adjustment;

(*4*) The nominal or recommended setting, and the associated production tolerances, for each such parameter.

(B) the manufacturer may provide, in the preliminary application for certification, information relating to why certain parameters are not expected to be adjusted in actual use and to why the physical limits or stops used to establish the physically adjustable range of each parameter, or any other means used to inhibit adjustment, are expected to be effective in preventing adjustment of parameters on in-use vehicles to settings outside the manufacturer's intended physically adjustable ranges. This may include results of any tests to determine the difficulty of gaining access to an adjustment or exceeding a limit as intended or recommended by the manufacturer.

(C) The Administrator may require to be provided detailed drawings and descriptions of the various emission related components, and/or hardware samples of such components, for the purpose of making his determination of which vehicle or engine parameters will be subject to adjustment for new certification and Selective Enforcement Audit testing and of the physically adjustable range for each such vehicle or engine parameter.

(2) Projected U.S. sales data sufficient to enable the Administrator to select a test fleet representative of the vehicles (or engines) for which certification is requested, including the altitude of intended sale for light-duty vehicles and light-duty trucks.

(3) A description of the test equipment and fuel proposed to be used.

(4)(i) A description of the proposed mileage (or service) accumulation procedure for durability testing.

(ii) A description of the test procedures to be used to establish the evaporative emission deterioration factors required to be determined and supplied in § 86.079–23(a)(2).

(5)(i) A statement of recommended maintenance and procedures necessary to assure that the vehicles (or engines) covered by a certificate of conformity in operation conform to the regulations, and a description of the program for training of personnel for such maintenance, and the equipment required.

(ii) A description of vehicle adjustments or modifications necessary, if any, to assure that light-duty vehicles and light-duty trucks covered by a certificate of conformity, conform to the regulations while being operated at any altitude.

(6) At the option of the manufacturer, the proposed composition of the emission-data and durability-data test fleet.

(c) Complete copies of the application and of any amendments thereto, and all notifications under §§ 86.079–32, 86.079–33, and 86.079–34 shall be submitted in such multiple copies as the Administrator may require.

(d) Incomplete light-duty trucks shall have a maximum completed curb weight and maximum completed frontal area specified by the manufacturer.

6. Section 86.082–24 is added. This section is identical to § 86.079–24 except for paragraphs (b)(1)(v) and (b)(1)(vii)(D).

§ 86.082–24 Test vehicles and engines.

(a)(1) The vehicles or engines covered by an application for certification will be divided into groupings of engines which are expected to have similar emission characteristics throughout their useful life. Each group of engines with similar emission characteristics shall be defined as a separate engine family.

(2) To be classed in the same engine family, engines must be identical in all the following respects:

(i) The cylinder bore center-to-center dimensions.

(ii) The dimension from the centerline of the crankshaft to the centerline of the camshaft.

(iii) The dimension from the centerline of the crankshaft to the top of the cylinder block head face.

(iv) The cylinder block configuration (air cooled or water cooled; L–6, 90° V–8, etc.).

(v) The location of intake and exhaust valves (or ports) and the valve (or port) sizes (within a ⅛-inch range on the valve head diameter or within 10 percent on the port area).

(vi) The method of air aspiration.

(vii) The combustion cycle.

(viii) Catalytic converter characteristics.

(ix) Thermal reactor characteristics.

(x) Type of air inlet cooler (e.g., intercoolers and after-coolers) for diesel-duty engines.

(3) Engines identical in all the respects listed in paragraph (a)(2) of this section may be further divided into different engine families if the Administrator determines that they may be expected to have different emission characteristics. This determination will be based upon a consideration of the following features of each engine:

(i) The bore and stroke.

(ii) The surface-to-volume ratio of the nominally dimensioned cylinder at the top dead center position.

(iii) The intake manifold induction port size and configuration.

(iv) The exhaust manifold port size and configuration.

(v) The intake and exhaust valve sizes.

(vi) The fuel system.

(vii) The camshaft timing and ignition or injection timing characteristics.

(4) Where engines are of a type which cannot be divided into engine families based upon the criteria listed in paragraphs (a) (2) and (3) of this section, the Administrator will establish families for those engines based upon the features most related to their emission characteristics.

(5) The gasoline-fueled vehicles covered by an application for certification will be divided into groupings which are expected to have similar evaporative emission characteristics throughout their useful life. Each group of vehicles with similar evaporative emission characteristics shall be defined as a separate evaporative emission family.

(6) To be classed in the same evaporative emission family, vehicles must be similar with respect to:

(i) Type of vapor storage device (e.g., canister, air cleaner, crankcase).

(ii) Basic canister design.

(iii) Fuel system.

(7) Where vehicles are of a type which cannot be divided into evaporative emission families based on the criteria listed above, the Administrator will establish families for those vehicles based upon the features most related to their evaportative emission characteristics.

(b) Emission data. (1) *Emission-data vehicles.* Paragraph (b)(1) of this section applies to light-duty vehicle and light-duty truck emission-data vehicles.

(i) Vehicles will be chosen to be operated and tested for emission data based upon the engine family groupings. Within each engine family, the requirements fo this paragraph must be met.

(ii) Vehicles within an engine family will be divided into engine displacement-exhaust emission control system combinations as applicable. A projected sales volume will be established for each combination for the model year for which certification is sought. One vehicle of each combination will be selected in order of decreasing projected sales volume until 70 percent of the projected sales of a manufacturer's sales of a manufacturer's total production of vehicles of that engine family is represented, or until a maximum of four vehicles is selected. If any single combination represents over 70 percent, then two vehicles of that combination may be selected. The vehicle selected for each combination will be specified by the Administrator as to such features as engine code, transmission type, fuel system, inertia weight class, and test weight.

(iii) The Administrator may select a maximum of four additional vehicles within each engine family based upon features indicating that they may have the highest emission levels of the vehicles in that engine family. In selecting these vehicles, the Administrator will consider such features as the emission control system combinations, induction system characteristics, ignition system characteristics, fuel system, rated horsepower, rated torque, compression ratio, inertia weight class, test weight, transmission options, and axle ratio.

(iv) If the vehicles selected in accordance with paragraphs (b)(1) (ii) and (iii) of this section do not represent each engine-system combination, then one vehicle of each engine-system combination not represented will be selected by the Administrator. The vehicle selected shall be of the engine displacement with the largest projected sales volume of vehicles with the control system combination in the engine family and will be designated by the Administrator as to such features as engine code, transmission type, fuel system, inertia weight class, and test weight.

(v) The Administrator may select one vehicle for each engine-system combination within an engine family if such a vehicle is expected to have high exhaust emissions when operated at high altitude.

(vi) The Administrator may combine testing requirements for any vehicle selected under paragraph (b)(1)(v) or (b)(1)(vii)(D) of this section with the testing requirements for any similar vehicle in the same engine-system combination selected under paragraph (b)(1) (ii), (iii), or (iv) of this section or any similar vehicle in the same engine-system, evaporative emission family evaporative emission control system combination selected under paragraph (b)(1)(vii) (A) or (B) of this section. The testing requirements may be combined by the Administrator by requiring a vehicle selected for testing under paragraphs (b)(1) (ii), (iii), (iv), (vii)(A), or (vii)(B) of this section to be modified (if necessary) after mileage accumulation and emission testing for the purpose of demonstrating compliance with § 86.079–23(c)(1)((ii).

(vii)(A) Vehicles of each evaporative emission family will be divided into evaporative emission control systems. One vehicle of each evaporate emission control system within the evaporative emission family will be selected.

(B) The Administrator may select a maximum of four additional vehicles within each evaporative emission family based upon features indicating that they may have the highest evaporative emission levels of vehicles in that family.

(C) The Administrator may determine that the vehicles selected under paragraphs (b)(1) (ii) through (iv) of this section may be used to satisfy the requirements of paragraphs (b)(1)((vii) (A) and (B) of this section.

(D) The Administrator may select one vehicle for each evaporative emission control system within each evaporative emission family if such a vehicle is expected to have high evaporative emissions when operated at high altitude.

(E) Vehicles selected under (b)(1)(v) may be used to satisfy the requirements of (b)(1)(vii)(D).

(2) *Gasoline-fueled heavy-duty emission-data engines.* Paragraph (b)(2) of this section applies to gasoline-fueled heavy-duty engines.

(i) Engines will be chosen to be run for emission data based upon engine family groupings. Within each engine family, the requirements of this paragraph must be met.

(ii) Engines of each engine family will be divided into engine displacement-exhaust emission control system combinations. A projected sales volume will be established for each combination for the applicable model year. One engine of each combination will be selected in order of decreasing projected sales volume until 70 percent of the projected sales of a manufacturer's total production of engines of that family is represented, or until a maximum of four engines is selected. The engines selected for each combination will be specified by the Administrator as to fuel system.

(iii) The Administrator may select a maximum of two additional engines within each engine family based upon features indicating that they may have the highest emission levels of the engines in that engine family. In selecting these engines, the Administrator will consider such features as the exhaust emission control system, induction system characteristics, ignition system characteristics, fuel system, rated horsepower, rated torque, and compression ratio.

(iv) If the engines selected in accordance with paragraphs (b)(2) (ii) and (iii) of this section do not represent each engine displacement-exhaust emission control system combination, then one engine of each engine displacement-exhaust emission control system combination not represented shall be selected by the Administrator.

(3) *Diesel heavy-duty emission-data engines.* Paragraph (b)(3) of this section applies to Diesel heavy-duty emission-data engines.

(i) Engines will be chosen to be run for emission data based upon engine family groupings. Within each engine family, the requirements of this paragraph must be met.

(ii) Engines of each engine family will be divided into groups based upon exhaust emission control system. One engine of each engine-system combination shall be run for smoke emission data and gaseous emission data as prescribed in § 86.082–26(c)(3). Either the complete gaseous emission test or the complete smoke test may be conducted first. Within each combination, the engine that features the highest fuel feed per stroke, primarily at the speed of maximum rated torque and secondarily at rated speed, will usually be selected. If there are military engines with higher fuel rates than other engines in the same engine-system combination, then one military engine shall also be selected. The engine with the highest fuel feed per stroke will usually be selected.

(iii) The Administrator may select a maximum of one additional engine within one engine-system combination based upon features indicating that it may have the highest emission levels of the engines of that combination. In selecting this engine, the Administrator will consider such features as the injection system, fuel system, compression ratio, rated speed, rated horsepower, peak torque speed, and peak torque.

(c) Durability data. (1) *Durability-data vehicles.* Paragraph (c)(1) of this section applies to light-duty vehicle and light-duty truck durability-data vehicles.

(i) A durability-data vehicle will be selected by the Administrator to represent each engine-system

combination. The vehicle selected shall be of the engine displacement with the largest projected sales volume of vehicles with that control system combination in that engine family and will be designated by the Administrator as to transmission type, fuel system, inertia weight class, and test weight.

(ii) A manufacturer may elect to operate and test addditional vehicles to represent any engine-system combination. The additional vehicles must be of the same engine displacement, transmission type, fuel system, inertia weight class, and test weight as the vehicle selected for that engine-system combination in accordance with the provisions of paragraph (c)(1)(i) of this section. Notice of an intent to operate and test additional vehicles shall be given to the Administrator no later than 30 days following notification of the test fleet selection.

(2) *Gasoline-fueled heavy-duty durability-data engines.* Paragraph (c)(2) of this section applies to gasoline-fueled heavy-duty durability-data engines.

(i) A durability-data engine will be selected by the Administrator to represent each engine-system combination.

(ii) [Reserved]

(iii) A manufacturer may elect to operate and test additional engines to represent any engine-system combination. The additional engines must be of the same engine displacement and fuel system as the engine selected for that combination in accordance with the provisions of paragraph (c)(2)(i) of this section. Notice of an intent to run additional engines shall be given to the Administrator not later than 30 days following notification of the test fleet selection. Deterioration factors calculated for each engine-system combination shall be applied separately to military and non-military engines within the same engine-system combination.

(3) *Diesel heavy-duty durability-data engines.* Paragraph (c)(3) of this section applies to Diesel heavy-duty durability-data engines.

(i) One engine from each engine-system combination shall be tested as prescribed in § 86.082–26(c)(3)(ii). At each test point, either the complete gaseous emission test or the complete smoke test may be conducted first. Within each combination, the engine which features the highest fuel feed per stroke, primarily at rated speed and secondarily at the speed of maximum rated torque, will usually be selected for durability testing. In the case where more than one engine in an engine-system combination has the highest fuel feed per stroke, the engine with the highest maximum rated horsepower will usually be selected for durability testing. If an engine system combination includes both military and nonmilitary engines, then the nonmilitary engine with the highest maximum rated horsepower will usually be selected for durability testing.

(ii) A manufacturer may elect to operate and test additional engines to represent any engine-system combination. The additional engines must be of the same model and fuel system as the engine selected in accordance with the provisions of paragraph (c)(3)(i) of this section. Notice of an intent to test additional engines shall be given to the Administrator not later than 30 days following notification of the test fleet selection. Deterioration factors calculated for each engine-system combination shall be applied separately to military and nonmilitary engines within the same engine-system combination.

(d) For purposes of testing under § 86.082–26 (a)(9), (b)(9) or (c)(11), the Administrator may require additional emission-data vehicles (or emission-data engines) and durability-data vehicles (or durability-data engines) identical in all material respects to vehicles (or engines) selected in accordance with paragraphs (b) and (c) of this section: *Provided*, That the number of vehicles (or engines) selected shall not increase the size of either the emission-data fleet or the durability-data fleet by more than 20 percent or one vehicle (or engine), whichever, is greater.

(e) Any manufacturer whose projected sales for the model year in which certification is sought is less than

(1) 2,000 gasoline-fueled light-duty vehicles, or

(2) 2,000 diesel light-duty vehicles, or

(3) 2,000 gasoline-fueled light-duty trucks, or

(4) 2,000 diesel light-duty trucks, or

(5) 2,000 gasoline-fueled heavy-duty engines, or

(6) 2,000 diesel heavy-duty engines, may request a reduction in the number of test vehicles (or engines) determined in accordance with the foregoing provisions of this section. The Administrator may agree to such lesser number as he determines would meet the objectives of this procedure.

(f) In lieu of testing an emission-data or durability-data vehicle (or engine) selected under paragraph (b) or (c) of this section, and submitting data therefor, a manufacturer may, with the prior written approval of the Administrator, submit exhaust emission data and/or fuel evaporative emission data, as applicable on a similar vehicle (or engine) for which certification has previously been obtained or for which all applicable data required under § 86.079–23 has previously been submitted.

(g) (1) This paragraph applies to light-duty vehicles and light-duty trucks.

(2) Where it is expected that more than 33 percent of a car line, within an engine-system combination, may be equipped with an item (whether that item is standard equipment or an option), the full estimated weight of that item shall be included in the curb weight computation of each vehicle available with that item in that carline, within that engine-system combination. Where it is expected that 33 percent or less of the carline, within an engine-system combination, will be equipped with an item (whether that item is standard equipment or an option) no weight for that item will be added in computing the curb weight for any vehicle in that carline, within that engine system combination, unless that item is standard equipment on the vehicle. In the case of mutually exclusive options, only the weight of the heavier option will be added in computing the curb weight. Optional items weighing less than three pounds per item need not be considered.

(3) Where it is expected that more than 33 percent of a carline, within an engine-system combination, will be equipped with an item (whether that item is standard equipment or an option) that can reasonably be expected to influence emissions, then such items shall actually be installed, unless specifically excluded by the Administrator, on all emission data and durability data vehicles of that carline, within that engine-system combination, on which the items are intended to be offered in production. Items that can reasonably be expected to influence emissions are: air conditioning, power steering, power brakes, and other items determined by the Administrator.

(4) Where it is expected that 33 percent or less of a carline within an engine-system combination, will be equipped with an item (whether that item is standard equipment or an option) that can reasonably be expected to influence emissions, that item shall not be installed on any emission data vehicle or durability data vehicle of that carline, within that engine-system combination, unless that item is standard equipment on that vehicle or specifically required by the Administrator.

7. Section 86.082–26 is added. This section is identical to § 86.080–26 except for paragraphs (a)(3)(i)(C), (a)(3) (i)(D),

(a)(3)(ii)(C), (a)(3)(ii)(D), and (a)(3)(iii)(A).

§ 86.082–26 Mileage and service accumulation; emission measurements.

(a)(1) Paragraph (a) of this section applies to light-duty vehicles and light-duty trucks.

(2) The procedure for mileage accumulation will be the durability driving schedule as specified in appendix IV to this part. A modified procedure may also be used if approved in advance by the Administrator. Except with the advance approval of the Administrator, all vehicles will accumulate mileage at a measured curb weight which is within 100 pounds of the estimated curb weight. If the loaded vehicle weight is within 100 pounds of being included in the next higher inertia weight class as specified in § 86.129, the manufacturer may elect to conduct the respective emission tests at the test weight corresponding to the higher loaded vehicle weight.

(3) *Emission-data-vehicles.* Unless as otherwise provided for in § 86.079–23(a), emission-data vehicles shall be operated and tested as follows:

(i) *Gasoline-fueled.* (A) Each gasoline-fueled emission-data vehicle shall be driven 4,000 miles with all emission control systems installed and operating. Complete exhaust emission tests shall be conducted at zero and 4,000 miles on those vehicles selected under § 86.082–24 (b)(1)(ii) through (b)(1)(v). Complete exhaust and evaporative emission tests shall be conducted at zero miles and 4,000 miles on those vehicles selected under § 86.082–24(b)(1)(vii). The manufacturer may at his option test the vehicles selected under § 86.082–24(b)(1)(vii) up to three times at the 4,000-mile test point as long as the ±250-mile test tolerance is adhered to. The Administrator may determine under § 86.082–24(f) that no testing is required.

(B) The emission-data vehicle(s) selected for testing under § 86.082–24 (b)(1)(v) or (b)(1)(vii)(D) shall be driven 6,436 kilometers (4,000 miles) at any altitude. Emission tests shall be conducted at zero kilometers (zero miles) at any altitude and 6,436 kilometers (4,000 miles) under high-altitude conditions.

(C) Exhaust and evaporative emission tests at 6,436 kilometers (4,000 miles) for vehicles selected under § 86.082–24(b)(1)(ii) through (b)(1)(iv) shall be conducted under low-altitude conditions.

(D) The Administrator may designate any vehicles selected under § 86.082–24 (b)(1)(ii) through (b)(1)(vii) to be tested under high-altitude conditions. If the manufacturer recommends adjustments or modifications in order to conform to emission standards at high altitude, such adjustments or modifications shall be made to the test vehicle (in accordance with the instructions to be provided to the ultimate purchaser) before being tested at high altitude.

(ii) *Diesel.* (A) Each diesel emission-data vehicle shall be driven 6,436 kilometers (4,000 miles) with all emission control systems installed and operating. Emission tests shall be conducted at zero kilometers (zero miles) and 6,436 kilometers (4,000 miles).

(B) The emission-data vehicle(s) selected for testing under § 86.082–24(b)(1)(v) shall be driven 6,436 kilometers (4,000 miles) at any altitude. Emission tests shall be conducted at zero kilometers (zero miles) at any altitude and 6,436 kilometers (4,000 miles) under high-altitude conditions.

(C) Exhaust emission tests at 6,436 kilometers (4,000 miles) shall be conducted under low-altitude conditions.

(D) The Administrator may designate any vehicles selected under § 86.082–24 (b)(1)(ii) through (b)(1)(vii) to be tested under high-altitude conditions. If the manufacturer recommends adjustments or modifications in order to conform to emission standards at high altitude, such adjustments or modifications shall be made to the test vehicle (in accordance with the instructions to be provided to the ultimate purchaser) before being tested at high altitude.

(iii)(A) Vehicles tested for compliance under high-altitude conditions shall be tested at an elevation of 1,620 meters±100 meters (5,400 feet±300 feet) or the equivalent observed barometric test conditions of 82±1 kilopascal.

(4) *Durability-date vehicles.* Unless as otherwise provided for in § 86.079–23(a), durability-data vehicles shall be operated and tested as follows:

(i) *Gasoline-fueled.* Each gasoline-fueled durability-data vehicle selected by the Administrator or elected by the manufacturer under § 86.082–24(c)(1) shall be driven, with all emission control systems installed and operating for 50,000 miles or such lesser distance as the Administrator may agree to as meeting the objective of this procedure. Complete exhaust emission tests shall be made on all durability-data vehicles selected by the Administrator or elected by the manufacturer under § 86.082–24(c) at the following mileage points: 0; 5,000; 10,000; 15,000; 20,000; 25,000; 30,000; 35,000; 40,000; 45,000; 50,000. The Administrator may determine under § 86.082–24(f) that no testing is required.

(ii) *Diesel.* Each diesel durability-data vehicle shall be driven, with all emission control systems installed and operating, for 50,000 miles or such lesser distance as the Administrator may agree to as meeting the objectives of the procedure. Complete emission tests (see §§ 86.106 through 86.145) shall be made at the following mileage points: 0; 5,000; 10,000; 15,000; 20,000; 25,000; 30,000; 35,000; 40,000; 45,000; 50,000.

(5) All tests required by this subpart to be conducted after every 5,000 miles of driving for durability-data vehicles and 4,000 miles for emission-data vehicles must be conducted at any accumulated mileage within 250 miles of each of those test points.

(6)(i) The results of each emission test shall be supplied to the Administrator immediately after the test. The manufacturer shall furnish to the Administrator explanation for voiding any test. The Administrator will determine if voiding the test was appropriate based upon the explanation given by the manufacturer for the voided test. If a manufacturer conducts multiple test at any test point at which the data are intended to be used in the calculation of the deterioration factor, the number of tests must be the same at each point and may not exceed three valid tests. Tests between tests points may be conducted as required by the Administrator. Data from all tests (including voided tests) shall be air posted to the Administrator within 24 hours (or delievered within 3 working days). In addition, all test data shall be compiled and provided to the Administrator in accordance with § 86.079–23. Where the Administrator conducts a test on a durability-data vehicle at a prescribed test point, the results of that test will be used in the calculation of the deterioration factor.

(ii) The results of all emission tests shall be rounded, using the "rounding off method" specified in ASTM E29–67, to the number of places to the right of the decimal point indicated by expressing applicable emission standards of this subpart of three significant figures.

(7) Whenever the manufacturer proposes to operate and test a vehicle which may be used for emission or durability data, he shall provide the zero-mile test data to the Administrator (except for those vehicles for which the zero-mile test requirement has been waived under § 86.079–23(a)(2)) and make the vehicle available for such testing under § 86.079–29 as the Administrator may require before beginning to accumulate mileage on the vehicle. Failure to comply with this requirement will invalidate all test data submitted for this vehicle.

(8) Once a manufacturer begins to operate an emission-data or durability-data vehicle, as indicated by compliance

with paragraph (a)(7) of this section, he shall continue to run the vehicle to 4,000 miles or 50,000 miles, respectively, and the data from the vehicle will be used in the calculations under § 86.082–28. Discontinuation of a vehicle shall be allowed only with the written consent of the Administrator.

(9)(i) The Administrator may elect to operate and test any test vehicle during all or any part of the mileage accumulation and testing procedure. In such cases, the manufacturer shall provide the vehicle(s) to the Administrator with all information necessary to conduct this testing.

(iii) The test procedures in §§ 86.106 through 86.145 will be followed by the Administrator. The Administrator will test the vehicles at each test point. Maintenance may be performed by the manufacturer under such conditions as the Administrator may prescribe.

(iii) The data developed by the Administrator for the engine-system combination shall be combined with any applicable data supplied by the manufacturer on other vehicles of that combination to determine the applicable deterioration factors for the combination. In the case of a significant discrepancy between data developed by the Administrator and that submitted by the manufacturer, the Administrator's data shall be used in the determination of deterioration factors.

(10) Emission testing of any type with respect to any certification vehicle other than that specified in this part is not allowed except as such testing may be specifically authorized by the Administrator.

(11) This section does not apply to testing conducted to meet the requirements of § 86.079–23(b)(2).

(b)(1) Paragraph (b) of this section applies to heavy-duty engines.

(2)(i) For gasoline-fueled engines, the dynamometer service accumulation schedule will consist of several operating conditions which give the percent loads and the modes as specified in the following chart. The percentage of time in each mode must be held within the limits specified. The maximum observed torque for each mode in the service accumulation cycle must be determined at the rpm at which the mode is being conducted. The percent load for that mode will be determined from the maximum torque at the rpm at which the mode is being conducted.

Mode	Observed torque (percentage of maximum observed)	Percentage of time
Idle	Idle	23 (22–24)
CT	CT	14 (13–15)
PTD	10	6 (5–7)
Cruise	25	31 (30–32)
PTA	55	15 (14–16)
FL	90	11 (10–12)

(ii) The equivalent control parameter for engine loading will be manifold vacuum, manifold pressure, or torque. Usage of one of the three parameters will require approval in advance by the Administrator. The control parameter values that correspond to the appropriate percent loads as specified in the emission test cycle will be initially determined at the zero-hour point or after an appropriate break-in procedure. The control parameter values determined initially will be used for the entire service accumulation schedule. If at any time during the service accumulation, the 90 percent torque value cannot be attained, the engine shall be operated at wide-open throttle.

(iii) The average speed shall be between 1,650 and 1,700 rpm. Subject to the requirements as to average speed, there must be operation at speeds in excess of 3,200 rpm (but not in excess of governed speed for governed engines or rated speed for nongoverned engines) for a cumulative maximum of 0.5 percent of the actual cycle time, excluding time in transient conditions. Maximum cycle time shall be 15 minutes. A cycle approved in advance by the Administrator shall be used.

(3)(i) For diesel engines, the following criteria must be met before service accumulation can begin. Failure to comply with these requirements shall invalidate all test data submitted for an engine.

(A) Each engine shall produce at least 95 percent of the maximum horsepower, corrected to rating conditions, at 95 to 100 percent of the rated speed.

(B) The fuel rate at maximum horsepower shall be within manufacturer's specifications.

(ii) During service accumulation, hours can be credited toward the required service accumulation hours when the following criteria are met. If these criteria cannot be met, engine operation shall be discontinued and the Administrator shall be notified immediately. (Adjustments to the fuel rate can be approved under the provisions of § 86.079–25).

(A) Each engine shall produce at least 95 percent of the maximum horsepower, at 95 to 100 percent of the rated speed, observed at the zero-hour point. Horsepower values shall be corrected to the rating conditions.

(B) The engine shall be operated at 75 percent of the inlet and exhaust restrictions specified in § 86.879–3 except that the tolerance will be ±3 inches of water and ±0.5 inch of Hg respectively.

(C) During each emission test the inlet and exhaust restrictions shall be as specified in § 86.879–8.

(4) If a break-in procedure is used, the procedure must be the same as recommended to the ultimate purchaser. Prior approval by the Administrator is required for use of any break-in procedure. The hours accumulated during the break-in procedure will not be counted as part of the service accumulation.

(5) Emission-data engines: Each emission-data engine shall be operated for 125 hours with all emission control systems installed and operating. An emission test shall be conducted at 125 hours. A zero-hour emission may be performed after the engine has been approved by the Administrator to begin service accumulation. Evaporative emission controls need not be connected provided normal operating conditions are maintained in the engine induction system.

(6) Durability-data engines: Each gasoline-fueled durability-data engine shall be operated, with all emission control systems installed and operating, for 1,500 hours. Each diesel durability-data engine shall be operated for 1,000 hours. Emission measurement, as prescribed, shall be made at 125-hour intervals beginning at 125 hours of operation. A zero-hour emission test may be performed after the engine has been approved by the Administrator to begin service accumulation. Evaporative emission controls need not be connected provided normal operating conditions are maintained in the engine induction system.

(7) All tests required by this subpart to be conducted after 125 hours of operation or at any multiple of 125 hours may be conducted at any accumulated number of hours within 8 hours of 125 hours or the appropriate multiple of 125 hours respectively.

(8)(i) Data from all emission tests (including voided tests) shall be air posted to the Administrator within 72 hours (or delivered within 5 working days). The manufacturer shall furnish to the Administrator an explanation for voiding any test. The Administrator will determine if voiding the test was appropriate based upon the explanation given by the manufacturer for the voided test. If a manufacturer conducts multiple tests at any test point at which the data

are intended to be used in the calculation of the deterioration factor, the number of tests must be the same at each point and may not exceed 3 valid tests. Tests between test points may be conducted as required by the Administrator. In addition, all test data shall be compiled and provided to the Administrator in accordance with § 86.079–23. Where the Administrator conducts a test on a durability-data engine at a prescribed test point, the results of that test will be used in the calculation of the deterioration factor, the number of tests must be the same at each point and may not exceed 3 valid tests. Tests between test points may be conducted as required by the Administrator. In addition, all test data shall be compiled and provided to the Administrator in accordance with § 86.079–23. Where the Administrator conducts a test on a durability-data engine at a prescribed test point, the results of that test will be used in the calculation of the deterioration factor.

(ii) The results of all emission tests shall be recorded and reported to the Administrator using two places to the right of the decimal point. These numbers shall be rounded in accordance with the "Rounding Off Method" specified in ASTM E 29–67.

(9) Whenever the manufacturer proposes to operate and test an engine which may be used for emission or durability data, he shall provide such information concerning components used on the engine as the Administrator may require and make the engine available for such testing under § 86.079–29 as the Administrator may require, before beginning to accumulate hours on the engine. Failure to comply with this requirement will invalidate all test data later submitted of this engine.

(10) Once a manufacturer begins to operate an emission-data or durability-data engine, as indicated by compliance with paragraph (b)(9) of this section, he shall continue to run any emission-data engine to 125 hours, any gasoline-fueled durability-data engine to 1,500 hours, and any diesel durability-data engine to 1,000 hours. The data from the engine will be used in the calculations under § 86.345. Discontinuation of an engine shall be allowed only with the prior written consent of the Administrator.

(11)(i) The Administrator may elect to operate and test any test engine during all or any part of the service accumulation and testing procedure. In such cases the manufacturer shall provide the engine(s) to the Administrator with all information necessary to conduct the testing.

(ii) The test procedures (Subparts D or H of this part for gasoline-fueled engines, and subparts I and D or I and J of this part of diesel engines) will be followed by the Administrator. The Administrator will test the engines at each test point. Maintenance may be performed by the manufacturer under such conditions as the Administrator may prescribe.

(iii) The data developed by the Administrator for the engine-system combination shall be combined with any applicable data supplied by the manufacturer on other engines of that combination to determine the applicable deterioration factors for the combination. In the case of a significant discrepance between data developed by the Administrator and that submitted by the manufacturer, the Administrator's data shall be used in the determination of deterioration factors.

(12) Emission testing of any type with respect to any certification engine other than that specified in this subpart is not allowed except as such testing may be specifically authorized by the Administrator.

8. Section 86.082–28 is added. This section is identical to § 86.079–28 except for paragraph (a)(4)(i)(B).

§ 86.082–28 Compliance with emission standards.

(a)(1) Paragraph (a) of this section applies to light-duty vehicles and light-duty trucks.

(2) The applicable exhaust and fuel evaporative emission standards of this subpart apply to the emissions of vehicles for their useful life.

(3) Since it is expected that emission control efficiency will change with mileage accumulation on the vehicle, the emission level of a vehicle which has accumulated 50,000 miles will be used as the basis for determining compliance with the standards.

(4) The procedure for determining compliance of a new motor vehicle with exhaust emission standards is as follows:

(i) Separate emission deterioration factors shall be determined from the exhaust emission results of the durability-data vehicles(s) for each engine-system combination. A separate factor shall be established for exhaust HC, exhaust CO, and exhaust NO_x for each engine-system combination. A separate evaporative emission deterioration factor shall be determined for each evaporative emission family-evaporative emission control system combination from the testing conducted by the manufacturer.

(A) The applicable results to be used in determining the exhaust emission deterioration factors for each engine-system combination shall be:

(*1*) All valid exhaust emission data from the tests required under § 86.082–26(a)(4) except the zero-mile tests. These shall include the official test results, as determined in § 86.079–29 for all tests conducted on all durability-data vehicles of the combination selected under § 86.082–24(c) (including all vehicles elected to be operated by the manufacturer under § 86.082–24(c)(1)(ii)).

(*2*) All exhaust emission data from the tests conducted before and after the scheduled maintenance provided in § 86.079–25

(*3*) All exhaust emission data from tests required by maintenance approved under § 86.079–25, in those cases where the Administrator conditioned his approval for the performance of such maintenance on the inclusion of such data in the deterioration factor calculation.

(B) All applicable exhaust emission results shall be plotted as a function of the mileage on the system, rounded to the nearest mile, and the best fit straight lines, fitted by the method of least squares, shall be drawn through all these data points. The interpolated 4,000- and 50,000-mile points on this line must be within the low-altitude standards provided in § 86.082–8 or § 86.082–9 as applicable, or the data will not be acceptable for use in calculation of a deterioration factor, unless no applicable data point exceeded the standard. An exhaust emission deterioration factor shall be calculated for each engine-system combination as follows:

Factor = Exhaust emissions interpolated to 50,000 divided by exhaust emissions interpolated to 4,000 miles.

These interpolate values shall be carried out to a minimum of four places to the right of the decimal point before dividing one by the other to determine the deterioration factor. The results shall be rounded to three places to the right of the decimal point in accordance with ASTME 29–67.

(C) An evaporative emission deterioration factor shall be determined from the testing conducted as described in § 86.082–21(b)(4)(ii), for each evaporative emission family-evaporative emission control system combination to indicate the evaporative emission level at 50,000 miles relative to the evaporative emission level at 4,000 miles as follows:

Factor = Evaporative emission level at 50,000 miles minus the evaporative emission level at 4,000 miles.

The factor shall be established to a minimum of two places to the right of the decimal.

(ii)(A) The official exhaust emission test results for each emission-data vehicle at the 4,000 mile test point shall be multiplied by the appropriate deterioration factor: *Provided,* That if a deterioration factor as computed in paragraph (a)(4)(i)(B) of this section is less than one, that deterioration factor shall be one for the purposes of this paragraph.

(B) The official evaporative emission test results for each evaporative emission-data vehicle at the 4,000 mile test point shall be adjusted by addition of the appropriate deterioration factor: *Provided,* That if a deterioration factor as computed in paragraph (a)(4)(i)(C) of this section is less than zero, that deterioration factor shall be zero for the purposes of this paragraph.

(iii) The emissions to compare with the standard shall be the adjusted emissions of paragraph (a)(4)(ii) (A) and (B) of this section for each emission-data vehicle. Before any emission value is compared with the standard, it shall be rounded, in accordance with ASTM E 29–67, to two significant figures. The rounded emission values may not exceed the standard.

(iv) Every test vehicle of an engine family must comply with the exhaust emission standards, as determined in paragraph (a)(4)(iii) of this section, before any vehicle in that family may be certified.

(v) Every test vehicle of an evaporative emission family must comply with the evaporative emission standards, as determined in paragraph (a)(4)(iii) of this section, before any vehicle in that family may be certified.

(b)(1) Paragraph (b) of this section applies to heavy-duty engines.

(2) The exhaust emission standards for gasoline-fueled engines in § 86.080–11 or for Diesel engines in § 86.080–11 apply to the emissions of engines for their useful life.

(3) Since emission control efficiency decreases with the accumulation of hours on the engine, the emission level of a gasoline-fueled engine which has accumulated 1,500 hours of dynamometer operation or a diesel engine which has accumulated 1,000 hours of dynamometer operation will be used as the basis for determining compliance with the standards.

(4) The procedure for determining compliance of a new engine with exhaust emission standards is as follows:

(i) Separate emission deterioration factors shall be determined from the emission results of the durability-data engine for each engine-system combination. Separate factors shall be established for HC, CO, and for the combined emissions of HC and NO_x. For Diesel engines, separate factors shall also be established for the acceleration mode (designated as "A"), the lugging mode (designated as "B"), and the peak opacity (designated as "C").

(A) The applicable results to be used in determining the deterioration factors for each combination shall be:

(*1*) All valid emission data from the tests required under § 86.079–26(b). These shall include the official test results, as determined in § 86.079–29, for all tests conducted on all gasoline-fueled durability-data engines of the combination selected under § 86.082–24(c)(2) or on all Diesel durability-data engines of the combination selected under § 86.082–24(c)(3) (including all engines elected to be operated by the manufacturer under § 86.082–24(c)(2)(iii) for gasoline-fueled engines or under § 86.082–24(c)(3)(ii) for Diesel engines).

(*2*) All emission data from the tests conducted before and after maintenance provided in § 86.079–25(c)(2)(i)(A) for gasoline-fueled engines or in § 86.079–25(c)(2)(i)(B) for Diesel engines.

(*3*) All emission data from the tests conducted before and after maintenance provided in § 86.079–25(c)(2)(v)(C) for Diesel engines if emission tests were conducted.

(B) All applicable emission results for (1) HC, (2) CO, (3) HC+NO_x, (4) acceleration smoke ("A"), (5) lugging smoke ("B"), and (6) peak smoke ("C") shall be plotted as a function of durability hours which shall be consistently rounded to the nearest hour. Emission data shall have two figures to the right of the decimal. The best fit straight lines, fitted by the method of least squares, shall be drawn through these data points. The interpolated 125-hour and 1,500-hour points for gasoline-fueled engines or the 1,000-hour point for Diesel engines on each line, rounded to whole numbers in accordance with ASTM E 29–67, must be within the standards specified in § 86.080–10 for gasoline-fueled engines or in § 86.080–11 for Diesel engines or the data shall not be used in the calculation of a deterioration factor, unless no applicable data points exceed the standards.

(C) The interpolated values shall be used to calculate a deterioration factor as follows:

Factor=Exhaust emissions interpolated to 1,500 hours for gasoline-fueled engines or to 1,000 hours for Diesel engines minus the exhaust emissions interpolated to 125 hours. (Negative deterioration factors shall be considered zero).

(ii) The appropriate deterioration factor, carried out to two places to the right of the decimal point, shall be added to the exhaust emission test results, carried out to two places to the right of the decimal point, for each emission-data engine.

(iii) The emission values to compare with the standards shall be the adjusted emission values of paragraph (b)(4)(ii) of this section rounded to two significant figures in accordance with ASTM E 29–67 for each emission-data engine.

(iv) Every test engine of engine family must comply with all applicable standards, as determined in paragraph (b)(4)(iii) of this section, before any engine in that family will be certified.

9. Section 86.082–30 is added. This section is identical to § 86.079–30 except for paragraphs (a)(3), (a)(4), (a)(5), (a)(6), (b)(1)(i)(B), and (b)(1)(i)(C).

§ 86.082–30 Certification.

(a)(1) If, after a review of the test reports and data submitted by the manufacturer, data derived from any inspection carried out under § 86.078–7(c), and any other pertinent data or information, the Administrator determines that a test vehicle(s) (or test engine(s)) meet(s) the requirements of the Act and of this subpart, he will issue a certificate of conformity with respect to such vehicle(s) (or engine(s)) except in cases covered by paragraph (c) of this section.

(i) Each certificate of conformity shall state the altitude(s) at which the vehicle(s) covered by the certificate has demonstrated compliance with the applicable emission standards.

(2) Such certificate will be issued for such period not to exceed one model year as the Administrator may determine and upon such terms as he may deem necessary to assure that any new motor vehicle (or new motor vehicle engine) covered by the certificate will meet the requirements of the Act and of this part. Each such certificate shall contain the following language:

This certificate covers only those new motor vehicles (or new motor vehicle engines) which conform, in all material respects, to the design specifications that applied to those vehicles (or engines) described in the application for certification and which are produced during the —— model year production period of the aid manufacturer, as defined in 40 CFR 86.082–2.

It is a term of this certificate that the manufacturer shall consent to all inspections described in 40 CFR 86.078–7 (c) which concern either the vehicle (or engine) certified, or any production vehicle (or production engine) which when completed will be claimed to be covered by this certificate. Failure to

comply with all the requirements of § 86.078–7(c) with respect to any such vehicle (or engine) may lead to revocation or suspension of this certificate as specified in 40 CFR § 86.082–30(c). It is also a term of this certificate that this certificate may be revoked or suspended for the other reasons stated in § 86.082–30 (c) or (d).

(3) One such certificate will be issued for each engine family. For gasoline-fueled light-duty vehicles and light-duty trucks, one such certificate will be issued for each engine family-evaporative emission family combination. Each certificate will certify compliance with no more than one set of standards except for low-altitude standards and high-altitude standards. The certificate shall state that it covers vehicles sold or delivered to an ultimate purchaser for principal use at high altitude only if the vehicle conforms, in all material respect to the design in the application for certification at high altitude.

(4) The adjustment or modification of any light-duty vehicle or light-duty truck in accordance with instructions provided by the manufacturer as approved by EPA for the altitude of the dealership selling or leasing the vehicle will not be considered violation of section 203(a)(3) of the Clean Air Act. A violation of section 203(a)(1) of the Clean Air Act occurs when any manufacturer sells or delivers to an ultimate purchaser any light-duty vehicle or light-duty truck, subject to the regulations under the Act which is not configured to meet high-altitude standards:

(i) At a designated high altitude location, unless such manufacturer has substantial reason to believe that such motor vehicle will not be sold to an ultimate purchaser for principal use at a designated high-altitude location; or

(ii) At an other than designated high-altitude location, when such manufacturer has reason to believe that such motor vehicle is intended by the ultimate purchaser to be used principally at a designated high-altitude location.

(5) For the purpose of paragraph (a) of this section, "designated high-altitude location" is any county which has substantially all of its area located above 1,219 meters (4,00 feet) and which is identified below:

Counties Located Substantially Above 1,219 Meters (4,000 Feet) in Elevation

State of Arizona

Apache
Navajo

State of Colorado

Adams
Alamosa
Arapahoe
Archuleta
Boulder
Chaffee
Clear Creek
Conejos
Costilla
Crowley
Custer
Delta
Denver
Dolores
Douglas
Eagle
Elbert
El Paso
Fremont
Garfield
Gilpin
Grand
Gunnison
Hinsdale
Huerfano
Jackson
Jefferson
Lake
La Plata
Larimer
Las Animas
Lincoln
Mesa
Mineral
Moffat
Montezuma
Montrose
Morgan
Ouray
Park
Pitkin
Pueblo
Rio Blanco
Rio Grande
Routt
Saguache
San Juan
San Miguel
Summit
Teller
Washington
Weld

State of Idaho

Bannock
Bear Lake
Bingham
Blaine
Bonneville
Butte
Camas
Caribou
Cassia
Clark
Custer
Franklin
Fremont
Jefferson
Madison
Minidoka
Oneida
Power
Teton
Valley

State of Montana

Beaverhead
Deer Lodge
Gallatin
Jefferson
Madison
Meagher
Park
Silver Bow

State of Nebraska

Banner
Kimball
Sioux

State of Nevada

Carson City
Douglas
Elko
Esmeralda
Eureka
Humboldt
Lander
Lyon
Mineral
Storey
White Pine

State of New Mexico

Bernalillo
Catron
Colfax
Curry
De Baca
Grant
Guadalupe
Harding
Lincoln
Los Alamos
Luna
McKinley
Mora
Rio Arriba
Sandoval
San Juan
San Miguel
Santa Fe
Sierra
Socorro
Taos
Torrance
Union
Valencia

State of Oregon

Lake

State of Utah

Beaver
Box Elder
Cache
Carbon
Daggett
Davis
Duchesne
Emery
Grand
Iron
Juab
Kane
Millard
Morgan
Piute
Rich
salt Lake
San Juan
Sanpete
Sevier
Summit
Tooele
Uintah
Utah
Wasatch
Wayne
Weber

State of Wyoming

Albany
Carbon
Converse
Fremont
Goshen
Hot Springs
Johnson
Laramie
Lincoln
Natrona
Niobrara
Park
Platte
Sublette
Sweetwater
Teton
Uinta
Weston

(6) The provisions of paragraph (a)(4) of this section shall not apply to any light-duty vehicle or light-duty truck sold, offered for sale, introduced,or delivered for intorduction into commerce in California provided that the vehicle is covered by a certificate of conformity with emission standards in effect in California.

(7) Certificates issued for light-duty vehicles or light-duty trucks certified with catalytic converters shall be subject to the following term in addition to the term in paragraph (a)(2) of this section: "Catalyst-equipped vehicles, otherwise covered by this certificate, which are driven outside the United States, Canada, and Mexico will be presumed to have been operated on leaded gasoline resulting in deactivation of the catalysts. If these vehicles are imported or offered for the importation without retrofit of the catalyst, they will be considered not to be within the coverage of this certificate unless included in a catalyst control program operated by a manufacturer or a United States Government Agency and approved by the Administrator."

(8) Certificates issued for incomplete light-duty trucks shall be subject to the following term in addition to the term in paragraph (a)(2) of this section: "For incomplete light-duty trucks, this certificate covers only those new motor vehicles which when completed by having the primary load-carrying device or container attached, conform to the maximum curb weight and frontal area limitations described in the application for certification as required in 40 CFR 86.082–21(d)."

(9) Certificates issued for heavy-duty engines shall be subject to the following term in addition to the term in paragraph (a)(2) of this section: "For heavy-duty engines, this certificate covers only those new motor vehicle engines installed in heavy-duty vehicles which conform to the minimum gross vehicle weight rating, curb weight, or frontal area limitations for heavy-duty vehicles described in 40 CFR 86.082–2."

(b)(1) The Administrator will determine whether a vehicle (or engine) covered by the application complies

with applicable standards by observing the following relationships:

(i) *Light-duty vehicles and light-duty trucks.* (A) The durability-data vehicle(s) selected under § 86.082–24(c)(1)(i) shall represent all vehicles of the same engine-system combination.

(B) The emission-data vehicle(s) selected under § 86.082–24(b)(1)(ii) through (b)(1)(v) shall represent all vehicles of the same engine-system combination as applicable.

(C) The emission-data vehicle(s) selected under§ 86.078–24(b)(1)(vii)(A) and (b)(1)(vii)(B) shall represent all vehicles evaporative emission family, as applicable.

(D) [Deleted]

(E) [Deleted]

(ii) *Gasoline-fueled heavy-duty engines.* (A) A test engine selected under § 86.082–24(b)(2)(ii) and (iv) shall represent all engines in the same engine family of the same engine displacement-exhaust emission control system combination.

(B) A test engine selected under § 86.082–24(b)(2)(iii) shall represent all engines in the same engine family of the same engine displacement-exhaust emission control system combination.

(C) A test engine selected under § 86.082–24(c)(2)(i) shall represent all engines of the same engine-system combination.

(iii) *Diesel heavy-duty engines* (A) A test engine selected under § 86.082–24(b)(3)(ii) shall represent all engines of the same engine-system combination.

(B) A test engine selected under § 86.082–24(b)(3)(iii) shall represent all engines of that emission control system at the rated fuel delivery of the test engines.

(C) A test engine selected under § 86.082–24(c)(3)(i) shall represent all engines of the same engine-system combination.

(2) The Administrator will proceed as in paragraph (a) of this section with respect to the vehicles (or engines) belonging to an engine family or engine family-evaporative emission family combination (as applicable), all of which comply with all applicable standards.

(3) If, after a review of the test reports and data submitted by the manufacturer, data derived from any additional testing conducted pursuant to § 86.079–29, data or information derived from any inspection carried out under § 86.078–7(c) or any other pertinent data or information, the Administrator determines that one or more test vehicles (or test engines) of the certification test fleet do not meet applicable standards, he will notify the manufacturer in writing, setting forth the basis for his determination. Within 30 days following receipt of the notification, the manufacturer may request a hearing of the Administrator's determination. The request shall be in writing, signed by an authorized representative of the manufacturer and shall include a statement specifying the manufacturer's objections to the Administrator's determination and data in support of such objections. If, after a review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.078–6 with respect to such issue.

(4) For light-duty vehicles and light-duty trucks the manufacturer may, at his option, proceed with any of the following alternatives with respect to an emission-data vehicle determined not in compliance with all applicable standards for which it was tested:

(i) Request a hearing under § 86.078–6; or

(ii) Remove the vehicle configuration (or evaporative vehicle configuration, as applicable) which failed, from his application;

(A) If the failed vehicle was tested for compliance with exhaust emission standards only: The Administrator may select, in place of the failed vehicle, in accordance with the selection criteria employed in selecting the failed vehicle, a new emission-data vehicle to be tested for exhaust emission compliance only.

(B) If the failed vehicle was tested for compliance with both exhaust and evaporative emission standards: The Administrator may select, in place of the failed vehicle, in accordance with the selection criteria employed in selecting the failed vehicle, a new emission-data vehicle which will be tested for compliance with both exhaust and evaporative emission standards. If one vehicle cannot be selected in accordance with the selection criteria employed in selecting the failed vehicle, then two vehicles may be selected (i.e., one vehicle to satisfy the exhaust emission vehicle selection criteria and one vehicle to satisfy the evaporative emission vehicle selection criteria). The vehicle selected to satisfy the exhaust emission vehicle selection criteria will be tested for compliance with exhaust emission standards only. The vehicle selected to satisfy the evaporative emission vehicle selection criteria will be tested for compliance with both exhaust and evaporative emission standards; or

(iii) Remove the vehicle configuration (or evaporative vehicle configuration, as applicable) which failed from the application and add a vehicle configuration(s) (or evaporative vehicle configuration(s), as applicable) not previously listed. The Administrator may require, if applicable, that the failed vehicle be modified to the new engine code (or evaporative emission code, as applicable) and demonstrate by testing that it meets applicable standards for which it was originally tested. In addition, the Administrator may select, in accordance with the vehicle selection criteria given in § 86.082–24(b), a new emission-data vehicle or vehicles. The vehicles selected to satisfy the exhaust emission vehicle selection criteria will be tested for compliance with exhaust emission standards only. The vehicles selected to satisfy the evaporative emission vehicle selection criteria will be tested for compliance with both exhaust and evaporative emission standards; or

(iv) Correct a component or system malfunction and show that with a correctly functioning system or component the failed vehicle meets applicable standards for which it was originally tested. The Administrator may require a new emission-data vehicle, of identical vehicle configuration (or evaporative vehicle configuration, as applicable) to the failed vehicle, to be operated and tested for compliance with the applicable standards for which the failed vehicle was originally tested.

(5) For heavy-duty engines the manufacturer may, at his option, proceed with any of the following alternatives with respect to any engine family represented by a test engine(s) determined not in compliance with applicable standards:

(i) Request a hearing under § 86.078–6; or

(ii) Delete from the application for certification the engines represented by the failing test engine. (Engines so deleted may be included in a later request for certification under § 86.079–32.) The Administrator will then select in place of each failing engine an alternate engine chosen in accordance with selection criteria employed in selecting the engine that failed; or

(iii) Modify the test engine and demonstrate by testing that it meets applicable standards. Another engine which is in all material respects the same as the first engine, as modified, shall then be operated and tested in accordance with applicable test procedures.

(6) If the manufacturer does not request a hearing or present the required data under paragraphs (b)(4) or (b)(5) (as applicable) of this section, the Administrator will deny certification.

(c)(1) Notwithstanding the fact that any certification vehicle(s) (or certification engine(s)) may comply with

other provisions of this subpart, the Administrator may withhold or deny the issuance of a certificate of conformity (or suspend or revoke any such certificate which has been issued) with respect to any such vehicle(s) (or engine(s)) if:

(i) The manufacturer submits false or incomplete information in his application for certification thereof;

(ii) The manufacturer renders inaccurate any test data which he submits pertaining thereto or otherwise circumvents the intent of the Act, or of this part with respect to such vehicle (or engine);

(iii) Any EPA Enforcement Officer is denied access on the terms specified in § 86.078–7(c) to any facility or portion thereof which contains any of the following:

(A) The vehicle (or engine);

(B) Any components used or considered for use in its modification or buildup into a certification vehicle (or certification engine);

(C) Any production vehicle (or production engine) which is or will be claimed by the manufacturer to be covered by the certificate;

(D) Any step in the construction of a vehicle (or engine) described in (C) of this subdivision;

(E) Any records, documents, reports, or histories required by this part to be kept concerning any of the above;

(iv) Any EPA Enforcement Officer is denied "reasonable assistance" (as defined in § 86.078–7(c)) in examining any of the items listed in paragraph (c)(1)(iii) of this section.

(2) The sanctions of withholding, denying, revoking, or suspending of a certificate may be imposed for the reasons in paragraphs (c)(1)(i), (ii), (iii), or (iv) of this section only when the infraction is substantial.

(3) In any case in which a manufacturer knowingly submits false or inaccurate information or knowingly renders inaccurate or invalid any test data or commits any other fraudulent acts and such acts contribute substantially to the Administrator's decision to issue a certificate of conformity, the Administrator may deem such certificate void ad initio.

(4) In any case in which certification of a vehicle (or engine) is proposed to be withheld, denied, revoked, or suspended under paragraph (c)(1)(iii) or (c)(1)(iv) of this section, and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.078–7(c) in fact occurred, the manufacturer, if he wishes to contend that, even though the violation occurred, the vehicle (or engine) in question was not involved in the violation to a degree that would warrant withholding denial, revocation, or suspension of certification under either paragraph (c)(1)(iii) or (c)(1)(iv) of this section, shall have the burden of establishing that contention to the satisfaction of the Administrator.

(5) Any revocation or suspension of certification under paragraph (c)(1) of this section shall:

(i) be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.078–6 hereof.

(ii) Extend no further than to forbid the introduction into commerce of vehicles (or engines) previously covered by the certification which are still in the hands of the manufacturer, except in cases of such fraud or other misconduct as makes the certification invalid ab initio.

(6) The manufacturer may request in the form and manner specified in paragraph (b)(3) of this section that any determination made by the Administrator under paragraph (c)(1) of this section to withhold or deny certification be reviewed in a hearing conducted in accordance with § 86.078–6. If the Administrator finds, after a review of the request and supporting data, that the request raises a substantial factual issue, he will grant the request with the respect to such issue.

(d)(1) Notwithstanding the fact that any vehicle configuration or engine family may be covered by a valid outstanding certificate of conformity, the Administrator may suspend such outstanding certificate of conformity in whole or in part with respect to such vehicle configuration or engine family if:

(i) The manufacturer refuses to comply with the provisions of a test order issued by the Administrator pursuant to § 86.603; or

(ii) The manufacturer refuses to comply with any of the requirements of § 86.603; or

(iii) The manufacturer submits false or incomplete information in any report or information provided pursuant to the requirements of § 86.609; or

(iv) The manufacturer renders inaccurate any test data which he submits pursuant to § 86.609; or

(vi) Any EPA Enforcement Officer is denied the opportunity on the terms specified in § 86.606, to:

(A) Monitor vehicle selection pursuant to § 86.607, or

(B) Select vehicles for testing pursuant to § 86.607, or

(C) Monitor vehicle testing performed to satisfy any of the requirements of this part; or

(vii) Any EPA Enforcement Officer is denied "reasonable assistance" as defined in § 86.606 in examining any of the items listed in that section; or

(viii) The manufacturer refuses to comply with the requirements of §§ 86.604(a), 86.605, and 86.607, 86.608, 86.610, or 86.611.

(2) The sanction of suspending a certificate may not be imposed for the reasons in paragraphs (d)(1)(i), (ii), or (viii) of this section where such refusal is caused by conditions and circumstances outside the control of the manufacturer which renders it impossible to comply with those requirements. Such conditions and circumstances shall include, but not be limited to, any uncontrollable factors which results in the temporary unavailability of equipment and personnel needed to conduct the required tests, such as equipment breakdown or failure or illness of personnel, but shall not include failure of the manufacturer to adequately plan for and provide the equipment and personnel needed to conduct the tests. The manufacturer will bear the burden of establishing the presence of the conditions and circumstances required by this paragraph.

(3) The sanctions of suspending a certificate may be imposed for the reasons in paragraphs (d)(1)(iii), (iv), (v), (vi), or (vii) of this section only when the infraction is substantial.

(4) In any case in which a manufacturer knowingly submitted false or inaccurate information or knowingly rendered inaccurate any test data or committed any other fraudulent acts, and such acts contributed substantially to the Administrator's original decision not to suspend or revoke a certificate of conformity in whole or in part, the Administrator may deem such certificate void from the date of such fraudulent act.

(5) In any case in which certification of a vehicle is proposed to be suspended under paragraph (d)(1)(v), (d)(1)(vi), or (d)(1)(vii) of this section, and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.606 in fact occurred, the manufacturer, if he wishes to contend that even though the violation occurred, the vehicle configuration or engine family in question was not involved in the violation to the degree that would warrant suspension of certification under either paragraph (d)(1)(v), (d)(1)(vi), or (d)(1)(vii) of this section, shall have the burden of establishing that contention to the satisfaction of the Administrator.

(6) Any suspension of certification under paragraph (d)(1) of this section shall:

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.613 hereof, and

(ii) Not apply to vehicles no longer in the hands of the manufacturer.

10. Section 86.082–35 is added. This section is identical to § 86.079–35 except for paragraphs (a)(1)(iii)(D) and (a)(1)(iii)(F), (a)(1)(iii)(G).

§ 86.082–35 Labeling.

(a) The manufacturer of any motor vehicle (or motor vehicle engine) subject to the applicable emission standards of this subpart, shall, at the time of manufacture, affix a permanent legible label, or the type and in the manner described below, containing the information hereinafter provided, to all production models of such vehicles (or engines) available for sale to the public and covered by a certificate of conformity under § 86.082–30(a).

(1) *Light-duty vehicles and light-duty trucks.* (i) A permanent, legible label shall be affixed in a readily visible position in the engine compartment.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the certificate of conformity for such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(A) The label heading: Vehicle Emission Control Information;

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches), engine, family identification and evaporative family identification;

(D) Engine tune-up specifications and adjustments, as recommended by the manufacturer in accordance with the altitude at which the vehicle is to be sold for principle use to the ultimate purchaser, including but not limited to idle speed(s), ignition timing, the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), high idle speed, initial injection timing, and valve lash (as applicable), as well as other parameters deemed necessary by the manufacturer. These specifications should indicate the proper transmission position during tune-up and what accessories (e.g., air conditioner), if any, should be in operation. If adjustments or modifications to the vehicle are necessary to insure compliance with emission standards at either high or low altitude, the manufacturer shall either include the instructions for such adjustments on the label, or indicate on the label where instructions for such adjustments may be found. The label shall indicate whether the engine tune-up or adjustment specifications are applicable to elevation below or above 4,000 feet.

(E) An unconditional statement of compliance with the appropriate model year U.S. Environmental Protection Agency regulations which apply to light-duty vehicles or light-duty trucks;

(F) A statement, if applicable, that the adjustments or modifications indicated on the label are necessary to assure emission control compliance at the altitude specified.

(G) For high-altitude vehicles, a statement indicating that the vehicle was sold to the ultimate purchaser for principal use at high altitude.

(2) *Heavy-duty engines.* (i) A permanent legible label shall be affixed to the engine in a position in which it will be readily visible after installation in the vehicle.

(ii) The label shall be attached to an engine part necessary for normal engine operation and not normally requiring replacement during engine life.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals which shall be a color that contrasts with the background of the label:

(A) The label heading: Engine Exhaust Emission Control Information;

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches) and engine family and model designations;

(D) Date of engine manufacture (month and year);

(E) Engine specifications and adjustments as recommended by the manufacturer. These specifications should indicate the proper transmission position during tuneup and what accessories (e.g., air conditioner), if any, should be in operation;

(F) For gasoline-fueled engines the label should include the idle speed, ignition timing, and the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), and valve lash.

(G) For Diesel engines the label should include the advertised hp at rpm, fuel rate at advertised hp in mm^3 stroke, valve lash, initial injection timing, and idle speed.

(H) An unconditional statement of compliance with appropriate model year (e.g., 1979) U.S. Environmental Protection Agency regulations applicable to heavy-duty engines.

(iv) The label may be made up of one or more pieces; *Provided,* That all pieces are permanently attached to the same engine or vehicle part as applicable.

(b) The provisions of this section shall not prevent a manufacturer from also reciting on the label that such vehicle (or engine) conforms to any applicable State emission standards for new motor vehicles (or new motor vehicle engines) or any other information that such manufacturer deems necessary for, or useful to, the proper operation and satisfactory maintenance of the vehicle (or engine).

(c)(1) The manufacturer of any light-duty vehicle or light-duty truck subject to the emission standards of this subpart, shall, in addition and subsequent to setting forth those statements on the label required by the Department of Transportation (DOT) pursuant to 49 CFR 567.4, set forth, on the DOT label or on an additional label located in proximity to the DOT label and affixed as described in 49 CFR 567.4(b), the following information in the English language, lettered in block letters and numerals not less than three thirty-seconds of an inch high, of a color that contrasts with the background of the label:

(i) The heading: "Vehicle Emission Control Information";

(ii) The statement: "This Vehicle Conforms to U.S. EPA Regulations Applicable to 1979 Model year New Motor Vehicles."

(iii) One of the following statements, as applicable, in letters and numerals not less than six thirty-seconds of an inch high and of a color that contrasts with the background of the label:

(A) For all vehicles certified as non-catalyst-equipped: "NON-CATALYST";

(B) For all vehicles certified as catalyst-equipped which are included in a manufacturer's catalyst control program for which approval has been given by the Administrator: "CATALYST-APPROVED FOR IMPORT";

(C) For all vehicles certified as catalyst-equipped which are not included in a manufacturer's catalyst control program for which prior approval has been given by the Administrator: "CATALYST."

(2) In lieu of selecting either of the labeling options of paragraph (c)(1) of this section, the manufacturer may add the information required by paragraph

(c)(1)(iii) of this section to the label required by paragraph (a) of this section. The required information will be set forth in the manner prescribed by paragraph (c)(1)(iii) of this section.

(d) Incomplete light-duty trucks or incomplete heavy-duty vehicles optionally certified as light-duty trucks shall have the following statement printed on the label required in paragraph (a)(1) of this section in lieu of the statement required by paragraph (a)(1)(iii)(E) of this section: "This vehicle conforms to U.S. EPA regulations applicable to 19— Model year New Motor Vehicles when completed at a maximum curb weight of ———— pounds and a maximum frontal area of ——— square feet."

(e) Incomplete heavy-duty vehicles having an 8,500 pound gross vehicle weight rating or less shall have the following statement printed on the label required in paragraph (a)(2) or (a)(3) of this section in lieu of the statement required by paragraph (a)(2)(iii)(F) or (a)(3)(iii)(F) of this section: "This engine conforms to U.S. EPA regulations applicable to 19— Model Year New heavy-Duty Engines when installed in a vehicle completed at a curb weight of more than 6,000 pounds or with a frontal area greater than 45 square feet."

(f) The manufacturer of any incomplete vehicle shall notify the purchaser of such vehicle of any curb weight, frontal area, or gross vehicle weight rating limitations affecting the emissions certificate applicable to that vehicle. This notification shall be transmitted in a manner consistent with National Highway Traffic Safety Administration safety notification requirements published in 49 CFR Part 568.

11. Section 86.082–38 is added. This section is identical to § 86.079–38 except for paragraphs (c)(2) and (d)(2).

§ 86.082–38 Maintenance instructions

(a) The manufacturer shall furnish or cause to be furnished to the purchaser of each new motor vehicle (or motor vehicle engine) subject to the standards prescribed in §§ 86. 082–8, 86.082–9, 86.080–10, or 86.080–11, as applicable, written instructions for the maintenance and use of the vehicle (or engine) by the purchaser as may be reasonable and necessry to assure the proper functioning of emission control systems.

(1) Such instructions shall be provided for those vehicle and engine components listed in Appendix VI to this part (and for any other components) to the extent that maintenance of these components is necessary to assure the proper functioning of emission control systems.

(2) Such instructions shall be in clear, and to the extent practicable, nontechnical language.

(b) The maintenance instructions required by this section shall contain a general description of the documentation which the manufacturer will require from the ultimate purchaser or any subsequent purchaser as evidence of compliance with the instructions.

(c) *For gasoline-fueled light duty vehicles and light-duty trucks.* (1) Such instructions shall specify the performance of all scheduled maintenance performed by the manufacturer under § 86.079–25(a) and shall explain the conditions under which EGR system and catalytic converter maintenance are to be performed (e.g., what type of warning device is being employed and whether the device is activated by component failure or the need for periodic maintenance).

(2) Such instructions shall indicate what adjustments or modifications, if any, are necessary to allow the vehicle to meet applicable emission standards at elevations above or below 4,000 feet.

(3) [Reserved]

(d) *For Diesel light-duty vehicles and light-duty trucks.* (1) Such instructions shall specify the performance of all scheduled maintenance performed by the manufacturer under § 86.079–25(a) and shall explain the conditions under which EGR system and catalytic converter maintenance are to be performed (e.g., what type of warning device is being employed and whether the device is activated by component failure or the need for periodic maintenance).

(2) Such instructions shall indicate what adjustments or modifications, if any, are necessary to allow the vehicle to meet applicable emission standards at elevations above or below 4,000 feet.

(e) For gasoline-fueled heavy-duty engines, such instructions shall specify the performance of all scheduled maintenance performed by the manufacturer under § 86.079–25 (c)(2). Scheduled maintenance in addition to that performed on the durability-data engine under § 86.079–25(c)(2) may be recommended for reasons such as to offset the effects of operating conditions which differ from the dynamometer durability cycle or to increase the life of the engine beyong 1,500 hours (or the equivalent). The instructions may schedule maintenance on a calendar time basis and/or mileage basis in addition to the engine service time basis that was followed by the manufacturer under § 86.079–25(c)(2).

(f) For Diesel heavy-duty engines, such instructions shall specify the performance of all scheduled maintenance performed by the manufacturer under § 86.079–25(c)(2). Scheduled maintenance in addition to that performed on the durability-data engine under § 86.079–25(c)(2) may be recommended for reasons such as to offset the effects of operating conditions which differ from the dyamometer durability cycle or to increase the life of the engine beyond 1,000 hours (or the equivalent). The instructions may schedule maintenance on a calendar time basis, mileage basis, engine service time basis, or combination of each.

(Secs. 202, 206, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7521, 7525, and 7601 (a)).

Dated: January 15, 1980.

Douglas M. Costle,

Administrator, U.S. EPA.

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Part IV

Environmental Protection Agency

Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines; Submission of Altitude Performance Adjustments

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL-1383-2; Docket No. A-79-42]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Proposed Regulations for the Submission of Altitude Performance Adjustments for Motor Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The EPA is proposing this rulemaking to establish requirements for manufacturers to provide altitude performance adjustment instructions for motor vehicles. This action is intended to improve the emission control performance of vehicles at various altitudes. Section 215 of the Clean Air Act as amended in 1977 (the Act) provides the authority for this section.

DATES: *Public Hearing:* EPA will hold a public hearing on the provisions of the proposed action at least 30 days from the date of **Federal Register** publication. The date this hearing will be announced in the **Federal Register.**

Public Comment: During final rulemaking, EPA will consider comments received on or before 30 days from the date of public hearing.

ADDRESSES: Interested persons may participate in this rulemaking by submitting written comments to: U.S. Environmental Protection Agency, Central Docket Section (A-130), Attn: A-79-42, Waterside Mall, Room 2903B (EPA Library), 401 M Street SW., Washington, D.C. 20460.

Ten copies of the comments are requested but not required.

The public hearing will be held at the U.S. Post Office Auditorium, 1823 Stout Street, Denver, Colorado.

FOR FURTHER INFORMATION: Thomas M. Ball, Certification Division, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, 313-668-4280.

SUPPLEMENTARY INFORMATION: Section 215 of the Act mandates this action and establishes the authority to require manufacturers to submit to the Administrator instructions for the adjustment or modification of vehicles being operated at elevations other than the altitude for which the vehicle was originally designed. Section 215 also requires that EPA establish regulations to require these submissions. EPA will not consider adjustments or modifications (hereafter "adjustments") made to vehicles in accordance with instructions (approved under these regulations) as being in violation of the tampering provisions of Section 203(a)(3) of the Act. Although Section 215 does not require specific emission reductions to be achieved as a result of the adjustments, EPA believes the intent of Congress when it enacted Section 215 was to bring about a reduction in emissions from in-use motor vehicles.

Light-duty vehicles (LDV's) and light-duty trucks (LDT's) that are not designed for operation at high altitude (over 4,000 feet above sea level) emit significantly more hydrocarbons (HC) and carbon monoxide (CO) per mile at high altitude than at low altitude. For the 1977 model year, EPA regulations required that manufacturers of LDV's sold at high altitude certify those vehicles to meet emission standards at high altitude. These regulations were revoked for 1978 and later model years by the 1977 Clean Air Act Amendments. As a result of that congressional action, vehicles that comply with emission standards only at low altitude may now be legally sold at high altitude. This proposed regulation will provide procedures for manufacturers to provide instructions to adjust these in-use vehicles in order to reduce vehicle emissions at high altitude.

As required by Section 215(b)(3), this proposed regulation will also require instructions to adjust for low-altitude operation in-use vehicles that are designed for operation only at high altitude. These vehicles may not perform acceptably at low altitude and may emit more pollutants if not adjusted for low-altitude use.

Air quality improvements resulting from this regulatory action will depend on how many vehicles are adjusted in practice. Inspection and maintenance (I/M) programs in the affected areas would provide the greatest incentive to the vehicle owner to have the adjustments performed. Recent data collected in Denver show that 95 percent of the vehicles sampled had incorrect adjustments.[1] We assume that many of these adjustments to other-than-recommended specifications were deliberately performed to improve vehicle performance at high altitude. Thus, even without I/M, vehicles owners may have sufficient incentive to have their vehicles adjusted to compensate for high-altitude operating conditions. However, the possiblity of improved driveability may not be adequate incentive if the costs of adjustments are unreasonable. Therefore, EPA is proposing that approvals of adjustments be dependent on a reasonable projected cost of the adjustment.

Section 215(d) prohibits high-altitude performance adjustments after December 31, 1980 in any states in which I/M programs have not been implemented for their nonattainment areas. This may provide states with added incentives to implement I/M programs. EPA anticipates that nearly all high-altitude states will meet the December 31, 1980 deadline.

General Applicability

Section 215(b)(1) requires instructions for "each class or category of vehicles or engines to which this subchapter [Title II] applies." This language requires that instructions be provided for all model years in which a given class or category of vehicles or engines was regulated under Title II. Thus, this regulation applies to the following:

—1968 and later model year light-duty vehicles and light-duty trucks,

—1970 and later model year heavy-duty engines built after December 31, 1969, and

—1978 and later model year motorcycles built after December 31, 1977.

Because some vehicles have been designed for high-altitude operation (through fixed design or automatic altitude compensation), not all vehicles within the above categories are affected. The regulations include provisions to exempt these vehicles from the high-altitude performance adjustment requirements since they do not need further adjustment for high-altitude operation. However, the regulations still require that manufacturers provide adjustment instructions for the low-altitude operation of vehicles with fixed high-altitude designs.

Emission Requirements

The congressional intent of Section 215 was to reduce emissions from vehicles being operated at high altitude. Section 215 does not specify requirements for minimum reductions in emission levels. In the development of these regulations, EPA considered requiring certain emission reductions, but the approach was rejected since EPA could not find the authority needed in Section 215 and since the Agency could not accurately predict the effect of typical adjustments on emission levels when such a wide range of vehicle types and designs are currently in use. EPA also determined that such requirements are not necessary since emission level reductions are easily obtained by relatively simple adjustments at high altitude. In keeping with the intent of Section 215, EPA will not approve

[1] EPA-460/3-78-001, March 1978, Colorado Motor Vehicle Emission Inspection Pilot Program.

altitude performance adjustments that result in emission level increases, with one exception: EPA will allow any pollutant emission level that is below the low-altitude standard to rise to the level of the standard without jeopardizing the approval of the adjustment (since vehicles need only meet the applicable standards in order to achieve the necessary benefit to air quality).

If the Section 215 language were read as precluding the Administrator from approving instructions which might result in a slight emission increase for one of the pollutants, the effectiveness of Section 215 would be destroyed and the very purpose for enacting it (i.e., to improve emission control and fuel economy in high-altitude areas) would not be achieved. This is because it is practically impossible to reduce HC and CO emissions without experiencing some increase in oxides of nitrogen (NO_x) emissions.

The apparent conflict between the language and the purpose of Section 215 can be reconciled by interpreting the language "equivalent emission control performance with respect to each standard" as permitting slight increases in emissions of one pollutant provided that the applicable standard is not exceeded and that the overall emission performance of the vehicle is improved. While such an interpretation is not the most obvious reading of the statutory language, EPA believes that it is the most sensible interpretation and totally consistent with the purposes of Section 215.

Because of engine combustion characteristics, EPA feels that it is technically appropriate to allow emission levels to increase as long as they stay below the emission standard as described above. NO_x emissions tend to decrease when the air-fuel mixture in the combustion chamber becomes more fuel-abundant (rich) in relation to the available oxygen. At increasingly higher elevations, the density of air decreases, thus decreasing the available oxygen. Since the amount of fuel used does not change in engines not equipped to compensate for the air density change, the air-fuel mixture becomes increasingly rich at high elevations. These rich mixtures create excess fuel combustion products which result in increased HC and CO emission levels. High-altitude adjustments will involve decreasing the amount of fuel into the combustion chamber, or increasing the amount of air, in order to decrease HC and CO emissions. However, in the process of reducing the HC and CO emissions, NO_x emissions nearly always increase from their initial depressed level at high altitude. In order that high-altitude performance adjustments for the reduction of HC and CO pollutants are not made technically impossible, EPA will allow the NO_x level to increase to the level of the standard. EPA expects the benefits from reductions in grams per mile HC and CO emissions to offset any increase in NO_x emissions.

Performance Requirements

In addition to the emission restrictions discussed above, this regulation also contains other restrictions on how altitude performance adjustments may affect the performance of the vehicle. While Section 215 allows EPA to establish performance standards for the approval of altitude adjustment instructions, EPA has determined that specific performance improvement requirements are not necessary since some improvement should naturally result from most adjustments. Such requirements would also be difficult to define and may be unreasonably burdensome for manufacturers to prove. However, in order for altitude performance adjustments to be accepted by the public, the adjustments should not cause poorer fuel economy or vehicle driveability. EPA feels that it is important that these conditions do not occur since no air quality improvements will be realized without public participation. It is unlikely, however, that these restrictions will be difficult to meet since vehicles adjusted for better emission control performance at high altitude should also improve in fuel economy and driveability as a result.

Cost Restrictions

In the development of this regulation, EPA has established altitude performance adjustment cost acceptance criteria intended to assure successful field implementation through vehicle owner participation. EPA believes that if the cost of the adjustments are too high in relation to the driver perceived benefits (e.g., driveability and fuel economy), the program may fail or be less effective due to lack of consumer participation. EPA is proposing what it considers a reasonable cost restriction ($20) based on information currently available on altitude performance adjustments. With ths NPRM, however, EPA solicits comments and pertinent information from vehicle and engine manufacturers (and any other interested party) as to the appropriateness of a cost restriction and to the amount of the restriction.

Reasonable Adjustments

As discussed earlier, EPA chose not to impose minimum emission reduction requirements for altitude performance adjustments. EPA is confident that such requirements are not necessary since EPA expects manufacturers to comply with the spirit and intent of Section 215. This intent is to bring about the maximum possible emission reductions from vehicles at high altitude through adjustments or modifications of reasonable cost and complexity.

Neither Section 215 nor these proposed regulations impose requirements for specific types of adjustments. EPA feels that the manufacturer is in the best position to determine the most effective adjustments within cost limitations. However, manufacturers are cautioned that EPA will only approve adjustments that are reasonably considered as altitude performance adjustments as defined in these regulations. Readjustments that do not change parameter specifications from original specifications *and* are part of normal scheduled maintenance will not be considered as altitude performance adjustments.

An example of this type of adjustment is setting idle fuel/air mixture to specification at high altitude with no accompanying adjustments to other parameters. If this adjustment is already required as part of normal scheduled maintenance, it is likely that most in-use vehicles have had this adjustment done previously. Idle mixture specifications are usually performance specifications such as idle CO, lean best idle speed, or propane injection idle speed. A vehicle brought from low altitude to high altitude should be readjusted to the same specifications to compensate for the air density change. If this is normally done by dealer preparation of new vehicles, or if normal scheduled maintenance calls for this adjustment periodically, EPA does not intend to consider this adjustment alone as an altitude performance adjustment.

At the other extreme, EPA will not accept modifications that are too complex to be properly performed in the field. EPA is particularly concerned about modifications that change emission control systems (as defined in MSPAC Advisory Circular No. 20–B) since these may jeopardize the useful life emission control of some vehicles. For this reason, EPA does not intend to approve altitude performance adjustments that result in different emission control systems.

Data Requirements

Section 215 requires altitude performance adjustment approvals to be "based upon minimum engineering evaluations consistent with good engineering practice." EPA expects that manufacturers will submit a potentially large number of separate altitude adjustment instructions that will cover a wide range of vehicle designs, types, and model years. EPA has determined that specific test data requirements to evaluate this range of vehicles is burdensome and unnecessary. These regulations instead require that the manufacturer provide EPA with information (which may include test data or technical evaluations) that the manufacturer contends is adequate demonstration that the emission and fuel economy acceptance criteria are met. EPA amy require additional information if the information is judged to be insufficient to show compliance with the emission acceptance criteria. The emission standards that EPA will use to determine emission control performance acceptability will be the standards in place for the model year and vehicle type for which the adjustments apply. For example, if an adjustment applies to 1973 light-duty vehicles, and if the NO_x emission level increases as a result of the altitude adjustment, the after-adjustment NO_x emission level will be compared to the 1973 light-duty vehicle NO_x emission standard. Deterioration factors will not be applied to emission data to determine acceptability.

Schedule for Submissions

These regulations impose a deadline of July 1, 1981 for the submission of altitude adjustment instructions for in-use vehicles. EPA anticipates that this will provide manufacturers one year from the final promulgation of these regulations to submit adjustment instructions. For new vehicles, manufacturers must submit adjustment instructions within 30 days from the date which the vehicles were certified by EPA. EPA invites comments as to whether the leadtimes provided in these schedules are appropriate.

Manufacturers should take note that if they fail to submit altitude performance adjustment instructions by the applicable deadline, EPA may impose the penalties specified in Section 205 of the Clean Air Act. However, in cases where EPA finds certain adjustment instructions unacceptable, EPA will allow an extra 30 days for a new submission.

Effect on Parameter Adjustments

EPA has promulgated regulations for LDV's and LDT's beginning in the 1981 model year that will allow EPA to adjust certain parameters to the limits of their adjustability on vehicles before testing. These regulations have the intended effect of inducing designs that have no or limited adjustability. Parameter adjustment regulations are also in effect for model year 1980 and later motorcycles.

The parameter adjustment regulations for 1981 model year and later LDV's and LDT's require that idle mixture and choke adjustments must cost more than 20 dollars and take more than ½ hour to perform in order to be deemed nonadjustable. (This same limitation will apply to idle speed in ignition timing beginning in the 1982 model year.)

The simple adjustable parameters of idle mixture, choke, and ignition timing are, therefore, eliminated for simple altitude adjustments. However, a number of vehicles beginning in the 1981 model year will be exempt from the proposed Section 215 regulations because they are altitude compensated to some extent. Most feedback control systems will be included in this category. EPA has proposed rules effective beginning in the 1982 model year that will impose high-altitude emission standards and require that all new LDV's and LDT's be at lease capable of being modified to meet the high-altitude standards. Under those requirements all 1982 and subsequent model year LDV's and LDT's will be exempt from the requirements of these proposed regulations. It is apparent that only a portion of 1981 model year vehicles will have an adjustability problem to meet the Section 215 requirements. Under this proposed rule, manufacturers must still recommend adjustments or modifications that any service facility can perform for 20 dollars or less.

In order to remedy the adjustability problem for 1981 model year vehicles, EPA may consider a provision in this rulemaking that would allow vehicle manufacturers to recommend more costly adjustments, but that the amount in excess of 20 dollars must not be charged to the customer. If this provision is adopted, the vehicle manufacturer would be required to provide a means for independent repair establishments to perform the adjustment at the same cost to a vehicle owner as will be charged by a franchised repair facility (unless a waiver is granted under Section 207(c)(3)(B) of the Act). The Agency believes that, in most instances, allowing manufacturers to provide subsidized adjustments only at their franchised dealerships would be contrary to the congressional intent of Section 207 of the Act to allow all repair facilities to be able to participate in all nonwarranty emission-related maintenance not exceeding 2 percent of the retail purchase price of the vehicle.

The Agency requests comments from any interested party on the appropriateness of a provision as described above, and requests comments from vehicle manufacturers (or any other interested party) on the types of altitude performance adjustments that can be recommended for vehicles subject to parameter adjustment regulations. The comments should also provide the estimated cost to perform the adjustments.

EPA does not anticipate any problems for 1980 and subsequent model year motocycles to meet the requirements of this proposed regulation. Even though these motorcycles are subject to parameter adjustment regulations, modifications can be made (such as changing carburetor jet sizes) for high-altitude operation that do not involve parameter adjustments or exceed the 20-dollar limit.

Air Quality Benefits

The severity of the air pollution problems in the larger, high-altitude cities confirms the need for the regulation. Denver, Salt Lake City, and Albuquerque are rapidly growing, automobile-oriented cities. The weather conditions in these cities, in combination with the high altitude and extensive dependence on the automobile, result in air quality problems that are not normally characteristic of the size of the cities. (Denver, the largest city of the three, is only the 24th largest metropolitan area in the nation.) It is important that the emission control systems used on high-altitude vehicles be adjusted to operate as efficiently as possible to reduce the serveity of high-altitude air quality problems.

In December of 1978, EPA issued a policy (MSAPC Advisory Circular No. 80) to allow manufacturers to obtain altitude performance adjustment approvals voluntarily. The limited data obtained from this program show that HC and CO emissions can be reduced by up to 40 percent at high altitude through simple adjustments.

As mentioned earlier, a very large portion of in-use vehicles at high altitude are adjusted incorrectly. When EPA initiated a study to correct the maladjustments, the average emission

levels decreased by 22 percent for HC, 30 percent for CO, and 5 percent for NO_x. Under this regulation, manufacturers are likely to recommend adjustments that will incidentally correct some maladjustments. These readjustments will also set the devices to new specifications which may further reduce emission levels at high altitude. The benefits from this regulation will thus be twofold, and in-use vehicle emissions may improve beyond what is indicated by data from test vehicles that were not initially maladjusted.

Costs

EPA does not anticipate that this regulation will result in significant costs to motor vehicle manufacturers. The techniques for reducing emissions from vehicles at high altitude are established and well-known for past and current vehicle designs. EPA estimates that manufacturers [1] development, testing, and administrative costs for altitude adjustment instructions to apply to all applicable past model years will not exceed $2 million. The subsequent annual cost to all manufacturers to provide adjustments for new vehicles is not expected to exceed $500,000. This annual cost may be reduced considerably (by as much as 60 percent) if light-duty vehicles and light-duty trucks are exempted from the Section 215 requirement because of the high-altitude emission standards regulation beginning in model year 1982. The cost for high-altitude adjustments or modifications will then be attributed to that regulation. EPA invites comments from any interested party as to these cost estimates.

The cost of this regulation to the general public will depend on the level of participation of vehicle owners and on the amount charged to vehicle owners for the adjustments. Even though the adjustments costing as much as 20 dollars would be allowed, information received from manufacturers taking part in the voluntary program (through MSAPC Advisory Circular No. 80) indicates that adjustment costs will average about 10 dollars. There is an estimated population of 4 million in-use vehicles that are subject to this regulation in high-altitude areas. Assuming that a maximum of 50 percent of in-use vehicles are adjusted in the first year of this program, the cost to consumers to adjust in-use vehicles will not likely exceed 20 million dollars (1979 dollars) in the first year of operation. Annual consumer costs following the first year should be considerably less since new light-duty vehicles light-duty trucks will likely be exempt under the high-altitude standards regulation. If annual high-altitude sales of nonexempt vehicles (including heavy-duty trucks and motorcycles) are about 200,000 vehicles, the annual cost to consumers should not exceed $2 million. EPA invites comments from any interested party regarding consumer costs.

The cost of the adjustments to consumers may be partially or fully offset by fuel economy improvements. Data from the voluntary altitude performance adjustment program indicate that average fuel economy improvements may be as much as 3.5 percent for light-duty vehicles and light-duty trucks. Assuming that the average fuel economy improvement will be between 1 percent and 3 percent and that the average fuel economy for these vehicles (1968 through 1980 model years) is 15 miles per gallon, the fuel savings for the average vehicle per year will be between 8 and 23 gallons. With the price of gasoline at about $1.10 per gallon, the fuel economy improvement may pay for the altitude adjustment in the first 12,000 miles of operation. For light-duty vehicles and light-duty trucks alone, the fuel savings could amount to between 14 million and 40 million gallons in the first year of operation with 50 percent participation.

COMMENTS AND THE PUBLIC DOCKET: We request that, to the extent possible, comments be submitted prior to the hearing. EPA intends to assure that all interested parties have an opportunity to study all information that may become the basis for EPA's final action in this proceeding. Accordingly, the Agency will not consider in this rulemaking any information that the Agency cannot make publicly available. Anyone who wishes to submit information responding to this Notice of Proposed Rulemaking is cautioned that EPA will not consider any comments which are claimed, in whole or in part, to be confidential. EPA will return such comments to the commenter.

Copies of material relevant to this rulemaking action are contained in the Public Docket No. A–79–42 at the U.S. Environmental Protection Agency, Central Docket Section, Waterside Mall, Room 2903B (EPA Library), 401 M Street, S.W., Washington, D.C. 20460. The docket may be inspected between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday. A reasonable fee may be charged for copying services.

EVALUATION PLAN: EPA intends to review the effectiveness and need of the provisions contained in this action after initial implementation of the final regulation. EPA will provide an evaluation plan at the time of issuance of the final rule.

REPORTING AND RECORDKEEPING REQUIREMENTS: Under the EPA's "sunset" policy for reporting requirements in regulation, the reporting requirements in this regulation will automatically expire 5 years from the date of promulgation, unless EPA takes affirmative action to extend them. To accomplish this, a provision automatically terminating the reporting requirements at that time will be included in the text of the final regulation.

REGULATORY ANALYSIS: The Administrator has determined that this is a "significant routine" regulation. The impact of the regulation will be significant, in that Agency resources will be required to develop and implement the regulation and because an air quality improvement may be expected as a result of the regulation. However, because of the limited number of vehicles that will be affected by the regulations, the limited geographical area in which the primary impact of the regulations will be felt, and the failure of the regulation to trigger any of the criteria governing the preparation of a regulatory analysis, the proposal is not a "major" regulation.

This regulation does not require preparation of an Environmental Impact Study (EIS) under the National Environmental Policy Act, although the environmental effects of the regulation will be considered during the rulemaking. Similarly, an Economic Impact Assessment (EIA) is not required since the proposal does not meet the criteria of Section 317(a) of the Act, and the action does not meet the criteria requiring preparation of a Regulatory Analysis.

Accordingly, it is proposed to amend 40 CFR Part 86 by adding a new Subpart K to read as follows:

Subpart K—Regulations for Altitude Performance Adjustments for New and In-Use Motor Vehicles and Engines

Sec.

Subpart K—Regulations for Altitude Performance Adjustments for New and In-Use Motor Vehicles and Engines

§ 86.1001 General applicability.

This subpart applies to manufacturers of motor vehicles and motor vehicle engines (hereafter referred to as vehicles) which are subject to the requirements of title II of the Clean Air

Act. This subpart applies to the following vehicles:

(a) 1968 and later model year light-duty vehicles and light-duty trucks.

(b) 1970 and later model year heavy-duty engines built after December 31, 1969.

(c) 1978 and later model year motorcycles built after December 31, 1977.

§ 86.1002 Definitions.

The definitions provided in Subpart A also apply in this subpart. Additional definitions that apply in this subpart are as follows:

"Altitude performance adjustments" are adjustments or modifications made to vehicle, engine, or emission control functions in order to improve emission control performance at altitudes other than those for which the vehicles were designed.

"Low altitude" means any elevation less than or equal to 1219 meters (4,000 feet).

"Manufacturer parts" are parts produced or sold by the manufacturer of the motor vehicle or motor vehicle engine.

§ 86.1003 General requirements.

(a) Manufacturers of vehicles specified in § 86.1001 shall submit to the Administrator for approval altitude adjustment instructions for all of those vehicles except the vehicles described in paragraph (b) of this section.

(b) The following vehicle exemptions apply to the requirements of this subpart:

(1) Manufacturers are not required to submit *high*-altitude adjustment instructions for vehicles that are certified as meeting the appropriate emission standards at high altitude. However, manufacturers *are* required to submit *low*-altitude adjustment instructions for these vehicles if they are not certified to meet the appropriate emission standards at low altitude and do not meet the exemption criterion described in paragraph (b)(2) of this section.

(2) Manufacturers are not required to submit altitude adjustment instructions for vehicles equipped with systems or devices that compensate (in full or in part) the engine fuel metering system for air density changes, *and* if further emission reductions cannot be obtained by adjusting the vehicle at a cost of 20 dollars (1979 dollars) or less (including parts and labor). Manufacturers claiming this exemption must submit to the Administrator a notification of the claim specifying the affected vehicles. The notification must also describe the compensating system used, and must contain a statement that further emission reductions cannot be obtained for 20 dollars or less, or that the adjustments would be too complex for the average mechanic to perform.

(c) Manufacturers shall meet the requirements of paragraph (a) according to the following schedule:

(1) Altitude adjustment instructions for all 1980 and earlier model year vehicles or engines shall be submitted to the Administrator by July 1, 1981.

(2) Altitude adjustment instructions for 1981 and later model year vehicles or engines shall be submitted to the Administrator within 30 days of the issuance of the certificate of conformity for those vehicles or engines. For vehicles or engines certified for the 1981 model year before the publication of this regulation, altitude adjustment instructions shall be submitted within 30 days of the publication of this regulation.

(d) Failure to submit altitude performance adjustment instructions in accordance with this section is a violation of Section 203(a)(3) of the Clean Air Act and may result in penalties as specified in Section 205 of the Clean Air Act. The Administrator may grant extensions of the schedule in paragraph (c) of up to 30 days if the manufacturer submits a written request to the Administrator specifying the reasons for the need for the extension.

(e) The adjustment instructions (including labels) that the Administrator approved under this subpart shall be made available by the manufacturer at no cost to service outlets and the general public. EPA encourages manufacturers to notify vehicle owners in high-altitude areas of the availability of high-altitude adjustments.

(f) If altitude adjustments are performed according to the instructions approved by the Administrator, they will not be treated as violations of the tampering provisions of Section 203(a) of the Act except as described below:

(1) A violation may occur when high-altitude adjustments are performed on vehicles at low-altitude locations. High-altitude adjustments performed at the designated high-altitude locations specified in § 86.079–30(a)(5) will not be considered violations.

(2) In accordance with Section 215(d) of the Act, after December 31, 1980, the Administrator will only permit high-altitude adjustments in high-altitude areas of states in which inspection and maintenance programs have been instituted for their nonattainment areas. After December 31, 1980, high-altitude adjustments performed in any other state may be considered a violation.

§ 86.1004 Conditions for disapproval.

(a) The Administrator shall *not* approve altitude performance adjustments that will:

(1) Cause any regulated pollutant emission level to increase if the emission level exceeded the appropriate emission standard before adjustment was made.

(2) Cause any regulated pollutant emission level to exceed the appropriate emission standard if the emission level did not exceed the emission standard before the adjustment was made.

(3) Cause decreases in fuel economy as measured by the procedures in Part 86.

(4) Cause any reduction of vehicle performance (as evaluated by the manufacturer) such that vehicle drivers will likely complain.

(5) Result in a total cost to the vehicle owner of more than 20 dollars (1979 dollars) including parts and labor.

(6) Be of such technical complexity or require such complex, expensive, or exclusive equipment that a competent mechanic in an average service establishment cannot perform the adjustments correctly. Adjustment procedures should not require knowledge or training beyond that required to perform normal engine tuneups. All required equipment must be available to any service establishment at competitive cost.

(7) Require the use of manufacturer parts, unless they are necessary to ensure emission control performance and unless the Administrator grants a waiver under Section 207(c)(3)(B) of the Act.

(b) If the Administrator determines that the altitude performance adjustment instructions cannot be approved, the Administrator shall notify the manufacturer in writing of the disapproval. This notification shall explain the reasons for the disapproval.

(1) Within 20 days of receipt of a notification of disapproval, the manufacturer may file a written appeal to the Administrator. The Administrator may allow additional oral or written testimony prior to rendering a final decision.

(2) If the manufacturer files no appeal with the Administrator, the disapproval becomes final.

(3) Within 30 days following the Administrator's final decision of disapproval, the manufacturer must submit new altitude performance adjustment instructions applying to all of the vehicles for which the disapproved instructions applied. If these new instructions are not submitted within 30 days, EPA may take action

under Sections 203(a)(3) and 205 of the Act.

(i) If the new altitude performance adjustment instructions are disapproved by the Administrator, the manufacturer may follow the appeal procedures under paragraphs (b)(1) and (b)(2) of this section.

(ii) If the Administrator makes a final decision to disapprove the new instructions, EPA may take action under Sections 203(a)(3) and 205 of the Act.

§ 86.1005 Information to be submitted.

(a) Manufacturers shall submit to the Administrator the text of the altitude performance adjustment instructions to be provided to vehicle owners and service establishments. Each set of altitude performance adjustment instructions must set forth the adjustment procedure (including the installation of the label required by § 86.1006) to be followed and identify the vehicles for which the instructions are applicable. At a minimum, each set of instructions shall identify the vehicle applicability by manufacturer, car line, model year, engine displacement, engine family, and exhaust emission control systems. Manufacturers may specify further, if necessary, but such specifications must be identifiable to the public and the service industry through vehicle marking or codes.

(b) The manufacturer shall submit to the Administrator the following information about the adjustments:

(1) Specifications of changes in calibrations of any component, including the original and new calibration values or curves;

(2) Descriptions of component additions, including a full description of the new components along with the configurations (sketch or drawing), calibration values, and part numbers;

(3) Descriptions of component replacements, including all items in paragraph (2), above, for the new parts. Also, a description of the differences between the original component and the new component with respect to design, calibration, and function;

(4) The estimated amount (in dollars) to be charged to vehicle owners for the performance of the adjustments. This amount must include the cost to the vehicle owner of labor and parts; and

(5) Descriptions of any special tools necessary to perform the adjustments and the estimated retail cost of such tools.

(c) The manufacturer shall submit to the Administrator the following evaluations of the adjustments:

(1) Information that shows that the conditions of § 86.1004 (a)(1) through (a)(3) are not caused by the adjustment. The manufacturer may submit engineering evaluations instead of test data if the effects of the adjustment on emissions are well known. (EPA encourages manufacturers to submit test data in *all* cases so that the Administrator can make more efficient judgments, and so that the benefits of this program may be better evaluated.)

(2) A statement that vehicle performance is generally unchanged or improved as a result of the adjustments, and supporting information for this statement consisting of technical evaluations or driver evaluations.

(3) Information that shows compliance with Section 202(a)(4)(A) of the Act (which prohibits vehicles from causing unreasonable risks to public health, welfare, and safety).

(d) The manufacturer shall submit to the Administrator for approval a copy or sample of the label required by § 86.1006 and a copy of the instructions for installation of the label.

§ 86.1006 Labeling.

(a) The manufacturer shall make available to the public as part of the altitude performance adjustment instructions the labels described in this section. Instructions for installing the labels according to the requirements of this section shall be provided with each label.

(b) The label installation instructions shall indicate that the label should be placed in a readily visible position in the engine compartment and beside (to the extent possible) the existing label which is required under § 86.079–35. The instructions shall also indicate that the label should not be put on any equipment that can be easily detached from the vehicle.

(c) The label must be constructed such that if installed properly, it cannot be removed without destroying or defacing the label.

(d) The label shall contain the following information lettered in the English language in block letters and numerals, which must be of a color that contrasts with the background of the labels:

(1) The label heading: Vehicle Emission Control Information Update;

(2) Full corporate name and trademark of the vehicle manufacturer;

(3) The statement: "This vehicle has been (adjusted) (modified) to improve emission control performance when operated at (high) (low) altitude";

(4) Information on where altitude performance adjustment instructions may be obtained or include the actual altitude performance adjustment instructions;

(5) The new tuneup specifications (if changed from the original label specifications) at the applicable altitude.

(Sections 215 and 301 of the Clean Air Act, as amended, 42 U.S.C. §§ 7550 and 7601.)

Dated: January 15, 1980.

Douglas Costle,

Administrator.

[FR Doc. 80–2174 Filed 1–23–80: 8:45 am]

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Thursday
January 24, 1980

Part V

Department of Agriculture

Office of the Secretary

Reimbursement of Participants in Rulemaking Proceedings

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 12

Reimbursement of Participants in Rulemaking Proceedings

AGENCY: Department of Agriculture.

ACTION: Final Rule.

SUMMARY: These regulations govern the reimbursement of individuals and groups for certain of the costs of participation in rulemaking proceedings of the Department. They provide for reimbursement of applicants, within budget constraints, when the applicants' participation can reasonably be expected to contribute substantially to a full and fair determination of the issues covered at public proceedings; they are otherwise financially unable to appear; they are from the area affected; and the interest they seek to represent is not otherwise adequately represented.

EFFECTIVE DATE: February 25, 1980.

FOR FURTHER INFORMATION CONTACT: Dr. Linley Juers, Acting Associate Director of Public Participation and Decision System, Office of Budget, Planning and Evaluation, Room 118–A, United States Department of Agriculture, Washington, D.C. 20250, Phone (202) 447–6667.

SUPPLEMENTARY INFORMATION: The Department published proposed regulations governing the reimbursement of participants in USDA rulemaking proceedings on March 22, 1979 (44 FR 17507), requesting public comment and scheduling hearings to take oral testimony. The proposed regulations were issued in response to a directive by the conferees on Agricultural appropriations for fiscal year 1979 which indicated that such reimbursement of participants in USDA rulemaking proceedings be done only under regulations which comply with the Comptroller General's rulings on this matter.

One hundred written comments were received and 39 witnesses presented oral testimony at public hearings held in Denver, Colorado, Emeryville, California, and Washington, D.C. The comments and testimony have been thoroughly reviewed and considered in the preparation of this final rule. The discussion below reviews the comments received as they apply to particular aspects of these regulations and explains changes made in response to the comments and testimony.

Legal Authority for the Program

Several comments stated that there was no explicit or implicit authority in law for this program and that, therefore, regulations should not be issued. Some argued that the Department has misinterpreted *Greene County Planning Board* v. *Federal Power Commission*, 559 F. 2d 1237 (2nd cir. 1977), *cert. den.* 434 U.S. 1086 (1978) and attempted to distinguish the application of *Chamber of Commerce of the United States, et al.* v. *United States Department of Agriculture, et al.*, 459 F. Supp. 216 (D.D.C. 1978). We have responded to these comments by reexamining the authorities involved in detail and are satisfied that the conclusion reached in the discussion of authority presented with the proposed regulations is correct.

Need for the Program

A number of comments were received regarding the need or advisability of establishing a program under which participants would be reimbursed in connection with rulemaking proceedings. Those opposing the regulations argued that existing mechanisms for public involvement in the rulemaking process are adequate. Some argued that existing interest groups already represent the broad range of public interests affected by USDA actions. It was contended that the degree of public support for a viewpoint could be measured by the amount of money and resources that an organization could raise to make an appearance. Consequently, there would be no need for reimbursement.

Other comments contended that reimbursement would create additional burdens and delays in the administrative process and would add to the cost of regulations, diverting funds from other programs.

Some comments supporting the regulations argued that they are necessary because existing means for obtaining public input are not adequate and are biased in favor of better financed and business-related special interest groups. Many comments noted that consumers and the poor historically have not been able to involve themselves effectively. It was also commented that there are numerous proceedings before the Department entailing complex investigation, analysis and development of a factual record by participants. These factors conspire against the limited resources of individual citizens and grass roots organizations and for the most part preclude their making a substantive input. Studies were cited indicating the extent to which industry participants outnumbered public representatives and the limited representation of consumer interests in particular USDA proceedings. Participants often need Lawyers and other experts to advocate a viewpoint effectively in view of the growing need to have substantial analytic support for regulatory decisions.

Two important considerations lead us to issue these regulations. First, in the absence of regulations allowing reimbursement, there is evidence that certain groups in the public are disadvantaged in having their views adequately represented in certain proceedings of the Department due to lack of resources. Second, the issuance of regulations will not necessarily commit agencies to any greater program costs. Reimbursement would be used only where needed to obtain information and views which the Department needs to carry out its responsibilities. The use of reimbursement would be discretionary and in each case the use would be based on an analysis showing that reimbursement will help achieve program goals and be more cost effective than alternative means of obtaining the same information and views. The absence of these regulations would, on the other hand, foreclose the use of reimbursement when a potential for cost saving or improved decisions existed.

Another category of comments by both opponents and proponents of the regulations cited potential abuses under a reimbursement program. These concerns included agency favoritism of certain views, use of government funds where private resources could be used, and use of the program by an agency to develop new advocates for its programs.

The Department is cognizant of various types of abuse to be avoided and has included in the regulations stringent requirements for independent review of all agency reimbursement actions and a specific provision for avoiding financing applicants who may have contrived an appearance of eligibility through sham organizations.

Comments on Proposed § 12.1 *Purpose of Regulations:* Some comments were received suggesting we clarify the purpose of these regulations in the body of the regulation itself. The thrust of these comments was to clarify that the purpose of providing reimbursement to participants is to enable those who might not otherwise be able to appear to make "substantial" and "effective" contributions to rulemaking proceedings. Other comments questioned whether reimbursement would place greater emphasis on oral appearances than

written comment. Many comments focused on the word "appear" contained in the proposed regulation and objected to using reimbursement as a means of enabling people to attend proceedings and present views which "could be sent in with a 15¢ stamp."

The Department agrees with these comments. Accordingly, section 12.1 has been changed to make clear that to receive reimbursement participants must be able to "contribute substantially and effectively"; and the word "appear" has been changed to "participate". Furthermore, these regulations do not replace already existing travel regulations which might permit reimbursement of private individuals for travel to meetings "for the benefit of the government". It is also not intended to finance participation which would only add to the record views or information obtainable from other existing sources and which could be submitted for the record without further study or organization of data.

Under these regulations, applications for reimbursement would be evaluated on the basis of whether a substantial contribution is being offered and whether an applicant can make that contribution effectively. Participation would not be limited to appearances at hearings; an applicant could also be reimbursed for costs related to the preparation of a written comment.

Comments on Proposed § 12.2 *Definitions:* Comments on the definition of "applicant" in paragraph (c) suggested that profit-making organizations should be precluded from applying for reimbursement. The Department believes that the regulations provide for sufficient tests of need, and that small business or farming concerns may make profits but still have insufficient resources to represent themselves effectively in an administrative proceeding.

Some comments objected to exclusion of government agencies which may also have limited resources. Recognizing this, the Department believes that the views of these agencies are nevertheless reasonably likely to be represented through existing channels, and that inclusion of such agencies would create substantial administrative problems, particularly in regard to judgments as to lack of resources.

Comments on the definition of "Evaluation Board or Board" in paragraph (f) focused on various ways to maintain independence in the approval of applications and to avoid conflicts of interest or recruitment of participants supporting an Agency viewpoint. To assure independent review the section is amended to provide that no member of the Board shall be from the agency responsible for a given proceeding.

Many issues were raised with respect to the application of the definition of "locality to be affected" in paragraph (g) of § 12.2, particularly in regard to decisions involving natural resources, wilderness areas, and the scope of the impact of an action as opposed to its immediate physical location. Other comments raised questions about the role of organizations which may represent members or contributors or do business in an area but are headquartered elsewhere.

The Department recognizes that certain actions pose unique questions and believes that the best way to administer the requirement that an applicant be from the locality to be affected is to allow the Agency Head to define "locality to be affected" in the notice of proposed rulemaking.

Comments on the definition of "proceeding" in paragraph (h) of § 12.2 were generally critical of limiting coverage to rulemaking. It was pointed out that many important decisions with significant policy implications are made in proceedings which are not technically rulemaking. The need to exercise caution in implementing a new program led us to conclude that this definition should be maintained. However, the Department will have the option of extending the regulation to other proceedings in the light of experience under the program.

A comment stated that the publication requirement in paragraph (h) of § 12.2 was overly restrictive and irrelevant and recommended deletion. It has been deleted.

The addition of various new definitions were suggested in several comments to allow for simplified consideration of certain types of applicants, such as low-income recipients of benefits of Federal programs, or representatives of such recipients. While no single definition of eligibility exists for all USDA programs, it may be possible for agencies to accommodate this idea in their application procedures for actions under particular programs.

Additional definitions were suggested which were tied to a reordering of the entire regulation to clarify the application process. As proposed, the regulations state the requirements for an application and then the standards by which they will be evaluated. We believe this is a logical ordering.

Comments on Other Sections: In response to a comment suggesting that organizational affiliation be identified in case there is a parent group with sufficient resources, paragraph (d)(1) of § 12.4 has been changed to add that requirement for organizations.

Paragraph (d)(3) of § 12.4 in the proposed regulation has been eliminated as an unnecessary reporting burden inasmuch as the essential information is required in the following paragraphs.

Comments on paragraph (d)(4) of § 12.4 [now renumbered (d)(3)] in the proposed regulations, ranged from the opinion that the requirements were excessively burdensome to suggestions for requiring substantial additional information about the structure and purpose of the organization applying and the justification of the need for reimbursement. The paragraph has been amended to add the requirement that the applicant describe which issues to be addressed are "substantive." The remaining comments related more to the quality of applications submitted and methods of reviewing applications than to the regulation itself. Paragraph (d)(3) currently requires information in regard to the specific factors referred to in the Comptroller General's rulings on reimbursement. To go beyond these factors and require, for example, information on officer selection and voting procedures for members could be overly restrictive. While this additional information would not be appropriate to require in every case, an applicant would not be precluded from offering such information to strengthen its demonstration of interest or capability.

Many comments on paragraph (d)(6) [now renumbered (d)(5)] of § 12.4 objected to the complexity of the financial disclosure requirements and suggested various means of simplifying them. Among the comments were: "the requirements are an invasion of privacy"; they "could be met by a simple declaration of need"; they should "clarify that a person need not be destitute" or "that funds need not be diverted from other commitments of the applicant in order to qualify."

The Comptroller General has specified that reimbursement should be made only where there is a finding that the applicant lacks sufficient resources available to participate. The House Appropriations Committee additionally has stressed stringency and caution in implementing this program. We believe that the financial information required here represents the minimum information necessary to comply with those instructions.

The Comptroller General's rulings are not specific as to the exact test to be applied in each instance, nor do they imply that the sacrifice or curtailment of other activities is necessary. It is not possible to set forth a simple standard

which would be universally applicable; therefore, each application must be judged on its merits.

Paragraph (d)(6)(iii) of § 12.4 [now renumbered (d)(5)(C)] of the proposed regulations has been amended in response to a suggestion to waive the requirement of submitting financial records for the last three prior fiscal years where for good reason they may not exist.

A number of comments stated that paragraph (d)(7) of § 12.4 [now renumbered (d)(6)] represented an excessive and burdensome reporting requirement. This provision has been modified by limiting it to those proceedings for which applicants were previously reimbursed.

Several comments on paragraph (b) of § 12.5 urged that applications be reviewed as quickly as possible to avoid financial hardship and to avoid delays in the rulemaking process. The regulation as proposed directed the agencies to process applications as soon as practicable. Further, paragraph (j) of § 12.5 in the proposed regulations [now renumbered (g)] allows the Agency Head to extend any filing period and postpone hearings and directs the Agency Head in making such a decision to balance an applicant's need for time against the need for a speedy resolution of the proceeding. We believe it sufficient protection for an Agency Head to determine when the reimbursement process can be constructively used in a given rulemaking proceeding. This determination is complementary to the discretion granted to the Agency Head in paragraph (b) of § 12.4 to determine that reimbursed participation will provide a substantive contribution to the Agency's decisionmaking process. In light of the discretion granted to an Agency Head, we believe that the suggestion in a comment that a grandfather clause be added to preclude reimbursement in proceedings substantially underway is neither necessary nor desirable.

Additional comments were directed to the role of the Evaluation Board as described in paragraph (c) of § 12.5, toward making the role of the Board more specific. In response to these comments, the language in that paragraph has been amended to make it clear that the Board be presented with the docket of all applications received, and changes the Agency Head's role to that of presenting the Board with his analysis of the application. Provision is made in paragraph (f) of § 12.5 for reconsideration of the Evaluation Board's decision.

One comment proposed that the Department be compelled to approve an application if the eligibility requirements are met. We believe that this recommendation, which implies a right to reimbursement, is inconsistent with the Comptroller General's rulings.

Three comments were received relating to how the Department would decide among competing qualified applications. These suggestions, if adopted, would seem to limit the implied authority of the Department as described by the Comptroller General to determine whether reimbursed participation is appropriate, and to determine parties eligible for such reimbursement. We believe that it is impossible to prescribe in advance criteria which would be useful in all instances in resolving such questions.

A comment suggested that the Department should authorize funding of certain groups for particular aspects of an issue; this would encourage groups representing similar interests to pool their resources when possible and avoid duplication. The regulations do not specifically provide for this, but would not preclude such pooling of resources if properly described in the application.

Paragraph (d) of § 12.5 as presented in the notice of proposed rulemaking has been deleted as repetitive of agency discretion as to availability of funding.

Paragraph (e) of § 12.5 [now renumbered (d)] has been reordered to clarify the tests of need, residence, interest not otherwise adequately represented, and substantiality of contribution. With respect to substantiality, paragraphs (C) and (E) of § 12.5(e)(1) [now renumbered 12.5(d)(3)] have been eliminated. The test in this paragraph must clearly be the quality and substance of the contribution to the proceeding, not such outside considerations as the desirability of new participants or an implied numerical balancing of interests on the record as a whole.

Comments received on paragraph (e)(2)(ii) of § 12.5 [now renumbered (d)(1)(A)] of the proposed regulations requested clarification on the need to indicate the use of applicant's funds. The purpose of the provision is not to imply or require that applicant's own funds be used, but rather to give a fuller description of the total effort the applicant is proposing to make.

One comment on paragraph (e)(3) of § 12.5 [now renumbered (d)(2)] objected that the criteria concerning representation did not specifically refer to the Department. We believe that the language, "not otherwise adequately represented" is sufficient.

Another comment suggested that a comparison of the economic stake of the interest involved with the costs of participation be included as a factor in determining whether an applicant is qualified. We believe that this consideration may have some qualitative importance with respect to particular actions, and can be taken into account within the context of the revised language of the proposed section.

Paragraph (e)(1)(ii) of § 12.5 [now renumbered (d)(3)(B)] provides for a broader description of how an applicant's interest may be affected. It must be understood, however, that this is only a factor which may bear on the selection of a qualified applicant but is not a legal standard on which qualification will be based.

One comment suggested that all awards should be published in the **Federal Register**, and public comment allowed. The Department disagrees. This suggestion runs counter to the many comments expressing concern about added procedural steps and delays.

Two comments were received on paragraph (g) of § 12.5 [now renumbered (f)] in the proposed regulations, one recommending a right of appeal with a hearing before the Board, and a second raising the question of whether paragraph 12.5(f) applies to any appeal to the Evaluation Board. The Department believes that a complex appeals' process going beyond paragraph 12.5(f) would cause undue delays in implementing programs.

Some comment stated that objectivity requires full disclosure of all contacts between the agency and applicants during the pre-application and post-application periods as well as during the application process itself. To require a record of "all" contacts would be excessively burdensome because it could entail a record of contacts having no relation to a party becoming an applicant; moreover, an agency would have no way of knowing whether a party were planning to become an applicant. Protections of the objectivity of the approval procedure lie in the requirement of filing in the docket the records of all written and oral communications that bear on the selection and review process and the further requirement that all dockets will be maintained for public inspection.

Comments on paragraph (j) of § 12.5 [now renumbered (g)] in the proposed regulations urged revisions to require adequate notice of schedule changes and that the term "applicant" used here be changed to "participant" to assure that all parties are treated equally. Those changes have been adopted.

A wide range of comment was received concerning which costs could

or should be reimbursed as set forth in § 12.6. Those who felt that the expenses covered should be narrowed recommended limitations on experts, attorneys, and staff salaries, and urged that the least expensive travel and subsistence costs be covered. Other comments urged that the range of reimbursable expenses be broadened to cover such items as child care, lost wages, and payment for services of volunteers.

The regulation has been written broadly to cover the range of expenses which might conceivably be incurred in preparing to participate in complex proceedings. Whether all such expenses would be allowable with respect to a particular proceeding must be judged on a case-by-case basis. The Comptroller General's ruling in dealing with this question states that ". . . where an appropriation is made for a particular object, purpose or program, it is available for expenses which are reasonably necessary and proper. . . ." (Opinion of the Comptroller General, *Costs of Intervention—Food and Drug Administration,* December 3, 1976, 56 Comp. Gen. 111). The decision quoted an earlier decision that held that the responsibility for determining whether the payment of expenses of intervenors may be considered "necessary expenses" rests with the administering agency. With respect to specific allowable rates, the Department will apply the standards common to the reimbursement of experts consulted by the Government.

Several comments raised questions with respect to reimbursability of certain costs—specifically, existing staff, fringe benefits, overhead, and costs incurred prior to approval.

We believe the only fair and equitable standard to apply is that stated in paragraph (a) of § 12.6: "Reimbursement is limited to the actual, and reasonable costs authorized and incurred by the applicant's participation." Expenses for existing staff or overhead expenses will be reimbursed (to the extent incurred as a result of the applicant's participation). Fringe benefits associated with the employment of persons working under an approved application would be included in the compensation paid the employee and itemized as a part of direct costs. Costs incurred prior to the approval of an application could not be construed as being "necessary expenses" within the discretion of the Department.

Comments received on § 12.7 expressed concern that it could be liable to abuse, for instance, the ease of obtaining additional funds might encourage an inadequate or inefficient performance. The section has, therefore, been revised to require valid reason for any supplementary reimbursement.

A number of comments on § 12.8 noted that to be eligible an applicant must lack resources, yet reimbursement is made only after work is completed. The Comptroller General refers only to reimbursement, suggesting payment for work completed. The regulations do provide, however, that "for good cause shown, partial payment may be made as an applicant's work progresses."

Several comments addressed the problem of presenting bills or receipts for all costs over $10 and requiring proof of cost. The language of paragraph (a) of § 12.8 has been modified in response to these comments substituting "itemized statement" for "other proof" but adding that a claim for reimbursement must be certified as correct.

Several comments were received with respect to paragraph (b) of § 12.8 which provides for a denial of payment if the applicant has "clearly" not provided the representation for which the reimbursement was intended. The concern expressed in many of the comments seems to imply that reimbursement might be jeopardized by even minor misunderstandings or misinterpretations. The inclusion of this provision is intended for use only when there has been clear misrepresentation of the applicant's purpose.

Several comments were received on § 12.9 regarding the retention of records for audit and the procedure for such audits. This section does not require that all records will be audited, but is designed to assure adequate recordkeeping. The retention of records is a protection for recipients of reimbursement in the event an audit should call their claim into question.

This final rule has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations," and has been classified "significant." An Approved Final Impact Statement is available from Dr. Linley E. Juers, U.S. Department of Agriculture, Room 118–A, 14th and Independence Avenue, SW., Washington, D.C. 20250.

(The reporting and/or recordkeeping requirements contained herein will be submitted for approval by the Office of Management and Budget in accordance with the Federal Reports Act of 1942)

Dated: January 18, 1980.

Bob Bergland,

Secretary of Agriculture.

Accordingly, a new Part 12 is added to Title 7, Code of Federal Regulations, to read as follows:

PART 12—REIMBURSEMENT OF PARTICIPANTS IN RULEMAKING PROCEEDINGS

Sec.

Authority: 5 U.S.C. 301.

§ 12.1 Purpose.

This part sets forth the Department's regulations governing the reimbursement of individuals and groups for certain of the costs of participation in rulemaking proceedings of the Department. Applicants are eligible to be reimbursed, within budget constraints, when their participation can reasonably be expected to contribute substantially and effectively to a full and fair determination of the issues; they are otherwise financially unable to participate; they are from the area affected; and the interest they seek to represent is not otherwise adequately represented.

§ 12.2 Definitions.

As used in this part:

(a) "Agency" means each agency of the United States Department of Agriculture.

(b) "Agency Head" means the administrator or director of any Agency, and his or her delegate.

(c) "Applicant" means any person requesting compensation under this part to present views as a participant in a rulemaking proceeding, including individuals or any profit or nonprofit group, association, partnership, or corporation. This does not include a local, state, or Federal agency.

(d) "Department" means the U.S. Department of Agriculture.

(e) "Docket" means the file of material relevant to requests for reimbursement under this part.

(f) "Evaluation Board" or "Board" means a panel composed of three members including a Chairperson designated by the USDA Director of Public Participation. No member shall be from the Agency which is responsible for the proceeding out of which the application arises.

(g) "Locality to be affected" means the United States in the case of proceedings which may have a nationwide impact; and the State or States affected in the

case of proceedings which do not have a nationwide impact; or as defined by the Agency Head in the notice of the agency proceeding.

(h) "Proceeding" means any phase of a Department rulemaking process that is open to public participation, including any advance notice or notice of proposed rulemaking, or any meeting, hearing, or invitation to comment in contemplation of rulemaking, except that this does not include adjudications.

(i) "Secretary" means the Secretary of Agriculture or his or her delegate.

§ 12.3 Scope and applicability.

(a) This part applies to any individual or group seeking financial assistance to participate in a rulemaking proceeding of the Department. It does not, however, create any new right to intervene or otherwise participate in any proceeding. The availability of funds and the program need for reimbursement of participants will be determined by the Department.

(b) This regulation is solely for the purpose of establishing internal procedures to assist agencies in determining applicants' eligibility for the reimbursement provided by the Department under this regulation. Nothing in this regulation shall be construed to create a cause of action or to preclude any cause of action which might exist without this regulation.

§ 12.4 Applications for reimbursement.

(a) Any person may submit an application for reimbursement for participation in an agency proceeding. The application should be submitted as early as practicable after a proceeding begins.

(b) If the Agency anticipates that reimbursed participation would contribute substantially and effectively to it in a particular proceeding, it may invite applications for reimbursement. The invitation, including a description of the particular issues the proceeding will address, the locality affected and a closing date for the submission of applications, will be published in the **Federal Register** and may also be publicized in any other way.

(c)(1) Applications shall be submitted to the Agency Head responsible for the proceeding: (Agency Head), United States Department of Agriculture, Washington, D.C. 20250.

(2) Alternatively, an applicant may send the application to the Director of Public Participation, United States Department of Agriculture, Washington, D.C. 20250. The Director will promptly send any applications he or she receives to the appropriate Agency Head.

(3) Instructions on preparing applications for reimbursement and an application form will be available from the agency responsible for the proceeding.

(d) Each applicant shall provide, in a signed statement, the information requested below in the order specified. Failure to include the requested information may delay the consideration of the application and may disqualify the applicant.

(1) The applicant's name and address. In the case of an organization, the names, addresses, and titles of the members of its governing body, organizational affiliation with other groups and a description of the organization's general purposes, size, structure, and Federal income tax status.

(2) The proceeding for which funds are requested.

(3) The issues the applicant plans to address and how they affect the applicant's interest in the proceeding. This discussion should explain which ideas or viewpoints the applicant believes are substantive, novel, or significant, and why the applicant believes that the presentation of these ideas and viewpoints would contribute to a full and fair determination of the issues involved in the proceeding.

(4) A statement of the amount of funds requested, including an itemized statement of the services and expenses to be covered by the requested funds.

(5) Financial status, including:

(i) A listing of annual gross income for the current and prior year, plus current assets and liabilities and long-term assets and liabilities of the applicant as of the date of the application.

(ii) An explanation of why the applicant cannot use any assets it may have in excess of liabilities, to cover its costs of participating in the agency proceeding. An applicant should list any commitment of such assets which may preclude their use for the proceeding in question.

(iii) If the applicant is a group, association, partnership, or corporation, the official budget for the current fiscal year of the applicant. A statement of revenues and expenses for the last three fiscal years or an explanation of why such information is not available should also be provided.

(6) A list of all proceedings of the Federal Government in which the applicant has been reimbursed for participation during the past year (including the interest represented and the presentation made) and the amount of such financial assistance received from agencies of the Federal Government.

§ 12.5 Processing of applications and criteria for reimbursement.

(a) The Agency Head will process applications. He or she may request applicants to provide additional written or oral information necessary for full consideration of the application. The Agency Head shall file such additional written information, and summaries of oral information with a copy of each application in the docket.

(b) The Agency Head will process applications as soon as practicable after they are received. If the Agency has invited applications for reimbursement in a particular proceeding, the Agency Head will make every effort to process the applications within 15 working days after the closing date announced in the invitation.

(c) The Agency Head shall present the docket containing all applications together with his or her analysis to the Evaluation Board for approval or rejection.

(d) The Evaluation Board may approve an application only if it finds that:

(1) The applicant has demonstrated that is does not have sufficient resources available to participate effectively in the proceeding in the absence of an award under this part. In making this determination, the Evaluation Board may consider, but is not limited to, the following factors:

(i) The amount of an applicant's assets that are firmly committed for other expenditures;

(ii) The amount of its own funds the applicant will spend on its participation; and

(iii) Whether an appearance of being impecunious is achieved by establishing a sham organization to receive reimbursement under this part or other similar Federal reimbursement programs.

(2) Except for expert witnesses whose technical expertise is required, the applicant is a resident of the locality to be affected, and seeks to represent an interest that is not otherwise adequately represented.

(3) The applicant's participation would, or could reasonably be expected to, contribute substantially to a full and fair determination of the issues involved in the proceeding, taking into consideration the following factors:

(i) The ability of the applicant to represent in a timely and competent manner the interest it espouses, including the applicant's or its consultant's or attorney's experience and expertise in the substantive area at issue in the proceeding;

(ii) How the applicant's interest is affected or evidence of the applicant's

relation to the affected interest it seeks to represent;

(iii) The novelty, complexity, and significance of the issues to be addressed by the applicant at the proceeding.

(e) The Agency Head shall mail each applicant the written decision of the Department, stating either that reimbursement has been granted and the amount of funding approved or the basis for denial in light of the criteria in paragraph (d) of this section. A copy of the decision shall be filed in the docket.

(f) The Evaluation Board may, for good and timely reason given by an applicant, reconsider its approval or disapproval of all or part of an application. The decision of the Evaluation Board shall be final.

(g) Upon request and where practicable the Agency Head may publish notice to extend any filing period for all parties or reschedule any hearings, in order to afford participants adequate time to prepare their presentations. The Agency Head in deciding whether to make such a decision shall balance the need to give time to applicants or participants against the need for a speedy resolution of the proceeding.

§ 12.6 Reimbursable costs.

(a) Reimbursement is limited to the actual and reasonable costs authorized and incurred as a result of the applicant's participation.

(1) Expenses compensable under this regulation include but are not limited to reasonable costs of attorneys, experts, the expense of clerical services, studies, displays, travel and subsistence costs, and other reasonable costs associated with the participation and actually incurred. Except as otherwise provided the total costs reimbursed cannot exceed the amount authorized when the application is approved.

(2) Compensation of an applicant is limited to the actual and reasonable costs of its participation. Compensation paid to the staff of any participating group or organization is limited to the rate of reimbursement normally paid by the participant for staff services and may not exceed the rates paid to Department employees for providing comparable services. Compensation of a participant's contractor may be valued at the prevailing market rates for the kind and quality of service provided, but may not exceed the rates paid to Department employees for providing comparable services.

(3) Reimbursement for travel, subsistence, and miscellaneous expenses must not exceed the rates authorized by Department travel regulations.

(4) Compensation will not be provided for work performed or costs incurred prior to approval of an application by the Evaluation Board. Compensation will not be provided for negotiating claims, answering Department inquiries, or preparing an application.

§ 12.7 Supplementary reimbursement.

Applicants may apply to the Agency Head for supplementary reimbursement if for valid reason the costs of completion were underestimated or if additional funds would improve substantially the applicant's ability to contribute. The disbursement of supplementary funds will be closely regulated.

§ 12.8 Payments to applicants.

(a) An applicant shall submit a claim for reimbursement, for approved costs to the relevant Agency within 90 days of the applicant's completion of participation in the proceeding. The claim shall be certified as correct by the applicant. Such claims shall include bills, receipts, or itemized statements of costs incurred for each item of expense exceeding $10. The relevant agency will authorize payment of the approved expenses within 30 days of receipt of the applicant's claim. For good cause shown, partial payments may be made as an applicant's work progresses.

(b) Payment may be denied if the applicant clearly has not provided the representation for which the application was approved.

§ 12.9 Audits.

The Secretary and the Comptroller General of the United States, or their duly authorized representatives, shall have access for the purpose of audit and examination to any pertinent books, documents, papers, and records of a participant receiving reimbursement or applicant under this section. The Secretary shall establish additional guidelines for accounting, recordkeeping, audit, and other administrative procedures which Agencies will follow in granting reimbursement. Approved applicants shall retain all relevant records supporting a claim for reimbursement for a period of 3 years after receipt of such reimbursement.

§ 12.10 Availability of dockets.

All dockets concerning reimbursement for participation in Department proceedings will be available for inspection and copying through the Department Public Participation Staff at Department Headquarters, 14th and Independence Avenue, S.W., Washington, D.C. 20250.

§ 12.11 Authority for the program.

(a) The following statutes provide implicit authority for the reimbursement of participants in rulemaking proceedings under these statutes: United States Grain Standards Act, 7 U.S.C. 71 *et seq.;* Federal Plant Pest Act, 7 U.S.C. 150aa *et seq.;* Plant Quarantine Act, 7 U.S.C. 151–165, 167; Packers and Stockyards Act, 1921, 7 U.S.C. 181 *et seq.;* Agricultural Marketing Agreement Act of 1937, 7 U.S.C. 601 *et seq.;* Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.;* Bankhead-Jones Farm Tenant Act, 7 U.S.C. 1010, 1011e; Agricultural Adjustment Act of 1938, 7 U.S.C. 129; Agricultural Act of 1949, 7 U.S.C. 1421 *et seq.;* Federal Crop Insurance Act, 7 U.S.C. 1501 *et seq.;* Agricultural Marketing Act of 1946, 7 U.S.C. 1621 *et seq.;* Agricultural Trade Development and Assistance Act of 1954, P.L. 480, 7 U.S.C. 1691 *et seq.;* Consolidated Farm and Rural Development Act, 7 U.S.C. 1921 *et seq.;* Food Stamp Act, 7 U.S.C. 2011–2027; Cotton Research and Promotion Act, 7 U.S.C. 2101 *et seq.;* Animal Welfare Act, 7 U.S.C. 2131 *et seq.;* Potato Research and Promotion Act, 7 U.S.C. 2611 *et seq.;* Egg Research and Consumer Information Act, 7 U.S.C. 2611 *et seq.;* Beef Research and Information Act, 7 U.S.C. 2901 *et seq.;* Wheat and Wheat Foods Research and Nutrition Education Act, 7 U.S.C. 3401 *et seq.;* Commodity Credit Corporation Charter Act, 15 U.S.C. 714 *et seq.;* Multiple Use-Sustained Yield Act, 16 U.S.C. 528–531; Soil Conservation and Domestic Allotment Act, 16 U.S.C. 590a–f; Flood Control Act of 1944 (Sec. 13); Watershed Protection and Flood Prevention Act, 16 U.S.C. 1001 *et seq.;* Wilderness Act, 16 U.S.C. 1131 *et seq.;* National Forest Management Act of 1976, 16 U.S.C. 1600 *et seq.;* Forest and Rangeland Renewable Resources Planning Act of 1974, 16 U.S.C. 1600 *et seq.;* Forest and Rangeland Renewable Resources Research Act of 1978, 16 U.S.C. 1641 *et seq.;* Soil and Water Resources Conservation Act of 1977, 16 U.S.C. 2001 *et seq.;* Cooperative Forestry Assistance Act of 1978, 16 U.S.C. 2101 *et seq.;* Animal Quarantine Laws, 21 U.S.C. 102, 111, 120; Poultry Products Inspection Act, 21 U.S.C. 451 *et seq.;* Federal Meat Inspection Act, 21 U.S.C. 601 *et seq.;* Housing Act of 1949, 42 U.S.C. 1471 *et seq.;* Rural Clean Water Act of 1977 (Sec. 35) 33 U.S.C. 1288; National School Lunch Act, 42 U.S.C. 1751–1768; Child Nutrition Act of 1966, 42 U.S.C. 1771–1778.

(b) Prior to the implementation of a reimbursement plan for rulemaking

proceedings conducted under other statutes, the Office of the General Counsel (OGC) will review the relevant statute or statutes and determine whether there is explicit or implicit authority for reimbursement for public participation. OGC will make this determination in response to a request from an Agency Head. Such request shall be made:

(1) prior to inviting applications for reimbursement; or

(2) where such an invitation is not made, after receiving an application for reimbursement for a specific rulemaking proceeding.

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Thursday
January 24, 1980

Part VI

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Surface Coal Mining and Reclamation Operations Permanent Regulatory Program; Performance Bonding

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 800, 801, 805, 806, 807, and 808

Surface Coal Mining and Reclamation Operations Permanent Regulatory Program; Performance Bonding

AGENCY: Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior.

ACTION: Proposed amendment to rules and notice of public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) proposes to amend portions of its permanent regulatory program (30 CFR Chapter VII, Subchapter J) relating to bond and insurance requirements for surface coal mining and reclamation operations. The proposed changes would revise provisions concerning the period of liability, the form of the performance bond, performance bond requirements for long-term facilities and disturbances, and release and forfeiture of the bond. Several of the changes are in direct response to a petition for rulemaking filed with OSM, while others were generated from comments received during the petition review process.

DATES: The comment period of the proposed amendments will extend until March 24, 1980. Public hearings will be held on February 13, 1980.

ADDRESSES: Written comments must be mailed or hand-delivered to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record Office, Room 135, South Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240. All comments will be available for inspection at Room 135, South Interior Building.

Public hearings will be held at the following locations:

Washington—Department of the Interior Auditorium, 18th and C Sts. N.W., Washington, D.C.
Indianapolis—Indiana War Memorial, 431 North Meridan St., Indianapolis, Ind.
Denver—Court House, 1961 Stout St., Rm. C-503, Denver, Colo.

For addresses where additional copies of these proposed amendments are available, see "Availability of Copies" under Supplementary Information.

FOR FURTHER INFORMATION CONTACT: David R. Maneval, Assistant Director, Technical Services and Research, Office of Surface Mining, U.S. Department of the Interior; 202-343-4264.

SUPPLEMENTARY INFORMATION:

Public Comment Period

The comment period on these proposed amendments will extend until March 24, 1980. All written comments must be received at OSM Headquarters, U.S. Department of the Interior, South Building, Room 135, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, by 5:00 p.m. on that date. Comments received after that hour will not be considered or included in the administrative record for the final rulemaking. OSM cannot ensure that written comments received or delivered during the comment period to locations other than that specified above will be considered and included in the administrative record for the final rulemaking.

Availability of Copies

Copies of these proposed amendments may be obtained from the following OSM offices:

Headquarters, U.S. Department of the Interior, South Building, Room 135, 1951 Constitution Avenue, N.W., Washington, D.C. 20240; 202-343-4728.
Region I, Thomas and Hill Building, 1st Floor, 950 Kanawha Boulevard, East Charleston, WV 25301; 303-342-8125.
Region II, Suite 500, 530 Gay Street, S.W., Knoxville, TN 37902; 615-637-8060.
Region III, Room 502, Federal Building & U.S. Courthouse, 46 East Ohio Street, Indianapolis, IN 46204; 317-269-2600.
Region IV, Scarritt Building, 5th Floor, 818 Grand Avenue, Kansas City, MO 64106; 816-374-2618.
Region V, Brooks Towers, 1020 15th Street, Denver, CO 80202; 303-837-5511.

Public Hearings

Public hearings on these regulations will be held on February 13, 1980, to hear all those who wish to testify. The hearings will be held at the following locations and will begin at 9:30 a.m. local time at each location.

Washington—Department of the Interior Auditorium, 18th and C Sts. N.W., Washington, D.C.
Indianapolis—Indiana War Memorial, 431 North Meridan St., Indianapolis, Ind.
Denver—Court House, 1961 Stout St., Rm. C-503, Denver, Colo.

Persons wishing to testify at the public hearings on these proposed amendments should contact persons listed under "PUBLIC MEETINGS" for the appropriate location on or before February 11, 1980. Individual testimony at these hearings will be limited to 15 minutes. The hearings will be transcribed. Filing of a written statement at the time of giving oral testimony would be helpful and would facilitate the job of the court reporter. Submission of written statements in advance of the hearings would greatly assist OSM officials who will attend the hearings. Advance submissions will give these officials an opportunity to consider appropriate questions which could be asked for clarification or to request more specific information from the person testifying.

The public hearings will continue on the day identified above until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak and wish to do so will be heard following the scheduled speakers. Each hearing will end after all persons scheduled to testify and persons present in the audience who wish to speak have been heard. Persons not scheduled to testify, but wishing to do so, assume the risk of having the public hearing adjourned unless they are present in the audience at the time all scheduled speakers have been heard.

Public Meetings

Representatives of OSM will be available to meet between January 24, 1980 and March 24, 1980, at the request of members of the public, State representatives, and industry organizations to receive their advice and recommendations concerning the content of these proposed amendments. Persons wishing to meet with representatives of OSM during this time period may request a meeting at the Washington office or any of the five regional offices. Persons to contact to schedule or attend such meetings are as follows:

Washington—Russ Price, 202-343-4022.
Charleston—Jesse Jackson, 304-345-4720.
Knoxville—Roger Calhoun, 615-637-8060, ext. 311.
Indianapolis—William Bye, 317-269-2604.
Kansas City—Kerry Cartier, 816-374-3409.
Denver—Roberta Jones, 303-837-5656.

OSM representatives will be available for these meetings between 9:00 a.m. and noon and 1:00 and 4:00 p.m., local time, Monday through Friday excluding holidays, at the OSM regional offices. All such meetings are open to the public. Notices of the meetings will be publicly posted in advance as to the location of the meeting. A written summary of the meetings will be a part of the administrative record and will be available to the public.

Public Comments

Written and oral comments should be as specific as possible. OSM will appreciate any and all comments, but those most useful and likely to influence decisions on these amendments will be those which include a rationale based on fact, not opinion, for any given recommendation. Written comments

will be accepted until 5:00 p.m. on March 24, 1980 at the address indicated above under "ADDRESSES". OSM cannot assure that comments received after that time will be considered.

Statements of Significance and Environmental Impact

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. The Department of the Interior has determined that amendment of the rules within the scope of this document will not significantly affect the quality of the human environment. Accordingly, this action is not subject to the environmental impact statement requirements of the National Environmental Policy Act.

On March 13, 1979, OSM promulgated permanent program regulations as required by Section 501(b) of the Surface Mining Control and Reclamation Act of 1977. Subchapter J, Parts 800–809, of the permanent program regulations pertain to bond and insurance requirements for surface coal mining and reclamation operations. References to Subchapter J have been published as follows: 44 FR 15385–15393, with corrections published at 44 FR 15485 (March 14, 1979), 44 FR 49673–49687 (August 24, 1979), 44 FR 53507–53509 (September 14, 1979), and 44 FR 66195 (November 19, 1979). Portions of the bonding rules, as well as other permanent program rules were suspended by announcements appearing at 44 FR 67942 (November 27, 1979) and 44 FR 77455 (December 31, 1979). These provisions were suspended in response to reevaluation of the provisions in the context of pending litigation *(In Re: Permanent Surface Mining Regulation Litigation,* filed May 9, 1979, D.D.C.—Civil Action 79–1144).

As a result of comments received on a petition for rulemaking filed by the Mining and Reclamation Council of America (MARC), Travelers Indemnity Company, and Green Mountain Company, ("the peritioners"), OSM has concluded that several Sections of Subchapter J need revision. Refer to 44 FR 28005–28008 (May 14, 1979) and 44 FR 52098 (September 6, 1979), respectively.

Explanation of Proposed Amendments

Part 800—General Requirements for Bonding of Surface Coal Mining and Reclamation Operations Under Regulatory Programs

§ 800.5 Definitions.

Revised definitions of collateral bond and self-bond are proposed to agree with proposed amendments to §§ 806.11 and 806.12. These changes would include a security interest in real or personal property as a form of collateral bond and eliminate it as a form of self-bond.

Commenters on the petition suggested that self-bonding should not require separate collateral, such as real and personal property. The rationale for changing the definitions is presented as part of the discussion of proposed §§ 806.12(h) and 806.14, which were derived from redesignating portions of existing § 806.11(b).

§ 800.11 Requirements to file a bond.

The petitioners requested addition of a new Paragraph allowing bond amount under § 805.11 to be calculated on a cumulative basis in addition to the existing incremental basis.

Two options concerning cumulative bonding were considered: (1) Retain the current language of §§ 800.11 and 805.11, which allows full bonding of the permit area or incremental bonding as approved by the regulatory authority in the bond schedule; or (2) Adopt revised regulations that will calculate a bond amount on a cumulative basis. The second alternative would authorize increases or decreases in the total bond amount as portions of the permit area reach different phases of reclamation under a single bond.

Performance-bonding liability as defined in Section 509(a) of the Act covers that land within the permit area during the initial term of the permit. Succeeding increments require additional bonding. The amount of bond must be sufficient to assure that the reclamation plan can be completed by the regulatory authority. Therefore, the Act provides for the filing of new bond as new increments are about to be disturbed and for the release of bonds on reclaimed increments. This process, if administered under a single bond that covers successive increments, is called cumulative bonding under the proposed revisions. In review of this proposal, OSM feels that the most important factor in applying a cumulative bond is the achievement of the proposed schedule by which affected areas, in various phases of reclamation, and areas not yet disturbed, are included or excluded in the amount of bond coverage. OSM proposes inserting this provision in § 800.11 rather than in § 805.11.

Section 805.11 sets forth the responsibility of the regulatory authority for determination of performance-bond amounts. The regulatory authority must estimate the cost of reclamation considering complexity of terrain, soil characteristics, proposed vegetation, and hydrologic data in order that adequate funds will be available to contract for the reclamation if it must be completed by the regulatory authority. Section 800.11(b)(1)(ii) currently provides for the incrementation of performance bonding as the operator undertakes mining on successive incremental areas within the permit area. Each incremental area is considered to be independent for purposes of bonding, revegetation, and bond release. Therefore, in considering this proposal, cumulative bonding has been provided in § 800.11 concerning bond coverage and scheduling.

The following example illustrates the use of a cumulative bond:

Cumulative bonding is to be applied to a surface coal mining operation during which the operator intends to disturb 10 percent of the permit area each year for 10 consecutive years.

At year 1 the bond required for increment 1 is 10 percent of the total estimated reclamation cost.

At year 2 the operator begins to distrub increment 2, and the bond required for both increments combined increases to 20 percent of the total reclamation cost.

At year 3 the operator begins to disturb increment 3 but requests partial release on increment 1, which has been backfilled, graded, and seeded during year 2 so that reclamation phase I is complete. Upon approval of the release, the bond required for increment 1 is reduced to 4 percent (40 percent of the reclamation cost on 10 percent of the total permit area). The total amount of bond required for increments 1, 2, and 3 is 4 percent, 10 percent, and 10 percent, respectively, or 24 percent of the total reclamation cost.

At year 4 the operator disturbs increment 4, increment 1 is ready for further release and adjustment of bond, increment 2 is ready for initial release and adjustment of bond based on completion of reclamation phase II, and increment 3 still requires a full bond. Upon approval of the releases, the bond required for increment 1 is reduced to 1.5 percent, the bond for increment 2 is reduced to 4 percent, and the bond for increment, 3 and 4 is 10 percent each, or 25.5 percent of the total reclamation cost.

The bond amount increases 1.5 percent per year between year 4 and year 10. The total bond required at year 10, assuming no increment has been released totally from its liability period, is 34.5 percent.

Probably the most important factor in the effective implementation of a cumulative bond is the control of the disturbed acreage and contemporaneous

reclamation, thereby allowing bond release on schedule. In the example, only 20 percent of the permit area is disturbed by active mining at any one time, and a constant 10 percent is in the backfilling, grading, and seeding phase. The key element in successfully reducing the bond amount is to attain successful reclamation in a timely manner.

To implement cumulative bonding fully, conditions may be specified in the regulatory program that either (a) authorize a constant bond face amount but limit the amount of the bond which may be forfeited at any one time to the amount of bond required at that time under the approved schedule, or (b) that allow for variable bond face amount in accordance with the approved schedule. Of course, variation of bond face amount must not be allowed in a manner which would ever have the amount forfeitable fall below the actual estimated full cost of completing reclamation on all distrubed area.

Many commenters felt that adequate latitude is already provided in the regulations to allow cumulative bonding through adopting standards at the State regulatory level. Such interpretation of the bonding requirements would give the regulatory authority the ability to work with bonding companies to control reclamation costs, provide accurate estimates, and avoid bonds which are excessive. Some commenters felt that due to the requirements for contemporaneous reclamation, no more than 50 percent of the total bond amount would be required if all permit increments were in some phase of mining or reclamation effort.

Operators and sureties testified that, due to the uncertain effects of the permanent regulations and their enforcement by OSM and the States, bonding for coal operations will quickly become unobtainable. It was pointed out that most sureties writing bonds today require 100-percent collateral bonding. Even operators who claim to have records of long-standing solvency and good reputations in reclamation reported that it is difficult to obtain bonds. The provisions for cumulative bonding may improve this situation by controlling the total area disturbed at any given time.

In view of the favorable comments on cumulative bonding in support of § 805.11(b) as proposed in the petition, and in light of the inspection frequency required by the Act in the permanent program, OSM has selected option 2 and is proposing aspects of cumulative bonding for the regulations.

OSM has inserted the Section allowing cumulative bonding under Part 800 as § 800.11(b)(ii). This provision will allow an operator to provide a single bond for a permit area including all or part of the increments at differing levels of mining activity. Unlike bonds on separate increments, the forfeitable amount of the cumulative bond may vary as incremental areas are added or deleted. As in incremental bonding, the total bond posted must be sufficient for the regulatory authority to complete the reclamation plan in accordance with Section 509 of the Act.

§ 800.13 Regulatory authority responsibility.

One commenter requested addition of two paragraphs to this Section which would (1) require the regulatory authority to establish bonding-amount rate guidelines, and (2) recommend that the regulatory authority apply the proceeds of forfeitures in a timely manner. The proposed text which was requested is as follows:

"(g) The regulatory authority shall establish bonding-amount rate guidelines based on the estimated maximum cost to the regulatory authority for completing the reclamation requirements of the Act, this Chapter, the regulatory program, and the provisions of the reclamation plan. These guidelines shall form a part of the regulatory authority's program and shall be subject to approval by the Office of Surface Mining Reclamation and Enforcement. These guidelines shall be reviewed and revised periodically to reflect the current cost of reclamation to the regulatory authority. These guidelines shall be based on best estimates by a certified professional engineer of such cost for the State or Indian lands in which the permit area is located.

"(h) The regulatory authority shall apply the proceeds of bond forfeitures toward the reclamation, restoration, abatement, and revegetation of the permit area within a reasonable period of time."

OSM agrees that a cost-estimating guide is essential for developing reclamation costs for operation and reclamation plans, as well as for estimating bond amount. Each State may want to develop and utilize its own guidelines and techniques in estimating the cost of reclamation. OSM feels that no Federal regulations are necessary covering this issue.

The proposal recommending use of proceeds from bond forfeitures in a timely manner has not been included, because it does not appear to add any conditions which are not already covered under existing provisions of bond forfeitures in Part 808. It is the intent of these regulations that reclamation of an area on which bond has been forfeited be conducted in a timely manner, in accordance with the reclamation plan, and in a manner that avoids potential environmental degradation.

The same commenter recommended changing bond "form" to "forms" in § 800.13(a). In developing procedures for filing performance bonds, OSM has developed information forms. The various bonding methods require different information and thus different forms. Therefore, Paragraph (a) is proposed to be amended to reflect the use of multiple forms in bond submission.

Self-bonding, originally in § 806.11, is proposed to be moved to § 806.14. Therefore, the reference in Paragraph 800.13(d) to the self-bonding Section has been changed to § 806.14.

Part 801—Bonding Requirements for Underground Coal Mines, Coal-Processing Plants, Associated Structures, and Other Coal-Related Long-Term Facilities and Structures

The petitioners requested addition of a new Section covering underground mines, coal-processing plants, refuse areas, and associated structures and facilities. Many comments were received which supported a separate Section addressing underground mining and long-term coal-related facilities.

Section 516(d) of the Act requires that standards relating to bonding shall be applicable to both surface mines and the surface effects of underground mines, with modifications necessary to accommodate the distinct difference between the two mining methods.

OSM has proposed Part 801 to deal with bombing regulations of long-term disturbances at such facilities as underground coal mines, coal-processing plants, refuse areas, and other coal-related facilities. Other provisions of Subchapter J would also apply to long-term facilities, except to the extent that specific differences is bonding of long-term facilities have been considered and enacted in Part 801.

Sureties have resisted issuing performance bonds for long-term facilities because of the length of time the bond must remain posted. However, the Act requires bonding coverage sufficient to complete the reclamation plan throughout the life of coal operations. Therefore, a long-term facility must be bonded initially to obtain a permit. One solution recommended in the proposed Part 801 is that surety companies provide bond coverage during the first years of operation, and that production-

generated escrow collateral replace the surety bond early in the facility's life and extend throughout the remainder of the facility's life. Further, at a predetermined time the surety responsibility may cease to be necessary, under a replacement method agreed upon by the operator, surety, and regulatory authority.

Several commenters felt that the liability period associated with an underground mine or coal-processing plant would be prohibitive to surety bonding. Such facilities commonly have a 30-to 50-year life. Therefore, Part 801 provides for short-term liability periods with specific renewal requirements for continuing bond coverage for continuous operations or coverage of the reclamation phases and period of liability. In considering the applicability of this new Part, it was felt that most facilities to which it applied would have multiple-term permits. However, in the transition from interim to permanent program some long-term facilities may be reaching the end of their useful life. Therefore, OSM has inserted certain time constraints on the applicability of Part 801 under proposed Section 801.11 to determine to which facilities and disturbances the provisions of this Part would apply. Operators not covered by Part 801 would require bond liability continously until reclamation has been completed in accordance with Section 805.13(a). In addition, in considering possible situations, a long-term facility may be located on land which is part of a surface mining permit with other shorter term facilities. Such facilities could be bonded with continuous liability until reclamation is completed as part of the total permit area or be treated as a separate permit under Part 801, depending on the most appropriate bond agreeable to the operator and the regulatory authority.

For underground mining operations, specific attention should be given to applying performance standards from Part 817, performance standards for underground mines. The following Sections differ materially from the surface mining performance standards of Part 816: §§ 817.13, 817.14, 817.15, 817.50, 817.71–817.74, 817.101-817.103 and 817.121-817.126.

For long-term facilities and structures, speical attention should be directed to Part 827, "Special Permanent Program Performance Standards—Coal Processing Plants and Support Facilities Not Located at or Near the Minesite or Not Within the Permit Area for a Mine".

Surface disturbances at underground operations and long-term processing facilities do not usually change appreciably during the life of the facility. Therefore, the bond amount can be relatively constant. The amount must cover the total reclamation cost for the disturbed surface area during the permit term. Subsequent coverage is proposed to be required for each permit renewal. Upon completion of the useful life of the facility, bond or other security will cover the reclamation phases including the applicable period of extended revegetation liability of § 816.116.

The bonding requirements for an underground operation as proposed would not include coverage of long-term potential unplanned subsidence or unforeseen mine drainage. However, the proposed regulations detail the applicability of performance bond coverage to any proposed surface measures to control subsidence or in relocating structures and for the construction of facilities associated with mine drainage treatment facilities identified in the permit application.

The preamble to the permanent regulatory program (44 FR 15112) further addresses the bonding of surface effects of underground mines. As stated there, the protection of surface owners from damaging effects of subsidence and environmental problems of acid mine drainage are the subject of further study by OSM. In the meantime, the provisions which provide surface-owner protection detailed in § 817.124 shall continue to apply.

The petition also requested a provision for retention of long-term facilities and structures if they present no potential danger to public health and safety. OSM, in considering this issue, refers to its rationale for § 816.132 regarding cessation of operations found at 44 FR 15415 (March 13, 1979). Unless the structures are approved for retention by the regulatory authority as part of the reclamation plan and support the postmining land use, they cannot remain.

In determining the bond amount in accordance with § 805.11, the procedures for estimating the cost to complete the reclamation plan for surface and underground mines will be basically the same. However, the estimator must consider the differences, complexity, and performance standards of Part 817 in computing bond amount for underground mines.

Part 805—Amount and Duration of Performance Bond

§ 805.13 Period of liability.

The petitioners requested that the regulations be revised to consider the issue that augmented seeding, fertilization, irrigation, or other work often constitutes good husbandry practice and should not require the area to begin its 5- or 10-year liability period again. Many commenters argued that operators should not be penalized for using good husbandry techniques to maintain the area. Revegetation regulations of § 816.116 require the liability period to begin after successful vegetation has been established following augmentation. Work considered beyond normal husbandry practices for a region would require extension of the applicable liability period. However, if normal conservation practices as determined by the regulatory authority are conducted, no extension should be required. The conservation practices which are acceptable to the regulatory authority should be documented prior to undertaking corrective action, to avoid potential controversy. OSM invites comments as to the need to establish specific acceptable practices in the permit process and procedures for amendment if supported by local experience.

Commenters noted that the Act explicitly prohibits seeding, fertilizing, or irrigating during the extended period of liability unless the postmining land-use plan provides for ongoing management. Section 816.116(b)(1) states that "The period of extended responsibility under the performance bond requirements of Subchapter J initiates when ground cover equals the approved standard after the last year of augmented seeding, fertilizing, irrigation or other work". Several commenters noted that the bond should not be held for the entire permit area if only a small portion of the permit area requires additional maintenance. They suggested that the bond be released on the portions of the permit area that meet the requirements of proper revegetation and on which the liability period has expired. Only the portion of land requiring further maintenance should retain its bond for an additional 5- or 10-year period.

To allow some latitude in the extension of the liability period, § 805.13(c) is proposed to allow separation of a portion of the area from the original bonded increment if augmentation is required under certain circumstances upon approval of the regulatory authority. The period of liability on the new portion will begin when a vegetation cover has been established in accordance with § 816.116 of the regulations.

Several comments were received suggesting that the 5- or 10-year period of liability is too long. Section 515(b)(20) of the Act (30 U.S.C. 1265(b)(10))

specifies that the liability period shall be 5 or 10 years. Because the period of liability is set by the Act, no change is proposed.

Section 805.13(c) is proposed to be redesignated as § 805.13(d) to allow for addition of new § 805.13(c).

Section 805.13(d) is proposed to be redesignated as § 805.13(e) and revised to reflect the exception to general revegetation standards of § 816.111(a) in contrast to those under § 816.116. The existing language appears to allow an exception to § 816.116, which was not intended.

A new section § 805.13(f) has been added in response to the petitioners' request to limit the liability of the surety company in the event that an approved postmining land use is not completed. One commenter contended that performance by a third-party landowner or person other than the coal operator cannot be guaranteed as part of the bond for reclamation of the original permit area. OSM agrees that the bond liability of the permittee cover only completion of the reclamation plan so the land will be capable of supporting the approved postmining land use. The regulatory authority must determine during the permitting process the reclamation responsibilities necessary to assure there is a reasonable likelihood that the approved postmining land use will be achieved. Bonding liability may be extended for not attaining the approved land uses under certain circumstances. These include land-use requirements on prime farmlands, alluvial valley floors, and areas where intensive agricultural postmining land use is planned or mining and reclamation methods are approved under a variance.

§ *805.14 Adjustment of amount.*

The petitioners contended that the surety, as well as the permittee, should be notified of adjustments in bond amounts. Currently, only the permittee is required to be notified, and many commenters recommended that the surety should also be notified.

OSM agrees and is proposing a revision to § 805.14 to include surety notification. The request for bond adjustment being proposed in § 805.14(b) also includes other persons who may have an interest in the bond. It is being proposed that, in addition to the permittee and surety, any person with property interest in collateral offered as bond coverage may receive notification of adjustment of bond amount if a request is submitted in writing to the regulatory authority. It is felt that all persons involved in bond coverage should be aware of actions in order to protect their interests. Notification of surety is consistent with involvement of surety companies in bond coverage as found in Section 509(b) of the Act, and provides for coordination in bond matters with surety firms.

Several commenters stated that bond amounts should not be adjusted as required in § 805.14(a). However, Section 509(e) of the Act requires the regulatory authority to adjust bond amounts as the acreage in the permit area changes or where the future cost of reclamation changes. No change has been proposed regarding such adjustments.

Part 806—Form, Conditions, and Terms of Performance Bonds and Liability Insurance

§ *806.11 Form of the performance bond.*

Section 806.11 prescribes the types of performance bonding which may be used to assure an operator's performance. This section has three parts: form of the bonds, self-bonding, and bonding alternatives.

The first Paragraph lists two types of bonds—surety and collateral, the specifics of which are discussed in § 806.12. Self-bonding is covered in detail in Paragraph (b), and bonding alternatives are discussed in Paragraph (c). From the many comments received in regard to self-bonding requirements, it was determined that the specific requirements of self-bonding in § 806.11(b) should be treated separately for clarity, as self-bonding is a separate subsection (509(c)) of the Act. In addition to separating self-bonding, which is proposed as new § 806.14, the provision for requiring a security interest in real and personal property as collateral under self-bonding has been redesignated § 806.12. The proposed revision to Section 806.11 contains reference to the following bonding alternatives: (1) Surety bonding, (2) Collateral bonding, (3) Escrow bonding (a form of collateral bonding), (4) Self-bonding, and (5) The provision for a combination of methods. The criteria by which these various bonding methods may be applied are described in the discussion of §§ 806.12, 806.13, and 806.14. Alternatives to bonding as allowed by Section 509(c) of the Act under the Secretary's authority, which are currently found in § 806.11(c), are proposed as § 806.11(b). OSM in conjunction with this provision invites comments and recommendations on alternatives to bonding methods to further implement Section 509(c) of the Act. A new section, "Escrow Bonding," is proposed as § 806.13. Existing §§ 806.13, "Replacement of Bonds," and 806.14, "Terms and Conditions for Liability Insurance," are proposed to be redesignated as §§ 806.15 and 806.16, respectively.

The petition proposed that § 806.11(b) on self-bonding should be deleted and rewritten to require only the information specified in the Act. Three options were considered: (1) Accept the portion of the petition dealing with Section 806.11(b) and propose the petitioners' suggestions for rulemaking, (2) Reject the portion of the petition dealing with § 806.11(b) and continue the requirements now extant, and (3) Propose a revised and refined § 806.11(b) responsive to concerns of various commenters.

In requesting deletion of § 806.11(b) in its entirety, the petitioners cited two requirements that they consider to be beyond the intent of Section 509(c) of the Act. One is the requirement in § 806.11(b)(2) of the regulations for the operator to show a net worth of six times the total self-bond amount. Another is the requirement in §§ 806.11(b) (3) and (4) for a mortgage or security interest in real or personal property. Two commenters requested that the Sections be rewritten, for as presently written they did not allow self-bonding as a practical matter.

Another commenter stated that the self-bonding regulations did not exceed the authority of OSM under the Act, that the regulations should not be eliminated and rewritten to require only the information required in the Act.

Another commenter said that § 806.11(b) should not be deleted, as proposed by the petitioners, but should be revised to better achieve the purposes of the Act.

Other commenters specified areas, in addition to those of the petition, which should be considered for revision. A commenter pointed out that the Surety Association of America had submitted a statement which would support a regulation that required that the total bond obligation not exceed a multiple of company's net worth, instead of requiring the company's net worth to be a multiple of the bond obligation. Another commenter suggested an amount not exceeding two times the applicant's net worth. Another commenter felt that an audited statement representing a "six times" ratio does not reflect either a residual equity value or a demonstrated ability to pay. Another comment received concerning this Section raised the point that certification by a Certified Public Accountant (CPA) of the net worth added a cost burden on the unaudited independent operator.

Other comments were received on §§ 806.11(b)(3) and (4). One commenter

proposed eliminating indemnity agreements. Another had no problem with the indemnity requirements but felt that a mortgage or security was unnecessary. Two commenters pointed out that a first mortgage cannot be given to the regulatory authority because it would have been required as collateral to borrow money for company expansion. Another commenter stated that the determination of fair market value not subjected to the test of an established active market will present problems for the regulatory authority. Another commenter suggested that § 806.11(b)(4)(iii)(C) be changed to include mine lands at the permit site as eligible bond collateral. Another commenter suggested the deletion of §§ 806.11(b)(4)(iii) and (iv) since they prevent most public utilities from providing self-bonding. Another commenter stated that the definition of collateral property in § 806.11(b)(4)(iv)(D) should not be limited to U.S. Government bonds. Another commenter felt that the requirement in § 806.11(b)(4)(iv)(E), that personal property in which a security interest may be granted shall not include certificates of deposit which are not federally insured, directly interferes with the permittee's right to choose financial institutions.

Several commenters proposed changes to § 806.11(b)(5). One commenter felt that detailed financial statements are unnecessary to assure reclamation. Another commenter felt that new operators should not be disqualified from self-bonding. Another commenter proposed that the regulatory authority could consider the financial records of operators with less than 10 years of continuous experience in § 806.11(b)(5).

Two commenters proposed that the requirement be changed in § 806.11(b)(5)(v)(A) for an operator to provide a financial statement including audited financial statements prepared by a disinterested independent CPA and including a final determination by the CPA regarding the operator's ability to meet all obligations and costs under the reclamation plan for the life of the mine. They suggested that CPA's probably would not issue an opinion that would expose their firms to any liability.

Another commenter proposed that there was no need for curent-to-total asset ratios in § 806.11(b)(5)(v)(A)(3)(i).

Another commenter proposed deletion of the requirement in § 806.11(b)(6)(i)(D) for a spouse's signature unless the spouse is involved in the business on a regular, bona fide basis. Clarification of § 806.11(b)(6)(ii) was also requested by a commenter.

OSM has selected option 3, reopening § 806.11(b) to rulemaking, and proposes various revisions and refinements. OSM feels that Sections 102, 201, 501, and 503 of the Act require guidance in the regulations regarding the parameters of accepting self-bonds to implement the concept granted in the Act. The evidence submitted by the petitioners and others did not seem to support the request to have the regulations completely deleted and the words of the Act submitted in their place.

Further details of the changes made in self-bonding and other areas of § 806.11 are discussed in connection with §§ 806.12(h) and 806.14.

These amendments propose to (1) eliminate real and personal property as a requirement of self-bonding and relocate those provisions as a part of collateral bonding; and (2) create a new Section dealing with self-bonding. The proposed Sections were developed by redesignating and revising portions of § 806.11(b) as follows:

Current	Proposed
Sec.:	
806.11(b) redesignated as	806.14(a)
806.11(b)(1) redesignated as	806.14(a)(1)
806.11(b)(2) deleted	
806.11(b)(3) redesignated and revised as	806.12(h)(1)
806.11(b)(4) redesignated as	806.12(h)(2)
806.11(b)(4)(iii)(C) redesignated and revised as	806.12(h)(2)(iii)(C)
806.11(b)(5) redesignated as	806.14(a)(2)
806.11(b)(6) redesignated as	806.14(a)(3)
806.11(b)(6)(i)(D) redesignated and revised as	806.14(a)(3)(i)(D)
806.11(b)(7) redesignated as	806.14(a)(4)

Only those paragraphs of § 806.11(b) indicated as revised are open for comment unless specific comments regarding other issues are requested as part of this preamble. Other portions of the proposed Sections are printed only as an aid to the reader.

§ 806.12 Terms and conditions of the bond.

Section 806.12 sets forth the criteria by which a regulatory authority may accept performance bonds. This Section covers the requirements for surety bonds, collateral bonds, letters of credit, and the requirements for the use of real and personal property as collateral. Several comments were received on several paragraphs of § 806.12, and they are discussed below.

Section 806.12(e)(4). A surety comment referring to § 806.12(e)(4) asserted that equity in settlement is prohibited to the surety company. This commenter recommended that the surety be able to decide whether to complete the reclamation plan or forfeit the bond. The Act requires that the bond amount must be sufficient for a third party to complete the reclamation plan. If the surety agrees to complete the reclamation in a manner acceptable to the regulatory authority and the bond coverage is considered adequate, OSM feels that surety could meet the requirements of the Act by completing the reclamation plan. Bond coverage and subsequent releases would remain in effect for the surety with bond releases and liability periods as required by other parts of Subchapter J. This provision is proposed as a new § 808.11(c). The regulatory authority may allow the surety to complete the reclamation plan if the surety can demonstrate a contract for services which will meet the requirement of the regulations and the reclamation plan. No bond shall be released, except for partial releases authorized under Part 807, until successful completion of all reclamation under the terms of the permit including the applicable liability period of Part 805.

Sections 806.12(e)(6)(iii) and 806.12(g)(7)(iii). One commenter recommended elimination of the requirement in §§ 806.12(e)(6)(iii) and 806.12(g)(7)(iii) that in the event of insolvency of a surety or a bank, the permittee is deemed without bond and should immediately discontinue surface mining, or a change in the regulation to allow the permittee a 90-day grace period. Section 509(a) of the Act requires that a bond be filed before a permit is issued. An operator losing bonding, whether due to the operator's financial situation or that of the operator's bank or surety, is technically without bonding. However, cessation of operations due to the latter situation, where the operator is not at fault, may prove to be more detrimental to the environment, the public, and reclamation than continuing operations for a brief period without a bond. In additon, in some cases, requiring cessation of operations would ensure operator failure and bankruptcy, since the operator's source of income would cease to exist. Therefore, OSM proposes to amend the regulations to allow a grace period in which an operator must reinstitute bonding. The proposed regulations would require the regulatory authority to issue a notice of violation if this situation occurs and to maintain stringent inspection and monitoring of the operation during the unbonded period.

The proposed amendment allows up to a 90-day period for bond replacement. Since operating without a bond is a permit violation, an operator would be cited as in violation but would be allowed a grace period to abate the condition and replace bond coverage.

Failure to operate in compliance with other performance standards or an unwillingness of an operator to diligently seek bond replacement may require cessation of operations. Operators complying with the abatement period and replacing the bond within the time period would not have the notice of violation count adversely on their records in the event of future, unrelated violations or future permit applications.

Section 806.12(g)(2). A commenter pointed out that § 806.12(g)(2), requiring letters of credit to be irrevocable prior to release by the regulatory authority, cannot be satisfied under current banking policies. Various State and Federal banking regulations prohibit a bank from issuing a letter of credit with an open-ended commitment as to maturity date, and many states prohibit the issuance of such letters of credit with a maturity date in excess of 1 year. Furthermore, in the absence of State regulations, the issuance of open-ended maturity-date obligations still would often not qualify as prudent credit judgment.

OSM has considered the issue of open-ended letters of credit and has decided that the regulations must remain basically unchanged. In response to requests from several commenters, irrevocable letters of credit were added to the permanent-program regulations in 44 FR 15119. These letters of credit are required to be irrevocable during the life of the mine. Their irrevocable nature allows for the same degree of assurance as is required of other collateral. For the purpose of bonding, collateral must retain its value continually. However, they need not be open-ended. The regulations provide for bond replacement, substitution, and adjustment. In these cases, letters of credit used as collateral could be reissued or replaced with the approval of the regulatory authority. A letter of credit might be for a specific time period if an alternative, such as an escrow account or new letter of credit, is to replace it at a specific time during the life of the mine. Accordingly, revisions to the requirements for irrevocable letters of credit are proposed to allow for withdrawal upon written approval of the regulatory authority. Letters of credit subject to withdrawal, if not replaced by other suitable bond, will be forfeited and collected before the date of revocation.

The operator and bank issuing the letter of credit would agree upon the date to replace the letter of credit with another form of bond. A schedule would be approved at the time the permit is issued. The bank would remind the regulatory authority, 90 days in advance of the predetermined date, that the letter of credit was to be withdrawn and collateral substituted. Upon written approval by the regulatory authority, the letter of credit could be withdrawn as long as adequate alternative bonding was first provided.

New Section 806.12(h). It is proposed that real and personal property be deleted from self-bonding to allow its consideration under new § 806.12(h) as collateral. The acceptance of real and personal property will be subject to the regulations developed for the State and Federal lands programs. Although the Act does not mention the use of real or personal property as bonds, both constitute tangible assets of most operators. The provision for acceptance of real and personal property has been included under collateral bonds, as a "perfected first-lien security interest," to ensure the regulatory authority an unconditional judgment if forfeiture occurs. The use of real and personal property as collateral will allow the regulatory authority greater latitude in accepting bond coverage. This aspect of collateral may create some problems in cases of forfeiture, where land or personal property would require liquidation into cash assets to complete reclamation work. Comments by States, in particular, are requested regarding the problems faced in liquidating real or personal property and if it can be handled within their administrative operations.

Section 806.12(h)(2)(iii)(C), which replaces current § 806.11(b)(4)(iii)(C). This section has been modified to allow lands under the permit to be used as collateral after reclamation phase II has been achieved. The value of this collateral must be restricted to its value after reclamation, less the cost of revegetation; this value is proposed to be set at 85 percent of its reclaimed value. Other land on the permit area which has not yet been mined has not been included as collateral for bonding since its value, although equal to other land in the permit area, would not be subject to the conditions of regulatory review which would be afforded land in reclamation Phase III.

Comments were received objecting to limiting collateral to U.S. Government bonds and federally insured certificates of deposit under § 806.12(f). The regulatory authority must be confident that collateral offered is from a solvent and secure financial institution. Requiring Federal or municipal general obligation bonds meets this standard. Certificates of deposit from federally insured institutions also meet the necessary standards of secured collateral. Therefore, the requirement remains unchanged.

§ *806.13 Escrow bonding.*

Section 806.13 has been added to present the option of escrow bonding as an alternative method allowed by the Act. Escrow bonding is a form of collateral bonding, developed over a period of time through funds deposited with the regulatory authority or into an account payable only to the regulatory authority, on a coal-production, acreage-affected, or other similar basis. Escrow bonding is expected to supplement other bonding methods by replacing or adding bond coverage at a rate increasing with mining operations. The concept of escrow bonding as a supplement to other methods would provide the operator with (1) a method to develop a bond alternative which could be used to cover the liability period, (2) a method to develop a collateral bond in a short period to cover long-term facilities over the life of the operations and the subsequent liability period without imposing long-term involvement of surety companies, and (3) a method to compensate for bond increases due to inflation without renegotiating with the surety on all bond adjustments. An example of an escrow situation would occur if an operator posted a surety bond on the initial increment to be mined. By depositing an amount into an escrow account based on production, the operator could establish collateral for the next increment. The original surety bond could remain constant throughout the life of the mine. At the time mining operations ended and the entire permit area was in varying phases of reclamation, the escrow account could be sufficient to cover the bond amount during the extended period of liability.

This perhaps would eliminate a surety's role during the extended liability period. After reaching the end of the liability period, and approval by the regulatory authority, the balance of the escrow account may be released to the operator as with other collateral bonds.

Escrow accounts may be deposited in federally insured (FDIC/FSLIC) accounts payable to the regulatory authority or as cash deposited on a scheduled basis with the regulatory authority. An escrow account may be converted to a certificate of deposit as a bond replacement if it is agreeable to the regulatory authority. As a certificate of deposit, the escrow becomes a collateral bond and subject to conditions in § 806.12(f). Interest paid on

escrow accounts may be applied to the account balance and become part of the bond amount, or released to the operator if arrangements have been made during the bond-submission process.

§ 806.14 Self-bonding.

The proposed amended regulations for self-bonding, § 806.14, contain much of the language from § 806.11(b) of the permanent program regulations with respect to the information required to apply for a permit under self-bonding. Commenters on this Section recommended that the minimum period necessary to provide financial history and demonstrate continuous operation be reduced from 10 years to 5 years, in order to allow the regulatory authority to consider applications from additional operators for self-bonding. OSM, in review of business-failure rates provided by the Small Business Administration, feels that a period of 10 years of continuous operation is necessary to support assurance of financial solvency. Also, the coal industry faced speculation during the oil embargo of 1974, when many companies were formed to take advantage of inflated coal prices. OSM feels that several more years are necessary to demonstrate the capability of such operators to self-bond. OSM requests comments on this issue.

The requirement for an operator to show a net worth of six times the total self-bond amount is proposed to be deleted. This provision would be covered by the requirement of a financial statement in sufficient detail to allow the regulatory authority to determine an operator's ability to perform under the provision of the permit. The regulatory authority may wish to set standards for evaluating net worth and ratios of bond value to net worth in determining an operator's qualifications.

Proposed § 806.14(a)(3)(i)(D), formerly § 806.11(b)(6)(i)(D), would be revised to require a spouse's signature on self-bond indemnity agreement only if he or she is directly involved as a part of the business. The current provision was designed to avoid transfer of an operator's assets to his or her spouse, thereby leaving the operator judgment proof. However, OSM feels that laws regarding fraudulent transfers and provisions of the Fair Credit Act would provide necessary assurances that the potential for isolating attachable assets from the regulatory authority would be minimal.

One comment stated that detailed financial statements are unnecessary to assure reclamation. The intent of financial statements under self-bonding is (1) to provide the regulatory authority with a documented basis over a period of time by which to evaluate an applicant's financial stature, and (2) to test the financial credibility of the applicant to issue an indemnity agreement, which upon forfeiture would provide adequate funds for the regulatory authority to complete the reclamation plan as required under § 805.11(a). Therefore, OSM proposes that financial statements which meet the provisions listed in the regulations must continue to be provided.

Part 807—Procedures, Criteria, and Schedule for Release of Performance Bond

§ 807.12 Criteria and schedule for release of performance bond.

The petitioners requested that § 807.12 be deleted in its entirety and replaced by a new Section presented as part of the petition. OSM, in considering this request, evaluated two options: (1) Retain the current language of § 807.12 which establishes a formula to determine the maximum liability to be released at any time prior to release of the entire permit area, or (2) Adopt revised regulations to clarify the inconsistencies apparently found in existing § 807.12. Option 2 was selected due to the many comments regarding the bond-release provisions and in support of the petition. The proposed new bond-release schedule retains the basic percentages from the previous version, but eliminates the formula of Paragraph (c), which might be interpreted as not allowing any bond release until the entire mine has been reclaimed.

Section 807.12(a) was revised for editorial reasons and to add consistency to the revisions in Paragraph (b) and (c).

Many commenters suggested that a contradiction exists between §§ 807.12(b) and 807.12(c). Section 807.12(b) allows for the release of a portion of the bond liability, contingent on the completion of either phase I or phase II reclamation. A formula is established to determine the maximum liability which may be released at any time prior to the release of all acreage from the permit area. Acreage release occurs only after phase III reclamation has been completed. However, commenters felt that the language was unclear and appeared to nullify the formula established in § 807.12(b), and therefore partial bond release might not be possible until phase III reclamation has been completed. To eliminate this possible confusion, the formula has been deleted and provisions for bond release set forth.

In regard to the percentages used, several commenters recommended that up to 95-percent release should be allowed in phase II; another figure suggested was 70 percent. Another commenter suggested that if the 25-percent phase II bond release comes before initiating the 5- to 10-year liability period, then a 25-percent release is excessive. OSM invites comments on the percentage of release and justification for why a particular percentage is reasonable.

A new § 807.12(c) is proposed regarding incremental bond release and to make bond release and forfeiture consistent with Section 816.133 regarding postmining land uses. OSM believes that capability to support the postmining land use of an increment needs to be self-supporting and not dependent upon the future reclamation of other portions of the permit area; otherwise, bond liability must be retained for all related increments of a permit area prior to any release from phase III. For example, pasture or row crops could probably be released independently, whereas airport hangars, without the completion of an associated runway, probably could not.

With respect to implementing the postmining land use under § 807.12(e)(3), OSM believes that, in most cases, the liability of the permittee, and the surety's risk, is only the reclamation to a capability of supporting the approved postmining land use, not its implementation by a third party.

In view of proposed § 805.13(f), limiting the liability of the permittee to completion of the reclamation plan so that the land will support the postmining land use, it is felt that the definition of phase III reclamation under Part 807 should be amended for consistency. Therefore, the requirement to implement any postmining land use has been eliminated, and the permittee need only perform reclamation so that the land supports the approved postmining land use.

Part 808—Performance Bond Forfeiture Criteria and Procedures

§ 808.11 General.

A new Paragraph 808.11(c) is proposed to allow the regulatory authority to authorize a surety to complete the reclamation plan. The background for this provision is discussed under § 806.12(e)(4).

§ 808.12 Procedures.

Comments were received on § 808.12(c) regarding use of bonds for specific increments to cover adverse effects anywhere on the entire permit

area. As first proposed (43 FR 41872, September 18, 1978) the regulations would have required any bond on "a permit area to be applicable under forfeiture to an entire permit area." During the comment period that followed, a sentence was added restricting any bond from use on the entire permit area except for the protection of the hydrologic balance. Several commenters requested that the Section be returned to its original intent. Review of Section 509 of the Act reveals that bonds "must be conditional upon faithful performance of all the requirements of the Act and the permit." Furthermore, the bond amount must be sufficient to assure the completion of the reclamation plan. In many cases, the complete reclamation plan may apply to the entire permit area. Therefore, the Section is proposed to be amended to clarify that any bond deposited for an entire permit area or any increment may be forfeited to assure all aspects of reclamation of any portion of the permit area.

Paragraph 808.12(d) has been added under procedures of bond forfeiture to ensure that funds in the amount forfeited are made available by the regulatory authority for completion of the reclamation plan for the specific permit area covered by a bond. The Act requires that the bond amount be sufficient to complete the reclamation plan for the specific permit area covered. In complying with this provision, it is assumed that assets resulting from bond forfeiture would be available to contract for reclamation. To provide for uniform application of assets received from bond forfeiture, § 808.12(d) has been added requiring a regulatory authority to use forfeited assets to fund the completion of the reclamation plan.

§ *808.13 Criteria for forfeiture.*

Several issues were raised concerning § 808.13. One issue in § 808.13(a) concerns whether to give the regulatory authority more flexibility to determine forfeiture criteria. The decision on this issue is discussed in the preamble of the permanent regulations at 44 FR 15123 (March 13, 1979), which is incorporated herein by reference.

A second issue raised concerning § 808.13 is whether to include a paragraph providing for a notice of intent of forfeiture in this Section. The alternatives were to add another paragraph or to allow procedures of § 808.12 to address this issue. The commenter proposed that, prior to forfeiture of bond, all parties to the contract, including the surety, be issued a notice of intent of forfeiture in order to allow either the operator or surety to come forward with a compromise agreement of compliance. OSM believes that adequate notification to the surety is provided in § 808.12, which will serve notice of forfeiture on the surety. A dissatisfied surety or permittee may avail itself of its rights of appeal as referred to in § 808.12(a)(2), (3), and (4). Therefore, OSM feels that no additional notice of intent is necessary. In addition, § 808.11(b) gives the regulatory authority the option to accept a schedule for compliance, and withhold forfeiture.

An issue raised regarding § 808.13(a)(3) was whether to restrict permittees who fail to conduct surface mining and reclamation operations to those who *refuse* to conduct operations in accordance with the Act, the permit, the regulations, and the regulatory program. It was determined that an operator unable to conduct surface mining and reclamation operations in accordance with the Act, permit, regulations, and regulatory program should face forfeiture regardless of whether he or she specifically refuses.

In order to clarify the issue of an operator failing or refusing to comply, another issue must be raised; that is, whether a bond must be forfeited for minor infractions of a permit or the regulations. One commenter felt that since the regulations establish a separate penalty procedure for violations, bond forfeiture should not be a threat for violations or other deviations from the regulations.

OSM agrees with the commenter and proposes to add the clarifying phrase "and the regulatory authority has determined that it may be necessary, in order to fullfill the requirements of the permit and applicable program, to have someone other than the operator correct or complete the operation."

Dated: January 17, 1980.

Joan M. Davenport,

Assistant Secretary, Energy and Minerals.

Proposed Revisions

SUBCHAPTER J—BOND AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS

PART 800—GENERAL REQUIREMENTS FOR BONDING OF SURFACE COAL MINING AND RECLAMATION OPERATIONS UNDER REGULATORY PROGRAMS

A. In § 800.5 the definitions of collateral bond and self-bond are proposed to be amended as set forth below.

§ 800.5 Definitions.

* * * * *

Collateral bond means an indemnity agreement in sum certain deposited with the regulatory authority or executed by the permittee and supported by: (1) The deposit of cash in one or more federally insured accounts payable only to the regulatory authority upon demand; (2) Negotiable bonds of the United States or a municipality endorsed to the order of, and in the possession of, the regulatory authority; (3) Negotiable certificates of deposit payable only to the regulatory authority and in its possession; (4) An irrevocable letter of credit of any bank organized or authorized to transact business in the United States payable upon presentation by the regulatory authority only; or (5) A perfected, first-lien security interest in real or personal property, in favor of the regulatory authority only.

Self-bond means an indemnity agreement in sum certain payable upon demand to the regulatory authority.

* * * * *

B. Section 800.11(b)(1) is proposed to be amended as follows:

1. A new Paragraph (ii) would be added to read in its entirety as set forth below.

2. Original Paragraph (ii) would be redesignated as Paragraph (iii).

§ 800.11 Requirements to file a bond.

* * * * *

(b)(1) * * *

(ii) A cumulative bond schedule listing the areas covered by the bond and the sequence for release of acreage as it progresses through varying reclamation phases and the addition of other acreage as it is affected. The amount of bond required to obtain a permit shall include the full reclamation cost of the initial area being affected; or

* * * * *

C. Section 800.13 is proposed to be amended as follows:

1. Paragrpah (a) would be revised to read in its entirety as set forth below.

2. Paragraph (d) would be revised to read in its entirety as set forth below.

§ 800.13 Regulatory authority responsibilities.

(a) The regulatory authority shall prescribe and furnish forms for filing performance bonds.

* * * * *

(d) The regulatory authority may not accept a self-bond in lieu of a surety or collateral bond, unless the permittee meets the requirements of § 806.14 and any additional requirements in the State or Federal program.

* * * * *

A new Part 801 is proposed to be added to read as follows:

PART 801—BONDING REQUIREMENTS FOR UNDERGROUND COAL MINES, COAL-PROCESSING PLANTS, ASSOCIATED STRUCTURES, AND OTHER COAL-RELATED LONG-TERM FACILITIES AND STRUCTURES

Sec.
801.1 Scope.
801.2 Objective.
801.4 Responsibilities.
801.11 Applicability.
801.12 Amount of bond required.
801.13 Period of liability.
801.14 Form of bond.
801.15 Applicability of other Sections.
801.16 Subsidence and mine drainage.
801.17 Bond forfeiture.

Authority: Sections 102, 201, 501, 503, 504, 507, 508, 509, 510, 515, 516, 519, and 701 of Pub. L. 95–87; 91 Stat. 448, 449, 467, 468, 470, 471, 477, 479, 480, 486, 495, 498, 501, and 516 (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1257, 1258, 1259, 1260, 1265, 1266, 1267, and 1269).

§ 801.1 Scope.

This Part establishes bonding procedures applicable to long-term facilities, such as underground mines, coal-processing plants, refuse areas, and other long-term facilities and structures associated with surface and underground coal mining. Such permits may have several renewal terms, or have a single permit term in excess of 5 years, but the surface area affected during the facility life remains basically unchanged.

§ 801.2 Objective.

The objective of this Part is to set forth special bonding regulations for long-term operations to account for differences between short-term and long-term operations and between surface and underground mines.

§ 801.4 Responsibilities.

The regulatory authority shall ensure that bond coverage is provided for long-term surface facilities and surface areas of underground mines subject to the requirements of this Chapter. Specific reclamation techniques required for underground mines and long-term facilities, such as the removal of deposits of coal fines, sealing of shafts and portals, and removal of structures, shall be considered in determining the extent of reclamation and associated cost estimated.

§ 801.11 Applicability.

(a) Operations subject to the provisions of this Part are—

(1) Portions of underground coal mines which will continuously disturb the surface for a period in excess of 5 years;

(2) Coal-processing plants to be operated for more than 5 years from the date a permit is first issued under the regulatory program;

(3) Coal-refuse areas to be operated for more than 5 years;

(4) Coal-loading facilities to be operated for more than 5 years from the date a permit is first issued for it under the regulatory program; and

(5) Long-term coal-related facilities to be permitted for operation longer than 5 years in accordance with § 785.21.

(b) Facilities listed in Paragraph (a) of this Section, conducted within a permit area for a mine includes areas or facilities not subject to this Part, may be bonded as a separate increment of the surface mine permit area. If bonded separately, provisions of this Part shall apply to that increment. If bonded as part of the permit area which included areas or facilities not subject to this Part, bond liability shall continue in accordance with § 805.13.

§ 801.12 Amount of bond required.

(a) regulatory authority shall determine the bond amount necessary to complete reclamation of the area in accordance with § 805.11.

(b) The area considered in the reclamation plan shall include the entire area disturbed.

(c) The amount of bond necessary to obtain a permit is the entire performance bond required during the term of the permit.

§ 801.13 Period of liability

(a) The period of liability for performance-bond coverage shall commence with issuance of a permit and continue for the full term of the permit as established under Section 786.25.

(b) An operator seeking to renew a permit shall file a performance bond as part of the application for permit renewal no less than 120 days prior to the expiration of an existing permit in accordance with § 788.14. The new bond shall commence upon the expiration of the existing permit and continue throughout the term of the new permit, regardless of the issuance date.

§ 801.14 Form of bond.

Performance bonding may be authorized by the regulatory authority in accordance with the methods listed in § 806.11. An escrow account may be established on the basis of a coal-production rate, periodic deposit schedule, or other similar schedule, so that replacement in whole or part of surety bond with collateral bond may be authorized in accordance with § 806.13. Upon development of full bond coverage under an escrow account, any surety bond or self-bond may be terminated. All bonding methods shall comply with provisions and conditions set forth in this Part.

§ 801.15 Applicability of other sections.

Except to the extent that provisions of other Parts of Subchapter J conflict with this Part, all other portions of Subchapter J shall apply to bonding requirements for underground coal mining operations and long-term coal-related facilities subject to this Part.

§ 801.16 Subsidence and mine drainage.

(a) Sections 784.20 and 817.121–817.126 shall apply to the protection of surface-owner property rights against potential damage caused by unplanned subsidence. All measures undertaken to conform with § 784.20(b) in the prevention of damage to surface facilities through planned subsidence shall be subject to performance-bond coverage and the estimated cost of reclamation in the event of failure of such measures included under § 805.11. In addition, the bond liability shall extend to performance of the construction, site preparation, and relocations approved by the regulatory authority under § 784.20(b). Release of bond coverage for damage from planned subsidence shall be authorized only after final inspection, acceptance, and approval by the regulatory authority, and shall not be subject to the liability period of § 805.13 or the bond-release criteria of § 807.12. Procedures for seeking bond release for damage from planned subsidence shall be conducted in accordance with § 807.11.

(b) Performance-bond liability shall include construction of planned impoundments, conveying systems, and treatment facilities for mine drainage in accordance with standards of §§ 816.42, 816.48, 816.50, 817.42, 817.48, and 817.50. Bond release for such facilities shall be authorized only after final inspection, acceptance, and approval by the regulatory authority and is not subject to the period of liability of § 805.13 or the bond-release criteria of § 807.12. Procedures for seeking bond release shall be conducted in accordance with § 807.11. Bond liability with respect to mine drainage shall extend to the construction and ultimate removal of facilities described in the permit application or reclamation plan as associated with the treatment of mine drainage. The estimated bond amount computed under § 805.11 shall not include continuous treatment, monitoring, or potential unpredictable expenses as a result of mine drainage.

§ 801.17 Bond forfeiture.

The regulatory authority shall forfeit a bond pursuant to this Part if—

(a) The operator has not filed a performance bond or other security as required under this Part 120 days prior to permit renewal; or

(b) The regulatory authority determines that a permittee is subject to forfeiture under the criteria of § 808.13(a).

PART 805—AMOUNT AND DURATION OF PERFORMANCE BOND

A. Section 805.13 is proposed to be amended as follows:

1. Paragraph (b) would be revised to read in its entirety as set forth below.

2. A new Paragraph (c) would be added to read in its entirety as set forth below.

3. Original Paragraph (c) would be redesignated as Paragraph (d).

4. Original Paragraph (d) would be redesignated as Paragraph (e) and would be revised as set forth below.

5. New Paragraphs (f) and (g) would be added to read in their entirety as set forth below.

§ 805.13 Period of liability.

* * * * *

(b)(1) In addition to the period necessary to achieve compliance with all requirements of the Act, this Chapter, the regulatory program, and the permit, including the standards for the success of revegetation as required by §§ 816.116 and 817.116, the period of liability under performance bond shall continue for a minimum period in accordance with Paragraph (b)(2) of this Section, beginning when ground cover equals the approved standard after the last year of augmented seeding, fertilizing, irrigation, or other work.

(2) The minimum period of liability shall continue for not less than 5 years in areas of more than 26.0 inches average annual precipitation, and for not less than 10 years in areas of 26.0 inches or less average annual precipitation. The period of liability shall begin again upon achievement of success of vegetation whenever augmented seeding, fertilization, irrigation, or other work is required or conducted on the site prior to bond release.

(3) The regulatory authority may approve selective husbandry practices including seeding, fertilization, or irrigation without extending the period of bond liability, if such practices are normal within the region for unmined lands having land uses similar to the approved postmining land use of the area covered by the bond.

(c) A portion of a bonded area requiring extended liability because of augmentation may be separated from the original area and bonded separately upon approval by the regulatory authority. Before determining that extended liability should apply to only a portion of the original bonded area, the regulatory authority shall determine that such area portion—

(1) Is not significant in extent in relation to the entire area under bond, and

(2) Is limited to a distinguishable contiguous portion of the bonded area.

* * * * *

(e) If the regulatory authority issues a written finding approving a long-term intensive agricultural land use, the operation shall be exempt from the requirements of § 816.111(a). Such a finding shall not constitute a grant of an exception to the bond-liability periods of this Section.

(f) The bond liability of the permittee shall include only those actions which the operator is obliged to take under the permit, including completion of the reclamation plan in such a manner that the land will be capable of supporting a postmining land use approved under § 816.133(c). Actions of third parties which are beyond the control and influence of the operator and for which the operator is not responsible under the permit need not be covered by the bond.

(g) If an area is separated under Paragraph (c) of this Section, that portion shall be bonded separately and the applicable period of liability, in accordance with § 805.13(b), shall commence anew. The period of liability for the remaining area shall continue in effect without extension. The amount of bond on the original bonded area may be adjusted in accordance with § 805.14.

B. Section 805.14 is proposed to be amended as follows:

1. The second sentence of Paragraph (a) would be amended to be two sentences as set forth below.

2. The first sentence of Paragraph (b) would be amended to read as set forth below.

§ 805.14 Adjustment of amount.

(a) * * * The regulatory authority shall notify persons involved in bond coverage of any proposed bond adjustments and provide those persons an opportunity for an informal conference on the adjustment. For purposes of this Section, a person involved in bond coverage shall include the permittee, and surety, and any other person with a property interest in collateral posted under this Subchapter who has in writing to the regulatory authority requested such notification at the time the collateral is posted or the interest is acquired, whichever occurs later. * * *

(b) A permittee, or other persons involved in bond coverage, may request reduction of the required performance-bond amount upon submission of evidence to the regulatory authority proving that the permittee's method of operation or other circumstances will reduce the maximum estimated cost to the regulatory authority if it has to complete the reclamation. * * *

PART 806—FORM, CONDITIONS, AND TERMS OF PERFORMANCE BONDS AND LIABILITY INSURANCE

A. Part 806 is proposed to be amended as follows:

1. Section 806.11(a) would be revised to read as set forth below.

2. Current § 806.11(b) would be repealed in total.

3. The current § 806.11(c) would be redesignated as § 806.11(b)

§ 806.11 Form of the performance bond.

(a) The form of the performance bond shall be prescribed by the regulatory authority in accordance with the provisions of 30 CFR Parts 805 and 806. The regulatory authority may allow for—

(1) A surety bond,

(2) A collateral bond,

(3) Establishment of an escrow account,

(4) Self-bonding, or

(5) A combination of these bonding methods.

(b) The Secretary may approve, as part of a State or Federal program, an alternative bonding system, if it will achieve the following objectives and purposes of the bonding program:

(1) The alternative shall assure that the regulatory authority will have available sufficient money to complete the reclamation, restoration, and abatement provisions for all permit areas which may be in default at any time.

(2) The alternative shall provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

B. Section 806.12 is proposed to be amended as follows:

1. Paragraph 806.12(e)(6)(iii) would be revised to read as set forth below.

2. Paragraph 806.12(g)(2) would be revised to read as set forth below.

3. Paragraph 806.12(g)(7)(iii) would be revised to read as set forth below.

4. A new § 806.12(h) relating real and personal property to collateral bonds would be added. Many of the provisions of the Section currently are found in 806.11(b)(4).

§ 806.12 Terms and conditions of the bond.

* * * * *

(e) * * *

(6) * * *

(iii) Upon the incapacity of a surety by reason of bankruptcy, insolvency, or suspension or revocation of its license, the permittee shall be deemed to be without bond coverage in violation of § 800.11(b). The regulatory authority shall issue a notice of violation against any operator who is without bond coverage. The notice shall specify a reasonable period to replace bond coverage, not to exceed 90 days. During this period the regulatory authority shall conduct weekly inspections to ensure continuing compliance with other permit requirements, the regulatory program, and the Act. Such notice of violation, if abated within the period allowed, shall not be counted as a notice of violation for purposes of determining "pattern of willful violations" under 30 CFR 843.13 and need not be reported as a past violation in permit applications under 30 CFR 778.14. If such a notice of violation is not abated in accordance with the schedule, a cessation order shall be issued.

* * * * *

(g) * * *

(2) Letters of credit shall be irrevocable. The regulatory authority may approve withdrawal of a letter of credit as security in accordance with a schedule approved with the permit. Such withdrawal may not occur less than 90 days after written notice has been given to the regulatory authority. Those letters of credit approved for withdrawal on areas requiring continued bond coverage shall be forfeited and collected by the regulatory authority if not replaced by other suitable collateral at least 30 days before the earliest day of withdrawal authorized by the regulatory authority.

* * * * *

(7) * * *

(iii) Upon the incapacity of a bank by reason of bankruptcy, insolvency, or suspension or revocation of its charter or license, the permittee shall be deemed to be without performance bond coverage in violation of § 800.11(b). The regulatory authority shall issue a notice of violation against any operator who is without bond coverage.

The notice shall specify a reasonable period to replace bond coverage, not to exceed 90 days. During this period the regulatory authority shall conduct weekly inspections to ensure continuing compliance with other permit requirements, the regulatory program, and the Act. Such notice of violation, if abated within the period allowed, shall not be counted as a notice of violation for purposes of determining "pattern of willful violations" under § 843.13 and need not be reported as a past violation in permit applications under § 778.14. If such a notice of violation is not abated in accordance with the schedule, a cessation order shall be issued.

* * * * *

(h) Real and personal property posted as a collateral bond shall meet the following criteria:

(1) The applicant shall grant the regulatory authority a mortgage or perfected first-lien security interest in real or personal property located in the State in which mining will be conducted.

(2) The instrument creating such mortgage or security interest shall vest such interest in the regulatory authority so as to secure the right and power in the regulatory authority to immediately attach said property concurrent with the issuance of a notice of forfeiture under 30 CFR Part 808 and to sell or otherwise dispose of the property by a public or private transaction, and to establish the regulatory authority as the sole secured creditor with respect to such property, so as to assure the regulatory authority of a preferred claim over all other creditors in case of bankruptcy. For classes of property with respect to which a preferred claim cannot be maintained against subseqent bona fide purchasers for value under the Uniform Commercial Code, the instrument shall require possession of the property by the regulatory authority. The property subject to the security interest shall not be subject to any conflicting or prior security interest. The instrument creating the interest in real property shall be recorded as authorized for fee interests. The instrument creating the security interest in personal property shall be recorded in accordance with, and otherwise conform to, the requirements of the Uniform Commercial Code for perfecting a security interest in the State. In order for the regulatory authority to evaluate the adequacy of the property offered to satisfy this requirement, the applicant shall submit a schedule of the real or personal property which will be pledged to secure the obligations under the indemnity agreement. The schedule shall include—

(i) A description of the property;

(ii) The value of the property. The property shall be valued at fair market value as determined by an appraisal conducted by appraisers appointed by the regulatory authority. The appraisal shall be expeditiously made, and a copy thereof furnished to the regulatory authority and the permittee. The reasonable expense of the appraisal shall be borne by the permittee; and

(iii) Proof of the mortgagor's possession of, and title to, the unencumbered real property within the State which is offered to secure the obligations under the bond. Such proof shall include—

(A) If the interest arises under a Federal or State lease, a status report prepared by an attorney, satisfactory to the regulatory authority as disinterested and competent to so evaluate the asset, and an affidavit from the owner in fee establishing that the leasehold could be transferred to the regulatory authority upon forfeiture;

(B) If title is in fee, a title certificate or similar evidence of title and encumbrances prepared by an abstract office authorized to transact business within the State and satisfactory to the regulatory authority; and

(C) The property may include lands which are part of the permit area, only after reclamation standards of phase II are complete on such lands. The bonding value of land within a permit area may not exceed 85 percent of the appraised value if reclaimed to standards of phase III reclamation, based on the value of surrounding lands, less the value for any coal in place, and their current uses. Land pledged as security shall not be mined under any permit; and

(iv) Proof the person granting the security interest holds possession of, and title to, personal property within the State which is offered to secure the obligation of the permittee under the bond. Evidence of such ownership shall be submitted in a form satisfactory to the regulatory authority. The personal property offered shall not include—

(A) Property in which a security interest is held by any person;

(B) Goods which the operator sells in the ordinary course of his or her business;

(C) Fixtures;

(D) Securities which are not negotiable bonds of the U.S. Government or general revenue bonds of the State; or

(E) Certificates of deposit which are not federally insured or where the depository is unacceptable to the regulatory authority.

C. Current § 806.13 is proposed to be redesignated as § 806.15.

D. Current § 806.14 is proposed to be redesignated as § 806.16.

E. A new § 806.13, "Escrow Bonding", is proposed to be added to read in its entirety as set forth below.

§ 806.13 Escrow bonding.

(a) The regulatory authority may authorize the operator to supplement a bonding program through the establishment of an escrow account deposited in one or more federally insured accounts payable on demand only to the regulatory authority or deposited with the regulatory authority directly. Contributions to the account may be based on acres affected or tons of coal produced or any other rate approved by the regulatory authority. In all cases, as long as the total bond including the escrow amount, as determined by the regulatory authority in the bonding schedule, shall not be less than the amount required under Part 805, less amounts released under Part 807.

(b) Escrow funds deposited in federally insured accounts shall not exceed the maximum insured amount under applicable Federal insurance program such as by FDIC or FSLIC.

(c) Interest paid on escrow accounts shall be retained in the escrow account and applied to the bond value of the escrow account unless the regulatory authority has approved that the interest be paid to the operator. In order to qualify for interest payment the operator must request such action in writing during the permit-application process under § 800.11.

(d) Certificates of deposit may be substituted for escrow accounts upon approval of the regulatory authority. Provisions of § 806.12(f) shall apply to certificates of deposit as a collateral bond.

F. A new § 806.14, "Self-bonding," is proposed to be added to include redesignated and revised portions of § 806.11(b). Only the new language under new § 806.14(a)(3)(i)(D) is open for comment, unless specific comments regarding other issues are requested as part of the preamble. Other portions of existing Paragraph 806.11(b) have been printed only as an aid to the reader.

§ 806.14 Self-bonding.

(a) The regulatory authority may accept a self-bond from the applicant under the following conditions:

(1) The applicant shall designate the name and address of a suitable agent to receive service of process in the State where the surface coal mining operation is located.

(2) The applicant, or the applicant's parent organization, in the event the applicant is a subsidiary corporation, shall have demonstrated to the satisfaction of the regulatory authority a history of financial solvency and continuous operation as a business entity for 10 years prior to filing the application. For purposes of this Paragraph, such demonstration shall include a financial statement in sufficient detail to allow the regulatory authority to determine whether it is reasonable to predict from the ownership patterns and financial history of the applicant that it will be financially capable of completing all reclamation requirements throughout the life of the surface coal mining and reclamation operations. Such statement shall include, at a minimum—

(i) Identification of operator by—

(A) For corporations, name, address, telephone number, State of incorporation, principal place of business, principal office in the State where the operation is located, the name, title, and authority of persons signing the application, and a statement of authority to do business in the State where the operation is located; and

(B) For all other forms of business enterprises, name, address, and telephone number and statement of how the enterprise is organized, law of the State under which it is formed, place of business, and relationship and authority of the person signing the application, and principal office in the State where the operation is located;

(ii) Estimated amount of bond likely to be required after approval of the permit which will be determined in accordance with 30 CFR Part 805, and the estimated maximum liability likely to be required during the life of the mine;

(iii) History of other bonds procured by the operator for mining operations in any State, including—

(A) Name of sureties, if any, for outstanding bonds;

(B) Amounts of outstanding bonds;

(C) Name of any surety which denied any bond; and

(D) Unsatisfied claims against any bond;

(iv) Brief chronological history of business operations conducted within the last 10 years including information showing—

(A) Continuous operations; and

(B) The jurisdiction within which each such operation has been conducted;

(v) A financial statement, including—

(A) Audited financial statements prepared and certified by a disinterested independent Certified Public Accountant. All statements shall be prepared following generally accepted principles of accounting and shall include—

(1) A common-size comparative balance sheet which shows assets, liabilities, and owner's equity for 10 years. The regulatory authority shall have the discretion to increase this length of time to any period which is necessary to show financial solvency and continuous operation. The common-size comparative balance sheet shall be detailed with regard to owner's equity, especially retained earnings, so as to set forth a series of retained-earning statements showing the changes that have occurred in retained earnings during the requied period of time;

(2) A common-size comparative income statement which shows all revenues and expenses for 10 years or for such longer time as is required for the common size comparative balance sheet; and

(3) A statement of the operator's working capital and an analysis of assets and liabilities calculated for each year covered by the common-size comparative balance sheet and income statement that show—

(i) A schedule of the percentage of each classification of current assets to total current assets,

(ii) The current ratio,

(iii) The acid-test ratio,

(iv) The liquidity ratio,

(v) The asset ratio, and

(vi) The return on investment.

(4) In addition to the above, all ratios must be calculated with the bond amount added to the operator's current or total liabilities;

(5) A ratio of the operator's capital assets subject to a mortgage or security interest to those liabilities to which the assets are subject. If the offer of real property or collateral for the bond will alter this ratio, this must be illustrated.

(B) A satisfactory basis to compare all ratios submitted pursuant to Paragraph (A) above.

(C) The regulatory authority shall have the right to challenge, prohibit, or prescribe the inclusion of any specific item or the value thereof within any of the above statements or ratios. If the value is challenged, the regulatory authority shall appoint an appraiser or appraisers to value the item. Any such appraisal shall be expeditiously made, and a copy thereof furnished to the regulatory authority and the permittee. The reasonable expense of the appraisers shall be borne by the operator. The findings of the appraisal shall be final and binding.

(D) A final determination by the independent Certified Public Accountant regarding the operator's ability to satisfactorily meet all obligations and costs under the proposed reclamation plan for the life of the mine.

(E) If the regulatory authority deems necessary, evidence of financial responsibility through letters of credit, or a rating of securities issued to the

applicant by a recognized national securities rating company.

(vi) A statement listing any liens filed on the assets of the permittee or applicant in any jurisdiction in the United States, actions pending or judgments rendered within the last 10 years against the permittee or applicant but not satisfied, and petitions or actions in bankruptcy including actions for recorganization. Each such lien, action, petition, or judgment shall be identified by the named parties, the jurisdiction in which the matter was filed, the case, file or docket number, the date of filing, and the final disposition or current status of any action still pending.

(vii) A statement listing any notices issued by the Securities and Exchange Commission or proceedings initiated by any party alleging a failure to comply with any public disclosure or reporting requirement under the securities laws of the United States. Such statement shall include a summary of each such allegation, including the date, the requirment alleged to be violated, the party making the allegation, and the disposition or current status thereof.

(3)(i) The idemnity agreement has been executed by the applicant, said agreement has also been executed by—

(A) If a corporation, then by two corporate officers who are authorized to sign the agreement by a resolution of the board of directors, a copy of which shall be provided.

(B) To the extent the history or assets of a parent organization are relied upon to make the showings of this Part, then the parent organization and every parent organization of which it is a subsidiary, whether first-tier, second-tier, or further removed, in the form of Paragraph (A) above;

(C) If the applicant is a partnership, all of its general partners and their parent organization or principal investors; and

(D) If the applicant is married, the applicant's spouse if directly involved as part of the business on a regular bona fide basis or as an officer of the organization.

(ii) The name of each person who signs the indemnity agreement shall be typed or printed beneath the signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he or she signs the indemnity agreement.

(iii) The indemnity agreement shall be a binding obligation, jointly and severally, on all who execute it.

(iv) For purposes of this paragraph, *principal investor* or *parent organization* means anyone with a 10-percent or more beneficial ownership interest, directly or indirectly, in the applicant.

(4) If at any time the conditions upon which the self-bond was approved no longer prevail, the regulatory authority shall require the posting of a surety or collateral bond before mining operations may continue.

PART 807—PROCEDURES, CRITERIA, AND SCHEDULE FOR RELEASE OF PERFORMANCE BOND

A. Section 807.12 is proposed to be amended as follows:

1. Paragraph (a) would be revised as set forth below.
2. Paragraph (b) would be revised as set forth below.
3. Paragraph (c) would be revised as set forth below.
4. Paragraph (d) would be revised as set forth below.
5. Paragraph (e)(3) would be revised as set forth below.

§ 807.12 Criteria and schedule for release of performance bond.

(a) The regulatory authority may release portions of the liability under performance bonds applicable to the permit area following the completion of reclamation phases as defined in Paragraph (e) of this Section.

(b) The maximum liability of performance bonds applicable to an increment or permit area which may be released shall be calculated on the following basis:

(1) Release of an amount not to exceed 60 percent of the total bond amount on the increment or permit area upon completion of phase I reclamation.

(2) Release of an additional amount not to exceed 25 percent of the total original bond amount on the permit area or an increment upon completion of phase II reclamation based on an amount of bond coverage sufficient to reestablish vegetation and reconstruct any drainage structures on the entire permit area or the increment.

(3) Release of the remaining portion of the total performance bond on the increment or permit area after standards of phase III reclamation have been attained and final inspection and procedures of § 807.11 have been satisfied.

(c) The regulatory authority may choose to release all bond liability for an increment if the phase III reclamation of the increment is complete. The portion of the permit area being released from bond coverage shall be capable of supporting the proposed postmining land use independent of the successful completion of the reclamation of portions of the permit area still under bond or not yet initially disturbed. If capability to support the postmining land use for an increment can be achieved only after successful reclamation of an additional portion of the permit area, no increment shall be totally released from bond liability to release of the phase III bond for the last increment on which it is dependent.

(d) The regulatory authority shall require performance-bond liability applicable, to the permit area, or an increment, in the amount necessary to—

(1) Allow someone other than the operator to complete the approved reclamation plan, achieving compliance with the Act, this Chapter, the regulatory program, and permit requirements;

(2) Allow someone other than the operator to abate any significant environmental harm to air, water, or land resources, or danger to public health and safety prior to release of the lands under the terms of the permit;

(3) Achieve the capability of supporting any alternative postmining land-use plan proposed in the permit, consistent with §§ 816.116, 816.133, 817.116, and 817.133 of this Chapter, including such measures as may be necessary in the event the permittee fails to undertake development within the 2 years required by § 806.116(b)(3)(ii), or § 817.116(b)(3)(ii) of this Chapter; and

(iv) Fulfill the minimum bond amount of $10,000 as required by § 805.12.

(e) * * *

(3) Reclamation phase III shall be deemed to have been completed when—

(i) The permittee has successfully completed all surface coal mining and reclamation operations in accordance with the approved reclamation plan, such that the land is capable of supporting any postmining land use approved pursuant to § 816.133 or 817.133;

(ii) The permittee has achieved compliance with the requirements of the Act, this Chapter, the regulatory program, and the permit; and

(iii) The applicable liability period under Section 515(b)(20) of the Act and § 805.13(b) of this Subchapter has expired.

PART 808—PERFORMANCE BOND FORFEITURE CRITERIA AND PROCEDURES

A. Section 808.11(c) is proposed to be added to read as set forth below.

§ 808.11 General.

* * * * *

(c) The regulatory authority may allow the surety to complete the reclamation plan, if the surety can demonstrate the ability to complete the

reclamation plan, including achievement of the capability to support the alternative postmining land use approved by the regulatory authority. No bond released, except for partial releases authorized under § 807.11, until successful completion of all reclamation under the terms of the permit including applicable liability periods of Part 807.

B. Section 808.12 is proposed to be amended as follows:

1. Paragraph (c) would be revised as set forth below.

2. A new paragraph (d) would be added as forth below.

§ 808.12 Procedures.

* * * * *

(c) The regulatory authority may forfeit any or all bond deposited for an entire permit area or any increment thereof, in order to satisfy §§ 808.11–808.14. Liability under any bond covering any increment of the permit area may extend to the entire permit area.

(d) The regulatory authority shall utilize funds collected from bond forfeiture to complete the reclamaiton plan on the permit area on which bond coverage applied, and to cover associated administrative expenses.

C. Section 808.13(a) is proposed to be amended as follows:

1. Paragraph (a)(1) would be revised to read as set forth below.

2. Paragraph (a)(2) would be revised to read as set forth below.

3. Paragraph (a)(3) would be revised to read as set forth below.

§ 808.13 Criteria for forfeiture.

(a) * * *

(1) The permittee has violated any of the terms or conditions of the bond and has failed to take corrective action;

(2) The permittee has failed to conduct the surface mining and reclamation operations in accordance with the Act, the conditions of the permit, this Chapter, and the regulatory program within the time required, and the regulatory authority has determined that it is necessary, in order to fulfill the requirements of the permit and the reclamation plan, to have someone other than the operator correct or complete reclamation;

(3) The permit for the area under the bond has been revoked, unless the operator or surety assumes liability for completion of reclamation work and is, in the opinion of the regulatory authority, diligently and satisfactorily performing such work; or

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January 24, 1980

Part VII

Department of Health, Education, and Welfare

Office of Education

Indochina Refugee Children Assistance Program

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

45 CFR Part 122a

Indochina Refugee Children Assistance Program

AGENCY: Office of Education, HEW.

ACTION: Final Regulations.

SUMMARY: The Commissioner of Education issues final regulations implementing Title II of the Indochina Refugee Children Assistance Act, as reauthorized by Title XIII of the Education Amendments of 1978. These regulations provide grants made from current Fiscal Year 1980 appropriations to State educational agencies (SEAs) to help local educational agencies (LEAs) provide educational services to certain Indochinese refugee children.

DATES: These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the **Federal Register.** The effective date is changed by statute if Congress disapproves the regulations or takes certain adjournments. If you want to know the effective date of these regulations, call or write the Office of Education contact person.

FOR FURTHER INFORMATION CONTACT: James H. Lockhart, Director, Indochina Refugee Assistance Staff, U.S. Office of Education, 400 Maryland Avenue, S.W. (Room 2189, FOB–6), Washington, D.C. 20202. Telephone (202) 245–3081.

SUPPLEMENTARY INFORMATION: On November 20, 1979, Pub. L. 96–123 was enacted, which provides $12,000,000 for Indochina refugee children assistance to be carried out under Title II of the Indochina Refugee Children Assistance Act. Legislative history of Pub. L. 96–123 states that the funds are designed principally to meet the educational needs of refugee students entering school in this country for the first time during the 1979–80 school year. These regulations only apply to current fiscal year 1980 funds.

Title II of the Indochina Refugee Children Assistance Act authorizes grants to SEAs to help LEAs provide educational services to Vietnamese, Cambodian, and Laotian children admitted into the United States (U.S.) on or after January 1, 1977, under the special parole authority of the Attorney General.

For each eligible child, aged 5 through 17, receving public educational services under the supervision of an LEA, the SEA may receive a maximum grant of $450 for subgrants to LEAs. Priority in providing services will be given to those children entering school for the first time during the 1979–80 school year.

Title II of the Indochina Refugee Children Assistance Act (Pub. L. 94–405) as amended by Title XIII of the Education Amendments of 1978 (Pub. L. 95–561), and modified by the enactment of Pub. L. 96–123 on November 20, 1979. These Acts are attached as Appendix A to these regulations.

These final regulations implement changes made by the 1978 amendments as follows:

(a) Limit eligibility under the Act exclusively to Indochinese refugee children admitted into the U.S. on or after January 1, 1977.

(b) Set $450 as the maximum grant that an SEA may receive for each Indochinese refugee child aged 5 to 17 who receives public educational services under the supervision of an LEA within the State. The maximum amount of the grant is ratably reduced if appropriations are less than $450 for each child.

(c) Require SEAs to distribute funds in proportion to the costs incurred to serve eligible children using a formula which provides double weight to newly enrolled children and allows the SEAs to reserve up to 20 percent of its allotment to meet unforeseen needs within the State occasioned by new concentrations of eligible children who enroll in an LEA after the formula subgrants are distributed.

In response to suggestions by the public and other interested parties, these final regulations make certain changes to provisions that were in the notice of proposed rulemaking.

Summary of Comments and Responses

A notice of proposed rulemaking for the Indochina Refugee Children Assistance Program (45 CFR Part 122a) was published in the **Federal Register** on June 25, 1979, and public meetings were held in 10 cities on August 3, 1979. During the 60-day comment period, more than 150 individuals and groups offered comments and recommendations.

The following is a summary of the comments that requested changes in the regulations and the Commissioner's reponse. The comments and responses are identified by the section number of the notice of proposed rulemaking to which they refer. A brief summary of comments beyond the scope of these regulations concludes this section.

§ 122a.1 Description.

Comment. A commenter pointed out that the description of the Indochina Refugee Children Assistance Program states that services under the program are to be provided to Indochinese refugee children in elementary or secondary schools, while other sections of the proposed rules state that eligibility is limited to children 5 to 17 years of age. The commenter recommended that the question of eligibility be more clearly stated.

Response. A change has been made. Sections 122a.6 and 122a.10 of these final regulations have been revised in order to clarify the statutory requirement that a State's *count* of eligible children for the purpose of computing grant amounts is to be based on those children, 5 through 17 years of age, who are receiving or will receive public educational services under the supervision of an LEA. However, subject to the priority under § 122a.26(a), services may be provided under the supervision of an LEA to all eligible children enrolled in the elementary and secondary schools of the State, without regard to age.

§ 122a.3 Definitions.

Comment. One commenter questioned why the definition of "supplementary educational services," did not include the concept that these services are "necessary to enable those children to achieve a satisfactory level of performance." This commenter also questioned the provision in the proposed rules that these services "focus on" language and instruction, when the legislation says that the services "include" language and instruction.

Response. A change has been made. The definition of supplementary educational services now states that these services include instructional services, special materials and supplies used for instruction, and guidance and counseling services. In addition, the concept that supplementary educational services are those necessary to enable eligible children to achieve a satisfactory level of performance has been added to the definition.

Comment. A commenter asked if the definition of Indochinese refugee children includes refugee children from Vietnam, Cambodia, and Laos regardless of ethnicity (e.g. Chinese-Vietnamese children who are among the current group of incoming refugees).

Response. No change has been made. The definition of Indochinese refugee children includes all refugee children from Vietnam, Cambodia, and Laos regardless of ethnicity who are admitted

into the U.S. under the special parole authority of the Attorney General under Section 212(d)(5) of the Immigration and Naturalization Act.

Comment. One commenter believed that the definition of "Indochinese refugee children" seemed cumbersome as it proposes to enumerate all specific groups that could be eligible. The commenter suggested that in order to avoid the delay involved in amending the definition in the future that the definition be written as follows:

"Eligible children include those who were admitted under the Act as currently provided, or as may be amended."

Response. No change has been made. The Commissioner feels that the definition in these final regulations is comprehensive and understandable. A more vague definition of Indochinese refugee children, as suggested by the commenter, could lead to misunderstanding of the intent of the Act.

§ 122a.10 State eligibility for maximum grant.

Comment. A commenter questioned why the proposed rules provided that a State might count children who are provided "nonpublic educational services," when the legislation states that only children receiving public educational services are to be counted.

Response. Clarifying changes have been made to §§ 122a.6 and 122a.10. The reference to providing "nonpublic educational services," has been deleted. Section 202(a) of the statute provides that the maximum grant an SEA is eligible to receive is based on the "number of Indochinese refugee children aged 5 to 17, inclusive, receiving public educational services under the supervision of each local educational agency within that State during the period for which the determination is made. . . ." The regulations provide that a child shall be counted if that child is or will be receiving public educational services—assisted under this part or from some other source—under the supervision of a local educational agency, during the fiscal year for which the grant is made. To require a child to be receiving public educational services at the time of the count would make it virtually impossible to give effect to the statutory mandate that non-public school children be afforded an opportunity to participate. In many cases these children will not actually receive public educational services until they receive services assisted under this part. However, a State may not include in its count, estimates of children who are not enrolled in the schools on the child count date, but are expected to enter this country in the future.

Comment. Commenters suggested that the requirements under § 122a.10, relating to an annual count, be modified to permit an SEA to make two or more counts, since there is a constantly increasing enrollment of refugee children as well as a continuous shifting of the target population, resulting from in-migration and secondary migration.

Response. No change is made. The Commissioner requires SEAs to count Indochinese refugee children in order to make funding decisions under this program. Nothing in these regulations prohibits SEAs from counting eligible children at any time. However, funds will not be reallocated from State to State on the basis of additional counts by SEAs. Section 122a.16(c) allows the SEAs to reserve up to 20 percent of its allotment to meet unforeseen needs occasioned by new concentrations of eligible children in an LEA.

§§ 122a.11 and 122a.20 Disapproval of SEA and LEA applications.

Comment. A commenter referred to the two sections cited above pertaining to the disapproval of an SEA and LEA application, respectively, and suggested that before an application is disapproved the Commissioner should provide applicants with the technical assistance to remedy any weaknesses in the application.

Response. No change has been made. The applicant is the SEA. It is within the general policy of the Office of Education to provide technical assistance to an applicant for Federal program funds upon request, subject to the Commissioner's ability to provide this technical assistance within the personnel and financial constraints of the agency.

§ 122a.12 State administration.

Comment. One commenter was concerned that much of the LEA allocation would be "siphoned off" to be used by the SEA for monitoring the program.

Response. A change has been made. SEAs may use up to 5 percent of its total allocation for administration costs. If an SEA proposes to use more than $150,000 for administration costs, however, a complete budget justification and prior approval of the Commissioner is required. In addition, SEA administration includes those costs necessary to award grants, conduct child counts as required by the Commissioner, and monitor LEAs, to ensure that the provisions of the Act and these regulations are carried out.

§ 122a.13 Eligibility for services.

Comment. A commenter asked if the provision restricting eligible children to those enrolled in school was intended to preclude the use of program funds for "outreach" programs to locate and place refugee children who are not yet enrolled in school.

Response. No change has been made. Section 103 of the Act authorizes the use of funds for ". . . supplementary educational services" and "basic instructional services." The Commissioner does not interpret this language to include "outreach" activities. A broader interpretation of the term "educational services", to include "outreach" activities, would inappropriately divert program funds away from critical instructional programs such as English language instruction.

§ 122a.16 Disapproval—LEA applications. (This section has been renumbered and is now § 122a.20)

Comment. A commenter questioned why the proposed rules did not require the SEA to provide notice of its decision to an LEA, when the authorizing legislation requires such notice.

Response. A change has been made. This section has been revised to require an SEA to provide a notice of its decision to disapprove an LEA application for a subgrant under this program.

§ 122a.17 Amount of a subgrant. (This section has been renumbered and is now § 122a.16)

Comment. Three commenters stated that an LEA's eligibility for a FY 1980 subgrant above that of the State's maximum grant of $450 per child (up to 150 percent or the $450 allotment) should be determined by the LEA's activities during both school years 1978–79 and 1979–80.

Response. Changes have been made. The Commissioner believes that a formula should be used to ensure that LEAs receive assistance to meet the higher costs of the newly enrolled eligible children. Note the changes to limitations on subgrant amounts which are discussed below in the response to the next comment. A paragraph (f) has been added to § 122a.16 which requires a State to adjust the amount of the subgrant to conform to limitations imposed by § 122a.16, paragraph (a).

Comment. A commenter asked why this section restricted the amount of subgrants to LEAs. This commenter took the view that these restrictions were not authorized by the legislation.

Response. A change has been made. However, there will continue to be restrictions on the amount of subgrants to LEAs. The limits on subgrant amounts prescribed by § 122a.16 have been revised to delete the $450 and 150 percent ceiling. An SEA must distribute at least 80 percent of its allocation to LEAs on the basis of a weighted formula giving proportionately more funds to LEAs on behalf of newly enrolled eligible children. The remaining 20 percent may be used to award discretionary subgrants to meet unforeseen needs in LEAs. The SEA may distribute all of its allocated funds on the basis of the formula. However, the total subgrant may not exceed the LEA's actual additional expenditures. The authority for subgrant limitations is in the Act. Section 103 of the Act limits financial assistance to State and local agencies to the actual additional expenditures incurred by those agencies for providing educational services for eligible children and authorizes the Commissioner to set limits on expenditures. Section 205 of the Act, as amended by the Education Amendments of 1978, requires an SEA to provide in its application "such data and assurances as the Commissioner may prescribe . . . to demonstrate that such payments are distributed between the State educational agency and the local educational agencies within the State in proportion to the contribution to such costs by each agency." The rules are meant to ensure that in keeping with section 205 of the Act, LEAs receive funds in some proportion to their respective costs of providing services.

Comment. A commenter stated that the law places a one percent limitation on each grant. This point is not mentioned in the regulations.

Response. A change has been made. The one percent limitation imposed by the Act (section 202(c)(2)) applies only to American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands. A new paragraph (b) has been added to § 122a.10 to clarify the requirement that these territories are allotted an aggregate total of one percent of the amount that is received by the remaining States, Territories, and the District of Columbia.

§ *122a.19 Actual expenditures.* (This section has been renumbered and is now § 122a.18)

Comment. One commenter suggested that the language in this section be revised to make it more understandable.

Response. A change has been made. Parts of § 122.18 have been revised to clarify the language relating to actual expenditures.

§ *122a.20 Additional expenditures.* (This provision has been deleted in these regulations)

Comment. Several commenters questioned or objected to the rule which, with respect to Indochinese refugee children who have been in the U.S. more than two years, restricts use of program funds to expenditures in excess of the LEA average per pupil expenditure. These commenters made the point that two years after a refugee child's arrival in the U.S. is too short a period to alleviate the impact on State and local resources.

Response. A change has been made. While the Commissioner believes that the Act provides the legal authority for prescribing a time limit on use of program funds for expenditures in excess of the average per pupil expenditure, the time limit has no practical effect on services provided with current FY 80 funds. Since these regulations only apply to current FY 80 funds, the provision has been deleted.

Comment. A commenter suggested that the Commissioner consider that actual additional expenditures be based upon the school aid formula of the Commonwealth of Massachusetts which would provide that all of the Indochinese students would qualify as transitional bilingual students. This would provide that each refugee student would be counted toward a pupil weight factor of 5.4 times the average cost of educating a student in Massachusetts, less the average per pupil cost, which would amount to more than $450 per child.

Response. No change has been made. The Commissioner does not consider that the formula as described above reflects the intent of Congress and the Act.

§ *122a.26 Restrictions.*

Comment. Commenters asked why, if basic services are acceptable for eligible children enrolled in public school, are they restricted for private school children if the services are secular, neutral, and non-ideological.

Response. A change has been made. The restriction questioned by the commenter has been deleted. Eligible children enrolled in non-public schools may receive all of the services authorized by the Act, subject to the restrictions imposed by section 205 of the Act.

Comment. One commenter suggested that the wording in § 122a.26(a)(5) regarding equipment should be the same as that found in the regulations for Title IV-B, ESEA, which refers to equipment that "can be removed from private school facilities without remodeling." He further suggests that this wording is clearer than the "mobile or portable" restrictions used in the NPRM.

Response. A change has been made to § 122a.26. Language has been added similar to the requirement stated in the proposed rule published for Title IV-B, ESEA on May 14, 1979 (45 CFR 134.77) regarding equipment.

§ *122a.27 Parental involvement.*

Comment. Several commenters asked what is the significance of the effective date for this section.

Response. A change has been made. The date of September 30, 1979 is now obsolete and has been deleted from these regulations.

§ *122a.28 Withholding funds.*

Comment. Commenters pointed out that the regulations seem to suggest that a hearing must actually take place, whereas, the law requires only reasonable notice and opportunity for a hearing.

Response. A change has been made. The provision has been revised to be consistent with the Act.

§ *122a.29 Waivers.*

Comment. One commenter asked if there were sanctions that a SEA could impose on a participating LEA in its State if the LEA either refused or failed substantially to provide educational services to non-public school children.

Response. No change has been made. The Act does not authorize the Commissioner to waive requirements pertaining to non-public school children in cases where an LEA refuses or fails substantially to comply. However, from sections 205 and 207 of the Act, the SEA has the obligation to withhold funds from participating LEAs which fail to comply with the requirements mandating the opportunity for non-public school children to participate.

Comments for Changes Beyond the Scope of These Regulations

§ *122a.1 Description of program.*

Comment. Several commenters stated that the provision to restrict eligibility under the program solely to those refugee children admitted into the country on or after January 1, 1977, is unfair to those refugee children who arrived in the country prior to that date who presently need additional educational assistance.

Response. No change has been made. This is a statutory provision—see sections 201 and 203 of the Act.

§ *122a.10 Maximum grant.*

Comment. Commenters expressed the opinion that the maximum grant of $450 per child is inadequate for heavily impacted districts.

Response. No change has been made. This is a statutory provision—see sections 202(b) and 204 of the Act.

§ *122a.19 Actual expenditures.*

Comment. Three commenters stated that allowable costs under the program should include a provision for regional training centers for the purpose of providing inservice training to school personnel who provide educational services to Indochinese refugee children.

Response. No change has been made. The statute does not provide for regional training centers to be directly funded under the program. However, it is possible for a participating LEA to subcontract with a regional training center to assist in providing services under the program. (See section 206(b) of the Act.)

§ *122a.26 Restrictions.*

Comment. Commenters stated that transportation should be an allowable cost if an LEA has to establish a totally new school bus route to serve only those qualified children residing in a remote area, or provide transportation to a central educational facility specifically established to meet the educational needs of the Indochinese children.

Response. No change has been made. This a statutory provision—see section 103(a) of the Act.

Citation of Legal Authority

The reader will find a citation of statutory or other legal authority in parentheses on the line following each substantive provision.

(Catalog of Federal Domestic Assistance No. 13.596, Indochina Refugee Children Assistance Act)

Dated: January 18, 1980.

William L. Smith,

U.S. Commissioner of Education.

Accordingly, Part 122a of Title 45 of the Code of Federal Regulations is added to read as follows:

PART 122a—INDOCHINA REFUGEE CHILDREN ASSISTANCE PROGRAM

Subpart A—General

Sec.

Authority: Title II, Pub. L. 94–405, 90 Stat.1229, as amended by Pub. L. 95–561, 92 Stat. 2363 unless otherwise noted.

(20 U.S.C. 1211b note)

Subpart A—General

§ 122a.1 A description of the Indochina Refugee Children Assistance Program.

The Indochina Refugee Children Assistance Program provides Federal financial assistance to States for educational services to Indochinese refugee children:

(a) Paroled into the United States on or after January 1, 1977; and

(b) Receiving public educational services under the supervision of an LEA in one of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(Sections 201–203 of the Act)

§ 122a.2 What regulations apply to the Indochina Refugee Children Assistance Program?

(A) Regulations that apply to the Indochina Refugee Children Assistance Program are—

(1) 45 CFR 100b.55 as in effect October 1, 1979;

(2) 45 CFR Part 74; and

(3) This part 122a.

(4) If any provision in other regulations conflicts with any provision in this part, the provision in this part applies.

(b) These regulations only apply to current funds appropriated in fiscal year 1980 for use primarily during the 1979–1980 school year. If any of these funds are carried over into 1981 fiscal year, these regulations will continue to apply to activities carried out with those funds.

(Title II of the Act; 20 U.S.C. 1221e–3(a)(1); 1232c (a) and (b); 1232d; 31 U.S.C. 200; 42 U.S.C. 2000d; Pub. L. 96–123)

§ 122a.3 What are the definitions that apply to this program?

(a) *Definitions specific to these regulations.*

As used in this part:

"Act" means the Indochina Refugee Children Assistance Act of 1976 (Pub. L. 94–405), as amended by Title XIII of the Education Amendments of 1978 (Pub. L. 95–561).

"Basic instructional services" means those instructional services regularly provided to non-refugee children. These services may include those provided by regular personnel and the acquisition of regularly provided books and other instructional materials.

(Sections 103, 203 of the Act)

"Eligible children" means Vietnamese, Cambodian, and Laotian children who are—

(1) Refugees within the meaning given that term in section 3 of the Indochina Migration and Refugee Assistance Act of 1975;

(2) Admitted into the United States on or after January 1, 1977, under the special parole authority of the Attorney General granted by Section 212(d)(5) of the Immigration and Naturalization Act; and

(3) Within the age limits for which the applicable State is required or permitted to provide free public elementary and secondary education in kindergarten through grade 12.

(Sections 201(b)(3), 203, and 205 of the Act)

"Parent" means a natural or adoptive parent, legal guardian, or other person having primary responsibility for an eligible child.

(20 U.S.C. 1231d)

"Supplementary educational services" means instructional services, special materials and supplies used for instruction, and guidance and counseling services—

(1) That are necessary to enable eligible children to achieve a satisfactory level of performance; and

(2) That are in addition to the basic instructional services provided by an LEA to non-eligible children of similar age. Supplementary educational services includes, but is not limited to, English language instruction in such forms as English as a second language, English for speakers of other languages, or bilingual education.

(Section 103(a) of the Act)

(b) *Definitions found elsewhere that apply to this program.*

The following terms, as used in this part, have the meaning given to them in section 201(b) of the Act:

Commissioner
Elementary school
Local educational agency (LEA)
Secondary school
State
State educational agency (SEA)
Elementary or secondary non-public schools

(Section 201(b) of the Act)

Subpart B—How Does a State Apply for a Grant?

§ 122a.4 How does a State apply for funds?

A State educational agency (SEA) wishing to participate in this program shall submit to the Commissioner—

(a) A general application, as required by Section 435 of the General Education Provisions Act (GEPA).

(b) A State application, as required by section 205(a) of the Act and by part 100b of this chapter.

(20 U.S.C. 1232d)

§ 122a.5 When does a State apply for funds?

(a) The Commissioner publishes a closing date in the **Federal Register** for submittal of SEA applications.

(b) An SEA wishing to apply for funds under this program shall submit the documents required by § 122a.4 to the Commissioner no later than the closing date published in the **Federal Register.**

(Section 205 of the Act; 20 U.S.C. 1221e-3(a))

§ 122a.6 What is included in the State application?

(a) The State application submitted by an SEA shall fulfill all application requirements of—

(1) Section 205 of the Act; and

(2) Section 435 of the GEPA.

(b) *Child Count.* The State application must also contain a statement showing the following:

(1)(i) The total number of eligible children (as defined in § 122a.3) in the State, aged 5 to 17, who in school year 1979–80 are receiving or will receive under the supervision of a local educational agency, public educational services assisted under this part or funded from some other source (these are the children who are counted for funding purposes); and

(ii) The number of eligible children aged 5 to 17 who are not or will not receive educational services under this program.

(2) The number of eligible children described in paragraph (b)(1) (i) and (ii) from—

(i) Vietnam;

(ii) Laos;

(iii) Cambodia.

(3) The total number of eligible children described in paragraph(b)(1) (i) and (ii) who have enrolled in school for the first time in this country during the 1979–1980 school year.

(4) The total number of eligible children described in paragraph(b)(1) (i) and (ii) who have enrolled in a school in this country prior to the 1979–1980 school year.

(c) The State application must contain a statement showing for each of the categories listed in paragraph (b) of this section—

(1) The total number of children enrolled in public schools; and

(2) The total number of children enrolled in non-public schools.

(d) The State application shall describe procedures the SEA will use for approving LEA applications and for the allocation of the non-formula setaside subgrants in § 122a.16 among participating LEAs within the State.

(e) The number of children counted under paragraphs (b) and (c) is determined by the State and reported to the Commissioner in accordance with a notice published in the **Federal Register.**

(f) A State may not include in its count, for purposes of this section, estimates of the number of Indochinese refugee children who are not enrolled in any school on the child count date but are expected to enter this country in the future.

(Section 205 of the Act; 20 U.S.C. 1221e-3(a)(1), 1232d)

§ 122a.7 Amending the State application.

A State shall amend the State application if required under part 100b. The Commissioner may establish a closing date for amendments to the State application by publishing a notice in the **Federal Register.**

(20 U.S.C. 1221e-3(a)(1))

122a.8 Effective date of the State application.

(a) The effective date of a State's application is October 1, 1979.

(b) This date is the earliest date on which costs may be paid with funds provided under this program.

(Section 201(a) of the Act; 20 U.S.C. 1221e-3(a)(1); 1232c(a)(1))

Subpart C—How is a Grant Made to a State?

§ 122a.9 Under what conditions does the Commissioner approve a State application?

The Commissioner approves each State application that satisfies the requirements of the Act, the regulations of this part, and the applicable regulations of part 100b.

(Section 205(b) of the Act; 20 U.S.C. 1221e3(a)(1))

§ 122a.10 What is the maximum grant for which a State is eligible?

(a) A State is eligible for a maximum annual grant equal to $450 multiplied by the number of eligible children counted in § 122a.6.

(b) The aggregate grant which the jurisdictions listed in section 202(c)(1) of the Act may receive is equal to one percent of the total amount received by the remaining States, Territories and the District of Columbia. The maximum grant may not exceed $450 per child.

(c) If funds appropriated are not adequate to provide $450 for each eligible child served, the Commissioner ratably reduces the amount for which applicant SEAs are eligible to the extent necessary to keep total grants within the limits of the funds appropriated.

(Sections 202, 204, of the Act)

§ 122a.11 Procedures for disapproving a State application.

The Commissioner does not finally disapprove an SEA application without first providing the SEA with reasonable notice of the proposed disapproval and an opportunity for a hearing on the record.

(Section 205(b) of the Act)

§ 122a.12 What funds may an SEA use for administration?

(a) The funds used by the SEA may not exceed 5 percent of the State allocation or the actual costs for administration—whichever is less.

(b) For purposes of this part, administration costs include those costs necessary for—

(1) Disbursement of funds including receiving and approving LEA applications;

(2) Conducting counts of eligible children required by the Commissioner in response to a notice in the **Federal Register**; and

(3) Monitoring LEAs to ensure that the provisions of the Act and these regulations are met.

(20 U.S.C. 1221e-3(a)(1))

(c) A complete budget justification and prior approval of the Commissioner is required before an SEA may use more than $150,000 for administration costs.

(20 U.S.C. 1221e-3(a)(1); Section 206(b) of the Act)

Subpart D—How Does an LEA Apply to the State for a Subgrant?

§ 122a.13 Who is eligible for educational services under this program?

Eligible children, who are enrolled in a public or non-public elementary or secondary school may receive educational services supported with Federal funds provided under this program if those services are provided under the supervision of a local educational agency.

(Sections 103, 202(b)(1)(A), 203 of the Act)

§ 122a.14 Who is eligible to receive a subgrant under this program?

Any LEA or consortium of two or more LEAs with eligible children within a State is eligible to receive a subgrant under this program.

(Sections 205(a) (1), (3), (6) of the Act)

§ 122a.15 What are the application requirements for subgrantees?

(a) An LEA or consortium of LEAs that desires to receive a subgrant under this program shall submit an application to the SEA in the form and manner prescribed by the SEA as contained in the State application.

(b) Each LEA application must comply with the relevant application requirements of GEPA.

(c) Each LEA application must contain assurances that it will comply with the applicable provisions of GEPA.

(Section 205(a)(4) of the Act; 20 U.S.C. 1231d, 1232e)

Subpart E—How is a Subgrant Made to an LEA?

§ 122a.16 Amount of a subgrant.

(a) *General.*

(1) The SEA shall allocate funds among LEAs in accordance with the provisions of (b) and (c) of this section, which requires payments to be distributed in proportion to the costs of providing additional services for eligible children.

(2) In no event shall payments to LEAs exceed the actual expenditures described in § 122a.18.

(b) *Formula Subgrants.* The SEA shall allocate at least 80 percent of its funds remaining after administration costs to LEAs according to the procedure in paragraphs (d) and (e) of this section. The procedure involves two categories of eligible children described in § 122a.6(b)—

(1) *Category I.* Those who have enrolled in a school in this country prior to the 1979–1980 school year; or

(2) *Category II.* Those who have enrolled in a school in this country for the first time during the 1979–1980 school year.

(20 U.S.C. 1221e-3(a)(1))

(c) The SEA may reserve up to 20 percent of its funds remaining after administration costs for subgrants to LEAs to meet unforeseen or unusual costs such as these occasioned by new concentrations of eligible children who enroll in an LEA after the formula subgrants in paragraph (b) of this section are distributed.

(d) *Procedure.*

(1) The SEA determines the number of children in the State in each category ((c) (1) and (2)).

(2) The SEA—

(i) Multiplies the number of children in Category I by one (1); and

(ii) Multiplies the number of children in Category II by two (2).

(3) The SEA adds the products of paragraph (d)(2) (i) and (ii) of this section to obtain the total weighted count.

(4) The SEA divides the total funds available for LEA formula subgrants (at least 80 percent of the total funds less administrative costs) by the weighted child count in paragraph (d)(3) of this section to determine the weighted child allocation.

(e) *Example.* (1) An LEA reports 10 Category I children and 10 Category II children. By applying the procedure in paragraph (d) of this section the total weighted child count equals 30:

(i) Ten multiplied by 1 in Category I equals 10; and

(ii) Ten multiplied by 2 in Category II equals 20.

(2) The LEA payment equals the product of the weighted total in paragraph (e)(1) of this section (which is 30) multiplied by the average weighted child allocation in paragraph (d)(4). If weighted child allocation equals $200 and the weighted child count total in paragraph (e)(1) is 30, the total LEA payment in this example would be $6,000.

(20 U.S.C. 1221e-3(a)(1))

(f) A State making a subgrant to an LEA in accordance with the provisions of paragraphs (b) and (c) of this section must adjust the amount of the subgrant if, upon the receipt of subsequent information, it is determined that the amount of the original subgrant does not conform to the limitations imposed by this section.

(Section 203, 205(a)(3) of the Act; 20 U.S.C. 1221e-3(a)(1))

§ 122a.17 [Reserved]

Subpart F—What Conditions Must Be Met by the State and Its Subgrantees?

§ 122a.18 How are actual expenditures determined?

(a) The Commissioner considers actual expenditures allowed by the Act to—

(1) Be limited to the cost of basic instructional services and supplementary educational services that an LEA or SEA provides either directly or by contract; and

(2) Be only those costs that would not have been incurred except for the presence of eligible children.

(b) Generally, these expenditures include—

(1) Personnel costs necessary to provide supplementary educational services to eligible children;

(2) Personnel costs necessary to keep basic instructional services at normal or average levels established by either existing practice or formal policy;

(3) Instructional materials, supplies, and guidance and counseling services necessary to permit participation by eligible children in regular school programs; and

(4) Inservice training of personnel who provide educational services for Indochinese refugee children.

(Sections 103, 203 of the Act)

§ 122a.19 [Reserved]

Subpart G—What Are the Administrative Responsibilities of the State and Its Subgrantees?

§ 122a.20 Procedures for disapproving an LEA application.

The SEA shall not finally disapprove an LEA application for funds under this program, either in whole or in part, without first providing the LEA with a reasonable notice of its decision and an opportunity for a hearing on the record.

(Section 205(a)(4) of the Act)

§ 122a.21 What are the State's responsibilities in administering the program?

Subject to the provision of § 122a.12, an SEA receiving funds under this program is responsible for—

(a) Complying with its assurances to the Commissioner;

(b) Reviewing and approving of its LEA applications; and

(c) Monitoring the performance of LEAs to which it has awarded subgrants under this program to ensure that the provisions of the Act and these regulations are met.

(Sections 205(a), 205(b) of the Act; 20 U.S.C. 1221e–3(a)(1))

§ 122a.22 Who controls and supervises funds, services, and materials provided under this program?

Grantees and subgrantees shall be responsible for maintaining public supervision and control over funds provided under this program and over services or materials acquired with those funds.

(Section 205(a) (1), (6) of the Act; 20 U.S.C. 1221e–3(a))

§ 122a.23 When are costs allowable under this program?

SEAs and LEAs shall use funds provided under this program for costs incurred only on or after October 1, 1979.

(Sections 103, 201(a) of the Act)

§ 122a.24 When may an SEA make a subgrant?

An SEA shall make a subgrant to an LEA—

(a) On or after the date on which the SEA application to the Commissioner is effective;

(b) If all the applicable requirements of the Act, the General Educational Provisions Act, and applicable regulations are met; and (Sections 203, 205(a) of the Act; 20 U.S.C. 1221e–3(a)(1), 1231d);

(c) No sooner than the first day that the SEA application has been approved by the Commissioner.

(Sections 201(a), 203, 205 of the Act; 20 U.S.C. 1221e–3(a)(1))

§ 122a.25 [Reserved]

§ 122a.26 What restrictions are there on the use of funds?

(a) FY 1980 funds shall be used to principally deal with eligible children entering school in this country for the first time during the 1979–1980 school year. Each grantee and subgrantee shall use funds available under its subgrant first to ensure that these children receive necessary services. If funds are available after serving those children, subgrantees may use remaining funds to serve other eligible children.

(b) Grantees and subgrantees shall not use funds provided under this program for—

(1) Programs, services, and expenditures that are not authorized under section 103 and 205(a)(6) of the Act;

(2) Overhead costs, construction costs, acquisition or rental of space, or transportation costs; and

(3) Salaries for teachers or other employees of non-public schools.

(c) The public agency may place materials or equipment acquired with program funds on the premises of a private school as needed for the period of the project.

(d) The public agency shall ensure that the materials or equipment placed on the premises of a private school—

(1) Are used only for the purposes of this program; and

(2) Can be removed from the private school without remodeling its facilities.

(e) The public agency shall remove the materials or equipment from the premises of a private school if—

(1) The materials or equipment are no longer needed for the purposes of the project; or

(2) Removal is necessary to avoid use of the materials or equipment for other than the purposes of this program.

(Sections 103, 205(a)(b) of the Act; 602 (1971), Pub. L. 96–123)

§ 122a.27 What constitutes parental involvement in the program?

(a) Each SEA shall take steps to ensure that LEAs provide parents of eligible children opportunities to become effectively involved in the planning, implementation, and evaluation of LEA services provided or assisted under this program.

(b) Each participating LEA shall establish policies and procedures to ensure adequate dissemination of program plans and evaluations to parents of eligible children and to the general public.

(20 U.S.C. 1231d)

Subpart H—What Are the Compliance Procedures Used by the Commissioner?

§ 122a.28 Under what conditions does the Commissioner withhold funds?

The Commissioner may withhold payments under this part to an SEA if the Commissioner, after reasonable notice and the opportunity for a hearing, finds that there has been a failure to meet the requirements of the Act.

(Section 207 of the Act)

§ 122a.29 Under what circumstances does the Commissioner permit waivers of requirements for serving non-public school children?

(a)(1) If a State is prohibited by law from providing public educational services to eligible children enrolled in non-public elementary or secondary schools, the Commissioner—

(i) Waives this requirement; and

(ii) Arranges for services to affected eligible children by contracting with organizations or individuals within the State qualified to provide educational services in accordance with the Act and this part

(2) For the purpose of determining if the conditions described in paragraph (a)(1) of this section exist in the State, the Commissioner requires the SEA to furnish an opinion of the Attorney General of the State.

(b) If the Commissioner arranges for services to eligible children attending non-public schools, the Commissioner reduces the grant to the SEA, including administrative funds, by the amount of funds for which the SEA would have been eligible on behalf of those children.

(c) Even if an SEA is prohibited by law from providing public educational services for children enrolled in non-public elementary and secondary schools, the SEA shall identify and separately enumerate these children in the count required under § 122a.6.

(Section 206(c) of the Act; 20 U.S.C. 1221e–3(a)(1))

Appendix

Note.—This Appendix will not be codified in the Code of Federal Regulations

Title II—Program for the Transition Period

Applicability; Definitions

Sec. 201. (a) The provisions of this title shall be applicable for the period beginning

July 1, 1976, and ending September 30, 1977, and for the period beginning October 1, 1978, and ending September 30, 1981.

(b) As used in this title—

(1) The term "Commissioner" means the Commissioner of Education.

(2) The term "elementary school" means a day or residential school which provides elementary education, as determined under State law.

(3) The term "Indochinese refugee children" means children who are refugees within the meaning of that term as defined in section 3 of the Indochina Migration and Refugee Assistance Act of 1975, and who are paroled into the United States by the Attorney General pursuant to section 212(d)(5) of the Immigration and Naturalization Act on or after January 1, 1977.

(4) The term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(5) The term "secondary school" means a day or residential school which provides secondary education, as determined under State law.

(6) The term "State" includes, in addition to the several States of the Union, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(7) The term "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

(8) The term "elementary or secondary nonpublic schools" means schools which comply with the compulsory education laws of the State and which are exempt from taxation under section 501(c)(3) of the Internal Revenue Code.

(20 U.S.C. 1211b note) Enacted September 10, 1976, P. L. 94–405, sec. 201, 90 Stat. 1229, 1230.

State Entitlements

Sec. 202. (a) The Commissioner shall, in accordance with the provisions of this title, make payments to State educational agencies for the period July 1, 1976, through September 30, 1977 and for the period October 1, 1978, through September 30, 1981 for the purpose set forth in section 203.

(b)(1) Except as provided in subsection (d) of this section, the maximum amount of the grant to which a State educational agency is eligible to receive under this title, for the period beginning July 1, 1976, and ending September 30, 1977, and for fiscal year 1979 and for each year ending prior to October 1, 1981 shall be equal to the sum of—

(A) the number of Indochinese refugee children aged 5 to 17, inclusive, receiving public educational services under the supervision of each local educational agency within that State during the period for which the determination is made; multiplied by—

"(B) an amount not to exceed $450.".

(2) For the purpose of this subsection, the term "State" does not include American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(c)(1) The jurisdictions to which this subsection applies are American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(2) Each jurisdiction to which this subsection applies shall be entitled to a grant for the purposes set forth in section 203 in an amount equal to an amount determined by the Commissioner in accordance with criteria established by him, except that the aggregate of the amount to which such jurisdictions are so entitled for any period shall not exceed an amount equal to 1 percentum of the aggregate of the amounts to which all States are entitled under subsection (b) of this section for that period. If the aggregate of the amounts, determined by the Commissioner pursuant to the preceding sentence, to be so needed for any period exceeds an amount equal to such 1 per centum limitation, the entitlement of each such jurisdiction shall be reduced proportionately until such aggregate does not exceed such 1 per centum limitation.

(d) Notwithstanding any other provision of this section, no State educational agency shall be entitled to receive a grant for any period in excess of the amount equal to the amount to which such agency would otherwise be entitled under this section for that period minus the sum of the amounts received by the local educational agencies of that State and by that State educational agency for that period under the Indochina Migration and Refugee Assistance Act of 1975.

(e) Determinations with respect to the number of Indochinese refugee children by the Commissioner under this section for any period shall be made, whenever actual satisfactory data are not available, on the basis of estimates. No such determination shall operate because of an underestimate, to deprive any State educational agency of its entitlement to any payment (or the amount thereof), under this section to which such agency would be entitled had such determination been made on the basis of accurate data.

(20 U.S.C. 1211b note) Enacted September 10, 1976, P.L. 94–405, Sec. 202, 90 Stat. 1230, 1231.

Uses of Funds

Sec. 203. Payments made under this title to any State may be used *"only in accordance with the provisions of section 103".*

Allocation of Appropriations

Sec. 204. (a) If the sums appropriated for the period from July 1, 1976, to September 30, 1977, *"and for the period October 1, 1978, through September 30, 1981"* for making the payments provided for in this title are not sufficient to pay in full the total amounts which State educational agencies are entitled to receive under this title for such period, the allocations to such State educational agencies shall be ratably reduced to the extent necessary to bring the aggregate of such allocations within the limits of the amount so appropriated.

(b) In the event that funds become available for making payments under this title for such period after allocations have been made under subsection (a) for that period, the amounts reduced under subsection (a) shall be increased on the same basis as they were reduced.

(20 U.S.C. 1271b note) Enacted September 10, 1976 P.L. 94–405, Sec. 204, 90 Stat. 1231, 1232.

Applications

Sec. 205. (a) No State educational agency shall be entitled to any payment under this title for any period unless that agency submits an application to the Commissioner at such time, in such manner, and containing or accompanied by such information, as the Commissioner may reasonably require. Each such application shall—

(1) provide that the educational programs, services, and activities for which payments under this title are made will be administered by or under the supervision of the agency;

(2) provide that payments under this title will be used for purposes set forth in section 203;

"(3) provide such data and assurances as the Commissioner may prescribe—

"(A) to demonstrate that the costs of the additional services for which the payment will be made are the direct result of the presence of Indochinese refugee children and that those additional instructional services will actually be provided to those children for the duration of the period for which assistance is made available under this title; and

"(B) to demonstrate that such payments are distributed between the State educational agency and the local educational agencies within the State in proportion to the contribution to such costs by each such agency;".

(4) provide assurances that the State educational agency will not finally disapprove in whole or in part any application for funds received under this title without first affording the local educational agency submitting an application for such funds reasonable notice and opportunity for a hearing;

(5) provide for making periodic reports to the Commissioner evaluating the effectiveness of the payments made under this title, and such other reports as the Commissioner may reasonably require to perform his functions under this title; and

(6) provide assurances—

(i) that to the extent consistent with the number of Indochinese refugee children enrolled in the elementary or secondary nonpublic schools within the district served by a local educational agency, such agency, after consultation with appropriate officials of such schools, shall provide for the benefit of these children secular, neutral, and nonideological services materials, and equipment necessary for the education of such children;

(ii) that the control of funds provided under this paragraph and title to materials, equipment, and property repaired, remodeled, or constructed therewith shall be in a public agency for the uses and purposes provided in this title, and a public agency shall administer such funds and property; and

(iii) that the provision of services pursuant to this paragraph shall be provided by employees of a public agency or through contract by such public agency with a person, association, agency, or corporation who or which, in the provision of such services, is independent of such elementary or secondary nonpublic school and of any religious organization; and such employment or contract shall be under the control and supervision of such public agency,and the funds provided under this paragraph shall not be commingled with State or local funds.

(b) The Commissioner shall approve an application which meets the requirements of subsection (a). The Commissioner shall not finally disapprove an application of a State educational agency except after reasonable notice and opportunity for a hearing on the record to such agency.

(20 U.S.C. 1211b note) Enacted September 10, 1976, P.L. 94–405, Sec. 205, 90 Stat. 1232, 1233.

Payments

Sec. 206. (a) The Commissioner shall pay to each State educational agency having an application approved under section 205 the amount which that State is entitled to receive under this title.

(b) The Commissioner is authorized to pay to each State educational agency amounts equal to the amounts expended by it for the proper and efficient administration of its functions under this title, except that the total of such payments for any period shall not exceed *"5 per centum"* of the amounts which that State educational agency is entitled to receive for that period under this title.

(c) If a State is prohibited by law from providing public educational services for children enrolled in elementary and secondary nonpublic schools, as required by section 205(a) (6), the Commissioner may waive such requirement and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of this title.

(20 U.S.C. 1211b note) Enacted September 10, 1976, P.L. 94–405, sec. 206, 90 Stat. 1233.

Withholding

Sec. 207. Whenever the Commissioner, after reasonable notice and opportunity for a hearing to any State educational agency, finds that there is a failure to meet the requirements of this title, the Commissioner shall notify that agency that further payments will not be made to the agency under this title, or in his discretion, that the State educational agency shall not make further payments under this title to specified local educational agencies (whose actions cause or are involved in such failure) until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied, no further payments shall be made to the State educational agency under this title or payments by the State educational agency under this title shall be limited to local educational agencies whose actions did not cause or were not involved in the failure, as the case may be.

(20 U.S.C. 1211b note) Enacted September 10, 1976, P.L. 94–405, sec. 207, 90 Stat. 1233.

Authorization of Appropriations

Sec. 208. There are authorized to be appropriated for the period beginning July 1, 1976, and ending September 30, 1977, and for fiscal year 1979 and for each succeeding fiscal year ending prior to October 1, 1982, such sums as may be necessary to make payments to which State educational agencies are entitled under this title and payments for administration under section 206(b).

(20 U.S.C. 12116 note) Enacted September 10, 1976, P.L. 94–405, sec. 208, 90 Stat. 1233.

Uses of Funds

Sec. 103. (a) Financial assistance to State and local educational agencies under this title shall be available only to meet the cost of providing Indochinese refugee children—

(1) supplementary educational services necessary to enable those children to achieve a satisfactory level of performance including, but not limited to—

(A) English language instruction,

(B) other bilingual educational services, and

(C) special materials and supplies;

(2) additional basic instructional services which are directly attributable to the presence in the school district of Indochinese refugee children, including the cost of providing additional classroom teachers and additional teaching materials and supplies, but not including overhead costs, costs of construction, acquisition or rental of space, or costs of transportation; and

(3) special inservice training for personnel who will be providing instruction described in either paragraph (1) or (2).

(b) The Commissioner shall by regulation prescribe standards for the determination of the actual additional expenditures incurred by State and local educational agencies in providing educational services for Indochinese refugee children. Such standards may include—

(1) maximum incremental costs for providing basic educational services in relation to the number of additional children;

(2) maximum allowable costs for particular types of supplementary educational services; and

(3) to the extent consistent with this section, categories of programs, services, and expenditures for which funds provided under this title may be used.

(20 U.S.C. 1211b note) Enacted September 10, 1976, P.L. 94–405, sec. 103, 90 Stat. 1227.

[FR Doc. 80–2262 Filed 1–23–80; 8:45 am]

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Thursday
January 24, 1980

Part VIII

Department of the Interior

Bureau of Land Management

Financial Assistance, Local Governments Payments in Lieu of Taxes

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1880

Financial Assistance, Local Governments Payments in Lieu of Taxes

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: These proposed regulations would make the provisions of the regulations for payments in lieu of taxes under the Act of October 20, 1976 (90 Stat. 2662, 31 U.S.C. §§ 1601–1606), commonly referred to as the Payment in Lieu of Taxes Act, applicable to new entitlement lands identified in the Act of October 17, 1978 (92 Stat. 1319). The proposal would also incorporate into the regulations provisions relating to (1) payments for lands acquired for addition to the Redwood National Park pursuant to section 106 of the Act of March 27, 1978 (92 Stat. 171), (2) Decision B–167553 of the Office of the Comptroller General of the United States (October 16, 1978) and (3) the findings of the General Accounting Office and recommendations of the Office of the Inspector General covering verification of data submitted by States for computation of payments.

DATE: Comments by March 24, 1980.

ADDRESS: Send comments to: Director (650), Bureau of Land Management, 1800 C Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

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or

Eleanor R. Schwartz (202) 343–8735

SUPPLEMENTARY INFORMATION: The Act of October 17, 1978 (92 Stat. 1321) contains an amendment which provides that for fiscal years occurring after September 30, 1978, "reserve areas", that is, any area of land withdrawn from the public domain and administered solely or primarily by the Secretary through the Fish and Wildlife Service, shall be deemed entitlement lands for which payments are to be made under the Act of October 20, 1976 (31 U.S.C. 1601–1607), commonly referred to as the Payments in Lieu of Taxes Act. It provides, further, that reserve area payments received by any unit of local government under the Refuge Revenue Sharing Act (16 U.S.C. 715s) are to be included among the payments to be deducted in computing payments to units of local government under section 2 of the Payments in Lieu of Taxes Act.

In addition, the same Act amends the Payments in Lieu of Taxes Act to provide that: (1) effective on October 1, 1978, lands on which are located semi-active or inactive military installations, not including industrial installations, retained by the Army for mobilization purposes and for support of reserve component training, shall be included in the definition of entitlement lands for which payments are to be made under the Act; (2) beginning with fiscal year 1979, lands owned and/or administered by a State or unit of local government and exempt from payment of real estate taxes at the time such lands are or were conveyed to the United States are to be considered entitlement lands if they are or were acquired by a State or unit of local government from private parties for the purpose of donation to the Federal Government and are or were so donated within eight years of acquisition; and (3) beginning in fiscal year 1979, a unit of local government in Alaska located outside the boundaries of an organized borough which acts as the collecting and distributing agency for real property taxes is eligible to receive payments under section 3 of the Act.

Section 106 of the Act of March 27, 1978 (92 Stat. 171) amends the Payments in Lieu of Taxes Act in two respects: (1) payments authorized in section 3 of the Act for lands or interests therein acquired for addition to the Redwood National Park under authority of the Act of March 27, 1978 (92 Stat. 163), but not paid because of the payment limitations of that section are to be deferred and applied, until the amount is exhausted, to future years in which the annual payments would not otherwise equal the amount of real property taxes assessed and levied on such property during the last full fiscal year before the fiscal year in which such lands or interests were acquired; and (2) the Redwoods Community College District is to be considered an affected school district qualifying for payments under section 3(a) of the Act.

This proposed rulemaking would change the wording in § 1881.1–3(b) of the regulations regarding the distribution of Section 3 payments by the counties to affected units of local government and affected school districts. The proposed regulations would require that such distribution be made in proportion to the "taxes assessed and levied" by the affected units of local government and affected school districts, instead of in proportion to "tax revenues received". This change is in response to communications received from units of local government which indicate that because of the amount of delinquent taxes incurred or past delinquencies paid, the amount of revenues received could be significantly different from the potential tax loss as evidenced by taxes assessed and levied.

These proposed rules would add the requirment that information reported by State governments in accordance with section 2(a)(2) of the Act be verified by Certified Public Accountants or State Auditors prior to submission to BLM and that these submissions include an auditor's certification respecting the accuracy of the information submitted. Both the General Accounting Office and the Interior Department's Office of the Inspector General have stated that information being supplied by the States has been inaccurate, and these offices recommend that all future submissions be verified through audit. The Office of the Inspector General has further recommended that this certification of audit should be a condition precedent to payment. Similar requirements would be imposed for State submitted data used for prior fiscal year adjustments. Report No. 96–374 of the House of Representatives in the 96th Congress, on p. 13, noted that the General Accounting Office informed the Bureau of Land Management that data submitted by States must be verified prior to being used in the year-end computation of payments under the Payments in Lieu of Taxes Act.

These requirements of audit verification could be waived by the authorized officer where the information has been verified by the General Accounting Office, the Office of the Inspector General or other qualified Federal official, or where such audit certification is determined to be unnecessary. The Office of the Inspector General would have oversight responsibility for these audit requirements under the authority of the Inspector General Act of 1978 (95 Stat. 452).

The Office of the Inspector General and the Office of the Solicitor have also recommended that portions of the definition of "Entitlement Lands" be clarified. This matter is currently under review by the concerned Bureaus and agencies and will be covered by future amendment to these regulations or by recommendations for statutory change.

The regulations would be further amended to conform the definition of "money transfers" to Comptroller General Decision No. B–167553, of October 16, 1978. That decision concluded that Federal revenue sharing payments which are not actually received by a unit of local government, or over which the unit of local government has no control when they are paid to a single-purpose government

entity, such as a school district, are not to be deducted in the computation of section 1 payments as prescribed by subsection 2(a)(1) of the Payments in Lieu of Taxes Act. This proposed rulemaking would incorporate these changes and amendments into the regulations relating to payments in lieu of taxes in 43 CFR Part 1880.

The principal author of this proposed rulemaking is Eleanor R. Schwartz, Chief, Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that the publication of this document is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C) is required.

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

Under the authority of the Act of October 20, 1976 (31 U.S.C. 1601–1607), sections (a)(4) and (b) of the Act of October 17, 1978 (92 Stat. 1319, 1321–1322), and section 106 of the Act of March 27, 1978 (92 Stat. 171), it is proposed to amend Subpart 1881, Part 1800, Subchapter A, Chapter 2 of Title 43 of the Code of Federal Regulations as follows:

PART 1880—FINANCIAL ASSISTANCE, LOCAL GOVERNMENTS

1. Section 1881.0–5 is amended, by amending paragraph (b)(1)(iii), by amending paragraphs (c)(1) (iv), and (v), adding new paragraphs (c)(1) (vi), and (vii), by amending paragraph (c)(2)(i), and by revising paragraph (d), all to read as follows:

§ 1881.0–5 Definitions.

* * * * *

(b) * * *

(1) * * *

(iii) Alaskan boroughs in existence on October 20, 1976, and, beginning October 1, 1978, for purposes of payment under section 3 of the Act, a unit of local government in Alaska located outside of boundaries of an organized borough which acts as the collecting and distributing agency for real property taxes.

* * * * *

(c)(1) * * *

(iv) Water resource projects administered by the Bureau of Reclamation or Corps of Engineers;

(v) Dredge disposal areas administered by the Corps of Engineers;

(vi) Beginning October 1, 1978, lands on which are located semiactive or inactive installations, not including industrial installations, retained by the Army for mobilization purposes and for support of reserve component training; or

(vii) Beginning October 1, 1978, lands designated as "reserve areas", which means any area of land withdrawn from the public domain and administered, either solely or primarily, by the Secretary through the United States Fish and Wildlife Service.

(c)(2) * * *

(i) Lands that were owned or administered by a State or unit of local government and which, at the time title was conveyed to the United States, were exempt from payment of real estate taxes. However, beginning October 1, 1978, this exclusion shall not apply to any entitlement land which is or was acquired by a State or unit of local government from private parties for the purpose of donation of such land to the Federal Government and which is or was donated within eight years of the date of acquisition thereof by the State or unit of local government.

(d) "Money transfers" means money or cash payments received by units of local government under the statutes in section 4 of the Act, 31 U.S.C. § 1604. The term does not include payments made to a State and distributed by the State directly to a school district or other single or special purpose governmental entities, or payments distributed by the State to the unit of local government which the unit of local government is required by State law to pass on to a school district or other independent single or special purpose governmental entity.

2. Section 1881.1–2 is amended by revising paragraph (d)(2) and adding new paragraph (e) to read as follows:

§ 1881.1–2 Procedures, Section 1 Payments.

* * * * *

(d) * * *

(2) a written certification by a State Auditor, an independent Certified Public Accountant or an independent public accountant, licensed on or before December 31, 1970, that the statements furnished by the Governor or his delegate have been audited in accordance with auditing standards established by the Comptroller General of the United States in *Standards for Audit of Governmental Organizations, Programs, Activities and Functions*, available through Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, and in accordance with the audit guide for payments in lieu of taxes issued by the Department of the Interior. Such audit certifications will be required for statements submitted for the computation of payments authorized by section 1 of the Act for:

(i) payments to be made for fiscal years beginning on or after October 1, 1979; and

(ii) prior fiscal year payments as may be required by the Office of the Inspector General, Department of the Interior.

The Authorized Officer may waive the requirement for audit certifications where information contained in statements furnished by the Governor or his delegate is verified by the General Accounting Office, the Office of the Inspector General, or other qualified Federal Officials, or where such verification is determined to be unnecessary.

(e) The Office of the Inspector General, United States Department of the Interior, will provide appropriate assistance to the Director, Bureau of Land Management to facilitate the implementation and administration of the audit requirements specified in paragraph (d)(2) of this section pursuant to the provisions of sections 4 and 6 of the Inspector General Act of 1978 (92 Stat. 1102–1103, and 1104–1105). The Office of the Inspector General will develop appropriate audit guides to be used by State auditors, independent Certified Public Accountants or an independent public accountant, licensed on or before December 31, 1970, for auditing the statements of the Governors or their delegates and submitting audit certifications specified in paragraph (d)(2) of this section. Copies of the audit guides will be furnished to the Governor or his delegate each year. Questions pertaining to the use or application of this guide should be referred to the Office of Inspector General, U.S. Department of the Interior, Washington, D.C. 20240.

3. Section 1881.1–3 is amended by revising paragraph (b) and adding a new paragraph (d) to read as follows:

§ 1881.1–3 Procedures, Section 3 Payments.

* * * * *

(b) Counties receiving payments in excess of $100 shall distribute those payments to affected units of local government and affected school districts, in accordance with section 3 of the Act, within 90 days of the receipt of such payment. Distribution shall be in proportion to the tax revenues assessed and levied by the affected units of local government and school districts in the Federal fiscal year prior to acquisition of

the entitlement lands by the Federal Government. The Redwoods Community College District in California shall be considered an affected school district.

* * * * *

(d) In accordance with 106(c) of the Act of March 27, 1978 (92 Stat. 171), payment of the difference, if any, between the amounts actually paid during each of the five fiscal years immediately following the fiscal year in which lands or interests therein were acquired for addition to the Redwoods National Park pursuant to said Act of March 27, 1978, and 1% of the fair market value of such lands and interests therein at the time of their acquisition shall be deferred, unless the amount not paid, or any part of such amount, was not paid due to an insufficiency of appropriated funds. commencing with the sixth fiscal year following acquisition, the amount deferred shall be paid to eligible counties annually in amounts that reflect the limitations of section 3(c)(2) of the Act. Such payments shall be made until the total amount deferred during the first five years has been paid.

Daniel P. Beard,

Acting Assistant Secretary of the Interior.

January 21, 1980.

[FR Doc. 80-2341 Filed 1-23-80; 8:45 am]

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federal register

Thursday
January 24, 1980

Part IX

Department of Health, Education, and Welfare

Public Health Service

Health Maintenance Organizations; Final Regulations Regarding Grants and Loan Guarantees

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

42 CFR Part 110

Health Maintenance Organizations

AGENCY: Public Health Service, HEW.

ACTION: Final regulations.

SUMMARY: These rules amend the Public Health Service (PHS) regulations by implementing certain changes made by the HMO Amendments of 1978 with respect to grants and loan guarantees for planning and initial development costs (Subpart D) and to loans and loan guarantees for initial costs of operation (Subpart E). These regulations change Subpart D by including projects for the "expansion of services" of an HMO among the projects eligible for initial development assistance. In addition, they change the limits on the amount of assistance permitted for initial development projects. These regulations also change Subpart E by substituting the words "costs of operation" for the words "operating costs," thereby expanding the scope of assistance for initial operations (1) to include costs of certain small capital expenditures for equipment and alterations and renovations of facilities and (2) to incorporate into the regulations a long-standing policy which specifies the amount of preaward balance sheet liabilities which may be paid for with funds under operating loans (whether made directly or guaranteed by the Secretary).

EFFECTIVE DATE: These regulations are effective on January 24, 1980. However, comments are invited through March 24, 1980.

FOR FURTHER INFORMATION CONTACT: Howard R. Veit, Director, Office of Health Maintenance Organizations, Park Building—3rd Floor, 12420 Parklawn Drive, Rockville, Maryland 20857, 301–443–4106.

ADDRESSES: Interested persons are invited to submit written comments or suggestions on these rules to the person and office listed above. The comments will be available for public inspection and copying at the above address between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, except for Federal holidays.

SUPPLEMENTARY INFORMATION: The Health Maintenance Organization Amendments of 1978 (Pub. L. 95–559) (the Amendments) revised and extended the provisions of Title XIII of the Public Health Service Act (the Act), as amended, to include, among other changes, provisions affecting grants and loan guarantees for planning and initial development of HMOs (section 1304 of the Act) and loans and loan guarantees for initial operating costs of HMOs (section 1305 of the Act). Final regulations to implement sections 1304 and 1305 of the Act were adopted in the **Federal Register** on October 27, 1978 (43 FR 50182–3, Subparts D and E). On February 22, 1979, certain amendments were made to Subpart E to conform to the HMO Amendments of 1978 (44 FR 10602–3). At that time, it was indicated that a number of other changes would be made in the regulations as a result of the Amendments. The regulations promulgated in this document make those changes and ones similarly needed for Subpart D.

For the reasons described below, the Secretary has determined that public participation in rulemaking prior to issuance of these regulations is unnecessary, impractical and contrary to public interest, and accordingly, that good cause exists for making these regulations effective on January 24, 1980.

With respect to Subpart D, the HMO Amendments of 1978 added projects for the "expansion of services" of an HMO to section 1304(b)(2) of the Act, which describes projects for which initial development assistance may be awarded. The revised Subpart B regulations, published in the **Federal Register** on July 18, 1979 (44 FR 42074–9), now provide a definition of "expansion of services" (§ 110.202) which can be used as a basis for awarding assistance under Subpart D. In addition, the Amendments increased the amount which may be awarded for initial development projects. A delay in the effective date would be detrimental to applicants for initial development assistance who need the increased award amounts and to HMOs which, in order to preserve or enhance their fiscally sound operation, urgently need financial support to expand their services.

With respect to Subpart E, the HMO Amendments of 1978 substituted, as a basis for assistance, the words "costs of operation" for the words "operating costs" in section 1305(a). In enacting this amendment, Congress authorized the Secretary to expand the scope of the costs that could be paid for with loan assistance under section 1305 of the Act. (See H.R. Rep. No. 95–1479, 95th Cong. 2nd Sess., Aug. 11, 1978, p. 58.) A delay in the effective date of Subpart E would be detrimental to HMOs which, in order to preserve or enhance their fiscally sound operation, urgently need the expanded basis for assistance to pay for the additional costs which may now be supported with loan assistance under section 1305.

Accordingly, the Secretary has determined that good cause exists for making these regulations effective upon publication. However, the Secretary invites public comments on these revisions and will consider them if received on or before March 24, 1980, in determining whether future revisions are appropriate. After the comment period, the Secretary intends to republish Subparts D and E in their entirety. The republication will take into account the comments received and will further simplify and clarify the regulations in accordance with the Department's Operation Common Sense.

The Secretary notes that the "costs of operation" which may now be supported under Subpart E are related only to the assistance provided under section 1305 of the Act. This term includes some costs which are characterized differently under the reimbursement principles of other programs administered by the Department, including the Medicare and Medicaid programs of Titles XVIII and XIX of the Social Security Act. As noted above, the broad definition of "costs of operation" under Subpart E implements a specific Congressional intent to provide assistance under section 1305 not only for "operating costs", as previously defined in the regulations, but also for certain small capital expenditures.

Set forth below is a summary of the amendments made in these regulations:

1. **Sections 110.401(a), 110.402, and 110.404(f) are amended to include projects for the "expansion of services,"** as defined in § 110.202 of the revised subpart B regulations, among the projects eligible for initial development.

2. Section 110.405(b) is amended to delete any reference to dollar limitations for projects for initial development. Instead, reference is made to sections 1304(f)(2) and (f)(3) of the Act, which state respectively the amount authorized for any initial development project for an HMO and the cumulative total authorized for initial development projects for any HMO. This amendment permits the Secretary to implement the amendment to section 1304(f)(2), which increases the amount of initial development funds which may be awarded to an HMO for a particular project from a maximum of $1 million to $2 million effective October 1, 1979. These amendments will also facilitate the prompt implementation of any future legislative changes in the amounts authorized for initial development awards.

3. Section 110.405(b)(2) is amended to change the period for which an initial

development grant can be made from 1 year to 3 years, as provided by an amendment to section 1304(b)(3).

4. Section 110.405(b)(4) is revised by changing the reference from "§ 110.104(b)" to "§ 110.404(b)." The original reference was a typographical error.

5. The term "costs of operation" is substituted for "operating costs" and is defined to mean any cost incurred during the HMO's first 60 months of operation or expansion which:

a. Under generally accepted accounting principles or under accounting practices prescribed or permitted by State regulatory authority is not a capital cost;

b. Is required by State regulatory authority to meet reserve or tangible net equity requirements;

c. Is for a payment made to reduce balance sheet liabilities existing at the beginning of the 60 month period, but only if (i) the payment has been approved in writing by the Secretary and (ii) the total of these payments does not exceed 20 percent of the amount of the loan; or

d. Is for small capital expenditures (as defined in paragraph 6 below), but only if (i) this cost has been approved in writing by the Secretary, and (ii) the total of these costs does not exceed $200,000 in any 12 month period and $400,000 during the first 60 months of operation or expansion.

This definition covers those terms previously covered by the more limited operating costs definition (items a, b, and c), incorporates into the regulations the long-standing policy of the Department's Office of Health Maintenance Organizations as to the amount of balance sheet liabilities which may be covered by operating assistance (the limitations stated for item c), and adds language providing for payments from operating loan or loan guarantee funds for small capital expenditures (item d). The Secretary decided to impose the aggregate dollar limits on small capital expenditures in order to allow enough flexibility to cover the needs of HMOs, while insuring that sufficient funds would continue to be available to cover HMO operating deficits.

6. "Small capital expenditures" is defined in § 110.502(d) as expenditures for:

a. Equipment (as defined in 45 CFR Part 74.132, the Department's general regulation on grants administration); and

b. Alterations and renovations required to change the interior arrangements or other physical characteristics of an existing facility or installed equipment, so that it may be more effectively used for its currently designated purpose, or adapted to a changed use.

The Secretary has adopted definitions of equipment and alterations and renovations which are the same as those used in HEW grant programs in order to have uniform requirements for the various types of financial assistance available to HMOs. The limitation to "small" capital expenditures is consistent with the Congressional intent that major capital costs should be covered by the new Section 1305A authority for loans and loan guarantees for acquisition and construction of ambulatory facilities, rather than by funds for initial costs of operation. (See H.R. Rep. No. 95–1479, 95th Cong. 2nd. Sess., Aug. 11, 1978, p. 58.)

The Assistant Secretary for Health for the Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education, and Welfare, hereby amends 42 CFR Part 110, Subparts D and E, as set forth below.

(Sec. 215, 58 Stat. 690 (42 U.S.C. 216); secs. 1301–1318, as amended, 92 Stat. 2131–2141 (42 U.S.C. 300e–300e–17)).

Dated: September 28, 1979.

Julius B. Richmond,

Assistant Secretary for Health.

Approved: January 17, 1980.

Patricia Roberts Harris,

Secretary.

1. Section 110.401 is revised to read as follows:

§ 110.401 Applicability.

(a) The regulations of this subpart, in addition to the regulations of Subpart B of this part, apply to:

(1) Grants awarded under section 1304 of the Act for projects for the planning and for the initial development of HMOs.

(2) Guarantees made under section 1304 of the Act to non-Federal lenders of payment of the principal of and the interest on loans made for projects for the planning and initial development of HMOs.

(b)(1) Planning projects include projects for (i) the establishment of an HMO, and (ii) the significant expansion (as defined in § 110.202) of the membership or of the area served by an HMO.

(2) Initial development projects include projects for (i) the establishment of an HMO, (ii) the significant expansion (as defined in § 110.202) of the membership or of the area served by an HMO, and (iii) the expansion of the services (as defined in § 110.202) of an HMO.

2. Section 110.402 is revised to read as follows:

§ 110.402 Eligible applicants.

Any public entity or nonprofit private entity which is, or which proposes to become, an HMO is eligible to apply for a grant or a loan guarantee under this subpart. A for-profit private entity which is, or which proposes to become, an HMO is only eligible to apply for a loan guarantee under this subpart.

(a) In the case of a for-profit private entity, the applicant must demonstrate that at least 10 percent of the projected membership of the HMO to be established or expanded will be from medically underserved populations.

(b) Only HMOs qualified under Subpart F of this part are eligible to apply for projects for the significant expansion of their membership or of their service areas or for the expansion of their services.

§ 110.404 [Amended]

3. Section 110.404(f) is revised by deleting the word "significant" in the first sentence and by amending subparagraph (4) to read as follows:

* * * * *

(f) * * *

(4) The plans for the proposed expansion which demonstrate that the definition of "expansion of services" or of "significant expansion" of membership or service area in § 110.202 will be met.

§ 110.405 [Amended]

4. Section 110.405(b) is revised by amending subparagraphs (1) and (2) to read as follows:

* * * * *

(b) * * *

(1) The aggregate amount of loan guarantees and grants for any initial development project may not exceed the amount specified by section 1304(f)(2) of the Act. The cumulative total of grants made to and the principal of loans guaranteed for an HMO for initial development projects may not exceed the amount specified by section 1304(f)(3) of the Act.

(2) A grant may only be made for initial development costs incurred in a period not to exceed three years.

* * * * *

§ 110.405 [Amended]

5. Section 110.405(b)(4) is revised by changing the reference to "§ 110.104(b)" to read "§ 110.404(b)".

§ 110.502 [Amended]

6. Section 110.502(a) is revised to read as follows:

(a) "Costs of operation" means any cost incurred in the first 60 months of operation or expansion which:

(1) Under generally accepted accounting principles or under accounting practices prescribed or permitted by State regulatory authority is not a capital cost;

(2) Is required by State regulatory authority to meet reserved or tangible net equity requirements;

(3) Is for a payment made to reduce balance sheet liabilities existing at the beginning of the 60 month period, but only if (i) the payment has been approved in writing by the Secretary, and (ii) the total of these payments does not exceed 20 percent of the amount of the loan; or

(4) Is for a small capital expenditure, but only if (i) the cost has been approved in writing by the Secretary, and (ii) the total of these costs does not exceed $200,000 in any 12 month period and $400,000 during the first 60 months of operation or expansion.

* * * * *

§ 110.502 [Amended]

7. Section 110.502(d) is added, as follows:

* * * * *

(d) "Small capital expenditures" means expenditures for (1) equipment (as defined in 45 CFR 74.132); and (2) alterations and renovations required to change the interior arrangements or other physical characteristics of an existing facility or installed equipment, so that it may be more effectively used for its currently designated purpose, or adapted to a changed use.

§ 110.503 [Amended]

8. Section 110.503(b) is revised by replacing the words "operating costs", each time they appear, with the words "costs of operation".

§ 110.505 [Amended]

9. Section 110.505 is revised by replacing the words "operating costs" in the first sentence with the words "costs of operation".

Subpart E [Title Amended]

10. The title of Subpart E is amended by replacing the words "operating costs" with the words "costs of operation".

[FR Doc. 80-2223 Filed 1-23-80; 8:45 am]

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Thursday
January 24, 1980

Part X

Department of Commerce

National Oceanic and Atmospheric Administration

Fishermen's Contingency Fund

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 296

Fishermen's Contingency Fund

AGENCY: National Marine Fisheries Service/National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final regulations.

SUMMARY: These regulations implement Title IV of the Outer Continental Shelf Lands Act Amendments of 1978 (92 Stat. 629, Pub. L. 95–372, 43 U.S.C. Section 1841 *et seq.* (Title IV).) Title IV establishes a Fishermen's Contingency Fund (Fund) to compensate fishermen for eligible claims for actual and consequential damages, including lost profits, due to damages to, or loss of, fishing vessels or fishing gear by items associated with oil and gas exploration, development, or production on the Outer Continental Shelf (OCS). These regulations establish procedures for administering the Fund, and for filing, processing, reviewing, adjudicating and paying claims.

EFFECTIVE DATE: Sections 296.1 through 296.3, §§ 296.5 through 296.9 and § 296.15 are effective on January 24, 1980. Section 296.4 and §§ 296.11 through 296.14 are effective February 25, 1980. Any lease, exploration permit, easement or right-of-way in effect on January 24, 1980 shall be assessed under §§ 296.4 (a) and (c)(1).

FOR FURTHER INFORMATION CONTACT: Mr. Michael L. Grable or Ms. Kathryn E. Hensley, Financial Services Division, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Washington, D.C. 20235, Telephone (202) 634–4688.

SUPPLEMENTARY INFORMATION:

I. Response to Public Comments.

A notice of proposed rulemaking for implementation of the Fund was published on May 24, 1979, (44 FR 30292). We received a number of detailed comments in response to the notice of proposed rulemaking. Many comments raised questions or made suggestions which have resulted in changes in these final rules. The comments and the resulting changes in these final rules are discussed below.

A. Section 296.2. Definitions

"Area affected by Outer Continental Shelf exploration, development or production activities." The proposed definition included any area of the OCS in which such activities "have taken place or are taking place."

Comment: One commenter stated that this definition is too broad and bears no reasonable relationship to areas in which oil and gas obstructions might be encountered. Each area should be defined by coordinates and landward areas should be limited to specified traffic corridors leading to areas where oil or gas activities are taking place or to pipeline corridors.

Response: The definition is important, since it controls one of the criteria of a claim's presumed cause. In order to more realistically limit availability of the presumption of causation to probable areas of OCS oil and gas related obstructions, these final rules have been changed to redefine the term as any area which is: (1) Under oil and gas lease on the OCS, (2) within one-half geographical mile of a lease, pipeline, easement or right-of-way on the OCS, or (3) otherwise associated with OCS oil and gas activities (such as expired lease areas, relinquished rights-of-way and easements, and areas used extensively by surface vessels supporting oil and gas activities). Determinations about the third part of the redefined term will be made on a case-by-case basis by the Chief, Financial Services Division, NMFS, based upon information supplied by the Department of the Interior. The Chief's decision is subject to review by an administrative law judge (ALJ).

"Commercial Fishing Vessel"

The term "commercial fishing vessel," as defined in the proposed regulations, inadvertently included recreational fishing vessels.

Comment: Commenters suggested the following changes to the definition:

Recreational fishermen fishing for their own consumption should be excluded;

Eligible commercial fishermen should be required to earn some minimum percentage of their livelihood from commercial fishing; and

Only casualties occurring when a commercial fishing vessel is being used for commercial fishing purposes should be eligible for compensation.

Response: Commercial passenger carrying fishing vessels are within the meaning of the term "commercial fishing vessel" as that term is defined in the Title IV statute. Fishing vessels operated for non-commercial recreational purposes are not within the statutory definition. The final rules have been changed to exclude recreational vessels.

"Holder"—The term "holder" was defined to mean the record holder of any lease, exploration permit, easement or right-of-way.

Comment: One commenter suggested the definition of the term "holder" should include such holder's assignee of rights or such "holder's" designated agent.

Response: These final rules have been changed as suggested by the comment.

"Respondent"—Sections 296.2, 296.4, 296.8, and 296.11 deal with the definition of "respondent," assessable persons, admission or denial of responsibility, and payment of costs.

Comment: Several commenters suggested that time limits should be established so that oil and gas companies are not perpetually exposed to assessments or other liabilities simply because they had operated in a particular area at some time in the past.

Response: Assessments for the purpose of funding the area accounts will be based by the Department of the Interior on current inventories of leases, easements, rights-of-way, and permits in effect. Abandoned, relinquished, cancelled, or otherwise non-effective leases, easements, rights-of-way, or permits will not be included for the purpose of assessment, but will be included in Interior's notices of claims and requests for admission or denial of responsibility. Additionally, the concept of a "respondent" has been replaced by a concept of an "interested person", as explained elsewhere in this Preamble.

B. Section 296.3. Fishermen's Contingency Fund

This section excludes from the geographical area of all area accounts any area under State, rather than Federal, jurisdiction.

Comment: One commenter suggested the final rules strike the phrase "any portion of the OCS which is" in § 296.3(b) and substitute "submerged lands" in its place.

Response: These final fules have been changed as suggested by the comment. Section 296.3(b) is redesignated as § 296.3(c).

In addition, the definition of "outer continental shelf" has been changed in these final regulations, to track the statutory definition in 43 U.S.C. section 1331.

Although the statutory definition is not very helpful to the average fisherman, NOAA believes the definition used in the proposed regulations could have created confusion in some cases about which geographic areas are assessed to pay into the Fund.

C. Section 296.4. Payments into the Fund

Assessments to Maintain Accounts

Section 296.4(b) provides for reassessments when the amount remaining in any area account is less than one-half its total capitalizable amount.

Comment: Commenters suggested: Reassessment should occur whenever monies in an area account are insufficient to pay adjudicated claims; and

Reassessment should occur whenever monies in an area account are less than 90 percent of its total capitalizable cost.

Response: Since lack of monies to pay a claim would create a debt of the Fund, and since payment of reassessments is due within thirty days of billing, NOAA believes the present provisions are sufficient.

Calculation of Amount

Section 296.4(c) established the assessment for exploration permits at $25.00.

Comment: One commenter suggested that the proposed assessment for exploration permits was too low. At a fee of $25.00 per exploration permit, there would have to be 4,000 exploration permits to fund one area account at the $100,000 level.

Response: The concern is that there would be no way of adequately funding an area account prior to the time leasing and development or production takes place, since Fund income from exploration permits would be negligible. NOAA does not believe that this will be a significant problem. In these final rules the assessment for exploration permits is increased from $25.00 to $50.00 in order to better defray the cost of administering such assessments.

Comment: One commenter observed that § *296.4(c)(1)(iii)* allows escapement from assessment by new permits, leases, rights-of-way, or easements which come into existence between assessments, until the next assessment. The commenter apparently believes new permits, leases, rights-of-way, and easements should be assessed as soon as they exist.

Response: New assessments will occur whenever an area account's capital is less than $50,000. If claims are paid on a continuing basis from any area account, virtually all persons liable to pay assessments will eventually pay as reassessments are made. NOAA believes no change in these final rules is warranted.

Section 296.4(c)(1)(v) deals with the exclusion of certain flow and gathering lines from the assessment of pipeline easements.

Comment: One commenter suggested the word "operation" as it appears immediately before the period at the end of this section should be stricken and the word "operator" should be inserted in lieu thereof;

A second commenter suggested the phrase should read "under unitized operation or a single operation."

Response: These final rules have been changed to refer to either contiguous unitized leases or contiguous leases under a single operator.

Billing

Comment: One commenter suggested the Department of the Interior's assessment billing under § *296.4(d)* should include an itemized statement of assessment.

Response: The Department of the Interior intends each billing to contain an itemized statement of assessment. These final rules have been changed accordingly.

By Whom and When Payable

Section 296.4(e) requires assessments to be paid within thirty days after billing.

Comment: One commenter suggested that assessment payments should be due sixty days after the assessment.

Response: NOAA believes thirty days is a reasonable period for responding to a billing.

D. Section 296.5. Claims Eligible for Compensation

Damage or Loss of Fishing Gear

Section 296.5(b) deals with the type of damage eligible for Fund compensation and specifically provides that casualties occurring in waters under State jurisdiction may nevertheless be eligible for Fund compensation if the obstructions causing the casualties were associated with oil and gas exploration, development or production activities on the Federal Outer Continental Shelf.

Comment: One commenter suggested deleting the provision allowing Fund compensation for damage occurring in waters under State jurisdiction caused by obstructions related to Federal OCS oil and gas activities.

Response: Debris and other obstructions directly related to Federal OCS oil and gas activities might be deposited in waters under State jurisdiction. For example, a supply vessel bound for an OCS site may lose overboard, in waters under State jurisdiction, a large piece of equipment hazardous to commercial fishing operations. Additionally, the Fund's authorizing legislation provides that damage need not have occurred in the geographic area of a specific area account in order to be the liability of that area account. In many cases, however, the OCS-related nature of obstructions causing damage in waters under State jurisdiction will have to be specifically proven, since the presumption of causation contained in § 296.9(b) will apply to casualties occurring in waters under State jurisdiction only if that particular area is an "area affected by OCS exploration, development or production activities" (one of the criteria of the presumption's availability). No change in these final rules is warranted.

Exceptions

Section 296.5(c) restates the Title IV statute's requirement that claims are not eligible for Fund compensation in certain cases, including if the damages claimed are caused by items attributable to a "financially responsible party".

Comment: Commenters suggested: Claimants should be able to claim against the Fund as an alternative to litigation against financially responsible parties;

A denial of responsibility on the part of oil and gas companies notified by the Department of the Interior should, thereafter, enable claimants to collect from the Fund even if such companies are found by a hearing examiner (administrative law judge) to be responsible; and

Claimants should be allowed to recover compensation from the Fund even if financially responsible oil and gas companies admit responsibility for claimants' damages because it may be difficult to recover from oil and gas companies.

Response: The Fund's authorizing legislation makes damages attributable to financially responsible parties ineligible for compensation. No change in these final rules as to that issue is therefore permissible.

The final regulations define a "financially responsible party" as, generally, a financially solvent person who is responsible for damage to or loss of commercial fishing vessels or gear by items associated with OCS oil and gas activities. NOAA believes this definition is consistent with Congressional intent that the Fund not be an alternate remedy when the oil or gas—related company responsible for the damage is known and able to pay for the damage.

The final regulations also expand § 296.5(c), attempting to include in one list the Title IV statute's requirements prohibiting or limiting payment of awards by the Fund, and to cross-reference the statutory requirements to the appropriate sections of the final

regulations. E. section 296.6. *Amount of awards.*

Fishing Gear

Section 296.6(b) establishes replacement cost, less salvage value, as the measure of Fund compensation for irreparable fishing gear damage.

Comment: Commenters suggested using depreciated replacement cost or fair market value, rather than replacement cost less salvage value, as the measure of Fund compensation for irreparable fishing gear damage.

Response: We believe replacement cost less salvage value is the fairest criterion since (1) fishing gear often does not depreciate normally due to constant repair (for example, nets) and (2) a fair market value for different components of fishing gear is often impossible to establish. The final rules clarify that "replacement cost" means the cost of new fishing gear, without consideration of wear and tear on the damaged or lost gear.

Consequential damage

Comment: One commenter suggested there is a possibility that § 296.6(c) may allow consequential damages without actual damages.

Response: The only such possibility we can foresee is a claim for lost profits incurred as a result of disengaging fishing gear in such a way as to prevent actual damage of the gear involved. This will encourage claimants to mitigate or altogether avoid actual damages, but may result in damage in the form of lost profits as a result of such mitigation or avoidance. In response to an additional comment on this section, this type of consequential damage ordinarily will be limited to the replacement cost, minus salvage value, of the gear involved, unless the fisherman can show that his efforts to free the gear were reasonable and that abandonment of the gear would have resulted in greater economic loss (see final § 296.6(c)(2)(ii)).

Loss of Profits

Section 296.6(c)(2) limits claims for lost profits to a period of six months or less.

Comment: One commenter suggested claims for lost profits beyond six months should be allowed if a claimant can produce substantiating records.

Response: The Fund's authorizing legislation limits lost profits compensation to a maximum of six months. No change in these final rules is permissible.

Section 296.6(c)(2) also specifies that the ordinary measure of compensation is the net profits lost.

Comment: Commenters had the following suggestions: One commenter questioned how net profits will be determined and pointed out that certain fixed expenses continue whether vessels are fishing or not;

Crew members should not be able to claim compensation for their losses, either on their own or through vessel owners;

The determination of economic loss will be difficult. Income, for example, fluctuates greatly according to season, type of fishery, and what processors are willing to purchase. Income tax returns reflect aggregate annual income, which might be too low when applied to any specific activity at any specific point in a year. Fish tickets for a given period would more accurately reflect gross income for that period but would not contain evidence of expenses;

It will be difficult to determine income or profits in newly developing fisheries;

Compensation for economic loss should be based upon average performance for comparable quarters of at least two years prior to a casualty. The variable nature of fishing makes income averaging over longer periods the fairest method of measuring compensation for lost profits; and

Compensation for economic loss which includes profits greater than net profits is outside the purview of the Fund's authorizing legislation.

Response: The determination of reasonable compensation for economic loss will be difficult. Attempting to make fine distinctions might often result in a considerable expenditure of time and money on the part of the claimant, the Government, and the Fund. We believe, consequently, that a pre-hearing administrative standard should be established in the interest of efficiency.

Crew members' claims for economic loss are eligible under the Fund's authorizing legislation. To facilitate resolution of multiple claims resulting from one casualty, these final rules do suggest that the claims of all crew members be aggregated and submitted by the owner or operator on behalf of the crew members (see § 296.7(d)).

To facilitate resolution of claims, we intend to propose settlements and make other agency recommendations for economic loss compensation based upon the vessel owner or operator's latest Federal income tax return where such return reflects the operation of the vessel involved in the casualty, or a similar vessel. The annual net profit in such a return will be used to make a pro rata computation of the vessel owner or operator's loss of net profit for a reasonable period during which vessel operation was prevented by the casualty. The annual income and expense data in such a return will be used to compute the crew members' shares of lost profits (when crew member claims are filed relating to the casualty) according to the contractual share to which each crew member was entitled (see also § 296.7(e)(11)).

We believe this is a fair and efficient resolution of an otherwise difficult evidentiary problem. The claimant or an "interested person" disagreeing with the application of this standard has the opportunity, subject to certain standards, to present evidence at any hearing before an administrative law judge (ALJ) for the purpose of rebutting this standard for determining compensation in particular cases. The ALJ has the discretion to consider any and all other evidence in determining the measure of compensation for economic loss.

These final rules have been changed accordingly.

Other

Section 296.6(c)(3) of the proposed regulations allowed Fund compensation for consequential damage, including personal injury resulting from damaged fishing gear.

Comment: One commenter suggested deleting personal injury compensation because the Fund's authorizing legislation does not contemplate it.

Response: The Fund's authorizing legislation provides for "reasonable compensation for damages to, or loss of, fishing gear and any resulting economic loss to commercial fishermen". We agree that this language does not explicitly include compensation for personal injury. Additionally, compensation for personal injury is provided for in commercially available marine protection and indemnity insurance, and remedies are available under admiralty law. We believe that title IV was intended to provide compensation for damages not normally compensable under other systems of remedies. Accordingly, these final rules have been changed to exclude Fund compensation for personal injury.

Attorneys' fees

Section 296.6(d) authorizes Fund compensation of reasonable attorneys' fees.

Comment: Commenters submitted the following comments: Allow recovery of actual, rather than reasonable, attorneys' fees;

Make payment of attorneys' fees discretionary;

There should be no recovery for attorneys' fees if claim is unsuccessful; and

If claimant's claim is reduced to reflect claimant's contributory negligence, recovery for claimant's attorneys' fees should be reduced proportionately.

Response: It would not be proper under the Title IV statute to allow Fund compensation of actual, but unreasonable, attorneys' fees. The title IV statute requires payment of reasonable attorneys' fees if claimant is successful. We believe that reducing attorneys' fees proportionately to reflect reductions of claims due to claimant's contributory negligence is not in accordance with normal standards for computation of fees, and would be difficult to administer.

We agree that unsuccessful claimants should not recover attorneys' fees.

These final rules have been changed accordingly.

Negligence of claimant

Section 296.6(e) establishes negligence factors and provides for reduction of compensation based upon a comparative negligence standard.

Comment: The following comments were submitted: Claimants' duty to mitigate damages should be modified by inclusion of the word "diligently";

Claimant negligence should constitute an absolute bar to recovery, rather than only a partial bar under comparative negligence theory;

Negligence factors should include (1) failure to abide by established rules of the road and (2) failure to use proper care. Oil and gas companies should be provided some legal protection against fishermen negligently damaging pipelines or subsea wells in such a way that materials from them subsequently become obstructions;

Claimants' negligence should be restricted to intentional acts;

The criterion for navigation safety zones is too general and should be more specifically defined with care being taken to assure that not too large an area is removed from traditional fishing grounds.

Response: These final rules have been changed to (1) require "due diligence" in the mitigation of damages and (2) include failure to use proper care and failure to abide by established rules of the road as additional negligence factors.

The comparative negligence standard is in the Title IV statute, and we do not agree that claimants' contributory negligence should be an absolute, rather than a partial, bar.

Providing oil and gas companies legal protection against damage caused by fishermen is outside the scope of the Fund's authorizing legislation. If, however, a fisherman's conflict with oil and gas property results in the spread of materials which subsequently become obstructions, some consolation is provided by the fact that a Fund claim for the first conflict probably will result in the obstruction site being charted or noted in Notices to Mariners, thereby likely removing it from the possibility of producing further Fund claims.

Navigational safety zones are established for the safety of all ocean users. Since they may vary with different conditions, the criterion should be kept general.

We see no good reason why unintentionally negligent acts should be excluded.

Section 296.6(e)(2)(ii) has been changed in these final rules to add the phrase "(casualties occurring within a one-quarter mile radius of obstructions so recorded or marked are presumed to involve negligence or fault of the claimant)". The effect of this change is to presume negligence or fault in the case of a vessel's incurring a casualty within a one-quarter mile radius of obstructions previously recorded on National Ocean Survey charts or in the Notice to Mariners, or marked by a buoy. This new provision may reduce, but usually will not eliminate, an award. The fishermen may provide evidence to show that his action was not negligent, or that the obstruction he encountered was not the one charted.

Comment: One commenter suggested that negligence of vessel owners or operators which bars or reduces their Fund claims should likewise bar or reduce claims from crew members relating to the same casualty.

Response: NOAA agrees that imputing the vessel owner or operator's negligence to the crew is reasonable. The Fund should not pay the crew for losses caused by such negligence. These final rules have been changed as suggested.

Insurance Proceeds

Section 296.6(f) disallows recovery from the Fund of any portion of a claim which will be covered by insurance and requires a claimant to first seek recovery from such insurance of that portion of the casualty which may be covered by such insurance.

Comment: One commenter suggested the rules should not require a claimant to first seek recovery from insurance.

Response: We do not believe Congress intended the Fund to become a substitute for currently available marine insurance. This section largely excludes from Fund compensation damage to vessels, since such damage is generally recoverable under commercially available marine insurance. Since, however, damage to fishing gear is not generally recoverable under such insurance, fishing gear damage generally would not be subject to the requirement first to seek recovery from insurance. The final rules require that claimants provide a copy of any insurance policies covering the vessel, so the Chief, FSD and the ALJ may determine whether the damage claimed may be compensable by insurance (see § 296.7(e)(13)).

F. Section 296.7. Instructions for filing claims

(a) Five-day report required to gain presumption of validity.

Section 296.7(a) requires the reports upon which the presumption of validity depends to be made within five days. In these final regulations, the presumption of "validity" is changed to a presumption of "causation" by obstructions associated with OCS oil or gas activities.

Comment: One commenter suggested increasing the time period of the report from five days to ten days.

Response: The Fund's authorizing legislation specifies only five days for the submission of the report. No change in these final rules is therefore permitted concerning this issue. The final regulations allow the owner or operator of the fishing vessel to file a five-day report on behalf of the entire crew, owner, and operator of the vessel.

Where to radiotelephone file the five-day report

Section 296.7(a)(3) of the proposed regulations established that five-day reports (required for the presumption of validity) must be made to specific National Marine Fisheries Service (NMFS) representatives at the NMFS Regional Offices.

Comment: One commenter stated claimants far distant from the NMFS Regional Offices would be unable to make contact by radiotelephone (the example given is a claimant in the Beaufort Sea trying to reach Juneau, Alaska, by radiotelephone). Other allowable reporting contacts should be: Coast Guard offices, local marine operators, or local National Marine Fisheries Service representatives;

Notification of Coast Guard by radio would be a better alternative, since radiotelephone reports are sometimes difficult or impossible when large incidence of radiotelephone traffic closer to shore blocks communication.

Response: Although it may sometimes prove difficult or impossible for a claimant to radiotelephone a National Marine Fisheries Service Regional

Office from the casualty site, some control must be maintained over the receipt of five-day reports if they are to serve their proper purpose. Since the world at large cannot be expected to be familiar with either the requirements of a five-day report or their proper processing, the report destination must be limited to the National Marine Fisheries Service. The Coast Guard informs NMFS that they are concerned that the message of traffic from Title IV claims might hinder their ability to conduct their primary functions, such as search and rescue. Accordingly, the final regulations require that the five-day report be made to the local NMFS Regional Office.

Section 296.7(a)(2)(ii) of the proposed regulations would have required claimants who had made five-day radiotelephone or oral reports to confirm them in writing within five days of their first return to port. This has been modified to strongly recommend (rather than require) that written confirmation be made to the Chief, Financial Services Division, NMFS, as soon as possible (see § 296.7(a)(3) of the final regulations).

Contents

Section 296.7(e)(10) deals with proof of ownership of damaged fishing gear, estimates of its replacement or repair cost, the facts of the damage or loss, etc.

Comment: Commenters submitted the following comments:

Owners of homemade nets will have difficulty proving possession because they do not have purchase invoices or sales receipts;

Provisions should be made to include reasonable value of makers' labor involved in homemade nets;

Claimants who cannot prove purchase or ownership of damaged fishing gear because they no longer have purchase invoices or sales receipts should be allowed to substitute affidavits from sellers; and

Lessees of fishing vessels or gear may have difficulty proving their lease rights.

Response: The best available evidence of possession or ownership must be submitted. Purchase invoices, sales receipts, income tax depreciation schedules, and the like are the best evidence. Where these are unavailable, affidavits from sellers, crew members, claimants, or other persons will be considered. Unwritten lease rights may be proven by an affidavit from the lessor.

Reasonable labor charges for net makers may be included, unless this is a normal duty for which crew members are compensated by their regular share of vessel income.

All comments can be accommodated by the section as presently written and no change in these final rules is warranted.

Section 296.7(e)(27) deals with acceptable means of fixing the position of obstructions causing loss or damage. The section specifically states that radar bearings are not an acceptable means to locate an obstruction.

Comment: One commenter stated radar bearings are accurate and should be an acceptable means of fixing the position of an obstruction;

A commenter suggested several technical errors be corrected.

Response: The most accurate method generally available for fixing positions is Loran C time delay readings, and § 296.7(e)(27) lists Loran C as the most preferable method. Other methods, in descending order of preference, are noted. Some of these other methods allow radar distance readings when used in conjunction with compass bearings to visually observed fixed objects. Radar bearings by themselves are, however, inadequate for fixing the position of obstructions since the radar equipment generally used aboard fishing vessels is not sophisticated enough to allow accurate position fixing by the use of radar bearings alone. The final regulations allow use of radar bearings alone only if no better method of position-fixing is available.

Certain technical errors have been corrected by appropriate changes in these final rules.

G. Section 296.8. NMFS processing of claims.

Public Notice of Claims.—Actions by the Chief, FSD

Section 296.8(d) of the proposed regulations specified when the Government will assign a hearing examiner to a Fund claim.

Comment: One commenter suggested the Government should determine that a Fund claim is valid with respect to the purposes of the Title IV statute before assigning an administrative law judge (ALJ). Another commenter suggested the establishment of a 5-day maximum period during which the Government must determine if a claim is complete and timely filed, assign an ALJ, and issue a notice.

Response: NOAA believes that the statute requires that the ALJ determine whether a Fund claim is eligible. The final rules provide that the ALJ makes the final decisions on eligibility. The final regulations (see §§ 296.8 (b) and (d)(1)) include a procedure for expedited review by the ALJ of claims which the Chief, FSD, and the NOAA General Counsel believe are incomplete, untimely filed, or clearly ineligible for compensation.

NOAA believes the suggested 5-day maximum limitation of the time in which these actions must be accomplished is neither practical nor necessary. No change in these final rules has been made to reflect this suggestion.

Action by the Secretary of the Interior

Section 296.8(d)(2) of the proposed regulations (§ 296.8(a)(2) in the final regulations) required the Secretary of the Interior to send a notice of each claim to all persons known to have engaged in Outer Continental Shelf oil and gas activities in the vicinity of the casualty.

Comments: The following comments were received in this section: The word "vicinity" is too vague and should be more specifically defined; and

All persons who contributed to an area account should receive notice of a claim relating to a casualty in that area account. Such persons would not, otherwise, have an opportunity to investigate casualties or object to claims for them. Lack of notice might constitute an unlawful taking and be a violation of due process.

Response: These final rules have been changed so that "vicinity" is defined as all lease blocks either wholly or partially within a 3-mile radius of the casualty. Wider notice may, however, be made if, in the judgment of the Interior Department, the casualty or the nature of OCS oil and gas operations where the casualty occurred reasonably require wider notification. NOAA does not believe it is necessary or appropriate routinely to require giving actual notice to all persons who contribute to an area account. Since notice of all claims will be published in the **Federal Register** with an opportunity for interested persons to submit evidence and request to participate in any hearing on the claim, due process of law will be adequately addressed.

Responses to Notice of Claims

Section 296.8(d)(3) of the proposed regulations (§ 296.8(a)(3) of the final regulations) required persons intending to submit evidence at a hearing to first notify the ALJ and the Chief, MNFS Financial Services Division, within thirty days after a notice of a claim is published in the **Federal Register**. This section limits the persons who may submit evidence at a hearing to those persons engaged in activities associated with Outer Continental Shelf oil and gas activities in the vicinity of a claimant's casualty.

Comment: The following comments were submitted on this section:

The thirty-day rule should be waived if a person can show why he did not have knowledge that he would be an interested party to the claim; and

Anyone who contributes to the Fund should have standing to submit evidence at any hearing.

Response: These final rules have been changed to enable the Chief, FSD or the ALJ, at their discretion and for good cause shown, to waive the thirty-day rule and allow an "interested person" to submit evidence which might have a significant bearing upon the claim.

"Interested person" is defined in these final regulations to mean a person (including a lessee or permittee or such person's contractor or subcontractor) known to have engaged in activities assocated with OCS oil and gas exploration, development or production in the vicinity where the claimant's damage or loss occurred. This definition is derived from 43 U.S.C. section 1845(c), which provides that certain persons may submit evidence at any hearing concerning a claim.

The final rules allow any peson to send evidence to the Chief, FSD, for use in preparing a proposed settlement or other agency recommendation. The ALJ's powers will allow the ALJ to let any person present evidence as a witness, since the ALJ will able to submit evidence.

Recommended settlement.

Agency recommendation.

Objection to Recommended Settlement

Sections 296.8(e), (f) and (g) of the proposed regulations would allow the Government to file with the ALJ appointed to decide a claim either (1) a recommended settlement, if the Government and the claimant can agree that the claim can be settled without an evidentiary hearing before the ALJ, or (2) an agency recommendation, if such a settlement cannot be agreed upon. Any person disagreeing with a recommended settlement could request a hearing under 5 U.S.C. section 554.

Comment: The following comments were received on these sections:

Limit recommended settlements to claims for $5,000 or less and dispense altogether with agency recommendations; and

If a person forces a recommended settlement to an evidentiary hearing and the ALJ subsequently adopts the recommended settlement, such person should pay the cost of the hearing.

Response: Where (1) a claim appears eligible and reasonable and (2) the claimant and the Government can agree on a recommended settlement amount, the cost savings to the Fund of avoiding an evidentiary hearing will be considerable. NOAA does not believe a dollar ceiling on the amount of a recommended settlement is necessary or appropriate.

Although the Government may not always file an agency recommendation where the claimant and the Government cannot agree on a recommended settlement, the Government will do so when, in its judgment, the claim may in any respect be unreasonable or ineligible. NOAA believes that the Government, with the Fund's interest in mind, has a duty to advise the ALJ in such instances.

Whether or not a request for an oral hearing on a recommended settlement is granted depends, generally, upon the ALJ's judgment whether the hearing would aid in fairly adjudicating the claim. If, in the ALJ's judgement, a hearing would be an aid, the person making the request should not be held liable for the cost of the hearing. Under the final regulations, any interested person objecting to a proposed settlement may request the ALJ to conduct an oral hearing concerning the claim. Such requests are filed with the NOAA General Counsel, who sends them to the ALJ along with the claim.

No change in these final rules has been made in response to these comments. (See §§ 296.8 (b), (c), (d), (e), and (f) of these final regulations).

H. Section 296.9. Burden of Proof and Presumptions

Presumption

Section 296.9(b) deals with the factors required for a presumption of claim validity. A claim is presumed to be caused by OCS oil and gas activities if the claimant establishes that: (1) The commercial fishing vessel was being used for fishing in an area affected by Outer Continental Shelf oil and gas activities, (2) the location of the obstruction and the nature of the casualty was reported within five days of its occurrence, (3) the obstruction was not marked on nautical charts or published in a Notice to Mariners, and (4) there was no surface marker or lighted buoy. If the criteria are fulfilled, a claimant need not establish the nature of the obstruction.

Comments: Comments submitted on this section included the following:

The section should be changed to require a claimant to establish that an obstruction was (1) man-made and (2) resulted from oil and gas activities. The section, as proposed, is a severe extension beyond statutory authority. Each presumably valid claim should be subjected to on-site investigation by the Government. If at least five survey passes with magnetometer and side-scan sonar revealed no obstruction, the presumption of validity should be rebutted;

The presumption of causation should be overcome by subsequent evidence, including that required to be submitted in claims;

Only obstructions appearing in the Notice to Mariners current on the date of the casualty should operate to deny the presumption;

Pipelines should be specifically excluded as charted or noted obstructions which can operate to deny the presumption; and

One commenter stated the Notice to Mariners issued by the Defense Mapping Agency is not a proper means of notifying fishermen of obstructions, since Defense Mapping Agency publications are neither intended for fishermen nor read by them.

Response: In these final rules, the presumption is called a presumption of "causation," not of "validity." The presumption of causation is provided for in the Fund's authorizing legislation. Although the presumption may sometimes result in the payment of claims that might not in fact be eligible, its absence would sometimes result in the nonpayment of claims that in fact are eligible. Since fishing gear is often damaged by underwater obstructions which can neither be retrieved nor identified by fishermen, nor located and identified by the Government, Congress decided to presume that such obstructions were related to oil and gas activities when they occurred in areas affected by oil and gas activities. The basic presumption has, consequently, been retained in these final rules.

Two other changes in these final rules, should, however, result in a more reasonable restriction of the presumption's availability. First, the term "area affected by Outer Continental Shelf oil and gas exploration, development, or production activities" has been more specifically defined so as to limit availability of the presumption to specific geographic areas where it is reasonably likely that obstructions resulted from OCS oil and gas activities. Second, § 296.9(c) has been added, to deny the presumption for any casualty occurring within a one-quarter mile radius of any obstruction which had been marked on National Ocean Survey nautical charts, listed in Notices to Mariners, or marked by a buoy or other surface marker.

NOAA believes fishermen should avoid all obstructions which have been

properly marked on current nautical charts, noted in current or past Notices to Mariners or marked by a buoy. Fishermen who encounter an obstruction within one-quarter mile of such known obstructions may regain the presumption of causation by showing that the obstruction involved in the casualty is different than the previously known obstruction. Note also that failure to qualify for the presumption of causation does not bar a claim, but the fisherman would have to prove that the obstruction causing the damage was OCS oil or gas related.

Greater certainty about the identity of an object could be obtained if, as the comments suggested, the Government made investigations at the site of each casualty. The Government does not presently have the means of doing so, but nothing prevents other persons from doing so and submitting the results as evidence in the disposition of a claim.

NOAA believes that the presumption of causation is available only if the preponderance of the evidence favors the presumption. We do not think it necessary to specify in the final rules that contrary evidence may rebut the presumption.

Pipelines are expected to be installed in such a way as not to pose a hazard to commercial fishing. The ownership of pipelines is generally known and the owners are generally "financially responsible parties." This will make most casualties caused by pipelines ineligible for Fund compensation under the provisions of the Fund's authorizing legislation which excludes Fund compensation for casualties caused by obstructions attributable to "financially responsible parties." In addition, the new restriction on the geographic availability of the presumption of causation will operate to reduce claims due to pipelines or obstructions near them which are charted, on Notices to Mariners, or marked by a buoy.

There are two types of Notices to Mariners: Local notices issued by the U.S. Coast Guard for each Coast Guard District; and a weekly notice issued by the Defense Mapping Agency, Hydrographic/Topographic Center, for the entire offshore State waters and Outer Continental Shelf surrounding the United States. Both notices primarily give notice of hazards to surface navigation and neither are designed to give notice of bottom hazards to commercial fishing. The notice issued by the Defense Mapping Agency was selected as the primary vehicle for the statutory notification of obstructions posing bottom hazards to commerical fishing because it covers the entire range of marine State waters and the Outer Continental Shelf surrounding the United States. The local notices issued by the U.S. Coast Guard, on the other hand, cover only the Coast Guard District where the notice is issued and relate primarily to coastal and near-shore areas. Since fishermen often fish in more than one Coast Guard District, they would have to read more than one Coast Guard notice to be informed about obstructions in the total area in which they might fish. Since fishermen often fish both within and outside the ocean area covered by the Coast Guard notices, they would have to read both the Coast Guard notices and the Defense Mapping Agency notices to be informed about obstructions in the total ocean area in which they fish. Exclusive usage of the Defense Mapping Agency notice would remove these problems since all fishermen in all areas would need to read only one weekly notice to be informed about all obstructions in all areas. This would also be a more efficient use of Government resources since the extra distribution of notices occasioned by the Fund would be confined to one weekly notice. Accordingly, these final rules have been changed to make the weekly Notice to Mariners issued by the Defense Mapping Agency the exclusive standard for determining whether official notification of Outer Continental Shelf obstructions has been given in a Notice to Mariners. NMFS will be reporting the location of claimed obstructions to the National Ocean Survey, which sends the information to the Defense Mapping Agency for inclusion in the Notice to Mariners.

I. Section 296.10. Hearings. [Reserved]

NOAA is temporarily reserving publication of final regulations governing the process for adjudicating claims. We expect that the final regulations will encourage resolution of claims without costly and time-consuming oral hearings. We believe the ALJ should have adequate powers to expedite the proceedings, for example by requiring all evidence to be submitted in written or documentary form. We also believe the ALJ should have some control over the degree of participation allowed for affected, or potentially affected, members of the OCS oil and gas industry and other persons. Reserving this section should not hinder the process of funding the area accounts or the processing of claims by NMFS to prepare them for referral to the ALJ. We expect that issuance of § 296.10 at a future date will result in few, if any, changes to the other regulations in this Part 296.

Section 296.11 Payment of Costs

This section describes circumstances under which either claimants or oil and gas entities denying responsibility for claimants' damages may be required to pay hearing costs.

Comment: The following comments were submitted concerning this section:

The Fund's authorizing legislation does not authorize an ALJ to find any person liable for the casualty, thus liable for payment of hearing costs;

The ALJ has no jurisdiction over oil and gas entities and, therefore, may not assess hearing costs against oil and gas entities until a court of law has found such entities responsible; and

If both claimants and oil and gas entities denying responsibility are found to have joint responsibility for the damage or loss incurred, then hearing costs should be apportioned between them.

Response:

NOAA believes that the Title IV statute authorizes the ALJ to make the finding of responsibility.

The final rules have been changed to provide that when both claimants and oil and gas entities denying responsibility are found to have joint responsibility for the damage or loss incurred, hearing costs will be apportioned equitably between them.

K. Section 296.14. *Subrogation.*

This section requires claimants to sign subrogation agreements before receiving compensation from the Fund and subsequently to assist the Government in any reasonable way to pursue the subrogated rights.

Comment:

One commenter stated the word "reasonable" should be specifically defined so as to guard against claimants' spending undue amounts of time or money.

Response:

The variety of possibilities precludes specifically defining the word "reasonable", but every attempt possible will be made to minimize claimants' time and expense in assisting the Government to pursue subrogated rights.

L. *General.*

Several general comments were received in response to the proposed rulemaking. These comments and the NMFS responses follow.

Comment:

One commenter suggested including a provision for a Government advocate to represent the Fund.

Response:

We believe the statutory provision for adjudication by the ALJ indicates Congressional intent to provide an impartial forum for the weighing of all available evidence. The Government will, however, analyze claims and, where appropriate, forward either a proposed settlement or agency recommendation to the ALJ. These final regulations provide for review of NMFS recommendations on claims by the NOAA Office of General Counsel, to assure that proposed settlements or other agency recommendations forwarded to the ALJ fairly consider the interests of the Fund. Generally, the Office of the General Counsel, rather than the Chief, Financial Services Division, will be responsible for the Government's handling of the claim from the time it is ready to be submitted to an ALJ until the time an ALJ issues a decision.

Comment:

One commenter stated that lack of diligence in locating the obstruction involved in a casualty, and marking it by buoy if possible, should have a bearing on the claim's outcome and could reflect negligence.

Response:

The Fund's authorizing legislation established no duty for claimants to mark obstructions by the placement of buoys. To do so would often be impractical because it would require all fishermen to sail with an assortment of buoys and anchoring components sufficient to provide for buoy placement under different ocean conditions. All fishermen will be expected to accurately fix the position of obstructions causing them damage. No change in these final rules is warranted.

II. *Other Changes.*

NOAA has made numerous other changes in various sections of the final rules. These changes and the reasons for them are listed below.

A. Throughout the regulations, the term "hearing examiner" has been changed to "administrative law judge" or "ALJ", to reflect current usage in 5 U.S.C. section 3105.

B. Paragraph (e)(7) of § 296.7 has been changed in these final rules to require claims to be more specific about the nature of the fishing operation being conducted at the time of the casualty.

C. Proposed § 296.8(d)(1)(iii)(C) has been deleted from these final rules. This paragraph would have required the name and address of the hearing examiner to have been included in the Federal Register notice of claim published by the Chief, Financial Services Division, National Marine Fisheries Service. This deletion has been made because the name and address of the hearing examiner may be unknown at the time this notice is required to be published (see § 296.8(a)(1)(iii)). Requests to submit evidence at a hearing will be made to the Chief, FSD, who will include the request in the case file for action by the ALJ.

D. Proposed § 296.8(d)(3)(iv) has been modified in these final rules (see § 296.8(a)(3)(iv)). An admission of responsibility for the casualty removes it from the possibility of Fund compensation, regardless of whether or not the claimant and the person admitting responsibility are able to settle the matter. However, if such a person later denies responsibility, the casualty should again become eligible for Fund compensation.

Note.—The Assistant Administrator for Fisheries made an initial determination that these regulations are not significant under Executive Order 12044. The Assistant Administrator has also determined that these regulations do not require the preparation of an environmental impact statement under the National Environmental Policy Act.

The Assistant Administrator for Fisheries, NOAA, finds that there is good cause to make certain sections of these regulations effective immediately, in order to formalize procedures for receiving claims, and to allow processing of claims that already have been received. Sections effective on January 24, 1980, are §§ 296.1 through 296.3, §§ 296.5 through 296.9, and § 296.15. Section 296.4 and §§ 296.11 through 296.14 will become effective February 25, 1980. Any lease, exploration permit, easement or right-of-way in effect on January 24, 1980, shall be assessed under § 296.4(a) and (c)(1). Section 296.10 is reserved.

January 21, 1980.

Winfred H. Meibohm,

Executive Director, NMFS.

(92 Stat. 629, Pub. L. 95-372, (43 U.S.C. 1841 *et seq.*))

Accordingly, 50 CFR Part 296 is promulgated, as follows:

PART 296—FISHERMEN'S CONTINGENCY FUND

Sec.

Authority: Pub. L. 95-372; 92 Stat. 629 (43 U.S.C. 1841 *et seq.*)

§ 296.1 Purpose.

These regulations implement Title IV of the Outer Continental Shelf Lands Act Amendments of 1978 ("Title IV"). Title IV establishes a Fishermen's Contingency Fund to compensate commercial fishermen for eligible claims for actual and consequential damages, including loss of profits, due to damage to, or loss of, fishing gear by materials, equipment, tools, containers, or other items associated with oil and gas exploration, development, or production activities on the Outer Continental Shelf.

§ 296.2 Definitions.

Unless the context otherwise requires, the terms used in this Part have the following meanings:

"ALJ" means an administrative law judge or hearing examiner appointed under 5 U.S.C. section 3105.

"Area account" means an account, within the Fishermen's Contingency Fund, for a specific area of the Outer Continental Shelf, as described in § 296.3.

"Area affected by OCS oil and gas exploration, development, or production activities" means any geographic area which is:

(1) Under oil or gas lease on the OCS;

(2) Within one-half geographical mile of an oil or gas lease, pipeline, easement, or right-of-way which is on the OCS; or

(3) Otherwise associated with OCS oil and gas activities (such as expired lease areas, relinquished rights-of-way and easements, and areas used extensively by surface vessels supporting OCS oil and gas activities).

Determinations about areas which are "otherwise associated with OCS oil and gas activities" under paragraph (3) of this definition will be made on a case-by-case basis by the Chief, FSD, based upon information supplied by the Secretary of the Interior; such determinations are subject to review by the ALJ when the ALJ adjudicates the claim.

Areas landward of the Outer Continental Shelf are included under this definition when such areas meet the criteria of this definition.

"Chief, Financial Services Division, NMFS" or "Chief, FSD" means the Chief

of the Financial Services Division, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, 3300 Whitehaven St., N.W., Washington, D.C., 20235.

"Citizen of the United States" means (1) any person who is a United States citizen by law, birth, or naturalization; (2) any State, any agency of a State, or a group of States; (3) any partnership or association organized under the laws of any State; or (4) any corporation organized under the laws of any State which has as its president or other chief executive officer and as its chairman of the board of directors, or holder of a similar office, a person who is a United States citizen by law, birth, or naturalization, and which has at least seventy-five percent (75%) of the interest in the corporation owned by citizens of the United States. Seventy-five percent (75%) of the interest in the corporation shall not be deemed to be owned by citizens of the United States if:

(a) The title of seventy-five percent (75%) of its stock is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States;

(b) Seventy-five percent (75%) of the voting power in such corporation is not vested in citizens of the United States;

(c) Through any contract or understanding it is so arranged that more than twenty-five percent (25%) of the voting power may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or

(d) By any other means whatsoever, control of any interest in the corporation in excess of twenty-five percent (25%) is conferred upon or permitted to be exercised by any person who is not a citizen of the United States.

"Claimant" means a commercial fisherman who files a claim under this Part.

"Commercial fisherman" means any citizen of the United States who owns, operates, or derives income from being employed on a commercial fishing vessel.

"Commercial fishing vessel" means any vessel, boat, ship, or other craft which is (1) documented under the laws of the United States or, if under five net tons, registered under the laws of any State, and (2) used for, equipped to be used for, or of a type which is normally used for commercial purposes for the catching, taking, or harvesting of fish or the aiding or assisting at sea of any activity related to the catching, taking, or harvesting of fish, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

"Easement" means a right of use of easement granted under 30 CFR 250.18.

"Exploration permit" means the "permit" defined in 30 CFR Part 251.

"Financially responsible party" means a financially solvent person who is responsible for damage to or loss of a commercial fishing vessel or fishing gear by materials, equipment, tools, containers or other items associated with OCS oil and gas exploration, development, or production activities.

"Fish" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals, birds, and highly migratory species.

"Fishing gear" means (1) any commercial fishing vessel, and (2) any equipment of such vessel, whether or not such equipment is attached to the vessel.

"Fund" means the Fishermen's Contingency Fund established under 43 U.S.C section 1842.

"General Counsel" means the General Counsel, National Oceanic and Atmospheric Administration, or a designee.

"Holder" means the record owner of each lease, exploration permit, easement, or right-of-way or any agent or assignee of such record owner.

"Interested person" means a person (including a lessee or permittee or such person's contractor or subcontractor) known to have engaged in activities associated with OCS oil and gas exploration, development or production in the vicinity where the claimant's damage or loss occurred.

"Lease" means any form of authorization issued under section 8 or maintained under section 6 of the Outer Continental Shelf Lands Act and which authorizes exploration for, and development and production of, oil and gas resources.

"Natural obstruction" means any object or thing not made or caused by humans which hinders or prevents the operation of fishing gear.

"NMFS" means the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

"National Ocean Survey" means the National Ocean Survey, National Oceanic and Atmospheric Administration, Department of Commerce.

"Outer Continental Shelf" or "OCS" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in 43 U.S.C. section 1301, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

"Outer Continental Shelf Lands Act" means 43 U.S.C. section 1331 *et seq.*, as amended.

"Person" means an individual, partnership, corporation, association, public or private organization, government, or other entity.

"Right-of-way" means a right-of-way granted under section 5(e) of the Outer Continental Shelf Lands Act (43 U.S.C. section 1334(e)) or under 43 CFR 3340.0–5.

"Secretary of the Interior" means the Secretary of the Department of the Interior or a designee.

"Title IV" means Title IV of the Outer Continental Shelf Lands Act Amendments of 1978, 92 Stat. 629, Pub. L. 95–372, 43 U.S.C. section 1841 *et seq.*

"USGS" means the United States Geological Survey, Department of the Interior.

§ 296.3 Fishermen's Contingency Fund.

(a) *General.* There is established in the Treasury of the United States a Fishermen's Contingency Fund consisting of the area accounts designated in paragraph (b) of this section.

(b) *Area accounts.* The following area accounts are established within the Fund:

(1) *North Atlantic Area Account.* This account is for the area of the OCS in the Atlantic Ocean which is bounded by the U.S.-Canadian boundary on the north, 39° N. latitude on the south, and 71° W. longitude on the west.

(2) *Mid-South Atlantic Area Account.* This account is for those areas of the OCS in the Atlantic Ocean which are:

(i) Both north of 39° N. latitude and west of 71° W. longitude;

(ii) South of 39° N. latitude and east of 80°15′ W. longitude (off the southern coast of Florida); or

(iii) Adjacent to any U.S. territory, commonwealth, or possession in the Atlantic Ocean or the Caribbean Sea to which the Outer Continental Shelf Lands Act applies.

(3) *Pacific Area Account.* This account is for the area of the OCS adjacent to Washington, Oregon, California, Hawaii, or any U.S. territory, commonwealth, or possession in the Pacific Ocean to which the Outer Continental Shelf Lands Act applies.

(4) *Alaska Area Account.* This account is for the area of the OCS adjacent to Alaska.

(5) *Freeport Area Account.* This account is for the area of the OCS in the Gulf of Mexico as described in section A of Appendix I of this part. This area is identical to the USGS Freeport District.

(6) *Lake Charles Area Account.* This account is for the area of the OCS in the Gulf of Mexico as described in section B of Appendix I of this part. This area is identical to the USGS Lake Charles District.

(7) *Lafayette Area Account.* This account is for the area of the OCS in the Gulf of Mexico as described in section C of Appendix I of this part. This area is identical to the USGS Lafayette District.

(8) *Houma Area Account.* This account is for the area of the OCS in the Gulf of Mexico as described in section D of Appendix I of this part. This area is identical to the USGS Houma District.

(9) *Metairie Area Account.* This account is for the area of the OCS in the Gulf of Mexico as described in section E of Appendix I of this Part. This area is identical to the USGS Metairie District.

(c) *Exclusion.* The geographic area for each area account described in paragraph (b) of this section does not include submerged lands recognized by the United States as being under the jurisdiction of any State under the Submerged Lands Act (43 U.S.C. section 1301 *et seq.*).

(d) *Amounts.* Each area account shall be funded initially at $100,000. Amounts in any area account may not exceed $100,000.

§ 296.4 Payments into the Fund.

(a) *Initial assessments.* Each lease issued or maintained under the Outer Continental Shelf Lands Act for any tract in any geographical area for which there is an area account, each easement or right-of-way for the construction of a pipeline in such area, and each exploration permit in such area, in effect at any time on or after January 24, 1980 shall be assessed in accordance with paragraph (c) of this section so that $100,000 will be collected in each area account.

(b) *Assessments to maintain accounts.*—(1) *When depleted.* If the total amount in any area account is less than $50,000, the Chief, FSD, may determine that the account is depleted. After making the determination, the Chief, FSD, will notify the Secretary of the Interior that an assessment is needed to maintain the area account.

(2) *Amounts.* Each lease, permit, easement, and right-of-way which is both (i) in the geographical area for which there is a depleted area account (as determined under paragraph (b)(1) of this section) and (ii) in effect on the date an assessment is effective, shall be assessed such amount as is necessary to increase the total amount in the area account to $100,000.

(c) *Calculation of amount.*—(1) *Criteria.* The amount to be paid under paragraphs (a) and (b) of this section by each holder of a lease, exploration permit, easement, and right-of-way in any geographical area for which there is an area account shall be determined as follows:

(i) Each exploration permit in effect on the date an assessment is effective is assessed $50.00.

(ii) Leases, easements, and rights-of-way are assessed equally on a per-unit basis based on the number of leases and pipeline segments in effect on the date an assessment is effective.

(iii) New permits, leases, rights-of-way, and easements, that come into existence after an assessment is made, escape assessment until the next assessment, at which time all permits, leases, rights-of-way, and easements in effect are assessed.

(iv) Pipeline rights-of-way and easements in the Gulf of Mexico are credited to the area account in which the pipeline segment originates.

(v) Pipeline easements to be assessed do not include flow or gathering lines within the confines of a single lease or group of contiguous leases under unitized operation or a single operator.

(2) *By whom calculated.* The Secretary of the Interior will calculate the amounts to be paid by each holder.

(d) *Billing.*

(1) The Chief, FSD, will inform the Secretary of the Interior each time there is to be an assessment under this section.

(2) The Secretary of the Interior will notify each appropriate holder of the assessments and in what amount and where payable. Such notification shall include an itemized statement of the assessment.

(e) *To whom, by whom and when payable.* Each assessment under this section shall be paid to the Secretary of the Interior by the holder no later than 30 days after the Secretary of the Interior sends notice of the assessment under paragraph (d)(2) of this section.

(f) *Maximum payment.* No lease, exploration permit, easement, or right-of-way shall be assessed more than a total of $5,000 in any calendar year under this section.

§ 296.5 Claims eligible for compensation.

(a) *Claimants.* To be eligible for compensation under this Part, the damage or loss must be suffered by a commerical fisherman.

(b) *Damage or loss of fishing gear.* Except as provided in paragraph (c) of this section, any actual or consequential damage (including loss of profits) due to damage to or loss of fishing gear caused by materials, equipment, tools, containers, or other items associated with oil and gas exploration, development, or production activities in a geographical area for which an area account has been established under § 296.3 is eligible for compensation under this part. Damage or loss may be eligible for compensation even if it did not occur in the waters above the OCS, if the item causing the damage or loss was associated with OCS oil and gas exploration, development, or production activities.

(c) *Exceptions.* As specified by the Title IV statute, damage or loss is not eligible for compensation under this part:

(1) If the damage or loss with respect to which the claim is filed was caused by materials, equipment, tools, containers, or other items attributable to a financially responsible party;

(2) To the extent that damages were caused by the negligence or fault of the commercial fisherman making the claim (see also § 296.6(e));

(3) If the event causing the damage or loss with respect to which the claim is filed occurred before September 18, 1978;

(4) In the case of a claim for damage to, or loss of, fishing gear, in an amount in excess of the replacement value of the fishing gear with respect to which the claim is filed;

(5) In the case of a claim for loss of profits (i) for any period in excess of 6 months, and (ii) unless such claim is supported by records with respect to the claimant's profits during the previous 12-month period (see also §§ 296.6(c)(2) and 296.7(e)(11));

(6) For any portion of the damages claimed with respect to which the claimant has or will receive compensation from insurance (see also § 296.6(f));

(7) If the claim is not filed within 60 days after the date the claimant discovers the damage or loss with respect to which the claim is filed (see also §§ 296.7(c) and 296.8(b)); and

(8) If the damage or loss was caused by a natural obstruction or an obstruction unrelated to OCS oil and gas exploration, development, or production activities.

§ 296.6 Amount of awards.

(a) *General.* The amount of the award under this part is the total of the amounts under paragraphs (b), (c) and (d) of this section, minus any reductions under paragraphs (e) and (f) of this section and minus any reduction under § 296.11 (if applicable).

(b) *Fishing gear.* If the fishing gear with respect to which the claim is filed can be repaired to a condition substantially similar to its condition

immediately before the damage was suffered, at a cost less than its replacement cost minus its salvage value, then the amount of compensation is its repair cost. In all other cases (including loss of the fishing gear), the amount of compensation is the lost or damaged gear's replacement cost minus its salvage value. For the purposes of this § 296.6, the term "replacement cost" means the cost of supplying new fishing gear of the same or substantially similar size, type, and materials, without reference to the age or condition of the gear damaged or lost.

(c) *Consequential damage.*—(1) *Expenses.* The amount of an award under this Part will include compensation for any reasonable expenses actually incurred by the claimant to ascertain the cause and extent of the damage or loss caused to fishing gear and to obtain a decision in the claimant's favor. The ALJ will determine what expenses are reasonable and their amounts.

(2) *Loss of profits.* (i) The amount of an award under this Part will include compensation for any loss of profits due to damage to, or loss of, fishing gear with respect to which the claim is filed.

(ii) A claim for loss of profits due to loss of time spent in disengaging fishing gear from any item described in § 296.5(b) may be eligible for compensation under this part even if the fishing gear involved was not damaged or lost. Compensation for this type of lost profits ordinarily will not exceed what would have been the replacement cost, less salvage value, of the fishing gear disengaged, unless the claimant can show that his efforts to disengage the gear were of reasonable duration and that abandonment of the gear would have resulted in a greater economic loss.

(iii) No award may be made under this Part for loss of profits for any period in excess of 6 months from the date when the damage or loss of the fishing gear was discovered.

(iv) A claim for loss of profits must be supported by records with respect to the claimant's profits during the 12-month period immediately preceding the date of the discovery of the damage to or loss of the fishing gear (if the claimant was not a commercial fisherman for all of the 12-month period or if the fishery involved is a new one, estimates of profit may be based on NMFS statistics or other reliable evidence);

(v) In determining the amount awarded under this paragraph (c)(2), the ALJ may consider any evidence concerning:

(A) Profits from the corresponding quarter of the previous year;

(B) Profits from trips immediately before and after the loss or damage which is the subject of the claim;

(C) Such other evidence as the claimant may submit; and

(D) Such other evidence as the hearing examiner may deem appropriate.

(vi) The measure of compensation for loss of profit ordinarily is the net profit lost. If the ALJ determines that a different measure of compensation for loss of profit is appropriate because the facts of the claim are sufficiently extraordinary, and states the reasons for the determination, the ALJ may apply the measure of compensation which the ALJ deems to be most appropriate.

(vii) In making either an agency recommendation or a proposed settlement under § 296.8(c), the Chief, FSD, will use an administrative standard to determine lost profit. The administrative standard will be based on the latest Federal income tax return which best establishes the annual income and expenses of the vessel involved in the loss or damage (or in the discretion of the Chief, FSD, a similar vessel). The annual net profit in such a return will be used to compute the vessel owner or operator's loss of net profit for a reasonable period during which vessel operation was precluded by the damage or loss with respect to which the claim is filed. With respect to claims filed by crew members, the annual income and expense data in such a return will be used to compute the crew member's share according to the contractual share to which each crew member was entitled. The Chief, FSD, ordinarily will not attempt to settle a claim for loss of profits if the Federal income tax return pertaining to the vessel involved (or a similar vessel) is not made available. In such cases, the compensation for lost profits will be determined by the ALJ.

(3) *Other.* An award under this part may include compensation for any other consequential damage resulting from the damage or loss of fishing gear, but may not include compensation for personal injury resulting from damaged fishing gear.

(d) *Attorneys' fees.* An award under this part will include compensation for reasonable attorneys' fees incurred by the claimant in obtaining a decision in the claimant's favor. Claimants will not be compensated for attorneys' fees if the claim is denied.

(e) *Negligence of claimant.* (1) The amount of an award under this part is reduced to the extent that the ALJ finds that the loss or damage (including consequential damages) was caused by the negligence or fault of the claimant. (For example, a claimant who sustained $10,000 in damages and whose negligence or fault was found to be responsible for 40% of the damage would receive $6,000 in compensation. If the same claimant were responsible for 99% of the negligence or fault that caused the damage, the claimant would receive $100 in compensation).

(2) Negligence or fault of the claimant includes, but is not limited to, failure to:

(i) Remain outside of any navigation safety zone established around oil and gas rigs and platforms by any responsible Federal agency;

(ii) Avoid obstructions recorded on nautical charts or in the Notice to Mariners, or marked by a buoy or other surface marker (casualties occurring within a one-quarter mile radius of obstructions so recorded or marked are presumed to involve negligence or fault of the claimant);

(iii) Abide by established rules of the road;

(iv) Use proper care; or

(v) Attempt to mitigate, or to use due care and diligence mitigating the damage to, or loss of, the fishing gear and any resulting economic loss.

(3) With respect to the actions described in paragraph (e)(2) of this section, negligence of the owner or operator of the commercial fishing vessel involved in a claim shall bar or reduce an award to the vessel's crew members with a claim arising from the same damage or loss to the same extent that it bars or reduces an award to such owner or operator.

(f) *Insurance proceeds.* (1) The amount of any award under this part will be reduced by the amount of any compensation the claimant received, or will receive, from insurance for the damage or loss with respect to which the claim against the Fund is filed.

(2) If the claimant has insurance which covers the damage, or any portion of it, the claimant must seek compensation from the insurance. No award will be made from the Fund for damage which is covered by the claimant's insurance.

§ 296.7 Instructions for filing claims.

Five-Day Report

(a) *Five-day report required to gain presumption of causation.*—(1) *General.* Under § 296.9(b) damages or losses are presumed to be caused by items associated with OCS oil and gas exploration, development, or production activities if certain requirements are satisfied. One requirement is that a report on the location of the obstruction which caused the damage or loss, the nature of the damage or loss, and certain other information specified in

paragraph (a)(4) of this section, *must be made to the NMFS within five (5) days after the date when the damage or loss is discovered.* If more than one commercial fisherman suffers loss from the same incident, the owner or operator of the commercial fishing vessel involved may file a five-day report on behalf of the entire crew, owner, and operator of the vessel. Note that filing of a five-day report must be followed up by filing of a detailed claim under paragraphs (b), (c), (d), and (e) of this section.

(2) *When and how to file a five-day report.* To qualify for the presumption of causation, a five-day report must be made to the nearest NMFS Regional Office within 5 days after the date the claimant discovered the loss or damage. Satisfaction of the five-day requirement is determined by the date of postmark, if the report is mailed; by the date of receipt of a call, if the report is telephoned or radio-telephoned; or, by the date of appearance, if the report is made in person at the nearest NMFS Regional Office. NMFS addresses and telephone numbers to use for making a five-day report are listed below:

Chief, Financial Services Branch, Northeast Region, National Marine Fisheries Service, Post Office Building, Box 1109, Gloucester, Massachusetts 01930 (617) 281–3600

Chief, Fisheries Development Analysis Branch, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, Duval Building, St. Petersburg, Florida 33702 (813) 893–3271

Chief, Fisheries Development Division, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731 (213) 548–2575

Chief, Financial Services Branch, Northwest Region, National Marine Fisheries Service, 1700 Westlake Avenue North, Seattle, Washington 98109 (206) 442–5532

Chief, Fisheries Development, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802 (907) 586–7224

(3) *Written confirmation of oral five-day report.* The Chief, FSD, strongly recommends that claimants confirm, in writing, as soon as possible, the substance and accuracy of each five-day report that is made by telephone, radiotelephone or other oral communication. Address the written confirmation to:

Chief, Financial Services Division, National Marine Fisheries Service, 3300 Whitehaven St., N.W., Washington, D.C. 20235.

(4) *Contents of five-day report.* Each five-day report must include the following information:

(i) The claimant's name and address;

(ii) The name and identifying number of the commercial fishing vessel involved;

(iii) The location of the obstruction which caused the damage or loss (see paragraph (e)(27) of this section for the methods of position fixing);

(iv) A statement concerning the activities, at the time the damage or loss occurred, of the vessel involved;

(v) A description of the nature of the damage or loss;

(vi) The date such damage or loss was discovered;

(vii) A description of the obstruction, if known; and

(viii) A statement concerning whether or not a surface marker or lighted buoy was attached to or near the obstruction.

Detailed Claim Form

(b) *Form of claim.* Claims must be in writing and include the information specified in paragraphs (e)(1) through (29) of this section. When available, claim forms may be obtained from any NMFS Regional Office or from the Chief, FSD.

(c) *Who must file, and when and where to file claims. Each claimant must file a claim (even those who filed five-day reports to gain the presumption of causation).* Each claim must be filed, in writing, with the Chief, Financial Services Division, National Marine Fisheries Service, 3300 Whitehaven St. N.W., Washington, D.C. 20235, *no later then 60 days after the date the claimant discovers the damage or loss* with respect to which the claim is made. For the purpose of this paragraph (c), the term "filed" means delivered in person, or mailed (as determined by the date of postmark), to the Chief, FSD. The Chief, FSD, suggests that a claim which is mailed be sent by registered or certified mail, return receipt requested, so the claimant will have a record that the claim was received by the Chief, FSD.

(d) *Aggregating claims.* If more than one commercial fisherman suffers loss or damage arising from the same incident (for example, when several members of the crew lost income due to loss of fishing time), the claims of all such fishermen should be aggregated into one claim and the claim should be submitted on their behalf by the owner or operator of the commercial fishing vessel or vessels involved.

(e) *Contents.* Each claim shall be signed by the claimant and shall accurately and completely provide the following information:

General Identification

(1) The name, mailing address, telephone number, citizenship, and occupational status (for example, vessel owner, operator, or crew member on a vessel) of each claimant;

(2) The name, address, and telephone number of each person (for example, an attorney) retained to act on behalf of any claimant in pursuing the claim;

(3) The name of the commercial fishing vessel involved in the damage or loss for which the claim is submitted;

(4) The vessel's U.S. Coast Guard documentation number (or State registration number, if the vessel is not documented under Federal law);

(5) The home port of the vessel;

(6) The date when the claim is written;

Type and Extent of Damage or Loss

(7) A statement of: The type of fishing operation being conducted (for example, trawling for shrimp), the type and size of vessel involved, a full description of the fishing gear involved (including a list of all components);

(8) The nature and extent of the damage or loss suffered or expected;

(9) Photographs (when available) of any physical damage to fishing gear (including a commercial fishing vessel);

(10) The amount, if any, claimed for physical damage to, or loss of, fishing gear. If an amount is claimed, the claim shall include:

(i) Proof that the claimant owns the fishing gear damaged or lost (submit copies of the best evidence of ownership available, for example, sales receipts, affidavits, or other evidence);

(ii) A list of all components of fishing gear damaged or lost, together with the size, type, grade, material of construction, age, and the estimated remaining useful economic life of each component damaged or lost;

(iii) The date, place, and cost of acquisition of all fishing gear damaged or lost;

(iv) Estimates, from two different commercial fishing gear repair or supply companies, of the present replacement cost of the fishing gear and the repair cost of the fishing gear (if it is repairable). If fishing gear of the type lost or damaged is usually made or repaired by the claimant, a detailed estimate prepared by the claimant identifying the repair or replacement cost of the fishing gear may be included in place of one of the estimates from commercial fishing gear repair or supply companies;

(v) If the fishing gear is repaired or replaced before an award is made under this part, a copy of the invoice or receipt for the repair or replacement of the fishing gear; and

(vi) The estimated salvage value of the fishing gear, if it is not repairable;

(11) The amount, if any, claimed for loss of profits. If an amount is claimed,

the claim shall include copies of all records, including catch logs and landing receipts documenting the claimant's profits during the 12-month period immediately preceding the date when the damage or loss of the fishing gear was discovered. The claimant shall also include the latest Federal income tax return or other suitable evidence for the operational income of the vessel involved in the loss or damage for which the claim is submitted (or, in the discretion of the Chief, FSD, a similar vessel). (One use of the Federal tax return is described in § 296.6(c)(2)(vii).) If the claim involves a claim for a crew member's lost share of profits, include a full statement of the contractual arrangements governing determination of the shares of vessel income to which each crew member is entitled (including a copy of the contract if in writing). The claimant shall describe fully the basis upon which the amount claimed is calculated. The claimant should include whatever additional data might support, or be pertinent to, the amount claimed (for example, the duration of an average fishing trip, and the duration of the average time in port between fishing trips). Each claim shall contain a full statement of why the length of time claimed for loss of profits is justified and what action, if any, the claimant took to mitigate the amount of lost fishing time;

(12) The amount, if any, claimed for consequential damages under § 296.6(c)(1) and (3), together with a full description of what each amount claimed represents;

(13) Copies of all insurance policies covering the vessel (unless the loss or damage is to the vessel's fishing gear rather than the vessel itself) and a statement whether a claim has been, or will be, made against any insurance policy which may cover the damage or loss with respect to which the claim against the Fund is filed;

(14) The name and mailing address of each person, if any, to whom the claimant has given oral or written notice that such person caused, or may have caused, the damage or loss; together with a copy of any written notice given each person and a statement whether each such person has paid, or will pay, the claimant for any portion of the damage or loss;

Circumstances of the Damage or Loss

(15) The date and time of day, if known, when the damage or loss occurred;

(16) The date when the damage was first discovered by the claimant;

(17) The depth of the water, if known, at the time and site where the damage or loss occurred;

(18) The visibility at the time and site the damage or loss occurred;

(19) The depth at which the fishing gear was being operated when the damage or loss occurred;

(20) The direction, speed, and activities of the claimant's fishing vessel immediately before, during, and after the damage or loss occurred (including a full description of both the deployment of any fishing gear which is the subject of the claim and all attempts at the retrieval of the gear);

(21) The amount and type of vessel traffic in the general vicinity at the time the damage or loss occurred;

(22) A full description (including any identification markings) of the item or obstruction which caused the damage or loss, if known. If the item or obstruction was physically recovered, it should be retained. If photographs of the item or obstruction are available, they shall be submitted with the claim;

(23) A description of any lighted buoy or surface marker attached to or anchored by the item or obstruction;

(24) A full statement of the claimant's reason or believing that the obstruction which caused the damage or loss is associated with oil and gas exploration, development, or production on the Federal OCS rather than with similar oil and gas activities within State waters, other ocean users, or natural causes;

(25) The names and addresses of all known witnesses to the incident which caused the damage or loss (statements from the witnesses should be submitted);

(26) If applicable, a statement concerning when and how the claimant notified NMFS within 5 days of the damage or loss as provided in § 296.7(a);

(27) The position of the commercial fishing vessel when the damage or loss occurred and the position of the obstruction causing the damage or loss (if the obstruction was dragged, give positions for both before and after it was dragged, if known), to be specified by using one or more of the following methods of position fixing. Claimants should use the most reliable method available aboard the vessel at the time of discovery of the damage or loss, such as: [1]

(i) Loran-C readings. Provide time delay readings from at least two Loran-C pairs (e.g., 7980–W and 7980–Y). Readings from additional pairs should be provided if available from the particular Loran-C receiver installed. If a coordinate converter is being used, the latitude and longitude readings may be furnished, but the actual Loran-C time delay readings are more useful because they are generally more accurate.

(ii) Distance (range) and direction (bearing) to fixed offshore objects such as lighthouses, light towers, and oil drilling or production platforms. Specify the name of each such object used (for example, Ambrose Light Tower, Shell Oil Platform No. 4281, etc.).

(iii) Distance (range) and direction (bearing) to fixed aids to navigation and landmarks which are identified on National Ocean Survey charts, such as radio towers, jetty lights, etc.

(iv) Distance (range) and direction (bearing) to prominent landmarks which are not identified on National Ocean Survey charts, but are readily identifiable for future reference.

(v) Loran-A readings. Provide time delay readings from at least two Loran-A rates. Readings from additional rates should be provided if available. Identify any skywave time delay readings as such.

(vi) Direction (bearing) to radiobeacons using a radio direction finder. Give each station's identifying call letters. Provide a copy of the radio direction finder deviation table if prepared for the fishing vessel.

(vii) Distance (range) and direction (bearing) to floating navigational aids, such as buoys. Identify any buoy by name, number, color, type and Light List number, if known.

(viii) Alternate navigation methods may be used if they are available. These include Raydist, Decca, and similar electronic navigation systems that may be in use. A celestial fix or line-of-position may be used if no other navigation method is available. In this case all calculations shall be included.

[1] The methods are listed in descending order of accuracy. Fixes obtained by combining lines-of-position from two systems are acceptable if no single system will provide an accurate, unambiguous fix. An example is a Loran-C line-of-position and a radar range.

The use of dead reckoning, or running fixes, or both, to determine the vessel's position at the time of the damage or loss is acceptable only if no more accurate method were available. In this case, the claim shall include information sufficient to allow recalculation of the vessel position.

Bearings to shore and/or offshore objects shall be visually observed and provided in degrees. Radar bearings generally are not considered to be acceptable unless other methods are not available. If bearings are taken using a magnetic compass, they shall be converted to true by applying deviation and variation. The conversion calculation, including all figures used, must accompany the claim.

Brand name and model of all electronic and navigation equipment used in determining the geographic position of the incident should be included.

(28) A list of all crew members aboard the vessel at the time the loss or damage occurred; and

(29) Any other information which the claimant believes is relevant to the claim.

(f) *Other evidence.* The Chief, FSD, or the ALJ may require the submission of additional information, affidavits, estimates, or other evidence.

(g) *Amendment of claims.* A claimant may amend the claim at any time before the claim is referred to the ALJ.

(h) *Criminal penalty for fraudulent claim.* Any person who files a fraudulent claim is subject to criminal prosecution under 18 U.S.C. sections 287 and 1001, each of which, upon conviction, imposes a penalty of not more than a $10,000 fine and 5 years' imprisonment, or both.

§ 296.8 NMFS Processing of Claims.

(a) *Public Notice of Claims.*—(1) *Action by the Chief, FSD.* Upon receipt of a claim, the Chief, FSD, will promptly:

(i) Request an ALJ to be assigned;

(ii) Transmit an abstract of the claim to the Secretary of the Interior;

(iii) Transmit the reported location of any obstruction to the National Ocean Survey, which will inform the Defense Mapping Agency Hydrographic/Topographic Center; and

(iv) Publish notice of the claim in the **Federal Register.** Each **Federal Register** notice published under this paragraph (a)(1) will contain:

(A) A brief statement of the nature and dollar amount of the claim, and the location where the damage or loss occurred;

(B) A statement that the Chief, FSD, may seek a proposed settlement agreement under paragraph (c) of this section; and

(C) A statement that an interested person or any other person may, within thirty (30) days following publication of the notice in the **Federal Register,** submit to the Chief, FSD, any evidence concerning either the claim or a proposed settlement agreement.

(2) *Action by the Secretary of the Interior.* (i) After receiving an abstract of the claim under paragraph (a)(1) of this section, the Secretary of the Interior will promptly send written notice of the claim to all persons known to have engaged in activities associated with OCS oil and gas exploration, development, or production in the vicinity where the damage or loss occurred.

(ii) Persons to be notified under paragraph (a)(2)(i) of this section shall include all persons known to have engaged in activities associated with OCS oil and gas exploration, development or production in all lease blocks either wholly or partially contained within a 3-mile radius of the reported location of the damage or loss, and such other persons as the Secretary of the Interior determines should receive notice of the damage or loss. In determining whether or not to notify such other persons, the Secretary of the Interior shall consider the nature of the damage or loss and the nature of OCS oil and gas exploration, development, or production activities (including surface supply traffic) in the vicinity of the damage or loss.

(3) *Responses to notice of claim.* (i) Any interested person may submit evidence at any hearing concerning a claim under this Part in accordance with § 296.10(d) [Reserved], or concerning any proposed settlement under paragraph (c) of this section. Any such person who intends to submit evidence at a hearing or concerning any settlement under paragraph (c) of this section must notify the Chief, FSD, in writing, describing specifically the evidence to be submitted, not later than 30 days after publication of notice of the claim in the **Federal Register** under paragraph (a)(1) of this section. Where evidence concerns any proposed settlement or hearing on a claim, the Chief, FSD or the ALJ, respectively, may waive the 30-day rule for good cause, such as if the interested person first requesting, after the expiration of the 30 days, to submit evidence shows that such person did not previously have knowledge that such person would have an interest in the claim and that such person has evidence which may significantly affect the outcome of the proposed settlement or any hearing on the claim, or if the evidence first became available to such person after the expiration of the 30-day period.

(ii) Each person notified by the Secretary of the Interior under paragraph (a)(2) of this section shall, within thirty (30) days after the Secretary of the Interior sends the notice, notify the Chief, FSD, and the Secretary of the Interior whether that person admits or denies responsibility for the damages claimed.

(iii) Each person who is notified by the Secretary of the Interior under paragraph (a)(2) of this section and fails to give timely and proper notice of admission or denial of responsibility under paragraph (a)(3)(ii) of this section, shall be conclusively presumed for the purposes of § 296.11 to deny responsibility for the damages claimed.

(iv) If any person admits responsibility under paragraph (a)(3)(ii) of this section or otherwise, the Chief, FSD, will so inform the claimant, and will not take any further action on the claim. If the person admitting responsibility later denies, or withdraws the admission of, responsibility, the Chief, FSD, will resume processing of the claim.

(v) Any interested person may request to be admitted as a party to any hearing concerning the claim. Such request must be filed with the Chief, FSD, in writing, not later than thirty (30) days after publication of notice of the claim in the **Federal Register** under paragraph (a)(1) of this section. Such request will be ruled on by the ALJ under § 296.10(c)(3)(ix) [Reserved].

(b) *NMFS review of claims*—(1) *General.* The Chief, FSD, will promptly review each claim filed under § 296.7 and determine whether it is timely filed within the 60-day period specified in § 296.7(c), properly completed under § 296.7(e), and eligible on its face.

(2) *Timeliness of claims.* (i) The 60-day filing requirement of § 296.7(c) is satisfied by the filing of an improperly completed or incomplete claim.

(ii) If the Chief, FSD, finds that the claim was not timely filed under § 296.7(c), the Chief, FSD, will refer the matter to the General Counsel.

(3) *Completeness of claims.* (i) If the Chief, FSD, finds that the claim is not properly completed or is incomplete, the Chief, FSD, will send to the claimant a written notice stating the deficiency in the claim.

(ii) If the claimant fails to correct the deficiency within 60 days after the date the notice of the deficiency is sent to the claimant, the claim is not eligible for compensation under this part unless the Chief, FSD, for good reason extends the period for correcting deficiencies.

(iii) If the Chief, FSD, finds that the claim is ineligible under paragraph (b)(3)(ii) of this section, the Chief, FSD, will refer the matter to the General Counsel.

(4) *Factual eligibility of claims.* If the Chief, FSD, finds that a claim is not eligible on its face (for example, because the claim states facts which make it ineligible under §§ 296.5(c)(1), (3), (5)(ii), (7) or (8)), the Chief, FSD, will refer the matter to the General Counsel.

(c) *Proposed settlement or other agency recommendation.* (1) After determining that the claim is timely filed, properly completed, and eligible on its face, the Chief, FSD, may contact the claimant and negotiate a proposed settlement of the claim.

(2) If the Chief, FSD, and the claimant agree to a proposed settlement, the Chief, FSD, will forward the proposed settlement to the General Counsel for action under paragraph (d) of this section.

(3) The Chief, FSD, will not forward any proposed settlement to the General Counsel sooner than thirty (30) days after publication of notice of the claim in the **Federal Register** under paragraph (a)(1) of this section.

(4) The Chief, FSD, may forward to the General Counsel an agency recommendation concerning the claim. The agency recommendation may be, among other things, to:

(i) Approve the claim;

(ii) Approve a proposed settlement of the claim; or

(iii) Deny the claim.

(d) *Action by General Counsel*—(1) *Concerning timeliness, completeness and eligibility of claims.* If the General Counsel concurs in the finding of the Chief, FSD, under paragraphs (b)(2), (3), or (4) of this section, the General Counsel will send the claim, together with a recommendation that the claim be denied, to the ALJ for an expedited hearing under § 296.10(1)(4) [Reserved].

(2) *Concerning proposed settlement or other agency recommendation.* If the General Counsel concurs in the agency recommendation of the Chief, FSD, under paragraph (c) of this section, the General Counsel will:

(i) In the case of an agency recommendation to approve either the claim or a proposed settlement of the claim,

(A) Publish a notice of the agency recommendation in the **Federal Register**, and

(B) Not sooner than 15 days after publication of the notice referred to in paragraph (d)(2)(i)(A) of this section, refer the claim to the ALJ under paragraph (f) of this section for consideration under § 296.10(j) [Reserved];

(ii) In the case of an agency recommendation to deny a claim, promptly refer the claim to the ALJ under paragraph (f) of this section.

(e) *Objection to certain agency recommendations.* Any interested person who objects to an agency recommendation to approve either the claim or a proposed settlement of the claim may request the ALJ to conduct an oral hearing concerning the claim. Any such request for an oral hearing must be filed in writing with the General Counsel within fifteen (15) days after the **Federal Register** notice is published under paragraph (d)(2) of this section and must state the interested person's reason for requesting an oral hearing.

(f) *Referral of a claim to the ALJ.* Upon expiration of the fifteen (15) day period following publication of the **Federal Register** notice (if any) under paragraph (d)(2) of this section, the General Counsel will refer to the ALJ the following items:

(1) The claim;

(2) Any agency recommendation under paragraph (d)(2) of this section;

(3) Any request, under paragraph (a)(3)(i) of this section, by an interested person to submit evidence at a hearing;

(4) Any request, under paragraph (a)(3)(v) of this section, by an interested person to be admitted as a party to any hearing; and

(5) Any request, under paragraph (e) of this section, by an interested person that an oral hearing be conducted.

§ 296.9 Burden of proof and presumption of causation.

(a) *Burden of proof.* The claimant has the burden to establish, by a preponderance of the evidence, all facts necessary to demonstrate eligibility for, and the amount of, compensation under this part, including, but not limited to:

(1) The identity or nature of the item which caused the damage to or loss of the fishing gear which is the subject of the claim; and

(2) That the item described in paragraph (a)(1) of this section is associated with oil and gas exploration, development, or production activities on the Outer Continental Shelf.

(b) *Presumption of Causation.* Paragraph (a) of this section notwithstanding, damages or losses are presumed to be caused by items associated with oil and gas exploration, development, or production activities on the OCS if the claimant establishes that:

(1) The claimant's commercial fishing vessel was being used for commercial fishing and was located in an area affected by OCS oil and gas exploration, development, or production activities (the damage or loss need not occur in one of the geographic areas described in § 296.3(b));

(2) A report on the location of the obstruction which caused such damage or loss, and the nature of such damage or loss, was properly made under § 296.7(a) within five days after the date when such damage or loss was discovered;

(3) There was no record on the most recent nautical charts issued by the National Ocean Survey, NOAA, or in any weekly Notice to Mariners issued by the Defense Mapping Agency Hydrographic/Topographic Center on or before the date such damage or loss was suffered, that an obstruction existed in the immedate vicinity where the damage or loss occurred; and

(4) There was no proper surface marker or lighted buoy attached, or closely anchored, to such obstruction.

(c) *Geographic exclusion from presumption of causation.* Damage or loss occurring within a one-quarter mile radius of obstructions recorded on charts or in a Notice to Mariners, or properly marked, as described in paragraphs (b)(3) and (b)(4) of this section, is presumed to involve the recorded obstruction.

§ 296.10 Hearings. [Reserved]

§ 296.11 Payment of costs.

(a) *By person denying responsibility for damage.* Any person who:

(1) Is notified by the Secretary of the Interior under § 296.8(a);

(2) Denies, or fails to either affirm or deny, responsibility for the damages claimed; and

(3) Is found by the ALJ or by a court of law to be responsible for the damage, shall pay the costs of the proceedings under this part with respect to such claim.

(b) *By the claimant.* Any claimant who files a claim under this Part and is found by the ALJ or by a court of law to be responsible for such damage, shall pay the costs of the proceedings under this part with respect to such claim.

(c) *By person denying responsibility for damage and the claimant.* If the ALJ or a court of law finds both the claimant and a person described in paragraphs (a) (1) and (2) of this section to have responsibility for such damage, then the cost of proceedings under this part shall be apportioned equitably between them.

§ 296.12 Appeals.

(a) *General.* Any person who suffers legal wrong or who is adversely affected or aggrieved by the decision of an ALJ under this part may, no later than sixty (60) days after the ALJ issues a decision under § 296.10(m) [Reserved], seek judicial review of such decision in the United States Court of Appeals for the Federal judicial circuit in which the damage occurred, or, if such damage occurred outside of any circuit, in the United States Court of Appeals for the nearest circuit.

(b) *Notice.* Any person who appeals a decision of an ALJ under this section shall so notify the claimant, the Chief, FSD, the General Counsel, and any other party in writing at the same time the appellant files an appeal with the appropriate United States Court of Appeals.

§ 296.13 Payment of award for claim.

(a) *Amount.* The Chief, FSD, will pay the amount of the award certified in the decision of the ALJ under § 296.10(m) [Reserved].

(b) *Area account.* The payment will be disbursed from the area account or

accounts specified in the decision of the ALJ under § 296.10(m) [Reserved].

(c) *Time of payment.* (1) No payment will be made under this section until the claimant has signed a subrogation agreement under § 296.14.

(2) No payment will be made under this section if an appeal has been filed under § 296.12.

§ 296.14 Subrogation.

(a) *Agreement.* Before receiving payment under this part, a claimant shall sign a subrogation agreement in a form satisfactory to the General Counsel which:

(1) Assigns to the Fund all rights the claimant has, and might have, to proceed against any person for damages with respect to any part of the damage or loss for which the award is being made; and

(2) Provides that the claimant will assist the Fund in any reasonable way to pursue collection of the subrogated rights.

(b) *Collection of subrogated rights.* In those instances in which it appears that a reasonable chance of successful collection exists, the General Counsel will refer the subrogated rights to the Department of Justice for collection.

§ 296.15 Computation of time.

Saturdays, Sundays, and Federal Government holidays shall be included in computing the time period allowed for filing any document or paper under this part (including the five-day report and claim referred to in §§ 296.7 (a) and (c), respectively), but when such time period expires on such a day, such time period shall be extended to include the next following Federal Government working day.

Appendix 1

A. *Freeport District*—The U.S. Geological Survey's Freeport District incorporates all, or the indicated portions, of the OCS areas shown on the following official maps:

1. OCS Leasing Map, South Padre Island Area, Texas Map. No. 1 (Approved July 16, 1954). That portion seaward of the 3-league line.

2. OCS Leasing Map, South Padre Island Area, East Addition, Texas Map. No. 1A (Approved May 6, 1965).

3. OCS Leasing Map, North Padre Island Area, Texas Map. No. 2 (Approved July 16, 1954). That portion seaward of the 3-league line.

4. OCS Leasing Map, North Padre Island Area, East Addition, Texas Map. No. 2A (Approved May 6, 1965).

5. OCS Leasing Map, Mustang Island Area, Texas Map No. 3 (Approved July 16, 1954; Revised October 30, 1961). That portion seaward of the 3-league line.

6. OCS Leasing Map, Mustang Island Area, East Addition, Texas Map No. 3A (Approved January 23, 1967).

7. OCS Leasing Map, Matagorda Island Area, Texas Map No. 4 (Approved July 16, 1954). That portion seaward of the 3-league line.

8. OCS Leasing Map, Brazos Area, Texas Map No. 5 (Approved July 16, 1954). That portion seaward of the 3-league line.

9. OCS Leasing Map, Brazos Area, South Addition, Texas Map No. 5B (Approved September 24, 1959).

10. OCS Leasing Map, Galveston Area, Texas Map No. 6 (Approved July 16, 1954). That portion seaward of the 3-league line.

11. OCS Leasing Map, Galveston Area, South Addition, Texas Map No. 6A (Approved September 24, 1959).

12. OCS Leasing Map, High Island Area, Texas Map No. 7 (Approved July 16, 1954; Revised August 1955). That portion seaward of the 3-league line.

13. OCS Leasing Map, High Island Area, East Addition, Texas Map No. 7A (Approved January 23, 1967). That portion seaward of the 3-league line.

14. OCS Leasing Map, High Island Area, South Addition, Texas Map No. 7B (Approved September 24, 1959).

15. OCS Leasing Map, High Island Area, East Addition, South Extension, Texas Map No. 7C (Approved September 24, 1959).

16. OCS Leasing Map, Sabine Pass Area, Texas Map No. 8 (Approved March 7, 1977). That portion on the Texas side of the Texas-Louisiana Line that is seaward of the 3-league line.

17. OCS Official Protraction Diagram, Corpus Christi NG 14–3 (Approved June 5, 1974; Revised January 27, 1976).

18. OCS Official Protraction Diagram, Port Isabel NG 14–6 (Approved June 5, 1974; Revised January 27, 1976).

19. OCS Official Protraction Diagram, East Breaks NG 15–1 (Approved June 8, 1973; Revised January 27, 1976).

20. OCS Official Protraction Diagram, Alaminos Canyon NG 15–4 (Approved June 5, 1974; Revised March 26, 1976).

21. OCS Official Protraction Diagram, Garden Banks NG 15–2 (Approved February 15, 1973; Revised December 2, 1976). That portion west of a north-south line formed by the east line of block 142 at the northeast corner and block 978 at the southeast corner.

22. OCS Official Protraction Diagram, Keathley Canyon NG 15–5 (Approved June 5, 1974; Revised December 2, 1976). That portion west of a north-south line formed by the east line of block 10 at the northeast corner and block 978 at the southeast corner.

B. *Lake Charles District*—The U.S. Geological Survey's Lake Charles District incorporates all, or the indicated portions, of the OCS areas shown on the following official maps:

1. OCS Leasing Map, West Cameron Area, Louisiana Map No. 1 (Approved June 8, 1954; Revised July 22, 1954). That portion more than three geographical miles seaward from the lines described in the supplemental decree of the United States Supreme Court, June 16, 1975 (U.S. versus Louisiana, 422 US 13).

2. OCS Leasing Map, West Cameron Area, West Addition, Louisiana Map No. 1A (Approved November 15, 1955; Revised January 30, 1957).

3. OCS Leasing Map, West Cameron Area, South Addition, Louisiana Map No. 1B (Approved September 8, 1959).

4. OCS Leasing Map, East Cameron Area, Louisiana Map No. 2 (Approved June 8, 1954; Revised August 1, 1973). That portion more than three geographical miles seaward from the lines described in the supplemental decree of the United States Supreme Court, June 16, 1975 (U.S. versus Louisiana, 422 US 13).

5. OCS Leasing Map, East Cameron Area, South Addition, Louisiana Map No. 2A (Approved September 8, 1959).

6. OCS Leasing Map, Vermilion Area, Louisiana Map No. 3 (Approved June 8, 1954; Revised June 25, 1954; Revised July 22, 1954). That portion more than three geographical miles seaward from the lines described in the supplemental decree of the United States Supreme Court, June 16, 1975 (U.S. versus Louisiana, 422 US 13).

7. OCS Leasing Map Vermilion Area, South Addition, Louisiana Map No. 3B.

8. OCS Leasing Map, Sabine Pass Area, Louisiana Map No. 12 (Approved March 7, 1977). That portion on the Louisiana side of the Texas-Louisiana line, more than three geographical miles seaward from the line described in the supplemental decree of the United States Supreme Court, June 16, 1975 (U.S. versus Louisiana, 422 US 13).

9. OCS Official Protraction Diagram, Garden Banks NG 15–2 (Approved February 15, 1973; Revised December 2, 1976). That portion bordered on the west by a north-south line formed by the west line of block 143 at the northwest corner and the west line of block 979 at the southwest corner and bordered on the east by a north-south line formed by the east line of block 80 at the northeast corner and the east line of block 1004 at the southeast corner.

10. OCS Official Protraction Diagram, Keathley Canyon NG 15–5 (Approved June 15, 1974; Revised December 2, 1976). That portion bordered on the west by a north-south line formed by the west line of block 11 at the northwest corner and the west line of block 979 at the southwest corner and bordered on the east by a north-south line formed by the east line of block 36 at the northeast corner and the east line of block 1004 at the southeast corner.

C. *LaFayette District*—The U.S. Geological Survey's Lafayette District incorporates all, or the indicated portions, of the OCS areas shown on the following official maps:

1. OCS Leasing Map, South Marsh Island Area, Louisiana Map No. 3A (Approved August 7, 1959).

2. OCS Leasing Map, South Marsh Island Area, South Addition, Louisiana Map No. 3C (Approved September 8, 1959).

3. OCS Leasing Map, South Marsh Island Area, North Addition, Louisiana Map No. 3D (Approved April 16, 1971; Revised January 18, 1972). That portion more than three geographical miles seaward from the line described in the supplemental decree of the United States Supreme Court, June 16, 1975 (U.S. versus Louisiana, 422 US 13).

4. OCS Leasing Map, Eugene Island Area, Louisiana Map No. 4 (Approved June 8, 1954; Revised July 22, 1954). That portion more than three geographical miles seaward from the

line described in the supplemental decree of the United States Supreme Court. June 16, 1975 (U.S. versus Louisiana, 422 US 13).

5. OCS Leasing Map. Eugene Island Area. South Addition. Louisiana Map No. 4A (Approved September 8, 1959).

6. OCS Official Protraction Diagram. Ewing Bank NH 15–12 (Approved February 15, 1973; Revised December 2, 1976). That portion that consists of blocks 932, 933, 937, 938, 975, 976, 977, 978, 979, 981, 982.

7. OCS Official Protraction Diagram. Green Canyon NG 15–3 (Approved February 15, 1973; Revised December 2, 1976). That portion west of a north-south line formed by the east line of block 12 at the northeast corner and the east line of block 980 at the southeast corner.

8. OCS Official Protraction Diagram. Walker Ridge NG 15–6 (Approved June 5, 1974; Revised December 2, 1976). That portion west of a north-south line formed by the east line of block 12 at the northeast corner and the east line of block 980 at the southeast corner.

9. OCS Official Protraction Diagram. Garden Banks. NG 15–2 (Approved February 15, 1976; Revised December 2, 1976). That portion east of a north-south line formed by the west line of block 81 at the northwest corner and the west line of block 1005 at the southwest corner.

10. OCS Official Protraction Diagram. Keathley Canyon NG 15–5 (Approved June 5, 1974; Revised December 2, 1976). That portion east of a north-south line formed by the west line of block 37 at the northwest corner and the west line of block 1005 at the southwest corner.

D. *Houma District*—The U.S. Geological Survey's Houma District incorporates all, or the indicated portions, of the OCS areas shown on the following official maps:

1. OCS Leasing Map. Ship Shoal Area. Louisiana Map No. 5 (Approved June 8, 1954). That portion more than three geographical miles seaward from the line described in the supplemental decree of the United States Supreme Court, June 16, 1975 (U.S. versus Louisiana, 422 US 13).

2. OCS Leasing Map. Ship Shoal Area. South Addition. Louisiana Map No. 5A (Approved September 8, 1959).

3. OCS Leasing Map. South Pelto Area. Louisiana Map No. 6 (Approved June 8, 1954; Revised July 22, 1954; Revised December 9, 1954). That portion more than three geographical miles seaward from the line described in the supplemental decree of the United States Supreme Court. June 16, 1975 (U.S. versus Louisiana, 422 US 13).

4. OCS Leasing Map. Bay Marchand Area. Louisiana Map No. 6 (Approved June 8, 1954; Revised July 22, 1954; Revised December 9, 1954). That portion more than three geographical miles seaward from the line described in the supplemental decree of the United States Supreme Court. June 16, 1975 (U.S. versus Louisiana, 422 US 13).

5. OCS Leasing Map. South Timbalier Area. Louisiana Map No. 6 (Approved June 8, 1954; Revised July 22, 1954; Revised December 9, 1954). That portion more than three geographical miles seaward from the line described in the supplemental decree of the United States Supreme Court. June 16, 1975 (U.S. versus Louisiana, 422 US 13).

6. OCS Leasing Map. South Timbalier Area. South Addition. Louisiana Map No. 6A (Approved September 8, 1959; Revised July 22, 1968).

7. OCS Leasing Map. Grand Isle Area. Louisiana Map No. 7 (Approved June 8, 1954). That portion more than three geographical miles seaward from the line described in the supplemental decree of the United States Supreme Court. June 16, 1975 (U.S. versus Louisiana, 422 US 13).

8. OCS Leasing Map. Grand Isle Area. South Addition. Louisiana Map No. 7A (Approved September 8, 1959; Revised March 7, 1961).

9. OCS Official Protraction Diagram. Ewing Bank NH 15–12 (Approved February 15, 1973; Revised December 2, 1976). That portion that does not include blocks 932, 933, 937, 938, 975, 976, 978, 979, 981, 982.

10. OCS Official Protraction Diagram. Green Canyon NG 15–3 (Approved February 15, 1973; Revised December 2, 1976). That portion east of a north-south line formed by the west line of block 13 at the northwest corner and the west line of block 981 at the southwest corner.

11. OCS Official Protraction Diagram. Walker Ridge NG 15–6 (Approved June 5, 1974; Revised December 2, 1976). That portion east of a north-south line formed by the west line of block 13 at the northwest corner and the west line of block 981 at the southwest corner.

11. OCS Official Protraction Diagram. NG 16–2 (Approved December 2, 1976).

12. OCS Official Protraction Diagram. The Elbow NG 16–3 (Approved October 10, 1972; Revised August 1, 1973; Revised December 2, 1976).

13. OCS Official Protraction Diagram. NG 16–4 (Approved December 2, 1976).

14. OCS Official Protraction Diagram. NG 16–5 (Approved December 2, 1976).

15. OCS Official Protraction Diagram. NG 16–6 (Approved June 5, 1974; Revised December 2, 1976).

16. OCS Official Protraction Diagram. St. Petersburg NG 17–1 (Approved October 10, 1972; Revised December 2, 1976).

17. OCS Official Protraction Diagram. Charlotte Harbor NG 17–4 (Approved October 10, 1972; Revised December 2, 1976).

18. OCS Official Protraction Diagram. Mobile NH 16–4 (Approved October 10, 1972; Revised December 21, 1977).

19. OCS Official Protraction Diagram. Pensacola NH 16–5 (Approved October 10, 1972; Revised December 2, 1976).

20. OCS Official Protraction Diagram. Viosca Knoll NH 16–7 (Approved October 10, 1972; Revised February 15, 1973; Revised August 1, 1973; Revised December 2, 1976).

21. OCS Official Protraction Diagram. Destin Dome NH 16–8 (Approved October 10, 1972; Revised August 1, 1973; Revised December 2, 1976).

22. OCS Official Protraction Diagram. Apalachicola NH 16–9 (Approved October 10, 1972; Revised August 1, 1973; Revised January 15, 1976).

23. OCS Official Protraction Diagram. Mississippi Canyon NH 16–10 (Approved February 15, 1973; Revised December 2, 1976).

24. OCS Official Protraction Diagram. De Soto Canyon NH 16–11 (Approved June 5, 1974; Revised December 2, 1976).

25. OCS Official Protraction Diagram. Florida Middle Ground NH 16–12 (Approved October 10, 1972; Revised August 1, 1973; Revised December 2, 1976).

26. OCS Official Protraction Diagram. Gainesville, NH 17–7 (Approved October 10, 1972; Revised December 2, 1976).

27. OCS Official Protraction Diagram. Tarpon Spring NH 17–10 (Approved October 10, 1972; Revised December 2, 1976).

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FOR MORE INFORMATION: Phone Viola Wilson (202) 523–5240.

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

Transportation Department

Federal Aviation Administration—

69283 12–3–79 / Alteration of Transition area; Dallas-Fort Worth, Tex.

69284 12–3–79 / Alteration of Transition area; Giddings, Tex.

66190 11–19–79 / Alteration of Transition area; Bowie, Tex.

69282 12–3–79 / Redesignation of control zones in Mississippi

76270 12–26–79 / IFR Altitudes; miscellaneous amendments

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.** A complete listing for the first session of the 96th Congress was published in the Reader Aid section of the issue of January 17, 1980.