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BOOK 1:
Pages
59831-60150

BOOK 2:
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federal register

Book 1 of 2 Books
Thursday, September 11, 1980

Highlights

60362 **Alaska Natural Gas** Office of the Federal Inspector for the Alaska Natural Gas Transportation System and EEOC proposes equal opportunity regulations, issues affirmative action plans, proposed memorandum of understanding, and employee standards of conduct; comments on proposed rule by 10–10–80, rules effective 9–2–80 (4 documents) (Part V of this issue)

60394 **Utilities** HUD establishes new procedures for calculating allowable utilities consumption level by Public Housing Agency; effective 10–1–80 (Part VIII of this issue)

60390 **Low and Moderate Income Housing** HUD/FHC develops demonstration project for condominium ownership mortgage insurance; comments by 11–10–80; effective 10–14–80 (Part VII of this issue)

59868 **Grant Programs—Community Development Block Grants** HUD/CPD consolidates grants and planning assistance to certain Insular Areas; effective 10–1–80

59867 **Mobile Homes** HUD/FHC provides for insurance of financial institutions which make or purchase improvement loans; effective 10–1–80

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Highlights

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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59909 **Endangered Plants** Interior/FWS proposes to determine *Isotria medeoloides* (small whorled pogonia) to be an endangered species; public comments by 11–10–80; comments from States by 12–10–80

60306 **Grant Programs—Mass Transportation** DOT/UMTA proposes guidelines for grant-in-aid recipients in the management of their projects; comments by 12–8–80 (Part IV of this issue)

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Reg. 662, Amdt. 1; Valencia Orange Reg. 663]

Valencia 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 Valencia oranges that may be shipped to market during the period September 12–September 18, 1980, and increases the quantity of such oranges that may be so shipped during the period September 5–September 11, 1980. Such action is needed to provide for orderly marketing of fresh Valencia oranges for the periods specified due to the marketing situation confronting the orange industry.

DATES: The regulation becomes effective September 12, 1980, and the amendment is effective for the period September 5–September 11, 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. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Valencia Orange Administrative Committee and upon other available information. It is hereby found that the action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1979–80 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on January 22, 1980. A final impact analysis on the marketing policy is available from Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again publicly on September 9, 1980 at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges deemed advisable to be handled during the specified weeks. The committee reports the demand for Valencia oranges is strong.

It is further found that there is insufficient time between the date when information became available upon which this regulation and amendment are based and when the actions must be taken to warrant a 60-day comment period as recommended in E.O. 12044, and 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), and the amendment relieves restrictions on the handling of Valencia 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 times.

1. Section 908.963 is added as follows:

§ 908.963 Valencia Orange Regulation 663.

Order. (a) The quantities of Valencia oranges grown in Arizona and California which may be handled during the period September 12, 1980, through September 18, 1980, are established as follows:

(1) District 1: 396,000 cartons;
(2) District 2: 504,000 cartons;
(3) District 3: Open Movement.

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

2. Paragraph (a) in § 908.962 Valencia Orange Regulation 662 (45 FR 58509), is hereby amended to read:

§ 908.962 Valencia Orange Regulation 662.

(a) * * *
(1) District 1: 484,000 cartons;
(2) District 2: 616,000 cartons;
(3) District 3: Open Movement.

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

Dated: September 10, 1980.

D. S. Kuryloski,

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

[FR Doc. 80-28263 Filed 9-10-80; 11:40 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

14 CFR Part 1427

[CCC Cotton Loan Program Regulations Governing 1980 and Subsequent Crops]

Cotton Loan Program Regulations; Correction

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Correction of References.

SUMMARY: This document corrects references in FR Doc. 80–19738 appearing at page 44293 in the **Federal Register** issued Tuesday, July 1, 1980.

FOR FURTHER INFORMATION CONTACT: Carolyn Cozart, Price Support and Loan Division, (202) 447–6611.

SUPPLEMENTARY INFORMATION: The reference to Parts in the Supplementary Information, page 44294, first column, thirty-second line, should read "7 CFR 1427.1–.25." The reference to Parts appearing at page 44295, at § 1427.5, second column, paragraph (a), eighth line, should read "713, 718, 791 and 792."

Signed at Washington, D.C., on September 2, 1980.

John W. Goodwin,

Acting Executive Vice-President, Commodity Credit Corporation.

[FR Doc. 80-27578 Filed 9-10-80; 8:45 am]

BILLING CODE 3410-05-M

Animal and Plant Health Inspection Service

9 CFR Part 78

Brucellosis Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: These amendments add the county of Greene in Tennessee, to the list of Modified Certified Brucellosis Areas and delete it from the list of Certified Brucellosis-Free Areas because it has been determined that this county qualifies only as a Modified Certified Brucellosis Area. The effect of this action will provide for more restrictions on cattle and bison moved interstate from this area. These amendments will also add the county of Vernon in Missouri to the list of Noncertified Areas and delete it from the list of Modified Certified Brucellosis Areas because it has been determined that this county now qualifies only as a Noncertified Area. The effect of this action will provide for more restrictions on cattle and bison moved interstate from this area.

EFFECTIVE DATE: September 11, 1980.

FOR FURTHER INFORMATION CONTACT: Dr. A. D. Robb, USDA, APHIS, VS, Room 805, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8713.

SUPPLEMENTARY INFORMATION: A complete list of brucellosis areas was published in the **Federal Register** (45 FR 44253–44256) effective July 1, 1980. These amendments add the county of Greene in Tennessee to the list of Modified Certified Brucellosis Areas in § 78.21 and delete this county from the list of Certified Brucellosis-Free Areas in § 78.20, because it has been determined that it now qualifies only as a Modified Certified Brucellosis Area as defined in §78.1(m) of the regulations. These amendments add the county of Vernon in Missouri to the list of Noncertified Areas in § 78.22 and delete this county from the list of Modified Certified Brucellosis Areas in § 78.21, because it has been determined that it now qualifies only as a Noncertified Area as defined in § 78.1(n) of the regulations. This list is updated monthly and reflects actions taken under criteria for designating areas according to brucellosis status.

Accordingly, Part 78, Title 9, Code of Federal Regulations, is hereby amended in the following respects:

§ 78.20 [Amended]

1. In § 78.20, paragraph (b) is amended by deleting: *Tennessee.* Greene.

§ 78.21 [Amended]

2. In § 78.21, paragraph (b) is amended by adding: *Tennessee.* Greene, and by deleting: *Missouri.* Vernon.

§ 78.22 [Amended]

3. In § 78.22, paragraph (b) is amended by adding: *Missouri.* Vernon.

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; sec. 3, 33 Stat. 1265, as amended; sec. 2, 65 Stat. 693; and secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111–113, 114a–1, 115, 117, 120, 121, 125, 134b, 134f, 37 FR 28464, 28477; 38 FR 19141, 9 CFR 78.25.)

The amendments designating areas as Modified Certified Brucellosis Areas and Noncertified Areas impose restrictions presently not imposed on cattle and bison moved from that area in interstate commerce. The restrictions are necessary to prevent the spread of brucellosis from such areas.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register.**

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by Paul Becton, Director, National Brucellosis Eradication Program, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without opportunity for public comment and preparation of an impact analysis statement at this time.

This final rule will be scheduled for review under provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C., this 4th day of September 1980.

J. K. Atwell,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 80–27846 Filed 9–10–80; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 80–CE–27–AD; Amdt. 39–3902]

Airworthiness Directives; Cessna Model 172RG Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) applicable to Cessna Model 172RG airplanes. It requires that the fuel mixture control connection at the engine carburetor be inspected to assure that it is correctly assembled and torqued. This action is necessary because, if the connection is not properly assembled or torqued to a minimum value, slippage of the fuel mixture control at this connection could occur. This may result in an engine power loss due to a lean fuel/air mixture.

EFFECTIVE DATE: September 15, 1980.

COMPLIANCE: Within the next 25 hours time-in-service after the effective date of this AD.

FOR FURTHER INFORMATION CONTACT: Jack Pearson, Aerospace Engineer, Aircraft Certification Program, Room 238, Terminal Building 2299, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 942–7927.

SUPPLEMENTARY INFORMATION: A Cessna Model 172RG airplane has recently been involved in an accident following engine power loss attributed to a loose mixture control connection. Additional reports of mixture control slippage have been received. Investigation has disclosed that on some Cessna Model 172RG airplanes the carburetor mixture control wire was incorrectly assembled to the carburetor mixture control arm. Specifically, the position of correct AN960–10 and –10L washers was reversed or an AN960–10L washer was substituted for an AN960–10 washer and, in both instances, inadequate torque may have been applied to the mixture control connection. These conditions could permit slippage of the carburetor mixture control wire at this connection, which may result in an engine power loss due to a lean fuel/air mixture. The airplane manufacturer has changed engineering design and production procedures to preclude these conditions on subsequent production airplanes. Since the conditions described herein may exist on other in-service airplanes of the same type design, the FAA is issuing an AD, applicable to Cessna Model 172RG airplanes, requiring a visual inspection of the mixture control connection to the carburetor arm to assure the installation of the correct hardware and its positioning and a torque check of the securing nut.

Since a situation exists that requires the immediate adoption of this regulation, notice and public procedure under 5 U.S.C. 553(b) is impracticable and contrary to the public interest and good cause exists for making the amendment effective in less than thirty (30) days after the date of publication in the **Federal Register.**

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to be 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.

Cessna: Applies to Model 172RG (S/N 172RG0001 through 172RG0573) airplanes certificated in all categories.

Compliance: Required as indicated unless already accomplished.

To preclude slippage of the mixture control wire at the carburetor fuel mixture control arm and resultant power loss due to a lean fuel/air mixture, within the next 25 hours time-in-service after the effective date of this AD, accomplish the following:

(A) Visually inspect the mixture control connection on the right side of the carburetor for correct assembly. Assure that (1) Cessna Part Number (P/N) 9862010-9 mixture control assembly wire is secured to the Cessna P/N S2323-11 clamp at the carburetor mixture control arm with an AN960-10 (approximately .063 inch thick) washer installed between the mixture control wire and the MS20365-1032C nut and (2) an AN960-10L (approximately .032 inch thick) washer is installed between the mixture control wire and the mixture control arm.

(B) If the parts are assembled per Paragraph A), check to assure that the minimum torque on the MS20365-1032C nut is 15 inch-pounds and that the Cessna P/N S2323-11 clamp will swivel in the mixture control arm. Make the prescribed entry in the aircraft maintenance records indicating compliance with this AD and no further action is required.

(C) If the parts are not assembled per Paragraph A) remove and discard the MS20365-1032C nut. Install washers in the positions specified by Paragraph A) and install a new MS20365-1032C nut. Torque the nut to 15 inch-pounds minimum and assure that the Cessna P/N S2323-11 clamp will swivel in the mixture control arm.

(D) Airplanes may be flown in accordance with FAR 21.197 to a location where the inspection required by Paragraph A) may be accomplished.

(E) Any equivalent method of compliance with this AD must be approved by the Chief, Aircraft Certification Program, Federal Aviation Administration, Room 238, Terminal Building No. 2299, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 942-4285.

This amendment becomes effective September 15, 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(a); 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 FAA, Office of the Regional Counsel, Room 1558, Central Region, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on August 29, 1980.

Paul J. Baker,

Director, Central Region.

[FR Doc. 80-27681 Filed 9-10-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket Number 80-CE-29-AD; Amdt. 39-3912]

Airworthiness Directives; Cessna Model P210N Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) applicable to Cessna Model P210N airplanes. It requires installation of a placard and revision to the limitations section of the Pilot's Operating Handbook/Airplane Flight Manual (POH/AFM). The placard and revised limitations require that specific minimum fuel flows be maintained at various power settings and prohibit fuel flow adjustments that produce peak exhaust gas temperature about 60 percent power. In addition, a check and/or adjustment of the unmetered fuel pressure is required. This action is necessary because operation at some recommended power settings and fuel flows may induce engine detonation and cause failed engine pistons and/or cylinders. This has resulted in engine power loss, loss of engine oil and an in-flight fire.

EFFECTIVE DATE: September 15, 1980.

COMPLIANCE: Within the next 25 hours time-in-service after the effective date of this AD.

ADDRESSES: Cessna Single Engine Customer Care Service Information Letter SE80-80, dated August 26, 1980, applicable to this AD, may be obtained from Cessna Aircraft Company, Marketing Division, Attention: Customer Service Department, Wichita, Kansas 67201; Telephone (316) 685-9111. A copy of the service letter cited above is 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:

Jack Pearson, Aerospace Engineer, Aircraft Certification Program, Room 238, Terminal Building 2299, Mid-continent Airport, Wichita, Kansas 67209; Telephone (316) 942-7927.

SUPPLEMENTARY INFORMATION: Two Cessna Model P210N airplanes have recently been involved in accidents following power loss attributed to engine detonation causing failure of engine pistons and cylinder heads. In addition, 19 engines in Model P210N airplanes have been reported to have burned pistons, burned cylinders, and/or loose exhaust valve seats which also are believed to have been caused by engine detonation. The detonation condition is related to engine operation at excessively lean fuel/air ratios. Operation at some recommended power and fuel flow settings contained in the cruise performance charts of the airplane manufacturer's POH/AFM may cause engine detonation. Investigations have established that unmetered fuel pressure on some Cessna Model P210N airplanes may not be adjusted in accordance with the engine manufacturer's specifications. This condition may make it impossible to obtain minimum required fuel flows at some power settings. Either one or combinations of the above conditions could cause engine detonation, engine damage and power loss. Accompanying loss or release of engine oil has resulted in loss of forward visibility from oil on the windshield and an in-flight fire in the powerplant compartment.

To correct the above conditions, the airplane manufacturer has issued Cessna Single Engine Customer Care Service Information Letter SE80-80 dated August 26, 1980, which provides a placard, temporary engine operating instructions and instructions for checking engine-driven fuel pump unmetered pressure. These provisions have been incorporated in Cessna Model P210N airplanes commencing with S/N P21000577.

Since the conditions described herein are likely to exist in other airplanes of the same type design now in service, the FAA is issuing an AD applicable to Cessna Model P210N airplanes. This AD will require incorporation of the above-mentioned placard and POH/AFM revisions in the airplane and a check of the engine fuel pump unmetered pressure.

The FAA has determined that there is an immediate need for a regulation to assure safe operation of the affected airplanes. Therefore, notice and public procedure under 5 U.S.C. 553(b) is impracticable and contrary to the public interest, and good cause exists for making this amendment effective in less

than thirty (30) days after the date of publication in the **Federal Register.**

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD:

Cessna: Applies to Model P210N (S/Ns P21000001 through P21000576) airplanes certificated in all categories.

Compliance: Required as indicated unless already accomplished.

To reduce the possibility of engine detonation and resultant power loss, loss of engine oil and in-flight fires within the next 25 hours time-in-service after the effective date of this AD, accomplish the following:

(A) Install Cessna P/N 2105026-1 placard next to the fuel flow indicator which reads as follows:

"Set fuel flow per limitations section of POH/AFM.

Do not lean to "peak EGT" above 60% power." and operate the airplane in accordance with this limitation.

(B) Revise the limitations sections of the Pilot's Operating Handbook/Airplane Flight Manual (POH/AFM) by inserting the applicable revision specified below:

Airplane serial No.	Revision	Cessna part No.
P21000001 through P21000150	Rev. 3, Aug. 20, 1980	D1124R3-13PH
P21000151 through P21000385	Rev. 4, Aug. 20, 1980	D1153R4-13PH
P21000386 through P21000576	Rev. 4, Aug. 20, 1980	D1188R4-13PH

The revised limitations read as follows and the airplane must be operated in accordance with these limitations:

"Takeoff manifold pressure and fuel flow must be adjusted per Section 4 of the Pilot's Operating Handbook (POH) under "Takeoff Power Check."

During maximum continuous power operation, maintain fuel flow at not less than 162 pounds per hour (PPH). (Top of the white arc).

For maximum cruise power (33" MP/2500 RPM), do not lean below 125 PPH.

At 60% power or less as defined by the POH, normal fuel flow settings or normal leaning with the exhaust gas temperature (EGT) may be used in accordance with the POH.

Above 60% power, do not lean to "peak EGT" at any time.

Between 60% and 80% power, do not lean unless an EGT indicator is installed. If an EGT indicator is installed, do not lean EGT above that EGT needle position established during engine operation at 33" MP, 2500 RPM and 125 PPH fuel flow."

(C) Check and, if required, adjust the unmetered fuel pressure per the procedures defined by the Model P210 Series Service Manual, Paragraph 12-65, Revision 1 or later. Set the unmetered fuel pressure at 33 to 37 pounds per square inch at 2700 revolutions per minute.

(D) Airplanes may be flown in accordance with FAR 21.197 to a location where the check required by Paragraph C may be accomplished.

(E) Any equivalent method of compliance with this AD must be approved by the Chief, Aircraft Certification Program Office, Room 238, Terminal Building 2299, Mid-Continent Airport, Wichita, Kansas 67201; Telephone (316) 942-4285.

Cessna Single Engine Customer Care Service Information Letter SE80-80, dated August 26, 1980, pertains to the subject matter of this AD.

This amendment becomes effective September 15, 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 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 FAA, Office of Regional Counsel, Room 1558, Central Region, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Mo., on August 29, 1980.

Paul J. Baker,

Director, Central Region.

[FR Doc. 80-27687 Filed 9-10-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 80-CE-28-AD; Amendemt 39-3913]

Airworthiness Directives; Gates Learjet 23, 24, 25, 28, 29, 35 amd 36 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, superseding existing Airworthiness Directive (AD).

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 80-09-06, (Amendment 39-3764) and adopts a new AD applicable to Gates Learjet Model 23 airplanes equipped with jet pumps and all Gates Learjet Models 24, 25, 28, 29, 35 and 36 series airplanes. AD 80-09-06 required a one-time inspection of the tailcone service area and revision of the Airplane Flight Manual by the addition of a supplement requiring post-flight inspection of this same area. This superseding AD incorporates and continues the provisions of AD 80-09-06 until the motive flow shutoff valve is shrouded and drained per Gates Learjet Corporation Modification Kit No. AMK 80-7. In addition, the new AD prohibits field servicing of the motive flow shutoff valve and requires installation of the kit by December 15, 1980. This action is necessary to further reduce the potential of leaking fuel from contacting possible ignition sources in the tailcone area. Such a situation could result in an explosion and/or fire in this area.

EFFECTIVE DATE: September 15, 1980.

COMPLIANCE SCHEDULE: As prescribed in the body of the AD.

FOR FURTHER INFORMATION CONTACT: C. A. Hughes, Aerospace Engineer, Aircraft Certification Program, Room 238, Terminal Building 2299, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 942-7927.

SUPPLEMENTARY INFORMATION: As a result of reported P/N AV16E1182 motive flow shutoff valve o-ring seal leakage and fuel contamination of the tailcone service area of certain Gates Learjet airplanes, the FAA issued AD 80-09-06, Amendment 39-3764, effective May 8, 1980. This AD, applicable to Gates Learjet Models 23, 24, 25, 28, 29, 35 and 36 series airplanes, required a one-time inspection of the tailcone service area for leaks, integrity of fuel and hydraulic lines and of battery and electrical equipment for possible ignition sources. In addition, it provided for installation of a temporary Airplane Flight Manual Supplement specifying a post-flight inspection of the motive flow valves and tailcone service area for fuel leakage and drain blockage. Subsequent to the issuance of AD 80-09-06 several additional reports of motive flow shutoff valve leakage were received. Additional investigations determined that 42 out of 167 valves returned to the valve manufacturer for various reasons leaked. Also, investigations and tests established that field disassembly and improper reassembly of the valve can cause severe damage and cuts of one or both o-rings with resultant fuel leakage. The airplane manufacturer has revised its maintenance manuals to remove therefrom the approved repairs for motive flow valves.

To prevent any possibility of fuel leakage from a motive flow shutoff valve contaminating the tailcone service area, the airplane manufacturer has developed and is making available Airplane Modification Kit No. AMK 80–7. This kit provides parts and instructions for installation of motive flow shutoff valve shrouds and drain lines.

Since the conditions described herein are likely to exist or develop in other airplanes of the same type design, the FAA is issuing a new AD superseding AD 80–09–06 which is applicable to Gates Learjet Model 23 airplanes equipped with jet pumps and all Gates Learjet Models 24, 25, 28, 29, 35 and 36 series airplanes. This new AD incorporates and continues the provisions of AD 80–09–06 until the motive flow shutoff valve is shrouded and drained per Gates Learjet Corporation Modification Kit No. AMK 80–7. In addition, the new AD prohibits field servicing of the motive flow shutoff valve and requires installation of the aforementioned kit by December 15, 1980.

This regulation is in part relieving in nature. In addition, the FAA has determined that there is an immediate need for this regulation to assure safe operation of the affected airplanes. Therefore, notice and public procedure under 5 U.S.C. 553(b) is impracticable and contrary to the public interest, and good cause exists for making this amendment effective in less than thirty (30) days after the date of publication in the **Federal Register.**

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD:

Gates Learjet: Applies to the following Model 23, 24, 25, 28, 29, 35 and 36 series airplanes certificated in all categories:

Model and Serial Numbers

*23 (equipped with jet pumps)—23–003 thru 23–099.

*Note.—Model 23 airplanes were not equipped with jet pumps when manufactured. Model 23 airplanes which have been retrofitted with jet pumps in the field will be so identified on the title page of the Airplane Flight Manual.

24—24–100 thru 24–357.
25—25–003 thru 25–319.
28—28–001 thru 28–005.
29—29–001 thru 29–002.
35—35–001 thru 35–348.
36—36–001 thru 36–045.

Compliance: Required as indicated unless already accomplished. To reduce the possibility of fuel contamination and/or the presence of ignition sources in the tailcone service area, accomplish the following:

(A) Within the next 25 hours time-in-service after May 8, 1980:

1. Run each engine to takeoff thrust momentarily, shut down and immediately open the access cover under the tailcone service area and make the following visual inspections:

a. Inspect the fuel and hydraulic system components for deterioration or damage, leakage and stains indicating leakage, paying particular attention to the exterior of the P/N AV16E1182 motive flow shutoff values.

b. Inspect the batteries and electrical equipment for deterioration or damage and conditions which may cause arcing.

c. Inspect all vents and drains for obstruction or blockage.

d. Before further flight, correct any of the above-noted unsatisfactory conditions. Do not disassemble or reassemble motive flow shutoff valves in the field. Replace leaking valves with a new or factory rebuilt part.

2. Remove the Temporary Airplane Flight Manual Supplement, included in AD 80–09–06 as Figure 1, in the existing Airplane Flight Manual and in place thereof, install Temporary Airplane Flight Manual Supplement, included in this AD as Figure 1A, and comply with its instructions.

(B) On or before December 15, 1980, install Gates Learjet motive flow valve shrouds and drain lines per Modification Kit No. AMK 80–7. After accomplishing this modification, remove the Temporary Airplane Flight Manual Supplement required by Paragraph (A)2.

(C) Airplanes may be flown in accordance with FAR 21.197 to a location where the provisions of this AD can be accomplished.

(D) Any equivalent method of compliance with this AD must be approved by the Chief, Aircraft Certification Program Office, Room 238, Terminal Building 2299, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 942–4285.

This AD supersedes ASD 80–09–06, Amendment 39–3764.

This amendment becomes effective September 15, 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 FAA, Office of Regional Counsel, Room 1558, Central Region, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on August 29, 1980.

Paul J. Baker,

Director, Central Region.

[FR Doc. 80–27688 Filed 9–10–80; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 80–WE–39–AD; Amdt. 39–3909]

Airworthiness Directives; Lockheed Model L–1011 Series Airplane

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires inspection and installation of intercostals on certain Lockheed Model L–1011 series airplanes. The AD is prompted by a report of two missing intercostals which could result in reduction of fatigue life of adjacent structure.

DATES: Effective September 15, 1980. Compliance schedule—Initial compliance required within 100 hours' time in service from the effective date of this AD.

ADDRESSES: The applicable service information may be obtained from: Lockheed California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63–11, U33, B–1.

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: Robert T. Razzeto, 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: There has been a report that certain Lockheed Model L–1011 aircraft have been delivered with two intercostals missing between Fuselage Station 1725 and Fuselage Station 1745. The FAA has determined that the aircraft structure, with the two intercostal members missing, has a reduced fatigue life although capable of reacting ultimate loads. Since this condition is likely to exist or to develop on other airplanes of

the same type design, an airworthiness directive is being issued which requires inspection, repair if necessary, and installation of intercostals on certain Lockheed Model L-1011 series airplanes.

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:

Lockheed California: Applies to Model L-1011-385-1, -385-1-15, -385-3 airplanes, serial numbers listed below:
193G-1179, 193K-1024, 193K-1032, 193N-1083, 193N-1093, 193N-1094, 193N-1011, 193N-1102, 193N-1106, 193N-1132, 193N-1145, 193N-1146, 193N-1178, 193N-1182, 193V-1157, 193V-1159, 193V-1164, 193V-1165, 193V-1168, 193V-1174, 193W-1166, 193W-1172.

Compliance required as indicated, unless already accomplished.

To prevent fatigue damage to fuselage structure adjacent to C-3 cargo door accomplish the following:

(a) Within 100 hours' time in service from the effective date of this AD, inspect the airplane structure adjacent to aft side of the C-3 cargo door for the presence of intercostals P/N 1551612-131 and 1551612-119 in accordance with paragraph 2.A and 2.B of Lockheed Alert Service Bulletin 093-53-A190 dated August 1, 1980.

(b) If intercostals are missing, conduct a visual daily inspection of the aircraft adjacent structure in accordance with paragraph 2.C and 2.D of Lockheed Alert Service Bulletin 093-53-A190 dated August 1, 1980 until intercostals are installed.

(c) If cracks are found during inspection per paragraph (b) above, repair in a manner approved by Chief, Aircraft Engineering Division, FAA Western Region.

(d) Install intercostals P/N 1551612-131 and -119 within the next 800 flights from the effective date of this AD in accordance with paragraph 2.A of Lockheed Service Bulletin 093-53-190 dated August 8, 1980.

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

(f) 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 September 15, 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)

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

Issued in Los Angeles, California on August 26, 1980.

H. C. McClure,

Acting Director, FAA Western Region.

[FR Doc. 80-27682 Filed 9-10-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 79-NE-12; Amdt. 39-3911]

Airworthiness Directives; Pratt & Whitney Aircraft JT3D Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires removal from service of fifth stage compressor disks, P/N 426505, on Pratt & Whitney Aircraft JT3D-1MC7 turbofan engines. The AD is needed to prevent fatigue cracks which could result in disk fracture.

DATES: Effective—October 7, 1980. Compliance required not later than December 31, 1980.

FOR FURTHER INFORMATION CONTACT: Daniel P. Salvano, Engine Standards Section (ANE-215), Engineering and Manufacturing Branch, Flight Standards Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone: (617) 273-7347.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring removal from service all fifth stage compressor disks, P/N 426505, on Pratt & Whitney Aircraft JT3D-1MC7 turbofan engines was published in the **Federal Register** at 44 FR 57105, October 4, 1979. The proposal was prompted by five instances of cracks found in fifth stage compressor disks which could result in fracture.

Interested persons have been afforded the opportunity to participate in the making of the amendment. The Civil Aviation Authority (CAA) of the United Kingdom submitted its recommendation that the compliance date should be extended to allow operators 1 year rather than 6 months as proposed in the notice of proposed rulemaking (NPRM). CAA's position is that the 1 year compliance date would be compatible with the level of risk involved and would be more proportionate to the length of time the problem is known to have existed. Airline Engineering Limited of the United Kingdom also commented that a compliance date of July 1, 1980, would cause a serious disruption to its program plan concerning engine removals, spares procurement, and down time of aircraft. FAA concurs with the commentators that the July 1, 1980, compliance date proposed in the NPRM would have been unnecessarily restrictive and that extension of the compliance date to December 31, 1980, would not significantly affect the level of airworthiness.

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 AD:

Pratt & Whitney Aircraft. Applies to all Pratt & Whitney Aircraft JT3D-1-MC7 turbofan engine models.

Compliance required not later than December 31, 1980.

To preclude high cycle fatigue cracking of fifth stage compressor disks which could result in disk fracture, retire from service all fifth stage compressor disks, P/N 426505, and replace with either disk P/N 697105 or P/N 749605.

Upon submission of substantiating data, through an FAA Aviation Safety Inspector, the Chief, Engineering and Manufacturing Branch, New England Region, may adjust the compliance date.

A historical file on this AD is maintained in full by the FAA at its headquarters in Washington, D.C., and at the New England Region.

(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 Federal Aviation Administration 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.

Issued in Burlington, Massachusetts, on August 28, 1980.

John B. Roach,

Acting Director, New England Region.

[FR Doc. 80-27683 Filed 9-10-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-CE-11]

Designation of Federal Airways, Area Low Point Routes, Controlled Airspace and Reporting Points; Alteration of Transition Area—Newton, Iowa

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the 700-foot transition area at Newton, Iowa, to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Newton, Iowa Airport, utilizing the Newton, Iowa VOR as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: October 30, 1980.

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

SUPPLEMENTARY INFORMATION: A new instrument approach procedure to the Newton, Iowa Airport is being established utilizing the Newton, Iowa VOR as a navigational aid. The establishment of an instrument approach procedure based on this approach aid entails the alteration of the transition area at Newton, Iowa, at and above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Discussion of Comments

On page 45310 of the **Federal Register** dated July 3, 1980, the Federal Aviation Administration published a Notice of Proposed Rule Making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Newton, Iowa. Interested persons were invited to participate in this rule making proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rule Making.

Accordingly, Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1980, (45 FR 445), is amended effective 0901 GMT, October 30, 1980, by altering the following transition area:

Newton, Iowa

That airspace extending upward from 700 feet above the surface within a 7 mile radius of the Newton, Iowa Airport (Latitude 41° 40' 04" N, Longitude 93° 01' 25" W).

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.69 of the Federal Aviation Regulations (14 CFR 11.69))

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

Issued in Kansas City, Missouri, on August 28, 1980.

Paul J. Baker,

Director, Central Region.

[FR Doc. 80-27689 Filed 9-10-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-CE-12]

Designation of Federal Airways, Area Low Point Routes, Controlled Airspace and Reporting Points; Designation of Transition Area—Excelsior Springs, Mo.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to designate a 700-foot transition area at Excelsior Springs, Missouri, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Excelsior Springs, Missouri Memorial Airport, utilizing the Napoleon OMNI directional range as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: October 30, 1980.

FOR FURTHER INFORMATION CONTACT: Charles A. Sears, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-538, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: An instrument approach procedure to the Excelsior Springs Memorial Airport, Excelsior Springs, Missouri, is being established utilizing the Napoleon OMNI directional range as a navigational aid. The establishment of an instrument approach procedure based on this approach aid entails the designation of a transition area at Excelsior Springs, Missouri, at and above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Discussion of Comments

On pages 48652 and 48653 of the **Federal Register** dated July 21, 1980, the Federal Aviation Administration published a Notice of Proposed Rule Making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Excelsior Springs, Missouri. Interested persons were invited to participate in this rule making proceeding by submitting written comments on the proposal to the FAA. Three comments were received. The Aircraft Owners and Pilots Association and the Director of Aviation, Kansas City, Missouri, offered no objections to the proposal. The President of Missouri Aviation, Inc., offered no objection to the designation of the transition area; however, he was concerned that the DME requirement would exclude many of the locally-based aircraft from use of the approach since many are not DME equipped. He suggested the approach be established and published showing DME minimums as well as VOR minimums for use by non-DME equipped aircraft. The FAA concurs with, and will follow, this suggestion.

Accordingly, subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1980, (45 FR 445), is amended effective 0901 GMT, October 30, 1980, by adding the following new transition area:

Excelsior Springs, Mo.

That airspace extending upward from 700' above the surface within a 5-mile radius of the Excelsior Springs Memorial Airport (Latitude 39° 20' 14" N, Longitude 94° 11' 51" W) and within 3 miles each side of the Napoleon, Missouri VORTAC R348°

extending from the 5-mile radius area to 13 miles north of the airport.

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c); Sec. 11.69 of the Federal Aviation Regulations (14 CFR 11.69))

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

Issued in Kansas City, Missouri, on August 28, 1980.

Paul J. Baker,

Director, Central Region.

[FR Doc. 80-27690 Filed 9-10-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-CE-16]

Designation of Federal Airways, Area Low Point Routes, Controlled Airspace and Reporting Points; Designation of Transition Area—El Dorado, Kans.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to designate a 700-foot transition area at El Dorado, Kansas, to provide controlled airspace for aircraft executing a new instrument approach procedure to El Dorado, Kansas Municipal Airport, based on the El Dorado, Kansas, Non-Directional Radio Beacon (NDB), a navigational aid. The intended effect of this section is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: October 30, 1980.

FOR FURTHER INFORMATION CONTACT: Charles A. Sears, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-538, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: An instrument approach procedure to the El Dorado Municipal Airport, El Dorado, Kansas, is being established based on the El Dorado Non-Directional Radio Beacon (NDB), a navigational aid. This radio facility will provide new navigational guidance for aircraft utilizing the airport. The establishment of an instrument approach procedure based on this approach aid entails the designation of a transition area at El Dorado, Kansas, at and above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Discussion of Comments

On pages 48651 and 48652 of the **Federal Register** dated July 21, 1980, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at El Dorado, Kansas. Interested persons were invited to participate in this rule making proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

Accordingly, Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1980 (45 FR 445), is amended effective 0901 GMT, October 30, 1980, by adding the following new transition area:

El Dorado, Kans.

That airspace extending upwards from 700' above the surface within a 5-mile radius of the El Dorado Municipal Airport (Latitude 37°46'32" N, Longitude 96°48'58" W), and within 3 miles each side of the El Dorado NDB (Latitude 37°46'46" N, Longitude 96°48'58" W) 217° bearing, extending from the 5-mile radius area to 8.5 miles southwest of the NDB.

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.69 of the Federal Aviation Regulations (14 CFR 11.69))

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

Issued in Kansas City, Missouri, on August 28, 1980.

Paul J. Baker,

Director, Central Region.

[FR Doc. 80-27691 Filed 9-10-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-SO-53]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of Transition Area, Naples, Fla.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule redesignates extensions in the Naples, Florida, Transition Area. This action is required to protect instrument flight operations at the Naples Municipal Airport.

EFFECTIVE DATE: 0901 GMT, October 12, 1980.

ADDRESS: Federal Aviation Administration, Chief, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

FOR FURTHER INFORMATION CONTACT: Harlen D. Phillips, Airspace and Procedures Branch, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: 404-763-7646.

SUPPLEMENTARY INFORMATION: In the Naples, Florida, Transition Area described in § 71.181 (45 FR 445) extensions were designated on the 051° and 221° bearings from the Naples RBN to provide controlled airspace for aircraft executing the NDB RWY 4 and 22 standard instrument approach procedures at the Naples Municipal Airport. The final approach course bearings have changed to 049° and 220°. The newly established Collier County TVOR, located near the RBN, will support the VOR RWY 4 and 22 approach procedures.

In the interest of flight safety, it is necessary to correct the extension designations. This action requires no additional airspace, but does incorporate adequate protection for the VOR procedures. Therefore, notice and public procedure hereon are impracticable and contrary to the public interest.

Adoption of the Amendment

Accordingly, Subpart G, § 71.181 (45 FR 445) of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 GMT, October 12, 1980, as follows:

Naples, Fla.

"* * * 051° and 221° * * *" is deleted and "* * * 049° and 220° * * *" is substituted therefor.

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

Note.—The Federal Aviation Administration 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 East Point, Georgia, on August 29, 1980.

Louis J. Cardinali,

Director, Southern Region.

[FR Doc. 80-27692 Filed 9-10-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80 ARM-08]

Designation of Federal Airways, Area Low Routes, Controlled Airspace and Reporting Points; Alteration of Control Zone and Establishment of 700' and 1,200' Transition Areas

AGENCY: Federal Aviation Adminsitration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the Eagle, Colorado control zone, 1,200' transition area and establishes a 700' transition area to provide additional controlled airspace for aircraft executing the new localizer-type directional aid (LDA) nondirectional radio beacon (NDB) "A" (LDA/NDB–"A") standard instrument approach procedure developed for the Eagle County Airport, Eagle, Colorado.

EFFECTIVE DATE: 0901 GMT October 30, 1980.

FOR FURTHER INFORMATION CONTACT: Robert E. Greene, Operations, Procedures and Airspace Branch, Air Traffic Division, ARM–500, Federal Aviation Administration, Rocky Mountain Region, 10455 East 25th Avenue, Aurora, Colorado 80010; Telephone (303) 837–3937.

SUPPLEMENTARY INFORMATION:

History

On Monday, July 21, 1980, the FAA published, for comment (45 FR 48651), a proposal to alter the present control zone, establish a 700' transition area and amend the present 1,200' transition area at the Eagle County Airport, Eagle, Colorado. The only comments received as a result of the circular expressed no objection.

Rule

This amendment to Part 71 of the Federal Aviation Regulation (FAR's) alters the Eagle, Colorado control zone, 1,200' transition area and establishes a 700' transition area to provide additional controlled airspace for aircraft executing the new localizer-type directional aid (LDA) nondirectional radio beacon (NDB) "A" (LDA/NDB–"A") standard instrument approach procedure developed for the Eagle County Airport, Eagle, Colorado.

Drafting Information

The principal authors of this document are Robert E. Greene, Operations, Procedures and Airspace Branch, Air Traffic Division, and Daniel J. Peterson, office of Regional Counsel.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended effective 0901 GMT, October 30, 1980, as follows:

By amending subpart F, § 71.171 (45 FR 356) so as to establish the following control zone:

Eagle, Colo.

Within a 5-mile radius of the Eagle County Airport (latitude 39°38'42" N., longitude 106°54'43" W.); within 3 miles each side of 072° and 252° bearings from the Wolcott NDB (latitude 39°40'33" N., longitude 106°45'34" W.); extending from the 5-mile radius area to 13 miles northeast of the Wolcott NDB.

By amending subpart G, § 71.181 (45 FR 445) so as to establish the following transition areas:

Eagle, Colo.

That airspace extending upward from 700' above the surface within a 9-mile radius of the Eagle County Airport (latitude 39°38'42" N., longitude 106°54'43" W.); within 3.5 miles each side of the 072° bearing from the Wolcott NDB (latitude 39°40'33" N., longitude 106°45'34" W.) extending from the 9-mile radius area to 10 miles northeast of the Wolcott NDB; and that airspace extending upward from 1,200' above the surface within the area bounded by a line beginning at latitude 40°01'30" N., longitude 106°34'00" W.; to latitude 39°35'15" N., Longitude 106°10'30" W.; to latitude 39°34'00" N., longitude 106°35'40" W.; to latitude 39°25'00" N., longitude 107°07'10" W.; to latitude 39°45'45" N., longitude 107°15'45"; thence to point of beginning.

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

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

Issued in Aurora, Colorado on August 26, 1980.

Arthur Varnado,

Director, Rocky Mountain Region.

[FR Doc. 80-27693 Filed 9-10-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-AAL-11]

Alteration of Transition Area, Kenai, Alaska, and Revocation of Transition Area, Soldotna, Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will alter the Kenai, Alaska, transition area by expanding the 700-foot AGL transition area and will revoke the Soldotna, Alaska, 700-foot AGL transition area. The need for this action was created when the Kenai VOR runway 19 and ILS runway 19 approaches were amended by establishing an 8-mile DME arc northeast of the Kenai VORTAC with a minimum altitude of 1,900 feet MSL. The alteration will provide additional controlled airspace for aircraft which utilize the Kenai VORTAC 8 DME arc while transitioning to the final approach course for these approaches. The expanded Kenai transition area will encompass the present Soldotna 700-foot AGL transition area, thereby eliminating the need for the Soldotna, Alaska, transition area.

EFFECTIVE DATE: December 25, 1980.

FOR FURTHER INFORMATION CONTACT: Jerry Wylie, Operations, Procedures, and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, Alaska 99513, telephone (907) 271–5903.

SUPPLEMENTARY INFORMATION:

History

On July 7, 1980, the FAA proposed to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71)

by altering the Kenai, Alaska, transition area by adding additional controlled airspace to protect IFR aircraft utilizing the Kenai VORTAC 8 DME arc to transition to the final approach course for the ILS runway 19 or VOR runway 19 approaches to Kenai. The additional controlled airspace would encompass the present Soldotna, Alaska, transition area and therefore the need for a separate Soldotna transition area no longer exists. Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. The comments received expressed no objections.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 445) is amended, effective 0901 GMT, December 25, 1980, as follows:

Under § 71.181—Kenai, Alaska, the text is deleted and "That airspace extending upward from 700 feet above the surface within an 17.5-mile radius of the Kenai Municipal Airport (latitude 60°34'21"N., longitude 115°14'44"W.), extending clockwise from the 007° to the 290° bearing from the airport" is substituted therefor.

Soldotna, Alaska, the text is deleted.

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

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 1134, 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, and anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Anchorage, Alaska, on August 28, 1980.

Robert L. Faith,

Director, Alaska Region.

[FR Doc. 80-27761 Filed 9-10-80; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 241

[Release No. 34-17111]

Regulation of Transfer Agents

AGENCY: Securities and Exchange Commission.

ACTION: Interpretations of rules.

SUMMARY: The Commission has authorized the issuance of a release that sets forth in a summary manner the interpretations of its staff regarding rules that establish minimum performance standards and other requirements for all registered transfer agents. The purposes of the release are to aid interested persons in understanding how these rules have been interpreted, to resolve certain recurring issues that have arisen under these rules, and to provide uniform interpretations of these rules for the benefit of those persons subject to their requirements.

DATE: September 2, 1980.

FOR FURTHER INFORMATION CONTACT: Lisa Gessow Michelson, Branch Chief, or Thomas V. Sjoblom, Staff Attorney, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549, (202) 272-2895, or (202) 272-2910, respectively.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission, in order to facilitate the establishment of a national system for the clearance and settlement of transactions in securities under Section 17A of the Securities Exchange Act of 1934 (the "Act"), adopted Rules 17Ad-1 to 17Ad-7 (17 CFR 240.17Ad-1 to 17Ad-7) (the "turnaround rules"), which, among other things, establish minimum performance standards and recordkeeping requirements for all registered transfer agents.[1] Numerous oral and written requests for interpretations of the turnaround rules have been presented to the Commission's staff. To provide guidance on the subjects and problems raised by such requests and on other significant recurring issues under those rules, the Commission has authorized the issuance of this release, which sets forth the views of its Division of Market Regulation.

Although many of the issues which have arisen under the turnaround rules have previously been addressed by the staff in interpretive and no-action letters that are publicly available, the staff has further clarified, and in certain instances revised, some of the positions expressed in those letters. Attention in this regard is directed particularly to Questions (4), (8), (9), (14), (26), (34), (40), (41) and (100) herein. To the extent that views expressed in previously issued interpretive and no-action letters are not discussed in this release, those views may still be considered to represent the staff's position on the question raised therein.

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[1] Securities Exchange Act Release No. 13636 (June 16, 1977) (hereinafter cited as "Release No. 13636") [42 FR 32404] (Vol. 12, No. 9 SEC Docket 853 (June 28, 1977) (hereinafter cited as "SEC Docket")).

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I. Rule 17Ad–1: Definitions [2]

A. *Item—Rule 17Ad–1(a):* The term "item" means (1) a certificate or certificates of the same issue of securities covered by on ticket (or, if there is no ticket, presented by one presentor) presented for transfer, or (2) an instruction to a transfer agent which holds securities registered in the name of the presentor to transfer or to make available all or a portion of those securities. (3) In the case of an outside registrar, each certificate to be countersigned is an item.

(1) *Question:* Does the term "item," as the basic unit upon which performance standards and other requirements are formulated, apply only to securities registered under Section 12 of the Act?

Answer: No. Under Section 17A(c)(1) of the Act, a transfer agent must be registered with its appropriate regulatory agency if it uses the mails or any means or instrumentality of interstate commerce to perform any transfer agent function with respect to any security either registered under Section 12 of the Act,[3] or which would be required to be registered except for the exemptions provided by Sections 12(g)(2)(B) (securities issued by registered investment companies) or 12(g)(2)(G) (securities issued by certain insurance companies) of the Act ("qualifying securities"). Once a transfer agent is registered, the turnaround rules apply to all securities, including securities which are not qualifying securities, for which the registered transfer agent performs transfer agent functions. Accordingly, the term "item," and the use of the word "securities" in defining an "item," refers to *all* securities for which a registered transfer agent performs transfer agent functions, whether or not all such securities are qualifying securities.

Illustration (a): Facts: A registered transfer agent performs transfer agent functions for an issue of qualifying securities. It also performs transfer agent functions for nine other issues of securities which are not qualifying securities. Interpretation: The turnaround rules apply to all ten issues of securities.

Illustration (b): Facts: A registered bank transfer agent performs transfer agent functions for the securities of an open-end, management company registered under the Investment Company Act of 1940 ("mutual fund shares") and for its own shares which are not qualifying securities. Interpretation: The certificates and instructions for transfer pertaining to the bank's own shares and the mutual fund shares are "items" for purposes of the turnaround rules. Accordingly, the turnaround rules apply to the bank's own shares even though the bank's shares are not qualifying securities. In addition, except as provided in Rule 17Ad–4(a), the turnaround rules apply to the mutual fund shares.

(2) *Question:* What are the essential elements in determining whether an "item" has been received by the transfer agent?

Answer: In addition to certificates to be countersigned by an outside registrar, Rule 17Ad–1(a) refers to two general categories of "items": certificates and instructions.

The first part of the definition of "item" refers to *certificates.* An "item" exists for purposes of the turnaround rules if the certificates are (i) of the *same issue* of securities, (ii) covered by *one ticket, or* if there is no ticket, presented by *one presentor, and* (iii) presented for *transfer,* as defined in Rule 17Ad–1(d).

The second part of the definition of "item" concerns *instructions.* An "item" exists if the instruction requests a transfer agent (i) that holds securities registered in the name of the presentor, (ii) to *transfer* (as defined in Rule 17Ad–1(d)) *or* to *make available* (as defined in Rule 17Ad–1(c)), (iii) all or a portion of the securities held in its possession or custody. For example, a shipment control list ("SCL") containing instructions from a depository to a transfer agent holding, under a transfer agent custodian or other arrangement, a balance certificate registered in the name of the depository's nominee to withdraw by transfer under the Fast Automated Securities Transfer ("FAST") program some of those securities and to make them available to the depository would constitute an "item." [4]

(3) *Question:* If a registered transfer agent is requested to replace a lost certificate, is the request an "item" presented for transfer?

Answer: No. In this instance, the transfer agent replaces a lost certificate upon receipt of an indemnity bond. No certificate has been presented for transfer, and the transfer agent is not making available any securities which are registered in the name of the presentor and are being held by the transfer agent.

(4) *Question:* When several certificates of the same issue of securities have been presented for transfer on several occasions during the same day by the same presentor, has only one item been presented for transfer?

Answer: No. Each time a single certificate is presented for transfer by one presentor, one item has been presented for transfer. Similarly, when there is no ticket, each time certificates of the same issue of securities are presented for transfer at the same time by one presentor, one item has been presented for transfer. In the latter case, certificates presented at different times must not be aggregated as one item, even though all certificates are of the same issue of securities and even though the same person was the presentor.

Illustration: Facts: At 2:00 p.m. on a business day, a messenger for a broker-dealer presents at the "window" of the transfer agent's premises two 10 share certificates of Company A's Class A common stock. At 10:30 a.m. on the next business day, the same messenger from the same broker-dealer presents at the "window" of the transfer agent's premises two more 10 share certificates of Company A's Class A common stock. Interpretation: Pursuant to Rule 17Ad–2(a), both presentments were received on the same business day. However, two items were presented for transfer because the presentments occurred at different times, even though the certificates were of the same issue of securities and even though the presentor was the same in both instances.

(5) *Question:* Is there a maximum number of certificates of the same issue of securities which may be presented for transfer at a single time and still be considered a single "item"?

Answer: No. Only one item is presented for transfer, regardless of the number of certificates, as long as all the certificates presented at the same time are (a) of the same issue of securities, and (b) covered by one ticket, or if there is no ticket, presented by one presentor.

(6) *Question:* How many certificates of the same issue of securities may be "covered by one ticket"?

[2] The captions used hereinafter are not intended and must not be construed as interpretations of the substance of each rule. The captions are used for reference only.

[3] *See generally* Sections 12(a), 12(b) and 12(g)(1) of the Act.

[4] *See* Release No. 13636. (SEC Docket, at 855.)

Answer: If all certificates are of the same issue of securities, there is no limit to the number of certificates which may be covered by one ticket.

(7) *Question:* When the presentor includes certificates representing securities of nine different issues under one ticket, to be registered in the name of the presentor's nominee, how many items have been presented for transfer?

Answer: Nine. Since the certificates represent nine different issues, nine items have been presented for transfer.

(8) *Question:* Is each broker-originated-window-ticket contained in or attached to an SCL a separate item?

Answer: No. An SCL, not each broker-originated-window-ticket attached thereto, is a separate item.

(9) *Question:* Is the entire SCL one item or is each line on an SCL considered a separate item?

Answer: The entire SCL, and not each line thereon, is a single "item." [5]

(10) *Question:* When a transfer agent receives certificates covered by one instruction from one presentor to transfer the shares to a number of shareholders, resulting in the issuance of a greater number of separate certificates, how many items have been presented for transfer?

Answer: Assuming that all certificates presented for transfer are of the same issue of securities, only one item has been presented for transfer since there is only one presentor.

Illustration: Facts: A transfer agent receives five certificates from one broker under one transmittal letter requesting that the total amount of shares be transferred to ten shareholders in 20 separate certificates. Interpretation: There is only one presentor. Therefore, assuming all five certificates are of the same issue of securities, only one item has been presented for transfer.

(11) *Question:* Do either of the following constitute an "item" presented for transfer:

(a) A bond called for partial reduction only?

Answer: No. If there is only a partial reduction of the bond, *i.e.*, the bond is subject to a series of partial cash redemptions and has been presented for one of them, the bond is not an "item" subject to the turnaround rules. As stated in Question (2) above, one of the elements of an "item," when a certificate is involved, is that the certificate be "presented for transfer." "Transfer" is defined in Rule 17Ad–1(d) to include, among other things, cancellation of a certificate and issuance of a new one. However, when a bond is presented for partial redemption only, the certificate presented is not cancelled and a new certificate is not issued. Accordingly, since there is no "transfer," the certificate has not been "presented for transfer" as required by Rule 17Ad–1(a) and, therefore, is not an "item."

(b) A bond called for partial reduction and transfer?

Answer: Yes. If the bond has been presented for both partial reduction and transfer, then it is an "item." [6]

(12) *Question:* Does an issuer's instruction to effect a stock dividend payable from previously authorized but unissued shares constitute an "item"?

Answer: No. Since no certificates are presented for transfer, and since the transfer agent does not hold the securities as registered in the name of the issuer-presentor, a stock dividend issued from previously authorized but unissued shares (*i.e.*, original issue securities) is not an item.

(13) *Question:* Is an issuer's instruction to a registered transfer agent to issue shares pursuant to the company's stock purchase plan considered an "item" subject to the turnaround rules?

Answer: If the shares issued pursuant to a stock purchase plan are original issue securities, the instruction to issue certificates for those shares is not an "item," since no certificates are presented for transfer and since the instruction does not relate to securities registered in the name of the issuer-presentor and already in the transfer agent's possession.

However, if treasury shares are used, the instruction relates to securities held by the transfer agent and registered in the name of the presentor-company. Accordingly, the instruction constitutes an item subject to the turnaround rules.[7]

(14) *Question:* When the transfer agent, pursuant to a transfer agent custodian or other arrangement, holds a balance certificate registered in the name of the depository's nominee, do deposits of certificates by a depository, and do fanfold instructions attached to an SCL to withdraw by transfer under the FAST program any shares and to reduce the balance certificate constitute "items"?

Answer: Yes. Under the first part of the definition of an "item," [8] certificates deposited by the depository constitute items. The third element—"presented for transfer"—is met because "transfer," as defined in Rule 17Ad–1(d), includes registration of the change of ownership without the physical issuance of certificates.

Under the second part of the definition of an "item," [9] if the transfer agent receives an SCL with fanfold instructions from the depository to withdraw by transfer under the FAST program any shares and effects transfer by reducing the balance certificate and by issuing certificates, the SCL with such instructions would also constitute an "item."

B. *Outside Registrar—Rule 17Ad–1(b):* The term "outside registrar" with respect to a transfer item means a transfer agent which performs only the registrar function for the certificate or certificates presented for transfer and includes the persons performing similar functions with respect to debt issues.

(15) *Question:* Do the federal securities laws prohibit a registered transfer agent from performing the functions of both a transfer agent and a registrar?

Answer: No. The federal securities laws do not prohibit a single transfer agent from performing both functions, nor do the federal securities laws require an issuer to engage two separate entities for purposes of performing transfer agent and registrar functions.[10]

C. *Made Available—Rule 17Ad–1(c):* An item is "made available" when (1) In the case of an item for which the services of an outside registrar are not required, or which has been received from an outside registrar after processing, the transfer agent dispatches or mails the item to, or the item is awaiting pick-up by, the presentor or a person designated by the presentor, or (2) In the case of an item for which the services of an outside registrar are required, the transfer agent dispatches or mails the item to, or the item is awaiting pick-up by, the outside registrar, or (3) In the case of an item for which an outside registrar has completed processing, the outside registrar dispatches or mails the item to, or the item is awaiting pick-up by, the presenting transfer agent.

[5] The entire SCL is a single item, regardless of whether some certificates or instructions pertaining to any line on an SCL may be classified as "routine," and other certificates or instructions attached to the SCL may be classified as "non-routine." *See* Question (34) and note 29 *infra.*

[6] However, because the transaction includes a partial redemption, the item is "non-routine" under Rule 17Ad–1(i)(5). *Cf.* Question (43) *Infra.*

[7] When any additional instruction is necessary before transfer can be effected, the item is considered non-routine under Rule 17Ad–1(i)(3). *See* Question (38) *infra.*

[8] *See* Rule 17Ad–1(a) and Question (2) *supra*, and Release No. 13636. (SEC Docket, at 855).

[9] *Id.*

[10] This matter is largely governed by state law. In addition, the various national securites exchanges may require separte entities. *See e.g.*, NYSE Company Manual, Section A1, Agencies, at A–5.

(16) *Question:* What is the meaning of "dispatched" for purposes of Rule 17Ad–1(c)?

Answer: An item is considered "dispatched" when it leaves the premises where transfer agent functions are performed *and* is sent to the receiving party or to a location from which it is picked up by the receiving party.[11]

(17) *Question:* When is an item considered "mailed" for purposes of Rule 17Ad–1(c)?

Answer: An item is considered "mailed" either when it is delivered to a location from which it is collected by the U.S. Postal Service or when it is being delivered to the U.S. Postal Service.[12]

(18) *Question:* When a transfer agent, after completing its performance of both the transfer and registrar functions, delivers *by noon* on the third business day a completed item in a properly addressed envelope to its on-premises mail room from which the mail is picked up daily at 5:30 p.m. by the U.S. Postal Service, is the item considered to have been made available when it reaches the mail room?

Answer: Yes. Rule 17Ad–1(c)(1) indicates that an item is "made available" when the transfer agent "mails" the item to the presentor or a person designated by the presentor. In this instance, the mail room serves as a designated drop area from which the U.S. Postal Service makes daily pickups. More importantly, since the completed item was delivered to the mail room *by noon* of the third business day as required by Rule 17Ad–2(a),[13] the item is considered to have been mailed[14] and, accordingly, "made available."

(19) *Question:* After the transfer agent completes transfer, the items are placed into an outgoing mail basket from which they are picked-up by an in-house mail carrier. The carrier then delivers the items to the transfer agent's central mail facility, located several miles away, which, in turn, delivers the items to the U.S. Postal Service. When are the items "made available"?

Answer: The transfer agent makes the items available when the central mail facility "mails the item[s] to * * * the presentor." Thus, in this instance, the items are "made available" when they are being delivered to the U.S. Postal Service.[15]

D. *Transfer—Rule 17Ad–1(d):* (There are two parts to, or methods which describe, the definition of "transfer.") The "transfer" of an item is accomplished (1) when, in accordance with the presentor's instructions, all acts necessary to cancel the certificate or certificates presented for transfer and to issue a new certificate or certificates, including the performance of the registrar function, are completed and the item is made available to the presentor by the transfer agent, or (2) when, in accordance with the presentor's instructions, a transfer agent which holds securities registered in the name of the presentor (a) completes all acts necessary to issue a new certificate or certificates representing all or a portion of those securities and makes available the new certificate or certificates to the presentor or a person designated by the presentor, or (b) with respect to those transfers of record ownership to be accomplished without the physical issuance of certificates, completes registration of change in ownership of all or a portion of those securities.

(20) *Question:* What is the status of an item rejected at the window of the transfer agent's premises?

Answer: Items presented for transfer but rejected at the window are not received for transfer and, accordingly, are not subject to the turnaround rules.[16]

(21) *Question:* How should a transfer agent treat an item which, after some internal circulation and review, is rejected as unacceptable for transfer?

Answer: The item should be considered as rejected. Since the transfer agent, pursuant to Rule 17Ad–6(a)(1), made a record showing the date the item was received from the presentor, that record should indicate that the item was subsequently rejected, so that the item does not appear as an "open" item on the transfer agent's records. In addition, if an internal control ticket was prepared prior to the time of rejection, the ticket must be traceable to any rejection notice sent to the presentor.

The item should not be considered non-routine under Rule 17Ad–1(i)(3) and should not be logged in as a non-routine item under Rule 17Ad–6(a)(2)(iv).

Finally, since these items are considered rejected, they are not included in the records required by Rule 17Ad–6(a)(2) and (a)(4) used to compute the number of items turned around pursuant to Rule 17Ad–2(a).

(22) *Question:* When a transfer agent, pursuant to a transfer agent custodian or other arrangment, holds a balance certificate representing securities registered in the name of a depository's nominee, does "transfer" occur when the transfer agent either (a) issues new certificates representing a portion of those securities and makes the certificates available to the depository, or (b) registers a change in ownership from the name of a participant in a depository to the name of the depository's nominee without a physical issuance of securities?

Answer: In either case, such transfers fall within the second method of "transfer." Thus, although a "transfer" usually will involve cancelling old certificates and issuing new certificates, no physical issuance of certificates need occur—*e.g.*, when a depository is the presentor and it requests the transfer agent, which holds a balance certificate, to complete registration of a change of ownership from the name of the depositor's participant to the name of the depository's nominee.[17]

E. *Turnaround—Rule 17Ad–1(e):* The "turnaround" of an item is completed (1) when transfer is acomplished, or (2) when an outside registrar is involved, the transfer agent in accordance with the presentor's instructions completes all acts necessary to cancel the certificate or certificate presented for transfer and to issue a new certificate or certificates, and the item is made available to an outside registrar.

(23) *Question:* If an outside registrar is involved, when is turnaround completed?

Answer: Turnround is completed when the item is made available to the outside registrar after the transfer agent has cancelled the old certificate and has issued the new certificate in accordance with the presentor's instructions.

(24) *Question:* Is turnaround completed when the transfer agent makes the item available to an outside registrar, even if the outside registrar performs its function on the transfer agent's own premises?

Answer: Yes. Rule 17Ad–1(c)(2), in describing how an item is "made available" to an outside registrar, does not specify *where* the transfer agent must dispatch or mail the item. In addition, Rule 17Ad–1(b) does not specify *where* an outside registrar must perform its function. Thus, turnaround is completed when a transfer agent makes the item available to an outside registrar, regardless of whether the registrar performs its function on or off the transfer agent's premises.[18]

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[11] *See* Release No. 13636. (SEC Docket, at 855).

[12] *Id.*

[13] The result would be different if the item is not delivered to the mail room by noon on the third business day as required by Rule 17Ad–2(a).

[14] *See* note 12 *supra* and Question (17).

[15] *Id.* Any delay occurring before the item reaches the U.S. Postal Service must be recorded on the record maintained under Rule 17Ad–6(a)(1).

[16] *See* Release No. 13636. (SEC Docket, at 856).

[17] *Id.*

[18] However, the transfer agent must maintain, pursuant to Rule 17Ad–6(a)(1)(ii), records showing clearly when the item was made available to the outside registrar.

Illustration: Facts: A New York transfer agent has a subsidiary transfer agent operation located in Chicago, which receives the items for transfer. The cancelled certificate is forwarded to the New York transfer agent for issuance of the new certificate. A bank in New York, acting as outside registrar, daily performs its functions on the New York transfer agent's premises. Interpretation: The New York transfer agent completes "turnaround" when the new certificate is made available to the ouside registrar's employees on the New York transfer agent's premises.

(25) *Question:* Is an item made available and, therefore, turnaround completed, when, after the old certificate is cancelled and the new one issued, the item is placed by noon on the third business day following its receipt in the mail room of the transfer premises for the only daily pick-up at 5:30 p.m. by the U.S. Postal Service?

Answer: Yes. Turnaround is completed either (a) when transfer is accomplished in accordance with Rule 17Ad–1(d), which requires as the last step in the transfer of the item making it available to the presentor (or a person designated by the presentor), or (b) when an outside registrar is involved, the item is made available to the outside registrar.

Under Rule 17Ad–1(c), an item is "made available" when, among other things, the transfer agent "mails" the item. The item is considered mailed when it is placed by noon of the third business day following its receipt in the mail room on the transfer premises from which it is collected by the U.S. Postal Service.[19]

F. *Receipt—Rule 17Ad–1(g):* The "receipt" of an item or a written inquiry or request occurs when the item or written inquiry or request arrives at the premises at which the transfer agent performs transfer agent functions, as defined in Section 3(a)(25) of the Act.

(26) *Question:* Are the following considered items received for transfer and, accordingly, subject to the turnaround rules:

(a) Items addressed to another transfer agent but inadvertently delivered to the subject transfer agent?

Answer: No. The transfer agent does not perform transfer agent functions for such items.

(b) Items addressed to the subject transfer agent, but for which the transfer agent does not perform transfer agent functions?

Answer: No, since the transfer agent does not perform transfer agent functions for such items.

(c) Items for which the transfer agent is the appropriate transfer agent but, because of nonpayment of fees, refuses to transfer such securities?

Answer: If these items are promptly returned to the presentor, they would not be considered received for transfer.[20]

(27) *Question:* Has "receipt" occurred when the item arrives in the mail room at the transfer premises?

Answer: Yes. Since the item arrived at the premises at which the transfer agent performs transfer agent functions, receipt has occurred for purposes of the turnaround rules.[21] The fact that the item was received in the mail room instead of the actual office or department where transfer agent functions are performed is immaterial. Thus, when the mail room is located in the *same* building as, or in a building connected to, the transfer premises, receipt occurs when the item arrives at the mail room. In this connection, the transfer agent must minimize delays which are subject to its control. It will be in the transfer agent's interest, therefore, to ensure that a received item is promptly forwarded from the mail room to the transfer department.[22]

(28) *Question:* Has "receipt" occurred when items arrive at a "drop" located a significant distance from the transfer premises?

Answer: No. The items have not been received, for purposes of the turnaround rules, until they arrive at the actual premises where transfer agent functions are performed. Thus, since the items have not arrived at the actual transfer premises when they arrive at such a "drop," they are not considered as having been received under Rule 17Ad–1(g).[23] However, when items are received at a "drop," a registered transfer agent must have, pursuant to Rule 17Ad–2(f), appropriate procedures to assure, and must assure, that items are promptly forwarded to the actual transfer premises.

(29) *Question:* In those cases where the named transfer agent for an issue contracts with a service bureau,[24] which also is a registered transfer agent, to perform the transfer agent functions for the issue, including transferring the certificates and maintaining the security holder records, does receipt of an item occur when it arrives at the premises of the named transfer agent?

Answer: No. An item is "received" when it arrives at the premises of the transfer agent that actually performs the transfer agent functions. Under the facts as presented, the named transfer agent does not perform the transfer agent functions; rather, those activities are performed at the premises of the service bureau. Accordingly, for purposes of the turnaround rules, receipt of the item occurs when it arrives at the service bureau's premises.

However, pursuant to Rule 17Ad–2(f), both the service bureau and named transfer agent must have appropriate procedures to assure, and must assure, that items are promptly forwarded to the premises of the service bureau.

Illustration: Facts: Both Company A and Company B are registered with their appropriate regulatory agency as transfer agents. Company A is the named transfer agent for an issue. Company A has contracted with Company B, a service bureau, to perform on behalf of Company A the transfer agent activities for that issue. Company A does not maintain or update the securityholder records. When an item is presented for transfer to Company A, Company A promptly forwards the item to Company B. Company B date-stamps the item upon receipt, completes turnaround, and makes the item available directly to the presentor. Company B daily sends to Company A a print-out of transfers completed by Company B. Interpretation: Company A and B must have appropriate procedures to assure, and must assure, that the item is promptly forwarded to Company B's premises. Receipt occurs, for the purposes of the turnaround rules, when the item arrives at Company B's premises. In addition, Company B must maintain the appropriate records [25] and meet the required turnaround performance.

G. *Business Day—Rule 17Ad–1(h):* A "business day" is any day during which the transfer agent is normally open for business and excludes Saturdays, Sundays and legal holidays or other holidays normally observed by the transfer agent.

(30) *Question:* Would any of the following circumstances give rise to a determination that a given day not be considered a "business day" for purposes of the turnaround rules:

[19] *See* Question (17) *supra.*

[20] If the transfer agent *retains* the item, it must be considered "received" for transfer but may be classified as "non-routine." *See* Question (40) *infra.*

[21] *See* Release No. 13636. (SEC Docket, at 856).

[22] *Id.*

[23] *Id.*

[24] As used in this release, the terms "named transfer agent" and "appointed transfer agent" refer to the registered transfer agent engaged by the issuer to perform the transfer agent functions for an issue of securities. Except where the term "outside service bureau" is used, the term "service bureau" refers to an entity that performs the transfer agent functions for that issue for the named transfer agent and is a registered transfer agent. A service bureau arrangement is sometimes also referred to as a "private label service."

[25] *See* Rules 17Ad–6 and 17Ad–7.

(a) Days when, because of severe inclement weather, city government and other businesses are forced to close down, virtually all forms of transportation are not available and ordinary commerce is suspended, but a bank transfer agent nevertheless opens its transfer department with a skeleton staff only?

Answer: Yes. Such days are not considered "business days" for purposes of the turnaround rules.

(b) Days when various public transportation systems have ceased to operate because of union or other strikes?

Answer: No. In these circumstances, most businesses, including transfer agents, are still "normally open for business." Transit strikes do not terminate basic business operations, even though it may be more difficult for employees to get to work.[26]

(c) Days when businesses are requested or required to close by order of a city, municipal or state government?

Answer: Yes. Such days would not be considered business days for purposes of the turnaround rules, since most, if not all, businesses would not normally be open.

H. *Routine—Rule 17Ad–1(i):* (The definition of a "routine" item is stated in the negative—*i.e.*, an item received for transfer will be deemed routine unless it falls within the specified exceptions enumerated in Rule 17Ad–1(i)(1)–(8).)[27]

(31) *Question:* When should a transfer agent classify an item as "routine" or "non-routine"?

Answer: The decision that an item is routine or non-routine must be made as soon as the item is reviewed upon receipt at the transfer premises. Once a transfer agent determines that an item is "routine," the item generally retains that classification throughout the completion of turnaround. Thus, an otherwise routine item does not become non-routine by virtue of internal delays in the turnaround of the item.

(32) *Question:* Once an item is determined to be "non-routine," does it remain so, even after additional documentation has been received and reviewed and the item can be transferred?

Answer: Yes. An item that is determined to be "non-routine" retains that classification until turnaround is completed.

(33) *Question:* What is the effect under the turnaround rules when an item is classified as non-routine?

Answer: Some of the turnaround rules apply only to routine items. For example, the three business day turnaround requirement in Rule 17Ad–2(a) applies only to routine items. If the item is non-routine, Rule 17Ad–2(e) requires that the item receive "diligent and continuous attention" and must be turned around "as soon as possible."

Other rules, while applying to both routine and non-routine items, distinguish between the two. For example, the recordkeeping rules in Rule 17Ad–6 contain separare requirements depending on whether the item is routine or non-routine.

Thus, every transfer agent is encouraged to examine carefully each turnaround rule.

(34) *Question:* Is an SCL which has attached thereto some certificates or instructions that might be denominated non-routine treated partially as a non-routine item?

Answer: No. An SCL is a single,[28] routine item, regardless of whether some of the certificates or instructions attached thereto pertain to a line on the SCL that may be classified as non-routine.[29]

1. *Requisitioning Certificates—Rule 17Ad–1(i)(1):* An item is "routine" if it does not require requisitioning certificates of an issue for which the transfer agent, under the terms of its agency, does not maintain a supply of certificates.

(35) *Question:* May a registered transfer agent, which, under the terms of its agency, is obligated to maintain a supply of certificates for an issue of securities, treat as "non-routine" items received for transfer if the transfer agent has exhausted its supply of certificates for that issue?

Answer: No. A transfer agent, which is required to maintain under the terms of its agency a working supply of unissued certificates, must treat items received for transfer as "routine," even though it must requisition additional certificates from the issuer or another source before transfer may be effected. There is no exception from the definition of "routine" in such cases, even if the transfer agent had earlier made a timely request for more certificates and they were not forthcoming, or even if there was an unusually large volume of trading and resulting transfers that exhausted its supply of certificates earlier than anticipated. The absence of such an exception encourages the implementation of effective inventory control and efficient reorder procedures.[30]

2. *No Additional Documents, Explanations or Endorsements Required—Rule 17Ad–1(i)(3):* An item is "routine" if it does not require any additional certificates, documentation, instructions, assignments, guarantees, endorsements, explanations or opinions of counsel before transfer may be effected.

(36) *Question:* A bond is presented for transfer to the trustee. The trustee subsequently forwards to the bond registrar the bond, a bond transfer sheet and instructions to prepare and execute the bond as shown on the bond transfer sheet. Is the bond a non-routine item?

Answer: No. The bond registrar is not required to perform any additional act in effecting the transfer of the bond which it would not otherwise perform had the bond been presented directly to the bond registrar. The bond is not transformed into a "non-routine" item merely because it is first presented to the bond trustee. Thus, unless the item otherwise qualifies as non-routine under Rule 17Ad–1(i), it is a routine item for purposes of the turnaround rules.

(37) *Question:* When the registered transfer agent, as trustee and authenticating agent for a bond issue, must forward, pursuant to the Indenture Agreement, the bonds to the issuer for signature by an officer in his corporate capacity before the certificate may be

[26] A 10% margin in the turnaround and processing standards exists in Rule 17Ad–2 (a) and (b). If, despite this margin, a transfer agent still fails to meet the turnaround or processing requirement, it should explain the circumstances in its notice of non-compliance filed pursuant to Rule 17Ad–2 or (d).

[27] The various subparagraphs of Rule 17Ad–1(i) are set forth below preceding the interpretations thereunder.

[28] *See* note 5 *supra* and Question (9).

[29] Generally, before the SCL is presented to the transfer agent, securities depositories review the certificates and instructions and retain those items which are non-routine. In those instances where an SCL does contain both routine and non-routine certificates or instructions, transfer agents might consider using the following procedure: Notify the depository; photocopy the SCL; transfer those certificates, and effect transfers pursuant to those instructions, capable of being transferred, and make them available to the depository together with the SCL and a memorandum containing information as to why non-routine certificates or instructions were not transferred; and return to the depository in a separate envelope all non-routine certificates or instructions not transferred, unless the depository instructs otherwise. This is merely a suggested procedure; other procedures may be used. However, this procedure does not suggest or imply that the SCL, as a single routine item, has now been broken down into several items—some routine and some non-routine; the SCL remains a single, routine item in all respects.

In all cases, appropriate documentation satisfying Rule 17Ad–6 must be prepared and maintained. If the transfer agent returns any certificates or instructions because they are non-routine and cannot be transferred, the record required by Rule 17Ad–6(a)(1)(i) for the SCL should contain either a notation for that line, such as "returned to presentor," or an indication of the number of lines not transferred, such as "3 lines returned to presentor."

[30] *See* Release No. 13636. (SEC Docket, at 856–57).

made available to the presentor, is the item non-routine?

Answer: Yes. Such items may be treated as non-routine because the trustee, in order to effect transfer, must obtain additional signatures from the corporate officer.

(38) *Question:* A transfer agent receives an instruction from the issuer-presentor to use treasury shares, which are registered in the name of the issuer and being held by the transfer agent, to issue certificates under the issuer's stock purchase plan. However, transfer can be accomplish only after an authorization letter is received from the issuer. Is such an instruction a non-routine item?

Answer: Yes. If the transfer agent must await the receipt of an authorization letter from the issuer-presentor before accomplishing transfer, the instruction qualifies as a non-routine item, since additional instructions must first be obtained from the issuer.

Illustration: Facts: A company submits stock certificate transmittal forms to its transfer agent. These forms supply information necessary to issue one certificate per form and designate participants eligible to receive shares of the company pursuant to its stock purchase plan. Three days later, the transfer agent receives a general transmittal letter confirming the number of stock certificate transmittal forms previously sent and indicating the number of shares to be issued. The transfer agent thereafter receives an authorization letter, signed by an officer of the company, instructing the transfer agent to draw against treasury shares, which are registered in the name of the company and are being held by the transfer agent, to fulfill the transmittal forms. Although the transfer agent begins issuing the new certificates as soon as it receives the stock certificate transmittal forms, transfer can be accomplished only after the authorization letter is received. Interpretation: Since the transfer agent must await additional instructions from the company via the authorization letter before transfer can be accomplished, the instruction is a non-routine item.

(39) *Question:* May a service bureau, which is a registered transfer agent, classify items that are received from and subsequently returned to the named transfer agent for performance of the registrar function as non-routine?

Answer: No. The service bureau must classify the items as routine, even though two separate entities perform part of the transfer function—the transfer activity by the service bureau and the registrar activity by the named transfer agent. No additional documents or endorsements of the type contemplated by Rule 17Ad–1(i)(3) are required. This example is similar to any other situation where both a transfer agent and outside registrar are involved.

Illustration: Facts: The named transfer agent for an issue receives the certificates, totals and logs them. The certificates are then forwarded to the service bureau, which issues new certificates and creates transfer journals. Thereafter, the certificates are returned to the named transfer agent, which performs the registrar function, countersigns the certificates and makes them available to the presentor. Interpretation: the service bureau must consider these items as routine.

(40) *Question:* If a transfer agent retains items received for transfer pending receipt of payment of transfer fees rather than returning them to the presentor for non-payment, may such items be classified as non-routine?

Answer: Yes. If the transfer agent decides to retain items at it premises even though transfer fees for such items have not been paid, the items have been "received."[31] However, such items may be classified as "non-routine" because the transfer agent must await additional instruments by which payment of transfer fees is to be effected. In such cases, pursuant to Rule 17Ad–2(e), the transfer agent is then obligated both to give such non-routine items "diligent and continuous attention," which includes, among other things, frequent and assiduous notification to the presentor that the item is being retained pending receipt of transfer fees, and, after receipt of payment, to turn around such items "as soon as possible."

(41) *Question:* May an item presented for transfer be classified as "non-routine" when, in the course of effecting transfer, the transfer agent is required to compute its transfer fee and fill in several blank checks attached to the item with the appropriate amount?

Answer: No. When a blank check is attached to the item and the transfer agent can compute its transfer fee and enter the appropriate amount on the check, the item must be classified as "routine." Thus, if a single certificate is presented for transfer with a blank check attached, the item is routine. Similarly, if several certificates of the same issue under one ticket are presented for transfer with blank checks attached, the item is routine. And, if an SCL is submitted with several vouchers attached, the item (*i.e.*, the SCL) is routine. The transfer agent need not obtain any further documentation or endorsements, within the meaning of Rule 17Ad–1(i)(3), which would transform such routine items into non-routine items.

3. *No Review of Certain Supporting Documentation Required-Rule 17Ad–1(i)(4):* An item is "routine" if it does not require review of supporting documentation other than assignments, endorsements, stock powers, certified corporate resolutions, signature or other common and ordinary guarantees or appropriate tax or tax waivers.

(42) *Question:* Are all items referred to counsel for review considered non-routine?

Answer: No. Items referred to counsel are not automatically non-routine under Rule 17Ad–1(i)(4). If the item requires no more than a review by counsel of the documents listed in Rule 17Ad–1(i)(4), the item is considered routine. If that review, however, requires counsel to examine other documentation, to obtain the information listed in Rule 17Ad–1(i)(3), or to render a legal opinion, the item would be considered non-routine.

4. *Transfers Not in Connection with a Reorganization, Tender Offer, Exchange, Redemption or Liquidation-Rule 17Ad–1(i)(5):* An item is "routine" if it does not involve a transfer in connection with a reorganization, tender offer, exchange, redemption or liquidation.

(43) *Question:* When a portion of a registered bond issue is called, and the bond registrar remits new bonds and cash to the bondholder as well as pays on uncashed coupons, is the item non-routine?

Answer: Yes. Under rule 17Ad–1(i)(5), the item involves a partial cash redemption and, accordingly, is not routine.

5. *Recent Registered Public Offerings Not of a Continuing Nature-Rule 17Ad–1(i)(8):* An item is "routine" if it does not include a security of an issue which within the previous 15 business days was offered to the public, pursuant to a registration statement effective under the Securities Act of 1933, in an offering not of a continuing nature.

(44) *Question:* When does the 15 business day period start to run?

Answer: For purposes of determining whether an item is non-routine under this exception, the 15 business day period begins from the closing date of the public offering, *i.e.*, the date on which the securities are delivered to the underwriter for the issue.

(45) *Question:* Pursuant to a registration statement effective under the Securities Act of 1933, securities are sold to the public in an offering not of a continuing nature. Thirty to forty-five days elapse before the certificates are presented for transfer, and they are

[31] *Compare* note 20 *with* Question (26)(c) *supra.*

presented in large quantities. May the transfer agent treat such certificates as "non-routine" items?

Answer: No. The securities were not offered to the public within the previous 15 business days, and the offering was not of a continuing nature. Thus, any such items received for transfer are "routine." The increase in the volume of transfers, because of both the offering and the quantity of certificates presented, does not entitle the transfer agent to treat such items as non-routine.

(46) *Question:* Would the answer to Question (45) be different if the securities are initially registered in the name of nominees that, more than 15 business days later, present in large quantities certificates for breakdown and transfer to individual securityholders?

Answer: No. If more than 15 business days have elapsed since the securities were initially offered to the public in an offering not of a continuing nature, the items remain routine. The classification of items is not altered merely because the securities were initially registered in nominee name or were presented in large quantity for breakdown and transfer to individual holders.

II. Rule 17Ad–2: Turnaround, Processing and Forwarding of Items.

A. *General.*[32]

(47) *Question:* Must a registered transfer agent report to its appropriate regulatory agency that it is meeting the turnaround or processing requirements of Rule 17Ad–2?

Answer: No. Rule 17Ad–2 (a) and (b) does not require that a transfer agent report its compliance with the performance standards of that rule.

(48) *Question:* Is there an exemption from the turnaround, processing and forwarding requirements of Rule 17Ad–2 when a registered transfer agent converts its transfer operations to an "on-line" [33] system?

Answer: No. No exemption from the requirements of Rule 17Ad–2 is provided for a registered transfer agent that converts from a "batch" [34] system to an "on-line" system. There are several reasons for reaching this conclusion. First, in order to protect investors, it is important that transfer agents meet the performance standards in Rule 17Ad–2 (a) and (b) to avoid any lag in the transfer and processing of securities transactions and to prevent any backlog from occurring. Second, Rule 17Ad–6 imposes requirements that recordkeeping be "current." If transfer operations are shut down to allow for conversion from one system to another, potential problems in maintaining "current" records may occur. Finally, Rule 17Ad–2 provides a 10% margin for turnaround and processing of items. Accordingly, a registered transfer agent must comply with the turnaround rules when converting from the "batch" method to an "on-line" system, and all performance standards of Rule 17Ad–2 must still be met.

(49) *Question:* A registered transfer agent has located in several cities satellite offices performing various transfer agent functions. May such transfer agent separately compute the performance statistics for each satellite office?

Answer: No. The transfer agent must aggregate figures from all of its operations when calculating turnaround and processing performance statistics for purposes of determining compliance with Rule 17Ad–2 and for purposes of recordkeeping under Rule 17Ad–6. In addition, aggregate figures must be used in computing volume when determining the availability of the exemption in Rule 17Ad–4(b).

(50) *Question:* How should a registered transfer agent that accepts a new appointment treat items that are received for transfer between the effective date of the appointment and the date on which the shareholder records and stop files are received?

Answer: Once the appointment is effective, a registered transfer agent is obligated to perform its contracted transfer agent activities for those new issues in compliance with the Act and the rules thereunder. Hence, all items arriving after the effective date of the appointment, regardless of whether the transfer agent has all the necessary books and records to effect transfer or processing, are treated as items received for transfer subject to the turnaround rules. Accordingly, a registered transfer agent should not make its appointment effective under its agency agreement until it has custody and possession of all shareholder records, stop files, unissued blank certificates and other materials necessary to effect transfer or processing. To avoid the possibility of a transfer agent falling into noncompliance with the turnaround rules, it is recommended that registered transfer agents remind issuers and others from whom transfer agents receive such records of the obligations imposed upon transfer agents by the turnaround rules.[35]

(51) *Question:* Does a transfer agent satisfy the 90% standard in Rule 17Ad–2(a) and (b) by applying that standard cumulatively to a 12 month period, *i.e.*, by turning around or processing 90% of all items received for the year by the end of that year?

Answer: No. The 90% standard in Rule 17Ad–2(a) and (b) must be applied to *each month* separately. A transfer agent is not permitted to aggregate the percentage of items turned around or processed for each 12 consecutive months to arrive at an *annual* percentage rate of 90% to establish compliance with that rule.

B. *Turnaround Requirement for Registered Transfer Agents—Rule 17Ad–2(a):* Every registered transfer agent (except when acting as an outside registrar) shall turnaround within three business days of receipt at least 90 percent of all routine items received for transfer during a month. For the purposes of Rule 17Ad–2(a), items received at or before noon on a business day shall be deemed to have been received at noon on that day, and items received after noon on a business day or received on a day not a business day shall be deemed to have been received at noon on the next business day.

(52) *Question:* Does a bond registrar comply with the turnaround rules if it transfers a registered bond within three business days of receipt?

Answer: Yes. The person who performs the transfer function for a bond issue is called a "bond registrar." Since it performs the "transfer" function for the bond issue, a bond registrar is treated the same as any other registered transfer agent for purposes of the turnaround rules, including Rule 17Ad–2(a).[36] Accordingly, the transfer of bonds by a bond registrar is subject to the three business day turnaround requirement of Rule 17Ad–2(a).

(53) *Question:* May a transfer agent that uses an outside registrar choose to calculate its turnaround performance as if it performed the registrar function, *i.e.*, by recording the dates on which each item is received from and made available to the *presentor* (rather than by recording the date on which each item is made available to the outside

[32] The following questions and answers have general application to some or all provisions in Rule 17Ad–2. The text of various paragraphs in Rule 17Ad–2 is set forth below preceding the interpretations thereunder.

[33] When a transfer agent uses an "on-line" system, the master shareholder files and records are updated immediately upon transfer.

[34] Under the "batch" method of updating the shareholder records, changes to the master files are not entered until after close of the normal business day, when all items transferred that day are inputed into the books and records.

[35] *See generally* Release No. 13636. (SEC Docket, at 857).

[36] A bond registrar is not an "outside registrar," which is defined in Rule 17Ad–1(b) as a transfer agent that performs only the registrar function or similar functions with respect to debt issues and which must process items within one business day under Rule 17Ad–2(b).

registrar, as contemplated by Rule 17Ad–1(c)(2) and required by Rule 17Ad–6(a)(1)(ii))?

Answer: Yes. The effect of this election is to treat the outside registrar as if the registrar function were performed in-house. Generally, when an outside registrar is involved, a registered transfer agent has three business days under Rule 17Ad–2(a) to "turnaround" the item, which is defined under Rule 17Ad–1(e) to include making the item available to the outside registrar pursuant to Rule 17Ad–1(c)(2). The outside registrar, pursuant to Rule 17Ad–2(b), then has one business day to "process" the item, which, under Rule 17Ad–1(f), is defined as performing the registrar function and making the item available to the presenting transfer agent pursuant to Rule 17Ad–1(c)(3). The transfer agent, in turn, must make the item available to the presentor, as required by Rule 17Ad–1(c)(1). Thus, the entire procedure, from the time of receipt by the transfer agent until the item is made available to the presentor, normally takes four business days.

However, if the transfer agent elects to treat the outside registrar as an in-house registrar, the item must be made available to the presentor within three business days. When an outside registrar is not involved, "turnaround" of an item is completed, under Rule 17Ad–1(e), when "transfer" is accomplished. "Transfer," by definition under Rule 17Ad–1(d), includes performing the registrar function as well as making the item available to the presentor. Thus, turnaround of an item does not involve the additional business day which would otherwise occur.

If the requirements of Rules 17Ad–2(a) (turnaround within three business days), 17Ad–1(e) (completing turnaround by accomplishing transfer), 17Ad–1(d) (transfer, including the registrar function), and 17Ad–1(c)(1) (making the item available to the presentor) are met, the transfer agent is required under Rule 17Ad–6(a)(1) to prepare records showing the business days on which each item is received from and made available only to the presentor.

The transfer agent's election to comply with the turnaround rules and to calculate its turnaround performance under Rule 17Ad–6(a) in this manner must be set forth in a written undertaking and sent to the Commission and the transfer agent's appropriate regulatory agency. In addition, the written undertaking must provide that a failure to comply with the turnaround performance standards under Rule 17Ad–2(a) will be charged to the transfer agent, irrespective of whether the delays were caused by the transfer agent or by the outside registrar.

(54) *Question:* What is the effect of the noon cut-off provision when an item is received before noon in the transfer agent's mail room but not forwarded until after noon to the transfer department where dating of the item occurs?

Answer: Items received in the transfer agent's mail room, located on the premises where the transfer activities are actually performed, are considered "received" under Rule 17Ad–1(g).[37] Thus, under Rule 17Ad–2(a), items received in the mail room at or before noon on a business day are deemed received by the transfer agent at noon on that same business day, even though the items may not be forwarded until after noon to the transfer department.

When the items are dated by the transfer department and not by the mail room, the transfer agent first must determine the cut-off time by which all items received at or before noon in the mail room will be forwarded to the transfer department. Then the transfer agent must observe this cut-off time for date-stamping items received in the transfer department. To implement this procedure, the transfer department must receive a commitment from the mail room that all items received at or before noon by the mail room will be forwarded by that specified cut-off time to the transfer department. Finally, the transfer agent must periodically check to ensure that the mail room is meeting its commitment.

Illustration: Facts: An item is received by the mail room at the transfer premises at 11:45 a.m. on Monday, a business day. The item is not date or time-stamped at that time by the mail room. By 2:00 p.m. on Monday, all items received by the mail room at or before noon (including the item received at 11:45 a.m.) are brought to the transfer department where they are date-stamped. Interpretation: The item was received before noon and must be date-stamped accordingly. In addition, since the item was received before noon on a business day, it must be turned around by noon on Thursday, the third next business day.

(55) *Question:* When, due to inclement weather, airports close for several days suspending the delivery of items, is an exemption from the requirements of Rule 17Ad–2(a) available to a transfer agent for the large quantity of back items received after the airports reopen and deliveries recommence?

Answer: No. The turnaround rules do not provide automatic exemptions for inclement weather or other acts of God. A transfer agent is required to meet the turnaround requirements for all items received, even if an unusually large quantity of items is presented on a given day. This question illustrates why Rule 17Ad–2 (a) and (b) provides a 10% margin. Nevertheless, if a transfer agent is unable to meet the turnaround or processing requirements of Rule 17Ad–2 (a) or (b) because of weather conditions, the notice required to be filed by Rule 17Ad–2 (c) or (d) should state such circumstances.

(56) *Question:* When must the remaining 10% of routine items presented and received for transfer be turned around?

Answer: Rule 17Ad–2(e) requires that routine items not turned around within three business days of receipt must be turned around "promptly," which, under usual circumstances, means within one additional business day.[38]

C. *Processing Requirement for Outside Registrars—Rule 17Ad–2(b):* Every registered transfer agent acting as an outside registrar shall process[39] at least 90 percent of all items received during a month (1) by the opening of business on the next business day, in the case of items received at or before noon on a business day, and (2) by noon of the next business day, in the case of items received after noon on a business day. For the purposes of paragraphs (b) and (d) of Rule 17Ad–2, "items received" shall not include any item enumerated in Rule 17Ad–1(i) (5), (6), (7) or (8) or any item which is not accompanied by a debit or cancelled certificate. For the purposes of this paragraph, items received on a day not a business day shall be deemed to have been received before noon on the next business day.

(57) *Question:* If the transfer agent and outside registrar have so agreed, may an outside registrar satisfy the processing requirements of Rule 17Ad–2(b) by notifying the presenting transfer agent that an item is available for pick-up, if the item is in fact available for pick-up?

Answer: Yes. To accomplish processing, which is defined in Rule 17Ad–1(f),[40] the outside registrar is required to perform the registrar function and to make available to the

[37] *See* Question (27) *supra*, and Release No. 13636. (SEC Docket, at 856).

[38] *See* Release No. 13636. (SEC Docket, at 859).

[39] Rule 17Ad–1(f) provides: "The term 'process' means the accomplishing by an outside registrar of all acts necessary (1) to perform the registrar function and to make available to the presenting transfer agent the completed certificate or certificates or (2) to advise the presenting transfer agent, orally or in writing, why performance of the registrar function is delayed or may not be completed."

[40] *Id.*

presenting transfer agent the completed certificate or certificates.

Rule 17Ad–1(c)(3) provides that an item is "made available," in the case of an item for which an outside registrar has completed processing, when "the outside registrar dispatches or mails the item to, or the item is awaiting pick-up by, the presenting transfer agent." The understanding between the outside registrar and the presenting transfer agent will govern which of the alternative methods permitted by Rule 17Ad–1(c)(3) will be used. If the parties have agreed that the presenting transfer agent will "pick-up" the processed item and that the outside registrar will notify the transfer agent when the item is available for pick-up, then the item is processed when the outside registrar completes the registrar function and notifies the presenting transfer agent that the completed certificate is in fact awaiting pick-up.

The outside registrar must be consistent in clocking the completion of its processing with the alternative agreed upon—in this case, notification that the item is awaiting pick-up. To accomplish processing, notification that an item is awaiting pick-up must be given to and received by the presenting transfer agent no later than the time period within which processing must be accomplished under Rule 17Ad–2(b). Thus, in the case of an item received at or before noon on a business day, notification that the item is awaiting pick-up must be given by the opening of business on the next business day; and, in the case of an item received after noon on a business day, by noon of the next business day.

(58) *Question:* Within what time period must the remaining 10% of items be processed?

Answer: Rule 17Ad–2(e) requires that items not processed within the periods prescribed by Rule 17Ad–2(b) shall be processed "promptly," which in usual circumstances means by the end of the business day following the day of receipt.[41]

D. *Notice of Non-Compliance—Rule 17Ad–2(c):* Any registered transfer agent which fails to comply with paragraph (a) of Rule 17Ad–2 with respect to any month shall, within ten business days following the end of such month, file with the Commission and the transfer agent's appropriate regulatory agency, if it is not the Commission, a written notice in accordance with paragraph (h) of Rule 17Ad–2. Such notice shall state the number of routine items and the number of non-routine items received for transfer during the month, the number of routine items which the registered transfer agent failed to turn around in accordance with the requirements of paragraph (a) of Rule 17Ad–2, the percentage that such routine items represent of all routine items received during the month, the reasons for such failure, the steps which have been taken, are being taken or will be taken to prevent a future failure, and the number of routine items, aged in increments of one business day, which as of the close of business on the last business day of the month have been in its possession for more than four business days and have not been turned around.

(59) *Question:* For purposes of the notice requirement, must routine items not turned around within the prescribed time period and in a transfer agent's possession be reported only in the month they were received, or must they be reported on a cumulative basis?

Answer: Rule 17Ad–2(c) requires a registered transfer agent that does not comply with Rule 17Ad–2(a) with respect to any month to file a written notice stating, among other things, "the number of routine items which the registered transfer agent failed to turn around" in accordance with Rule 17Ad–2(a). This requirement applies only to routine items received for transfer during that particular month which were not turned around in three business days; it does not refer to all outstanding items, regardless of the month in which they were received.

However, Rule 17Ad–2(c) also requires that the notice state "the number of routine items, aged in increments of one business day, which as of the close of business on the last business day of the month, have been in (the transfer agent's) possession for more than four business days and have not been turned around."[42] If routine items received for transfer in a previous month and not turned around within three business days are still in the transfer agent's possession as of the close of business on the last business day of the current month,[43] those items must be included in the current month's notice of non-compliance. Accordingly, this aspect of the notice is cumulative.

Illustration: Facts: Ten routine items are received for transfer in January. Eight of those items are turned around within three business days. Interpretation: A written notice, reporting the two items, is required to be filed for the month of January.

Facts: In February, ten routine items are received for transfer. Eight of those items are turned around within three busines days. However, as of the close of business on the last business day in February, the transfer agent had not turned around within three business days the remaining two items received in February, and, when aged in increments of one business day, had them in its possession for more than four business days. In addition, the transfer agent had not yet turned around the two items received in January. Interpretation: The transfer agent has not met turnaround under Rule 17Ad–2(a) and must file for the month of February a notice of non-compliance which will include the two outstanding routine items for February. In addition, the notice of non-compliance filed for the month of February must include, as aged items, the two items received in January but not yet turned around. In such a case, however, the transfer agent has violated Rule 17Ad–2(e).[44]

E. *Turnaround and Processing of Remaining Routine and All Non-Routine Items—Rule 17Ad–2(e):* All routine items not turned around within three business days of receipt and all items not processed within the periods prescribed by paragraph (b) of Rule 17Ad–2 shall be turned around or processed promptly, and all non-routine items shall receive diligent and continuous attention and shall be turned around as soon as possible.

(60) *Question:* What are the time requirements regarding the turnaround of "non-routine" items?

Answer: The turnaround rules do not impose a specific time period within which turnaround of non-routine items must occur. However, Rule 17Ad–2(e) requires that all "non-routine items shall receive diligent and continuous attention and shall be turned around as soon as possible." This is a flexible standard dependent on the facts and circumstances of each case. If experience indicates that a specific standard is necessary, the Commission

[41] *See* Release No. 13636. (SEC Docket, at 859).

[42] This requirement of Rule 17Ad–2(c) should be read in conjunction with Rule 17Ad–6(a)(2)(vi), which requires a registered transfer agent to make and keep current a record showing for each month "the number of routine items that, as of the close of business on the last business day of each month, have been in such registered transfer agent's possession for more than four business days, aged in increments of one business day (beginning on the fifth business day)." In this case, a *cumulative* record of aged items must be made of all routine items not turned around within three business days during *all* months in which those items were outstanding. *See* Release No. 13636, n. 18. (SEC Docket, at 864 n. 18).

[43] It should be noted, however, that Rule 17Ad–2(e) requires all routine items not turned around within three business days of receipt to be turned around "promptly," which, in the usual case, means within one additional business day. Accordingly, routine items received in the previous month must be given precedence over, and turned around before, items received in the current month.

will consider proposing such a requirement.

F. *Receipt of Items Off the Transfer Premises—Rule 17Ad–2(f):* A registered transfer agent which receives items at locations other than the premises at which it performs transfer agent functions shall have appropriate procedures to assure, and shall assure, that items are forwarded to such premises promptly.

(61) *Question:* When the named transfer agent for an issue contracts with a service bureau, which is also a registered transfer agent, to perform for it the transfer agency functions, when is the item considered received for transfer?

Answer: Items are received for transfer when they arrive at the premises of the service bureau, even if the items were first sent to the named transfer agent. However, both the named transfer agent and the service bureau, as registered transfer agents, must have appropriate procedures to assure that items which are received by the named transfer agent are forwarded promptly to the service bureau.

III. Rule 17Ad–4: Exemptions From Certain Turnaround Rules.

A. *Exempt Transfers—Rule 17Ad–4(a):* Rules 17Ad–2, 17Ad–3 and 17Ad–6(a) (1) through (7) and (11) shall not apply to interests in limited partnerships, to redeemable securities of investment companies registered under Section 8 of the Investment Company Act of 1940, or to interests in dividend reinvestment programs.

(62) *Question:* If the issuer acts as its own transfer agent for its only issue of securities, which are interests in joint ventures, are transfers of those interests exempt from the turnaround rules under Rule 17Ad–4(a)?

Answer: Yes. Rules 17Ad–2, 17Ad–3 and 17Ad–6(a) (1) through (7) and (11) do not apply to the transfer of interests in joint ventures; provided that the certificates are legended and there are restrictions on transferability, such as the existence of stop transfer instructions on the shareholder records and the requirement of consent by the issuer or other authorized person before transfer can be effected, so that no such item would be routine as defined in Rule 17Ad–1(i); and provided that the securities are neither traded on any securities exchange or in the over-the-counter market nor the subject of market-making activity by any broker-dealer. However, transfers of interests in joint ventures remain subject to Rules 17Ad–1; 17Ad–4; 17Ad–5; 17Ad–6(a) (8), (9) and (10); 17Ad–6 (b) and (c); and 17Ad–7.[45]

(63) *Question:* Does the issuance, redemption or transfer of interests in a unit investment trust registered under Section 8 of the Investment Company Act of 1940 fall within the exemption provided in Rule 17Ad–4(a)?

Answer: Yes. The exemption contained in Rule 17Ad–4(a) includes the issuance, redemption or transfer of redeemable securities of registered unit investment trusts.[46]

B. *Exempt Transfer Agents—Rule 17Ad–4(b):* Except as provided in paragraph (c) of Rule 17Ad–4, Rules 17Ad–2 (a), (b), (c), (d) and (h), 17Ad–3 and 17Ad–6(a)(2) through (7) and (11) shall not apply to any registered transfer agent (1) which during any six consecutive months shall have received fewer than 500 items for transfer and fewer than 500 items for processing and (2) which, within ten business days following the close of the sixth such consecutive month, shall have filed with its appropriate regulatory agency [47] a notice certifying to that effect (hereinafter an "exempt transfer agent").

(64) *Question:* Based on the number of *Certificates* received for transfer, may a registered transfer agent for an issue obtain an exemption under Rule 17Ad–4(b), even though the outside registrar for that same issue remains ineligible for the exemption?

Answer: Yes. To qualify for an exemption, a transfer agent must receive fewer than 500 items for transfer and fewer than 500 items for processing. An "item" with respect to an outside registrar is defined in Rule 17Ad–1(a) as "each certificate to be countersigned." An "item" with respect to a transfer agent that performs transfer activities, however, is defined, in pertinent part, as "a certificate or certificates of the same issue of securities covered by one ticket (or, if there is no ticket, presented by one presentor) presented for transfer * * *." Consequently, in order to qualify for an exemption under Rule 17Ad–4(b), an outside registrar must receive *fewer* than 500 *certificates* for countersigning and for processing during any consecutive six month period. However, the transfer agent for the same issue may have received *fewer* than 500 *items* covering more than 500 certificates during the consecutive six month period and, accordingly, qualify for the exemption.

(65) *Question:* May a registered transfer agent qualify as an "exempt transfer agent" when it performs both the transfer agent activities for some issues and the processing activities as an outside registrar for other issues?

Answer: Yes. If, during any consecutive six month period, a transfer agent receives fewer than 500 items for transfer for those issues for which it performs transfer activities and fewer than 500 certificates for countersigning and processing for those issues for which it acts as an outside registrar, it will qualify as an "exempt transfer agent."

(66) *Question:* May a transfer agent that has recently assumed the transfer agent functions for an issue be eligible for an exemption under Rule 17Ad–4(b), even though it has not performed the transfer agent functions for the requisite six month period, by tacking onto its period of performance the performance by the prior transfer agent for that issue?

Answer: Yes. The new transfer agent qualifies as an exempt transfer agent under Rule 17Ad–4(b), provided it can demonstrate, through appropriate records and documentation, that the previous transfer agent in fact received fewer than 500 items for transfer and fewer than 500 items for processing during the immediately preceding six consecutive months.[48]

Illustration: Facts: For the period December 1 through May 31, an issuer's transfer agent received 60 items for transfer. On June 1, after its registration as a transfer agent became effective, the issuer assumed the transfer agent functions for its securities. On June 7, the issuer-transfer agent filed with the Commission a notice certifying that it received fewer than 500 items for transfer and fewer than 500 items for processing for the six consecutive months ending May 31 and, accordingly, that the issuer qualified as an exempt transfer agent. Interpretation: Since the previous transfer agent received fewer than 500 items for transfer and fewer than 500 items for processing during the preceding six month period, the issuer qualifies as an exempt transfer agent under Rule 17Ad–4(b), provided it can demonstrate through appropriate records and documentation that the prior transfer agent received, in fact, fewer than 500 items for transfer during December 1, through May 31.

(67) *Question:* In order not to exceed the requirement in Rule 17Ad–4(b) that the transfer agent receive fewer than 500

[45] *See generally* Release No. 13636. (SEC Docket, at 855 and 862).

[46] *See* Release No. 13636. (SEC Docket, at 861).

[47] Rule 17Ad–2(h) states with which regulatory agency the notice must be filed.

[48] Although such tacking is permitted, if the number of items received for transfer by the transfer agent seeking to qualify as an exempt transfer agent together with the number of items received by the prior transfer agent *exceeds 500* for the preceding six consecutive month period, exempt status would not be available.

items for transfer and processing, may a transfer agent combine several items of the same issue received from several presentors in order to qualify as an exempt transfer agent?

Answer: No. If there is no ticket, an "item" is defined by Rule 17Ad–1(a) to mean certificates of the same issue of securities presented for transfer at the same time by *one presentor.* Thus, certificates of the same issue presented by several presentors must be treated as separate items and must not be combined when determining the availability of the exemption under Rule 17Ad–4(b), even though all certificates relate to the same issue of securities.

(68) *Question:* For purposes of determining whether a transfer agent qualifies as an exempt transfer agent, must a transfer agent, which has satellite offices located throughout the country, aggregate the total number of items received for transfer and for processing by all of its offices, even if one or more satellite offices perform transfer agent or registrar activities only for securities which are not qualifying securities?

Answer: Yes. A transfer agent must aggregate the total number of items received by all of its offices when computing volume for purposes of Rule 17Ad–4(b).[49] Once a transfer agent becomes registered with its appropriate regulatory agency, the turnaround rules apply to all of its transfer and processing activities, including those involving non-qualifying securities. Accordingly, the term "item" includes both qualifying and non-qualifying securities.[50] Thus, a registered transfer agent must aggregate the total number of items (including both qualifying securities and non-qualifying securities) received by it and its satellite offices for purposes of determining whether it qualifies as an "exempt transfer agent."

C. *Loss of Exempt Transfer Agent Status—Rule 17Ad–4(c):* Within five business days following the close of each month, every exempt transfer agent shall calculate the number of items which it received during the preceding six months. Whenever any exempt transfer agent receives 500 or more items for transfer or 500 or more items for processing during any six consecutive months, it shall, within ten business days after the end of such month, file with its appropriate regulatory agency a notice to that effect. Thereafter, beginning with the first month following the month in which such notice is required to be filed, the registered transfer agent shall no longer be exempt under paragraph (b) of Rule 17Ad–4 from the requirements of Rules 17Ad–2 (a), (b), (c), (d), and (h), 17Ad–3 and 17Ad–6(a) (2) through (7) and (11). Any registered transfer agent which has ceased to be an exempt transfer agent shall not qualify again for exemption until it has conducted its transfer agent operations pursuant to the foregoing rules for six consecutive months following the month in which it filed the notice required by this paragraph.

(69) *Question:* Must a registered transfer agent, which has filed the appropriate notice certifying that it is an exempt transfer agent under Rule 17Ad–4(b), file on a monthly basis additional notices to retain its exempt status?

Answer: No. A transfer agent that has filed a notice certifying its exempt status under Rule 17Ad–4(b) should not file any additional exemption notices, as long as it continues to receive fewer than 500 items for transfer and fewer than 500 items for processing during any consecutive six-month period.

However, Rule 17Ad–4(c) requires every exempt transfer agent to test continuously for the availability of the exemption by determining, within the first five business days of each month, the number of items received for transfer and the number of items received for processing during the immediately preceding six months. Whenever any exempt transfer agent has received 500 or more items for transfer *or* 500 or more items for processing during any six consecutive months, Rule 17Ad–4(c) requires it to file a notice to that effect within ten business days after the end of the sixth month. Thereafter, beginning with the first month following the month in which such notice is required to be filed, the transfer agent no longer is exempt.

Illustration: A transfer agent that has submitted by July 15, 1980 (the tenth business day in July) an exemption notice based upon its operations from January 1st through June 30th, must determine by August 7th (the fifth business day in August) the number of items received for transfer *and* the number of items received for processing for the period February 1st through July 31st; and by September 8th (the fifth business day in September), it must make the same determination for the period March 1st through August 31st; and so on.

If the calculation performed by August 7th demonstrates that the transfer agent received during the six-month period, from February 1st through July 31st, 500 or more items for transfer *or* 500 or more items for processing, the transfer agent would be required to file the requisite notice by August 14th (the tenth business day after July 31st). Finally, its exempt status would terminate as of the close of business on August 31st.

(70) *Question:* What is the definition of "item" for purposes of determining under Rule 17Ad–4(c) the continuing availability of the Rule 17Ad–4(b) exemption to a transfer agent that does not act as an outside registrar?

Answer: A transfer agent that does not act as an outside registrar does not receive items for "processing," as that term is defined in Rule 17Ad–1(f). Accordingly, for purposes of determining the continuing availability of exempt transfer agent status under Rules 17Ad–4 (b) and (c), such a transfer agent need only compute whether fewer than 500 items have been received for *transfer* during the preceding six consecutive months.

(71) *Question:* Does an exempt transfer agent lose its exempt status by issuing a stock dividend of original issue securities, if the additional certificates issued increase the number of items to more than 500 for a six consecutive month period?

Answer: No. Since stock dividends of original issue securities are not items received for transfer,[51] the issuance of the new certificates is not included in the calculation of items transferred and processed for purposes of Rule 17Ad–4(c).

IV. Rule 17Ad–5: Written Inquiries and Requests.

A. *General.*[52]

(72) *Question:* If a co-transfer agent receives a written inquiry or request subject to Rule 17Ad–5 to which the principal transfer agent is responsible for responding, and the co-transfer agent promptly forwards such communication to the principal transfer agent, when is the inquiry or request considered "received"?

Answer: For purposes of determining the required time period within which a response must be made under the various paragraphs of Rule 17Ad–5, a written inquiry or request is "received," under Rule 17Ad–1(g), when it arrives at the premises of the transfer agent responsible for making the response[53]—in this case, the principal transfer agent.

(73) *Question:* If a transfer agent, which is not the issuer, receives a written inquiry subject to Rule 17Ad–5 and refers the inquiry to one of its special departments or to the issuer for

[49] *See* Question (49) *supra.*

[50] *See* Question (1) *supra.*

[51] *See* Question (12) *supra.*

[52] The following questions and answers have general application to some or all of the provisions in Rule 17Ad–5. The various paragraphs in Rule 17Ad–5 are set forth below preceding the interpretations thereunder.

[53] *See also* Questions 28 and 29 *supra.*

response, has the transfer agent met its obligations under Rule 17Ad–5?

Answer: No. A response has not been made and the requirements of Rule 17Ad–5 have not been satisfied, when the transfer agent sends, in accordance with its internal procedures, the inquiry out of the transfer department to another department or to the issuer for response. Rather, the transfer agent still must make the required response within the time periods specified in Rule 17Ad–5.

(74) *Question:* In counting the number of business days in which a transfer agent is required to respond to written inquiries and requests under Rule 17Ad–5, should the transfer agent treat inquiries received at or before noon on a business day as having been received at noon on that day, and treat inquiries received after noon on a business day or received on a non-business day as having been received at noon on the next business day?

Answer: No. The noon-to-noon cut-off applicable for computing turnaround under Rule 17Ad–2 is not relevant to the calculation of time periods under Rule 17Ad–5. Rather, timely compliance is measured in terms of business days, as defined in Rule 17Ad–1(h).

(75) *Question:* If an inquiry relates to activities of a prior transfer agent whose duties have recently been assumed by the successor transfer agent, and if the successor transfer agent is unable to respond because it does not have the necessary records, how can it comply with Rule 17Ad–5?

Answer: The successor transfer agent complies with Rule 17Ad–5 when it responds, within the required time period, that it has recently been appointed the transfer agent for the issue and that additional time is necessary to research and answer the question. Once the transfer agent is able to respond, it must do so as promptly as possible.[54]

However, registered transfer agents are immediately subject to the turnaround rules upon appointment and should remind others of the obligations imposed on them by these rules. Accordingly, appointment should not be made effective until the transfer agent has possession of all necessary records.[55]

B. *Requests Regarding Status of Items Presented for Transfer—Rule 17Ad–5(a):* When any person makes a written inquiry to a registered transfer agent concerning the status of an item presented for transfer during the preceding six months by such person or anyone acting on his behalf, which inquiry identifies the issue, the number of shares (or principal amount of debt securities or number of units if relating to any other kind of security) presented, the approximate date of presentment and the name in which it is registered, the registered transfer agent shall, within five business days following receipt of the inquiry, respond, stating whether the item has been received; if received, whether it has been transferred; if received and not transferred, the reason for the delay and what additional matter, if any, is necessary before transfer may be effected; and, if received and transferred, the date and manner in which the completed item was made available, the addressee and address to which it was made available and the number of any new certificate which was registered and the name in which it was registered. If a new certificate is dispatched or mailed to the presentor within five business days following receipt of an inquiry pertaining to that certificate, no further response to the inquiry shall be required pursuant to this paragraph.

(76) *Question:* When a registered transfer agent does not know why transfer of an item has been delayed, may it respond by stating that it will research the question and respond after an answer can be determined?

Answer: No. Such a response does not satisfy the requirements of Rule 17Ad–5(a), which requires, in the case of an item received but not transferred, a statement of "the reason for the delay and what additional matter, if any, is necessary before transfer may be effected * * *." However, if the transfer agent, after a good faith and diligent effort to research the question, must respond in order to meet the time requiremenet of five business days, no violation of the rule will occur from the *occasional* response that further research is necessary; provided, the transfer agent does, in fact, send within a reasonable time follow-up correspondence containing an appropriate and complete response; and further provided, this is not a recurring practice of the transfer agent.

C. *Certain Broker-Dealer Requests—Rule 17Ad–5(b):* When any broker-dealer requests in writing that a registered transfer agent acknowledge the transfer instructions and the possession of a security presented for transfer by such broker-dealer or revalidate a window ticket [56] with respect to such security and th request identifies the issue, the number of shares (or principal amount of debt securities or number of units if relating to any other kind of security), the approximate date of presentment, the certificate number and the name in which it is registered, every registered transfer agent shall within five business days following receipt of the request, in writing, confirm or deny possession of the security, and, if the registered transfer agent has possession, (1) acknowledge the transfer instructions or (2) revalidate the window ticket. If a new certificate is dispatched or mailed to the presentor within five business days following receipt of a request pertaining to that certificate, no further response to the inquiry shall be required pursuant to this paragraph.

(77) *Question:* Does Rule 17Ad–5(b) apply to a *bank* which submits a written inquiry requesting the transfer agent either to acknowledge the transfer instructions and the possession of a security presented for transfer or to revalidate a window ticket with respect to that security?

Answer: No. Rule 17Ad–5(b) is limited to written requests received specifically from broker-dealers. However, Rule 17Ad–5(a) covers the type of inquiry in question; it applies to "any person," including a bank.

(78) *Question:* Must a registered transfer agent respond in writing within five business days following receipt of a broker-dealer's request to acknowledge transfer instructions and possession of a security or to revalidate a window ticket, regardless of the fee arrangement between the transfer agent and the broker-dealer for providing such information?

Answer: Yes. Rule 17Ad–5(b) does not authorize a registered transfer agent either to charge a fee or to condition its response upon receipt or assurance of payment of a fee.[57] Thus, a registered transfer agent must make a timely written response whether or not it has charged or received a fee.[58]

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[54] *See also* Question (76) *infra.*

[55] *See* Question (50) *supra.*

[56] The Commission understands that the phrase "revalidate a window ticket" has a generally accepted meaning in the industry. "A transfer agent is requested to 'revalidate a window ticket' when the presentor desires acknowledgment in some fashion (*e.g.*, by time-stamping again a copy of the window ticket) that the item is in the transfer agent's possession pursuant to the presentor's transfer instructions." Release No. 13636, n. 17. (SEC Docket, at 863 n. 17).

[57] References to a fee appear in Rule 17Ad–5(c) and (d) (17 CFR 240.17Ad–5(c) and (d)). *See also* Release No. 13636. (SEC Docket, at 863).

[58] Registered transfer agents should be aware of a broker-dealer's obligations under Rule 15c3–3(c)(3) 17 CFR 240.15c3–3(c)(3)), regarding a broker-dealer's control of customer securities, and Rule 17a–13(b)(3) 17 CFR 240.17a–13(b)(3)), regarding quarterly security counts by broker-dealers. Rule 17Ad–5(b) was written to complement those rules.

D. *Inquiries or Requests Which May Not Meet Rule 17Ad–5(a) through (d)—Rule 17Ad–5(e):* When any person makes a written inquiry or request which would qualify under paragraph (a), (b), (c) or (d) of Rule 17Ad–5 except that it fails to provide all of the information specified in those paragraphs, or requests information which refers to a time earlier than the time periods specified in those paragraphs, a registered transfer agent shall confirm promptly receipt of the inquiry or request and shall respond to it as soon as possible.[59]

(79) *Question:* Does Rule 17Ad–5(e) apply to a written inquiry or request that would otherwise satisfy the requirements of a particular paragraph of Rule 17Ad–5, but concerns an issue for which the entity no longer acts as transfer agent?

Answer: Yes. In these cases, Rule 17Ad–5(e) requires that the registered transfer agent promptly confirm receipt of the inquiry or request and respond as soon as possible that it no longer acts as transfer agent for the issue.

V. Rule 17Ad–6: Recordkeeping.

A. *Certain Records Required to Monitor Compliance—Rule 17Ad–6(a):* (Every registered transfer agent is required by Rule 17Ad–6(a) to "make and keep current" the records enumerated in subparagraphs (1)–(11)).

(80) *Question:* What types of recordkeeping system and forms are required under Rule 17Ad–6?

Answer: No specific type of system and no particular forms are required,[60] as long as all the information required under Rule 17Ad–6 is captured. Thus, each registered transfer agent may adopt a recordkeeping and record retention system suitable to its own operations, provided that the records contain the requisite information.

(81) *Question:* May a registered transfer agent that acts in its own name as a transfer agent on behalf of issuers and that also performs contractual services for other transfer agents maintain separate records of its performance for each contractual arrangement?

Answer: No. The records and performance statistics of a registered transfer agent, whether acting in its own name or under contract (*e.g.*, a "private label service"), must be aggregated for all purposes under the turnaround rules.

(82) *Question:* Does Rule 17Ad–6 require a registered transfer agent to file any notice with its appropriate regulatory authority that it is fulfilling its obligations under the turnaround rules?

Answer: No. Rule 17Ad–6 does not require a registered transfer agent to file any notice stating, or any records showing, that it is complying with the turnaround rules.

1. *Records Showing Date of Receipt and Availability of Items—Rule 17Ad–6(a)(1):* Every registered transfer agent shall make and keep current a receipt, ticket, schedule, log or other record showing the business day each routine item and each non-routine item is (i) received from the presentor and, if applicable, from the outside registrar and (ii) made available to the presentor and, if applicable, to the outside registrar.

(83) *Question:* What type of receipt or ticket is required?

Answer: No particular form of receipt or ticket is required, provided the ticket identifies the item involved and the relevant business day (*i.e.*, the year, month, and day, as determined under Rule 17Ad–1(h)) the item was received and made available. A transfer agent that uses a batch method for handling transfer items would use an "other record" by recording the required information for each batch of items.[61]

(84) *Question:* Does Rule 17Ad–6(a)(1) require that a registered transfer agent be able to identify the specific dates on which a particular item is received and made available?

Answer: Yes. A transfer agent's records must show the business day each item is received from and made available to the presentor and the outside registrar, if applicable, and the entries on such records must be traceable to the specific item.

(85) *Question:* How many dates must be recorded on a Rule 17Ad–6(a)(1) record when an outside registrar is involved?

Answer: Four, in the usual case.[62] The record must state the business day each item was (i) received from the presentor, (ii) made available to the outside registrar, (iii) received from the outside registrar and (iv) made available to the presentor.

(86) *Question:* How should a transfer agent indicate on its Rule 17Ad–6(a)(1) records receipt of items tendered in connection with a record date?

Answer: In order to record accurately receipt of an item under Rule 17Ad–6(a)(1)(i) while still complying with record date requirements, the ticket, receipt or other record should include the calendar date and time the item was actually received.

(87) *Question:* May the records required by Rule 17Ad–6(a)(1) be maintained in a fragmentary manner—for example, partially in a log and partially on tickets?

Answer: No. Either all the information for a particular item should be compiled in one record or all the pieces of paper capturing the required information should be attached together. Thus, even though Rule 17Ad–6 neither requires a particular recordkeeping system nor prescribes a particular form of records, a registered transfer agent must establish a recordkeeping system and develop forms of records that integrate and centrally locate all the information required by Rule 17Ad–6.

2. *Monthly Records Relating to Transfer Agent Turnaround—Rule 17Ad–6(a)(2):* Every registered transfer agent must make and keep current a log, tally, journal, schedule or other record showing for each month:

(i) The number of routine items received;

(ii) The number of routine items received during the month that were turned around within three business days of receipt;

(iii) The number of routine items received during the month that were not turned around within three business days of receipt;

(iv) The number of non-routine items received during the month;

(v) The number of non-routine items received during the month that were turned around;

(vi) The number of routine items that, as of the close of business on the last business day of each month, have been in such registered transfer agent's possession for more than four business days, aged in increments of one business day (beginning on the fifth business day); and

(vii) The number of non-routine items in such registered transfer agent's possession of the close of business on the last business day of each month.

(88) *Question:* Are the records required by Rule 17Ad–6 (a)(2)(vi) and (a)(2)(vii) cumulative in nature?

Answer: Yes. These records contain cumulative information. Thus, any item recorded on the previous month's log that is still in the transfer agent's possession as of the last business day of the current month must be shown on the current month's log.[63]

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[59] Rule 17Ad–5(e) was adopted by the Commission in Securities Exchange Act Release No. 14219 (December 1, 1977) (42 FR 62129).

[60] *See* Release No. 13636. (SEC Docket, at 863).

[61] Release No. 13636. (SEC Docket, at 863).

[62] *But see* Question (53) *supra.*

[63] *See* Release No. 13636, n. 18. (SEC Docket, at 864 n. 18). Footnote 18 in Release No. 13636 contains two typographical errors; the referenced paragraphs should be (a)(2)(vi) and (a)(2)(vii). *See also* Question (59) *supra.*

(89) *Question:* Does Rule 17Ad–6(a)(2)(vii) require aging of non-routine items in a transfer agent's possession?

Answer: No. Rule 17Ad–6(a)(2)(vii) requires only that the number and not the age of such items be recorded.[64]

3. *Records of Outside Registrar-Rule 17Ad–6(a)(3):* Every registered transfer agent shall make and keep current, with respect to items for which it acts as an outside registrar:

(i) A receipt, ticket, schedule, log or other record showing the date and time:

(A) Each item is (1) received from the presenting transfer agent and (2) made available to the presenting transfer agent;

(B) Each written or oral notice of refusal to perform the registrar function is made available to the presenting transfer agent (and the substance of the notice); and

(ii) A log, tally, journal, schedule or other record showing for each month:

(A) The number of items received;

(B) The number of items processed within the time required by Rule 17Ad–2(b); and

(C) The number of items not processed within the time required by Rule 17Ad–2(b).

(90) *Question:* Must items processed within one-half day of receipt be recorded on the records required to be maintained by Rule 17Ad–6(a)(3)(ii)(B)?

Answer: Yes. The record required by Rule 17Ad–6(a)(3)(ii)(B) includes the number of items processed within the time periods specified in Rule 17Ad–2(b), including items processed in a shorter period of time. That is, Rule 17Ad–2(b) prescribes a maximum period within which items must be processed.

(91) *Question:* Where are items processed more quickly than required by Rule 17Ad–2(b) recorded?

Answer: In addition to the record required by Rule 17Ad–6(a)(3)(ii)(B), such items are recorded on the records required to be maintained by Rule 17Ad–6(a)(4) regarding calculations of processing performance under Rule 17Ad–2(b).

4. *Calculations of Performance-Rule 17Ad–6(a)(4):* Every registered transfer agent shall make and keep current a record of calculations demonstrating the registered transfer agent's monitoring of its performance under Rule 17Ad–2 (a) and (b).

(92) *Question:* Is there any particular form which must be used to record calculations of turnaround or processing performance?

Answer: No. No specific form of record is required, provided the calculations monitoring performance are actually shown.[65] For example, a record indicating the total number of routine items received in a month and turned around within three business days of receipt divided by the total number of routine items received in that month is sufficient.[66]

5. *Written Inquiries—Rule 17Ad–6(a)(6):* Every registered transfer agent shall make and keep current any written inquiry or request, including those not subject to the requirements of Rule 17Ad–5, concerning an item, showing the date received; a copy of any written response to an inquiry or request, showing the date dispatched or mailed to the presentor; if no response to an inquiry or request was made, the date the certificate involved was made available to the presentor; or, in the case of an inquiry or request under Rule 17Ad–5(a) responded to by telephone, a telephone log or memorandum showing the date and substance of any telephone response to the inquiry.

(93) *Question:* Under Rule 17Ad–6(a)(6), is a transfer agent required to keep only those inquiries subject to Rule 17Ad–5?

Answer: No. Rule 17Ad–6(a)(6) specifically requires that a transfer agent keep all written inquiries or requests received concerning an item, regardless of whether the inquiry falls within the parameters of Rule 17Ad–5.

(94) *Question:* Does Rule 17Ad–6(a)(6) require a named transfer agent that utilizes a service bureau, which is a registered transfer agent, to keep a copy of all written inquiries or requests?

Answer: Yes. The named transfer agent must keep a copy of all written inquiries and requests received, including those not subject to the requirements of Rule 17Ad–5, even though it forwards such requests and inquiries to a service bureau for response.

6. *Records Concerning the Appointment of a Transfer Agent—Rule 17Ad–6(a)(8):* Every registered transfer agent shall make and keep current any document, resolution, contract, appointment or other writing, and any supporting document, concerning the appointment and the termination of such appointment of such registered transfer agent to act in any capacity for any issue on behalf of the issuer, on behalf of itself as the issuer or on behalf of any person who was engaged by the issuer to act on behalf of the issuer.

(95) *Question:* Must an issuer that only maintains the official securityholder records and, accordingly, is a registered transfer agent make and keep current the records required by Rule 17Ad–6(a)(8)?

Answer: Yes. Rule 17Ad–6(a)(8) specifically applies to a registered transfer agent acting "on behalf of itself as the issuer." An issuer that maintains the official securityholder records is acting on its own behalf. Therefore, it must make and keep current the records required by Rule 17Ad–6(a)(8).

7. *Records of Restrictions on Transfer—Rule 17Ad–6(a)(9):* Every registered transfer shall make and keep current any record of an active (*i.e.*, unreleased) stop order, notice of adverse claim or any other restriction on transfer.

(96) *Question:* May a registered transfer agent remove, on instruction from the issuer, stops or other restrictions on transfer of a security merely because the security has a *de minimus* market value?

Answer: No. The market value of a security subject to a stop is not a decisive factor in determining whether to permit removal thereof. A stop or other restriction on transfer remains active until a transfer agent receives instructions from an authorized person to release it.[67]

8. *Journals—Rule 17Ad–6(a)(10):* Every registered transfer agent shall make and keep current a copy of any transfer journal and registrar journal prepared by such registered transfer agent.

(97) *Question:* Is a registered transfer agent required, under Rule 17Ad–6(a)(10), to prepare a transfer or registrar journal?

Answer: No. Rule 17Ad–6(a)(10) does not require that a registered transfer agent prepare any transfer or registrar journal. However, if a registered transfer agent, in fact, maintains such a journal, Rule 17Ad–6(a) requires that it be kept current.

9. *Special Event Documentation—Rule 17Ad–6(a)(11):* Every registered transfer agent shall make and keep current any document upon which the transfer agent bases its determination that an item received for transfer was received in connection with a reorganization, tender offer, exchange, redemption, liquidation, conversion or the sale of securities registered pursuant to the Securities Act of 1933 and, accordingly, was not routine under Rule 17Ad–1(i)(5) or (8).

[64] *See* Release No. 13636. (SEC Docket, at 864).

[65] *See* Release No. 13636 (SEC Docket, at 863) and Question (80) *supra.*

[66] *See* Release No. 13636 (SEC Docket, at 864).

[67] An unauthorized removal of a restrictive legend could lead to a violation of the Securities Act of 1933 and could expose the transfer agent to further liability. Also, an unauthorized removal of a stop transfer instruction could be inconsistent with the Commission's Lost and Stolen Securities Program. *See* Rule 17f–1 (17 CFR 240.17f–1).

(98) *Question:* Does Rule 17Ad–6(a)(11) require that the documents, upon which the determination is made that an item received for transfer is non-routine under Rule 17Ad–1(i)(5) or (8), be traceable to the particular certificates involved?

Answer: Yes. The documents required by Rule 17Ad–6(a)(11) must be traceable to the particular item received for transfer. Although the transfer agent need not explain on the certificate why the item has been determined to be non-routine, two suggested methods for complying with Rule 17Ad–6(a)(11) are: (1) Attaching the ticket and any appropriate documentation (*e.g.*, shareholder transmittal form) to the item; or (2) referring directly on the ticket to the document which served as the basis for a determination that the item was non-routine.

Illustration: Facts: An issuer engages in a registered exchange offer. Shareholders tender their certificates together with a letter of transmittal to the issuer's exchange agent, a registered transfer agent. Based on the letter of transmittal, the transfer agent determines that the item is non-routine under Rule 17Ad–1(i)(5). Interpretation: To ensure proper accountability under Rule 17Ad–6(a)(11), the transfer agent should leave the letter of transmittal attached to the certificates tendered and subsequently cancelled.

B. *Records Regarding Control Logs for Each Issue—Rule 17Ad–6(b):* Every registered transfer agent which, under the terms of its agency, maintains security-holder records for an issue or which acts as a registrar for an issue shall, with respect to such issue, obtain from the issuer or its transfer agent and retain documentation setting forth (1) the total number of shares or principal amount of debt securities or total number of units if relating to any other kind of security authorized and (2) the total issued and outstanding pursuant to issuer authorization.

(99) *Question:* Where the issuer as a registered transfer agent maintains securityholder records only, and the service bureau, which also is a registered transfer agent, cancels and issues certificates as well as performs the registrar function, must the issuer-transfer agent retain the documentation required by Rule 17Ad–6(b) and (c)?

Answer: Yes. However, *for purposes of the turnaround rules,* the issuer need not keep *documents* (*e.g.*, certificate of incorporation or amendments thereto) concerning the matters covered by Rule 17Ad–6(b).[68] Instead, the issuer must retain a *record* setting forth the total number of securities authorized, issued and outstanding, as well as copies of each cancelled registered security referred to in Rule 17Ad–6(c) with accompanying documentation (except legal papers returned to the presentor).

C. *Cancelled Registered Certificates and Accompanying Documentation—Rule 17Ad–6(c):* Every registered transfer agent which, under the terms of its agency, maintains securityholder records for an issue shall, with respect to such issue, retain (1) each cancelled registered bond, debenture, share, warrant or right, other registered evidence of indebtedness, or other certificate of ownership and (2) all accompanying documentation, except legal papers returned to the presentor.

(100) *Question:* Does Rule 17Ad–6(c) apply only to *registered* bonds, debentures, shares, warrants, rights, other evidences of indebtedness and other certificates of ownership, which have been cancelled?

Answer: Yes. Rule 17Ad–6(c) specifically applies to "registered" securities; the word "registered" does not modify the word "bond" only.

VI. Rule 17Ad–7: Record Retention.

A. *Retention Periods for Records Regarding Transfer Agent's Appointment, Stops, Journals, and Control Logs—Rule 17Ad–7(c):* The records required by Rule 17Ad–6(a)(8), (9) and (10) and 17Ad–6(b) shall be maintained in an easily accessible place during the continuance of the transfer agency and shall be maintained for one year after termination of the transfer agency.

(101) *Question:* Does the language "continuance of the transfer agency and * * * one year after termination of the transfer agency" refer to the transfer agent's period of appointment for a particular issue of securities?

Answer. Yes. This language refers to the period of time during which a transfer agent is appointed to perform transfer agent activities for a *particular issue.* The rule does not refer to the period of time during which a transfer agent is registered with its appropriate regulatory agency.

B. *Retention Periods for Cancelled Certificates and Accompanying Documentation—Rule 17Ad–7(d):* The records required by Rule 17Ad–6(c) shall be maintained for a period of not less than six years, the first six months in an easily accessible place.

(102) *Question:* May a registered transfer agent destroy cancelled share certificates after they have been retained for a period of six years?

Answer: Rule 17Ad–7(d) establishes a *minimum* retention period of six years under the federal securities laws. Rule 17Ad–7(d) does not grant a registered transfer agent the right to destroy cancelled certificates after they have been retained for six years. Varying circumstances, other federal and state statutory provisions, as well as the by-laws of the issuing corporation, may require retention of cancelled certificates beyond six years.

C. *Microfilming of Records—Rule 17Ad–7(f):* The records required to be maintained pursuant to Rule 17Ad–6 may be produced or reproduced on microfilm and be preserved in that form for the time required by Rule 17Ad–7. If such microfilm substitution for hard copy is made by a registered transfer agent, it shall:

(1) At all times have available for examination by the Commission and the appropriate regulatory agency for such transfer agent, facilities for immediate, easily readable projection of the microfilm and for producing easily readable facsimile enlargements;

(2) Arrange the records and index and file the films in such a manner as to permit the immediate location of any particular record;

(3) Be ready at all times to provide, and immediately provide, any facsimile enlargement which the Commission and the appropriate regulatory agency by their examiners or other representatives may request; and

(4) For the period for which the microfilmed records are required to be maintained, store separately from the original microfilm records a copy of the microfilm records.

(103) *Question:* Has a registered transfer agent complied with Rules 17Ad–6(c) and 17Ad–7(d) when it releases cancelled certificates if it maintains microfilm substitution for hard copies of the cancelled certificates in compliance with Rule 17Ad–7(f)?

Answer: Yes. Rule 17Ad–6(c) requires that the transfer agent retain cancelled certificates for which it maintains securityholder records under its agency agreement, and Rule 17Ad–7(d) requires that such certificates be maintained for a period of at least six years, the first six months in an easily accessible place. However, Rule 17Ad–7(f) provides that records, which must be maintained pursuant to Rule 17Ad–6 (*e.g.*, cancelled certificates), may be microfilmed and preserved in that form for the appropriate period under Rule 17Ad–7, provided all four conditions of rule 17Ad–7(f) (1)–(4) are met. Thus, microfilm substitution for hard copy of the cancelled certificates, if all conditions of Rule 17Ad–7(f) are met, satisfies the recordkeeping requirement of Rule 17Ad–6(c) and, if preserved in

[68] *See* Release No. 13636. (SEC Docket, at 864–65).

that form for at least six years, satisfies Rule 17Ad–7(d).

(104) *Question:* Does Rule 17Ad–7(f)(4) require that a transfer agent keep the copy of microfilm records on premises that are physically separated from the location of the original microfilm records?

Answer: No. The rationale for requiring separate storage for the two sets of microfilm records is to minimize the possibility that a localized fire or other occurrence might destroy both sets of microfilm records. Consequently, compliance with Rule 17Ad–7(f)(4) depends upon the design and safeguards of the particular premises involved. If a separate building is available, the original and the copy of microfilm records should be stored in separate buildings. If there is only one building, such records should be stored on separate floors or in separate parts of the building.

D. *Records Maintained by a Third Party on Behalf of a Transfer Agent—Rule 17Ad–7(g):* If the records required to be maintained and preserved by a registered transfer agent pursuant to the requirements of Rules 17Ad–6 and 17Ad–7 are maintained and preserved on behalf of the registered transfer agent by an outside service bureau, other recordkeeping service or the issuer, the registered transfer agent shall obtain, from such outside service bureau, other recordkeeping service or the issuer, an agreement, in writing, to the effect that:

(1) Such records are subject at any time, or from time to time, to reasonable periodic, special or other examinations by representatives of the Commission and the appropriate regulatory agency for such registered transfer agent, if it is not the Commission; and

(2) The outside service bureau, recordkeeping service or issuer will furnish to the Commission and the appropriate regulatory agency, upon demand, at either the principal office or at any regional office, complete, correct and current hard copies of any and all such records.

(105) *Question:* When certain records are maintained and preserved on behalf of the registered transfer agent by an outside service bureau, other recordkeeping service or the issuer, does the production and furnishing by such entity of an easily readable facsimile enlargement in paper copy form, which is reproduced from microfilm as permitted by Rule 17Ad–7(f), violate the "hard copy" requirement of Rule 17Ad–7(g)(2)?

Answer: No. Rule 17Ad–7(f) provides that records required to be maintained under Rule 17Ad–6 by a transfer agent may be reproduced on microfilm and preserved in that form for the time period required by Rule 17Ad–7, provided that, among other things, easily readable facsimile enlargements are producible therefrom.

Pursuant to Rule 17Ad–7(g)(2), the registered transfer agent must obtain a written agreement from such entity that it will furnish, upon demand, "complete, correct and current hard copies of any and all such records." The purpose of Rule 17Ad–7(g) is to extend the record retention requirements of registered transfer agents to entities maintaining and preserving records on behalf of the registered transfer agent. The words "hard copy" in Rule 17Ad–7(g)(2) neither expand upon that responsibility nor increase the requirements of Rule 17Ad–7(f). Thus, an easily readable facsimile enlargement of records in paper copy form, which is reproduced from microfilm in accordance with Rule 17Ad–7(f) by an outside service bureau, other recordkeeping service or the issuer, satisfies Rule 17Ad–(g)(2).

Illustration: Facts: Pursuant to an agreement with the issuer, the registered transfer agent forwards, six months or more after cancellation, cancelled share certificates to the issuer. Upon receipt of the cancelled certificates, the issuer microfilms and then destroys the certificates. The issuer retains the microfilm copy for a period of not less than six years, as required under Rules 17Ad–6(c) and 17Ad–7(d). If the Commission or the transfer agent's appropriate regulatory agency requests a hard copy of a destroyed cancelled certificate, the issuer has agreed in writing to reproduce a paper copy thereof from the microfilm. Interpretation: This paper copy will satisfy the "hard copy" requirement of Rule 17Ad–7(g)(2).

E. *Transfer Agents that Cease to Perform Transfer Agent Functions—Rule 17Ad–7(h):* When a registered transfer agent ceases to perform transfer agent functions for an issue, the responsibility of such transfer agent under Rule 17Ad–7 to retain the records required to be made and kept current under Rule 17Ad–6(a) (1), (6), (9), (10) and (11), (b) and (c) shall end upon the delivery of such records to the successor transfer agent.

(106) *Question:* What are the record retention requirements for a registered transfer agent that is in the process of terminating all of its stock transfer activities but has not yet withdrawn from registration as a transfer agent with its appropriate regulatory agency?

Answer: Rules 17Ad–6 and 17Ad–7 set forth, respectively, the recordkeeping and record retention requirements for registered transfer agents. In addition, Rule 17b–1(g) prescribes record retention requirements in connection with the Commission's Lost and Stolen Securities Program. A registered transfer agent that is ceasing to perform transfer agent functions for either a particular issue or entirely may fulfill its obligations by delivering, pursuant to Rule 17Ad–7(g) or 17Ad–7(h), the records required to be maintained by the above rules to the issuer for which it was a transfer agent, to an outside service bureau, or to a successor transfer agent. If a transfer agent determines to fulfill its obligations by delivering such records to the issuer or an outside service bureau, it must obtain a written agreement from the issuer or the outside service bureau stating that the records will be retained for the required time periods and will be made available to the Commission and the appropriate regulatory agency for examination in accordance with Rule 17Ad–7(g). If the records are delivered to a successor transfer agent, however, no such written agreement is required by Rule 17Ad–7(h).

(107) *Question:* What obligations are imposed by the federal securities laws on transfer agents to retain transfer agent records after a transfer agent's withdrawal from registration with the Commission has become effective?

Answer: Rule 17Ac3–1 [69] and related Form TA–W [70] presribe the procedure to be followed by transfer agents withdrawing from registration as transfer agents with the Commission. Pursuant to the terms of withdrawal stated therein, the withdrawing transfer agent undertakes to preserve those records which it would otherwise be required to make and keep pursuant to Rules 17Ad–6 and 17f–2 for the remainder of the time periods specified in Rule 17Ad–7.

Illustration: Facts: A transfer agent, whose withdrawal from registration with the Commission has become effective, is storing cancelled certificates, transmittal letters and transfer journals. How long must the transfer agent continue to store these records? Interpretation: Pursuant to Rule 17Ad–7(d), cancelled certificates and transmittal letters are required to be retained for six years. Accordingly, the transfer agent must retain these records for the remainder of the six year period. Pursuant to Rule 17Ad–7(c), transfer journals must be retained during the continuance of the transfer agency and for one year after termination thereof. Accordingly, the transfer agent must retain its transfer journals for one year

[69] *See* 17 CFR 240.17Ac3–1.

[70] *See* 17 CFR 249b.101.

from the date of termination of its transfer agency with respect to that issue of securities.

(108) *Question:* After a transfer agent's withdrawal from registration with the Commission becomes effective, what records may be delivered to the issuer or the successor transfer agent?

Answer: Any records enumerated in Rules 17Ad–6 and 17Ad–7 may be delivered to the issuer pursuant to Rule 17Ad–7(g) or to the successor transfer agent pursuant to Rule 17Ad–7(h).

If the transfer agent chooses to deliver these records to the issuer, it should obtain a written agreement, in accordance with the transfer agent's undertaking in Form TA–W, that the issuer will retain the records for the applicable time periods and make them available to the Commission.

Accordingly, 17 CFR Part 241 is amended by adding thereto this interpretative release, Regulation of Transfer Agents.

By the Commission.

George A. Fitzsimmons,

Secretary.

September 2, 1980.

[FR Doc. 80–27812 Filed 9–10–80; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. RM79–48; Order No. 96]

Section 206(d) Exemption for Small Industrial Boiler Fuel Facilities From the Incremental Pricing Provisions of the Natural Gas Policy Act of 1978; Correction

September 3, 1980.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Correction notice to final rule.

SUMMARY: This notice contains a correction to the final regulations promulgated in Order No. 96, issued July 29, 1980 (45 FR 52359, August 7, 1980) which exempts certain small industrial boiler fuel facilities from incremental pricing.

EFFECTIVE DATE: September 5, 1980, or such later date as represents the first day following 30 days of continuous session of the Congress, if not disapproved by either House.

FOR FURTHER INFORMATION CONTACT:

Alice Fernandez, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, D.C. 20426, (202) 357–9095, or

Carol M. Lane, Office of the General Counsel, Federal Energy Regulatory, Commission, 825 North Capitol Street NE, Washington, D.C. 20426, (202) 357–8114.

Kenneth F. Plumb,

Secretary.

On mimeo page 18, 45 CFR 52363, in the first column, change § 282.203(a)(2) from: "(2) all gas used for an agricultural use;"

to: "(2) all gas consumed in an agricultural use unless by rule or order the Commission determines that there is an alternative fuel; or feedstock for the agricultural use that is economically practicable and reasonably available;"

[FR Doc. 80–27574 Filed 9–10–80; 8:45]

BILLING CODE 6450–85–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 200

[Docket No. R–80–633]

Revision to Thermal Requirements for HUD Minimum Property Standards (MPS) for One- and Two-Family Dwellings

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: This rule incorporates modified interim regulations for thermal requirements into the HUD MPS for One- and Two-Family Dwellings, 4900.1. This rule modifies the thermal requirements published in 44 FR 22444, April 16, 1979, effective as an Interim Rule May 16, 1979. These modifications are in response to a legislative mandate contained in House of Representatives Report No. 96–706, December 13, 1979, accompanying H.R. 3875, enacted as Section 322 of the Housing and Community Development Amendments of 1979, Public Law 96–153, December 21, 1979, and other comments made on the Interim Rule.

EFFECTIVE DATE: October 1, 1980.

FOR FURTHER INFORMATION CONTACT:

Mr. Mervin Dizenfeld, Office of Architecture and Engineering Standards, Room 6170, Department of Housing and Urban Development, Washington, D.C. 20410, (202) 755–6590. (This is not a toll-free number.

SUPPLEMENTARY INFORMATION: HUD Minimum Property Standards are published in Handbooks, MPS for One- and Two-Family Dwellings 4900.1, MPS for Multifamily Housing 4910.1, and MPS for Care-Type Housing 4920.1. The MPS are the standards for all new construction in HUD associated programs. The MPS are incorporated by reference into 24 CFR 200.919.

All substantive changes in the MPS are required by 24 CFR 200.933 to be published in the **Federal Register** using the same procedure as for the publication of regulations. The MPS for which these changes are proposed are available for examination in all HUD Field Offices and in Room 6170 of the Headquarters at the above address during business hours.

On April 16, 1979 (44 FR 22444) HUD published Increases in Thermal Requirements for HUD Minimum Property Standards. Interested persons were given until June 15, 1979 to comment on the amendment. House of Representatives Report No. 96–706 of December 13, 1979 accompanying H.R. 3875 contained a disapproval of the thermal standards as applied to masonry and included the following:

> The objective of the provision is not to exempt the masonry components of construction from increased thermal energy requirements. Rather, the conferees expect the Secretary of HUD, after consulting with the Farmers Home Administration and the Department of Energy, and after carefully reviewing data that has become available since the interim rule was published, and other data developed pursuant to the recent National Bureau of Standards cost-benefit analysis, to move immediately to issue final thermal standards for the masonry components of construction no later than one month after enactment of this Act. During the interim period and prior to the issuance of the revised standards, masonry components shall comply with those thermal requirements existing prior to April 16, 1979, except that any local acceptable standard exemptions granted by HUD as of June 8, 1979, may remain in effect until the revised standards become final.
>
> The conferees believe that the three agencies involved in developing conservation standards for new and rehabilitated residential construction—the Department of Housing and Urban Development, the Farmers Home Administration and the Department of Energy—should develop standards for various programs that are consistent. In order for the Federal Government to develop a rational and consistent approach to energy conservation, these three agencies should work closely together and reach a consensus on the assumptions and data used in various residential conservation standards.

Forty-one comments were received from other sources. These comments dealt with the requirement for an

external source of combustion air for furnaces, boilers, domestic water heaters and site-built masonry fireplaces. A second subject of commentary was the development of exceptions to requirements for electric resistance heating insulation levels for heat pumps in areas above 5000 heating degree days. Research and coordination of information in all of these areas has resulted in standards which (1) provide alternates to insulation standards for areas of 3000 heating degree days and less, based on recently available technical data, which is acceptable to the Farmers Home Administration (FmHA); (2) clarify the external air supply required for fireplaces in terms of combustion needs; (3) modify the requirement for external source of combustion air for furnaces and water heaters; (4) establish acceptable heat pump systems resulting from recent technology which relieve the requirement in areas over 5000 heating degree days for complying with insulation levels for electric resistance heating.

Discussion of Major Comments:

Masonry Construction

The legislative mandate in House of Representatives Report No. 96–706 quoted above was the basis for considerable reanalysis. HUD has consulted with both FmHA and the Department of Energy (DOE). Results from these discussions, particularly the development of unified energy conservation standards, are based upon analysis of data that was not in final form at the time the interim rule was prepared.

Prior to the above report, on November 15, 1979 HUD met with representatives of the National Concrete Masonry Association, the Brick Institute of America, the Portland Cement Association, DOE, FmHA, the Veterans Administration and the National Bureau of Standards (NBS). Test data on the thermal performance of six masonry and wood frame walls was presented and discussed. The results of the tests were represented as an initial effort to experimentally evaluate thermal response of building envelopes under dynamic as well as steady-state conditions. Additional tests of different wall configurations and different temperature cycles were recommended. The data submitted was insufficient to support a change to the HUD standards. Also submitted were tables for ten cities with reduced masonry wall R-values purported to be equivalent to the values in the HUD standards. However, these tables were derived from a study of low-rise apartment buildings, not one- and two-family dwellings, to which the HUD standards apply. The HUD standards were not developed on a steady-state basis, but were based upon the National Bureau of Standards Load Determination (NBSLD) program, using weather tapes and projected data for cities with various climatic conditions. Research, partially funded by HUD and DOE, is now in progress at NBS to refine basic values of various types of walls for use in such computer programs. The presentation of component description by U values in Table 6–7.1 of the HUD standards is consistent with the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) Handbook of Fundamentals and with the National Concrete Masonry Association publication "NCMA–TEK 12, Estimating U-Factors for Concrete Masonry Construction."

HUD reviewed National Bureau of Standards Interagency Report (NBSIR) 79–1789, an Economic Analysis of Insulation in Selected Masonry and Wood-Frame Walls, prepared for HUD by NBS. The report included projected comparative annual heating and cooling requirements for wood-frame and masonry walls, normalized to the same U value, for eight cities in various climatic areas. Masonry walls performed only slightly better then wood-frame walls in the comparison. In areas where heating rather than cooling is the dominant form of energy consumption, the masonry performance ranged from 0.5 percent to 1.3 percent better than the wood-frame walls. In areas where cooling is the critical load, the masonry wall energy consumption ranged from 0.7 percent to 4.9 percent less than the wood-frame wall. The maximum difference of 4.9 percent translates to 860,000 Btu, or approximately 250 kWh per year. When the NBS draft report on the performance of additional masonry walls is issued in final form, the performance graphs comparing masonry and wood frame walls from this report and from NBSIR 79–1789 will be incorporated into the HUD Manual of Acceptable Practices. This will assist users of the MPS in determining alternate approaches to conformance to the standards. The following statement is included in NBSIR 79–1789: "Although the energy savings due to an equivalent decrease in U-value for masonry walls are nearly the same as those for wood-frame walls, the maximum economic level of insulation is significantly lower for the masonry walls. This is due to the fact that the insulation of masonry walls is significantly more expensive than insulation in wood-frame walls, thereby reducing the cost-effectiveness of the insulation."

Technical support documents for the DOE Energy Performance Standards for New Buildings (BEPS) were also reviewed for applicability. The Economic Analysis for these standards, Appendix I. 3, Exterior Masonry Houses and the Residential Energy Budgets, discusses the problems that masonry houses present in terms of meeting the energy budget "optima" as follows: "Two questions are addressed:

1. How can masonry houses conform to the "optimum" energy budgets?
2. What are the energy budgets that minimize life-cycle cost for masonry houses?

The analysis is performed by using the DOE–2 computer program to model a prototype masonry house in several climates. The prototype resembles the Lawrence Berkley Laboratory (LBL) single-story house, except that the walls are made of concrete block. DOE used the same specifications for the concrete block as Petersen (1979) (NBSIR 79–1789). DOE assumed that partition walls are also made of masonry and that a slab-on-grade floor is used. The results can be summarized by the answers to the two questions posed above. First, to conform with the "optimum" energy budgets, masonry walls must be insulated to almost as large an R-value as frame walls. Thus, if the optimal house has R–19 walls, the masonry house will require almost (but not fully) R–19 insulation. Since the optima always involve at least R–11 insulation, masonry walls must also be insulated to meet the same standard. If further appears that insulating masonry houses to these levels is cost-effective even in warm climates such as Ft. Worth and Phoenix. Insulation techniques which involve interior furring and ordinary mineral wool insulation are the cheapest, given the cost data used. Second, the optima for a masonry prototype would be comparable to those in a frame house. For most climates, the masonry optima are slightly lower (in energy use) than the frame optima because the same R-value of insulation is used, but masonry buildings use slightly less energy for a given insulation level than frame houses. DOE concludes that, since the difference in energy performance between frame and masonry buildings is not large, there is no reason to establish a separate energy budget for masonry buildings. If masonry buildings are designed to meet the ordinary "optimum" budgets, they will be close to their own life-cycle cost minima. Even if the difference were

larger, one could still argue that separate energy budgets are not needed. The essence of the performance standard concept is that all houses must meet the same energy standard for a given size of house. This uniform energy standard will not, in general, correspond to the cost-minimizing configuration for any given house. It is only when the departures from cost-minimization become large that special exemptions from the general performance standard are advisable. Otherwise, every home which did not exactly follow the prototype specifications (e.g., house without southern exposure, houses with large view windows, houses with open-beam ceilings, etc.) would seek exemptions; and the standard would become more arbitrary and difficult to enforce. This is not the case with masonry. Both these results and those of Petersen (1979) show that masonry walls of a given U-value perform only a few percentage points better than frame walls of the same U-value. (Petersen shows that insulated masonry is generally not cost effective, but his report confines itself to insulation strategies which are expensive compared to interior furring and fiberglass insulation.)"

On March 6–7, 1980, HUD representatives attended a two-day meeting with DOE personnel and DOE contractors. The purpose of the meeting was to hear and discuss the status of BEPS as they would apply to residential construction and the comparison of these standards and HUD standards. While the assumptions, supporting the DOE proposed standards were reviewed, no attempt has been made to increase the levels of protection to that proposed therein. We are aware that public hearings on the DOE program have recently been completed. When the final DOE standards are developed further correlation of HUD Minimum Property Standards is contemplated. The following list indicates the major items of data reviewed in preparation of the Final Rule:

1. *Economic Analysis of Insulation in Selected Masonry and Wood-Frame Walls.* National Bureau of Standards (NBS) NBSIR 79–1789.

2. *Thermal Performance of Masonry Walls.* Fiorato and Cruz for the Portland Cement Association (PCA), the Brick Institute of America (BIA) and the National Concrete Masonry Association (NCMA).

3. *Effect of the Thermal Mass on the Heating and Cooling Loads in Residences.* Rudoy and Dougall for the National Forest Products Association.

4. *Avoid Tunnel Vision in Implementation of Energy Conservation Building Standards.* W. J. van der Meer for NBS Special Publication 473, Research and Innovation in the Building Regulatory Process.

5. *Thermal Inertia in Architectural Walls.* F. N. Arumi for ERDA and NCMA.

6. *Energy Conservation Guidelines for Including Mass and Insulation Building Walls.* Paper by M. E. Dexter for presentation at DOE seminar.

7. *The "M" Factor.* Masonry Industry Committee.

8. *New Insights into Energy Use and Conservation in Structures.* NCMA.

9. *A Comparison of Very Lightweight Walls of Wood, Metal and Glass Versus Concrete Masonry in Energy Conservation.* NCMA.

10. *Estimating U-Factors for Concrete Masonry Construction.* NCMA TEK 12.

11. *Thermal Comfort in Housing with Concrete Masonry Units.* NCMA TEK 26.

12. *Thermal Insulation of Concrete Masonry Walls.* NCMA TEK 38.

13. *Energy Conservation with Concrete Masonry.* NCMA TEK 58.

14. *Tables of U-Values for Concrete Masonry Walls.* NCMA TEK 67.

15. *New Findings on Energy Conservation with Concrete Masonry.* NCMA TEK 68.

16. *Energy Conscious Design for Buildings.* NCMA TEK 82.

17. *Dynamic Thermal Properties of an Experimental Masonry Building.* BSS 45, NBS.

18. Various *Technical Notes on Brick Construction.* BIA.

19. Excerpts from *PCA Studies on Low Rise Apartment Building*—Author Unknown.

20. Technical Support Documents for DOE NOPR on Building Energy Performance Standards.

21. Computer analysis comparison of frame and masonry houses by NBS for FmHA.

22. *Single-Family Housing Energy Study, One House-Two Cities-Three Walls.* BIA Research Report 19.

23. *An Appraisal of the "M" factor and the Role of Building Thermal Mass in Energy Conservation,* K. W. Childs, Oak Ridge National Laboratory.

On May 5 and May 19, 1980 meetings were held with FmHA to discuss the standards of the two agencies and to attempt to resolve the differences. Original assumptions upon which both FmHA and HUD standards were based were reanalyzed and economic information on which the original revision of the standards was based were reviewed in light of the energy costs which have escalated beyond those projected at the time of the revision. The resulting standard is based on the latest information available and the most liberal assumption regarding other energy conserving features. Since the Conference Report stated that it was not intended to exempt masonry construction from increased requirements, we have amended Table 6–7.1 to provide equivalent energy conservation through increased insulation requirements in ceilings to compensate for reduced levels of insulation in walls of all construction types. We believe this is a rational requirement which is responsive to the legislative mandate. This change appears as Note 2 to Table 6–7.1. We are aware that a low-pitched roof is the historical design preference in several geographic areas covered by this amendment. It is not cost-effective to mandate a change in roof structure merely to achieve limited additional cavity space to receive insulation. Therefore, the reduced thickness of ceiling insulation, adjacent to walls supporting the roof structure, will not be considered when determining conformance to the transmission values of Table 6–7.1 or Footnote 2.

Local Acceptable Standards now in effect in areas of 2000 Heating Degree Days or less will remain in effect until 120 days after the effective date of this Final Rule. The Department is aware that an amendment accepted by the House of Representatives during consideration of H.R. 7262 would continue Local Acceptable Standards for masonry construction, which were in effect on June 8, 1979, until the implementation of the building energy performance standards. If this amendment is incorporated into the Housing and Community Development Act of 1980, the Department will accede to the wishes of Congress.

Storm Sash

We have received several comments inquiring about the use of storm sash in lieu of insulating frames for metal frame windows in areas subject to a winter design temperature of 10 F or lower. Paragraph 508–5.1 has been modified to clarify our intent on this subject.

Fireplaces

Several comments were received concerning requirements for external combustion air for fireplaces. As a result we have conferred with knowledgeable people in this area and have discussed their experiences. The basic question centered on the amount of air needed to maintain the fire without undue depletion of conditioned air in the home. The requirement for an air source no smaller than the smoke pipe or the flue pipe has been replaced by a general statement, requiring an air supply sized for proper combustion. Guidance material will be developed for the Manual of Acceptable Practices. Based upon comments from HUD Field Offices, an operable window has been determined to be acceptable for combustion air supply when located to avoid drafts. A glass fire screen is required to allow the reduction of combustion air when desired.

Combustion and Ventilation Air

Many comments were received concerning the requirement of combustion air for fossil fuel heating systems. The commenters point out that no energy may be saved with this requirement. The intent of this requirement was not for energy conservation but for life safety. This decision was based on the understanding that quality builders were building a tighter house with a drastically reduced infiltration rate. We again refer to the National Fire Protection Association which has required outside air for combustion when fossil fuel burning units are located in confined areas with insufficient combustion air. This change is made in paragraph 615–2.5, Combustion Air. The American National Standards Institute Z223 Committee is presently circulating a proposed revision to the Standard which deals with required combustion and ventilation air in tightly constructed buildings. This consensus standard will be considered for inclusion in our standards. The proposed revision to Z223 contains definitions of confined and unconfined spaces in which appliances are located and the adequacy of these spaces to support combustion. Pending the outcome, the requirements for heating systems have now been reworded in an attempt to clarify the needs for a newer house without expensive controls to monitor combustion air.

Heat Pump

Several comments were received debating the need for insulating houses served by heat pumps, to the same level as houses having electric resistance heating in areas of more than 5000 heating degree days. The argument was also made that such a requirement discouraged the use of more efficient equipment. Reports later than those upon which the standard was based were presented.

As a result, Note 1 of Table 6–7.1 has been amended to provide exceptions to the standard when various specific types of heat pumps are proposed for use in areas of more than 5000 Heating Degree Days.

Several commenters pointed out that the graph, Figure 2, Gross Ceiling Area did not conform to Table 6–7.1. The graph has been corrected accordingly.

A finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410.

This rule is not listed in the Department's semiannual agenda of significant rules, published pursuant to Executive Order 12221.

For information and clarity the full text of the Final Rule, for the thermal revision to Handbook 4900.1, Minimum Property Standards for One- and Two-Family Dwellings, incorporated by reference in 24 CFR 200.933 as revised is published below. Paragraphs that have been changed as a result of comments on the Interim Rule are marked with an asterisk.

507–3.4 *Conditions of Use*

a. Foam plastic insulation surfaces shall have a flame spread rating of 0–75 tested in accordance with ASTM E–84. In all habitable rooms and in nonhabitable areas such as utility rooms, garages and basements using foam plastic for insulation, the insulation shall be installed within the cavity or on the exterior of a masonry wall or shall be separated from the building interior by a material having a finish rating of at least 15 minutes such as ½ in. gypsum wall board.

b. When installing insulation in attics, and eave vents are provided, a one in. clearance under the roof deck must be allowed to permit the upward flow of the incoming air above the surface of the insulation. To insure that the clearance is provided when blown or poured type insulation is used, baffles of durable material shall be installed prior to the insulation.

c. Vermiculite and perlite used as a fill insulation in masonry walls shall be of the water repellent type.

d. Loose fill cellulosic insulation pneumatically installed in wall cavities shall (1) be blown-in dry in accordance with the manufacturer's written instructions and shall comply with FS HH–I–515D as amended for conformance with Pub. L. 95–319 and (2) the R value shall be based on an installed density (ID) of not less than 3.5 lb/cf. ID is the ratio of the weight of the installed material (w) divided by the volume (v) of the wall cavity and shall equal or exceed 3.5 lb/cf.

*508–5.1 *General*

When metal windows or sliding glass doors are proposed in areas subject to a winter design temperature of 10 F or lower, insulating frames shall be provided. Criteria shall be as set forth in AAMA 1502.6, Voluntary Standards and Tests of Thermal Performance of Residential Insulating Windows and Sliding Glass Doors. Where wood is used as the insulator, it shall be water repellent preservative treated. Storm sash are acceptable to serve this purpose when a thermal separation is provided between the prime and the storm window where both window frames are metal.

*604–7.1 *General*

Fireplace construction shall be safe, durable and suitable for its intended use. All site-built fireplaces, solid fuel or gas burning, shall be provided with a source of combustion air from outside the conditioned atmosphere of the house. The air shall be ducted into the combustion chamber proper or located along the same wall or floor close to the fireplace. This supply of air shall be sized for the flow of air needed for proper combustion, independent of infiltration through the structure, and it shall be equipped with insect screening and tightly closing damper. An operable window in the same room may be considered as the source of air when located to assure draft-free comfort for occupants and a glass firescreen is installed.

607–3.2 *Overall Coefficient of Heat Transmission*

a. All buildings which are heated or cooled mechanically shall be constructed to comply with the U values shown in Table 6–7.1. U values shown do not include adjustments for framing in walls, ceilings or floors, nor for the sash frame in windows or glass doors.

*b. Where the stated U value of any one component of roof deck, ceiling, wall or floor cannot be practically obtained, such U value may be increased to the min. figure attainable and the U value for other components decreased until the overall heat gain or heat loss does not exceed the total resulting from conformance to the stated U values. (See Note 2, Table 6–7.1).

607–3.3 *Component Coefficient Values*

For ceilings, walls, floors and openings, U values shall not exceed those shown in Table 6–7–1.

TABLE 6-7.1*

Maximum U Values for Ceiling, Wall and Floor Sections for Electric Resistance Heat (E.R.) and Heat Pump or Fossil Fuel Heat (F.F.) (1)

Heating Degree Days (65 F Base)	Ceilings (2) (3)		Walls (2)		Floors (4)		Windows (5)		Sliding Glass Doors (5)		Storm Doors (6)	
	E.R.	F.F.	E.R.	F.F.	E.R.	F.F.	E.R.	F.F.	E.R.	F.F.	E.R.	F.F.
0 - 1000	.05	.05	.08	.08	--	--	1.13	1.13	1.13	1.13	No	No
1001 - 2500	.04	.05	.07	.08	--	--	.69	1.13	.69	1.13	No (7)	No
2501 - 3500	.03	.04	.05	.08	.07	--	.69	1.13	.69	1.13	No (7)	No
3501 - 4500	.03	.03	.05	.07	.05	.07	.69	.69	.69	.69	No (7)	No (7)
4501 - 6000	.03	.03	.05	.07	.05	.07	.47	.69	.69	.69	Yes	No (7)
6001 - 7000	.026	.03	.05	.07	.05	.07	.47	.69	.69	.69	Yes	No (7)
7001 +	.026	.026	.05	.05	.05	.05	.47	.47	.69	.69	Yes	Yes

Notes to Table 6-7.1

*(1) For areas of 5000 heating degree days (HDD) or less, houses using heat pumps may be insulated to levels required for fossil fuels. In areas above 5000 HDD, houses using air-to-air heat pumps shall be insulated to levels required for electric resistance (ER) heating. The following exceptions to this requirement are:

a. Water source heat pumps.
b. Fossil fuel supplemented heat pumps.
c. Units with multiple capacity.
(1) Dual compressors
(2) Modulating compressor speed
(3) Dual speed compressor
d. Uni-directional (such as annual cycle energy systems (ACES)).
e. Systems with balanced heating and cooling load.

*(2) The following combinations of wall and ceiling transmission U values are considered to provide annual heating and cooling consumption comparable to that predicted for values in Table 6-7.1 and may be substituted accordingly. Other components shall conform to the U values shown for the specific heating degree day:

HDD (65F)	ER		FF	
	CLG	WALL	CLG	WALL
0 - 1000	.04	.14	.04	.14
	.03	.15	.03	.15
	.026	.16	.026	.16
1001 - 1500	+	+	.04	.13
	.03	.13	.03	.14
	.026	.14	.026	.16
1501 - 2500	+	+	.04	.12
	.03	.11	.03	.13
	.026	.12	.026	.14
2501 - 3000	+	+	.03	.12
	.026	.07	.026	.13

+ See Table 6-7.1

(3) Includes roof/ceiling assemblies, in which the finished ceiling is the underside of the roof deck.

*(4) For floors of heated spaces over unheated basements, unheated garages or unheated crawl spaces. A basement, crawl space or garage shall be considered unheated unless it is provided with a positive heat supply to maintain a minimum temperature of 50° F. Positive heat supply is defined by ASHRAE as "heat supplied to a space by design or by heat losses occurring from energy-consuming systems or components associated with that space." Where the walls of an unheated basement or crawl space are insulated in lieu of floor insulation, the total heat loss attributed to the floor from the heated area shall not exceed the heat loss calculated for floors with required insulation.

*(5) Maximum glass area shall not exceed 15 percent of the gross area of all exterior walls enclosing heated spaces, except when demonstrated that the winter daily solar heat gain exceeds the 24 hour heat loss and the glass area is properly screened from summer solar heat gain. In areas where cooling is the predominant load and the heating load is insignificant (as an example, 2000 or more cooling hours and 2000 or less heating degree days), the maximum glazing area stated above may be waived when glass area is properly screened from solar heat gain. Any additional glass area shall have a significant portion of operable sash in order to provide natural ventilation.

(6) A 1¾ inch metal faced door system with an insulated core and durable weatherstripping providing a U value equal or better than 0.32, and an infiltration rate of no greater than .50 cfm per foot of crack length, tested according to ASTM E–283 at 1.567 psf of air pressure, may be substituted for a conventional door and storm door. All exterior doors shall be weatherstripped.

*(7) In areas with 1501 or more heating degree days, a storm door is required when the primary door is a hollow core door or is over 25% glass.

*607–3.4 *Alternate Performance Criteria*

a. As an alternative to conformance with Table 6–7.1, dwellings which conform to the performance criteria of this section shall be considered acceptable.

b. U_o (gross wall)—Total exterior wall area (opaque wall and window and door) shall have a combined thermal transmittance value (U_o value) not to exceed the values shown in Figure 1. Equation 1 shall be used to determine acceptable combinations to meet the requirements of Figure 1.

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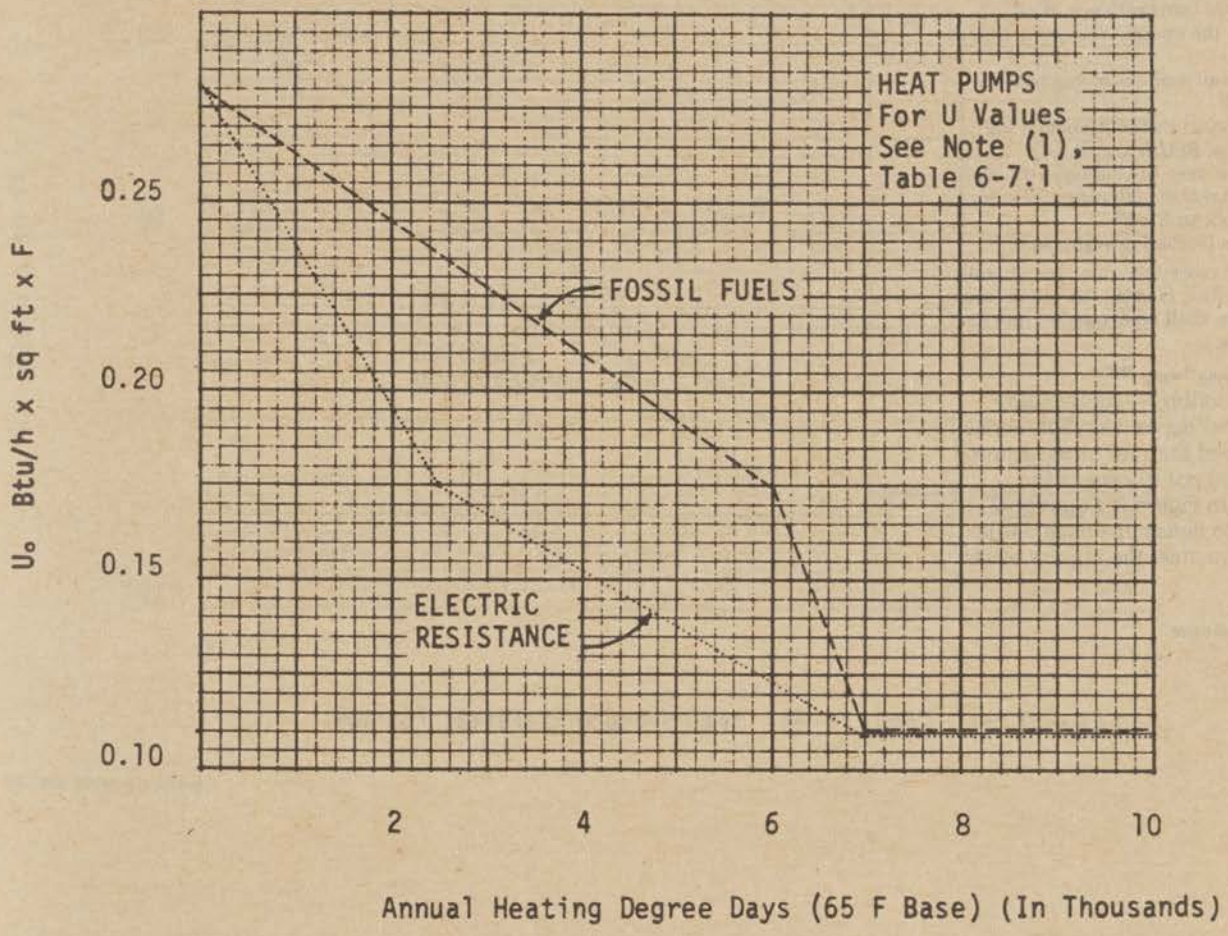
GROSS WALLS - FIGURE 1



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Equation 1 Formula for Determining Combinations (See Figure 1)

$$U_o = (U_{wall}A_{wall} + U_{window}A_{window} + U_{door}A_{door})/A_o$$

where:

U_o = the average thermal transmittance of the gross wall area, Btu/(h x sq ft x F)

A_o = the gross area of all exterior walls enclosing heated spaces, sq ft

U_{wall} = the thermal transmittance of all elements of the opaque wall area, Btu/(h x sq ft x F)

A_{wall} = opaque wall area enclosing heated spaces, sq ft

U_{window} = the thermal transmittance of the window area, Btu/(h x sq ft x F)

A_{window} = window area (including sash), sq ft

U_{door} = the thermal transmittance of the door area, Btu/(h x sq ft x F)

A_{door} = door area (including sash), sq ft

Note.—Where more than one type of wall, window and/or door is used, the U x A term for that exposure shall be expanded into its sub-elements, as:

$U_{wall_1} A_{wall_1} + U_{wall_2} A_{wall_2}$, etc.

c. U_o (gross ceiling)—Total ceiling area (opaque ceiling and skylights) shall have a combined thermal transmittance value (U_o value) not to exceed the values shown in Figure 2. Equation 2 shall be used to determine acceptable combinations to meet the requirements of Figure 2.

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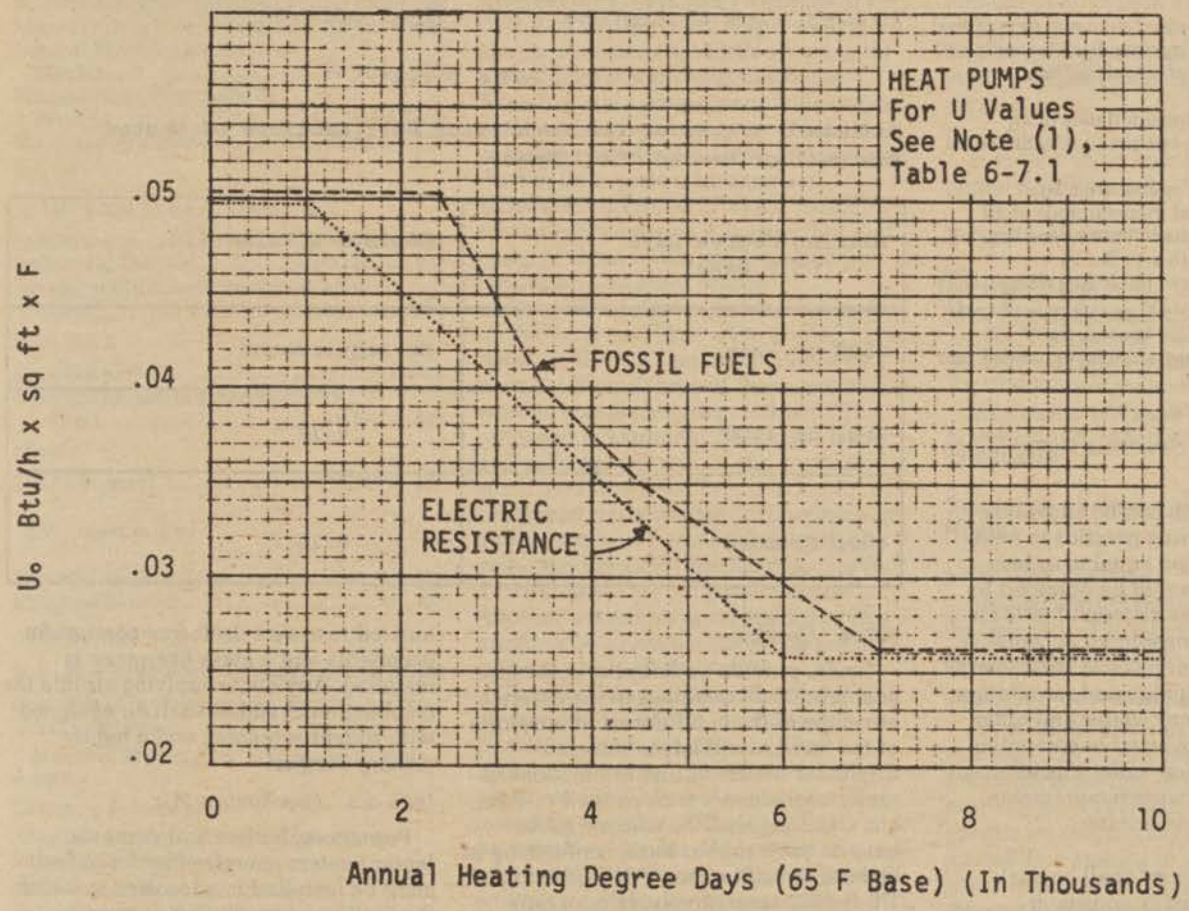
GROSS CEILING - FIGURE 2*



BILLING CODE 4210-01-C

Equation 2 Formula for Determining Roof/Ceiling Combinations

$U_o = (U_{roof}A_{roof} + U_{skylight}A_{skylight})/A_o$

where:

U_o = the average thermal transmittance of the gross roof/ceiling area, Btu/(h x sq ft x F)

A_o = the gross area of a roof/ceiling assembly, sq ft

U_{roof} = the thermal transmittance of all elements of the opaque roof/ceiling area, Btu/(h x sq ft x F)

A_{roof} = opaque roof/ceiling area, sq ft

$U_{skylight}$ = the thermal transmittance of all skylight elements in the roof/ceiling assembly, Btu/(h x sq ft x F)

$A_{skylight}$ = skylight area (including frame), sq ft

Note.—Where more than one type of roof/ceiling and/or skylight is used, the U x A term for that exposure shall be expanded into its sub-elements, as:

$U_{roof}\ A_{roof} + U_{roof}\ A_{roof}$, etc.

607–3.5 *Overall Structure Performance Alternative*

Structures which can be shown by accepted engineering practice to have energy consumption equal to or less than that which would be obtained by conformance to the criteria of 607–3.3 or 607–3.4 shall be considered acceptable. The contribution of passive solar energy and the related storage and reradiation capacity of masonry, water and other mass may be recognized in computing energy consumption under this alternate method. The following requirements shall govern in determining comparability:

a. The methodology shall be cost effective to the energy consumer.

b. The methodology shall not adversely affect the structural capacity, durability, or safety aspects of the structure.

c. All data and calculating must show valid performance comparisons between the proposed option and a structure comparable in size, configuration, orientation and occupant usage designed in accordance with 607–3.3 or 607–3.4.

607–3.6 *Basement or Crawl Space Foundation Walls*

Insulation may be omitted from floors over heated basement areas or heated crawl spaces if foundation walls are insulated. Foundation walls of heated areas below grade need not be insulated except where recreation or similar use rooms or habitable rooms are provided or where more than 50 percent of the wall is exposed to outside air. The U value of foundation wall sections shall not exceed the value shown in Table 6–7.2 except where the alternative methods shown in 607–3.4 or 607–3.5 are employed and foundation walls are included in the determination of the average thermal transmittance of the gross wall area.

TABLE 6-7.2*

Maximum U Values of the Foundation Wall Sections of Heated Basement or Heated Crawl Space

Heating Degree Days (65 F Base)	Maximum U Value
2500 or less	No Requirement
2501 to 4500	0.17
4501 or more	0.10

607–4 *Caulking*

Caulk, provide gasket(s) or otherwise seal around all openings in the exterior envelope of the conditioned atmosphere of the home, at all joints between dissimilar materials and at junctions of major components such as wall-to-floor, etc. Caulking shall be silicone rubber base or butyl rubber base, conforming to Federal Specifications TT–S–1543 and TT–S–1657 respectively, or materials demonstrating equivalent performance in resilience and durability.

610–1 *Factory-Built Fireplaces and Fireplace Stoves*

*610–1.1 *General*

All factory-built fireplaces, fireplace stoves and other devices and appliances burning solid fuels shall be provided with a source of combustion air from outside the conditioned atmosphere of the home, directed (1) into the combustion chamber proper, or (2) into the room and along the same wall in close proximity to where the appliance is located. The combustion air supply duct shall be sized for the flow of air needed by the appliance independent of infiltration through the structure. An operable window in the same room may be considered as a source of air when located to assure draft-free comfort for occupants and a glass firescreen is installed. Any duct supplying air into the combustion chamber shall be equipped with rodent screening and a tightly closing damper.

*615–2.5 *Combustion Air*

Furnances, boilers and domestic water heaters energized by fossil fuels shall be installed in a location in which the facilities for ventilation permit satisfactory combustion, proper venting and the maintenance of ambient temperature at safe limits. When normal infiltration does not provide the necessary air, outside air shall be introduced. Operation of exhaust fans, clothes dryers, or fireplaces will reduce the available air in a well constructed house and a source of air from outside the conditioned space should be considered in accordance with the requirements of NFPA Standards 31 and 54.

Appendix C

507–3 *Building Insulation*

*Cork Board ..... FS HH–I–525
Cellular Glass ..... FS HH–I–551
Cellulose, Vegetable or Wood Fiber ..... FS HH–I–515

Expanded Polystyrene Insulation Board.....FS HH–I–524
Fiberboard.....FS LLL–I–535

Class C or E or ASTM C–209

Insulation Board (Urethane).....FS HH–I–530
Mineral Fiber, Board (Roof).....FS HH–I–526
Mineral Fiber, Insulation Blanket.....FS HH–I–521
Mineral Fiber, Pneumatic or Poured.....FS HH–I–1030
Perimeter Insulation.....FS HH–I–524

Type II

FS HH–I–558, Form A, Class 1 or 2

Perlite.....FS HH–I–574 or ASTM C–549
Reflective, Thermal.....FS HH–I–1252
Structural Fiberboard Insulating Roof Deck.....AIMA IB

Spec. No. 1

Urea-Based Foam.....UM–74
Vermiculite (used as masonry wall filler).....FS HH–I–585

Class 2

(for other uses).....ASTM C–516

*510 *Specialties*

Factory-Built Fireplaces.....UL 127
Fireplace Stoves.....UL 737

*515–3 *Heating*

Solid Fuel Type Room Heaters.....UL 1482

(Sec. 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)))

Issued at Washington, D.C. on September 4, 1980.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 80–27981 Filed 9–10–80; 8:45 am]

BILLING CODE 4210–01–M

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24 CFR Part 201

[Docket No. R–80–621]

Mobile Home Improvement Loans

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: This amendment provides for the insurance of financial institutions which make or purchase loans for the improvement of mobile homes. The purpose of the amendment is to encourage various mobile home improvements (including expandable or add-on modules), many of which should therefore result in insulation and other conservation improvements.

EFFECTIVE DATE: October 1, 1980.

FOR FURTHER INFORMATION CONTACT: John L. Brady, Director, Office of Title I Insured Loans, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755-6680. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On February 14, 1979, the Secretary of Housing and Urban Development published a Notice of Proposed Rulemaking (44 FR 9597) to amend 24 CFR Part 201, § 201.12. At present, there are no provisions set forth allowing for Title I mobile home improvements. Therefore, this amendment will enable mobile home owners, many of whom cannot pay cash, to borrow and improve their mobile homes, by means of alteration and repair. Among various other improvements, it is expected that many of these loans will be made for insulation and other energy conservation improvements. Comments on the Proposed Rule were invited until April 14, 1979. A total of six comments were received. Three of these comments were in complete agreement with the proposed amendment. The other three basically agreed with it and suggested some modifications. Two commenters expressed concern that "expandable or add-on modules" were not specifically mentioned in either the summary or in § 201.1740—"Use of Loan Proceeds". Another commenter proposed that this program be available to mobile home owners who rent their units.

The Final Rule reflects the fact that expandable or add-on modules are permitted as improvements. The National Housing Act limits the purchase of mobile homes to borrowers intending their homes to be their principal residences. To maintain continuity, non-owner occupied homes will not be added to the amendment at this time.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures and was submitted with the Proposed Rule. A copy of this Finding is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

This rule is not listed in the Department's semi-annual agenda of significant rules, published pursuant to Executive Order 12221.

Accordingly, Title 24, Chapter II, § 201.12(b) is amended as follows:

§ 201.12 Insurance reserve.

* * * * *

(b) There shall be maintained for each insured a general insurance reserve which shall equal 10 percent of the aggregate amount advanced on all eligible loans originated by such insured pursuant to the provisions of the regulations in Subparts A, B, C, D, E, and F of this part on or after March 1, 1950, and prior to the expiration of the Commissioner's authority to insure under the provisions of this Act, less the amount of all claims approved for payment in connection with such loans and less the amount of any adjustment made pursuant to paragraph (c) of this section.

* * * * *

2. In Part 201 a new Subpart F is added as follows:

Subpart F—Improvements to Mobile Homes

Sec.
201.1700 Purpose.
201.1701 Incorporation by reference.
201.1702 Definitions.
201.1703 Maximum loan amount and terms.
201.1704 Use of proceeds.

Authority: Sec. 7(d), 79 Stat. 670 (42 U.S.C. 3535(d)); Sec. 2, 48 Stat. 1246 (12 U.S.C. 1703), as amended.

Subpart F—Improvements to Mobile Homes

§ 201.1700 Purpose.

This subpart permits approved Title I lenders to make or purchase loans to finance improvements to mobile homes.

§ 201.1701 Incorporation by reference.

All of the provisions of Subpart A of this part concerning insurance of institutions making or purchasing property improvement loans shall be applicable to the insurance of institutions making or purchasing mobile home improvement loans pursuant to this subpart except the following provisions:

Sec.
201.1 (i), (j), (k), (l), (m), (n), (o), (p) Definitions.
201.2(d) (2) Eligible notes.
201.3(a), (b) and (c) Maximum amounts of loans.
201.5(h) Credits and collections.
201.6(b), (d), (e) and (f) Eligible loans.

§ 201.1702 Definitions.

As used in the regulations in this subpart the term—

(a) "Borrower" means an individual who is a mobile home owner and who applies for and received a loan for the improvement of a mobile home that is his principal residence which the borrower has occupied at least 90 days before applying for the Title I improvement loan.

(b) "Principal residence" means that place where the borrower expects to live at least nine (9) months of the year.

(c) "Mobile home owner" means a borrower who has title to at least one-half (½) interest in the mobile home.

(d) "Mobile home" means a structure, transportable in one or more sections,

which is 8 body feet or more in width and is 32 body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein.

§ 201.1703 Maximum loan amount and terms.

The maximum loan amount shall not exceed $5,000. The maximum maturity of a loan shall not exceed twelve (12) years and thirty-two (32) days.

§ 201.1704 Use of loan proceeds.

The proceeds of a loan shall be used by a mobile home owner to finance alterations, repairs and improvements of a mobile home owned by the borrower which mobile home is the principal residence of the borrower. The proceeds shall be used solely for the purposes indicated. Alterations, repairs and improvements (including expandable or add-on modules) shall substantially protect or improve the basic livability or utility of the mobile home and must be commenced in reliance upon the credit facilities afforded by Title I of the Act. Moveable furniture, free-standing appliances, and other items not part of the structure of the mobile home, shall not be eligible for financing.

(Sec. 7(d) 79 Stat. 670 (42 U.S.C. 3535(d)); Sec. 2, 48 Stat. 1246 (12 U.S.C. 1703) as amended.)

Issued at Washington, D.C., September 4, 1980.

Lawrence B. Simons,

Assistant Secretary for Housing-Federal Housing Commissioner

[FR Doc. 80-27971 Filed 9-10-80; 8:45 am]

BILLING CODE 4210-01-M

Office of Assistant Secretary for Community Planning and Development

24 CFR Parts 570 and 600

[Docket No. R-80-735]

Community Development Block Grants and Comprehensive Planning Assistance; Consolidation of Grants for Certain Insular Areas

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: This rule revises Part 570, Subpart E of the regulations governing the Community Development Block Grant program under Title I of the Housing and Community Development Act of 1974, as amended, and Part 600, the regulations governing the Comprehensive Planning Assistance program under Section 701 of the Housing Act of 1954 as amended, to permit certain Insular Areas to: (1) apply for and receive a consolidated grant covering both their community development and comprehensive planning activities, (2) use a simplified application and reporting process for grants, and (3) be excused from the necessity of providing a non-Federal share in order to receive the comprehensive planning assistance portions of the consolidated grants.

EFFECTIVE DATE: October 1,1980.

FOR FURTHER INFORMATION CONTACT: Bernard Manheimer, Program Coordination Division, Office of Community Planning and Development, Department of Housing and Urban Development, Washington, D.C. 20410, 202-755-6201.

SUPPLEMENTARY INFORMATION: Title V of the Omnibus Territories Act of 1977 (Public Law 95-134) as amended by the Omnibus Territories Act of 1978 (Public Law 95-348) permits any Federal agency making grants to the Insular Areas, including the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands to consolidate any or all of its grants to an Insular Area. Each agency may also, notwithstanding any other statutory provisions, waive any requirements for matching funds from Insular Area consolidated grant recipients.

The Department has ascertained that consolidating its grants to the Insular Areas under the Community Development Block Grant and the Comprehensive Planning Assistance Programs will serve the purpose of the Act which is "to minimize the burden caused by existing application and reporting procedures for certain grant-in-aid programs" and will permit the Insular Areas to better coordinate their community planning and community development activities.

Accordingly, the Department is amending regulations governing grants to the Insular Areas of (1) Community development funds from the Secretary's Discretionary Fund by amending § 570.405, and (2) Comprehensive Planning Assistance funds by creating a new § 600.38, to permit the Insular Areas to make single applications for both grants, and to permit single reports on the grants.

The Department has also ascertained that waiving local matching requirements for the Insular Area will alleviate a hardship for them because of the paucity of local revenues and the great need to use those revenues for various crucial governmental purposes.

Accordingly, the Department is herein including in § 600.38 an exception for the Insular Areas from the necessity of providing a non-Federal share as a condition for receiving a Comprehensive Planning Assistance grant as part of a consolidated grant.

The Department is modifying the application and reporting requirement for the Insular Areas by simplifying application requirements for community development funds, and permitting joint reporting for community development and comprehensive planning activities. Applications for the community development funds will be simplified by permitting the Insular Areas to file applications similar to those required for small city single purpose funds rather entitlement funds.

Title V of the Act provides that the Insular Areas shall expend funds received under a consolidated grant "in furtherance of the programs and purposes authorized for any of the grants which are being consolidated, * * * but the Insular Areas shall determine the proportion of the funds granted which shall be allocated to such programs and purposes."

The Department is retaining authority to assure that the consolidated applications from the Insular Areas contain an adequate balance of planning and community development activities, by requiring that such a balance be present in the application before a consolidated grant application is funded.

HUD published a proposed rule on March 24, 1980 for public comment (45 FR 18955). Only one comment was received and that comment favored adoption of the proposed rule as published. However, the Department has ascertained the need for minor clarifications and corrections of the proposed rule since it was published, and for two changes to the rule as originally proposed. These changes are discussed below.

Paragraph (c)(3) in § 570.405 of the proposed rule provided that the community development portion of the application shall meet the requirements of Subpart F § 570.430 relating to small cities single purpose grants for applicants with a population of 25,000 or more. The population stipulation was included to necessitate preparation of a three year community development plan. Since the proposed rule was published, the requirement for single purpose applicants with populations of 25,000 or more to prepare a three year plan was dropped from Subpart F.

Therefore § 570.405(c)(3) of this rule omits the population provision and a requirement for a three year plan has been added.

Section 600.38 is amended by inserting a new paragraph (c) excusing the Commonwealth of the Northern Mariana Islands and American Samoa from the necessity of providing local matching funds under $100,000 in order to receive Comprehensive Planning Assistance funds regardless of whether or not they are part of a comprehensive grant. This waiver is mandated by a 1980 amendment to the Omnibus Territories Act—Title VI, Section 601 of Pub. L. 96–205.

The Department has determined that an environmental impact statement is not required with this rule. A copy of the Finding of Inapplicability is available for inspection in the Office of the Rules Docket Clerk at the address provided above.

In order to effect the above changes, the Department makes the following revisions to Title 24 CFR, Part 570, Subpart E, the Secretary's Fund portion of its community development regulations and to its Title 24 CFR, Part 600 Comprehensive Planning Assistance Program regulations.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

Subpart E—Secretary's Fund

In Subpart E, § 570.405 is revised to read as follows:

§ 570.405 The Insular areas—Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

(a) *Eligible applicants.* Eligible applicants are the Insular Areas—Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

(b) *Criteria for funding.* Applicants may submit applications not later than 75 days prior to the end of the current program year for discretionary community development grants for the full range of eligible activities described in Subpart C. The application may be consolidated with one for Comprehensive Planning Assistance funds under Section 701 of the Housing Act of 1954, as amended. The Secretary will establish for each fiscal year an amount for community development for which each eligible applicant may apply, taking into account the applicant's community development needs and administrative capacity.

(c) *Application, performance and reporting requirements.* Application, performance and reporting requirements are as follows:

(1) Each Insular Area may file separate applications for community development funds under this Subpart, and Comprehensive Planning Assistance Program funds under Part 600, § 600.38, or it may file, if it will be receiving both types of funding, a single application for a consolidated grant that includes both programs.

(2) An applicant need not file a preapplication for a Community Development grant or for a consolidated grant.

(3) For the community development grant or the community development portion of a consolidated grant, applicants shall meet the application requirements in Subpart F, § 570.430 relating to small city single purpose grants. In addition, a three year community development plan is required in a format to be specified by the HUD Area Office having jurisdiction.

(4) For the comprehensive planning portion of a consolidated grant application, applicants shall meet the requirements of § 600.100 but need not repeat assurances or other material provided under paragraph (c)(3) of this section.

(5) Area Offices having jurisdiction will assist Insular Areas preparing consolidated applications with a format appropriate to the needs of each Area and consistent with Federal statutory requirements.

(6) Consolidated grant applications must provide for an adequate balance of Section 701 comprehensive planning activities and community development activities. Therefore, within the discretion of each Insular Area, no less than half, nor more than one-and-a-half times the amount of funds provided from Section 701 Comprehensive Planning funds shall be used for planning activities authorized by Section 701. In no event shall more than 20% of the Community Development Block Grant funds provided be spent in total for planning, including comprehensive planning, as defined in Subpart C, § 570.205, and administration, as defined in § 570.206.

(7) Activities supported by a consolidated grant shall be carried out in accordance with instructions in this Part for community development and in Part 600 for comprehensive planning. The Department strongly encourages that a substantive relationship be demonstrated between the planning and community development activities to be supported.

(8) A consolidated final report shall be provided for a consolidated grant. Area Offices having jurisdiction will specify required contents of the report consistent with Federal statutory requirements.

(d) Grant and audit procedures. Where a consolidated grant application is approved for an Insular Area, the following shall occur.

(1) A single grant shall be awarded encompassing community development and comprehensive planning funds. The grant will specify separate amounts with separate identification numbers for the Community Development Block Grant and the comprehensive planning fund portions.

(2) Insular Areas receiving consolidated grants are responsible for carrying out the work program in accordance with the funding as specified in the grant, except as noted in paragraph (c)(6) of this section. Each Area shall establish accounting procedures which will permit the identification of all charges both direct and indirect to the individual programs, and in all requests for funding shall specify the proper identification number for the program form which payment is being sought.

(3) When an Insular Area receiving a consolidated grant chooses, per paragraph (c)(6) of this section, to use a portion of its comprehensive planning funding for community development activity, the comprehensive planning identification number shall be used for draw down of funds and the community development activities recorded against it. Community Development Block Grant funds used for comprehensive planning purposes will similarly be identified.

(4) Combined audits shall be performed.

(Title, I. Housing Community Development Act of 1974, as amended (42 U.S.C. 5301, et seq.); sec. 7(d), Department of the Housing and Urban Development Act (42 U.S.C. 3535(d)).)

PART 600—COMPREHENSIVE PLANNING ASSISTANCE

Part 600 is amended by the addition of § 600.38, as follows:

§ 600.38 Grants for the Insular areas—the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

In all respects, the Insular Areas, including the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands, shall file applications pursuant to § 600.100 except as follows:

(a) An Insular Area applicant may choose to file an application for a consolidated grant that includes comprehensive planning funds under this Part, and community development funds under Part 570, Subpart E, § 570.405—Secretary's Fund. The Insular Areas. Applications shall be in accordance with the Parts cited, but assurances and other material called for in both programs need not be duplicated.

(b) Notwithstanding any other provisions of this Part, the Insular Areas need not provide a local match in order to receive the comprehensive planning assistance portion of a consolidated grant.

(c) Notwithstanding any other provisions of this part, and irrespective of whether grants are consolidated or not, the Commonwealth of the Northern Mariana Islands and American Samoa need not provide local matching funds, where such funds are $100,000 or less, in order to receive Comprehensive Planning Assistance grants.

(d) Consolidated grant applications must provide for an adequate balance of Section 701 comprehensive planning activities and community development activities. Therefore, within the discretion of each Insular Area, no less than half, nor more than one-and-a-half times the amount of funds provided from Section 701 Comprehensive Planning funds shall be used for planning activities authorized by Section 701. In no event shall more than 20% of the Community Development Block Grant funds provided be spent in total for planning, including comprehensive planning, as defined in Subpart C, § 570.205, and administration, as defined in § 570.206.

(e) Activities supported by a consolidated grant shall be carried out in accordance with instructions in this Part for comprehensive planning and in Part 570 for community development. The Department strongly encourages that a substantive relationship be demonstrated between the planning and community development activities to be supported.

(f) A consolidated final report shall be provided for a consolidated grant.

(g) Where a consolidated grant application is approved for an Insular Area, the following grant and audit procedures will occur.

(1) A single grant will be awarded encompassing community development and comprehensive planning funds.

(2) The Insular Area recipient shall maintain records that will permit discrimination between expenditures for community development and comprehensive planning funded activities.

(3) Combined audits will be performed.

(Sec. 701, Housing Act of 1954, 63 Stat. 640 (40 U.S.C. 481); Sec. 7(d), Department of Housing and Urban Development Act. (42 U.S.C. 3535(d)))

Issued at Washington, D.C.

Robert C. Embry, Jr.

Assistant Secretary for Community Planning and Development.

[FR Doc. 80-27970 Filed 9-10-80; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners

AGENCY: United States Parole Commission.

ACTION: Final rule.

SUMMARY: The Parole Commission is publishing a final rule that sets standards for the penalty to be imposed when a prisoner given a parole date has violated institutional rules or committed a new crime before actual release on parole. This rule is designed to assist the Commission in making these decisions with greater precision and uniformity. With respect to new criminal behavior, the rule distinguishes between crimes on the basis of whether the new crime occurred in a prison facility or in the community. New criminal behavior in the community (on furlough, escape, etc.) will be more severely sanctioned than new criminal behavior in a prison facility. Sanctions for all new misconduct will be determined under the appropriate guidelines, and then added to the time required to be served by the original presumptive or effective parole date.

EFFECTIVE DATE: October 5, 1980.

FOR FURTHER INFORMATION CONTACT: Toby Slawsky, Office of General Counsel, 320 First Street, N.W., Washington, D.C. 20537. Telephone: (202) 724-7567.

SUPPLEMENTARY INFORMATION: On Tuesday, January 16, 1979, the United States Parole Commission published at 44 FR 3405 an interim/proposed rule on rescission of parole. The Commission is now publishing as a final rule those sections of the interim/proposed rule that establish the sanctions to be applied when a parole date is rescinded.

The final rule departs from the proposed/interim rule in that it changes the method of computing penalties for new criminal behavior. A year's experience has shown the desirability of this revised method. The sanctions imposed in the final rule for administrative infractions and escapes remain substantially the same as those prescribed in the interim rule. The procedural sections will remain as an interim/proposed rule.

The final rule distinguishes between new criminal behavior in a prison facility and new criminal behavior while the prisoner is in the community (e.g., on pass, furlough, work release, or escape). The Commission has made this distinction because it believes that new acts of criminality in the community violate the trust placed in a prisoner by community release (or compound the offense of escape) and should therefore be more severely sanctioned than new criminal acts within the confines of a prison facility.

New criminal behavior in the community will be sanctioned in the same way as violations by parolees who are also in a position of trust. The severity of the infraction behavior will be rated according to the Paroling Policy Guidelines (see 28 CFR §§ 2.20, 2.21), and the salient factor score will be recalculated for a new assessment of parole prognosis (treating the original offense as a prior record item).

Sanctions for infractions which constitute new criminal behavior in a prison facility will be determined by first rating the severity of the infraction according to the severity scale of the Paroling Policy Guidelines (see 28 CFR § 2.20). The customary range of months by which the infraction will be sanctioned will then be determined by reference to section (a)(2)(B) of this rule. These guidelines are intended to produce accountability for the new criminal behavior, but do not call for a redetermination of a prisoner's salient factor score (unlike the guideline for new crimes in the community).

The final rule requires that the amount of time to be served for all infractions under the guidelines set forth above will be added to the time required to be served by the original presumptive or effective parole date. Under the interim rule, infractions constituting new criminal behavior were treated as "aggravating factors" in a complete reassessment of the severity rating. This could result in different sanctions for similar infractions depending on the severity of the original offense.

§ 2.34 [Amended]

§ 2.35 [Amended]

Accordingly, pursuant to 18 U.S.C. 4203(a)(1) and 4204(a)(6), Title 28 Code of Federal Regulations, the text of § 2.36 is moved to § 2.35(b), interim rule § 2.34(g) is deleted, § 2.34(a)–(f) remains in effect as an interim/proposed rule and § 2.36 is revised as set forth below and § 2.20(i) is added as set forth below.

§ 2.36 Rescission guidelines.

(a) The following guidelines shall apply to the sanctioning of disciplinary infractions or new criminal behavior committed by a prisoner subsequent to the commencement of his sentence and prior to his release on parole. These guidelines specify the customary time to be served for such behavior which shall be added to the time required by the original presumptive or effective date. Credit shall be given towards service of these guidelines for any time spent in custody on a new offense that has not been credited towards service of the original presumptive or effective date. If a new concurrent or consecutive sentence is imposed for such behavior, these guidelines shall also be applied at the initial hearing on such term.

(1) *Administrative Rule Infraction(s)* (including drug/alcohol abuse) normally can be adequately sanctioned by postponing a presumptive or effective date by 0–60 days per instance of misconduct. Escape or other new criminal conduct shall be considered in accordance with the guidelines set forth below.

(2) *Escape/New Criminal Behavior in a Prison Facility* (including a Community Treatment Center). The time required pursuant to the guidelines set forth in (A) and (B) below shall be added to the time required by the original presumptive or effective date.

(i) *Escape or Attempted Escape Without Force or Threat:*

(A) Non-Secure Facility or Program (absent less than 7 days): 3–6 months.

(B) Secure Facility (no force or threat used); or Non-Secure Facility or Program (absent 7 days or more): 6–12 months.

Notes.—(1) If other criminal conduct is committed during the escape or during time spent in escape status, then time to be served for the escape/attempted escape shall be added to that assessed for the other new criminal conduct.

(2) Time in escape status shall not be credited.

(ii) *Other New Criminal Behavior in a Prison Facility:*

Severity rating of the new criminal behavior (from § 2.20)	Adult cases	Youth/NARA cases
Low	<6 months	<6 months.
Low moderate	<8	<8.
Moderate	10–14	8–12.
High	14–20	12–16.
Very high	24–36	20–26.
Greatest I	40–52	30–40.
Greatest II	52+	40+.

(3) *New Criminal Behavior in the Community* (e.g., while on pass, furlough, work release, or on escape). In such cases, the guidelines applicable to reparole violators under § 2.21 shall be applied, using the new offense severity (from § 2.20) and recalculated salient factor score (such score shall be recalculated as if the prisoner had been on parole at the time of the new criminal behavior). The time required pursuant to these guidelines shall be added to the time required by the original presumptive or effective date.

(b) The above are merely guidelines. Where the circumstances warrant, a decision outside the guidelines (above or below) may be rendered provided specific reasons are given. For example, a substantial period of good conduct since the last disciplinary infraction in cases not involving new criminal conduct may be treated as a mitigating circumstance.

§ 2.20 Paroling policy guidelines; statement of general policy.

* * * * *

(i) For criminal behavior committed while in confinement see § 2.36 (Rescission guidelines).

* * * * *

Dated: August 28, 1980.

Cecil C. McCall,

Chairman, U.S. Parole Commission.

[FR Doc. 80-27966 Filed 9-10-80; 8:45 am]

BILLING CODE 4410-01-M

POSTAL SERVICE

39 CFR Parts 310 and 320

Enforcement and Suspension of the Private Express Statutes

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the Private Express regulations as follows: (1) Messages are considered to be addressed if marked for delivery to a specific person or place or if delivered in accordance with a "selective delivery" plan, even if intended by the sender to be read or used by someone other than or in addition to the addressee. (2) A suspension is adopted for advertisements which accompany addressed merchandise or periodicals. (3) The exclusion of books and catalogs from the definition of "letter" specifies the factors used to determine whether an item is in fact a book or catalog. (4) The exception for carriage prior or subsequent to mailing is modified to prevent its use as a means of avoiding payment of full postage. (5) Technical amendments are made in the regulation dealing with the issuance of Private Express Advisory Opinions.

In addition, the Postal Service is withdrawing a proposed definition of "telegram" and a proposed amendment to the existing regulations dealing with administrative appeals by persons alleged to have violated the Private Express Statutes and regulations.

EFFECTIVE DATE: October 10, 1980.

FOR FURTHER INFORMATION CONTACT: Jerry Belenker (202) 245–4584.

SUPPLEMENTARY INFORMATION: On July 13, 1979, the Postal Service announced (44 FR 40899) its intention to conduct a "second round" of proposed rulemaking on certain amendments to the Private Express regulations which had been published in the **Federal Register** on December 28, 1978 (43 FR 60615). This procedure began with the publication on January 7, 1980 (45 FR 1427) of proposals on addressing, selective delivery plans, and advertisements enclosed with or accompanying merchandise. We are adopting modified versions of these proposals.

We have concluded that a "second round" of rulemaking is not needed to complete action on the remaining proposals. Three of the proposals (the definition of books and catalogs; the exception for carriage prior or subsequent to mailing; and the provision on Advisory Opinions) are primarily clarifying in nature, and are now adopted substantially as proposed. The other two proposals (defining the term "telegram", and establishing the scope of administrative appeals from formal demands for payment of postage) are withdrawn.

Definition of Letter

Section 310.1 of Title 39 CFR defines "letter" as "a message *directed to a specific person or address* and recorded in or on a tangible object * * *." (Emphasis added.) We proposed to specify that a message is "directed to" a specific person or address not only when the message or its container bears markings as to its destination, but also when the destination is specified by such means as detached address labels or cards, address lists, or memorized groups of addresses, or when the

message is "piggy-backed" for delivery with addressed merchandise, publications, or other items. We also proposed to specify that a message "bearing the name or address of a specific person, organization, or location is a letter even if it is intended by the sender to be read or otherwise used by some person or persons other than or in addition to the addressee."

The major thrust of comments on the proposal to amend the definition of "letter" was that it constituted an unwarranted expansion of that word. Some comments challenged the idea that an item is a letter if addressed only to a location or if intended to be read by persons other than the addressee. It remains the view of the Postal Service, after careful consideration of the comments, that the means by which a message is directed to a specific person or place may include those which were specified in the proposal. We believe that a contrary conclusion would be logically inconsistent with the existing definition and idea of "letter." Moreover, treating the presence of written markings as the *exclusive* addressing test would, paradoxically, enable the Private Express Statutes to be avoided by using means of addressing which are acceptable on materials delivered by the Postal Service itself. For example, delivery of certain third-class items is done by means of detached address labels under prescribed conditions. *Domestic Mail Manual*, § 661.3. We also believe it valid to conclude, as a general matter, that an item is a letter even though it is read or used by parties other than or in addition to the designated addressee.

Suspension for "Piggy-Backing" of Advertisements in Parcels and Periodicals

While the addressing proposal treats advertisements enclosed in addressed parcels as letters, a companion proposal would have suspended the Private Express Statutes for advertisements of manufacturers or shippers of accompanying merchandise. The proposal would not, however, have suspended the Private Express Statutes for advertisements furnished by other parties. The most frequent comment was that the inclusion of advertisements furnished by parties other than the manufacturer or shipper of the accompanying merchandise is an established practice which contributes to the profitability—and indeed to the survival—of many shippers. The practice was said to provide firms, including small ones, with a relatively cheap form of advertising which would not be cost effective if postage had to be paid as a condition of private carriage. It was also stated that the practice benefits the Postal Service because customer responses add to mail volume and postal revenues. The proposed limitation of the suspension to advertisements which relate to the same general line of products as the merchandise which they accompany was said to be arbitrary.

Commenters criticized the proposal for not permitting "piggy-backed" delivery of advertising circulars with magazines sent outside the mails. Some said the result would be discriminatory since privately delivered newspapers may include similar advertising materials. Comments suggested that delivering circulars with magazines serves to reduce delivery costs because of rebates given by the distributors to publishers.

We conclude that the record supports a suspension of the Private Express Statutes for advertisements (not marked with the names or addresses of the recipients) which accompany parcels or periodicals, without regard to the source of the advertisements. The suspension will apply only to advertisements which are incidental to the shipment of the merchandise or periodicals and which are not the primary reason for the shipment.

Definition of Books and Catalogs

Our proposed definition of "books and catalogs" contained a number of factors which determine whether a given item is, in fact, a book or catalog. These included number of pages; visual similarity of the parts; time and manner of binding and the reason for it; intended users of the item; contents; and extent of distribution. Although some parties stated that the proposed definition was vague, we believe it to be as precise a formulation as can reasonably be attained for purposes of the pertinent exclusion.

We consider totally inaccurate a comment that we are attempting to exercise control over the contents of books. Our view is that contents are relevant for the purpose of determining whether an item is a book or a lengthy letter. For example, comments on our various proposals ranged in length from one page to more than 70 pages. The 70 page letter was bound and was presumably distributed to a number of parties in addition to the Postal Service. We doubt, however, that many people would call it, despite its length, a "book." Recognizing it to be a letter, rather than a book, is not an attempt to control its contents.

Some comments opposed the present general rule, which we proposed to retain, that the book and catalog exclusion applies only to items with 24 or more bound pages with at least 22 printed. While the precise number of pages might have been set at some other figure, higher or lower, this would be true for any specific number we might set. One United States Court of Appeals recently noted that "* * * any definition (of letter) is likely to appear arbitrary from some perspective for the simple reason that definitions draw lines—they exclude some matters and include others despite similarities between the two classes." *Associated Third Class Mail Users* v. *United States Postal Service*, 660 F. 2d 824 (D.C. Cir. 1979), *cert. den.* 48 U.S.L.W. 3187.

For the reasons indicated, we are adopting a definition of "books and catalogs" that is substantially the same as the one proposed on December 28, 1978.

Carriage of Letters Before or After Mailing

The proposed amendment concerning the carriage of letters before or after mailing was intended to avoid abuses of this exception. Our concern may be illustrated by the case of someone who places letters intended for 50 locations in one envelope and mails it to a private courier who subsequently opens the envelope and delivers each letter to its addressee. If each letter were mailed directly to the addressee and weighed one ounce or less, a total of $7.50 in postage would be paid. When the envelope is mailed to the courier at first-class rates, however, the postage paid, based upon the overall weight of the 50 letters, would be computed at 15 cents for the first ounce and 13 cents for each additional ounce. The Postal Service would lose revenue as a result of this practice.

Since the intent of the exception is to permit private carriage that is only incidental to the transmission of letters through the mails, it should apply only to letters which have been carried, or will be carried, by the Postal Service for at least the minimum rate of postage that would be required for delivery from the senders to the addressees. The proposed regulation would not restrict the private carriage of letters prior or subsequent to mailing but would prevent the use of the exception as a means of avoiding the full postage to which the Postal Service is entitled under the Private Express Statutes.

Because some multi-location firms and organizations have consolidated mailrooms, we have added language specifying that carriage to a consolidated mailroom for preparation of letters which will be carried by the

Postal Service, and carriage from a central delivery point to the facilities served by that delivery point, are both permissible under the exception.

Definition of Telegram

We proposed a new definition to spell out our understanding of the longstanding exclusion from "letter" of the type of publicly available communication sent in the past under the designation of "telegram." We noted that the exclusion was based upon historical considerations, and that it should not extend to additional types of messages recorded in or on tangible objects simply because they are preceded by electronic transmission.

Some commenters asserted that all electronically generated "hard copy" should be excluded from the definition of letter; that the proposed definition of "telegram" was technologically obsolete; and that the definition should be determined by the Federal Communications Commission. Some alleged that the Postal Service was attempting to inhibit competitors of its proposed E–COM (Electronic Computer Originated Mail) service, and that all firms offering public message telegraph services should be given the benefit of the exclusion for telegrams. Some parties described the proposal as an effort to assert that the Private Express Statutes are applicable to the electronic transmission process itself.

The proposed definition of "telegram" did not signify any thought that the Private Express Statutes could be extended to the electronic transmission process. The comments, however, have caused us to conclude that little good would result from adopting a formal definition of "telegram" at this time. We will administer the existing exclusion in a manner which indicates that it is not an "open door" to the delivery over post roads of all letters which are preceded by electronic transmission.

Scope of Appeal Available to Persons Alleged To Have Violated the Private Express Statutes

Our proposal provided that hearings requested by persons served with formal demands for postage on letters carried out of the mails would deal only with the correctness of the methods used to compute the numbers of letters and the amount of postage payable. We withdraw the proposal and retain the existing regulations on appeals, as set out in 39 CFR 310.5(a)–(d) and 39 CFR Part 959.

Advisory Opinions

Technical amendments are made which provide that requests for Advisory Opinions may be directed to the Law Department, rather than any specific division, and which clarify the procedures for inspecting and receiving copies.

In consideration of the foregoing, Parts 310 and 320 in Chapter I of Title 39, Code of Federal Regulations, are amended as follows:

PART 310—ENFORCEMENT OF THE PRIVATE EXPRESS STATUTES

1. In § 310.1., paragraphs (a)(3) and (a)(7)(v) are revised to read as follows:

§ 310.1 Definitions.

(a) * * *

(3) A message is directed to a "specific person or address" when, for example, it, or the container in which it is carried, singly or with other messages, identical or different, is marked for delivery to a specific person or place, or is delivered to a specific person or place in accordance with a selective delivery plan. Selective delivery plans include delivery to particular persons or addresses by use of detached address labels or cards; address lists; memorized groups of addresses; or "piggy-backed" delivery with addressed articles of merchandise, publications, or other items. Selective delivery plans do not include distributions of materials without written addresses to passersby on a particular street corner, or to all residents or randomly selected residents of an area. A message bearing the name or address of a specific person or place is a letter even if it is intended by the sender to be read or otherwise used by some person or persons other than or in addition to the addressee.

* * * * *

(7) * * *

(v) Books and catalogs consisting of 24 or more bound pages with at least 22 printed, and telephone directories. Separate letters of less than 24 bound and 22 printed pages bound to other material do not qualify for this exclusion. In determining whether separate letters have been bound to other material, the following factors will be considered, along with any other relevant factors: Whether the parts are visually similar; whether the parts were printed and bound together at the same time and by the same process; whether the binding serves an important purpose and has been a longstanding practice; and whether the same individual reads all parts of the bound document. Ordinarily, books and catalogs deal with matters of interest to, and are intended for, a substantial number of recipients. In addition, books generally contain a substantial number of pages. Accordingly, this exclusion will not apply when the nature of the message conveyed, the limited numbers of published copies and of recipients, the limited number of pages, or other relevant factors suggest that it is not appropriate to treat the material as a book or catalog. An item distributed privately, or privately and by mail, to fewer than 25 separate persons or places will generally not be treated as a book or catalog falling within this exclusion.

* * * * *

2. In § 310.3, paragraph (e) is revised to read as follows:

§ 310.3 Exceptions.

* * * * *

(e) *Carriage prior or subsequent to mailing.* (1) The private carriage of letters which enter the mail stream at some point between their origin and their destination is permissible. Except as provided in paragraph (e)(3) of this section, however, the carriage of letters from a place where they have been opened, read, separated, or otherwise utilized, does not fall within this exception even though such letters had previously been in the mail stream. Similarly, the carriage of letters to a place where they will be consolidated or otherwise utilized does not fall within this exception even though they will subsequently enter the mail stream.

(2) Examples of permitted activities are the pickup and carriage of letters which are delivered to post offices for mailing; the pickup and carriage of letters at post offices for delivery to addressees; and the bulk shipment of individually addressed letters ultimately carried by the Postal Service.

(3) The private carriage of letters from branches of an organization to a location for preparation for mailing does not constitute a consolidation. The private carriage of letters from an organization's point of mail delivery to its branches in the locality does not constitute a separation.

3. Section 310.6 is revised to read as follows:

§ 310.6 Advisory opinions.

An advisory opinion on any question arising under this part and Part 320 of this chapter may be obtained by writing the Law Department, U.S. Postal Service, Washington, D.C. 20260. A numbered series of advisory opinions is available for inspection by the public in the Library of the United States Postal Service, and copies of individual opinions may be obtained upon payment of charges for duplicating services.

PART 320—SUSPENSION OF THE PRIVATE EXPRESS STATUTES

4. New § 320.7 is added reading as follows:

§ 320.7 Suspension for advertisements accompanying parcels or periodicals.

(a) The operation of 39 U.S.C. 601(a) (1) through (6) and § 310.2(b) (1) through (6) of this chapter is suspended on all post routes for advertisements enclosed with merchandise in parcels or accompanying periodicals under the following circumstances:

(1) The advertisements must not be marked with the names or addresses of the intended recipients.

(2) The advertisements must be incidental to the shipment of the merchandise or the periodical.

(i) An advertisement is incidental to the shipment of the accompanying merchandise or the periodical when the merchandise or the periodical has been ordered by or would otherwise be sent to the recipient even without the accompanying advertisement.

(ii) Notwithstanding § 320.7(a)(2)(i), an advertisement is not incidental to the merchandise when the pertinent circumstances, such as the nominal value of the merchandise, its shipment on an unsolicited basis, or its status as a sample, reasonably indicate that the shipper's primary purpose is the conveyance of the advertisement itself and that the merchandise is merely an adjunct to the advertisement.

(b) An item is an advertisement if its primary purpose is to cause or induce the purchase of goods or services from the shipper or others.

(39 U.S.C. 401, 404, 601–606; 18 U.S.C. 1693–1699, 1724)

W. Allen Sanders,

Associate General Counsel.

[FR Doc. 80-28090 Filed 9-9-80; 11:07 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL 1595-3]

Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Emission Offset Interpretative Ruling

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This action makes certain revisions to EPA's Emission Offset Interpretative Ruling of January 16, 1979, 44 FR 3274, as revised on May 13, 1980, 45 FR 31307, and August 7, 1980, 45 FR 52676. That Ruling describes the requirements for preconstruction review which apply to large new or modified air pollution sources affecting areas with air quality worse than the levels set to protect the public health and welfare. The revisions made today are in response to EPA's request for comments on certain issues related to the Ruling (*see* 44 FR 3298). Although the Ruling generally expired as of July 1, 1979 (*see* 44 FR 38471, July 2, 1979), it continues to apply to permits applied for before July 1, 1979, and in certain other situations. The changes made today are primarily non-substantive changes. Substantive changes affecting source applicability were proposed September 5, 1979 (44 FR 51924) and final regulations were promulgated on August 7, 1980 in response to the comments received on that proposal. 45 FR 52676.

DATES: These changes are applicable to permits applied for on or after September 11, 1980..

ADDRESS: EPA has established a docket for this rulemaking, designated Docket No. A–80–43. The docket is an organized and complete file of all information submitted to or otherwise considered by EPA during this rulemaking. The docket is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery I, A–130, 401 M Street, S.W., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Kirt Cox, Office of Air Quality Planning and Standards, Environmental Protection Agency, MD–15, Research Triangle Park, North Carolina 27711, Phone: (919)541–5497.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 1976, EPA issued an Emission Offset Interpretative Ruling (Offset Ruling) addressing the issue of the extent to which National Ambient Air Quality Standards (NAAQS) established under the Clean Air Act may restrict construction of major new or modified stationary air pollution sources. 41 FR 55524. The Ruling provided, in general, that a proposed major new source, which would emit pollutants in excess of specified amounts and would otherwise contribute to an existing violation of a national standard, could be constructed only if stringent conditions were met. These conditions were designed to ensure that the new source's emissions would be controlled to the greatest degree possible, that more than equivalent offsetting emission reductions ("emission offsets") would be obtained from existing sources, and that there would be progress toward achievement of the NAAQS.

Since the issuance of the December 21, 1976 Offset Ruling, the Agency's programs for preconstruction review of major new sources and major source modifications have been the subject of considerable legislative and regulatory change. Pertinent **Federal Register** actions incorporating these changes are noted below.

The Clean Air Amendments of 1977 (1977 Amendments) ratified the Agency's Offset Ruling, Section 129 of Pub. L. No. 95–95, 91 Stat. 685, note under 42 U.S.C. 7502. The amendments also established definitions for "major" sources. The issues of what size source and the circumstances under which a source should be subject to review were first addressed in the Agency's June 19, 1978 regulatory amendments to the New Source Review Program for the Prevention of Significant Deterioration (PSD) of air quality. 44 FR 26388.

After promulgating the PSD regulations, the Agency turned its attention to the Offset Ruling. As a result of comments received in amending the PSD regulations (43 FR 26380), comments on the original Offset Ruling (41 FR 55524), and the unambiguous language of the 1977 Amendments, the Agency published revisions to the Offset Ruling on January 16, 1979. 44 FR 3274. Most of the revisions were made final at that time, rather than proposed again for comment. Certain issues were proposed as interim policy and comment was solicited on these issues. 44 FR 3298.

On July 2, 1979, the Agency published regulations restricting the construction of major sources, as required by the 1977 Amendments, wherever State plans to attain and maintain NAAQS have not been approved by July 1, 1979. 44 FR 38471. For those areas, the Offset Ruling—which allows sources to "offset" their pollution and still construct—is superseded by the Act's restrictions against construction.

Additional action, primarily dealing with PSD but also affecting the scope of preconstruction review of new sources under the Offset Ruling, was proposed on September 5, 1979 (44 FR 51924) and promulgated on August 7, 1980. 45 FR 52675. That promulgation brought significant changes to the Agency's rules and regulations for preconstruction review, in response to a court interpretation of EPA's preconstruction review regulations for PSD. *Alabama Power Company* v. *Costle,* 13 ERC 1993

(D.C. Cir., 1979). This action does not address the issues dealt with in the August 7, 1980 promulgation.

Also, on May 13, 1980, (45 FR 31307) EPA took final action on certain of the changes to the Offset Ruling proposed on September 5, 1979. At that time, EPA eliminated the "clean spot" exemption from the Offset Ruling and gave guidance for State new source review permit programs adopted pursuant to Section 110(a)(2)(D) of the Clean Air Act. It also provided that the Offset Ruling will continue to apply to sources locating outside of nonattainment areas, but causing or contributing to a violation of ambient standards, until the State's permit or equivalent program under Section 110(a)(2)(D), providing for review of such sources to assure attainment and maintenance of the NAAQS, is approved by EPA.

As a result of the above actions, the Offset Ruling continues to apply to the following situations: (a) To proposed major sources in one State that would contribute to a violation of a NAAQS only in another State, (b) during the time allowed for the development and approval of a revised State Implementation Plan (SIP) in an area that is designated as nonattainment after March 3, 1978, (c) during any extended time allowed under Section 110(b) for development of a SIP revision for an area that violates the secondary NAAQS (and for which a plan for the primary NAAQS is either approved or not required) for a pollutant, and (d) proposed major sources locating outside of nonattainment areas but causing or contributing to a nonattainment problem until the State's permit or equivalent program is approved by EPA.

As noted, when the Agency published the January 16, 1979 Offset Ruling, it requested comments on certain issues contained therein. 44 FR 3274, 44 FR 3298. In this **Federal Register** action, the Agency is responding to comments made in response to that notice. Clarifications are made to the Offset Ruling with regard to technology transfer in determining LAER and the permissible area of offsets for NO_x sources. LAER requirements for secondary emissions are changed. Also, supplemental guidance is given on issues concerning the offset credit for meeting NSPS, the baseline for offsets, source compliance certification, fugitive dust, ownership, and banking. Certain issues on which the Agency solicited comments on January 16, 1979 were addressed by the August 7, 1980 promulgation and therefore are not discussed here. Those issues include those involved in the definitions of "potential to emit," "source," and "modification," the 50-ton exemption, rules relating to fugitive dust, and the geographic applicability of the Offset Ruling to major sources of volatile organic compounds.

In addition to the discussion of issues found in the August 7, 1980 **Federal Register** and in the supplementary information given below, the Agency has also responded to a number of issues in a separate document entitled, "Supplemental Discussion of Comments Received on Revised Emission Offset Ruling" (44 FR 3274, January 16, 1979, Office of Air, Noise, and Radiation, June 1980). The supplementary discussion document, as well as all the comments received in response to the January 16, 1979 Offset Ruling, are available for public inspection and copying during normal business hours at: Central Docket Section, West Tower Lobby, Gallery 1, 401 M Street, S.W., Washington, D.C. 20460. The discussions in that document relate to issues raised by comments which did not result in changes to the Offset Ruling and did not require further clarification as to EPA's policy or intent. Furthermore, none of the issues discussed in that document are issues on which the Agency solicited comment. 44 FR 3298.

II. Technology Transfer in LAER

A number of industrial commenters argued that there is no statutory authority to consider transfer of technology from one source type to another in determining the lowest achievable emission rate (LAER). The Agency affirms that the requirements for technology transfer appropriately incorporate Congressional intent, as discussed in the supplemental information to the January 16, 1979 ruling. There is considerable precedent for this approach. Technology transfer is authorized with regard to determining best available control technology for purposes of the New Source Performance Standards under Section 111 of the Clean Air Act. This approach is also supported by the fact that consideration of technology transfer has been found appropriate in determining effluent emission limits for water pollution control cases. *See, e.g., California and Hawaiian Sugar Co. v. EPA*, 553 F. 2nd 280, 285–289 (2nd Cir. 1977).

Many of these commenters went on to indicate that EPA's policy on technology transfer would be acceptable if implemented "reasonably," *i.e.*, that technological and economic feasibility be considered, that there be a reasonable degree of certainty that the transferred technology would work for the *specific* application under consideration, and that pilot studies or other appropriate techniques be used to verify transferability. In short, the commenters requested that good engineering judgment be used in determining whether technology transfer is applicable and feasible in a particular situation and what the effectiveness of such technology would be. EPA agrees and believes that considerations of feasibility are appropriate in using technology transfer in determining LAER. But EPA maintains that consideration of the transfer of technology from one source type to another is appropriate in determining LAER. Technology transfer which would cause an unduly severe economic penalty or would be technologically infeasible for the specific application under consideration need not be included in establishing the lowest achievable emission rate.

The Agency does not intend, in this statement of policy, to establish separate economic criteria for LAER for technology transfer. Consideration of economic feasibility is the same under LAER regardless of whether technology transfer is involved.

III. Nitrogen Oxides Issues

The January 16 revision to the Offset Ruling indicates that, due to the generally area-wide nature of NO_2 problems, offsets for NO_x sources may be obtained from "within the broad area of nonattainment." One commenter interpreted this language to mean that NO_x offsets must be obtained from within the designated nonattainment area for NO_2. EPA did not intend such a restrictive interpretation regarding the location of NO_x offsets. Section IV.D. is hereby amended to clarify that volatile organic compounds and NO_x should be treated consistently and, therefore, that NO_x offsets may come from nearby attainment or unclassifiable areas as well as from a designated nonattainment area.

Several commenters indicated that there is no basis for the assumption in Section III.C. (as amended, May 13, 1980, 45 FR 31307, 31311) that all NO_x emitted from a source is converted to NO_2 by the time the plume reaches the ground. This assumption is only intended as a screening technique; if the source would not significantly contribute to an NO_2 nonattainment problem under this "worst case" assumption, no further requirements under the Ruling would apply. However, if a potential problem is indicated by this screening technique, a more refined analysis will be necessary.

IV. Offset Credits

The Agency does not, at this time, make any changes to Section IV.C. of the Offset Ruling in response to comments received regarding the baseline for offsets. The Agency has recently promulgated somewhat different rules for determining when intra-source offsets may be used to avoid a preconstruction permit review (*e.g.* under the Offset Ruling for a modification that would otherwise be subject to full permit review and requirements. 45 FR 52675 (August 7, 1980)). The baseline for offset credits that is discussed below refers to sources that are subject to the Offset Ruling and must find sufficient emission offsets to meet the requirements of Conditions 3 and 4 of the rule, *i.e.*, sufficient emission offsets to represent reasonable further progress toward attainment, and to provide for a net air quality benefit in the area affected by the new source or modification.

The Clean Air Act Amendments of 1977 required that the baseline for determining emission offset credit, under the Offset Ruling, was to be the SIP emission limitations in effect at the time of the permit application. In the January 16, 1979 Offset Ruling changes, the Agency amended the Ruling to incorporate this legislative requirement. Thus, Section IV.C. of the Offset Ruling provides that if, for example, a SIP allows SO_2 emissions of 3.0 lb/10^6 Btu for all fuels, an existing source burning fuel oil with SO_2 emission of 1.0 lb/10^6 Btu could use the difference between 3.0 and 1.0 lb/10^6 Btu as offset credit.

Thus, in such a case, if the source agreed to the imposition of a legal obligation to maintain SO_2 emissions below SIP levels, the source could obtain offset credit.*

However, the Agency has retained its Section IV.C.1. requirement that where the SIP emission limit is higher than the source could emit without any controls, then the uncontrolled emission rate itself establishes its offset baseline for the source. The wording in Section IV.C.1. is changed to assure that the uncontrolled emission rate remains the offset baseline. In that section, the word "potential" is changed to "uncontrolled." This is being done now because the definition of "potential to emit" now looks to the source's controlled emissions.

Specific clarification on Section IV.C.1. was sought regarding sources burning natural gas, where the maximum uncontrolled emissions for natural gas combustion are in the neighborhood of .0006 lb/10^6 Btu. To allow offset credits for emissions up to a general SO_2 emission limit in the SIP of 3.0 lb/10^6 Btu, would allow credit far beyond what Congress intended in the 1977 Amendments. In such a case, the uncontrolled emission rate establishes the offset baseline for the source.

Similar clarification is now offered regarding offset credit for meeting NSPS and NESHAPS requirements. The baseline discussion in the preamble to the January 16, 1979 ruling (44 FR 3274–3275) indicated that EPA does not interpret the Ruling to permit offset credit for tightening SIP requirements down to the levels required by an applicable new source performance standard (NSPS) or national emission standard for hazardous air pollutants (NESHAPS), *i.e.*, requirements under Sections 111 and 112, respectively, of the Act. Comments reflected considerable misunderstanding and uncertainty as to EPA's policy on this issue, especially where an NSPS was concerned. EPA's intent was that, where a source is *subject* to an NSPS or NESHAPS emission limitation that is more stringent than the otherwise applicable SIP, the difference in emissions between the SIP and the NSPS or NESHAPS for such source may not be used as offset credit. As discussed in the January 16, 1979 preamble, any other approach would allow offset credit for "paper" reductions, where the SIP is adjusted but no actual tightening of requirements under the act occurs. However, if a source were not subject to an NSPS, for example if it were constructed *before* an NSPS was proposed for that source category, offset credit could be permitted for tightening the SIP to the NSPS level for such source. The general philosophy here is to permit offset credit only for controls that go beyond applicable State or federal emission limitations in effect for existing sources at the time an application for a new source permit is applied. A new Section IV.C.6. is added to the Offset Ruling to remove any uncertainty on this issue. Although one commenter recommended that this policy not be made applicable before January 16, 1979, EPA believes that the policy is fully consistent with the philosophy and intent of the original Ruling and thus should apply to all permits issued under it.

Several commenters also argued that a January 16, 1979 clarification in Section IV.C. as to how to calculate offset credits in terms of tons per year was a major change to the Ruling and should have been proposed for public comment prior to making the change. Specifically, these commenters felt that EPA's use of actual annual operating hours for the previous one or two year period (in conjunction with the SIP emission limit) was inconsistent with Section 129 of the 1977 Amendments. They felt that if there were no SIP requirements limiting the operating hours for an existing source, the baseline emissions for calculating offset credits available from such a source should be based on the maximum possible operating hours in a year. EPA does not believe that Section 129 of the 1977 Amendments, which specifies that the applicable SIP is to be used as the baseline for determining offset credit, requires that the maximum possible operating hours be used when determining creditable offsets in tons per year. Such an interpretation would create massive amounts of "paper offsets" which bear no relationship to the actual amount of offsets being obtained. EPA believes it is more realistic and consistent with Congressional intent to use the applicable SIP emission limit in conjunction with the *actual* number of annual operating hours for the prior one or two year period. Furthermore, the clarification contained in the revised Ruling is fully consistent with the intent and specific language of the original Ruling. For example, Section IV.C.3 of the original Ruling provides that "[a] source may be credited with emission reductions achieved by shutting down an existing source or permanently curtailing production or operating hours *below that which existed at the time the new source permit was submitted* * * *" (emphasis added). The original Ruling has been applied consistently with the clarification contained in the revised Ruling.

Several commenters indicated that credit for source shutdowns occurring *prior* to the date a new source permit is filed should not be limited to only replacement facilities. Credit is limited in that fashion by Section IV.C.3. and footnote 6. The Agency is retaining this approach. EPA responded in this manner because it is preparing comprehensive regulations regarding banking of emissions reductions to allow for future new source growth. These are a variety of interrelated

*This approach is somewhat different from that used in 40 CFR 51.18 (j). There, the emission offset baseline, while it ordinarily will be calculated on the basis of allowable emissions, may look to actual emissions if the State's demonstration of reasonable further progress (RFP) is based on actual emissions. This difference in approach is due to the fact that Congress required the baseline to be allowable emissions for the Offset Ruling, *see* Section 129(a)(1) of the 1977 Amendments, whereas under Section 173, offsets must be consistent with RFP and so the baseline may be either actual or allowable emissions, depending on the nature of the RFP demonstration.

issues involved in this matter and the Agency believes that this offset requirement would be best addressed in the banking rulemaking.

Finally, one commenter recommended that a major new source be allowed to secure offsets from small sources, mobile sources, and nonpoint sources. There is nothing in the Ruling that precludes such offsets, as long as all the other requirements of the Ruling are met. Offset credit is not permitted for reductions in mobile source emissions achieved by the Federal Motor Vehicle Control Program. Offset credit may be obtained by reducing mobile source emissions by other means, *e.g.*, inspection and maintenance programs or transportation controls that are not required by the SIP at the time the new source permit is applied for. It is clear that special problems of enforceability exist with regard to such offsets. For this reason it is emphasized that close scrutiny of the enforceability of such offsets must be given.

V. Certification of Compliance Under Condition 2

Several commenters raised issues relating to Condition 2 of Section IV.A. which requires a new source applicant to certify that all existing major sources in the same State owned or operated by the applicant are in compliance with all applicable standards under the Act, or are on federally enforceable compliance schedules.

One commenter argued that under the Clean Air Act, a source owner does not bear the responsibility of reporting violations discovered through continuous self-monitoring and that the burden of identifying violations is on EPA. Others claimed that a source owner may have a good faith belief, yet lack information to be able to certify that Condition 2 is being met. It was suggested that sources should be deemed in compliance unless a source has received a Notice of Violation and judicial proceedings have actually been commenced. Another commenter urged that the Ruling specify that only established noncompliance need be considered during certification. One industry association suggested that Condition 2 would be satisfied by certifying that existing major sources in the same State owned or operated by the applicant are not currently subject to any final civil or criminal judgment of noncompliance by any State court or Federal court.

It is not correct that under the Clean Air Act the sole responsibility for determining compliance with regulations adopted pursuant to the Act rests with EPA or State and local agencies. In most cases, sources are not required by regulation to report their noncompliance; however, the lack of a requirement to report violations in no way excuses the source from the requirement to comply at all times and to employ specified methods and procedures for assessing compliance status. The burden is clearly on the source to do whatever is necessary to assure compliance. The duty to comply clearly includes the duty to ascertain compliance status. Furthermore, Section 173(3) of the Clean Air Act provides that permits to construct and operate may be issued only if:

> * * * the owner or operator of the proposed new or modified source *has demonstrated* that all major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in such State are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under this Act. (emphasis added)

In order to demonstrate that Condition 2 is being met, an owner or operator should certify that its sources are in compliance and provide supporting evidence. Types of evidence could include performance test results, continuous monitoring results, if such a system is used, a demonstration that required control devices are in place and operating at design efficiency, and a demonstration that required operating and maintenance procedures are being followed. Where compliance is based on the use of a certain type or sulfur content of a fuel, the use of the type or sulfur content fuel must be documented.

Industry suggested that the absence of criminal or civil legal action against the source should be accepted as a sufficient indication of compliance. This is not only without legal support, but also unworkable. While EPA and the States have undertaken an accelerated enforcement effort, many sources remain in violation which have not yet been the subject of judicial action under the Clean Air Act. If this suggestion were implemented, EPA and the States would have to postpone action on a permit application until all cases of suspected noncompliance by sources owned or operated by the applicant were adjudicated. The result would be long delays in the permitting process, a loss by the States and EPA of control over judicial enforcement priorities, and an inappropriate shift of the burden of demonstrating compliance from the source to EPA and the States.

VI. Fugitive Dust

By its August 7, 1980 rulemaking, the Agency deleted the provisions which embody the exemption of fugitive dust from air quality analyses performed pursuant to the Offset Ruling and the definition of fugitive dust (emissions from haul roads, storage piles, etc.). 45 FR 52675, 52693 and 52741.

The requirements for offsets and LAER for fugitive dust emissions associated with a major source remain unchanged. Many industrial comments received on the January 16, 1979 changes to the Offset Ruling opposed subjecting fugitive dust associated with a major source to the requirements of the Ruling, citing the following reasons:

1. Fugitive dust emissions are difficult to quantify.
2. Fugitive dust is different (i.e., coarser) than other particles.
3. Only a portion of the fugitive dust emissions remains airborne.
4. Offsets for particulate matter are hard to find.

EPA believes that none of these reasons provides a basis for totally exempting fugitive dust from the Ruling. EPA recognizes that some problems exist in quantifying fugitive dust emissions, and in fact has and will continue to devote significant resources to improving emission factors for fugitive dust sources. However, EPA believes that reasonable quantification of fugitive dust emissions can be made for most sources on the basis of available data, and thus those sources should be covered by the Ruling. Determinations made on a case-by-case basis will indicate those instances in which fugitive dust cannot be quantified and would, therefore, not be considered. Under the regulations promulgated August 7, 1980, fugitive dust emissions (haul roads, storage piles, etc.) and fugitive process emissions of certain designated source categories are to be included in determining whether or not specified source categories are subject to review. 45 FR 52675, 52690–3.

One commenter sought clarification on the use of high volume sampling methods used to determine the need for fugitive dust offsets. Although fugitive dust is generally coarser than other particulate emissions, much of the fugitive dust is still in the particle size range measured by the high volume sampler. It is not EPA's intent that offsets be required for those very large fugitive dust particles which are not generally captured by the high volume sampler. In fact, most fugitive dust emission factors do not include these large particles and no special adjustments to the emission rates would

normally be necessary to implement this policy.

Several commenters contended that LAER could not be defined for fugitive dust sources. Paradoxically, one of these commenters went on to recommend that only BACT be required for fugitive dust sources. EPA sees no reason why LAER could not be defined for fugitive dust sources although in most cases it will take the form of operating or equipment standards rather than a numerical emission rate.

VII. Definition of Control

A permit issuing authority must determine when one business is in "control" of another, for three purposes under the Ruling. First, a stationary source is defined as embracing a grouping of industrial activities on contiguous or adjacent properties owned or operated by the same person or by persons "under common control." Second, the State-wide compliance requirement of Condition 2 applies to major sources owned by the applicant or by any entity "controlling, controlled by, or under common control with" the applicant. Third, secondary emissions that are not under the control of the permit applicant are not subject to the State-wide compliance requirement of Condition 2.

Control can be a difficult factual determination, involving the power of one business entity to affect the construction decisions or pollution control decisions of another business entity. EPA thought that a simplifying test of control, such as some specified voting share, would serve the interest of the business community, by providing clarity and predictability. Comments on this issue were solicited and suggestions were received. Upon receiving the comments, the Agency did not find a convincing argument in favor of any particular, simplified test of control. Some commenters seemed to favor unfettered inquiry into control in each case. Therefore, the Agency has decided that determinations of control will be made case-by-case, without benefit of a voting-share test or other simplifying test. However, the Agency will be guided by the general definition of control used by the Securities and Exchange Commission. In SEC considerations of control, control "means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person (or organization or association) whether through the ownership of voting shares, contract, or otherwise." 17 CFR 210.1–02(g). This definition is similar to a suggestion made by a commenter.

VIII. Banking

EPA has received many comments on banking. Most commenters view banking favorably, citing a number of advantages for it. Some commenters questioned the limitation in Section IV.C.5. which restricts banking to permits issued after January 16, 1979. Allowing retroactive application of banking would result in previously issued permits being reopened and excess offsets being banked for future use. The Agency is not changing this aspect of the Offset Ruling.

Under the Clean Air Act Amendments, States may, as part of their SIPs, allow emissions reduction banking and trading as long as care is taken to assure that use of banked emissions is enforceable, does not violate reasonable further progress requirements of Part D of the Act and does not block ultimate attainment. Only emissions reductions not needed for and not included in the SIP attainment demonstration could be used in permit applications.

EPA is now studying alternative approaches to banking emissions and will provide information and assistance where this is requested. The specific issues to be addressed will include the creation and use of banked emission reductions as well as the development of safeguard measures to assure the integrity of the SIP.

Since EPA considers economic efficiency and the accommodation of growth in nonattainment areas to be important national goals, it is also devoting resources to the development of "prototype" emission reductions banking and trading systems which States and local areas have the option of adopting in whole or in part. Technical information, management systems, workshops, and published manuals are being developed as part of this work. EPA work in these areas is being coordinated through the Division of Policy Planning in the Office of Planning and Evaluation which is part of the Office of Planning and Management. Parties seeking further information or assistance are invited to contact John S. Hoffman, Project Manager, PM–221, 401 M Street, S.W., Washington, D.C. 20460.

IX. Secondary Emissions

The Agency, on August 7, 1980, promulgated into the PSD regulations the same definition of secondary emissions as is now found in the Offset Ruling. 45 FR 52675, 52728. The Agency also promulgated its proposal that best available control technology (BACT) not be required for any secondary emissions subject to review under the PSD regulations. Consequently, secondary emissions will only be considered in, and subject to, the air quality impact analysis requirements in the PSD preconstruction review. Thus, if a source's secondary emissions would cause an increment violation, they would have to be controlled or offset before a permit could be issued, but BACT will not be required for the secondary emissions.

Commenters have stated, both before and in response to the January 16, 1979 rulemaking, that sources of secondary emissions should not be subject to LAER. The Agency has reconsidered its policy and has decided to take an approach parallel to the one adopted in the PSD regulations. This policy was noted in the preamble to the August 7, 1980 rulemaking, *See* 45 FR 52676, 52689, but the Agency neglected to make the corresponding change in the regulation. Therefore, this requirement for application of LAER to sources of secondary emissions is being deleted at this time.

X. Miscellaneous

Due to a typographical error in the January 16, 1979 **Federal Register**, the reference to footnote 3 (which was designated as footnote 5 prior to the August 7, 1980 promulgation) in Section IV.A. was incorrectly placed in Condition 2 rather than Condition 3. This is corrected in the amendment of the Offset Ruling set forth below.

XI. Authority

The Administrator has determined that this rulemaking is nationally applicable and is based on determinations of nationwide scope and effect. This rulemaking is issued under Section 129(a) of the Clean Air Act Amendments of 1977, Pub. L. 9595, 91 Stat. 745, August 7, 1977 (note under 42 U.S.C. 7502 and Section 301 of the Clean Air Act (42 U.S.C. 7601)).

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

By this notice, EPA advises prospective petitioners, as well as those who may seek review of EPA's promulgation on August 7, 1980 (45 FR 52675), that a court order governs petitions for review of today's action and the nonattainment petitions of the August 7 rulemaking. This order was

entered in *Manufacturing Chemists Association* v. *EPA*, No. 79–1112, and consolidated cases Nos. 79–1251, 79–1257, 79–1283, 79–1291, 79–1295, 80–1770, and 80–1777 (D.C. Cir.). The court order states that "regardless of when they file petitions for review, prospective petitioners are to file their opening briefs in accordance with [the following briefing] schedule, and to join with other petitioners raising identical or similar issues in common briefs * * *." The schedule is as follows:

Supplemental index to the record.	30 days after the date of this **Federal Register** notice
Petitioners' brief	45 days after the filing of the supplemental index
Respondent's brief	40 days after the filing of petitioners' briefs
Petitioners' reply briefs	25 days after filing of respondent's brief
Joint appendix	7 days after the filing of reply briefs
Final printed briefs	14 days after the filing of the joint appendix

The order was entered on September 10, 1979.

The Administrator has also determined that there is good cause to make this promulgation immediately effective because the changes are either non-substantive in nature or constitute clarification.

Dated: September 5, 1980.

Douglas M. Costle,

Administrator.

The Emission Offset Interpretative Ruling, 40 CFR Part 51 Appendix S, as revised 44 FR 3274 (January 16, 1979), 45 FR 31307 (May 13, 1980) and 45 FR 52676 (August 7, 1980) is amended as follows:

1. In Section II.G. the third sentence is changed to read as follows:

G. *Secondary emissions.*

* * * * *

However, secondary emissions may be exempt from Conditions 1 and 2 of Section IV.

* * * * *

2. In Section IV.A., the reference to footnote 3 (which was designated as footnote 5 prior to the August 7, 1980 promulgation) is removed from Condition 2 and is inserted in Condition 3 following the word "sources."

3. In Section IV.C.1 the word "potential," which appears twice in the second paragraph is changed in both places to read "uncontrolled."

4. In Section IV.C., a new subsection 6 is added as follows:

IV. Sources That Would Contribute to Concentrations That Would Exceed a NAAQS

* * * * *

C. *Baseline for determining credit for emission and air quality offsets.*

* * * * *

6. *Offset credit for meeting NSPS or NESHAPS.* Where a source is subject to an emission limitation established in a New Source Performance Standard (NSPS) or a National Emission Standard for Hazardous Air Pollutants (NESHAPS), (*i.e.*, requirements under Sections 111 and 112, respectively, of the Act), and a different SIP limitation, the more stringent limitation shall be used as the baseline for determining credit for emission and air quality offsets. The difference in emissions between the SIP and the NSPS or NESHAPS, for such source may not be used as offset credit. However, if a source were not subject to an NSPS or NESHAPS, for example if its construction had commenced prior to the proposal of an NSPS or NESHAPS for that source category, offset credit can be permitted for tightening the SIP to the NSPS or NESHAPS level for such source.

5. In section IV.D., the second paragraph is amended by changing the first sentence of that paragraph to read as follows:

D. *Location of offsetting emissions.*

* * * * *

Offsets for NO_x sources may also be obtained within the broad vicinity of the proposed new source.

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[FR Doc. 80–28070 Filed 9–10–80; 8:45 am]

BILLING CODE 6560–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2880

[Circular No. 2475]

Rights-of-Way Under the Mineral Leasing Act; Amendment to the Definitions Section

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This amendment to the definitions section will clear up a procedural conflict between the Bureau of Land Management and the U.S. Geological Survey as to which agency handles the issuance of permits for those pipelines and related facilities owned by the lessee or lessee's operator which are located on the lease area and which are used for the sole benefit of the lessee or lessee's operator's production, collection or processing of oil and gas produced on the lease.

EFFECTIVE DATE: October 14, 1980.

ADDRESS: Any inquiries or suggestions should be sent to: Director (330), Bureau of Land Management, 1800 C Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Orval L. Hadley, 202 343–5537.

SUPPLEMENTARY INFORMATION: After publication of the final rulemaking on the subject of Rights-of-way Under the Mineral Leasing Act in the **Federal Register** on October 9, 1979 (44 FR 56126), questions were raised about the issuance of permits for those pipelines and other related facilities owned by the lessee or lessee's operator which are located on the lease area and which are used for the sole benefit of the lessee or lessee's operator's production, collection and processing of oil and gas produced on the lease. These questions were the result of several comments received during the comment period questioning the inclusion of gathering lines in the definition of the term "pipeline." The final rulemaking gave this responsibility to the Bureau of Land Management, although the U.S. Geological Survey had exercised the responsibility in the past. It was thought at the time that the change in responsibility was required by amendments to the Mineral Leasing Act. This change in the regulations caused concern on the part of members of the public who felt that the new system might cause delays in the development of oil and gas leases. This concern caused the Office of the Solicitor to carefully research the Mineral Leasing Act, as amended, to determine if the definition for the term "pipeline" as set forth in the final rulemaking was correct, or whether the term should be defined otherwise. The Office of the Solicitor issued an opinion on June 19, 1980, in which it was concluded that "* * * section 28 of the Mineral Land Leasing Act does not apply to on-lease production facilities which are included in a surface use and operations plan, and which are authorized by the approval of an application to conduct leasehold operations or construction activities. We believe that a reasonable dividing point between 'production' and 'transportation' is the point at which the lease operator completes his final processing or storage of the product, or in the case of gas, the point of delivery to the transportation pipeline." The opinion then went on to state "(O)ff-lease facilities, regardless of their nature, on-lease oil and gas transportation facilities, and on-lease 'commercial' facilities * * * can be authorized only by an appropriate right-of-way grant".

The regulations issued on October contained a provision including "gathering lines" in the definition of "pipeline" only because it was believed

that this was required by statute. Thus, a decision was made to amend the regulations in the form now being published as soon as we learned that there was in fact no such statutory requirement. The subject of this amendment was an issue in the October rulemaking. There was a full 60-day comment period prior to the issuance of that final rulemaking. This amendment is in response to comments received during the comment period. For these reasons, it has been determined that publication of this amendment in proposed form, with an additional comment period, is unnecessary. In addition, the procedure set forth in the October 9, 1979, regulations has not yet been widely implemented in the field. The procedure which the October regulations replaced, and which is reinstated by this amendment, has been in use for a number of years by the Department of the Interior. For this reason, this amendment is a procedural change which should have no significant impact on the public.

It is determined that publication of this final rulemaking is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

The Departrment of the Interior has determined that this document is not a significant regulatory action requiring the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Under the authority of section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), Section 2880.0–5, Subpart 2880, Part 2880, Group 2800, Subchapter B, Chapter II, Title 43 of the Code of Federal Regulations is amended as set forth below.

James W. Curlin,

Acting Assistant Secretary of the Interior.

September 5, 1980.

1. Section 2800.0–5 is amended by revising existing paragraphs (i) and (k), inserting a new paragraph (l), and renumbering existing paragraphs (l) through (n) as paragraphs (m) through (o) respectively.

§ 2880.0–5 Definitions.

As used in this part, the term:

* * * * *

(i) "Pipeline" means a line of traversing Federal lands for transportation of oil or gas. The term includes feeder lines, trunk lines, and related facilities, but does not include a lessee's or lease operator's production facilities located on his lease.

* * * * *

(k) "Production facilities" means a lessee's or lease operator's pipes and equipment used on his lease solely to aid in his extraction, storage, and processing of oil and gas. The term includes storage tanks and processing equipment, and gathering lines upstream from such tanks and equipment, or in the case of gas, upstream from the point of delivery. The term also includes pipes and equipment, such as water and gas injection lines, used in the production process for purposes other than carrying oil and gas downstream from the wellhead.

(l) "Related facilities" means those structures, devices, improvements, and sites, the substantially continuous use of which is necessary for the operation or maintenance of a pipeline, which are located on Federal lands, and which are authorized under the Act, including but not limited to: supporting structures; airstrips; roads; campsites; pump stations, including associated heliports, structures, yards, and fences; valves, and other control devices; surge and storage tanks; bridges; monitoring and communication devices and structures housing them; terminals, including structures, yards, docks, fences, and storage tank facilities; retaining walls, berms, dikes, ditches, cuts, and fills; structures and areas for storing supplies and equipment. Related facilities may be connected or nonconnected or contiguous or noncontiguous to the pipe.

* * * * *

[FR Doc. 80–27948 Filed 9–10–80; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 311

Uniform Identification System for Federal Employees Performing Essential Duties During Emergencies; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Correction to final rule.

SUMMARY: This action provides a correction to the FEMA regulations on uniform identification system for certain Federal employees which was published in the **Federal Register** on June 26, 1980, 45 FR 43199.

FOR FURTHER INFORMATION CONTACT: Dennis R. DeWalt, (202) 566–0517

Correction:

§ 311.4 [Corrected]

1. On page 43200, § 311.4, Authorized Agencies, third column, "Department of Health and Human Resources", should read "Department of Health and Human Services".

§ 311.9 [Corrected]

2. On page 43201, § 311.9, Exceptions from coverage, third column, a comma should be added in the first line of the section between the words "military", and "Coast".

Dated: September 2, 1980.

Donald P. Young,

Acting General Counsel.

[FR Doc. 80–28061 Filed 9–10–80; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, and 90

[PR Docket No. 79–338; RM–3470]

Amending the Commission's Rules and Regulations To Implement a System of Temporary Licensing for Multiple Licensed Mobile Relay Systems Operating in the Business Radio Service in the 450–470 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: The FCC adopts a system of temporary licensing for multiple licensed mobile relay systems operating in the Business Radio Service. The new procedure will enable eligibles in the Business Radio Service who wish to be licensed to an existing community repeater to begin operations under certain conditions prior to the receipt of a formal authorization from the Commission.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

DATE: Effective January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Gay Ludington, Private Radio Bureau (202) 634-2443.

In the matter of amendment of Parts 1, 2, and 90 of the Commission's rules and regulations to implement a system of temporary licensing for multiple licensed mobile relay systems operating in the Business Radio Service in the 450–470 MHz band; PR Docket 79–338, RM–3470.

Report and Order

Adopted: August 1, 1980.

Released: September 4, 1980.

1. We have before us our proposal [1] released January 8, 1980, to implement a system of temporary licensing for "add on" users of multiple licensed mobile relay stations (also known as "community repeaters") in the Business Radio Service operating in the 450–470 MHz band.

Introduction

2. Under the system we have proposed, an applicant could mail to the Commission an application for a radio station authorization on the usual application form,[2] together with evidence of frequency coordination [3] if required. At the same time, the applicant would complete a second form verifying:

—His or her eligibility for temporary licensing (i.e. that he or she is a subsequent user of a multiple licensed shared facility).
—His or her eligibility in the Business Radio Service;[4]
—That the applicant is not a representative of a foreign government;
—That a formal application has been completed and mailed to the Commission.

Once the application is mailed or otherwise submitted to the Commission, the second form would be posted at the applicant's control point and would constitute a valid temporary authorization. The applicant could then begin operating his radio facilities using a temporary call sign made up of the prefix "WT" plus the applicant's local seven digit business telephone number. This authority would continue until the Commission acts on the application or up to 180 days.

Comments

3. Comments and reply comments on the proposal were received from 115 parties. The overwhelming majority supported the proposal, citing the numerous public service benefits it provides. Stevenson Communications, for example, notes that the delay in the Commission's present procedure [5] discourages applicants and provokes a variety of reactions: "* * * (a) customer gets tired of waiting and cancels order before delivery; (b) customer receives equipment, then doesn't want to pay for it until he can legally use said equipment; (c) customer gets fed up with the waiting and tries to return equipment and forgets the whole thing." Others who commented pointed out that seasonal businesses such as farming are especially affected by licensing delays. Teton Communications (Idaho Falls, Idaho) states, "The farmer just cannot wait 10 or 11 weeks for a license when his crops are due to be harvested or watered * * *." Other parties point out that temporary licensing in this Service would go far to eliminating delay-generated contract breaches and repudiations and note that the Commission itself would directly benefit through elimination of requests for time consuming application status checks and through a decrease in the need for investigations for unlicensed operations. The California Mobile Relay Association (CMRA) suggested that temporary licensing should be implemented for other shared radio facilities in the Business Radio Service in other bands. General Electric (GE) supported the proposal, but was apprehensive that the forward shift in the time frame for equipment delivery might have some adverse repercussions on its existing radio equipment distribution system.

4. Parties opposing the procedure argued that the proposed rule amendments would lead to "paper loading," [6] and would necessitate expensive equipment stocking by retailers, and that there is no need for the procedure. Telocator Network of America (Telocator) questions whether the temporary licensing procedure would meet the statutory requirements of Sections 301, 308, and 309 of the Communications Act of 1934, as amended.[7]

Decision.

5. We have considered the comments and reply comments carefully and have decided to adopt the rules substantially as proposed. We have also decided to extend the approach to cover other kinds of multiple licensed arrangements in the bands allocated to the Business Radio Service below 470 MHz.[8] We feel that issues which some raised regarding difficulties with equipment inventories and paper loading can be most efficiently addressed by the industry itself, and do not outweigh the clear public benefits which temporary licensing of add-on users of shared facilities provides. As we pointed out in our Notice of Proposed Rule Making, this approach is consistent with our previous action implementing temporary licensing in the Personal and Marine Radio Services.[9] Furthermore it will enhance our public service without diminishing our regulatory responsibilities. There is little or no likelihood that these subsequent users of shared facilities will cause interference to other users, because they are merely increasing mobile loading on systems already in operation. Also, these systems will already have gone through frequency coordination or completed the necessary field study reports.[10] Additionally, the antenna structures involved will already have received Federal Aviation Administration clearance. Finally, the eligibility requirement in the Business Radio Service is broad and most applicants engaged in a business activity will be found eligible.

6. Telocator argues that a temporary licensing procedure contravenes statutory limitations imposed by the Communications Act; that it would compound difficulties the Commission has identified with the community repeater concept; and that the changes proposed do not correlate with the reasons given for them.[11]

7. We have considered Telocator's comments, and we do not find that this approach to issuing temporary operating authority is contrary to Sections 301, 308 or 309 of the Communications Act of 1934, as amended. Telocator's reading of the Communications Act eliminates our ability to interpret the Act with the degree of flexibility required to fully and

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[1] *See Notice of Proposed Rule Making*, PR Docket 79–338, 45 FR 3349 (January 17, 1980).

[2] FCC Form 400; *c.f.* 47 CFR 1.922, 90.119.

[3] *See* 47 CFR Section 90.175(a) for coordination and survey requirements.

[4] Eligibility requirements for the Business Radio Service are set out at 47 CFR 90.75(a).

§ 90.75 Business Radio Service

(a) Eligibility. Persons primarily engaged in any of the following activities are eligible to hold authorizations in the Business Radio Service to operate stations for transmission of communications necessary to such activities of the licensees:

(1) The operation of a commercial activity.

(2) The operation of educational, philanthropic, or ecclesiastical institutions.

(3) Clergymen activities.

(4) The operation of hospitals, clinics, or medical associations.

[5] Under present procedures an applicant completes and mails his application and waits until the Commission acts on his request before commencing operation.

[6] This situation could arise where a community repeater operator artificially inflates the number of licensees operating on a particular channel, to avoid having it loaded above a certain user count. This results in inaccuracies in the frequency coordinator's data base, and inefficient use of scarce spectrum.

[7] 47 U.S.C. 301, 308, 309.

[8] Specialized restrictions still apply to users along the U.S.-Canada border. In order to fulfill our international commitments with Canada, the addition of stations (other than mobile stations) to existing radio systems authorized to operate in the frequency coordination zone along the United States-Canada border will be limited to stations with a maximum of 5 watts effective radiated power and an antenna height of 6.1 meters above average terrain until the necessary clearance is obtained from the Canadian administration.

[9] Cf. Order, FCC 76–320, (1976); Order FCC 78–846 (1979).

[10] *See* 47 CFR 90.175.

[11] Telocator's interest in this proceeding derives from its concern that "relaxation" of private radio eligibility rules might lead to illegal use of the Business Radio Service and loss of customers for services offered by radio common carriers.

responsively serve the public interest. We do not view our authority and flexibility as narrowly as Telocator would have us do [12] and we believe we have ample authority to prescribe appropriate procedures for fulfilling our mandated tasks. Pursuant to Section 303(g) of the Communications Act, the Commission has a statutory obligation to encourage "larger and more effective use of radio in the public interest," [13] and to accomplish this we possess extensive rule making authority under the Communications Act. *See e.g.* Sections 303(r) and 4(i). The statute broadly authorizes the Commission to "* * * perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions." [14] The rules we adopt here will help us execute our functions in a more effective and efficient manner consistent with our responsibilities under the statute.[15]

8. Telocator argues that our plan contravenes the Act which permits us to make grants of licenses or temporary authorizations, "only upon written application therefore received," [16] and only upon a showing that the "public interest, convenience and necessity will be served by granting of such application." [17] At issue is our ability to specify what constitutes receipt of an application. We believe the approach we have proposed (i.e., that receipt occurs when an individual delivers his application to the U.S. mail) is desirable in furthering a rapid, efficient radio communications service for eligible members of the public, and is not a new or novel definition of receipt.[18]

9. Further, because of the broad nature of the eligibility requirements in the Business Radio Service, there should be no major issues before us concerning an applicant at the time of application mailing.[19] Any potential interference problems with other facilities on the same or on other frequencies which might conceivably eventuate will have been addressed at the time the initial license for the shared facility was granted. Antenna site and height, environmental issues, if any, and aeronautical hazards will also have been resolved. It is only after this work has been done that the new (second, third, etc.) user of the shared facility would be permitted to operate under the temporary authorization, and then only for a relatively short period of time, that is, until we act on his or her application for regular authorization. Thus, the risks for allowing an unqualified person to operate are rather minimal, especially when weighed against the public benefit generally resulting from immediate implementation of needed radio communications systems. Telocator's arguments must be considered in this light. Furthermore, under this temporary licensing procedure, the Commission will continue to grant permanent authorizations only after evaluation of written applications, and after the requisite public interest determination have been made. We therefore reject Telocator's argument that we lack the necessary power to adopt a temporary licensing procedure and we conclude, consistent with Sections 301, 308 and 309, that we may implement this procedure for temporary licensing.

10. We also reject Telocator's other objections that action on this measure at this time is inappropriate and that there is no need for the temporary authorization procedure, either at present or in the future. Telocator argues that since in our on-going proceeding in PR Docket No. 79–107[20] we are re-evaluating licensing procedures of community repeaters in the 800 MHz band, that it is "unreasonable" and "irrational" to propose these temporary licensing rules for community repeaters at this time. Our answer to this point, in short, is that the above proceeding deals with multiple licensing at 800 MHz and has nothing to do with licensing practices below 800 MHz.[21]. Although Telocator is correct in its observation that the processing delay time for these systems has been reduced in recent months, these rules represent a more permanent solution to the delay problem.

11. We turn now to comments asking modification in the proposed procedure. CMRA, while approving of the temporary licensing scheme, asked that we include all multiple licensed shared base station facilities, whether radio or wireline controlled, which operate in the Business Radio Service in the frequency bands 30–50 MHz and 150–170 MHz as well as 450–470 MHz. We have considered CMRA's request and we conclude that it is consistent with our overall objectives in this proceeding. The same considerations which permit the temporary licensing approach for mobile relay systems[22] apply equally to these other shared facilities. We conclude, therefore, that the public interest will be served by including these facilities in this approach and we are expanding temporary licensing to include these systems.

12. The General Electric Company (GE) has expressed concern that the proposed change will have adverse repercussions on the highly competitive equipment marketplace, because it will necessitate major changes in the way GE and some other radio equipment manufacturers market their products. GE contends that most dealers presently do not maintain an inventory and sell radio equipment off the shelf. Instead, the dealer orders the necessary radio equipment from the manufacturer who then assembles and delivers it to the dealer. Arrangements are usually made to have the equipment delivered to the

[12] *See National Broadcasting Company* v. *United States* 319 U.S. 190 (1942), *Federal Communications Commission* v. *Pottsville Broadcasting Co.*, 309 U.S. 134 (1940); *United States* v. *Storer Broadcasting Co.*, 351 U.S. 192 (1956).

[13] 47 U.S.C. 303(g).

[14] 47 U.S.C. 154(i).

[15] The courts have consistently held that the Act must be read as granting the Commission "a comprehensive mandate" with "not niggardly but expansive powers." *National Broadcasting Co.* v. *United States, supra* at 219. *See also United States* v. *Southwestern Cable Co.* 392 U.S. 157 (1968); *Philadelphia Television Broadcasting Co.* v. *FCC 359 F. 2d 282 (1966).*

[16] 47 U.S.C. 308(a).

[17] 47 U.S.C. 309(a).

[18] The administrative designation of "receipt" as the date of mailing is most familiar to us under the Internal Revenue Service practice of deeming the date of mailing as the date of receipt, and Congress has specifically codified this practice at 26 U.S.C. 7502 (timely mailing treated as timely filing): "(a)(1) Date of Delivery—If any return, claim, statement or other document required to be filed * * * is * * * delivered by United States mail to the agency, the date of the United States postmark * * * shall be deemed to be the date of delivery or the date of payment * * *"

[19] Telocator's citation of *Folkways Broadcasting Company* v. *Federal Communications Commission*, 379 F. 2d 447(1967) and other common carrier cases is inappropriate. In *Folkways*, the court required the Commission to institute evidentiary proceedings to deal with public interest considerations which had *already* been raised. In the instant situation, unlike *Folkways*, (where adverse findings had already been made), there will be no issue as to character qualifications at the time of grant of the temporary permit in the overwhelming majority of cases because of the broad eligibility standards in the Business Radio Service. We would point out that the eligibility criteria to be met at the outset by radio common carriers (and other types of Commission licensees, *e.g.* broadcasters), and by Business Radio Service licensees are very different standards. The Commission does not measure the eligibility of a Business Radio Service applicant by radio common carrier standards. There is, in the instant situation, no reason not to issue a temporary authorization once the application is mailed. The issue of a temporary permit does not prejudge the issue of character when the permanent authorization is made. *See in Re Application Voice of Reason*, Inc. 37 FCC 2d 686 (1972).

[20] PR Docket 79–107, 71 FCC 2d 1391, released May 16, 1979.

[21] Telocator also makes an additional argument regarding the need for frequency coordination. However, the issue of the need for frequency coordination for add-on users of multiple licensed mobile relay facilities is presently pending in RM–3448. We think it more appropriate to address the comments of Telocator and others on point in that proceeding.

[22] I.e. FAA clearance, little likehood of interference, prior frequency coordination and broad eligibility criteria.

dealer about the same time that a license is issued to the user. The new licensing procedure will eliminate this delay. Dealers will be faced with a demand from customers to purchase and install equipment immediately. Such a change in customer demand characteristics will require dealers to stock inventory in order to remain competitive. This in turn may require local dealers to procure financing to purchase equipment, to rent storage space, to procure insurance, etc. GE therefore requests we delay implementation of our new rules to provide a period of time for manufacturers and dealers to alter or adjust their marketing procedures to assimilate this change.

13. We have considered these points and decided to delay implementation of the new rules until January 1, 1981. While we point out that our new procedure does not require any dealer to change his current method of doing business, we can understand that market forces may compel manufacturers to change their present operating procedures. We believe, however, that prompt implementation of this new procedure would most serve the public interest. January 1, 1981, was chosen to allow for sufficient time to have the temporary licensing forms printed and distributed, and we believe that GE can accomplish whatever marketing changes they wish to make within that time.

14. The Special Industrial Radio Service Association (SIRSA) asks that the concept of temporary licensing be extended to mobile relay systems operating in the Special Industrial Radio Service. It maintains that the advantges to be gained are substantially the same as those in the Business Radio Service. However, determining eligibility in the Special Industrial Radio Service represents a much more serious problem than in the Business Radio Service.[23] Additionally, SIRSA's request is beyond the scope of this proceeding. We are, therefore, declining to adopt this suggestion.

15. Finally, the National Association of Business and Educational Radio, Inc. (NABER) expressed its concern with the issuing of "John Doe" [24] coordinations. Specifically NABER is concerned about the potential for artificial inflation of its data base, and it therefore asks the Commission to place "guidelines" on the use of "John Doe" coordination letters.[25]

16. In the Notice of Proposed Rule Making the Commission did not specifically mandate the issuance of "John Doe' coordination letters, and we believe that the concerns which NABER expresses with regard to the integrity of its data base have some merit. Therefore, NABER may issue coordination letters in the manner it has indicated. We decline, however, to undertake to notify NABER when a coordination letter is used. We believe this is something NABER can best work out as part of its own procedure for providing coordination letters.[26]

Conclusion

17. In view of the foregoing, the Commission concludes that adoption of a temporary licensing procedure for shared Business Radio Service systems operating in the 30–50 MHz, 150–170 MHz, and 450–470 MHz bands will serve the public interest, convenience and necessity and we are adopting the rules set out in Appendices A and B. This system of licensing will benefit radio users by enabling them to begin operations more quickly than heretofore, and will not in any way lessen the Commission's ability to determine whether the applicant is eligible and possesses the necessary qualifications to be permanently licensed in the Business Radio Service.

18. The new form for temporary licensing and the posting requirement is adopted subject to General Accounting Office clearance. Sufficient supplies of it must be obtained to cover at least initial demand. Unless the public is advised, to the contrary, the rules we here adopt will be effective January 1, 1981.

19. Accordingly, pursuant to the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, it is ordered, that effective January 1, 1981, Parts 1, 2, and 90 of the Commission's rules are amended as set forth in Appendix A below.

20. It is further ordered that this proceeding is terminated.

21. It is further ordered That the Secretary shall cause this Report and Order to be published in the **Federal Register.**

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; (47 U.S.C. 154, 303).)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Parts 1, 2, and 90 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. In § 1.922 a new FCC Form and Title are added to read as follows:

§ 1.922 Forms to be used.

FCC form	Title
572	Temporary Permit to Operate a Business Radio Station.

* * * * *

2. In § 1.925 a new paragraph (g) is added to read as follows:

§ 1.925 Application for special temporary authorization, temporary permit, or interim amateur permit.

* * * * *

(g) An applicant for a Business radio station license utilizing an already authorized facility may operate the radio station for a period of 180 days, under a temporary permit, evidenced by a properly executed certification made on FCC Form 572, after the mailing of a formal application for station license together with evidence of frequency coordination, if required, to the Commission. The temporary operation of stations, other than mobile stations, within the Canadian coordination zone will be limited to stations with a maximum of 5 Watts effective radiated power and a maximum antenna height of 6.1 meters above average terrain.

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[23] To be eligible in the Special Industrial Radio Service the applicant must meet the stringent eligibility requirements set out at Rule Section 90.73(a). The criteria are quite detailed and require considerably more of a showing than required of applicants in the Business Radio Service. See 47 CFR 90.73(a).

[24] Frequency recommendation letters contain coordination information for a given transmitter location, and such lettters must be submitted with the application in lieu of a field study in the Business Radio Service for frequencies below 470 MHz. *See* CFR 90.175. In the case of a community repeater the coordination information is the same for every add-on-user. Nameless or "John Doe" coordination letters could be issued by NABER to the community repeater operator and could be used to accommodate unexpected applicants who need immediate radio service. The community repeater operator would fill in the name of the applicant, who would then attach the coordination form to his application for submission to the Commission.

[25] The guidelines NABER wishes us to implement are as follows:

—The recommendation letter to remain valid for a period not to exceed 60 days, with the possibility of another 60 day extension, upon notification of need;

—Notification that an applicant has used the recommendation and applied to the Commission for a Business Radio Service authorization;

—A restriction on the number of coordination letters which may be issued to any one shared facility;

—A restriction on the number of mobile stations (5) for which the coordination letter may be used.

[26] For example, a franked return envelope for submission of a stub from the coordination letter which will permit NABER to identify each coordination letter when it is used.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

3. In § 2.302, a new class of station, composition of call sign, and call sign block are added to the table of call signs, to read as follows:

§ 2.302 Call signs.

* * * * *

Class of station	Composition of call sign	Call sign blocks
* * * * * * *		
Business radio temporary permit	2 letters, 7 digits	WT plus local telephone number.
* * * * * * *		

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

4. Subpart G of Part 90 is amended by the addition of new rule § 90.159 to read as follows:

§ 90.159 Temporary permit.

An applicant for a Business radio station license utilizing an already authorized facility may operate the radio station for a period of up to 180 days, under a temporary permit evidenced by a properly executed certification made of FCC Form 572 after the mailing of a formal application for station license, together with evidence of frequency coordination, if required, to the Commission. The temporary operation of stations, other than mobile stations, within the Canadian coordination zone will be limited to stations with a maximum of 5 Watts effective radiated power and a maximum antenna height of 6.1 meters above average terrain.

5. In § 90.119, a new paragraph (e) is added to read as follows:

§ 90.119 Application forms.

* * * * *

(e) Form 572, Temporary Permit to Operate a Business Radio Station, should be properly executed, if applicant is eligible and desires to operate his station pending the processing of his formal application (See also § 90.159).

6. In § 90.437, a new paragraph (c) is added to read as follows:

§ 90.437 Posting station licenses.

* * * * *

(c) Entities operating under a temporary permit authorized in accordance with § 90.159 should post an executed copy of FCC Form 572, at every control point of the system.

BILLING CODE 6712-01-M

APPENDIX B

TEMPORARY PERMIT TO OPERATE A BUSINESS RADIO STATION

DO NOT MAIL THIS FORM TO THE COMMISSION

I

Use this form only if you want a temporary permit in the Business Radio Service to operate on an existing licensed facility in the 30-50 MHz, 150-170 MHz and 450-470 MHz bands while your regular application Form 400 is being processed by the FCC.

Do not use this form if you operate an individual non-shared Mobile Relay station.

Do not use this form until you comply with frequency coordination requirements under Section 90.175 of the FCC Rules

II

I hereby certify that:

I am not the representative of a foreign government.

I am eligible in the Business Radio Service under Section 90.75.

I have not been denied a license or had a license revoked by the FCC.

I am not subject to any other legal action concerning the operation of radio station.

I have complied with frequency coordination requirements under Section 90.175 of the FCC Rules and attached evidence of coordination with my regular application(s).

I have mailed my FCC Form 400 on , 19 .

Applicant Name

Applicant Mailing Address

_____

Signature of person responsible for the operation of this Radio Facility.

If you cannot certify to the above, you are not eligible for a temporary permit. Willful false statements void this permit and are punishable by fine and/or imprisonment.

III

- Location of Shared Mobile Relay station.

  Address

  City County State

- Location of control station(s)

- Number of Mobile Units

Provide the name and call sign of a licensee presently operating on the shared facility.

Licensee call sign

Licensee Name

IV

Complete the block as indicated

Use this temporary call sign until a call sign is given by the Federal Communications Commission.

W T

Local Telephone Number

(Required ID is WT plus local business telephone number)

V

Your authority under this permit is subject to all applicable laws, treaties and regulations and is subject to the right of use or control by the Government of the United States. This permit is valid for 180 days from the date the Form 400 is mailed to the FCC.

You must have a temporary permit or a license from the FCC to operate your Land Mobile radio transmitters.

VI Post this form or a photocopy of this form at your system's control point.

[FR Doc. 80-27969 Filed 9-10-80; 8:45 am]
BILLING CODE 6712-01-C

47 CFR Part 73

[BC Docket No. 80-51; RM-3218]

FM Broadcast Station in Chatham, Mass.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: Action taken herein assigns a Class B FM channel to Chatham, Massachusetts, as its first FM channel assignment, in response to a petition filed by Rosemary D. Nelson. The assignment is consistent with other assignments made in the Cape Cod area.

EFFECTIVE DATE: October 9, 1980.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

Report and order (Proceeding Terminated)

Adopted: August 22, 1980.

Released: September 4, 1980.

By the Chief, Policy and Rules Division:

1. The Commission herein considers a proposal for the assignment of Class B FM Channel 298 to Chatham, Massachusetts, as that community's first FM assignment. This proceeding was initiated by a *Notice of Proposed Rule Making*, adopted February 6, 1980, 45 FR 12454, published February 26, 1980, based on a petition filed by Rosemary D. Nelson ("petitioner"). Supporting comments were filed by petitioner in which she reaffirmed her intent to file for the channel, if assigned. Oppositions were filed by Harbinger Broadcasting Co., Inc., licensee of Station WCOD-FM, Hyannis, Massachusetts; Seashore Broadcasting Co. ("Seashore"), licensee of Stations WVLC(AM), and WLOM(FM), Orleans, Massachusetts; and Central Vermont Radio Corporation ("Central Vermont"), licensee of Stations WOCB(AM) and WSOX(FM), West Yarmouth, Massachusetts, to which petitioner responded.

2. Chatham (pop. 4,554)[1] is located in Barnstable County (pop. 96,656), on Cape Cod, approximately 110 kilometers (70 miles) from Boston. Petitioner states that a Class B channel would better serve the special local needs and interests of Chatham and lower Cape area.

[1] Population figures are taken from the 1970 U.S. Census.

3. In opposition, Central Vermont, Seashore and Harbinger contend that although there are no aural services licensed to the community, Chatham is served by a multiplicity of radio broadcast services, unlike the situation relied on by the Commission in *Cape Charles, Virginia*, 43 FR 6606 (1978). The assignment of a Class B radio station in Chatham would allegedly fractionalize the existing stations' audiences, thereby reducing the revenue to each of the stations. They maintain that a Class A frequency will serve the needs of Chatham.

4. Petitioner in reply, states that the parties in opposition have not advanced any substantial public interest basis for rejection of the proposed assignment. She further states that since five Cape Cod communities with similar populations (two even smaller) have already been assigned Class B channels, a Class A channel in Chatham has very little chance of economic survival. Petitioner states that Chatham's growth pattern (a 32% increase to 6,027 from 1970 to 1975), a tourist population of 25,000 during the summer months, fulfillment of the Commission's technical requirements without precluding FM service to any other locality, and the Commission's past practice of allocating Class B channels to Cape Cod's major communities to insure effective service justify the assignment of a Class B channel to Chatham.

5. It appears that the opposition's comments are more concerned with the competitive impact of another Class B station in the market, but that is not the issue we need to consider here. This issue can more adequately be resolved within the context of the application processing and further consideration shall be deferred until that stage. Although there are factual differences in the *Cape Charles, Virginia*, proceeding, the pattern of assignments in that area are similar to the situation here. All of the major communities (West Yarmouth (pop. 3,699), Orleans (pop. 3,055), Hyannis (pop. 6,847), Barnstable (pop. 1,202) and Falmouth (pop. 5,806)), have Class B assignments. It would be inconsistent in our opinion to deviate from this distribution particularly where a need based on growth and tourism has been established. Accordingly, the Commission believes the public interest would be served by assigning Channel 298 to Chatham.

6. In view of the foregoing, IT IS ORDERED, that effective October 9, 1980, the FM Table of Assignments (Section 73.202(b) of the Commission's Rules) IS AMENDED with regard to the following community:

City	Channel No.
Chatham, Mass	298

7. Authority for the action taken herein is found in Sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Section 0.281 of the Commission's Rules.

8. It is further ordered, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-9660.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; 47 U.S.C. 154, 155, 303)

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 80-28093 Filed 9-10-80; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 173, 178

[Docket No. HM-166C; Amdt. Nos. 173-14, 178-62]

Termination of Certain Regulations; Obsolete Packaging Specifications

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: The purpose of these amendments to the Department's Hazardous Materials Regulations is to remove certain specification packagings that are no longer being manufactured or are not in general use. This action is in keeping with Executive Order 12221 on "Improving Government Regulations". These amendments will result in fewer, simpler and less burdensome regulations.

EFFECTIVE DATE: September 11, 1980.

FOR FURTHER INFORMATION CONTACT: Darrell L. Raines, Chief, Exemptions and Regulations Termination Branch, Office of Hazardous Materials Regulation, 400 7th Street SW., Washington, D.C. 20590, (202) 472-2726.

SUPPLEMENTARY INFORMATION: On October 18, 1979, the MTB published a Notice of Proposed Rulemaking, Docket HM-166C; Notice No. 79-13; (44 FR 60112) which proposed to eliminate 27 DOT specification packagings from 49 CFR. The principal purpose of this

action is the termination of unnecessary regulations. The elimination of 20 packaging specifications will result in a reduction of 49 CFR by approximately 48 pages.

The Bureau received seventeen comments on Notice 79–13.

The most significant difference between the final rule and the proposed rulemaking is that DOT Specifications 3B seamless steel cylinders, 5L steel barrels or drums, 5P lagged steel drums, 6C steel barrels or drums, 37K steel drums, 23F and 23H fiberboard boxes are retained in this rulemaking. According to the comments received, these specific packagings are still being manufactured and are in general use. Steel cylinder Specifications 3C, 3D, 3A480X, 4, 4A, and 4C will continue to be authorized for use as packagings for materials listed in Part 173. However, new construction is not authorized and their specifications have been removed from Part 178.

Specification 2A inside containers, metal can, pails and kits, steel barrels or drum Specifications 5D, 5F, 5H, 5X, 6A, 6K, 17X, metal kegs Specification 13, and aluminum barrels or drum Specifications 42C, 42E, 42F, 42G and 42H have all been deleted from Parts 173 and 178.

One commenter recommended that DOT Specification 42D aluminum drums also be eliminated. Since Specification 42D was not included in Notice No. 79–13, it has not been included in this rulemaking. However, it will be included in a notice of proposed rulemaking in the near future. Any person having knowledge of other specifications that are no longer necessary should contact Mr. Raines at the address or phone number shown earlier in this preamble.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

In consideration of the foregoing, Parts 173 and 178 of 49 CFR are amended as follows:

1. In § 173.60, paragraphs (a)(2) and (a)(3) are deleted; paragraph (a)(4) is revised as follows:

§ 173.60 Black powder and low explosives.

(a) * * *

(2) [Reserved]

(3) [Reserved]

(4) Specification 14, 15A, or 16A (§§ 178.165, 178.168, 178.185 of this subchapter). Wooden boxes with inside fiber or metal containers not over 1½ pounds capacity each, or cotton bags of at least 4 ounce cotton duck not over 25 pounds capacity each. The gross weight of Specification 14 boxes may not exceed 140 pounds and the gross weight of Specification 15A or 16A boxes may not exceed 200 pounds.

* * * * *

2. In § 173.93, paragraphs (a)(2), (a)(3), and (a)(7) are deleted; paragraphs (a)(9), (b)(1), (d)(1), and (e)(2) are revised as follows:

§ 173.93 Propellant explosives (solid) for cannon, small arms, rockets, guided missiles, or other devices, and propellant explosives (liquid).

(a) * * *

(2) [Reserved]

(3) [Reserved]

* * * * *

(7) [Reserved]

* * * * *

(9) Specification 14, 15A, 15B or 15C (§§ 178.165, 178.168, 178.169, 178.170 of this subchapter) wooden boxes, or Specification 23F or 23H (§§ 178.214, 178.219 of this subchapter) fiberboard boxes, with not more than four strong inside tight metal containers of not more than 25 pounds each. The gross weight in fiberboard boxes may not exceed 65 pounds.

* * * * *

(b) * * *

(1) Specification 5, 5A, 5B, 6B, or 6C (§§ 178.80, 178.81, 178.82, 178.98, or 178.99 of this subchapter). Metal barrels or drums.

* * * * *

(d) * * *

(1) Specification 5, 5A, 5B, 6B, or 6C (§§ 178.80, 178.81, 178.82, 178.98, 178.99 of this subchapter). Metal barrels or drums.

* * * * *

(e) * * *

* * * * *

(2) Specification 5B, 6B, 6C, 6D; also 17C or 17H (single-trip) containers (§§ 178.82, 178.98, 178.99, 178.102, 178.115, 178.118 of this subchapter). Metal barrel, drum, or cylindrical steel overpack, with inside Specification 2S (§ 178.35 of this subchapter) polyethylene container, packed inside a strong, tight metal drum. Inside steel drum must be surrounded on all sides with at least 2 inches of incombustible absorbent cushioning material uniformly distributed. Polyethylene containers are authorized only for liquids that will not react dangerously with the plastic or result in container failure.

* * * * *

3. In § 173.119, paragraphs (a)(10), and (k)(2) are revised; paragraphs (a)(15), (b)(6) and (k)(4) are deleted as follows:

§ 173.119 Flammable liquids not specifically provided for.

(a) * * *

(10) Specification 42B, (§ 178.107 of this subchapter). Aluminum drums.

* * * * *

(15) [Reserved]

* * * * *

(b) * * *

(6) [Reserved]

* * * * *

(k) * * *

(2) Specification 6B, or 6C (§§ 178.98, 178.99 of this subchapter). Metal barrels or drums.

* * * * *

(4) [Reserved]

* * * * *

4. In § 173.121, paragraph (a)(3) is revised as follows:

§ 173.121 Carbon bisulfide (disulfide).

(a) * * *

(3) Specification 15A, 15B, 15C, 16A, or 19A (§§ 178.168, 178.169, 178.170, 178.185, 178.190 of this subchapter). Wooden boxes with strong inside metal containers or with inside glass or earthenware containers not over 5 pints capacity each.

* * * * *

5. In § 173.122, paragraph (a)(2) is revised as follows:

§ 173.122 Acrolein, inhibited.

(a) * * *

(2) Specification 15A, 15B, 15C, 16A, or 19A (§§ 178.168, 178.169, 178.170, 178.185, 178.190 of this subchapter). Wooden boxes with strong inside tight metal containers not over 5 gallons capacity each.

* * * * *

6. In § 173.127, paragraph (a)(2) is revised; paragraph (a)(3) is deleted as follows:

§ 173.127 Nitrocellulose or collodion cotton, fibrous or nitrostarch, wet; nitrocellulose flakes; colloided nitrocellulose, granular, flake, or block, and lacquer base or lacquer chips, wet.

(a) * * *

(2) Specification 6B, 6C, or 6J (§§ 178.98, 178.99, 178.100 of this subchapter). Metal barrels or drums not over 55 gallons capacity. Specification 6J (§ 178.100 of this subchapter) drums must have removable heads of 14 gauge metal or 16 gauge metal with one or more corrugations near the periphery and heads must have a minimum convexity of ⅜ inch; each drum must have three rolled or swedged-in hoops, one of which shall be in the body near the curl.

(3) [Reserved]

* * * * *

7. In § 173.134, paragraph (a)(2) is revised as follows:

§ 173.134 Pyroforic liquids, n.o.s.

(a) * * *

(2) Specification 15A, 15B, or 15C (§§ 178.168, 178.169, 178.170 of this subchapter) wooden boxes or Specification 12B (§ 178.205 of this subchapter) fiberboard boxes enclosing not more than four strong tight metal cans with inside containers of glass or metal, not over one quart capacity each, having positive screwcap closures adequately gasketed ahead of the threads. Inside containers must be cushioned on all sides with dry, absorbent, incombustible material in a quantity sufficient to absorb the entire contents. The strong tight metal cans must be closed by positive means, not by friction.

* * * * *

8. In § 173.135, paragraph (a)(4) is deleted as follows:

§ 173.135 Diethyl dichlorosilane, dimethyl dichlorosilane, ethyl dichlorosilane, ethyl trichlorosilane, methyl trichlorosilane, trimethyl chlorosilane, and vinyl trichlorosilane.

(a) * * *

(4) [Reserved]

* * * * *

9. In § 173.136, paragraph (a)(4) is deleted as follows:

§ 173.136 Methyl dichlorosilane and trichlorosilane.

(a) * * *

(4) [Revised]

* * * * *

10. In § 173.137, paragraph (a)(2) is revised as follows:

§ 173.137 Lithium aluminum hydride, ethereal.

(a) * * *

(2) Specification 6B, 6C, or 17H (single-trip) (§§ 178.98, 178.99, 178.118 of this subchapter). Metal barrels or drums with not more than one inside glass container not exceeding 2 gallons capacity. The inside container must be completely cushioned in sufficient incombustible cushioning material to completely absorb the contents in event of breakage.

* * * * *

11. In § 173.139, paragraph (a)(3) is revised as follows:

§ 173.139 Ethylene imine, inhibited, and propylene imine, inhibited.

(a) * * *

(3) Specification 6B, 6C, or 6J (§§ 178.98, 178.99, 178.100 of this subchapter). Metal barrels or drums, with one inside Specification 17E (§ 178.116 of this subchapter) metal drum not over 30 gallons capacity. Inside drum must be completely surrounded with incombustible cushioning material.

* * * * *

12. In § 173.154, paragraph (a)(1) is revised as follows:

§ 173.154 Flammable solids, organic peroxide solids and oxidizers not specifically provided for.

(a) * * *

(1) Specification 6B or 6C (§§ 178.98, 178.99 of this subchapter). Metal barrels or drums.

* * * * *

13. In § 173.156, paragraph (a)(2) is deleted as follows:

§ 173.156 Barium peroxide and calcium peroxide.

(a) * * *

(2) [Reserved]

* * * * *

14. In § 173.160, paragraph (a)(2) is revised as follows:

§ 173.160 Calcium chlorite and sodium chlorite.

(a) * * *

(2) Specification 6B or 6C (§§ 178.98, 178.99 of this subchapter). Metal barrels or drums.

* * * * *

15. In § 173.161, paragraph (a)(2) is revised as follows:

§ 173.161 Calcium phosphide.

(a) * * *

(2) Specification 6B or 6C (§§ 178.98, 178.99 of this subchapter). Metal barrels or drums.

16. In § 173.163, paragraph (a)(1) is revised as follows:

§ 173.163 Chlorate of soda, chlorate of potash, and other chlorates.

(a) * * *

(1) Specification 6B or 6C (§§ 178.98, 178.99 of this subchapter). Metal barrels or drums.

* * * * *

17. In § 173.164, paragraph (a)(1) is revised as follows:

§ 173.164 Chromic acid or chromic acid mixture, dry.

(a) * * *

(1) Specification 6B or 6C (§§ 178.98, 178.99 of this subchapter). Metal barrels or drums.

* * * * *

18. In § 173.166, paragraph (a)(1) is revised as follows:

§ 173.166 Cobalt resinate, precipitated, calcium resinate, and calcium resinate fused.

(a) * * *

(1) Specification 6B or 6C (§§ 178.98, 178.99 of this subchapter). Metal barrels or drums.

* * * * *

19. In § 173.175, paragraph (a)(2) is revised as follows:

§ 173.175 Lacquer base, or lacquer chips, dry.

(a) * * *

(2) Specification 6B or 6C (§§ 178.98, 178.99 of this subchapter). Metal barrels or drums.

* * * * *

20. In § 173.184, paragraph (a)(3) is revised; paragraph (a)(6) is deleted as follows:

§ 173.184 Nitrocellulose or collodion cotton, wet, or nitrocellulose, colloided, granular, or flake, wet, or nitrostarch, wet, or nitroguanidine, wet.

(a) * * *

(3) Specification 6B, 6C, or 6J (§§ 178.98, 178.99, 178.100 of this subchapter). Metal barrels or drums not over 55 gallons capacity. Specification 6J (§ 178.100 of this subchapter) drums must have removable heads of 14 gauge metal or 16 gauge metal with one or more corrugations near the periphery and the heads must have a minimum convexity of ⅜ inch; each drum must have three rolled or swedged-in hoops, one of which shall be in the body near the top curl.

* * * * *

(6) [Reserved]

* * * * *

21. In § 173.187, paragraph (a)(2) is revised as follows:

§ 173.187 Peroxide of sodium.

(a) * * *

(2) Specification 6B or 6C (§§ 178.98, 178.99 of this subchapter). Metal barrels or drums.

* * * * *

22. In § 173.188, paragraph (a)(2) is revised; paragraph (a)(4) is deleted as follows:

§ 173.188 Phosphoric anhydride.

(a) * * *

(2) Specification 6B or 6C (§§ 178.98, 178.99 of this subchapter). Metal barrels or drums.

* * * * *

(4) [Reserved]

* * * * *

23. In § 173.189, paragraph (a)(2) is revised as follows:

§ 173.189 Phosphorus, amorphous, red.

(a) * * *

(2) Specification 6B; also 37A or 37B (single-trip containers) (§§ 178.98, 178.131, 178.130 of this subchapter).

Metal barrels or drums. Gross weight not to exceed 160 pounds.

* * * * *

24. In § 173.190, paragraphs (b)(2) and (d)(1) are revised as follows:

§ 173.190 Phosphorous, white or yellow.

* * * * *

(b) * * *

(2) Specification 5A or 6B (§§ 178.81, 178.98 of this subchapter). Metal barrels or drums, not over 30 gallons capacity each.

* * * * *

(d) * * *

(1) Specification 6B or 6C (§§ 178.98, 178.99 of this subchapter). Metal barrels or drums, not over 30 gallons capacity each.

* * * * *

25. In § 173.191, paragraph (a)(2) is revised as follows:

§ 173.191 Phosphorous pentachloride.

(a) * * *

(2) Specification 6B or 6C; also 37A or 37B (single-trip containers) (§§ 178.98, 178.99, 178.131, 178.132 of this subchapter). "Black iron" metal barrels or durms.

* * * * *

26. In § 173.195, paragraphs (a)(2) and (b)(1) are revised as follows:

§ 173.195 Pyroxylin plastic scrap.

(a) * * *

(2) Specification 6B, 6C, or 6J; also 17H, 37A, or 37B (single-trip containers) (§§ 178.98, 178.99, 178.100, 178.118, 178.131, 178.132 of this subchapter). Metal barrels or drums.

* * * * *

(b) * * *

(1) Specification 6B or 6C; or 17H (single-trip) (§§ 178.98, 178.99, 178.118 of this subchapter). Metal barrels or drums.

* * * * *

27. In § 173.201, paragraph (a)(1) is revised as follows:

§ 173.201 Rubber scrap, rubber buffings, reclaimed rubber, or regenerated rubber.

(a) * * *

(1) Specification 6B or 6C (§§ 178.98, 178.99 of this subchapter). Metal barrels or drums.

* * * * *

28. In § 173.203, paragraph (a)(2) is revised as follows:

§ 173.203 Tetranitromethane.

(a) * * *

(2) Specification 6B or 6C (§§ 178.98, 178.99 of this subchapter). Metal barrels or drums, with an inside stainless steel or aluminum drum(s). The inside drum may have no opening larger than 2.5 inches in diameter and must be securely closed by a gasketed screw type device. Gaskets must be made of materials that will not deteriorate upon contact with the contents. The inside drum(s) must be cushioned with not less than 2 inches of absorbent incombustible cushioning material. Each inside drum shall be of not less than 20 gauge metal and shall be tested for leakage before packing in the outside drum.

29. In § 173.204, paragraph (a)(2) is revised as follows:

§ 173. 204 Sodium hydrosulfite.

(a) * * *

(2) Specification 6B or 6C (§§ 178.98, 178.99 of this subchapter). Metal barrels or drums.

* * * * *

30. In § 173.206, paragraph (a)(2) is revised as follows:

§ 173.206 Sodium or potassium, metallic; sodium amide; sodium potassium alloys; sodium aluminum hydride; lithium metal; lithium silicon; lithium ferro silicon; lithium hydride; lithium borohydride; lithium aluminum hydride; lithium acetylide-ethylene diamine complex; aluminum hydride; cesium metal; rubidium metal; zirconium hydride, powdered.

(a) * * *

(2) Specification 5, 5C, 6B, or 6C (§§ 178.80, 178.83, 178.98, 178.99 of this subchapter). Metal barrels or drums. Not authorized for lithium aluminum hydride or aluminum hydride.

* * * * *

31. In § 173.207, paragraphs (a)(2) and (b)(4) are revised as follows:

§ 173.207 Sulfide of sodium or sulfide of potassium, fused or concentrated, when ground.

(a) * * *

(2) Specification 6B or 6C (§§ 178.98, 178.99 of this subchapter). Metal barrels or drums.

* * * * *

(b) * * *

(4) Specification 6B or 6C (§§ 178.98, 178.99 of this subchapter). Metal barrels or drums.

* * * * *

32. In § 173.214, paragraphs (a)(1), (b)(1), (c)(1), and (d)(1) are revised as follows:

§ 173.214 Hafnium metal or zirconium metal, wet, minimum 25 percent water by weight, mechanically produced, finer than 270 mesh particle size; hafnium metal or zirconium metal, dry, in an atmosphere of inert gas, mechanically produced, finer than 270 mesh particle size; hafnium metal or zirconium metal, wet, minimum 25 percent water by weight, chemically produced (see Note 1), finer than 20 mesh particle size; hafnium metal or zirconium metal, dry, in an atmosphere of inert gas, chemically produced (see Note 1), finer than 20 mesh particle size.

(a) * * *

(1) Specification 15A or 15B (§§ 178.168, 178.169 of this subchapter) wooden boxes or Specification 6B or 6C (§§ 178.98, 178.99 of this subchapter) metal drums with inside containers of glass or non-carbon polyethylene having net weight of not over 10 pounds each. Inside glass containers must be equipped with positive type clamp-on closures equipped with rubber gaskets. Inside polyethylene containers must have screw-cap closures equipped with gaskets ahead of thread and shall be of material which will not react with or be decomposed when in contact with contents. Screw-cap closures must be secured in place by suitable tape. Each glass or polyethylene container must be surrounded on all sides with not less than 1-inch of incombustible cushioning material and in an amount sufficient to completely absorb the entire liquid contents of the containers. Each inside glass or polyethylene container must be placed in a strong tight metal can closed with push-in cover held in place by soldering or crimping at least four points. The authorized net weight of hafnium in one outside container shall not exceed 40 pounds for wooden boxes and shall not exceed 150 pounds for steel drums.

(b) * * *

(1) Specification 6B or 6C (§§ 178.98, 178.99 of this subchapter) or spec. 17C, 17H, or 37A (single-trip containers) (§§ 178.115, 178.118, 178.131 of this subchapter). Metal barrels or drums with inside non-carbon polyethylene bottles having positive type clamp on closures equipped with rubber gaskets, or with screw-cap closures having not less than three continuous threads and equipped with gaskets ahead of threads, not over 5 pounds net weight capacity each. Screw-cap closures must be secured in place by suitable tape. Each bottle must be placed in a Specification 2R (§ 178.34 of this subchapter) metal container having a wall thickness of one-fourth inch and be completely surrounded by cushioning material. Specification 2R containers must be separated from one another by incombustible cushioning material. The authorized net weight of metal in one

outside container shall not exceed 150 pounds.

(c) * * *

(1) Specification 15A or 15B (§§ 178.168, 178.169 of this subchapter) wooden boxes or Specification 6B or 6C (§§ 178.98, 178.99 of this subchapter) or 17C or 17H (single-trip containers) (§§ 178.115, 178.118 of this subchapter) metal drums with inside containers of glass or non-carbon polyethylene having net weight of not over 10 pounds each. Inside glass containers must be equipped with positive type clamp-on closures equipped with rubber gaskets. Inside polyethylene containers must have screw-cap closures equipped with gaskets ahead of the thread and shall be of material which will not react with or be decomposed when in contact with contents. Screw-cap closures must be secured in place by suitable tape. Each glass or polyethylene container must be surrounded on all sides with not less than 1-inch of incombustible cushioning material and in an amount sufficient to completely absorb the entire liquid contents of the containers. Each inside glass or polyethylene container must be placed in a strong metal can closed with push-in cover held in place by soldering or crimping at at least four points. The authorized net weight or zirconium in one outside container shall not exceed 40 pounds in wooden boxes and 150 pounds in steel drums.

* * * * *

(d) * * *

(1) Specification 6B or 6C (§§ 178.98, 178.99 of this subchapter) or Specification 17C, 17H, or 37A (single-trip containers) (§§ 178.115, 178.118, 178.131 of this subchapter). Metal barrels or drums with inside non-carbon polyethylene bottles having positive type clamp-on closures equipped with rubber gaskets, or with screw-cap closures having not less than three continuous threads and equipped with gaskets ahead of threads, not over 5 pounds net weight capacity each. Screw-cap closures must be secured in place by suitable tape. Each bottle must be placed in a Specification 2R (§ 178.34 of this subchapter) metal container having a wall thickness of one-fourth inch and be completely surrounded by cushioning material. Specification 2R containers must be separated from one another by incombustible cushioning material. The authorized net weight of metal in one outside container shall not exceed 150 pounds.

* * * * *

33. In § 173.217, paragraph (a)(1) is revised as follows:

§ 173.217 Calcium hypochlorite mixture, dry; lithium hypochlorite mixture, dry; mono-(trichloro) tetra-(monopotassium dichloro)-penta-s-triazinetrione, dry; potassium dichloro-s-triazinetrione, dry; sodium dichloro-s-triazinetrione, dry; trichloro-s-triazinetrione, dry.

(a) * * *

(1) Specification 6B or 6C (§§ 178.98, 178.99 of this subchapter). Metal barrels or drums.

* * * * *

34. In § 173.225, paragraph (a)(2) is revised as follows:

§ 173.225 Phosphorus trisulfide; phosphorus sesquisulfide; phosphorous heptasulfide, and phosphorus pentasulfide.

(a) * * *

(2) Specification 6B or 6C (§§ 178.98, 178.99 of this subchapter). Metal barrels or drums, not over 30 gallons capacity each.

* * * * *

35. In § 173.228, paragraph (a)(1) is revised as follows:

§ 173.228 Zinc ammonium nitrite.

(a) * * *

(1) Specification 6B or 6C (§§ 178.98, 178.99 of this subchapter). Metal barrels or drums.

* * * * *

36. In § 173.231, paragraph (a)(2) is revised as follows:

§ 173.231 Calcium, metallic, crystalline.

(a) * * *

(2) Specification 6B or 6C (§§ 178.98, 178.99 of this subchapter). Metal barrels or drums, gross weight not over 350 pounds.

* * * * *

37. In § 173.233, paragraph (a)(3) is revised as follows:

§ 173.233 Nickel catalyst, finely divided, activated or spent.

(a) * * *

(3) Specification 5, 6B, or 6C (§§ 178.80, 178.98, 178.99 of this subchapter). Metal barrels or drums, not over 55 gallons capacity each.

* * * * *

38. In § 173.236, paragraph (a)(1) is revised as follows:

§ 173.236 Decaborane.

(a) * * *

(1) Specification 6B or 6C (§§ 178.98, 178.99 of this subchapter). Metal barrels or drums.

* * * * *

39. In § 173.245, paragraphs (a)(9) and (a)(10) are deleted as follows:

§ 173.245 Corrosive liquids not specifically provided for.

(a) * * *

(9) [Reserved]

(10) [Reserved]

* * * * *

40. In § 173.252, paragraph (a)(2) is deleted as follows:

§ 173.252 Bromine.

(a) * * *

(2) [Reserved]

* * * * *

41. In § 173.253, paragraph (a)(3) is deleted as follows:

§ 173.253 Chloracetyl chloride.

(a) * * *

(3) [Reserved]

* * * * *

42. In § 173.263, paragraph (a)(2) is deleted as follows:

§ 173.263 Hydrochloric (muriatic) acid; hydrochloric (muriatic) acid mixtures; hydrochloric (muriatic) acid solution; inhibited; sodium chlorite solution (not exceeding 42 percent sodium chlorite); and cleaning compounds, liquids, containing hydrochloric (muriatic) acid.

(a) * * *

(2) [Reserved]

* * * * *

43. In § 173.264, paragraph (a)(10) and Notes 1, 2, and 3 are deleted as follows:

§ 173.264 Hydrofluoric acid; White acid.

(a) * * *

(10) [Reserved]

Note 1: [Deleted]

Note 2: [Deleted]

Note 3: [Deleted]

* * * * *

44. In § 173.265, paragraph (b)(1) is deleted as follows:

§ 173.265 Hydrofluosilicic acid.

* * * * *

(b) * * *

(1) [Reserved]

* * * * *

45. In § 173.266, paragraph (b)(4) is deleted as follows:

§ 173.266 Hydrogen peroxide solution in water.

* * * * *

(b) * * *

(4) [Reserved]

* * * * *

46. In § 173.268, paragraph (c)(1) is revised as follows:

§ 173.268 Nitric acid.

* * * * *

(c) * * *

(1) Specification 42B (§ 178.107 of this subchapter). Aluminum drums.

* * * * *

47. Section 173.270 is revised as follows:

§ 173.270 Phosphorus tribromide.

(a) Phosphorus tribromide must be packed in specification containers as follows:

(1) Specification 15A, 15B, 15C, 16A, or 19A (§§ 178.168, 178.169, 178.170, 178.185, 178.190 of this subchapter). Wooden boxes with inside glass or earthenware containers not over 1 gallon each, except that inside containers up to 3 gallons each are authorized when only one container is packed in an outside packaging.

(2) Specification 5K or 5M (§§ 178.88, 178.90 of this subchapter). Nickel or monel drums not over 10 gallons capacity each.

48. In § 173.271, paragraph (a)(1) is deleted as follows:

§ 173.271 Phosphorus oxybromide, phosphorus oxychloride, phosphorus trichloride, and thiophosphoryl chloride.

(a) * * *

(1) [Reserved]

* * * * *

49. In § 173.272, paragraph (c) is revised; paragraph (i)(23) is deleted as follows:

§ 173.272 Sulfuric acid.

* * * * *

(c) *Sulfuric acid concentration of 51 percent or less:* Authorized packaging is described in paragraphs (1) through (16) and (24) through (26) of paragraph (i) of this section.

* * * * *

(i) * * *

(23) [Reserved]

* * * * *

50. In § 173.275, paragraph (a)(2) is revised as follows:

§ 173.275 Difluorophosphoric acid, anhydrous, monofluorophosphoric acid, anhydrous, hexafluorophosphoric acid, and mixtures thereof.

(a) * * *

(2) Specification 42B or 42D (§§ 178.107, 178.109 of this subchapter). Aluminum drums not over 55 gallons capacity.

* * * * *

51. In § 173.276, paragraph (a)(8) is revised as follows:

§ 173.276 Anhydrous hydrazine and hydrazine solution.

(a) * * *

(8) Specification 42B or 42D (§§ 178.107, 178.109 of this subchapter). Aluminum drums. Authorized for anhydrous hydrazine only.

* * * * *

52. In § 173.280, paragraph (a)(4) is deleted as follows:

§ 173.280 Trichlorosilanes.

(a) * * *

(4) [Reserved]

* * * * *

53. In § 173.288, paragraph (b) is deleted as follows:

§ 173.288 Chloroformates.

* * * * *

(b) [Reserved]

* * * * *

54. In § 173.295, paragraph (a)(7) is deleted as follows:

§ 173.295 Benzyl chloride.

(a) * * *

(7) [Reserved]

* * * * *

55. In § 173.302, paragraph (a)(1) is revised as follows:

§ 173.302 Charging of cylinders with nonliquefied compressed gases.

(a) * * *

(1) Specification 3,[1] 3A, 3AA, 3B, 3C,[1] 3D,[1] 3E, 4,[1] 4A,[1] 4B, 4BA, 4BW, 4C,[1] 25,[1] 26, 33,[1] or 38,[1] (§§ 178.36, 178.37, 178.38, 178.42, 178.50, 178.51, 178.61 of this subchapter). See §§ 173.34 and 173.301(e).).

Note 1.—Authorized cylinders containing oxygen which is continuously fedt to tanks containing live fish may be shipped irrespective of the provisions of § 173.24.

* * * * *

56. In § 173.304, paragraphs (a)(1) and (d)(3)(i) are revised as follows:

§ 173.304 Charging of cylinders with liquefied compressed gases.

(a) * * *

(1) Specification 3,[1] 3A, 3AA, 3B, 3BN, 3D[1] 3E, 4,[1] 4A,[1] 4B, 4BA, 4B–ET, 4BW, 4E, 9,[1] 25,[1] 26,[1] 38,[1] 39, 40,[1] or 41,[1] (§§ 178.36, 178.37, 178.38, 178.39, 178.42, 178.50, 178.51, 178.55, 178.61, 178.65, 178.68 of this subchapter), except that no Specification 4E, 9, 39, 40, 41 packaging may be charged and shipped with a mixture containing a pyroforic liquid, carbon bisulfide (disulfide), ethyl chloride, ethylene oxide, nickel carbonyl, spirits of nitroglycerin, or poisonous material (class A, B, or irritating material), unless specifically authorized in this part.

* * * * *

(d) * * *

(3) * * *

(i) Specification 3,[1] 3A, 3AA, 3B, 3E, 4A,[1] 4B, 4BA, 4B240ET, 4BW, 4B240X,[1] 4B240FLW, 4E, 4,[1] 9,[1] 25,[1] 26,[1] 38,[1] 39, or 41[1] (§§ 178.36. 178.37, 178.38, 178.42, 178.50, 178.51, 178.55, 178.61, 178.54, 178.68, 178.48, 178.63, 178.65, 178.67 of this subchapter). The internal volume of a Specification 39 cylinder must not exceed 75 cubic inches.

* * * * *

57. In § 173.328, paragraph (a)(1) is revised as follows:

§ 173.328 Poison A material not specifically provided for.

(a) * * *

(1) Specification 33[1] or 3D[1] metal cylinders of not over 125 pounds water capacity (nominal). Gaskets if used between the protection cap and neck of cylinder must be renewed for each shipment. Cylinders not fitted with valve protection extension ring must be packed in wooden boxes complying with the construction, marking, and labeling requirements of § 173.25.

* * * * *

58. In § 173.329, paragraphs (b)(1) and (c)(1) are revised; footnote[1] is added as follows:

§ 173.329 Bromacetone; chlorpicrin and methyl chloride mixtures; chlorpicrin and nonflammable, nonliquefied compressed gas mixtures.

* * * * *

(b) * * *

(1) Specification 3A, 3AA, 3B, 3C,[1] 3E, 4A,[1] 4B, 4BA, 4BW, or 4C[1] (§§ 178.36, 178.37, 178.38, 178.42, 178.50, 178.51, 178.61, of this subchapter). Cylinders having not over 250 pounds water capacity (nominal). Valves or other closing devices must be protected to prevent damage in transit, by screw-on metal caps or by packing the cylinders in strong boxes or crates. Cylinders having a wall thickness of less than 0.10 inch must be packed in boxes or crates complying with the construction, marking, and labeling requirements of § 173.25.

(c) * * *

(1) Specification 3A, 3AA, 3B, 3C,[1] 3E, 4A,[1] 4B, 4BA, 4BW, or 4C,[1] (§§ 178.36, 178.37, 178.38, 178.42, 178.50, 178.51, 178.61, of this subchapter). Cylinders having not over 250 pounds water capacity (nominal). Valves or other closing devices must be protected to prevent damage in transit, by screw-on metal caps or by packing the cylinders in strong boxes or crates. Cylinders having a wall thickness of less than 0.10 inch must be packed in boxes or crates complying with the construction, marking, and labeling requirements of § 173.25.

59. In § 173.332, paragraph (a)(2) is revised; footnote[1] is added as follows:

§ 173.332 Hydrocyanic acid, liquid (prussic acid) and hydrocyanic acid liquefied.

(a) * * *

[1] Use of existing cylinders authorized, but new construction not authorized.

Specification 3A480, 3AA480, or 3A480X[1] (§§ 178.36, 178.37, of this subchapter). Metal cylinders of not over 278 pounds water capacity (nominal); a valve protection cap must be used and be at least 3/16 inch thick, gas-tight, with 3/16 inch faced seat for gasket and with a United States standard form thread; the cap must be capable of preventing injury or distortion of the valve when it is subjected to an impact caused by allowing cylinder, prepared as for shipment, to fall from an upright position with side of cap striking a solid steel object projecting not more than 6 inches above floor level.

* * * * *

60. In § 173.346, paragraph (a)(16) is revised; paragraph (a)(17) and (a)(23) are deleted as follows:

§ 173.346 Poison B liquids not specifically provided for.

(a) * * *

(16) Specification 42B or 42D (§§ 178.107, 178.109 of this subchapter). Aluminum drums.

(17) [Reserved]

* * * * *

(23) [Reserved]

* * * * *

61. In § 173.353, paragraph (a)(3) and footnote[1] are revised as follows:

§ 173.353 Methyl bromide and methyl bromide mixtures.

(a) * * *

(3) Specification 3A225, 3AA225, 3B225, 3E1800, 4A225,[1] 4B225, 4BA225, or 4BW225 (§§ 178.36, 178.37, 178.38, 178.42, 178.50, 178.51, 178.61 of this subchapter). Metal cylinders. Valves and other closing devices must be protected to prevent damage in transit, by screw-on metal caps or by packing the cylinders in strong boxes or crates. Cylinders having a wall thickness of less than 0.08 inch must be packed in boxes or crates (see § 173.25).

* * * * *

62. In § 173.354, paragraph (a)(1) is revised as follows:

§ 173.354 Motor fuel antiknock compound or tetraethyl lead.

(a) * * *

(1) Specification 15A (§ 178.168 of this subchapter). Wooden boxes with inside glass or earthenware containers of not over 1-pint capacity each, or metal cans, inclosed in hermetically sealed (soldered) strong metal cans.

* * * * *

[1] Use of cylinders authorized, but new construction not authorized.

63. In § 173.357, paragraph (b)(1) is revised; footnote[1] is added as follows:

§ 173.357 Chloropicrin and chloropicrin mixtures containing no compressed gas or Poison A liquid.

* * * * *

(b) * * *

(1) Specification 3A, 3AA, 3B, 3C,[1] 3D,[1] 3E, 4A,[1] 4B, 4BA, 4BW, or 4C[1] (§§ 178.36, 178.37, 178.38, 178.42, 178.50, 178.51, 178.61, of this subchapter). Metal cylinder. Valves or other closing devices must be protected by screw-on metal caps, or by packaging the cylinders in boxes or crates, to protect the valves from damage during transportation. A cylinder closed by means of a solid plug may have the closure protected by a metal collar. Cylinders having a wall thickness of less than 0.08 inch must be packaged in boxes or crates. Each cylinder having a water capacity over 275 pounds must have a minimum design pressure of 225 p.s.i.g., unless the specification requires a higher minimum design pressure.

* * * * *

64. In § 173.360, paragraph (a)(3) is deleted as follows:

§ 173.360 Perchloro-methyl-mercaptan.

(a) * * *

(3) [Reserved]

* * * * *

65. In § 173.361, paragraph (a)(2) is revised as follows:

§ 173.361 Aldrin mixtures, liquid, with more than 60 percent aldrin.

(a) * * *

(2) Specification 6B or 6C (§§ 178.98, 178.99 of this subchapter). Metal barrels or drums. Authorized only for viscous mixtures or those which may become partially solid.

* * * * *

66. In § 173.362, paragraph (a)(4) is revised as follows:

§ 173.362 4-Chloro-o-toluidine hydrochloride.

(a) * * *

(4) Specification 6B or 6C (§§ 178.98 or 178.99 of this subchapter). Metal barrels or drums.

67. In § 173.365, paragraph (a)(1) is revised as follows:

§ 173.365 Poison B solids not specifically provided for.

(a) * * *

(1) Specification 5, 5A, 5B, 6B, or 6C (§§ 178.80, 178.81, 178.82, 178.98, 178.99 of this subchapter). Metal barrels or drums.

* * * * *

[1] Use of existing cylinders authorized, but new construction not authorized.

68. In § 173.369, paragraphs (a)(1) and (a)(12) are revised as follows:

§ 173.369 Carbolic acid (phenol), not liquid.

(a) * * *

(1) Specification 5, 5A, 5B, 5C, 6B, or 6C (§§ 178.80, 178.81, 178.82, 178.83, 178.98, or 178.99 of this subchapter). Metal barrels or drums.

* * * * *

(12) Specification 42B (§ 178.107 of this subchapter). Aluminum drums.

* * * * *

69. In § 173.370, paragraph (a)(4) is revised as follows:

§ 173.370 Cyanides and cyanide mixtures, dry.

(a) * * *

(4) Specification 5, 5A, 5B, 6B, or 6C (§§ 178.80, 178.81, 178.82, 178.98, 178.99 of this subchapter). Metal barrels or drums.

* * * * *

70. In § 173.377, paragraphs (a)(3) and (b)(3) are revised as follows:

§ 173.377 Hexaethyl tetraphosphate mixtures; methyl parathion mixtures; organic phosphorus compound mixtures, organic phosphate compound mixtures; parathion mixtures; tetraethyl dithio pyrophosphate mixtures; and tetraethyl pyrophosphate mixtures, dry.

(a) * * *

(3) Specification 5, 5B or 6C (§§ 178.80, 178.82, 178.99 of this subchapter). Metal barrels or drums.

* * * * *

(b) * * *

(3) Specification 5, 5B or 6C (§§ 178.80, 178.82, or 178.99 of this subchapter). Metal barrels or drums.

* * * * *

71. In § 173.382, paragraph (a)(2) is revised as follows:

§ 173.382 Irritating materials, not specifically provided for.

(a) * * *

(2) Specification 6B or 6C (§§ 178.98, 178.99 of this subchapter). Metal barrels or drums.

* * * * *

PART 178—SHIPPING CONTAINER SPECIFICATIONS

§§ 178.20, 178.40, 178.41, 178.43, 178.48, 178.49, 178.52, 178.84, 178.85, 178.87, 178.91, 178.97, 178.101, 178.108, 178.110, 178.111, 178.112, 178.119, 178.136 and 178.140 [Deleted]

72. In Part 178, §§ 178.20, 178.40, 178.41, 178.43, 178.48, 178.49, 178.52, 178.84, 178.85, 178.87, 178.91, 178.97, 178.101, 178.108, 178.110, 178.111, 178.112, 178.119, 178.136 and 178.140 are deleted.

(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 September 3, 1980.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 80-27979 Filed 9-10-80; 8:45 am]

BILLING CODE 4910-60-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 78-8; Notice 3]

Lamps, Reflective Devices and Associated Equipment; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; correction.

SUMMARY: This notice corrects a typographical error in the amendment published on July 28, 1980, (45 FR 49941). The error appears in the amendment to Paragraph S5.1 in which a reference to SAE Standard J579c appeared as J579b. It is, therefore, necessary to correct the error.

FOR FURTHER INFORMATION CONTACT: John Simeroth, Office of Rulemaking, National Highway Traffic Safety Administration, Washington, D.C. (202-426-2705).

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

§ 571.108 [Amended]

The reference to "J579b" in the third sentence of S5.1 of Title 49 Code of Federal Regulations, § 571.108 is amended to read: "J579c"

The lawyer and program official principally responsible for this correction are Z. Taylor Vinson and John Simeroth respectively.

(Secs. 103, 112, 114, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1401, 1403, 1407); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on September 2, 1980.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 80-27808 Filed 9-10-80; 8:45 am]

BILLING CODE 4910-59-M

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 830

Notification and Reporting of Aircraft Accidents or Incidents and Overdue Aircraft, and Preservation of Aircraft Wreckage, Mail, Cargo, and Records

AGENCY: National Transportation Safety Board.

ACTION: Final rule.

SUMMARY: By this revision the National Transportation Safety Board (Board) changes the definition of the term "fatal injury" and adds a definition for the term "incident" to Part 830, concerning aviation accident reporting requirements, to conform to the definitions of those terms that are found in Annex 13 to the Convention on International Civil Aviation (Fifth Edition—1979).

EFFECTIVE DATE: September 11, 1980.

FOR FURTHER INFORMATION CONTACT: John M. Stuhldreher, General Counsel, National Transportation Safety Board, 800 Independence Avenue, S.W., Washington, D.C. 20594, 202-472-6034.

SUPPLEMENTARY INFORMATION: This revision is based on a notice of proposed rulemaking published in the **Federal Register** on May 3, 1979 (44 FR 25889). In that notice, the Board proposed to: (1) Delete the requirement for the reporting of aircraft accidents and incidents and certain other occurrences in the operation of aircraft when they occur outside the United States; (2) provide a definition for the term "incident" and redefine the term "fatal injury"; and (3) add five additional types of incidents to the current list of five incidents that require immediate notification to the Board.

A total of 11 comments were received in response to the notice. The majority opposed the proposal to delete the requirement for the reporting of accidents involving U.S. registered aircraft when they occur outside the United States. In making that proposal, the Board assumed that the Accident Data Reporting System (ADREP System) maintained by the International Civil Aviation Organization (ICAO) would make the reporting of accidents to the Board unnecessary. It now appears, however, that ICAO's ADREP System does not yet satisfy the need of the Board to identify accidents occurring in foreign states, particularly those accidents involving small aircraft. Until it does, the Board finds that it must delay the proposal to ease the existing reporting requirement. The Board therefore will not proceed at this time to amend § 830.1 as was proposed in the notice.

A majority of those who commented on the proposal to add five additional types of incidents to the current list were opposed to the addition for a variety of reasons, including the reason that incidents are already being reported to either the Federal Aviation Administration (FAA) or to the National Aeronautics and Space Administration (NASA) under a variety of programs as discussed in the notice. For example, near midair collisions are being reported to NASA under the Aviation Safety Reporting System on a voluntary basis. In reviewing the comments, the question of how the proposal would affect other reporting systems was given careful attention. Although the proposal involves notification as opposed to reporting, the Board recognizes that every effort should be made to minimize requirements to avoid duplication. The FAA is currently conducting a review of its incident reporting system with the distinct possibility that changes will be made in the reporting of various kinds of occurrences. The Board now believes that its proposed action should be delayed until the relationship of its needs to the anticipated changes to the FAA system becomes clearer and § 830.5 will therefore not be amended as proposed. In the meantime, most of the kinds of incidents proposed for addition to Part 830 are coming to the Board's attention in sufficient time to permit the Board to undertake an investigation, when necessary.

Although it was explained in the notice of proposed rulemaking that the Board does not intend to undertake any new incident-reporting system, both because of the existing systems available and the absence of funds, four commentators urged the Board to consider the potential benefits to safety that would accrue from a broad-based incident data reporting system. As was pointed out in the notice, and as explained above, the Board does intend to work in cooperation with the FAA in its review of aviation safety data needs in the various areas of incident reporting.

One commentator objected to the increase from 7 to 30 days for fatal injury determinations in the definition of "fatal injury" that was proposed in order to conform to the ICAO definition since he believes that it will be difficult to administer and will not advance the cause of accident prevention. The Board believes, however, that compatibility of standards among ICAO member states is an important goal and will contribute to further development of a common

reporting system. With respect to the addition of definition of the term "incident" to conform to the ICAO definition, there were no significant objections. In the interest of Board uniformity with ICAO member states, the Board has adopted the two definitions as proposed.

Certain other clarifying language changes set forth in the proposal are reflected in this final rule.

Accordingly, Part 830 of Title 49 of the Code of Federal Regulations is revised to read as follows:

PART 830—NOTIFICATION AND REPORTING OF AIRCRAFT ACCIDENTS OR INCIDENTS AND OVERDUE AIRCRAFT, AND PRESERVATION OF AIRCRAFT WRECKAGE, MAIL, CARGO, AND RECORDS

Subpart A—General

Sec.
830.1 Applicability.
830.2 Definitions.

Subpart B—Initial Notification of Aircraft Accidents, Incidents, and Overdue Aircraft

830.5 Immediate notification.
830.6 Information to be given in notification.

Subpart C—Preservation of Aircraft Wreckage, Mail, Cargo, and Records

830.10 Preservation of aircraft wreckage, mail, cargo, and records.

Subpart D—Reporting of Aircraft Accidents, Incidents, and Overdue Aircraft

830.15 Reports and statement to be filed.

Authority: Title VII, Federal Aviation Act of 1958, as amended, 72 Stat. 781, as amended by 76 Stat. 921 (49 U.S.C. 1441 et seq.), and the Independent Safety Board Act of 1974, Pub. L. 93-633, 88 Stat. 2166 (49 U.S.C. 1901 et seq.).

Subpart A—General

§ 830.1 Applicability.

This part contains rules pertaining to:

(a) Notification and reporting aircraft accidents and incidents and certain other occurrences in the operation of aircraft when they involve civil aircraft of the United States wherever they occur, or foreign civil aircraft when such events occur in the United States, its territories or possessions.

(b) Preservation of aircraft wreckage, mail, cargo, and records involving all civil aircraft in the United States, its territories or possessions.

§ 830.2 Definitions.

As used in this part the following words or phrases are defined as follows:

"Aircraft accident" means an occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight and all such persons have disembarked, and in which any person suffers death or serious injury, or in which the aircraft receives substantial damage.

"Fatal injury" means any injury which results in death within 30 days of the accident.

"Incident" means an occurrence other than an accident, associated with the operation of an aircraft, which affects or could affect the safety of operations.

"Operator" means any person who causes or authorizes the operation of an aircraft, such as the owner, lessee, or bailee of an aircraft.

"Serious injury" means any injury which (1) requires hospitalization for more than 48 hours, commencing within 7 days from the date of the injury was received; (2) results in a fracture of any bone (except simple fractures of fingers, toes, or nose); (3) causes severe hemorrhages, nerve, muscle, or tendon damage; (4) involves any internal organ; or (5) involves second- or third-degree burns, or any burns affecting more than 5 percent of the body surface.

"Substantial damage" means damage or failure which adversely affects the structural strength, performance, or flight characteristics of the aircraft, and which would normally require major repair or replacement of the affected component. Engine failure, damage limited to an engine, bent fairings or cowling, dented skin, small punctured holes in the skin or fabric, ground damage to rotor or propeller blades, damage to landing gear, wheels, tires, flaps, engine accessories, brakes, or wingtips are not considered "substantial damage" for the purpose of this part.

Subpart B—Initial Notification of Aircraft Accidents, Incidents, and Overdue Aircraft

§ 830.5 Immediate notification.

The operator of an aircraft shall immediately, and by the most expeditious means available, notify the nearest National Transportation Safety Board (Board), field office [1] when:

(a) An aircraft accident or any of the following listed incidents occur:

(1) Flight control system malfunction or failure;

(2) Inability of any required flight crewmember to perform normal flight duties as a result of injury or illness;

(3) Failure of structural components of a turbine engine excluding compressor and turbine blades and vanes;

(4) In-flight fire; or

(5) Aircraft collide in flight.

(b) An aircraft is overdue and is believed to have been involved in an accident.

[1] The National Transportation Safety Board field offices are listed under U.S. Government in the telephone directories in the following cities: Anchorage, Alaska; Chicago, Ill.; Denver, Colo.; Fort Worth, Tex.; Kansas City, Mo.; Los Angeles, Calif.; Miami, Fla.; New York, N.Y.; Seattle, Wash.; Washington, D.C.

§ 830.6 Information to be given in notification.

The notification required in § 830.5 shall contain the following information, if available:

(a) Type, nationality, and registration marks of the aircraft;

(b) Name of owner, and operator of the aircraft;

(c) Name of the pilot-in-command;

(d) Date and time of the accident;

(e) Last point of departure and point of intended landing of the aircraft;

(f) Position of the aircraft with reference to some easily defined geographical point;

(g) Number of persons aboard, number killed, and number seriously injured;

(h) Nature of the accident, the weather and the extent of damage to the aircraft, so far as is known; and

(i) A description of any explosives, radioactive materials, or other dangerous articles carried.

Subpart C—Preservation of Aircraft Wreckage, Mail, Cargo, and Record

§ 830.10 Preservation of aircraft wreckage, mail, cargo, and records.

(a) The operator of an aircraft involved in an accident or incident for which notification must be given is responsible for preserving to the extent possible any aircraft wreckage, cargo, and mail aboard the aircraft, and all records, including all recording mediums of flight, maintenance, and voice recorders, pertaining to the operation and maintenance of the aircraft and to the airmen until the Board takes custody thereof or a release is granted pursuant to § 831.10(b).

(b) Prior to the time the Board or its authorized representative takes custody of aircraft wreckage, mail, or cargo, such wreckage, mail, or cargo may not be disturbed or moved except to the extent necessary:

(1) To remove persons injured or trapped;

(2) To protect the wreckage from further damage; or

(3) To protect the public from injury.

(c) Where it is necessary to move aircraft wreckage, mail or cargo, sketches, descriptive notes, and

photographs shall be made, if possible, of the original position and condition of the wreckage and any significant impact marks.

(d) The operator of an aircraft involved in an accident or incident shall retain all records, reports, internal documents, and memoranda dealing with the accident or incident, until authorized by the Board to the contrary.

Subpart D—Reporting of Aircraft Accidents, Incidents, and Overdue Aircraft

§ 830.15 Reports and statements to be filed.

(a) *Reports.* The operator of an aircraft shall file a report on Board Form 6120.1 or Board Form 6120.2 [2] within 10 days after an accident, or after 7 days if an overdue aircraft is still missing. A report on an incident for which notification is required by § 830.5(a) shall be filed only as requested by an authorized representative of the Board.

(b) *Crewmember statement.* Each crewmember, if physically able at the time the report is submitted, shall attach a statement setting forth the facts, conditions, and circumstances relating to the accident or incident as they appear to him. If the crewmember is incapacitated, he shall submit the statement as soon as he is physically able.

(c) *Where to file the reports.* The operator of an aircraft shall file any report with the field office of the Board nearest the accident or incident.

Note.—The reporting and recordkeeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Report Act of 1942.

Signed at Washington, D.C., on September 4, 1980.

James B. King,

Chairman,

[FR Doc. 80-27741 Filed 9-10-80; 8:45 am]

BILLING CODE 4910-58-M

[2] Forms are obtainable from the Board field offices (see footnote 1), the National Transportation Safety Board, Washington, D.C. 20594, and the Federal Aviation Administration, Flight Standards District Office.

Proposed Rules

Federal Register
Vol. 45, No. 178
Thursday, September 11, 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 Ch. I

[Petition Notice No. PR 80-12; Docket No. 20200, Notice No. 80-5]

Petitions for Rulemaking; National and Dulles International Airports; Solicitation and Leafletting Procedures

AGENCY: Federal Aviation Administration.

ACTION: Publication of petitions for rulemaking: request for comments.

SUMMARY: In 45 FR 35314–35321, May 27, 1980, FAA amended the regulations pertaining to National Capital Airports to provide for the regulation of charitable, religious, and political leafletting and soliciting at National and Dulles Airports, in accordance with Title V of Public Law 96–193 enacted February 18, 1980. Three petitions for reconsideration of the final rule have been received since May 27. This notice publishes those petitions.

DATES: Comments must be received before November 10, 1980.

ADDRESS: Send comments on the petition in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket, AGC–204, Room 916, Docket No. 20200, 800 Independence Avenue, S.W., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Edward Faggen, Legal Counsel, AMA–7, Metropolitan Washington Airports, Washington, DC 20001, Telephone: (703) 557–8123.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to submit such written data, views, or arguments on the petition of rulemaking as they desire. Communications should identify the regulatory docket number of petition notice number and be submitted in duplicate to the address specified above will be considered by the Administrator before taking action on the petition for rulemaking. The final rule, the petition, any comment received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket. 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 substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Background Information

On May 20, 1980, FAA issued a final rule amending 14 CFR Part 159, National Capital Airports, to provide for regulation of solicitation and leafletting by noncommercial organizations at National and Dulles Airports. (45 FR 35314, May 27, 1980.) Subsequent to publication of the final rule, the original effective date of July 28, 1980, was deferred 90 days to October 26, 1980, to permit completion of various administrative requirements associated with implementation of the rule. (45 FR 49917, July 28, 1980.) Since the final rule was issued, FAA has received petitions for reconsideration of the rule from the following organizations:

Aviation Consumer Action Project
Alliance for Preservation of Religious Liberty
American Civil Liberties Union Fund of the National Capital Area

These petitions are in accordance with 14 CFR 11.25 requests to either amend or repeal portions of Amendment 159–18. Therefore, pursuant to 14 CFR 11.27, the petitions must be published in the **Federal Register** for public comment. The FAA is, however, reviewing the information submitted in accordance with these petitions and may amend the rule, in accordance with applicable statue and regulation, after completion of this review. The petitions are published verbatim rather than in summary form in consideration of the number and complexity of issues raised.

The Petition

The Federal Aviation Administration published verbatim the petitions of Aviation Consumer Action Project, dated June 10, 1980; Alliance for the Preservation of Religious Liberty, dated July 1, 1980; and American Civil Liberties Union Fund of the National Capital Area, dated August 5, 1980.

Issued in Washington, D.C. on September 5, 1980.

Edward P. Faberman,
Acting Assistant Chief Counsel, Regulations and Enforcement Division.

Petition for Reconsideration

On May 27, 1980 the Federal Aviation Administation (FAA) published a final rule entitled "Solicitation and Leafletting Procedures at National and Dulles Airports," 45 FR 35314. The Aviation Consumer Action Project (ACAP) hereby petitions the FAA to reconsider that rule before it takes effect on July 28, 1980. If the FAA is unable to consider and dispose of this motion by that time, ACAP requests a stay of the effective date until the agency has completed action on the instant motion.

This petition should be granted because: (1) the final rule, like the proposed rule, continues to compromise First Amendment rights in several crucial respects, and (2) the FAA has failed to consider substantive objections which seriously undercut the basis for the rule.

ACAP is a non-profit consumer advocacy group which has engaged in and intends to continue to engage in protected First Amendment activities at National and Dulles Airports.[1] In particular, ACAP intends in the near future to distribute solicitation material and literature about air fares, passenger rights and other aviation issues at airport locations.

ACAP believes that its activities and the protected First Amendment activities of other groups, including religious and charitable groups, will be unconstitutionally discouraged, limited and in some cases prohibited by certain unjustified provisions in the rule. As ACAP noted in its comments, a provision restricting First Amendment liberties is not justified when it does not purport to serve a compelling state interest, does not actually advance that interest, or is not the least restrictive way of advancing that compelling state interest.

This petition analyzes only the gravest deficiencies in the rule and the failure of the FAA to address the

[1] *See Aviation Consumer Action Project* v. *Butterfield*, Civ. No. 2085–73 (D.D.C. 1974).

criticisms of those deficiencies that were raised in the comment period.[2] Those deficiencies are: (1) the restrictions on the numbers of persons distributing literature or soliciting funds have not been justified; (2) the restrictions on the places where those distributing or selling literature or soliciting funds can engage in those activities have not been justified; (3) the extensive information and statements required as a prerequisite to receiving a permit have not been justified; (4) the rule is vague; and (5) the rule lacks due process.

I. The Restrictions on the Number of Persons Distributing Literature or Soliciting Funds Have Not Been Justified

The final rule incorporates the proposed rule's limitations on eight solicitors at National at any one time and seven at Dulles during peak hours without addressing the criticisms from a variety of commenters that the consultant study[3] which purports to justify these restrictions suffers from serious methodological and analytical flaws. Among other things, the FAA fails to address evidence and arguments submitted by commenters that: (1) the numerical limits on solicitors in the study were designed to promote "pedestrian convenience" and were not geared to "absolute capacity" or the compelling state interest of "pedestrian safety;" (2) neither the FAA nor the study demonstrated that public safety has been adversely affected by airport solicitors, or that solicitors have significantly contributed to airport congestion; (3) the FAA and the study failed to explain adequately how the study derived the particular number of solicitors allowed in each location; (4) the FAA study was unscientific, self-impeaching and arbitrary;[4] and (5) the FAA failed to show why the numbers chosen represented the least restrictive alternative possible.[5]

These substantive objections completely undermine the justification which the FAA has advanced to support the final rule's numerical restrictions, and the FAA should therefore reconsider its restrictions and perform a new study, particularly in light of the offer from one expeienced commenter to provide more reliable pedestrian data flow. In the alternative, since the FAA lacks evidence that solicitors and leafletters contribute materially to congestion in airports through which 18 million people pass safely each year, the FAA should drop its number restrictions entirely.

II. The Restrictions on the Places Where Those Distributing or Selling Literature or Soliciting Funds Can Engage in Their Activities Have Not Been Justified

The final rule incorporates the proposed rule's prohibitions on solicitation and distribution of literature in the following places: (1) any place outside of nine general areas at National and Dulles airports; (2) waiting areas and lounges; (3) certain areas near ticket counters and baggage claim areas; (4) areas within ten feet of ten airport structures and premises, such as premises leased to concessionaires; and (5) areas within ten feet of any line going into those ten structures and premises.

In incorporating these substantial "place" restrictions into the final rule, the FAA ignored substantive criticisms raised by several commenters that seriously undermine the rule's constitutional validity. In particular, (1) the FAA failed to explain why it allowed soliciting or distribution of lieterature in some, but not other general areas; (2) the FAA failed to explain why the ten structures and premises it placed off bounds were essential to the operation of the airport, or how soliciting within ten feet of such structures hampered essential operations;[6] (3) the FAA failed to explain adequately why prohibiting solicitation within ten feet of a line was either necessary to prevent undue congestion at the airport; and (4) the FAA, as noted in Section I of this petition, failed to show generally that solicitors had ever adversely affected the safe operation of the airports or materially increased congestion.

Although the FAA briefly discussed the criticism that its prohibitions on approaching persons in lounges and waiting areas was based on an impermissible "captive audience" theory, the FAA's discussion only served to weaken its argument by raising doubts that persons in lounges are captive at all. 45 FR 35319. Moreover, the FAA failed to discuss at all the criticisms that no compelling state interest was being served by its restrictions,[7] and that even if protecting a "captive audience" was such an interest, the prohibition in the rule was not the least restrictive way of serving it. Several commenters pointed out that the rule's restriction on repeat solicitation of persons who indicate that they wish to be left alone was adequate and was the least restrictive way of serving any legitimate interest that might exist, but the FAA completely ignored this suggestion in its discussion of the final rule.[8]

The FAA's failure to grapple with these critical objections leaves the extensive restrictions on "place" constitutionally deficient and in need of reconsideration.

III. The Extensive Information and Statements Required as a Prerequisite To Receiving a Permit Have Not Been Justified

The final rule retains most of the proposed rule's extensive permit application procedures and requires ten separate statements and pieces of information as a prerequisite to obtaining a permit.[9] In so requiring, the FAA ignored arguments raised by several commenters that:

(1) the requirements went far beyond *Cantwell* v. *Connecticut*, 310 U.S. 296,

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[2] A discussion of other deficiencies can be found in the Joint comments of ACAP and the American Civil Liberties Union submitted to this docket on May 12, 1980.

[3] "DCA–IAD Pedestrian Survey Study," Howard, Needles, Tammen & Bergendoff, March 1980 (hereinafter "Study").

[4] For example, the pictures in the study often showing large open areas argue against, not for, the restrictions in the proposed rule, and the sharp contrast between the limitation to seven solicitors at Dulles between four and eight p.m., while allowing an unlimited number at other times, shows the rough and inexact way that the study approached First Amendment rights.

[5] The only criticism addressed by the FAA in the discussion accompanying the final rule was that the FAA had arbitrarily decided upon different levels of congestion (levels of service) that would be allowed at each airport. The FAA responded that it "does not believe that either of the present service levels at National or Dulles should be lowered to the next lowest level by increasing the number in the Final Rule." 45 FR 35319. This response simply reasserts the arbitrary choice of maintaining two different service levels at the airport, while failing to show the effect of different numbers of solicitors on that service level.

[6] *See ISKCON* v. *Griffin*, 437 F. Supp. 666 (W.D. Pa. 1977). In that case the Court overturned a prohibition on approaching within ten feet of leased areas because "interference with the operation of the airport should be the standard by which regulations are measured, rather than arbitrary physical distance from specific airport areas." *Id.* at 672. Arbitrary distances are particularly unjustified in the present case since the FAA has demonstrated that it has the capability of trying to determine variable distances from structures based on pedestrian flow.

[7] The Supreme Court cases discussing captive audiences are either not analogous to the situation at hand, or indicate that outside of the home only the most substantial privacy interests being invaded in an essentially intolerable manner will justify restrictions on speech. *See Cohen* v. *California*, 403 U.S. 15, 21 (1971).

[8] To the extent that the FAA justifies its restrictions on approaching within ten feet of a line on the "captive audience" theory, such a justification is similarly without merit, as ACAP demonstrated in its earlier comments.

[9] The changes in the final rule are: (1) a person simply distributing literature, but not selling it, would not have to go through the lengthy application process, although a permit would still be required, and (2) a charitable solicitor is required to simply state that his organization is tax exempt, rather than having to bring in a letter to that effect from the IRS.

306 (1940), which allows a state to "protect its citizens from fraudulent solicitation by requiring a stranger * * * to establish his identity and his authority to act for the cause he purports to represent";

(2) the FAA provides little concrete evidence that fraud is a significant problem at the airports;

(3) the FAA failed to indicate how each requirement would prevent fraud or why the requirements were the least restrictive necessary to prevent fraud, particularly in light of existing penal laws (*Village of Schaumburg* v. *Citizens for a Better Environment*, 48 U.S.L.W. 4162, 4166 (Feb. 20, 1980)); and

(4) the permit application process and the requirement of wearing a badge were overbroad when applied to the noncommercial (e.g., religious and political) sale of literature (*Murdock* v. *Pennsylvania*, 319 U.S. 105, 111 (1943); *ISKCON* v. *Lentini*, 461 F. Supp. 49, 53 (E.D.La. 1978); *Wulp* v. *Corcoran*, 454 F.2d 826 (1st Cir. 1972); *Strasser* v. *Doorley*, 432 F.2d 567 (1st Cir. 1970); *Talley* v. *California*, 362 U.S. 60 (1960); *Bates* v. *Little Rock*, 361 U.S. 516 (1960); *NAACP* v. *Alabama*, 357 U.S. 449 (1958)).

The only discussion by the FAA of these challenges is brief and conclusory. The final rule states that: (1) requiring a person to submit a letter stating that he or she is authorized to solicit on the organization's behalf is a non-burdensome "minimal requirement" which is "less objectionable" than an FAA investigation into whether a person actually represents the group; (2) the requirement that a person name a supervisor is not vague; and (3) requiring a person to sign a statement that his or her organization is tax exempt was not precluded by the decision in *Village of Schaumburg, supra*, 45 FR 35318. These arguments either ignore or fail to adequately address the constitutional criticisms raised with regard to them.

With regard to the first argument, the FAA's statement that it would be "less objectionable" for the FAA to require a letter of authorization than to use existing penal laws to punish frauds is an arbitrary factual conclusion in direct conflict with the clear legal conclusion that use of existing laws is "less restrictive." Moreover, bringing in a letter to the FAA from a third party is not a "minimal requirement" compared to simply providing information. And while some of the requirements in the final rule may be minimal, taken together they are very burdensome.

With regard to the second argument, the FAA's contention that the requirement that the leafletter or solicitor name a supervisor is not "vague" ignores the more fundamental problem that the FAA has failed to show why the provision is necessary or why it is the least restrictive provision available.[10]

With regard to the third argument, the FAA may be correct that *Village of Schaumburg* implied that tax-exempt status can be used as a criterion for determining eligibility for solicitation in certain circumstances. However, citing such *dicta* is a far cry from proving that there is evidence of fraud at National and Dulles, and that requiring persons to obtain tax-exempt status and to state that their organizations are tax-exempt as part of a permit application process will either prevent such fraud, or is the least restrictive way of preventing such fraud.

The evidence on the rulemaking record from a variety of commenters is that the permit application requirements are burdensome and unnecessary. The FAA should reconsider these requirements in light of its failure to provide them with a firm constitutional basis in the final rule.

IV. *The Rule Is Vague*

Although the final rule made some efforts to clear up ambiguities in the proposed rule, the final rule contains over half a dozen unclear sections which not only deny due process, but will have a chilling effect on First Amendment activities, including:

(1) the failure of the rule to reconcile the definition of non-commercial activity in § 159.93(a)(3), and the implied definition of such activity in § 159.93(c)(2)(v)(A)–(E);[11]

(2) the failure of the FAA to provide clarity in its new and unconstitutional restriction on the sale of literature to "religious solicitors" in § 159.93(a)(3), which refers to a non-existent section (c)(2)(e)(1);[12]

(3) the failure of § 159.93(a)(3) to answer the question raised in 45 FR 35317 as to whether items with message value can be distributed at the airport;[13]

(4) the failure of the rule to distinguish between written and verbal solicitations;

(5) the failure of the rule to reconcile the implication in § 159.93(c)(2)(ii) that a person need not represent a group to solicit or sell literature, and the implication in § 159.9(c)(2)(v) that only persons soliciting or selling literature for a religion but not a religious group need not be associated with a group;[14]

(6) the failure of the rule to reconcile the contradictory requirements for persons distributing, but not selling, literature in § 159.93(c)(1) and § 159.93(c)(2);

(7) the failure of the rule to explain how a person selling literature under § 159.93(c)(2) can sign a statement that he or she is soliciting funds under § 159.93(c)(2)(v) (A) and (B) when the FAA distinguished between "sale" and "solicitation" throughout the rule; and

(8) the failure of the rule to define what "primary function" means in the definition of political activity in §§ 159.93(c) 159.93(c)(2)(v)(B).[15]

This lengthy list of vague provisions is enough to cast serious doubt on the rule's constitutionality and merits reconsideration by the FAA.

V. The Rule Lacks Due Process

Both the final rule and the authorizing statute (which is printed at 45 FR 35314) fail to provide for any administrative or judicial review of a permit denial. The rule continues, therefore, to deny the rights of due process and should be reconsidered. *Freedman* v. *Maryland*, 380 U.S. 51 (1965); *Southeastern Promotions, Ltd.* v. *Conrad*, 420 U.S. 546 (1975). In these cases, the Supreme Court held that a system of prior restraints runs afoul of the First Amendment if it lacks certain safeguards:

First, the burden of instituting judicial proceedings, and of proving that the material

[10] *See ISKCON* v. *Kearnes*, 454 F. Supp. 116 (E.D. Cal. 1978) (permit system to prevent fraud void as a prior restraint since information requested did not bear on the question of whether the applicant was likely to pursue a fraudulent course of behavior); and *Westfall* v. *Board of Com'rs of Clayton City*, 477 F. Supp. 862 (N.D. Ga. (1979) (solicitation statute overturned because sity required "double dose" of information identifying solicitor).

[11] This problem could be avoided by simply dropping the requirements in § 159.93(c)(2)(v), thus avoiding the flaw of requiring more information than what was allowed in *Cantwell* v. *Connecticut, supra*, and avoiding the more serious flaw that the FAA's definitions of political, charitable and religious groups prohibit certain protected groups from exercising their First Amendment rights at all.

[12] Other non-commercial speech is also protected, such as the "pamphlets of Thomas Paine." *Murdock* v. *Pennsylvania, supra*, 319 U.S. at 111.

[13] Although the final rule offers a new explanation for its prohibition on the distribution or sale of objects, it has long been held that the prevention of litter does not justify First Amendment restrictions. *Schneider* v. *State*, 308 U.S. 147 (1939). Moreover, while certain objects may not have any message value, their sale may be intimately tied in with the free exercise of religion. *See United States* v. *Silberman*, 464 F. Supp. 866, 870 (M.D. Fla. 1979).

[14] If § 159.95(c)(2)(v) is the guiding section, it is unconstitutional since it would prohibit a person from selling literature on his own. Surely, many great ideas and movements start with one individual.

[15] As stated in footnote 11, this requirement should be deleted entirely, or at least the word "primary" should be dropped to ensure that protected activity on the part of a group that engages in some, but not a great deal, of political activity is not excluded by definition.

is unprotected, must rest on the censor. *Second,* any restraint prior to judicial review can be imposed only for a specific brief period and only for the purpose of preserving the status quo. *Third,* a prompt final judicial determination must be assured.

420 U.S. at 560.

The FAA argues in its final rule that a permit will only be denied if an application form is incomplete, 45 FR 35318, implying that it has therefore removed from the airport manager all possible discretion and the need for due process. Such an argument is deficient for two reasons. First, because the rule is so vague and includes so many requirements in the registration process, legitimate disputes may arise as to whether a permit form has been "completed." To cite just one example, § 159.93(c)(2)(iii) requires the applicant to provide "the name and title of the person in the organization who will have supervision over and responsibility for the activity at the airport, *if applicable"* (emphasis supplied). Clearly, the airport manager will have to exercise some discretion in determining whether this requirement is "applicable" in any particular case.[16]

Second, even if the rule left no discretion to the airport manager, some form of administrative or judicial review would be required. In *ISKCON* v. *Rochford,* 585 F.2d 263 (7th Cir. 1978), a case involving solicitation at airports, the Court held, citing *Freedman* v. *Maryland, supra,* that:

> Even if the officials had no discretion in administering these regulations, due process would still require the inclusion of procedural safeguards.

Id. at 272.[17] Due process thus requires some form of administrative or judicial review of the airport manager's decisions on granting or denying permits, and the FAA should reconsider its proposed rule because it fails to contain any such proposed review.

Conclusion

For the foregoing reasons, ACAP respectfully requests that the FAA grant this petition for reconsideration. If the FAA is unable to complete action on this petition by the July 28 effective date, ACAP requests a stay of the effective date pending such final action.

Respectfully submitted,

Cornish F. Hitchcock,

Asociate Director.

Matthew H. Finucane,

Staff Attorney.

Aviation Consumer Action Project, P.O. Box 19029, Washington, D.C. 20036, (202) 223–4498.

June 10, 1980.

Supplement to Petition for Reconsideration of Aviation Consumer Action Project

All communications with respect to this document should be addressed to: Matthew H. Finucane, Staff Attorney, Aviation Consumer Action Project, P.O. Box 19029, Washington, D.C. 20036 (202) 223–4498.

July 21, 1980.

The Aviation Consumer Action Project (ACAP) hereby submits this supplement to its June 10, 1980 petition for reconsideration of the FAA's final rule entitled "Solicitation and Leafletting Procedures at National and Dulles Airports," 45 FR 35314 (May 27, 1980).[1] This supplement is based on new information received by ACAP from the FAA pursuant to the Freedom of Information Act.[2]

ACAP argued in its petition for reconsideration that the rule's lengthy and burdensome permit application process, which requires ten separate statements and documents as a prerequisite to receiving a permit, violated the First Amendment because the FAA had provided little concrete evidence that fraud was a problem at the airports; had failed to show how each required statement or document would help prevent fraud; and had failed to explain why each of the requirements was the least restrictive method of preventing fraud.

A preliminary analysis of all complaints received by the FAA concerning soliciting and leafletting confirms the argument that fraud is not a problem at National and Dulles Airports. In over five years, the FAA has received less than a dozen letters questioning whether solicitors actually represent the cause or organization they claim to represent, whether the recipient actually does what he or she claims to do with the money, or whether the orgainzation soliciting funds is a bona fide religion or charity. Only a handful of letters allege that the complainant was actually misled, and the amount of money involved in these complaints totals $4.35. None of the complaints were ever proven, and some of the complaints appear on their face to be unfounded.[3]

As a result of an alleged loss of $4.35 at two airports in over five years, the FAA intends to require those exercising their First Amendment rights to wear badges, to provide the name of a supervisor, and to provide personal and organizational identification to the FAA. While such regulatory overkill is to be avoided in any context, it is particularly undesirable when constitutional rights are involved, as here.

Respectfully submitted,

Matthew H. Finucane,

Staff Attorney.

July 21, 1980.

Alliance for the Preservation of Religious Liberty

July 1, 1980.

Federal Aviation Administration, Office of the Chief Counsel,

Attention: Rules Docket AGC–204, Docket No. 20200, Washington, D.C.

Dear Sir: This is in regards to the final rule published on May 27, 1980 by the Federal Administration (FAA) entitled "Solicitation and Leafletting Procedures at National and Dulles Airport," 45 Fed. Reg. 35314.

The Aviation Consumer Action Project (ACAP) has petitioned the FAA to reconsider the final rule of May 27, 1980 before it takes effect on July 28, 1980. Additionally, the ACAP has requested a stay of the effective date of the final rule until the FAA has completed action on that petition, in the event that the FAA is unable to consider and dispose of the matter by that time.

ACAP states in its petition that it should be granted because the final rule of the FAA compromises First Amendment Rights and the FAA has failed to consider the substantive objections which were

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[16] The discussion of comments in the final rule states that the phrase "if applicable" was added because in "some instances there may not be a supervisor." 45 FR 35318. But what instances are these? A religious person not associated with a group? Or a person associated with a group where there are no formal supervisors? The discussion of comments also states that "an applicant for a permit will not be denied on the basis of the failure to provide a name." 45 FR 35318. However, the clear language of the regulation states that "Failure to submit the information required . . . shall result in denial of a permit." Section 159.93(d). Surely, the airport manager is going to have to exercise some judgement in determining whether to be guided by the regulation or the "discussion" accompanying the regulation.

[17] Although *Liberman* v. *Schesventer,* 447 F. Supp. 1355 (M.D. Fla. 1978), a case involving solicitation on federal property, held to the contrary on this issue, its applicability to the instant issue was subsequently questioned by the Court in *United States* v. *Silberman,* 464 F. Supp. 866 (M.D. Fla. 1979), also a case involving solicitation on federal property. In *Silberman* the Court noted, *inter alia,* that: "prompt notice and review proceedings must be included" in any restriction or restraint: "[w]hile procedural due process is flexible and variable in different situations, the complete absence of any due process at all cannot be justified under the guise of flexibility," and "mere written notice of the face of denial of permit . . . is not constitutionally adequate." *Id.* at 873 n.4, *citing Memphis Light, Gas and Water Div.* v. *Craft,* 436 U.S. 1, 14 (1978). The *Silberman* court added that "[t]he Supreme Court has emphatically rejected the view that litigation by an adversely affected individual is 'an adequate substitute' for an administrative remedy." *Id.* at 873 n.4. Similarly in *ISKCON* v. *Griffin,* 437 F. Supp. 666, 670 (W.D. Pa. 1977), a case involving airport solicitation, the Court held that the County must either issue a permit or go to court, citing *Freedman* v. *Maryland, supra.*

[1] ACAP is a non-profit consumer advocacy group which has distributed literature and solicited support at National Airport, most recently around the Fourth of July weekend, and which plans to continue these activities in the future.

[2] In proposing its solicitation and leafletting rule, the FAA stated that it had received numerous complaints about soliciting and leafletting at National and Dulles Airports. These complaints were not included in the rulemaking docket, and ACAP made a request for copies under the Freedom of Information Act in order to obtain notice as to the basis of the FAA rulemaking. The request was made on May 9, 1980, and copies of the complaints were not received until July 11, 1980, over two months later. This supplement is based on a preliminary analysis of those complaints, after categorizing them on the basis of the primary reason for the complaint.

[3] In contrast over 85 percent of the letters received by the FAA concerned *the manner* in which money is solicited, not *who* is soliciting, e.g., alleged obscene, abusive, embarrassing or harassing remarks, pinning flowers, or failure to make change.

communicated to the FAA during the comment period on the proposed rule.

The Alliance for the Preservation of Religious Liberty (APRL) fully concurs with the statements made by the ACAP in their Petition for Reconsideration and joins in the appeal to the FAA for a reconsideration of the final rule prior to its effective date.

Sincerely,

John Spagnola,

Legislative Director.

American Civil Liberties Union Fund of the National Capital Area,
Washington, D.C., August 5, 1980.

Re: Final Rule on "Solicitation and Leafletting Procedures at National and Dulles International Airports", 45 Fed. Reg. 35314 (May 27, 1980).

Office of the General Counsel, Federal Aviation Administration,
Attn: Rules Docket (AGC—204) Docket No. 20200, Washington, D.C.

Gentlepeople:

The American Civil Liberties Union Fund of the National Capital Area requests that you reconsider your final rule governing solicitation and leafletting at National and Dulles Airports. Although the final rule represents some improvement over the proposed rule, it is still seriously flawed under the First Amendment.

Without reiterating our objections at length, we believe that the rule's area and numerical limitations on the exercise of activities protected by the First Amendment have not been shown to be necessary. We note in this respect that the FAA has recently proposed allowing an additional three million passengers to use National Airport each year. *See* 45 Fed. Reg. 4313 (January 21, 1980). We fail to see how the public areas of National Airport can accomodate an additional 8,000 persons a day, but cannot accomodate more than 8 persons exercising their First Amendment rights.

It is also our view that the permit application procedures and requirements established by the final rule go beyond what is necessary or constitutionally permissable. And in view of the Supreme Court's recent decisions on "corporate free speech," handed down subsequent to the publication of the final rule, the validity of the rule's requirement of religious, political, or non-profit status may also be open to serious question. *See Consolidated Edison Co. V. Public Service Comm'n,* 48 U.S.L.W. 4776 (June 20, 1980); *Central Hudson Gas & Electric Corp. v. Public Service Comm'n, 48 U.S.L.W. 4783 (June 20, 1980).*

In light of the fact that the effective date of the final rule has already been postponed until October 26, 1980, *see* 45 Fed. Reg. 49917 (July 28, 1980), it appears that nothing would be lost by reopening the rule for further comments and reconsideration at this time. And much might be gained from a constitutional standpoint. We urge you to reopen the rulemaking and reconsider the rule.

Sincerely yours,

Arthur B. Spitzer,

Legal Director.

[FR Doc. 80-28000 Filed 9-10-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 80-NW-40-AD]

Airworthiness Directives: Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rule making (NPRM).

SUMMARY: This proposed rule would amend Airworthiness Directive (AD) 79-04-01 (Amendment 39-3410, 44 FR 9735, as amended by Amendment 39-3577, 44 FR 56318, and Amendment 39-3889, 45 FR 55705) by decreasing the initial inspection threshold of the main landing gear downlock cranks on Boeing Model 727 series airplanes from 68,000 landings to 25,000 landings. Cracks have been detected in two downlock cranks which had accumulated approximately 26,000 landings. Complete failure of a crank can cause missequencing of the landing gear operation and subsequent jamming of the landing gear and wheel well door which, in turn, can result in a gear-up landing.

DATES: Comments must be received on or before November 1, 1980.

ADDRESSES: Send comments on the proposed rule in duplicate to: Federal Aviation Administration, Northwest Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket, Docket No. 80-NW-40-AD, 9010 East Marginal Way South, Seattle, Washington 98108.

FOR FURTHER INFORMATION CONTACT: Mr. Richard H. Yarges, Airframe Section, ANW-212, Engineering and Manufacturing Branch, FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108, telephone (206) 767-2516.

SUPPLEMENTARY INFORMATION: Airworthiness Directive 79-04-01, requires inspections or replacement of certain Boeing Model 727 series airplane main landing gear lock system components whose failure can or has resulted in missequencing of the landing gear operation and subsequent jamming of the gear and wheel well door. Nine jamming incidents have resulted in gear-up landings.

AD 79-04-01 requires an initial inspection of the downlock crank at 68,000 landings. Two recent reports of cracks at approximately 26,000 landings indicate the need to lower the time for initial inspection. This proposed rule would amend AD 79-04-01 by decreasing the initial inspection for the main landing gear downlock cranks from 68,000 to 25,000 landings.

Boeing has designed a replacement for the existing downlock crank which has improved fatigue characteristics. Since this crank has an estimated life in excess of one million landing cycles, this proposed rule would also amend AD 79-04-01 to include the incorporation of this crank, or an equivalent, as a terminating action for the downlock crank inspection requirements in paragraph A.

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals 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. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMS

Any person may obtain a copy of this Notice of Proposed Rule Making (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Region, Office of the Regional Counsel, Attention: Airworthiness Directive Rules Docket, Docket No. 80-NW-40-AD, 9010 East Marginal Way South, Seattle, Washington 98108.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) by further amending Airworthiness Directive 79-04-01, Amendment 39-3410 (44 FR 9735), as amended by Amendment 39-3577 (44 FR 56318) and Amendment 39-3889 (45 FR 55705) by revising the table in Paragraph A.

Note.—Only the portion of the table pertaining to the downlock crank is affected as follows:

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Component	Part No.	Replacement or Initial Inspection Threshold (landings)	Repeat Inspection Interval not to exceed (landings)
Downlock Torque Shaft	65-78698-1,-2 -5,-6 -7,-8	35,000	3,000
Downlock Rod Assy.	69-20527-2 69-33654-1 69-33654-2 69-33654-3 69-33654-4	12,000	◁1
	69-33654-5	35,000	3,000
Downlock Torque Tube Assy.	65-26921-17 65-26921-18	37,000	3,000
Uplock Universal Block	65-24488-1	10,000 flt hrs or 4 years, which ever occurs first.	1,500
	-4	48,000 landings	3,000
Uplock Universal Bolt	NAS 1106-44D 69-47743-1	11,000	to be replaced
Uplock Upper Shaft Assy.	65-25851-1 65-25851-2 65-25851-5 65-25851-6	46,000	3,000
Uplock Lower Crank	65-49325-1,-2, 65-49325-5,-6, 65-49325-7,-8	3,000	1,500
Downlock Crank ◁2	69-20528-1 -2 -3 -4	25,000	1,500

◁1 Within 1500 landings from the last inspection or within 1500 landings from October 9, 1979, whichever occurs first, thereafter not to exceed 500 landings.

◁2 Initially inspect or replace prior to accumulation of 25,000 landings or within 750 landings from the effective date of this amendment, whichever occurs later. Replacement with steel downlock crank, Boeing Part Number 69-20528-5 or -6 or an equivalent approved by the Chief, Engineering and Manufacturing Branch, Northwest Region, terminates the downlock crank inspection requirement of this table.

Component	Part No.	Replacement or Initial Inspection Threshold (landings)	Repeat Inspection Interval not to exceed (landings)
Uplock Lower Crank Bolt	NAS 1105-28	7,000	To be replaced
	BACP18T5-( )	7,000	
	MS20392-5C( ) (oversize option)	12,000	
	MS20392-6C( ) (oversize option)	50,000	
Downlock Rod Bolt (Inboard)	NAS 1105-13DW	20,000	To be replaced
	BACB30LJ5U13 Optional Bolts: BACB30NE5-13 BACB30GE5-14 NAS 1105-14	20,000	To be replaced
	BACB30NE5-15 Optional Bolts: BACB30LJ5U15 BACB30LJ5-16 BACB30GE5-16	20,000	To be replaced
Downlock Rod Bolt (Outboard)	NAS 1105-13DW	20,000	To be replaced
	BACB30LM5DU12 Optional Bolts: BACB30NE5D12 BACB30GE5D12 NAS 1305-12D	20,000	To be replaced

BILLING CODE 4910-13-C

(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))

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

Issued in Seattle, Washington, on August 28, 1980.

Charles R. Foster,

Director, Northwest Region.

The incorporation by reference provisions in the document were approved by the Director of the Federal Register on June 19, 1967.

[FR Doc. 80-27685 Filed 9-10-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 80-WE-41-AD]

Airworthiness Directives; Puritan-Bennett Aero Systems Co.; P/N 174039, 174010-01, 174010-03 and ZMR100 Series Oxygen Masks

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of proposed rule making.

SUMMARY: This notice proposes to adopt an Airworthiness Directive (AD) that would require replacement of a regulator diaphragm on Puritan-Bennett Aero Systems Company (PBASCo) oxygen masks. The proposed AD is needed to prevent the regulator inlet valve from either leaking causing depletion of the oxygen supply or developing positve pressure within the facecone making it difficult to breathe.

DATES: Comments must be received on or before November 13, 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, World Way Postal Center, Los Angeles, California 90009.

The applicable service information may be obtained from: Puritan-Bennett Aero Systems Company, 111 Penn Street, El Segundo, California 90245.

FOR FURTHER INFORMATION CONTACT: Robert Razzeto, 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 FAA has determined that certain regulators on PBASCo oxygen masks P/N 174039, 174010-01, 174010-03 and ZMR100 series contain oversize diaphragms. Under Certain conditions, an oversize diaphragm can cause the regulator inlet valve either to leak or to develop positive pressure within the facecone. Although the regulator may work properly in normal usage, it can develop one of the above conditions without warning. There is no reliable field test method for determining when or where the mask will develop problems. Since this condition is likely to exist or develop on other oxygen masks of the same type design, the proposed AD would require replacement of the oversize diaphragm in certain PBASCo oxygen masks P/N 174039, 174010-01, 174010-03 and ZMR100 series.

Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new Airworthiness Directive:

Puritan-Bennett Aero Systems Company: Applies to Puritan-Bennett Aero Systems Company oxygen masks P/N 174039, 174010-01, 174010-03 and ZMR100, series as listed below.

S/N for P/N 174039
0001 through 0012

S/N for P/N 174010-01 and 174010-03
00100 through 00144
146, 147, 149,
00150 through 00194
195 through 259
261 through 273
275 through 292

S/N for P/N ZMR100 series
6603 through 7234

Compliance required as indicated, unless already accomplished.

To prevent the regular inlet valve from causing either leakage or positive pressure within the facecone, accomplish the following:

(a) Within 120 days from the effective date of this Airworthiness Directive, remove diaphragm assembly P/N F334-1001-1 and install diaphragm assembly P/N F334-1001-1 modified to include diaphragm and plate assembly P/N F334-1003-1, Revision E.

(b) After modification per paragraph (a) of this AD, permanently mark letter "M" at the end of or beneath the mask serial number. This serial number is located under the face cushion on the left-hand side of the hardshell on the 174039 and ZMR100 series masks and on the back surface of the head harness on the 174010-01 and 174010-03 masks.

(c) The modified diaphragm replacement of paragraph (a) of this AD in the ZMR100 series masks may be accomplished by returning the mask to Puritan-Bennett Aero Systems Company, 111 Penn Street, El Segundo, California 90245 or in accordance with the following Puritan-Bennett Aero Systems ATA Component Maintenance Manuals:
35-10-25 for the ZMR160 mask
35-10-27 for the ZMR129 mask
35-10-28 for the ZMR129-1 mask
35-10-29 for the ZMR118 mask

Note.—This replacement in the 174039, 174010-01, 174010-03 and other ZMR100 series masks may be accomplished by returning the mask to Puritan-Bennett Aero Systems Company, 111 Penn Street, El Segundo, California 90245.

Note.—Puritan-Bennett Aero Systems Company Service Bulletin No. 1 dated April 15, 1980, pertains to the subject of this Airworthiness Directive.

(d) Alternate 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.

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

Issued in Los Angeles, California on August 27, 1980.

John D. Mattson,

Director, FAA Western Region.

[FR Doc. 80-27686 Filed 9-10-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 121

[Docket No. 20331; Petition Notice No. PR 80-11]

Petition for Rulemaking of the Air Transport Association of America

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Publication of petition for rulemaking; request for comments.

SUMMARY: This notice publishes for public comment the petition of the Air Transport Association (ATA) of America, of April 30, 1980, to amend § 121.220(d) of the Federal Aviation Regulations (FAR). In particular, ATA proposes amendments to § 121.220(d), which would exempt the operations of current freighter aircraft, narrow-body two-engine and three-engine passenger aircraft, and align the schedule of four-engine passenger aircraft ozone retrofit with the U.S. noise retrofit requirements for those airplanes by an amendment to affected carriers' operations specifications. This notice does not propose regulations for adoption or represent an FAA position on the merits of the petition.

DATES: Comments must be received on or before November 10, 1980.

ADDRESS: Send comments on the proposal in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 20331, 800 Independence Avenue, SW., Washington, D.C. 20591;

or delivered in duplicate to: Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to submit such written data, views, or arguments on the petition for rulemaking as they desire. Communications should identify the regulatory docket or petition notice number and be submitted in duplicate to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket No. 20331 (AGC-204), 800 Independence Avenue, SW., Washington, D.C. 20591. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the petition for rulemaking. 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 substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Background Information

On April 30, 1980, the ATA submitted a petition for rulemaking, in accordance with Part 11 of the FAR, to amend § 121.220(d) of the FAR. This petition is published in its entirety as part of this notice.

Section 121.220 requires a certificate holder to successfully demonstrate that ozone concentration in the cabin will not exceed established maximums. Section 121.220(d) provides that a certificate holder may obtain an authorization to deviate from these requirements by amending its operations specifications if it shows that due to circumstances beyone its control or to unreasonable economic burden it cannot comply for a specified period of time and it has submitted a plan acceptable to the Administrator to effect compliance to the extent possible. As clearly stated in the preamble to the final rule upon its publication, it is FAA's present intent to authorize such deviations only "* * * in circumstances such as equipment delivery delays or short-term use of aircraft, *when the certificate holder shows that through flight planning or other means it will attempt to avoid areas of high ozone concentrations* * * *." (45 FR 3882, January 2, 1980, emphasis added.)

The petitioner alleges that a close examination of alternative compliance methods discloses that the rule as written cannot be complied with by any practical method before the specified deadline. Petitioner proposes that § 121.220(d) be amended to exempt the operations of current freighter aircraft and narrow-body two-engine and three-engine aircraft, and to align the schedule of four-engine passenger aircraft ozone retrofit with the U.S. noise retrofit requirements for those airplanes. The absence of any discussion of means which would be taken to minimize ozone concentrations in the specified aircraft operated by carriers who would exercise the proposed deviation authority, coupled with the discussion contained elsewhere in the petition, appears to be indicative of petitioner's intent to eliminate any requirements for such considerations.

Although this notice sets forth the contents of the ATA petition as received by the FAA without changes, it should be understood that its publication to receive public comment is in accordance with FAA procedures governing the processing of petitions for rulemaking. It does not propose a regulatory rule for adoption, represent an FAA position, or otherwise commit the agency on the merits of the petition. The FAA intends to proceed to consider the petition under the applicable procedures of Part 11 and to reach a conclusion on the merits of the ATA proposal after it has had an opportunity to carefully evaluate them in light of the comments received and other relevant matters presented. If the FAA concludes that it should initiate public rulemaking procedures on the ATA petition, the appropriate rulemaking action will be proposed by the FAA including its evaluation of the proposal.

The ATA Petition

Accordingly, the Federal Aviation Administration publishes verbatim for public comment the following petition for rulemaking of the Air Transport Association of America, dated April 30, 1980:

Issued in Washington, D.C., on September 5, 1980.

Edward P. Faberman,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

Air Transport Association of America,
1709 New York Avenue, N.W.,
Washington, D.C.
April 30, 1980.

Hon. Langhorne M. Bond,
The Administrator, Federal Aviation Administration, Washington, D.C.

Dear Mr. Bond: This is in regard to 14 CFR Part 121, Amendment 121-154 prohibiting air carriers from flying above Flight Level 180 unless it is shown that specified ozone concentration limits are not exceeded. Although this amendment portends to offer Part 121 operators a number of alternative compliance methods, close examination of those alternatives discloses that the rule as written cannot be complied with by any practical method before the specified deadline. Accordingly, and in accordance with 14 CFR Part 11, Section 11.25, the Air Transport Association of America (ATA) on behalf of its member airlines respectfully petitions that Part 121 Section 121.220(d) be amended as follows:

"(d) A certificate holder may obtain an authorization to deviate from the requirements of paragraph (b) of this section, by amendment to its operations specifications, if—

(1) with respect to its two-engine airplanes, the fuel load is limited to a maximum of 7,500 U.S. gallons; or

(2) with respect to its three-engine airplanes, the fuel load is limited to a maximum of 10,000 U.S. gallons; or

(3) with respect to its four-engine airplanes, the fuel load is limited to a maximum of 15,000 U.S. gallons, or the airplane is

scheduled for re-engining or retirement or replacement to satisfy Part 91 Subpart E and until such re-engining, retirement or replacement occurs; or

(4) the airplane carries no passengers other than company employees and cargo attendants; or

(5) it shows that due to circumstances beyond its control or to unreasonable economic burden it cannot comply for a specified period of time, and it has submitted a plan acceptable to the Administrator to effect compliance to the extent possible."

The effect of the adoption of this petition would be to exempt the operations of current freighter aircraft and narrow-body two-engine and three-engine passenger aircraft, and to align the schedule of four-engine passenger aircraft ozone retrofit with the U.S. noise retrofit requirements for those airplanes. Freighter aircraft should be exempted based on (a) the obvious absence of impact on passengers and flight attendants, (b) the absence of any service reports of deleterious effects of ozone on flight deck personnel, and (c) equal treatment with non-Part 121 operators. As will be shown, the twinjet and trijet narrow-body passenger aircraft should be exempted based on the record of the previous rulemaking docket and new information, plus the apparent intent of the FAA to exclude these aircraft, anyway. The previous docket established the severe fuel penalty incurred in restraining flight to altitudes below Flight Level 180 and the absence of essential information regarding aircraft ozone attenuation characteristics for other than B–747 aircraft types; new information is provided with regard to current cost prognostications and retrofit hardware availability; and FAA's cost analysis in the previous rulemaking, as published in the preamble to the subject amendment, shows either a gross mistake or a clear intent not to regulate to the extent manifested by Amendment 121–154.

With regard to the four-engine narrow-body aircraft, it will be shown that it is not practical to meet the ozone requirements except by installing filters, and that the production of such installations cannot be completed on a schedule meaningful in advance of the re-engining schedules, and that logically the two modifications should be performed simultaneously.

This petition is being made for the airlines collectively in order to avoid the costs that would attend separate application by each operator to its regional FAA office.

The intent of this petition, with regard to passenger aircraft, is to exempt the narrow-body, short-to-medium range aircraft and to revise the compliance date for narrow-body quadjets to a realistic schedule. The use of fuel quantities to establish the dividing line between narrow-body and wide-body aircraft, while only one workable method, offers simplicity of administration.

Part 121, Section 121.220 presents several alternatives for compliance which are listed as five options for the purposes of this discussion.

(1) *Conduct all flights below Flight Level 180.* While this option may appear to be viable for a number of very short flight segments, it is not an option that an operator could apply to categorically establish compliance for its entire fleet of, for example, two-engine aircraft. In hub-and-spoke operations, an aircraft flying a short distance on one segment often flies a long distance on a sequel segment. Only in dense commuter markets is it conceivable to lock certain aircraft into rotations where high altitude flight would not be required, and even in these circumstances it is improbable that aircraft could be thus constrained for the reminder of their useful lives.

Artificially restricting flights to altitudes of FL 180 and lower is patently objectionable because (a) it crowds airplanes into less airspace than they presently fly in for the enroute segment, and would increase the mix of IFR and VFR traffic at lower altitudes, thus increasing air traffic separation burdens; (b) it disturbs passenger comfort and it hampers flight attendant activity by preventing flight above turbulent weather which prevails at the lower altitudes, and (c) it is wasteful of precious fuel, as more fully documented in ATA's comments to FAA dated January 5, 1979, regarding Docket No. 16854 on this subject.

(2) *Probabilistic analysis of historical ozone data.* The data base of historical ozone concentrations at various locations and altitudes is sketchy, but does indicate that the short-range aircraft could during the peak season at northernmost latitudes encounter ozone concentrations above the 0.25 parts per million limit. At this point in time, due to the fact that aircraft outside-to-inside ozone attenuation characteristics have not been determined (except B–747's), operators must conservatively assume that *no* attenuation takes place. It is quite possible that sufficient attenuation exists to virtually eliminate this concern for short-range aircraft, but the wrought result by Amendment 121–154 is that virtually thousands of short-range flights must be microscopically examined to preclude even the briefest exceedance of an ozone level that is not known to cause more than a temporary effect on human comfort. This analysis must be conducted every month for each schedule change and for each of several flight tracks that an operator might select in order to fly the smoothest and most fuel-efficient weather.

The administrative burden of compliance by analysis is difficult to estimate. The average trunk airline could, however, probably justify the addition of two analysts at a cost of $50,000 per year or one analyst plus a one-time $100,000 computer program modification. Such an expenditure is clearly not justified when there has been no authentic complaint about ozone on aircraft in this class.

If analysis shows that the ozone limit might be exceeded on one or more flights, another alternative would have to be exercised. We have already seen that an altitude restriction is a most burdensome option. Circumnavigation is equally burdensome due to the fact that ozone "pockets" tend to be quite large, and the extra fuel burned and time consumed offend today's emphasis on resource conservation. This leaves the option of installing a filter or converter, which, as we will show below, cannot be installed at a reasonable cost nor on a responsive schedule.

(3) Forecasting and circumnavigating ozone concentrations. Where the historical average ozone levels indicate too high a level for a given flight, the option exists for making a real-time forecast of ozone concentration, and, if less limiting than indicated by the historical data, preparing a flight plan to circumnavigate the prohibited concentrations. At this time there is not a concensus among meteorological experts in the industry that ozone can be forecasted with sufficient accuracy for this purpose, and this method has the same drawbacks as the method employing only historical data.

(4) *Applying a meter on board the aircraft.* It has been suggested that it would be possible to install a meter onboard an aircraft, and fly the airplane under or around any concentrations that make the meter indicate an exceedance. This is not a feasible alternative because there is no way to plan for the amount of extra fuel required for an altitude or track excursion made to avoid high ozone. FAR's require such fuel requirements to be accounted for in advance.

(5) *Installing a filter or converter.* It is impossible to install an ozone filter or converter on the narrow-body twinjet and trijets in the time frame contemplated because no such installation has been designed by the airframe manufacturers. Because of the need to integrate ozone control systems with the existing environmental control systems, it is fundamental that the airframe manufacturers are the foremost authorities on what such designs must entail, how and when they can be installed. The Boeing Company and McDonnel Douglas Corporation, who manufacture most of the aircraft in the narrow twinjet and trijet category, unequivocally advise that the designs for such systems cannot be readied by February, 1981, and, in fact, indicate that February, 1983 would be a more realistic date.

Since detailed designs for these installations have not been completed, costs can only be roughly approximated based on what has been done on B–747 aircraft. Estimates vary from $20,000 to $30,000 per aircraft for kit installation, plus $1,000 to $2,500 per aircraft per year additional operating cost, based on fuel at $1.00 per gallon. As many as 1500 of these aircraft are affected, indicating a total for the twinjet/trijet narrow-body fleet of $30,000,000 to $45,000,000 initially, plus $1,500,000 to $5,750,000 per year thereafter.

Since FAA's cost analysis in the preamble to the ozone rule only included the long-range aircraft, the B–747, B–707, DC–8, DC–10 and L–1011, and actually only 60 percent of that fleet, it is obvious that the FAA did not intend to regulate in the category of narrow-body twinjets and trijets, i.e., DC–9, BAC 1–11, B–737 and B–727. The above figures, in fact, which exclude the costs of modifying the long-range aircraft, *quadruple* the costs contemplated by FAA for the entire air carrier fleet; thus there remains no justifiable basis for applying the ozone concentration limits to short-range aircraft as described.

Four-engine narrow-body jets. Because of the long-range capability of the narrow

quadjets, and because the other compliance options are too penalizing, most operators have indicated that cabin ozone filtration or conversion systems are the most likely compliance options. The problem is that the designs of such systems for these aircraft are still embryonic. Manufacturers are estimating a 30-month requirement to design, test, certify, and fabricate such systems. The airlines will need an additional six to twelve months to schedule their aircraft into the major overhaul facilities for the installation of these systems. Therefore, a compliance date of mid-1983 is more realistic than early 1981.

Installations in the 1983 time period, moreover, are commensurate with the re-engining of certain of these four-engine aircraft required by Part 91, Subpart E, the noise retrofit rule. Since the installation of a substantially different powerplant will entail large changes in the various aircraft systems powered by the engines, and these usually include the cabin environmental control system, it is only sensible to incorporate new cabin ozone control systems into the basic redesign of systems entailed by the re-engining effort. Otherwise, the $25,000 or so per aircraft expended for an ozone filter design, plus $800 per year higher operating costs and loss of cargo space, would be wasted due to incompatibility between the new engine and the old ozone filter design. The FAA has a duty to regulate in such fashion as to conserve these resources.

The exemption for four-engine jets should not be limited to those aircraft that are being re-engined. FAR 91 Subpart E permits such an airplane to be operated until December 31, 1984 without modification provided it is replaced or removed from service, or is operated in foreign commerce. A stark injustice is worked when an operator is required to modify his aircraft to install ozone filters, and such filters cannot be made available for such installation until just 1½ years prior to the retirement of that aircraft.

Benefit to the public; effects on safety. Granting of this petition will have no adverse impact on passenger or crew health or safety. The retrofit of long-range, high-altitude aircraft—those usually exposed to the ozone levels of concern—to install ozone filters or converters will not be affected, except for DC-8 and B-707 aircraft which are scheduled for early retirement or re-engining (and this petition proposes an ozone retrofit concurrent with such re-engining) pursuant to noise regulations in FAR 91 Subpart E.

This petition offers the additional benefits of avoiding inflationary expenditures, i.e., expenditures with no productivity gains, that must ultimately be borne by air transport consumers. This petition would avoid the necessity of compressing all narrow-body jet traffic below Flight Level 180 during peak ozone exposure periods, thereby reducing the problem of mixing VFR and IFR traffic and reducing exposure to the relatively greater air turbulence at the lower altitudes.

The ATA is grateful for the opportunity to present this petition to the Administrator. A brief summary is attached for your convenience. Your expedited handling of this request is urged.

Sincerely,

Clifton F. von Kann,

Senior Vice President, Operations and Airports.

Attachment

Summary of Air Transport Association Petition for Changes to FAR 121 Section 220, Cabin Ozone Concentration

Petitioner: Air Transport Association on behalf of its member airlines.

Regulations affected and changes requested:

14 CFR 121 Section 220(d) is requested to be changed so that (1) freighter operations are exempted, (2) narrow-body twinjet and trijet passenger aircraft are exempted, and (3) narrow-body quadjet aircraft are regulated by the same compliance schedule that applies to these aircraft under 14 CFR Part 91 Subpart E for noise retrofit or retirement.

Justification:

Granting of the petition will have no public disbenefits and will not affect aviation safety. The present rule as written cannot be complied with by any practicable means, and the expenditure of tens of millions of dollars not contemplated by FAA in its enactment of § 121.220 would be averted.

[FR Doc. 80-27999 Filed 9-10-80; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 430

[Docket No. R-80-866]

Multifamily Housing Projects; Mortgagor Relationship to Tenant Activities; Transmittal of Proposed Rule to Congress

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. This proposed rule would amend 24 CFR to add a new Part 430 which would prohibit certain multifamily housing project owners from taking actions that would frustrate tenants' efforts to obtain rental subsidies or impede tenants' efforts to organize.

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 430—Mortgagor Relationship to Tenant Activities.

(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., September 4, 1980.

Moon Landrieu,

Secretary, Department of Housing and Urban Development.

[FR Doc. 80-28068 Filed 9-10-80; 8:45 am]

BILLING CODE 4210-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 116 and 117

[FRL 1603-3]

Hazardous Substances; and Determination of Reportable Quantities; Addition of Carcinogens; Extension of Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Notice of extension of comment period.

SUMMARY: The date for the close of the comment period on proposed Part 116 and 117 hazardous substances carcinogen regulations is hereby extended by 30 days from September 8, 1980 to October 8, 1980.

EFFECTIVE DATE: September 5, 1980.

FOR FURTHER INFORMATION CONTACT: Joseph Krivak, Director, Criteria & Standards Division (WH-585), Office of Water Planning & Standards, 401 M Street, S.W., Washington, D.C. 20460 (202) 755-0100.

SUPPLEMENTARY INFORMATION: On July 9, 1980, (45 FR 46094 and 46097) the Environmental Protection Agency published proposed rules that would (1) amend the Part 116 Designation of Hazardous substances regulation to add 14 new substances based on carcinogenic effects and (2) amend the Part 117 Determination of Reportable Quantities regulation to establish reportable quantities for the substances proposed to be designated and change the reportable quantities for six

substances previously designated on the basis of acute aquatic toxicity. A 60-day comment period was provided that began on July 9, 1980 and was to have ended on September 8, 1980.

Several commenters have made written requests to the agency to ask for additional time to complete their comments because of the complexity of the scientific and technical issues related to the regulation of carcinogens under the section 311 hazardous substance program.

Accordingly, the agency has decided to extend the official comment period from its closing date of September 8, 1980 to October 8, 1980.

Dated: September 5, 1980.

Eckardt C. Beck,

Assistant Administrator for Water and Waste Management.

[FR Doc. 80-28001 Filed 9-10-80; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 80-540; RM-3476]

FM Broadcast Stations in Kennewick and Richland, Wash.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: This action proposes to substitute Channel 293 for Channel 292A at Richland, Washington, and to modify the license of Station KXDD on Channel 292A to specify the Class C channel in response to a petition filed by KUTI Communications, Inc. A request to further modify the license of Station KXDD to specify a new community, Kennewick, Washington, has not been proposed.

DATE: Comments must be filed on or before October 24, 1980, and reply comments on or before November 13, 1980.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Myra G. Kovey, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: August 22, 1980.

Released: September 4, 1980.

By the Chief, Policy and Rules Division:

1. KUTI Communicators, Inc. ("KUTI"), licensee of Station KXDD (Channel 292A), Richland, Washington, has filed a petition for rule making seeking substitution of Channel 293 for its existing assignment.[1] It asks, in addition, that Kennewick, Washington, rather than Richland, be specified as the community of license purportedly to reflect petitioner's actual use of the channel. According to KUATI, Station KXDD is not the only Class A facility in the contiguous cities of Kennewick (1970 U.S. Census pop. 15,212), Pasco (1970 pop. 13,920) and Richland (1970 pop. 26,290), known collective in southeastern Washington as the Tri-Cities.[2] A Class C assignment would place Station KXDD in a more competitive position, petitioner asserts, while at the same time eliminating undersirable intermixture.

2. Substitution of Channel 293 for Channel 292A would cause new preclusion to eight communities with populations exceeding 1,000 and no present local aural service: *Washington:* Goldendale, Odessa, Soap Lake, Union Gap; *Oregon:* Elgin, Heppner, May Park and Union City. Petitioner lists alternative channels for all of these communities.

3. No first or second service would be provided by a Class C facility at Station KXDD's present site. KUTI states. It intends, however, to move to a site 42 kilometers (26 miles) northeast of Kennewick, from which point staff estimated indicate that a first nighttime service would be provided to approximately 1,700 persons in an area of 1,036 square kilometers (400 square miles).

4. KUTI owns, in addition to KXDD, Station KUEZ (Channel 281) at Yakima, Washington. KUEZ presently operates with 61 kW of power and an antenna height of 780 feet; petitioner proposed to operate KXDD at its new site with a power of 100 kW and antenna height of 750 feet. In order to avoid prohibited 1mV/m contour overlap, both of these Class C assignments would be limited to present or proposed facilities with no possibility of future expansion.

5. Pursuant to our decision in *Cheyenne, Wyoming,* 62 F.C.C. 2d 63, 38 R.R. 2d 1655 (1976), we would consider modification of Station KXDD's license to specify the proposed Class C assignment only if no other interest in the channel is expressed during the comment phase of this proceeding. If interest is shown, petitioner would be free to withdraw its request since, as adjacent channels, the Class C channel could not be assigned without the deletion of the Class A assignment. *Statesboro, Georgia,* Mimeo No. 82040, 40 R.R. 2d 1021 (1977). However, we will not propose to modify petitioner's license to specify a different city as it has requested.

6. Although petitioner alleges that its station is actually a Kennewick operation, it is licensed to serve Richland and the Commission assumes the station is operating to serve Richland. A new assignment to a community, as opposed to a substitution of a Class B/C channel for a Class A channel in the same community, has never been held to fall under our authority to modify. See *Riverside and Santa Ana, California,* 65 F.C.C. 2d 920 (1970) and cases cited therein. This refusal to modify the city of license has applied even in situations where the 10 or 15 mile rule would be applicable. See Section 73.203(b) of the Commission's Rules.[3] In the present case, not even the 15 mile rule would be of assistance since Kennewick is already a listed city. Our consistent holding has been to leave open for application a channel newly assigned to a community. Petitioner may wish to comment on this matter and to demonstrate why we should act differently here. We shall, then, propose modification of the license for Station KXDD for the channel change (Channel 292A to Channel 293) at Richland, only. An *Order to Show Cause* is not necessary since consent to the modification is implied by virtue of the request.

7. Since the requested assignment is within 402 kilometers (250 miles) of the U.S.-Canadian border, Canadian concurrence must be obtained.

8. In view of the foregoing, we find it in the public interest to explore the following amendment to the FM Table of Assignments, Section 73.202(b) of the Commission's Rules:

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[1] Public Notice of the petition was given on September 19, 1979. Report No. 1192.

[2] Channels 235, 274 and 292A are assigned and licensed to Richland though Channel 292A is being used by petitioner at a site closer to Kennewick. Channel 287 is assigned to Kennewick.

[3] In *Warner Robins and Hawkinsville, Georgia* (Docket 17924), 12 R.R. 2d 1576 (1968), *recons. den.*, 12 F.C.C. 2d 885 (1968), a channel assigned at Hawkinsville, Georgia, and reassigned to Warner Robins was opened up for competing applications even though an applicant had already received cut-off protection at Hawkinsville. The distance between the two communities was close enough to make Section 73.203(b) applicable. The same theory applied, that is, a newly assigned channel made available for the first time in a particular community should be open for all interested persons to apply.

City	Channel No.	
	Present	Proposed
Richland, Washington	235, 274, 292A	235, 274, 293

9. Authority to instituted rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

10. Interested parties may file comments on or before October 24, 1980, and reply comments on or before November 13, 1980.

11. For further information concerning this proceeding, contact Myra G. Kovey, Broadcast Bureau, (202) 632–7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until it is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Section 0.281(b)(6) of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Assignments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponents of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments on the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an orginal and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 80–28092 Filed 9–10–80; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1080

[Ex Parte No. 364 (Sub-1)]

Freight Forwarder Contract Rates—Implementation of Pub. L. 96–296

AGENCY: Interstate Commerce Commissioner.

ACTION: Extension of time to notice of proposed rulemaking.

SUMMARY: The Commission proposed, by notice at 45 FR 53190, August 11, 1980, to modify existing rules to allow the filing of contract rates between freight forwarders and rail and water carriers. The notice of proposed rulemaking set September 10, 1980 as the due date for comments. A 30-day extension has been requested on behalf of various ocean carriers and ocean ratemaking conferences. While the changes accomplished in Pub. L. 96–296 are straightforward, there appear to be some complications regarding the impact and implementation of this statutory change, notably, with respect to water carriers subject to the Shipping Act of 1916. We will grant the 30-day extension. In view of the 180-day time limit, no further extensions will be authorized.

DATES: The comment period is extended until October 10, 1980.

ADDRESS: Send comments to: Office of Proceedings, Room 5356, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 275–7693, or Jane Mackall, (202) 275–7656.

(49 U.S.C. 10321, 10703(a)(4)(E), 10749, and 10766(b), 5 U.S.C. 553)

Decided: August 26, 1980.

By the Commission, Darius W. Gaskins, Jr., Chairman.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80–27866 Filed 9–10–80; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine "Isotria medeoloides" (Small Whorled Pogonia) to be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposal.

SUMMARY: The U.S. Fish and Wildlife Service proposes to determine a plant, *Isotria medeoloides* (small whorled pogonia), to be an Endangered species under the authority contained in the Endangered Species Act of 1973. Historically, this plant has been known to occur in 49 counties in 17 eastern States and Canada. In 1979, it was known to occur in 12 counties in 11 different States and one county in Ontario, Canada. The continued existence of this species is endangered by taking of the plants and the loss of habitat. A determination of *Isotria medeoloides* to be an Endangered species would implement the protection provided by the Endangered Species Act of 1973 as amended.

DATES: Comments from the public must be received by November 10, 1980. Comments from the Governors of affected States must be received by December 10, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Dyer, U.S. Fish and Wildlife Service, Department of the Interior, One Gateway Center, Suite 700, Newton Corner, MA 02158.

ADDRESSES: Comments and materials concerning this proposal, preferably in triplicate, should be sent to the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, MA 02158. Comments and materials received will be available for public inspection during normal business hours at the Service's Office of Endangered Species at the above address.

SUPPLEMENTARY INFORMATION: *Isotria medeoloides* (small whorled pogonia) is often referred to as the rarest orchid in America. There are only 16 known populations in the eastern United States and Canada. Approximately 150–175 individual plants occur at these 16 sites. The plant can be found in a variety of forest types but is most often associated with relatively open areas in deciduous hardwoods; either beech-birch-maple or oak-hickory. The spectrum of habitats includes dry, rocky, wooded slopes to moist streambanks.

One or two yellowish-green flowers appear from mid-May in the south to mid-June in the north above a whorl of 5 or 6 light green, elliptic, somewhat pointed leaves. The sepals are up to 2.5 cm long and help distinguish this species from the other member of the genus, *Isotria verticillata*. At maturity the plants are 9.5—25 cm tall.

The continued existence of this plant is being threatened by the inadvertent loss of populations to habitat alteration, such as golf courses, housing complexes etc., and taking by collectors for other than commercial purposes. Today there are nearly as many, if not more, dried specimens of *Isotria medeoloides* in herbaria than are known to exist in the wild. This rule proposes to determine *Isotria medeoloides* to be Endangered, and implements the protection provided by the Endangered Species Act of 1973. Critical Habitat is not being proposed. The following paragraphs further discuss the sections to date involving this plant, the threats to the plant, and effects of the proposed action.

The United States placed this species on a provisional list in the Annex to the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere (CNPWP) during a conference held in Mar del Plata, Argentina, 18–22 October, 1965. Sections 2 and 8 of the Endangered Species Act of 1973 as amended, provide the U.S. implementing legislation of this Convention. The President, by Executive Order 11911 (41 FR 15683–15684), designated the Secretary of the Interior to act on behalf of and to represent the U.S. in all regards as required by the CNPWP, and required that he consult with other departments and agencies as required.

This species was placed on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) at the original plenipotentiary conference in Washington, D.C. in February and March, 1973.

Background

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Director published a notice in the **Federal Register** (40 FR 27823–27924) of his acceptance of the report of the Smithsonian Institution as a petition within the context of Section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523–24572) to determine approximately 1,700 vascular plant species to be Endangered species pursuant to Section 4 of the Act. This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Isotria medeoloides* was included in the July 1, 1975, notice of review and the June 16, 1976, proposal.

Following the June 16, 1976, proposal, hundreds of comments were received from individuals, conservation organizations, botanical groups, business and professional organizations. Few of these comments were specific in nature in that they did not address individual plant species. Most comments addressed the program or the concept of endangered plants and their protection and regulation. These comments are summarized in the April 26, 1978, **Federal Register** publication of a final rule which also determined 13 plant species to be Endangered or Threatened species (43 FR 17909–17916). Additional comments which are received during the comment period for this proposal will be summarized in the final rule.

In the June 24, 1977 **Federal Register** (42 FR 32373–32381), the Service published a final rule detailing the regulations to protect Endangered and Threatened plant species. The rule established prohibitions and a permit procedure to grant exceptions, under certain circumstances, to the prohibitions.

The Endangered Species Act Amendments of 1978 require that all proposals over two years old be withdrawn. A one year grace period was given to proposals already over two years old. On December 10, 1979, the Service published a notice withdrawing the June 16, 1976, proposal along with four other proposals which had expired. The Service now has sufficient new information to warrant reproposing *Isotria medeoloides*.

Critical Habitat is not being proposed for *Isotria medeoloides* primarily because of the history of taking of this species and the lack of taking prohibitions in the Act. Bringing further general public attention to existing populations via Critical Habitat designation would in itself be a threat to the plant.

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

Summary of Factors Affecting the Species

Section 4(a) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) states that the Secretary of Interior shall determine whether any species is an Endangered species or a Threatened species due to one or more of the five factors described in Section 4(a) of the Act. These factors and their application to *Isotria medeoloides* (small whorled pogonia) are as follows:

Isotria medeoloides

(1) *Present or threatened destruction, modification or curtailment of its habitat or range. Isotria medeoloides* has historically been known to occur in 49 counties in 17 eastern States and Canada. Today it is known to exist in 12 counties in 11 different States and one county in Ontario, Canada as noted in Table 1.

Table 1.—*Distribution of Isotria Medeoloides (Small Whorled Pogonia)*

State	County	Town
Connecticut	Hartford	Middletown.
	Litchfield	Brookfield.
	New Haven	New Haven.
	New London	Stratford.
	New London	Ledyard.
	New London	Lyme.
	New London	Waterford.
	Windham	Pomfret.
Georgia	Rabun[1]	Chatahoochee National Forest.
	Habersham	Chatahoochee National Forest.
Illinois	Randolph[1]	
Massachusetts	Hampshire	East Hadley.
Michigan	Berrien[1]	Harbert.
Missouri	Bollinger	Glen Allen.
New Hampshire	Belknap	Alton.
	Belknap	Meredith.
	Strafford	Madbury.
	Strafford	Milton.
	Strafford	Barrington.
	Merrimack[1]	Epsom.
	Grafton	Squam Lake.
	Carroll	Brookfield.
	Carroll[1]	Madison.
New Jersey	Bergen	Franklin Lakes.
	Bergen	Closter
	Mercer	Trenton.
	Sussex[1]	Montague.
	Sussex	Sparta.
New York	Nassau	Hampstead.
	Onondaga	Manlius.
	Rockland	Tappantown.
	Suffolk	Wyandanck.
	Ulster	Olive.
	Washington	Fort Edward.
Maine	Kennebec[1]	Kent's Hill.
	Cumberland	North Sebago.
	Oxford	Norway.
Maryland	Montgomery	North Chevy Chase.
	Montgomery	Bethesda.
North Carolina	Macon[1]	Nantahala National Forest.
	Harnett	Unknown.
	Henderson	Hendersonville.
	Surry	Mount Airy.
Pennsylvania	Centre[1]	Port Matilda.
	Green	Rogersville.
	Montgomery	Willow Grove.
	Berks	Reading.
	Philadelphia	Philadelphia.
	Chester	West chester.
	Monroe	East Stroudsburg.
Rhode Island	Providence[1]	Glocester.
	Kent	West Greenwich.
South Carolina	Oconee[1]	Sumter National Forest.
Vermont	Chittenden	Burlington.
Virginia	Buckingham	Unknown.
	Gloucester[1]	White Marsh.
	James City	Williamsburg.
	New Kent	Unknown.
Canada	Elgin[1]	Mount Salem.

[1] Extant populations in 1979/1980.

A short assessment of the species status in Canada and by state is as follows:

Connecticut: Historically, *Isotria medeoloides* has been collected from eight towns in the State (Mehrhoff, 1978). There is only one plant now known to exist and that is on private land in the town of Mystic. This plant has not flowered in recent years and was transplanted from the wild. Thus it is not listed in Table 1. Although the vitality of this plant is questionable it is the only known "successful" transplantation.

Georgia: Previous to this rule there has never been a record of occurrence for *Isotria medeoloides* in Georgia. Three populations are now known to have occurred although only one population of five plants was extant in 1979. This population formerly consisted of 15–22 plants when first discovered in the late 1960's. All three sites are on the Chatahoochee National Forest, however, one of the three sites was recently eradicated by road expansion.

Illinois: The Randolph County population is the only known station in the State. In 1979 there was one plant found at this site. A report of a Pope County population is erroneous.

Maine: The North Sebago population formerly consisted of six or seven plants when first discovered in 1954. One plant was seen in 1976 and none have appeared since. The site is on privately owned land and has not been disturbed (Eastman, 1978). The Norway population has not been relocated nor is it now known to exist. In 1923 approximately 35 plants were counted at the Norway site in a partly open woodland of beech and red maple (Eames, 1926). The largest known population occurs in Kent's Hill, Kennebec County. An estimated 50–75 plants were discovered at this site in 1980.

Maryland: This species has not been collected in Maryland since 1930. The former localities in North Chevy Chase and Bethesda have been absorbed by the expanding suburban sprawl of Washington, D.C. *Isotria medeoloides* is believed to be extirpated in the State (Broome, et al., 1979).

Massachusetts: There is one old record of occurrence for this plant in East Hadley, MA. It has not been recorded in the State since 1899 and efforts to find individuals knowledgeable of its existence in Massachusetts have been unsuccessful (Coddington and Field, 1978).

Michigan: Isotria medeoloides is protected under State law as an endangered species. The Berrien County site consisted of two plants in 1979. Twelve plants were known to occur in 1969 and seven plants in 1970 (Case and Schwab, 1971). The area is being slowly developed, further endangering the only known colony in Michigan.

Missouri: There is one old 1897 record for this species on a wooded limestone hill near Glen Allen. This population has not been rediscovered after several searches (Steyermark, 1963). There is some question about its original occurrence in the State.

New Hampshire: Historically, *Isotria medeoloides* has been collected from eight towns in central New Hampshire. There are two extant populations in the State, one in the town of Epsom that has been watched by local botanists for several years, the other, discovered in 1980, in the town of Madison. In 1979, 12 plants were extant at the Epsom site. Fourteen plants were noted at the Madison site, with three additional plants about one quarter of a mile away. Both areas are on private land, however, ownership of the land and the potential for development are unknown.

New Jersey: Approximately eight plants were observed in the town of Montague in 1979. The plants are on privately owned land and there is no known threat to the population. Other than this locality the most recent record for the State was near Franklin Lakes where approximately 30 plants were noted in 1935. None are now known to exist at this site. The other reported localities are of ancient vintage and no longer believed to exist.

New York: There are six historical records for the small whorled pogonia in the State. Most of the records are from the late 1800's thru the early 1900's with precise localities unknown. The Manlius population was originally discovered in 1961 when several plants were noted. In recent years only one plant has been seen at this site with the last appearance in 1976. There are no known extant populations (Mitchell, et al., 1980).

North Carolina: The second largest known population of 27 plants occurs on the Nantahala National Forest. The Forest Service is aware of the locality and has modified timber management practices within a small area to protect the plants. There is only a very slight economic impact resulting from protecting the area. The Forest Service has been most conscientious in carrying out their responsibilities under the Endangered Species Act. Field personnel and timber markers have been trained in identification and are aware of the need to protect the plants. No other populations are known to exist in the State.

Isotria medeoloides is listed as an endangered plant in North Carolina. The legislation protecting endangered plants in the State prohibits their removal from private property without the landowner's permission, and prohibits commerce in the species. In addition, when a State listed species occurs on

lands administered by the U.S. Forest Service, as is the case for *Isotria medeoloides* in North Carolina, the Forest Service will protect the species as though it were Federally listed.

Pennsylvania: There are six historical and one presently known locality of *Isotria medeoloides* in Pennsylvania. There are two extant populations in Port Matilda which were seen in 1979. One site contained three plants and the other contained two. The plants are on private land and logging operations have been voluntarily restricted at the specific sites. The other locality records for the plant are a minimum of 50 years old and the orchid's continued existence at these sites is doubtful (Wiegman, 1979).

Rhode Island: Twelve plants in Glocester, Rhode Island, were known to exist in 1979. This population has been monitored since 1947 and has shown a gradual decline of individual plants. The site is on privately owned land and adjacent lots have been cleared for houses. A national conservation organization is presently pursuing acquisition of this site. A second population in West Greenwich, Rhode Island has also been monitored since 1957 when 23 plants were noted. In 1961 there were 15 plants at this site, in 1973, four plants. In 1978 no plants were found and none have been seen since (Church and Champlin, 1978).

South Carolina: Three plants were seen in 1979, on the Sumter National Forest. Previous to the preparation of the proposed rulemaking the Forest Service was not aware of the plants at this site. Compliance with Forest Service policies as stated in the January 1980 Manual on Wildlife and Fish Management, Amendment No. 136 should help insure the protection of this population. No other populations are known to exist in the State.

Vermont: The Burlington, Vermont locality was found in 1902. A golf course now occupies the site. The referenced habitat of "hemlock woods" appears to be an exception to the general rule of deciduous hardwoods. No other localities are known (Countryman, 1978).

Virginia: The Williamsburg, Virginia population appears to be one of the most well known sites of *Isotria medeoloides*. In 1921 the late E. J. Grimes described the area and noted 15 plants (Grimes, 1921). In 1979, only one plant was known to occur at what is believed to be the same area. The habitat for the species still exists but is being threatened by residential development. There are no other known extant populations in the State.

Canada: There is only one record of occurrence in Canada. Two populations of two plants each were found near Mount Salem in 1977 (Stewart, 1977). The status of this population has not chnged.

A summary of the species' status shows that approximately 150–175 plants at 16 different sites were known to exist in the eastern United States and Canada at the end of the 1979–1980 field seasons. Three of these sites are located on U.S. Forest Service land. The remainder are believed to be on privately owned land.

Many people feel that the disclosure of specific localities will further endanger the species' continued existence. Due to the documented history of taking for scientific purposes those fears are not unfounded. On the other hand, many former localities, some dating back to the late 1800's, have been inadvertently lost to habitat alteration. Based on herbaria label data and recent field checks of these sites, shopping malls, housing developments, and golf courses now mark the localities of historical populations. Any conservation program for the species must balance these two somewhat opposing factors.

Other reasons for the species' disappearance throughout its range are not so clear. Some populations such as the one in Glocester, Rhode Island, have been monitored for a period of years and there has been a gradual decline in the number of individual plants from 28 in 1947 to four in 1978. However, in 1979, 12 plants were seen. Other known populations have displayed similar characteristics. One popular source (Correll, 1950) states that the species may remain dormant for up to 20 years, however, this has not been substantiated from available scientific evidence.

Except for the three populations on Forest Service land, the remaining extant localities occur on private lands where specific ownership has not yet been determined. In certain instances, lands adjacent to these known localities are being cleared for house lots, further endangering the continued existence of the species.

(2) *Overutilization for commercial, sporting, scientific or educational purposes.* Collecting for scientific purposes has contributed to the loss of many plants. There are specimens of *Isotria medeoloides* in all major eastern institutional herbaria and many private collections. In several instances the available literature documents the removal of specimens for "the scientific record." Wildflower garden enthusiasts are known to have taken this species from the wild and attempted transplantation to a more convenient locality. The rarity of this orchid makes it the object of interest by professionals and amateurs alike.

(3) *Disease or predation* (including grazing). Not applicable to this species.

(4) *The inadequacy of existing regulatory mechanisms.* There is no provision in the Endangered Species Act which would offer the species protecton from collectors or private actions. Only the States of Michigan and North Carolina have officially listed *Isotria medeoloides* as an endangered plant. Michigan legislation provides prohibition against "taking" of the orchid. Also under Michigan Public Act No. 203, the Department of Natural Resources has been given responsibility for conducting "investigations on fish, plants, and wildlife in order to develop information relating to population, distribution, habitat needs, limiting factors and other biological and ecological data to determine management measures necessary for their continued ability to sustain themselves successfully." The key in this State program is the indentification and protection of habitats using available State laws and regulations.

The legislation protecting Endangered plants in North Carolina prohibits their removal from private property without the landowner's permission, and prevents commerce in the species. In addition, when a State listed species occurs on lands administered by the U.S. Forest Service, as is the case for *Isotria medeoloides* in North Carolina, the Forest Service will protect the species as though it were Federally listed.

The Forest Service's regulations prohibit removing, destroying, or damaging any plant that is classified as a threatened, endangered, rare, or unique species (42 FR 2956–2962). These regulations, however, may be difficult to enforce, and do not provide all of the protection and funding mechanisms furnished by the Endangered Species Act.

Official listing under the Endangered Species Act of 1973, as amended, will provide a means by which various conservation and recovery actions can be implemented to insure the continued existence of this plant throughout its range.

(5) *Other natural or man-made factors affecting its continued existence.* The species' biology is not well understood but there is evidence of continuing decline in several known populations. The limited number and size of existing populations are cause for concern as natural factors could lead to the extinction of the species.

Although populations lost by habitat alteration are obvious, the habitats of

some declining populations have not "significantly" changed over the period of observance. Many theories could be advanced in attempts to explain the species' apparent natural decline. What is apparent may be due to no one factor but a number of factors acting interdependently. Natural successional changes, microclimatic parameters and failure or success in reproductive mechanisms are but a few of the unknown aspects of the species' biology that need to be understood before the reasons for the decline can be understood and hopefully reversed.

Critical Habitat

Critical Habitat is not being proposed for *Isotria medeoloides*, due to the extreme rarity of this orchid, the documented history of taking, and the great interest in this species by many botanists and wildflower enthusiasts. It would not be prudent or in the best interest of the species to bring further attention to site specific areas via Critical Habitat designation.

Effects of This Proposal if Published as a Final Rule

In addition to the effects discussed above, the effects of this proposal if published as a final rule would include, but would not necessarily be limited to, those mentioned below.

The Act and implementing regulations published in the June 24, 1977 **Federal Register** set forth a series of general prohibitions and exceptions which apply to all Endangered plant species. The regulations referred to above, which pertain to Endangered plants, are found at § 17.61 of 50 CFR and are summarized below.

With respect to *Isotria medeoloides*, all prohibitions of section 9(a)(2) of the Act, as implemented by Section 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions could apply to agents of the Service and State conservation agencies. The Act and Section 17.62 of the regulation also provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered species under certain circumstances.

Section 7(a) of the Act provides that each Federal agency shall confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under Section 4. Section 7(a) of the Act also requires Federal agencies to evaluate their actions with respect to any species which is listed as Endangered or Threatened. This protection would accrue to *Isotria medeoloides* if it is later determined to be Endangered as a result of this proposal.

Provisions for Interagency Cooperation which implement Section 7 of the Act are codified at 50 CFR Part 402. If published as a final rule this proposal would require Federal agencies to insure that activities they authorize, fund, or carry out, are not likely to jeopardize the continued existence of *Isotria medeoloides*. The Critical Habitat clause would not be applicable since Critical Habitat is not being officially designated.

Since populations of *Isotria medeoloides* are known to occur on U.S. Forest Service lands in North Carolina and South Carolina, the Forest Service would be required to carry out programs for the species' conservation, and to insure that its actions are not likely to jeopardize the species' continued existence. The Forest Service's regulations prohibit removing, destroying, or damaging any plant that is classified as a threatened, endangered, rare, or unique species (36 CFR 261.9(b)), and are consistent with the purposes of the Act. No other impact on Federal activities is foreseen.

National Environmental Policy Act

A draft environmental assessment has been prepared in conjunction with this proposal. It is on file at the Service's Regional Office, One Gateway Center, Suite 700, Newton Corner, MA 02158, and may be examined during regular business hours. A determination will be made at the time of final rulemaking as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Public Comments Solicited

The Director intends that if a rule is finally adopted it will be as accurate and effective as possible in the conservation of any Endangered or Threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological or other relevant data concerning any threat (or the lack thereof) to the species included in this proposal;

(2) Additional information concerning the range and distribution of this species;

(3) Current or planned activities in the subject areas.

If promulgated, the regulations on *Isotria medeoloides* will take into consideration the comments and any additional information received by the Director, and such communications may lead him to adopt final regulations that differ from this proposal.

This proposal is being published under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; 87 Stat. 884). The primary author of this proposed rule is Mr. Richard Dyer, U.S. Fish and Wildlife Service, Department of the Interior, One Gateway Center, Suite 700, Newton Corner, MA 02158 (617/829–9318).

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U.S. Fish and Wildlife Service, Region 5, Newton Corner, MA.

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

§ 17.12 Endangered and threatened plants.

1. It is proposed to amend § 17.12 by adding, in alphabetical order, the following to the list of plants:

Species		Historic range	Status	When listed	Critical habitat	Special rule
Scientific name	Common name					
Orchidaceae: *Isotria medeoloides*..	Orchid family: Small whorled pogonia.	Canada and U.S.A. (CT, GA, IL, MA, MD, ME, MI, MO, NH, NJ, NY, NC, PA, RI, SC, VA, and VT)	E	.....	NA	NA

Dated: September 3, 1980.

Lynn A. Greenwalt,

Director, Fish and Wildlife Service.

[FR Doc. 80-27857 Filed 9-10-80; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 80

Federal Aid in Fish and Wildlife Restoration

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Correction, proposed revisions to regulations applicable to the Federal Aid in Wildlife Restoration Act and the Federal Aid in Fish Restoration Act.

SUMMARY: In FR 80-26250 appearing at page 57471 in the **Federal Register** of August 28, 1980, a portion of the proposed rules was inadvertently omitted. This notice publishes the omitted text.

DATES: The original date for receipt of comments is extended to October 31, 1980.

ADDRESSES: Any comments on the proposed requirements should be submitted to the Chief, Division of Federal Aid, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Charles K. Phenicie, Chief, Division of Federal Aid, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone 703/235-1526.

SUPPLEMENTARY INFORMATION: On page 57471, the following should be added as § 80.1 (d) through (j):

§ 80.1 Definitions.

* * * * *

(d) *Secretary.* The Secretary of the Interior or his designated representative.

(e) *Director.* The Director of the U.S. Fish and Wildlife Service, or his designated representative. The Director serves as the Secretary's representative in matters relating to the administration and execution of the Federal Aid Acts.

(f) *Regional Director.* The Regional Director of the U.S. Fish and Wildlife Service, or his designated representative.

(g) *Federal Aid Manual.* The publication of the U.S. Fish and Wildlife Service which contains policies, standards and procedures required for participation in the benefits of the Acts.

(h) *Project.* A program of related undertakings necessary to fulfill a defined need which is consistent with the purposes of the Act.

(i) *Comprehensive fish and wildlife management plan.* A document describing the State's plan for meeting the long-range needs of the public for fish and wildlife resources, and the system for managing the plan.

(j) *Federal Aid Funds.* Funds provided under Federal Aid Acts.

Section 80.2 is added as follows:

§ 80.2 Eligibility.

Participation in the benefits of the Acts is limited to State fish and wildlife agencies as specified below:

(a) Federal Aid in Sport Fish Restoration—Each of the 50 States, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.

(b) Federal Aid in Wildlife Restoration—Each of the 50 States, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands; except that the benefits afforded by Section 4(b) of the Act relating to hunter education projects are limited to the 50 States.

Dated: September 8, 1980.

M. J. Spear,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 80-27856 Filed 9-10-80; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

Groundfish of the Gulf of Alaska: Approval of Fishery Management Plan Amendment; Proposed Implementing Regulations

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

ACTION: Notice of approval of part of fishery management plan amendment; proposed rulemaking.

SUMMARY: Part of amendment number 8 to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska, submitted by the North Pacific Fishery Management Council (Council), is approved. The amendment submitted by the Council contains seven subparts, including the change of the management year to conform to the calendar year, and the elimination of any plan expiration date. Six subparts are approved. The seventh is still being reviewed by the Secretary of Commerce (Secretary). Regulations to implement the approved portions of the amendment are proposed for public comment.

DATE: Written comments are invited until October 20, 1980.

ADDRESS: Comments should be sent to: Denton R. Moore, Chief, Permits and Regulations Division, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C. 20235, Telephone: (202) 634-7432.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. McVey, Director, Alaska Region, National Marine Fisheries

Service, P.O. Box 1668, Juneau, Alaska 99802, Telephone (907) 586–7221.

SUPPLEMENTARY INFORMATION: On April 21, 1978, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), approved the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP), which was prepared by the North Pacific Fishery Management Council pursuant to the Fishery Conservation and Management Act of 1976, as amended (the FCMA). The FMP was published on April 21, 1978, (43 FR 17242). Since that time, the Assistant Administrator had approved seven amendments to the FMP: 43 FR 34825; 43 FR 47222; 43 FR 46349; 44 FR 40099; 44 FR 42738; 44 FR 46904; 44 FR 64410. Looseleaf copies of the FMP, as amended, may be obtained upon request from the North Pacific Fishery Management Council, P.O. Box 3136 DT, Anchorage, Alaska 99510, telephone 907–274–4563.

Amendment 8 to the FMP was received by the Assistant Administrator on July 1, 1980. It consists of the seven parts listed below.

(1) Change the plan's management year to conform to the calendar year, and eliminate any predetermined plan expiration date. The previous management year of November 1–October 31 hampered coordination of the management of the groundfish fishery of the Gulf of Alaska and that of the Bering Sea and Aleutian Islands, which is managed on the basis of the calendar year. An artificial deadline to revise the FMP every 365 days bears no relationship to the availability of new scientific information and may interfere with sound management.

(2) Express the optimum yield (OY) for squid, thornyhead rockfish, other rockfish, and other species on a Gulf-wide basis, rather than allocating them among the three regulatory areas. The Council concluded that there is insufficient information on these species to justify the administrative burden of managing these species in three separate areas—particularly the requirement that all groundfish operations in an area be terminated when the allocation of one of these species for that area has been reached.

(3) Establish the following four species categories: unallocated species, target species, other species, and nonspecified species. This categorization, which has already been adopted for the Bering Sea and Aleutian Islands, fosters timely management by allowing more flexible treatment of species that are caught incidentally to the target species.

(4) Divide the Eastern regulatory area of the Gulf of Alaska into the following three regulatory districts for purposes of sablefish fishing: Yakutat; Southeast Inside; and Southeast Outside. Separate sablefish allowable catch figures are assigned to each of these districts. This measure is intended to encourage United States fishermen to fish for sablefish over a broader area.

(5) Specify the authority of the Director, Alaska Region, National Marine Fisheries Service (NMFS) to issue field orders imposing time/area restrictions upon foreign fishing operations so that conflicts with domestic fixed gear will be avoided. This measure is necessary as a result of conflicts that arose in 1979. No such restrictions are permitted to interfere with the attainment of OY, or of foreign national allocations of TALFF, in the absence of further amendments to the FMP. This subpart has not been approved but is still being reviewed by the Secretary.

(6) Specify a schedule to: apportion Reserves to the estimated domestic annual harvest (DAH) and the total allowable level of foreign fishing (TALFF); and transfer DAH to TALFF. The new schedule provides for apportionments as follows: April, 80 percent; June, 40 percent; and August, 20 percent. In contrast with the current schedule, the new schedule will postpone the first Reserve release until the United States fishery is fully under way and its progress can be assessed. The initial apportionments will be authorized at a level high enough to allow foreign and domestic fishermen to plan their activities for the rest of the year far in advance. Additionally, unscheduled apportionments to DAH of any Reserve amounts are authorized.

(7) Require biodegradable escape panels on sablefish pots. This measure would reduce ghost fishing—the continued capture of fish by lost pots.

It is important to note the following matters related to the proposed regulations.

(1) Specifications of OY's, DAH's Reserves, and TALFF's have been increased by ⅙ (two months) to reflect the "one-time only" transition from the plan's management year to the calendar year. Thus, a 14-month quota is proposed for the period November 1, 1980–December 31, 1981.

(2) Even though certain OY's are now Gulf-wide, reporting is still by fishing area.

(3) Although the amendment specifies an OY for the Southeast Inside district, and this OY is part of the plan, it is not reflected in the regulations because the Southeast Inside district is not in the fishery conservation zone.

(4) The specifications of TALFF's, Reserves, Domestic Annual Processing (DAP's), and Joint Vesture Processing (JVP's) in the foreign fishing regulations have been moved to Appendix 1 of § 611.20. This will facilitate the publication of Reserve releases and the codification of the regulations.

(5) The unallocated species concept is not applied to domestic fishermen. The reader is reminded, however, that other statutes prohibit the retention of certain species by domestic trawl fishermen.

(6) The regulations allow the Regional Director to undertake an unscheduled release, from Reserve to DAH. The current foreign fishing regulations (§ 611.92(b)(1)(ii)(C)(*4*))require appropriate notice and a comment period prior to the effective date of any such release.

(7) The annual reporting requirements have been slightly modified to require a one-time report for November–December, 1980.

The Assistant Administrator has determined that this amendment to the FMP is necessary and appropriate to the conservation and management of Gulf of Alaska groundfish, and that it is consistent with the National Standards of section 301 of the FCMA, other provisions of the FCMA, and other applicable law. He has, therefore, approved the amendment pursuant to section 304 of the FCMA, and proposed regulations to implement the amendment. Those proposed regulations follow the amendment, pursuant to section 305 of the FCMA.

The Assistant Administrator has determined that promulgation of the amendment and the proposed implementing regulations does not constitute a major Federal action requiring the preparation of an environmental impact statement under the National Environmental Policy Act, and that it does not constitute a significant regulation requiring the preparation of a regulatory analysis under Executive Order 12044. He has further determined that the amendment and regulations will be carried out in a manner that is consistent, to the maximum extent practicable, with the Alaska Coastal Management Program.

(16 U.S.C. 1801 *et seq.*)

Signed in Washington, D.C., this the 5th day of September, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

A. the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska is amended as follows:

Summary. Delete recommendation 4 at the end and substitute the following: "4. Distribute the OY through the three regulatory areas of the Gulf of Alaska proportional to the biomass of the stocks found in those areas except for thornyhead rockfish, squid, other species, and other rockfish, for which Gulf-wide OY's apply. This provision applies to both United States and foreign fishermen."

1.0 Table of Contents. Add to the list of figures, "figure 1b 'districts of the Eastern Regulatory Area'." Add to 11.0—Appendices, "11.2 'Categories of Species Involved in the Gulf of Alaska Groundfish Fishery.' "

2.0 Introduction. Add the following paragraph after the third paragraph: "For the first two years of its implementation, the Plan provided for a management year extending from November 1 to October 31, and was considered to expire at the end of each management year. This Plan now incorporates a management year that corresponds to the calendar year, in the interest of administrative convenience and reduction of cost. Based upon two years of experience in the implementation of the Plan, the Council concluded in 1980 that its provisions should remain in effect until specifically rescinded or modified. Thus, this Plan has no expiration date, and its provisions will be changed as new scientific information on the Gulf of Alaska groundfish fishery is gathered and considered by the Council."

3.1 Areas and Stocks Involved. Add after the first sentence: "For sablefish, the Eastern regulatory area is further divided into the Yakutat, Southeast Inside, and Southeast Outside districts (Figure 1b)."

Figure 1b. Add Figure 1b, depicting the Yakutat, Southeast Inside, and Southeast Outside districts.

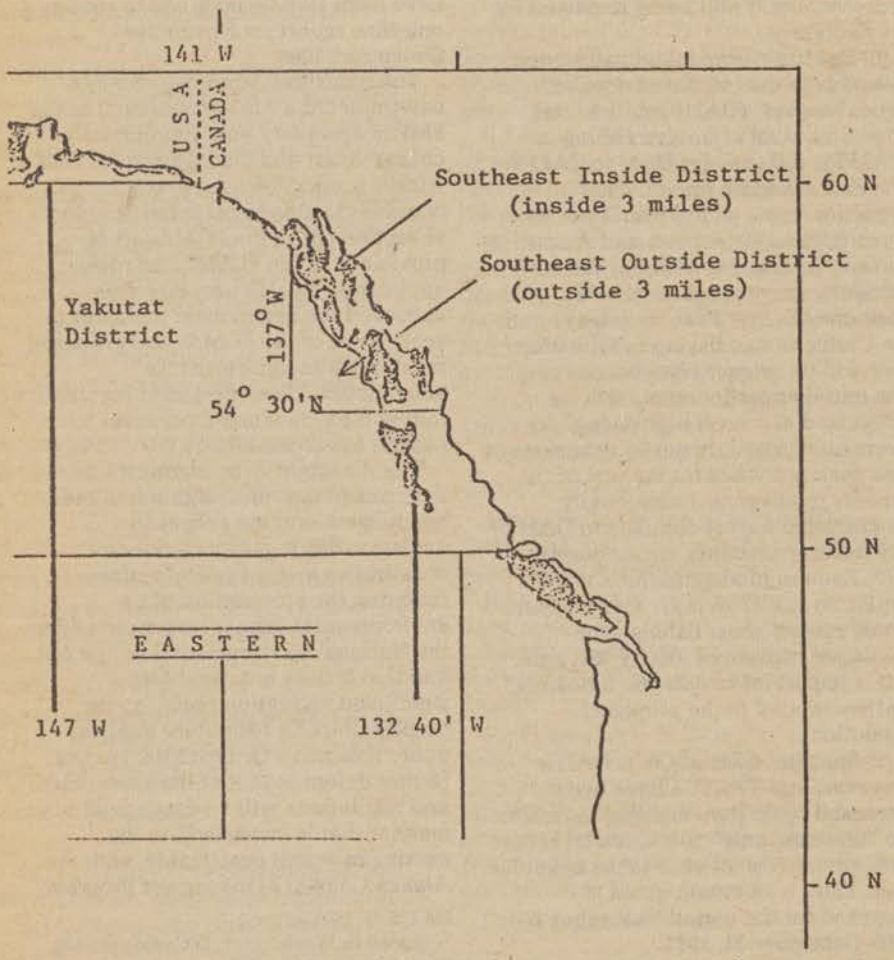

Figure 1b. Districts of the Eastern Regulatory Area

Table 58. Replace with a new Table 58 eliminating the area breakdown for squid, other species, and other rockfish. Include a new footnote 6 under OY for sablefish in the Eastern area, setting forth the following OY's for the three new districts: Yakutat—3,400 metric tons; Southeast Outside—3,000 metric tons; Southeast Inside—700 metric tons. Delete all references to rattails.

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Table 58 -- The Derivation of Optimum Yield (OY) for Gulf of Alaska Groundfish Resources (1,000s mt)

	SPECIES	WESTERN	CENTRAL	EASTERN	TOTAL
Exploitable biomass	Pollock	357 - 713	595 -1191	103 - 206	1055 - 2110
	Pacific cod	40 - 79	82 - 161	23.9 - 48	368 - 736
	Flounders	220	346	206	772
	Pacific Ocean Perch		-Unknown-		
	Other Rockfish		-Unknown-		
	Sablefish		-Unknown-		
	Atka Mackerel				
	Squid				(110) 1/
	Thornyhead Rockfish		-Unknown-		
Maximum Sustainable Yield (MSY)	Pollock				169 - 338
	Pacific Cod				88 - 177
	Flounders				67
	Pacific Ocean Perch				125 - 150
	Other rockfish				7.6 - 10
	Sablefish				22 - 25
	Atka Mackerel				(33) 1/
	Squid				5.0
	Thornyhead Rockfish				3.75
Equilibrium Yield (EY) When stock incapable of producing MSY	Pollock				N/A
	Pacific Cod				N/A
	Flounders				N/A
	Pacific Ocean Perch				50
	Other Rockfish				N/A
	Sablefish				17.4 - 19.8
	Atka Mackerel				N/A
	Thornyhead Rockfish				N/A
Allowable Biological Catch (ABC)	Pollock 2/	57.0	95.2	16.6	168.8
	Pacific Cod 2/	16.5	33.5	10.0	60.0
	Flounders 2/	20.8	30.6	16.6	67.0
	Pacific Ocean Perch 3/	5.3	15.7	29.0	50.0
	Other Rockfish 3/				7.6
	Sablefish 3/	2.8	5.1	10.6	17.4
	Atka Mackerel 4/	4.7	20.8	3.2	28.7
	Squid 5/				5.0
	Thornyhead Rockfish				3.75
	Other Species				16.2
Optimum Yield (OY)	Pollock	57.0	95.2	16.6	168.8
	Pacific Cod	16.6	33.5	9.9	60.0
	Flounders	10.4	14.7	8.4	33.5
	Pacific Ocean Perch	2.7	7.9	14.4	25.0
	Other Rockfish		(OY apportioned Gulf-wide)		7.6
	Sablefish	2.1	3.8	7.1 6/	13.0
	Atka Mackerel	4.7	20.8	3.2	28.7
	Squid		(OY apportioned Gulf-wide)		5.0
	Thornyhead Rockfish		(OY apportioned Gulf-wide)		3.75
	Other Species		(OY apportioned Gulf-wide)		16.2
	TOTAL	93.5	175.9	59.6	361.55

1/ From unsubstantiated Soviet reports.
2/ Apportioned on basis of trawl survey data.
3/ Apportioned on basis of 1973-75 Japanese Catch.
4/ Apportioned on basis of 1973-75 soviet catch and 1978 Japanese catch.
5/ Apportioned equally to each INPFC area.
6/ Apportioned as follows: Yakutat District - 3400 metric tons
Southeast Outside - 3000 metric tons
Southeast Inside - 700 metric tons.

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4.7.6.1 Maximum Sustainable Yield [Sablefish]. Add after the last sentence: "It is generally accepted that, although separate stocks of sablefish have not been identified, interchange among areas occurs at a slow rate. Within the Eastern regulatory area, domestic fishing is concentrated in grounds that are close to shore, whereas foreign fishing is dispersed. In order to help distribute the domestic harvest, the Eastern regulatory area has been subdivided into the Yakutat, Southeast Inside, and Southeast Outside districts."

Table 61. Replace with a new Table 61 that deletes all references to rattails.

Table 61.—*Expected Domestic Annual Harvest (DAH) of Groundfish From the Gulf of Alaska*

[In metric tons]

Species	Metric tons
Pollock	21,310
Pacific cod	10,000
Flounders	3,180
Pacific Ocean perch	2,915
Other rockfish	900
Sablefish	6,480
Atka mackerel	2,070
Squid	150
Thornyhead rockfish	6
Other species	1,720
Total	48,731

6.1 Departure from MSY to ABC for Biological Reasons. At the end of the section add: "In the case of sablefish, where interchange among areas is slow, over- and under-exploitation of different portions of the resource within the Eastern regulatory area is probably the result of recent patterns of fishing by domestic and foreign fishermen. This area has, therefore, been subdivided into the Yakutat, Southeast Inside, and Southeast Outside districts."

6.2 Departure from ABC for Socioeconomic Reasons:

Sablefish. At the end of the paragraph, add: "OY's for the districts within the Eastern regulatory area are as follows: Yakutat—3,400 metric tons; Southeast Outside—3,000 metric tons; Southeast Inside—700 metric tons. These district OY's are based on historical domestic and foreign catch statistics and on biomass estimates."

6.3 Optimum Yield (OY). Add at the end of the section: "The optimum yield concept is applied in a different manner to each of four categories of species and species groups that are taken by the groundfish fishery.

1. *Unallocated Species.* Except to the extent that their harvest is authorized under other regulations, the taking of these species must be avoided and, when they are taken, they must be returned to the sea immediately. These species include shrimps, scallops, snails, Pacific herring, Pacific halibut, salmonids, king crab, Tanner crab, Dungeness crab, corals, surf clam, horsehair crab, and lyre crab.

2. *Target Species.* These are the species, discussed above, which are commercially important and are generally targeted upon by the groundfish fishery. Sufficient data on each species or species group exist for it to be managed separately from the others. Records of the catch of each target species must be kept. These species include pollock, Pacific cod, flounders, Pacific ocean perch, other rockfish, sablefish, Atka mackerel, squid, and thornyhead rockfish.

3. *Other Species.* These are species currently having only slight economic value and are not generally targeted upon, but which either are significant components of the ecosystem or have economic potential. While insufficient data exist for the management of each species on a separate basis, there is a high degree of confidence that the MSY for these species is not less than 5 percent of the combined OY's for target species, and the OY for 'other species' is set at that figure. Records of the catch of 'other species' must be kept. These species include sculpins, sharks, skates, eulachon, smelts, capelin, and octopus.

4. *Nonspecified Species.* This is a residual category of species and species groups of no current or foreseeable economic value or ecological importance, which are taken in the groundfish fishery as an accidental by-catch and are in no apparent danger of depletion. This category includes rattails, which was formerly treated as a separate species. Little significant research has been done on these species. There is, however, a high degree of confidence that the MSY of these species is larger than the amount of them that is likely to be taken incidentally to groundfish operations under the Plan, and the OY for this category is so expressed. These species may be either retained or discarded, and only records of the total amount retained, if any, must be kept. If observer or enforcement records were to indicate either the development of a target fishery for any of these species or a reduction in their abundance, it is the Council's intent that this Plan be amended promptly to reclassify the species in question."

6.4 Reserves. (new section). Add a new 6.4 as follows: *"6.4 Reserves.* The Reserve, which equals 20 percent of OY, except for sablefish in the Southeast Inside and Southeast Outside districts of the Eastern regulatory area where there is no reserve, is to be apportioned to domestic or foreign fisheries as the season progresses, on the basis of cumulative appraisals of DAH. The figures for OY, Reserve, DAH, and TALFF for the Gulf of Alaska are set forth in table 62. For certain species categories, these figures are apportioned among the three regulatory areas of the Gulf of Alaska, as set forth in Table 64.

As soon as practicable after the first day of the following months and after consultation with the Council, the Regional Director may apportion to TALFF all or part of the following amounts of each reserve: April—40 percent; June—40 percent; August—20 percent.

As soon as practicable after the first day of August, the Regional director shall apportion to TALFF that part of the DAH which he determines will not be harvested by United States fishermen during the remainder of the year.

As soon as practicable after the first day of the following months, and on such other dates as he determines necessary, the Regional Director may reassess the DAH and apportion to DAH any amounts of any Reserve that he determines are needed to supplement DAH: April, June, and August."

Table 61a. Replace with a new table 61a, which deletes all references to rattails and eliminates the regulatory area quotas for squid, thornyhead rockfish, other rockfish, and other species.

Table 61-a

Revised DAH by Species by Area (Metric Tons)

Species	Area	Western	Central	Eastern	Total
Pollock		5,775	13,320	2,215	21,310
Pacific Cod		1,880	6,050	2,070	10,000
Flounder		700	1,120	1,360	3,180
Pacific Ocean Perch		345	1,255	1,315	2,915
Other Rockfish			Gulf-wide OY		900
Sablefish		270	1,220	4,990	6,480
Atka Mackerel		290	1,080	700	2,070
Squid			Gulf-wide OY		150
Thornyhead Rockfish			Gulf-wide OY		6
Other Species			Gulf-wide OY		1,720

Table 62. Replace with a new Table 62, which deletes all references to rattails.

Table 62.—*Gulf of Alaska TALFF*

[In thousands of metric tons]

Species	Oy	Reserve	DAH	TALFF [1]
Pollock	168.8	33.76	21.31	113.73
Pacific cod	60.0	12.0	10.0	38.00
Flounders	33.5	6.7	3.18	23.62
Pacific Ocean perch	25.0	5.0	2.915	17.085
Other rockfish	7.6	1.52	0.9	5.18
Sablefish	13.0	2.6	6.48	3.92
Atka mackerel	28.7	5.74	2.07	20.89
Squid	5.0	1.0	.15	3.85
Thornyhead rockfish	3.75	.75	.006	2.994
Other species	16.2	3.24	1.72	11.24
Total	361.55	71.57	48.731	241.249

[1] (Initial) TALFF: May be increased as reserve and/or DAH is apportioned during the year.

Table 63. Replace with a new Table 63 which eliminates the breakdown by regulatory area of quotas for squid, other species, thornyhead rockfish, and other rockfish, and deletes all references to rattails.

Table 63 -- Percentages of OY Apportioned to GOA Regulatory Areas

Species	Western	Central	Eastern	Total
Pollock	33.8	56.4	9.8	100
Pacific Cod	27.6	55.9	16.5	100
Flounders	31.0	44.0	25.0	100
Pacific Ocean Perch	10.8	31.4	57.8	100
Other Rockfish		Gulf-wide OY		100
Sablefish	16.0	29.0	55.0	100
Atka Mackerel	16.3	72.6	11.1	100
Squid		Gulf-wide OY		100
Thornyhead Rockfish		Gulf-wide OY		100
Other Species		Gulf-wide OY		100

Table. 64. Replace with a new Table 64 which eliminates the area breakdown of quotas for squid, thornyhead rockfish, other species, and other rockfish; deletes all references to rattails; and adds a new footnote 2 to the sablefish figures for the Eastern regulatory area, as follows: "[2] See Table 65 for Sablefish OY–DAH–DAP–JVP–Reserve–TALFF within the Eastern regulatory area."

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TABLE 64

OY--DAH--DAP--DNP--JVP--Reserve--and TALFF by Area (1000s mt)

SPECIES			WESTERN	CENTRAL	EASTERN	TOTAL
Pollock	1.	OY	57.0	95.2	16.3	168.8
	2.	DAH				21.31
	3.	...DAP	0.025	5.38	0.695	
	4.	...JVP	5.75	7.94	1.52	
	5.	RESERVE	11.4	19.04	3.32	33.76
	6.	TALFF	39.825	62.84	11.065	113.73
Pacific Cod	1.	OY	16.56	33.54	9.9	60.0
	2.	DAH				10.00
	3.	...DAP	0.24	3.48	0.280	
	4.	...DNP 1/	0.60	1.200	1.200	
	5.	...JVP	1.04	1.37	0.59	
	6.	Reserve	3.312	6.708	1.980	12.0
	7.	TALFF	11.368	20.782	5.850	38.0
Flounders	1.	OY	10.4	14.7	8.4	33.5
	2.	DAH				3.18
	3.	...DAP	0.1	0.3	0.9	
	4.	...JVP	0.6	0.82	0.46	
	5.	RESERVE	2.08	2.94	1.68	6.7
	6.	TALFF	7.62	10.64	5.36	23.62
Pacific Ocean Perch	1.	OY	2.7	7.9	14.4	25.0
	2.	DAH				2.915
	3.	...DAP	0.025	0.295	0.08	
	4.	...JVP	0.32	0.96	1.235	
	5.	RESERVE	0.54	1.58	2.88	5.0
	6.	TALFF	1.815	5.065	10.205	17.085
Other Rockfish	1.	OY				7.6
	2.	DAH				0.9
	3.	...DAP	Gulf-wide OY			
	4.	...JVP				
	5.	RESERVE				1.52
	6.	TALFF				5.18
Sablefish	1.	OY	2.1	3.8	7.1 2/	13.0
	2.	DAH				6.48
	3.	...DAP	0.1	1.00	4.70 2/	
	4.	...JVP	0.17	0.22	0.29 2/	
	5.	RESERVE	0.42	0.76	1.42 2/	2.6
	6.	TALFF	1.41	1.82	0.69 2/	3.92

SPECIES			WESTERN	CENTRAL	EASTERN	TOTAL
Atka Mackerel	1.	OY	4.678	20.836	3.186	28.7
	2.	DAH				2.07
	3.	...DAP	0	0	0	
	4.	...JVP	0.290	1.080	0.70	
	5.	RESERVE	0.936	4.167	0.637	5.740
	6.	TALFF	3.452	15.589	1.849	20.89
Squid	1.	OY				5.0
	2.	DAH				0.15
	3.	...DAP	Gulf-wide OY			
	4.	...JVP				
	5.	RESERVE				1.0
	6.	TALFF				3.85
Thornyhead Rockfish (Sebastolobus)	1.	OY				3.75
	2.	DAH				0.006
	3.	...DAP	Gulf-wide OY			
	4.	...JVP				
	5.	RESERVE				0.75
	6.	TALFF				2.994
Other Species	1.	OY				16.2
	2.	DAH				1.72
	3.	...DAP	Gulf-wide OY			
	4.	...JVP				
	5.	RESERVE				3.24
	6.	TALFF				11.24

1/ DNP estimate is based on longline and crab bait trends.
2/ See Table 65 for Sablefish OY-DAH-DAP-JVP-Reserve-TALFF within the Eastern Area.

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Table 65. Add a new Table 65, "Sablefish OY–DAH–DAP–JVP–Reserve–TALFF for districts within the Eastern Regulatory Area (metric tons)."

Table 65.—*Sablefish OY–DAH–DAP–JVP–Reserve–TALFF for Districts Within the Eastern Regulatory Area*

[In metric tons]

	Yakutat district	Southeast inside district	Southeast outside district	Total
OY	3,400	700	3,000	7,100
DAH	1,380	700	2,910	4,990
DAP	1,180	700	2,820	4,700
JVP	200	0	90	290
Reserve	1,420	0	0	1,420
TALFF	600	0	90	690

8.3.1(E) Domestic Gear Restrictions. Add to the section: "Sablefish pots must contain biodegradable escape panels in order that lost pots do not continue fishing."; strike "none."

11.2 Appendix. Add a new Appendix 11.2, "Categories of Species Involved in the Gulf of Alaska Groundfish Fishery."

Appendix 11.2.—*Categories of Species Involved in the Gulf of Alaska Groundfish Fishery*

Unallocated species [1]	Target species [2]	"Other" species [3]	Nonspecified species [4]
Salmonids, halibut, herring, king crab, Tanner crab, coral shrimp, clams, horsehair crab, lyre crab, scallops, snails, Dungeness crab, and surf clams.	Pollock, cod, flounders, Atka mackerel, sablefish, Pacific Ocean perch, thornyhead rockfish, other rockfish, and squid.	Sculpins, sharks, skates, eulachon, smelts, capelin, and octopus.	All species not included in other three categories.

[1] Must be returned to the sea, records must be maintained.

[2] Commercially important; sufficient data base to allow management based on biological, social, economic and ecological characteristics; specific OY applies to each species; records must be maintained.

[3] Slight economic value, greater economic potential or important ecosystem component, but insufficient data to allow discrete species management; records must be maintained of the aggregate catches.

[4] No current economic value, may be discarded or retained, but if retained records must be maintained of the aggregate retained catches.

PART 611—FOREIGN FISHING

§ 611.20 Appendix I [Amended]

B. It is proposed to amend 50 CFR 611.20, Appendix I, by inserting the following:

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Appendix 1, Section 611.20 (continued)

Species	Species Code	Areas	OY	DAH	DAP	JVP=(DAH - DAP)	DNP	Reserve	TALFF
4. Alaska Fisheries:									
E. Gulf of Alaska Groundfish Fishery.									
Pollock	701	Western[5]	66,500	6,737	29	6,708		13,300	46,463
		Central[5]	111,066	15,540	6,277	9,263		22,213	73,313
		Eastern[5]	19,367	2,584	811	1,773		3,874	12,909
		TOTAL	196,933	24,861				39,387	132,685
Pacific Cod	702	Western	19,320	2,193	280	1,213	700	3,864	13,263
		Central	39,130	7,058	4,060	1,598	1,400	7,826	24,246
		Eastern	11,550	2,415	327	688	1,400	2,310	6,825
		TOTAL	70,000	11,666				14,000	44,334
Flounders	129	Western	12,133	816	116	700		2,427	8,890
		Central	17,150	1,307	350	957		3,430	12,413
		Eastern	9,800	1,587	1,050	537		1,960	6,253
		TOTAL	39,083	3,710				7,817	27,556
Pacific Ocean Perch[4]	780	Western	3,150	402	29	373		630	2,118
		Central	9,217	1,465	344	1,121		1,843	5,909
		Eastern	16,800	1,534	93	1,441		3,360	11,906
		TOTAL	29,167	3,401				5,833	19,933
Other Rockfish[6]	849	TOTAL	8,867	1,050				1,773	6,044
Sablefish[7]	703	Western	2,450	315	117	198		490	1,645
		Central	4,433	1,423	1,167	256		887	2.123
		Yakutat District[5]	3,966	1,610	1,377	233		1,656	700
		Southeast Outside[5]	3,500	3,395	3,290	105		0	105
		TOTAL	14,349	6,743				3,033	4,573
Atka mackerel	207	Western	5,458	338	0	338		1,092	4,028
		Central	24,309	1,260	0	1,260		4,862	18,187
		Eastern	3,717	817	0	817		743	2,157
		TOTAL	33,484	2,415				6,697	24,372
Squid	509	TOTAL	5,833	175				1,167	4,491
Other species[8]	499	TOTAL	18,900	2,007				3,780	13,113
Thornyhead rockfish	749	TOTAL	4,375	7				875	3,493

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5. See figures 1 and 2 of section 611.92(a) for description of regulatory areas.

6. The category "other rockfish" includes all fish of the genus *Sebastes* except the category "Pacific ocean perch" as defined above and "Thornyhead rockfish," *Sebastolobus.*

7. Excludes values for the Southeast Inside District, which is not governed by these regulations.

8. The category "other species" includes sculpins, sharks, skates, eulachon, smelts, capelin, and octopus.

§ 611.92 [Amended]

C. It is proposed to amend 50 CFR 611.92 as follows:

(1) Amend paragraph (a)(3) to read:

(a) * * *

(3) The specifications of total allowable levels of foreign fishing (TALFF's) and reserves in Appendix 1 to § 611.20 are effective from November 1, 1980, through December 31, 1981, unless amended. After December 1, 1981, TALFF's and reserves shall be specified on a calendar year basis."

* * * * *

(2) Reletter paragraphs (b), (c), (d), (e), and (f) as paragraphs (c), (d), (e), (f), and (g), respectively. Throughout § 611.92, all references to paragraphs (b), (c), (d), (e), and (f) are changed to (c), (d), (e), (f), and (g), respectively.

(3) Insert a new paragraph (b) as follows:

* * * * *

(b) *Categories of Species.* Four categories of species are recognized for regulatory purpose in this fishery.

(1) "Unallocated species" include shrimps, scallops, snails, Pacific herring, Pacific halibut, salmonids, king crab, Tanner crab, Dungeness crab, corals, surf clam, horsehair crab, and lyre crab. Except to the extent that their harvest is authorized under other regulations, the taking of these species must be avoided and, when they are taken, they must be returned to the sea immediately, in accordance with 50 CFR 611.13.

(2) "Target species" are the species that are commercially important and are generally targeted upon by the groundfish fishery. They include pollock, Pacific cod, flounders, Pacific Ocean perch, other rockfish, sablefish, Atka mackerel, squid, and thornyhead rockfish. Sufficient data on each species or species group exist for it to be managed separately from the others. Records of the catch of each target species or species group must be kept.

(3) "Other species" are species currently having only slight economic value and not generally targeted upon, but which either are significant components of the ecosystem or have economic potential. These species include sculpins, sharks, skates, eulachon, smelts, capelin, and octopus. The optimum yield for these species as a category is set at 5 percent of the combined optimum yields of the target species. Records of the catch of other species must be kept.

(4) "Nonspecified species" include all fish other than those specifically listed in paragraphs (b)(1), (2), and (3) of this section. It is thus a residual category of species of no current or foreseeable economic value or ecological importance which are taken by the groundfish fishery as an accidental bycatch and are in no apparent danger of depletion. Nonspecified species may be either retained or discarded, and only records of the total amount retained, if any, must be kept.

These species categories and the species and species groups of which they are composed are set forth in Table I.

(4) Add Table I, which sets forth the four species categories.

Table I.—*Categories of Species Involved in the Gulf of Alaska Groundfish Fishery*

Unallocated species [1]	Target species [2]	"Other" species [3]	Non-specified species [4]
Salmonids, halibut, herring, king crab, Tanner crab, coral, shrimp, clams, horsehair crab, lyre crab, scallops, snails, Dungeness crab, and surf clams.	Pollock, cod, flounders, Atka mackerel, sablefish, Pacific Ocean perch, thornyhead rockfish, other rockfish, and squid.	Sculpins, sharks, skates, eulachon, smelts, capelin, and octupus.	All species not included in other three categories.

[1] Must be returned to the sea, records must be maintained.

[2] Commercially important; sufficient data base to allow management based on biological, social, economic and ecological characteristics; specific OY applies to each species; records must be maintained.

[3] Slight economic value, greater economic potential or important ecosystem component, but insufficient data to allow discrete species management; records must be maintained of the aggregate catches.

[4] No current economic value, may be discarded or retained, but if retained records must be maintained of the aggregate retained catches.

(5) Position a new Figure 2, which illustrates the three regulatory districts of the Eastern regulatory area, next to Figure 1.

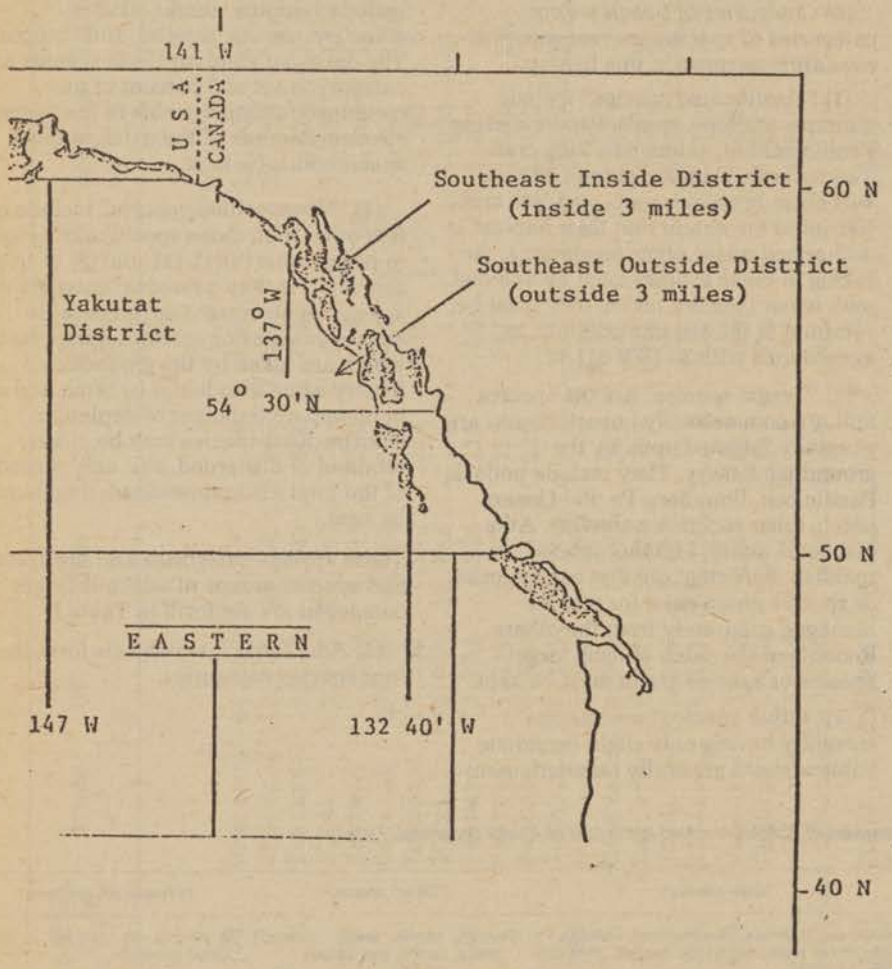

Figure 2. Districts of the Eastern Regulatory Area

(6) Amend the newly lettered paragraph (c)(1)(i) to read:

* * * * *

(c) * * *
(1) * * *

(i) The specifications of optimum yield (OY), estimates of domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and TALFF's and Reserves are set forth in Appendix 1 to § 611.20. Species listed in paragraph (b)(1) and Table I of this section as "unallocated species," or for which the TALFF listed in Appendix 1 to § 611.20 is zero, shall be treated as prohibited species in accordance with 50 CFR 611.13.

* * * * *

(7) Amend the newly lettered paragraph (c)(1)(ii)(A) to read:

* * * * *

(c) * * *
(1) * * *
(ii) * * *

(A) *Apportionment of Reserves.* (*1*) As soon as practicable after the first day of the following months, and after consultation with the Council, the Regional Director may apportion to TALFF, in accordance with paragraph (c)(1)(ii)(C) of this section, all or part of the following amounts of each Reserve: April—40 percent; June—40 percent; August—20 percent.

(*2*) As soon as practicable after the first day of the following months, and on such other dates as he determines necessary, the Regional Director may apportion to DAH, in accordance with paragraph (c)(1)(iii) of this section, any amounts of any Reserve that he determines to be needed to supplement DAH: April, June, and August.

* * * * *

(8) Amend newly lettered paragraph (c)(1)(ii)(B) to read:

* * * * *

(c) * * *
(1) * * *
(ii) * * *

"(B) *Apportionment of Initial DAH.* As soon as practicable after the first day of August, the Regional Director shall apportion to TALFF that part of the DAH which he determines will not be harvested by United States fishermen during the remainder of the year."

* * * * *

(9) Amend newly lettered paragraph (c)(2)(ii) by changing the words "species group" wherever they appear to "species category," and to delete all references to rattails.

(10) Amend the first paragraph of newly lettered paragraph (g) to read:

* * * * *

(g) In addition to the requirements of § 611.9, each nation whose fishing vessels fish subject to this section shall submit a written annual report to the Regional Director setting forth catch and effort statistics regarding fishing activities conducted under this section from January 1 through December 31 by May 31 of the following year. A two-month report will be required by May 31, 1981, for the period November 1 through December 1, 1980.

PART 672—GROUNDFISH OF THE GULF OF ALASKA

D. It is proposed to Amend 50 CFR Part 672 as follows:

§ 672.2 [Amended]

(1) Amend 50 CFR Part 672.2 by inserting the following before the definition of "Fishing vessel:"
"Regulatory district means any of three districts of the Eastern regulatory area as follows: Southeast Outside district: All waters of the FCZ east of 137° West longitude. Southeast Inside district: All waters of the territorial sea (within three miles) east of 137° West longitude and north of 54°30′ North latitude. Yakutat district: All other portions of the Eastern regulatory area."

(2) Replace the former Table I with a new Table I, which eliminates (1) all reference to rattails, and (2) the area breakdown for squid, thornyhead rockfish, other rockfish, and other species.

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Table I: OY, DAH, DAP, DNP, JVP, Reserve, and TALFF by Regulatory Area[1/]

Species	Species Code	Areas	OY	DAH	DAP	JVP=(DAH - DAP)	DNP	Reserve	TALFF
Pollock	701	Western	66,500	6,737	29	6,708		13,300	46,463
		Central	111,066	15,540	6,277	9,263		22,213	73,313
		Eastern	19,367	2,584	811	1,773		3,874	12,909
		TOTAL	196,933	24,861				39,387	132,685
Pacific Cod	702	Western	19,320	2,193	280	1,213	700	3,864	13,263
		Central	39,130	7,058	4,060	1,598	1,400	7,826	24,246
		Eastern	11,550	2,415	327	688	1,400	2,310	6,825
		TOTAL	70,000	11,666				14,000	44,334
Flounders	129	Western	12,133	816	116	700		2,427	8,890
		Central	17,150	1,307	350	957		3,430	12,413
		Eastern	9,800	1,587	1,050	537		1,960	6,253
		TOTAL	39,083	3,710				7,817	27,556
Pacific Ocean Perch[2/]	780	Western	3,150	402	29	373		630	2,118
		Central	9,217	1,465	344	1,121		1,843	5,909
		Eastern	16,800	1,534	93	1,441		3,360	11,906
		TOTAL	29,167	3,401				5,833	19,933
Other Rockfish[3/]	849	TOTAL	8,867	1,050				1,773	6,044
Sablefish	703	Western	2,450	315	117	198		490	1,645
		Central	4,433	1,423	1,167	256		887	2.123
		Yakutat District[4/]	3,966	1,610	1,377	233		1,656	700
		Southeast Outside[4/]	3,500	3,395	3,290	105		0	105
		TOTAL	14,349	6,743				3,033	4,573
Atka mackerel	207	Western	5,458	338	0	338		1,092	4,028
		Central	24,309	1,260	0	1,260		4,862	18,187
		Eastern	3,717	817	0	817		743	2,157
		TOTAL	33,484	2,415				6,697	24,372
Squid	509	TOTAL	5,833	175				1,167	4,491
Other species[5/]	499	TOTAL	18,900	2,007				3,780	13,113
Thornyhead rockfish	749	TOTAL	4,375	7				875	3,493

1/ See 672.2 for a description of Regulatory Areas and Districts.

2/ The category "Pacific ocean perch" includes Sebastes species S. alutus (Pacific ocean perch), S. polyspinus (northern rockfish), S. aleutianus (rougheye rockfish), S borealis (shortraker rockfish), and S. zacentrus (sharpchin rockfish).

3/ The category "other rockfish" includes all fish of the genus Sebastes except the category "Pacific ocean perch" as defined above and "Thornyhead Rockfish", Sebastolobus.

4/ Excludes values for the Southeast Inside District, which is not governed by these regulations.

5/ The category "other species" includes sculpins, sharks, skates, eulachon, smelts, capelin, and octopus.

BILLING CODE 3510-22-C

§ 672.20 [Amended]

(3) Amend 50 CFR § 672.20(a) to read:

(a) The specifications of optimum yield (OY), Reserves, estimates of domestic annual processing (DAP), joint venture processing (JVP), and total allowable level of foreign fishing (TALFF) for species regulated under this part are set forth in Table I. These specifications are effective from November 1, 1980, through December 31, 1981, unless amended. After December 31, 1981, these specifications shall be on a calendar year basis. When the combined catch by foreign and United States vessels reaches the OY amount for a species or species category, further fishing for all species shall be prohibited in the applicable regulatory area for the remainder of the year, except that fishing for sablefish by fishing vessels of the United States using longline gear shall not be prohibited unless the OY for sablefish in that fishing area or district has been reached.

* * * * *

(4) Change the title of newly lettered paragraph (c) to read:

* * * * *

(c) *Apportionment of Reserves and Initial DAH.*

* * * * *

5. Amend newly lettered paragraph (c)(1) to read:

* * * * *

(c) * * *

(1) *Apportionment of Reserves.* (i) As soon as practicable after the first day of the following months, and after consultation with the Council, the Regional Director may apportion to TALFF, in accordance with paragraph (c)(3) of this section, all or part of the following amounts of each reserve: April—40 percent; June—40 percent; August—20 percent.

(ii) As soon as practicable after the first day of the following months, and on such other dates as he determines necessary, the Regional Director may apportion to DAH, in accordance with paragraph (c)(3) of this section, any amounts of any reserve that he determines to be needed to supplement DAH: April, June, and August.

* * * * *

(6) Amend paragraph (c)(2) to read:

* * * * *

(c) * * *

(2) *Apportionment of Initial DAH.* As soon as practicable after the first day of August, the Regional Director shall apportion to TALFF that part of the DAH which he determines will not be harvested by United States fishermen during the remainder of the fishing year.

* * * * *

(7) Amend § 672.24 to read:

§ 672.24 Biodegradable escape panels required for all sablefish pots.

Each sablefish pot used in fishing under these regulations shall have a biodegradable panel. This panel shall consist of an opening in the webbing of the pot which has been laced, sewn, or secured by untreated cotton twine or other natural fiber no larger than 120 thread which, upon deterioration, produces an opening in the web with a perimeter equal to the perimeter of the tunnel eye opening.

[FR Doc. 80-27811 Filed 9-10-80; 8:45 am]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 45, No. 178
Thursday, September 11, 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

Forest Service

Challis National Forest Grazing Advisory Board; Meeting

The Challis National Forest Advisory Board will meet at 1:00 p.m. MDT, on October 21, 1980 at the Challis National Forest Supervisor's Office, Challis, Idaho. The purpose of this meeting is to discuss, and receive advice and recommendations for, the utilization of range betterment funds, and development of allotment management plans for FY 1983.

The meeting will be open to the public. Persons who wish to attend should notify Ralph Jenkins at the Challis National Forest Supervisor's Office, Challis, Idaho. Written statements may be filed with the committee before or after the meeting.

Jack E. Bills,

Forest Supervisor.

[FR Doc. 80-28084 Filed 9-10-80; 8:45 am]

BILLING CODE 3410-11-M

Science and Education Administration

Cooperative Forestry Reseach Advisory Board; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the Science and Education Administration announces the following meeting:

Name: Cooperative Forestry Research Advisory Board.
Time: October 2, 1980, 7:00 p.m.
Place: 3rd Floor Meeting Facility, Spokane Sheraton Hotel, Spokane, Washington.
Type of meeting: Open to the public. Persons may participate in the meeting as time and space permit.
Comments: Written statements may be filed with the Board before or after the meeting with the contact person listed below and names of Board members may be obtained from the contact person.
Purpose: The Advisory Board will review new proposals on the structure of the formula for the allocation of funds appropriated for the McIntire-Stennis program.
Contact person for agenda and more information: W. I. Thomas, Executive Secretary of the Board, Science and Education Administration, Cooperative Research, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-4423.

Done at Washington, D.C., this 28th day of August, 1980.

Anson R. Bertrand,

Director, Science and Education.

[FR Doc.80-28056 Filed 9-10-80; 8:45 am]

BILLING CODE 3410-22-M

Soil Conservation Service

Batupan Bogue Creek Watershed, Mississippi; Finding of No Significant Impact

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Mr. Chester F. Bellard, State Conservationist, Soil Conservation Service, 1321 Federal Building, 100 West Capitol Street, Jackson, Mississippi 39201, telephone number (601) 960-4335.

NOTICE: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the construction of one floodwater retarding structure in Batupan Bogue Creek Watershed, Grenada County, Mississippi.

The environmental assessment of this federally assisted action indicates this project will not cause significant local, regional, or national impacts to the environment. As a result of these findings, Mr. Chester F. Bellard, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns the construction of one floodwater retarding structure. The floodwater retarding structure will be of the drop inlet type and will consist of an earthen embankment, concrete principal spillway with draw-down capability for fish and wildlife, and a vegetated earth emergency spillway.

The project will result in the conversion of approximately 7 acres of hardwood timber and 10 acres of abandoned open fields to the sediment pool of the proposed floodwater retarding structure. An additional 30 acres of hardwood forest and 4 acres of abandoned fields will be situated in the flood pool. The borrow area, emergency spillway, and levee will consist of approximately 4 acres of mixed pine-hardwood forest and 6 acres of abandoned open field.

The Notice of Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Chester F. Bellard. An environmental assessment report has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental assessment report are available to fill single copy requests at the above address.

No administrative action or implementation of the proposal will be taken until October 14, 1980.

Dated: August 28, 1980.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

James W. Mitchell,

Associate Deputy Chief for Natural Resource Projects.

[FR Doc. 80-27881 Filed 9-10-80; 8:45 am]

BILLING CODE 3410-16-M

Buffalo Elementary School Land Drainage R. & D. Measure, West Virginia; Finding of No Significant Impact

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT:
Mr. Craig M. Right, State Conservationist, Soil Conservation Service, 75 High Street, Morgantown, West Virginia 26505, telephone 304–599–7151.

NOTICE: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Buffalo Elementary School Land Drainage R. C. & D. Measure, Wayne County, West Virginia.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Craig M. Right, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for the installation of a subsurface drainage system totaling 1,180 feet of 4-inch flexible plastic pipe to correct internal drainage problems. These drains will be backfilled with gravel to the ground surface. This will improve infiltration and also provide suitable bedding for the tile.

The Notice of a Finding of No Significant Impact (FNSI) has data forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Craig M. Right, State Conservationist. The FNSI has been sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until October 14, 1980.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: August 28, 1980.

Joseph W. Haas,

Deputy Chief for Natural Resource Projects.

[FR Doc. 80–27877 Filed 9–10–80; 8:45 am]

BILLING CODE 3410–16–M

North Bay Shoreline Stablization R.C. & D. Measure; Michigan; Finding of No Significant Impact

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of finding of no significant impact.

FOR FURTHER INFORMATION CONTACT:
Mr. Arthur H. Cratty, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517–337–6702.

Notice: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the North Bay Shoreline Stablization RC&D Measure, Presque Isle County, Michigan.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Arthur H. Cratty, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for the installation of practices for critical area treatment. The planned works of improvement include critical area planting, vehicle barriers, fencing, sodding, and tree and shrub planting. Total construction cost is estimated to be $7,200; $5,100 RC&D funds and $2,100 local funds.

The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Arthur H. Cratty. The FNSI has been sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until October 14, 1980.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular No. A–95 regarding State and local Clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: August 28, 1980.

Joseph W. Haas,

Deputy Chief for Natural Resources Projects.

[FR Doc. 80–27884 Filed 9–10–80; 8:45 am]

BILLING CODE 3410–16–M

Ritter Park Land Drainage R.C. & D. Measure, West Virginia; Finding of No Significant Impact

AGENCY: Soil Conservation Service, Department of Agricuture.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT:
Mr. Craig M. Right, State Conservationist, Soil Conservation Service, 75 High Street, Morgantown, West Virginia 26505, telephone 304–599–7151.

NOTICE: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guildelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared from the Ritter Park Land Drainage R.C. & D. Measure, Cabell County, West Virginia.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Craig M. Right, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for the installation of subsurface drainage system totaling 3,740 feet of 4- and 6-inch flexible plastic pipe to correct internal drainage problems. These drains will be backfilled with gravel to the ground surface. This will improve infiltration and also provide suitable bedding for the tile.

The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Craig M. Right, State Conservationist. The FNSI has been sent to various Federal, State and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until October 14, 1980.

Dated: August 28, 1980.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Joseph W. Haas,

Deputy Chief for Natural Resource Projects.

[FR Doc. 80–27883 Filed 9–10–80; 8:45 am]

BILLING CODE 3410–16–M

Riverview Beach Park Recreational Development R.C. & D. Measure, New Jersey; Finding of No Significant Impact

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Mr. Plater T. Campbell, State Conservationist, Soil Conservation Service, 1370 Hamilton Street, Somerset, New Jersey 08873, telephone 201–246–1205.

NOTICE: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Riverview Beach Park Recreational Development RC&D Measure, Salem County, New Jersey.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Plater T. Campbell, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for the installation of water-based recreational facilities within the Riverview Beach Park. The planned works of improvement include picnic areas with shelters, a boat ramp, a fishing pier on the Delaware River, and associated comfort stations, parking lots, and utilities.

The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Plater T. Campbell. The FNSI has been sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address.

Implementatioan of the proposal will not be initiated until October 14, 1980.

Dated: August 28, 1980.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular No. A–95 regarding State and local Clearinghouse review of Federal and federally assisted programs and projects is applicable)

Joseph W. Haas,

Deputy Chief for Natural Resource Projects.

[FR Doc. 80–27885 Filed 9–10–80; 8:45 am]

BILLING CODE 3410–16–M

Rotary Park Critical Area Treatment R.C. & D. Measure, West Virginia; Finding of No Significant Impact

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Mr. Craig M. Right, State Conservationist, Soil Conservation Service, 75 High Street, Morgantown, West Virginia 26505, telephone 304–599–7151.

NOTICE: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Rotary Park Critical Area Treatment R.C. & D. Measure, Cabell County, West Virginia.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Craig M. Right, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure is designed to stabilize and revegetate about 2 acres of land that is now subject to accelerated erosion. Included in the planned works of improvement are land smoothing, water bars, and revegetation. Revegetation of all disturbed areas will consist of seedbed preparation, lime and fertilizer, seed, mulching, and shrubs. The installation of this measure will reduce the erosion and improve the aesthetics of the area.

The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Craig M. Right, State Conservationist. The FNSI has been sent to various Federal, State and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until October 14, 1980.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: August 28, 1980.

Joseph W. Haas,

Deputy Chief for Natural Resource Projects.

[FR Doc. 80–27882 Filed 9–10–80; 8:45 am]

BILLING CODE 3410–16–M

CIVIL AERONAUTICS BOARD

[Dockets 33362, 38175, and 38176]

Former Large Irregular Air Service Investigation and Applications of Flight Transportation Corp.; Postponement of Hearing

Notice is hereby given that the hearing in the above-entitled proceeding assigned to be held on September 17, 1980 at 10:00 a.m. (45 FR 58636, September 4, 1980) is postponed until September 18, 1980, at 10:00 a.m. (local time) in Room 1003, Hearing Room A, Universal North Building, 1875 Connecticut Avenue, N.W., Washington, D.C. before the undersigned administrative law judge.

Dated at Washington, D.C., September 8, 1980.

Joseph J. Saunders,

Chief Administrative Law Judge.

[FR Doc. 80–28007 Filed 9–10–80; 8:45 am]

BILLING CODE 6320–01–M

CIVIL RIGHTS COMMISSION

California Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the rules and regulations of the U.S. Commission on Civil Rights that a press conference of the California Advisory Committee will convene at 10:30 a.m. and will end at 11:30 a.m., on September 25, 1980, at Greater Los Angeles Press

Club, 600 North Vermont, Los Angeles, California.

The purpose of this press conference is to release California State Advisory Committee report entitled, "California State Employment."

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Mr. Herman Sillas, Jr., U.S. Courthouse Bldg., 658 Capitol Mall, Sacramento, California 95814, 916/440–2331, or the Western Regional Office, 3660 Wilshire Boulevard, Suite 810, Los Angeles, California 90010, 213/688–3437.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., September 5, 1980.

Thomas L. Neumann,

Advisory Committee Management Officer.

[FR Doc. 80–28086 Filed 9–10–80; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Calcium Pantothenate From Japan; results of administrative review of antidumping finding

AGENCY: U.S. Department of Commerce, International Trade Administration.

ACTION: Notice of Results of Administrative Review of Antidumping Finding.

SUMMARY: This notice is to advise the public that the Department of Commerce has conducted an administrative review of the antidumping finding on calcium pantothenate from Japan. The scope of the review covers all known producers, exporters and transshippers of this merchandise, with the exception of Fuji Chemical Industries Ltd., which was excluded from the finding, Daiichi Seiyaku Co., Ltd., for which a revocation became effective on July 28, 1980, and Takeda Chemical Industries Ltd., which was exempted from the finding on September 21, 1979. The review covers separate time periods for each exporter up to December 31, 1979. This review indicates margins in particular periods for certain manufacturers and exporters. As a result of this review, the Department has preliminarily decided to assess dumping duties for individual exporters equal to the calculated margins on their shipments occurring during the periods for which margins have been found. Where company-supplied information was inadequate or no information was received, the Department has used the best information available. Interested parties are invited to comment on this decision.

EFFECTIVE DATE: September 11, 1980.

FOR FURTHER INFORMATION CONTACT: Susan M. Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202–377–4033).

SUPPLEMENTARY INFORMATION:

Procedural Background

On January 17, 1974, a dumping finding with respect to calcium pantothenate from Japan was published in the **Federal Register** as Treasury Decision 74–34 (39 Fed. Reg. 2086). On January 1, 1980, the provisions of Title I of the Trade Agreement Act of 1979 became effective. On January 2, 1980, the authority for administering the antidumping duty law was transferred from the Department of the Treasury to the Department of Commerce (hereinafter referred to as "the Department"). The Department published in the **Federal Register** of March 28, 1980 (45 Fed. Reg. 20511–12) a notice of intent to conduct administrative review of all outstanding dumping findings. As required by Section 751 of the Tariff Act of 1930 (hereinafter referred to as the "Act"), the Department has conducted an administrative review of the finding on calcium pantothenate from Japan.

Scope of the Review

Imports covered by this review are shipments of calcium pantothenate, a member of the B-complex vitamin family, which is produced in two grades: D-Cal Pan (USP grade which is used for human nutrition in the form of multi-vitamin tablets) and DL-Cal Pan (feed grade which is used as a food supplement for swine & poultry). They are provided for in item 437.82 of the Tariff Schedules of the United States Annotated (TSUSA).

The Department knows of a total of 40 manufacturers, shippers and transshippers of Japanese calcium pantothenate to the United States. Two of the manufacturers are not covered by this review: Fuji Chemical Industries Ltd., which was excluded from the finding, and Daiichi Seiyaku Co., Ltd., for which a revocation was published in the **Federal Register** on June 23, 1980 (45 Fed. Reg. 41995) that became effective on July 28, 1980. In addition, one shipper, Takeda Chemical Industries Ltd., whose sole supplier is Fuji Chemical Industries Ltd., was exempted from the finding in Customs Information Exchange N–534/72, supplement #24, dated September 21, 1979. The remaining 37 are listed below. This review covers all time periods for which information is available, that is, all periods up to December 31, 1979, during which shipments of calcium pantothenate may have been made to the United States and for which master lists have not been issued. Different time periods are involved for different companies. For certain exporters the period covered is from June 8, 1973, the date liquidation was suspended, through December 31, 1979. For the remaining exporters the time frames vary depending on the last periods covered by master lists issued prior to January 1, 1980. The issue of the Department's obligation to conduct administrative review of entries, unliquidated as of January 1, 1980 and covered by such master lists, is under review. Liquidation has been suspended pending disposition of the issue.

There are two manufacturers covered by this review. The time periods for each are:

Firm and Period

Alps Pharmaceutical Co., Ltd.—April 1, 1978—March 31, 1979; April 1, 1979—December 31, 1979

Nippon Roche K.K.—April 1, 1979—December 31, 1979

The Department's records indicate that there are 25 Japanese shippers:

Firm and Period

Agropol Limited—June 8, 1973—December 31, 1979

Byron Chemical Co.—April 1, 1979—December 31, 1979

Chugai Boyeki Co.—June 8, 1978—December 31, 1979

Eisai Co., Ltd.—June 8, 1973—December 31, 1979

Fallek Chemicals—April 1, 1978—March 31, 1979; April 1, 1979—December 31, 1979

First Enterprise Inc.—June 8, 1973—December 31, 1979

Fututakan Sangyo—April 1, 1978—March 31, 1979; April 1, 1979—December 31, 1979

Helm Japan—June 8, 1973—December 31, 1979

Isho Inc.—April 1, 1978—March 31, 1979; April 1, 1979—December 31, 1979

Iwaki—April 1, 1978—March 31, 1979; April 1, 1979—December 31, 1979

Kamiyama Corp.—April 1, 1979—December 31, 1979

Kishimoto Trading Co.—April 1, 1979—March 31, 1979; April 1, 1979—December 31, 1979

Kowa—April 1, 1979—December 31, 1979

Marubeni Corp.—June 8, 1973—December 31, 1979

Maruzen Chemicals Co.—June 8, 1973—December 31, 1979

Mitsubishi Corp.—April 1, 1978—December 31, 1979

Mitsui & Co.—April 1, 1978—March 31, 1979; April 1, 1978—December 31, 1979

Sankei Pharmaceutical Co., Ltd.—June 8, 1973—December 31, 1979

Sankyo Co., Ltd.—June 8, 1973—December 31, 1979

Shinonogi Seiyaku—April 1, 1978—March 31, 1979; April 1, 1979—December 31, 1979
Tanabe Seiyaku Co.—June 8, 1973—December 31, 1979
Tass International Inc.—June 8, 1973—December 31, 1979
Toho Bussan Co.—June 8, 1973—December 31, 1979
Tomen—April 1, 1979—December 31, 1979
Toyo Menka Kaisha—June 8, 1973—December 31, 1979

In addition, there are 10 non-Japanese foreign companies identified as shippers of Japanese calcium pantothenate. The Department has determined that for dumping purposes transshipped merchandise is within the scope of the finding, unless the marchandise has undergone substantial transformation or reprocessing which results in a product with a new character or use. In such a case the Department will consider the intermediate country as the country of origin. No such transformation has occurred here. Our review for all 10 companies covered shipments during the period June 8, 1973–December 31, 1979. These non-Japanese foregin companies are:

Company and Country

Chemeta B.V.—Netherlands
Chemical & Feeds Ltd.—United Kingdom
Chemical & Feeds Ltd.—W. Germany
Deutsch Norwegische GMBH—W. Germany
M. Gurvey & Berry—Canada
Helm—W. Germany
Lenk Chemicals Co.—Netherlands
Marsing—W. Germany
Siemsgluss & Sohn—W. Germany
Siemsgluss A.G.—Switzerland

The Department's records show that Alps also shipped to the United States through 14 of the 25 shippers. Our calculated margins for shipments through these companies are so designated in the *Results of the Review* below. Among the exporters, Mitsubishi Corporation's sole supplier was Daiichi Seiyaku Co., Ltd., and Tanabe's sole supplier was Fuji Chemical Industries Ltd. Accordingly, these two are excluded from the finding. Marubeni Corporation and Sankyo Co., Ltd. indicated they have not shipped calcium pantothenate to the United States since the suspension of liquidation. For these two, the Department used the margin calculated at the time of the fair value determination. Finally, eight exporters—Chugai Boyeki Co., Eisai Co., First Enterprise Inc., Isho Inc. (for the most recent period), Kamiyama Corp., Sakei Pharmaceutical Co., Ltd., Tass International Inc. & Toho Bussan Co.—did not respond or furnished inadequate responses to the Department's questionnaire. For these eight firms, the Department used the higher of the margins calculated for the two covered manufacturers for the most recent period as the best information available.

The transshippers, with the exception of M. Gurvey & Berry, Canada, provided either inadequate or no responses. For all but Gurvey & Berry the Department used the higher of the margins calculated for the two covered manufacturers for the most recent period as the best information available.

United States Price

In calculating United States price the Department used purchase price, as defined in Section 772(b) of the Act, since all sales were made to unrelated purchasers. Purchase price was calculated on the basis of the F.O.B. or C.I.F., packed price, to an unrelated purchaser in the United States or to an unrelated Japanese trading company for export to the United States, as appropriate. Where applicable, we deducted from this price ocean freight, insurance, postage, shipping charges, commissions, inland freight, brokerage charges and U.S. duty.

Foreign Market Value

In calculating foreign market value, the Department used home market price, as defined in Section 773(a)(1)(A) of the Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Both manufacturers sold over 15% of their total production in Japan. The home market prices are based upon the delivered price with adjustment for inland freight and interest charges, where applicable. No other adjustments were made or claimed.

Results of the Review

As a result of our comparison of United States price to foreign market value, I preliminarily determine that the following margins exist:

A. Japanese Co.

Exporter/Manufacturer	Time period	Percent margin
1. Agropol Limited/Alps	6/1/73–12/31/79	4.27
2. Alps Pharmaceutical Co., Ltd	4/1/78–3/31/79	14.42
	4/1/79–12/31/79	0
3. Byron Chemical Co./Alps	4/1/79–12/31/79	6.6
4. Chugai Boyeki Company	6/8/73–12/31/79	11.52
5. Eisai Co., Ltd	6/8/73–12/31/79	11.52
6. Fallek Chemical/Alps	4/1/78–3/31/79	
	4/1/79–12/31/79	25.13
		(1)
7. First Enterprise Inc	6/8/73–12/31/79	11.52
8. Fukutaken Sangyo/Alps	4/1/79–12/31/79	6.6
9. Helm/Alps	6/8/73–12/31/79	1.78
10. Isho Inc./Alps	4/1/78–3/31/79	0.642
	4/1/79–12/31/79	11.52
11. Iwaki/Alps	4/1/78–3/31/79	
	4/1/79–12/31/79	0
		(1)
12. Kamiyama Corp	4/1/79–12/31/79	11.52
13. Kishimoto Trading Co./Alps	4/1/79–12/31/79	3.02
14. Kowa/Alps	4/1/79–12/31/79	1.87

A. Japanese Co.—Continued

Exporter/Manufacturer	Time period	Percent margin
15. Marubeni Corp	4/1/79–12/31/79	(1)
16. Maruzen Chemicals Co/Alps	6/8/73–12/31/79	9.57
17. Mitsubishi Corporation/Daiichi Seiyaku Co., Ltd	4/1/79–12/31/79	(2)
18. Mitsui & Co./Alps	4/1/78–3/31/79	24.54
	4/1/79–12/31/79	18.87
19. Nippon Roche K.K	4/1/79–12/31/79	11.52
20. Sankei Pharmaceutical Co., Ltd	6/8/73–12/31/79	11.52
21. Sankyo Co., Ltd	4/1/79–12/31/79	(1)
22. Shinonogi Seiyaku/Alps	4/1/78–3/31/79	
	4/1/79–12/31/79	11.91
		(1)
23. Tanabe Seiyaku Co/Fuji Chemical Industries Ltd	6/8/73–12/31/79	(2)
24. Tass International Inc	6/8/73–12/31/79	11.52
25. Toho Bussan Co	6/8/73–12/31/79	11.52
26. Tomen/Alps	4/1/79–12/31/79	0
27. Toyo Menka Kaisha/Alps	6/8/73–12/31/79	1.87

[1] No shipments.
[2] Excluding from finding.

B. Transshippers

Company and country	Time period	Percent margin
1. Chemeta B.V./Netherlands	6/8/73–12/31/79	11.52
2. Chemical & Feeds Ltd./United Kingdom	6/8/73–12/31/79	11.52
3. Chemical & Feeds/W. Germany	6/8/73–12/31/79	11.52
4. Deutsch Norwegische GMBH/W. Germany	6/8/73–12/31/79	11.52
5. Gurvey & Berry/Canada	6/8/73–12/31/79	0
6. Helm/W. Germany	6/8/73–12/31/79	11.52
7. Lenk Chemicals Corp./Netherlands	6/8/73–12/31/79	11.52
8. Marsing/W. Germany	6/8/73–12/31/79	11.52
9. Siemsgluss & Sohn/W. Germany	6/8/73–12/31/79	11.52
10. Siemsgluss A.G./Switzerland	6/8/73–12/31/79	11.52

Interested parties may submit written comments on this preliminary determination on or before October 14, 1980 and may request disclosure and/or a hearing on such determination on or before September 26, 1980. The Department will publish the results of its analysis of any such comments or hearing. Absent any comment, this determination will be made final 35 days from the date of publication of this notice. We will publish a notice of final determination at that time.

The Department shall determine, and the U.S. Customs Service shall assess, duties on all entries made during the time periods involved. Individual statutory values may vary from the percent stated above. The Department will issue appraisement instructions separately on each shipper directly to the Customs Service. Further, as required by Section 353.48(b) of Commerce Regulations, a cash deposit based upon the margin on the last known shipments, that is, the above margin amounts, will be required on all shipments entered, or withdrawn from warehouse, for consumption on or after the date of the final determination. In

those instances where an exporter covered by this review does not identify the manufacturer of merchandise being entered, the above margins will be the basis for the cash deposit until the exporter provides the appropriate identification. For Marubeni Corporation and Sankyo Co., Ltd., the two companies that have not shipped since suspension of liquidation, the fair value margin of 3.98% will be required. This requirement shall remain in effect until publication of the results of the next administrative review.

This administrative review and notice are in accordance with Section 751(a)(1) of the Act (93 Stat. 175, 19 U.S.C. 1675(a)(1)) and Section 353.53 of Commerce Regulations (19 CFR 353, 45 Fed. Reg. 8205).

John Greenwald,

Deputy Assistant Secretary, Import Administration.

September 8, 1980.

[FR Doc. 80-27974 Filed 9-10-80; 8:45 am]

BILLING CODE 3510-25-M

Maritime Administration

Merchant Marine Academy Advisory Board; Public Meeting

Notice is hereby given of a meeting of the Advisory Board to the U.S. Merchant Marine Academy (the Board) on October 3, 1980 at 1:00 p.m., in Wiley Hall, U.S. Merchant Marine Academy, Kings Point, New York.

The Advisory Board was established by the Secretary of Commerce under the authority of 46 U.S.C. 1126d to examine the course of instruction and overall management of the U.S. Merchant Marine Academy (the Academy) and advise the Assistant Secretary of Commerce for Maritime Affairs with respect thereto.

The Board consists of not more than seven members appointed by the Secretary of Commerce selected from segments of the maritime industry, labor, educational institutions and other fields relating to the purposes of the Academy.

The Agenda for the meeting is:

1. Call meeting to order;
2. Opening Remarks by the Superintendent;
3. Approval of minutes of the last meeting;
4. Report of Board members on Assignments;
5. Status Report on the placements of the Class of 1980;
6. Status Report on Composition of the Class of 1984;
7. Status Report on H.R. 5451;
8. Report on Plans for the Middle States Accreditation visit;
9. Report on Faculty/Midshipmen Review of the Honor Code and Midshipman Pub Operations;
10. Regimental Commander's Report on the Plebe Indoctrination Program;
11. Sea-year Program
(a) Present Program
(b) Midshipmen Report on Sea Year
(c) Impact of Proposed IMCO Requirements
12. Setting of date of next meeting.

This meeting is open to public observation and comment. Approximately 40 seats will be available for the public on a first-come, first-served basis.

Copies of the minutes will be available upon request.

Inquiries may be addressed to the Committee Control Officer, Arthur W. Friedberg, Director, Office of Maritime Labor and Training, Room 3069A, Department of Commerce Building, Washington, D.C. 20230, telephone A/C 202/377-3018.

Dated: September 2, 1980.

So Ordered by Assistant Secretary of Commerce for Maritime Affairs, Maritime Administration.

Robert J. Patton,

Secretary.

[FR Doc. 80-27975 Filed 9-10-80; 8:45 am]

BILLING CODE 3510-15-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Caribbean Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Public Law 94-265), will hold its 31st regular meeting to consider: (1) status reports on fishery management plans (FMP's) under development; (2) draft framework FMP for shallow-water Reef Fishes; (3) interim draft document on the Coastal Migratory Pelagics FMP; (4) National Marine Fisheries Service's policy on joint preparation of FMP's; (5) next Chairmen and Executive Directors' meeting; (6) progress report on the preparation of a color slide-narrated presentation; and (7) administrative matters as well as other Council business.

DATES: The meetings, which are open to the public, will convene on Tuesday, September 30, 1980, at approximately 1:30 p.m., and will adjourn on Thursday, October 2, 1980, at approximately 12 noon.

ADDRESS: The meetings will take place at the Conference Room, Federal Building, Charlotte Amalie, St. Thomas, U.S. Virgin Islands.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 00918, telephone: (809) 753-4926.

Dated: September 8, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80-28096 Filed 9-10-80; 8:45 am]

BILLING CODE 3510-22-M

Mid-Atlantic Fishery Management Council's Scientific and Statistical Committee; Public Meeting

AGENCY: Natinal Marine Fisheries Service, NOAA.

SUMMARY: The Mid-Atlantic Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Public Law 94-265), has established a Scientific and Statistical Committee, which will meet to discuss amendment #3 to the Surf Clam and Ocean Quahog Fishery Management Plan (FMP); Scup and Black Sea Bass FMP, as well as other fishery matters.

DATES: The meeting, which is open to the public, will convene on Wednesday, October 1, 1980, at approximately 10:30 a.m., and will adjourn at approximately 3:30 p.m.

ADDRESS: The meeting will take place at the Holiday Inn, Philadelphia Airport-South, 45 Industrial Highway, Essington, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Mid-Atlantic Fishery Management Council, North and New Streets, Room 2115, Federal Building, Dover, Delaware 19901, Telephone: (302) 674-2331.

Dated: September 8, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80-28097 Filed 9-10-80; 8:45 am]

BILLING CODE 3510-22-M

New England Fishery Management Council; Public Meetings

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 (Public Law 94–265), will meet to discuss groundfish—interim plan and amendment No. 5; lobster—report of oversight committee; scallops; herring—status of the fishery; Council operations, as well as other business.

DATE: The meetings, which are open to the public, will convene on Wednesday, September 24, and Thursday, September 25, 1980, at approximately 10 a.m., and will adjourn at 5 p.m., both days. The meetings may be lengthened, or agenda items rearranged, depending on progress on the agenda.

ADDRESS: The meetings will take place at King's Grant Inn, Route 128 at Trask Lane, Denvers, Massachusetts.

FOR FURTHER INFORMATION CONTACT:

New England Fishery Management Council, Suntaug Office Park, Five Broadway, Route One, Saugus, Massachusetts 01906, Telephone: (617) 231–0422.

Dated: September 5, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80–28098 Filed 9–10–80; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

U.S. Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and, possibly, foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of patents cited are available from the Commissioner of Patents & Trademarks, Washington, DC 20231, for $.50 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $5.00 each ($10.00 outside North American Continent). Requests for copies of patent applications must include the PAT-APPL number. Claims are deleted from patent application copies sold to avoid premature disclosure. Claims and other technical data will usually be made available to serious prospective licensees upon execution of a non-disclosure agreement.

Requests for information on the licensing of particular inventions should be directed to the addresses cited for the agency-sponsors.

Douglas J. Campion,

Program Coordinator, Office of Government Inventions and Patents, National Technical Information Service, U.S. Department of Commerce.

U.S. Department of Agriculture Program Agreements and Pat. Branch Admin. Ser. Div. Federal Bldg. Science and Education Admin. Hyattsville, Md 20782

Patent Application 6–110, 860: Controlled Release of Bioactive Materials using Alginate Gel Beads; Filed Jan. 9, 1980.

Patent Application 6–140, 911: Anti-Feedant for Boll Weevils. Filed Apr. 16, 1980.

Patent 4,203,892: Method of Protecting Proteins for Animal Feed. Filed Apr. 17, 1978, patented May 20, 1980. Not available NTIS.

Patent 4,204,008: Preparation of Protein Concentrates from Whey and Seed Products. Filed Dec. 28, 1978, patented May 20, 1980; not available NTIS.

Patent 4,204,043: Method of Removing Pigment from Annatto Seed. Filed Apr. 4, 1978; patented May 20, 1980; not available NTIS.

Patent 4,205,602: Apparatus for Tying Cauliflower. Filed Dec. 19, 1978, patented June 3, 1980; not available NTIS.

U.S. Department of Health and Human Services, National Institutes of Health, Chief, Patent Branch, Westwood Building, Bethesda, Md 20205

Patent 4,178,285; Separation of Active Acid α1 Glycoprotein and Utilization in the Lipoprotein Lipase Enzyme System. Filed Dec. 20, 1978; patented Dec. 11, 1979; not available NTIS.

Patent 4,183,864: Cobalt Catalyzed Steroid Synthesis. Filed Feb. 21, 1978, patented Jan. 15, 1980; not available NTIS.

Patent 4,200,806: Scanning Flow Indicator for Rotameters. Filed Apr. 25, 1978; patented Apr. 29, 1980; not available NTIS.

U.S. Department of the Navy, Assistant Chief for Patents, Office of Naval Research, Code 302, Arlington, Va 22217

Patent Application 6–086, 213: Diamond Supported Helix Assembly and Method. Filed Oct. 18, 1979.

Patent Application 6–091, 224: Automatic Parachute Release System. Filed Nov. 6, 1979.

Patent Application 6–116, 351: A New Method for Preparing Pentanitroanline and Triaminotrinitrobenzenes from Trinitrotoluene. Filed Jan. 28, 1980.

Patent Application 6–121, 550: Transducer Array Release and Pressure Compensation System. Filed Feb. 14, 1980.

Patent Application 6–130, 804: A Simplified Multilayer Circuit Board; filed Mar. 17, 1980.

Patent Application 6–133, 753: Electric Connector Receptacle Assembly; filed Mar. 25, 1980.

Patent Application 6–135, 563: Bonding Agent for HMX (Cyclotetromethylenetetranitramine). Filed Mar. 31, 1980.

Patent Application 6–137, 226: Portable Battery Operated Smoke Generator; filed Apr. 4, 1980.

Patent Application 6–137, 227: Nontoxic Smoke Generator. Filed Apr. 4, 1980.

Patent Application 6–141, 703: Apparatus and Method for Radio Channel Selection. Filed Apr. 18, 1980.

Patent Application 6–143, 079: Automatic Temperature Control System for Diver Heating System. Filed Apr. 4, 1980.

Patent Application 6–143, 707: Dynamics Parachute Four-Line Release Simulator. Filed Apr. 25, 1980.

Nat. Aeronautics and Space Admin., Assist. Gen. Couns. for Pat. Matters, NASA Code GP–2, Washington, DC 20546

Patent 4,193,435: Floating Nut Retention System. Filed Aug. 31, 1978; patented Mar. 18, 1980; not available NTIS.

Patent 4,195,666: Quartz Ball Valve. Filed Aug. 31, 1978; patented Apr. 1, 1980; not available NTIS.

Patent 4,199,764: Dual Band Combiner for Horn Antenna. Filed Jan. 31, 1979; patented Apr. 22, 1980; not available NTIS.

[FR Doc. 80–27888 Filed 9–10–80; 8:45 am]

BILLING CODE 3510–04–M

Office of the Secretary

Scientific and Technical Information Policy Subcommittee; Commerce Technical Advisory Board

AGENCY: Office of the Secretary, Department of Commerce.

ACTION: 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 the Scientific and Technical Information Policy Subcommittee of the Commerce Technical Advisory Board will hold a meeting on Tuesday, September 16, 1980 from 1:30 p.m. to 4:30 p.m. in room 3868 in the main Commerce Building, 14th Street and Constitution Avenue, NW., Washington, D.C.

The subcommittee was established to advise on matters pertinent to the Department's responsibilities on the economics and pricing of scientific and technical information, the National Technical Information Service and international issues related to those above.

Tentative agenda items include the review of draft documents prepared by the subcommittee's membership.

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 the press on a first-come, first-serve 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 Michael R. Rubin, Room 3877, U.S. Department of Commerce, Washington, D.C. 20230. Telephone (202) 377–2388.

Dated: September 8, 1980.

Jordan J. Baruch,

Assistant Secretary for Productivity, Technology, and Innovation.

[FR Doc. 80–28085 Filed 9–10–80; 8:45 am]

BILLING CODE 3510–17–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Environmental Impact Statements; Notice of Intent; City of Durham, N.C.

To prepare a Draft Environmental Impact Statement (DEIS) for a regulatory permit action involving a water supply reservoir proposed by the City of Durham on Little River near the community of Orange Factory in Durham County, North Carolina.

Lead Agency: U.S. Army Corps of Engineers, Wilmington District, North Carolina.

Action: Notice of Intent to Prepare a Draft Environmental Impact Statement.

Summary: The City of Durham's current raw water demand (1978) averaged 17.5 million gallons per day (mgd) and the safe yield of the present 4.2 billion gallons (BG) Lake Michie reservoir on Flat River is 21 mgd. By 1985, predictions indicate that this safe yield will be equalled or exceeded by the demand and by 2015 an additional 24 mgd will be needed. There is also a need for over 800 acres of city-wide or urban park area.

The proposed project would meet this project water demand and would also provide 214 acres of park area.

This reservoir would impound 528 acres. Construction would include a war water pump station and about 10,000 feet of 54-inch diameter raw water main to the water filtration plant.

The three alternatives under consideration are: (1) the construction of a new dam 2000 feet downstream of the existing water source, Lake Michie, on the Flat River, (2) a dam and reservoir on Flat River at SR 1471 upstream of Lake Michie, and, (3) using the water from the B. Everett Jordan Federal multi-purpose reservoir.

No scoping meeting is planned. However, there has been close coordination with the City of Durham, agencies, and opponents. There have been several meetings with the City and agencies and meetings are planned with opponents. Consultation under Section 7 of the Endangered Species Act will not be required. However, the Orange Factory site within the proposed reservoir limits may be eligible for inclusion in the National Register of Historic Places.

The DEIS is expected to be made available to the public in January 1981.

The significant issues to be analyzed in depth in the DEIS will probably be cultural resources, socio-economics, and the extent of the area's needs met by the project.

Questions about the proposed action and DEIS can be answered by Mr. Frank Yelverton, Special Projects Manager, Regulatory Functions Branch, Wilmington District Corps of Engineers, P.O. Box 1890, Wilmington, North Carolina 28402, telephone (919) 343–4640, (FTS) 671–4640.

A. A. Kopcsak, Jr.,

LTC, Corps of Engineers, Deputy District Engineer.

[FR Doc. 80–28071 Filed 9–10–80; 8:45 am]

BILLING CODE 3710–GN–M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Beach Nourishment of Revere Beach in Revere, Mass.

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a draft environmental impact statement.

SUMMARY: 1. Description of the Action: The proposal calls for placing approximately one million cubic yards of sand along 13,000 feet of beach to a general backshore elevation of 18-feet above mean low water and with a width of about 185-feet shoreward of the mean high waterline. The beach would require periodic nourishment; this is anticipated to require about 20,000 cubic yards annually. The Corps would participate in this action for the first 10 years, but after this it would become a local requirement. Beach nourishment would protect the existing shoreside structures, and would create additional areas for recreation.

2. Alternatives to be considered: These include:

a. Beach nourishment with periodic re-nourishment;

b. Beach nourishment along with groins to stabilize portions of the beach and periodic re-nourishment;

c. Beach nourishment with stabilization by beach vegetation and limited access;

d. No action.

3. Environmental Review and Public Involvement: As the study progresses, scoping meetings will be held. The date and location will be announced through Public Notice procedures. Consultation with the State Historic Officer and the U.S. Heritage Conservation and Recreation Service will be initiated in accordance with the National Historic Preservation Act of 1966 and Executive Order 11593. Planning will be coordinated with the U.S. Fish and Wildlife Service on an informal and formal basis, including the procedures required by the Fish and Wildlife Coordination Act of 1958 and the Endangered Species Act Amendments of 1978. In addition close coordination will be maintained with other various Federal, State, and local resource agencies and groups.

4. Significant Issues: Significant issues the EIS will address include:

a. Borrow site locations—both aquatic and upland;

b. Habitat loss from borrow operations—primarily aquatic;

c. Turbidity generated if aquatic borrow operations occur;

d. Change in hydraulic conditions from aquatic borrow operations;

e. High volume truck traffic should an upland borrow site be selected;

f. Reduced beach use during nourishment operations;

g. Any other issue that surfaces through coordination.

5. Availability: The Draft EIS is expected to be available in mid-1981.

ADDRESS: Questions about this proposed action and DEIS can be addressed to: Mr. Bill Coleman, Engineering Division, or Mr. Del Kidd, Impact Analysis Branch, New England Division, U.S. Army Corps of Engineers, 424 Trapelo Road, Waltham, MA 02254, at (617) 894–2400.

Dated: September 3, 1980.

Max B. Scheider,

Colonel, Corps of Engineers Division Engineer.

[FR Doc. 80–27886 Filed 9–10–80; 8:45 am]

BILLING CODE 3710–GT–M

Intent To Prepare a Draft Supplemental Environmental Impact Statement for the Snettisham Hydroelectric Project Near Juneau, Alaska.

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a draft supplemental environmental impact statement.

SUMMARY: 1. The Corps of Engineers filed a final Environmental Impact Statement (EIS) addressing construction of the Long Lake phase of the Snettisham Project with the President's Council on Environmental Quality during 1970. A draft supplement to that EIS will be prepared by the Corps of Engineers to address the construction of a second phase of the project at Crater Lake.

2. The Snettisham Project was designed to generate electricity for the Juneau power market from hydropower from Long Lake and Crater Lake, both located approximately 23 miles east-southeast of Juneau. The project was planned for construction in two stages to meet the demand for electricity by the Juneau power market as it expanded. The first stage would tap the existing capacity of Long Lake and Crater Lake for hydropower. The second stage woud increase the hydropower potential by damming both lake outlets to increase the storage capacity. Construction of the Long Lake phase of the first stage was begun during 1967 and completed in 1974. Since the completion of the Long Lake phase, the market for electrical power in Juneau has continued to expand until demand now requires that the Crater Lake phase of the project be constructed.

3. Crater Lake is a 503-acre, glacier fed lake with a total drainage basin of 11.4 square miles and a capacity of 121,000 acre feet. Its surface is 1,022 feet above sea level, but less than a mile from the estaurine waters of Speel Arm. Crater Lake does not contain a fish population and, because of its turbidity and low productivity, is not considered a good candidate for artificial stocking. Crater Creek, the lakes' outlet, is too steep to support a fish population, but there is a small estuarine area of potential salmon spawning habitat at the mouth of the creek.

4. The Crater Lake phase would require the construction of a 7,800–foot tunnel and penstock from the existing powerhouse to the floor of Crater Lake and an access road approximately 1 mile long from the powerhouse to Crater Lake. The completed Crater Lake phase would add 27,000 kilowatts to the Snettisham project generating capacity. Two alternatives for road access and alternative lake diversion methods will be addressed in the supplemental EIS. No significant impacts to important biota or habitats have been identified for the Crater Lake phase construction.

5. Operation of the Snettisham project after completion will impact fish populations and fish spawning in Long River, Indian Lake, and possibly in Crater Cove. Impacts from the existing Long Lake phase and potential impacts from the Crater Lake phase are being studied. The results of these and other studies were presented to the people of Juneau at a public meeting during the summer of 1980 and will be presented to other concerned parties by mail. Opportunities for agencies and the public to identify environmental and community concerns and to make significant contributions to the scoping of the supplemental EIS will be provided by mail and at a public meeting(s) during 1980. The Corps of Engineers expects to file the final supplemental EIS in April 1981. A second supplemental EIS would be prepared at a future date if the second stage of construction at Snettisham eventually was required to meet Juneau power demands.

6. Interested persons, agencies, and organizations are invited to submit comments or suggestions for consideration in connection with the scoping and preparation of the draft supplemental EIS. The draft supplemental EIS is expected to be available for public review and comment in November 1980.

ADDRESS: Questions regarding the proposed action and the draft supplemental EIS should be addressed to: William D. Lloyd, Chief, Environmental Section, Alaska District, Corps of Engineers, P.O. Box 7002, Anchorage, Alaska 99510.

Dated: September 3, 1980.

Lee R. Nunn,

Colonel, Corps of Engineers District Engineer.

[FR Doc. 80–27899 Filed 9–10–80; 8:45 am]

BILLING CODE 3710-NL-M

Department of the Navy

Privacy Act of 1974; Notice of Amendment of System of Records; Corrections

In FR Doc 80–15427, appearing at page 33679, in the issue for Tuesday, May 20, 1980, the following changes should be made: a. On page 33682, in the first column immediately preceding the bold face heading "SYSTEM MANAGER(S) AND ADDRESS," the following category should be inserted: "RETENTION AND DISPOSAL. Delete the entire entry and substitute with the following: Records are retained for three years after settlement and then retired to the Federal Records Center, St. Louis, MO."

b. On page 33682, in the second column, the second sentence under the bold face heading "SYSTEM MANAGER(S) AND ADDRESS," should be deleted.

c. On page 33682, in the second column, immediately preceding the category "RECORD ACCESS PROCEDURES," the following category should be inserted: "NOTIFICATION PROCEDURES. In the initial inquiry, the requester must provide full name, payroll or military service number and activity where he/she had dealings. A list of other offices the requester may visit will be provided after initial contact at the office above. At the time of a personal visit, requester must provide proof of identity containing the requester's signature."

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

September 8, 1980.

[FR Doc. 80–27978 Filed 9–10–80; 8:45 am]

BILLING CODE 3810-70-M

Office of the Secretary

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electronic Devices (AGED) will meet in closed session on 9–10 October 1980 at Naval Research Laboratory, 4555 Overlook Avenue, S.W., Washington, D.C. 20375.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with 5 U.S.C. App 1, § 10(d) (1976), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C.

§ 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

September 5, 1980.

[FR Doc. 80-27976 Filed 9-10-80; 8:45 am]

BILLING CODE 3810-70-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

The DOD Advisory Group on Electron Devices (AGED) will meet in closed session on October 10, 1980 at the Palisades Institute for Research Services, Inc., 1925 North Lynn Street, Arlington, Virginia 22209.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of Electron Devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with 5 U.S.C. App. 1 § 10(d) (1976), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552b(c)(1)(1976), and that accordingly, this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

September 5, 1980.

[FR Doc. 80-27983 Filed 9-10-80; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF EDUCATION

Advisory Council on Developing Institutions; Meeting

AGENCY: Advisory Council on Developing Institutions.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Developing Institutions. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: September 26, 1980, 9 a.m. to 5 p.m.

ADDRESS: F.O.B. 6, Room 5141, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. Paul H. Carnell, Executive Director, Advisory Council on Developing Institutions, Regional Office Building 3, (202) 245-2455, 7th and D Streets, S.W., Washington, D.C. 20202.

SUPPLEMENTARY INFORMATION: The Advisory Council on Developing Institutions is established under section 303 of the Higher Education Act of 1965, as amended (20 U.S.C. 1051-1056), unless otherwise noted. The Council is established to—

Identify developing institutions through which the purposes of this title may be achieved; and establish the priorities and criteria to be used in making grants under section 304(a).

The meeting of the Council shall be open to the public.

The proposed agenda includes:

1. Title III—"Where Are We Going"—Dr. Richard L. Fairley. Deputy Assistant Secretary, Office of Institutional Support.
2. Title III Legislation.
3. Request for Proposal—"A Study of the Strengthening Developing Institutions Program"
4. The Professor Emeritus Program

Records are kept of all Council proceedings, and are available for public inspection at the Office of the Executive Director of the Advisory Council on Developing Institutions, Room 3068, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C. 20202.

Signed at Washington, D.C. on September 8, 1980.

Paul H. Carnell,

Executive Director,, Advisory Council on Developing Institutions.

[FR Doc. 80-27943 Filed 9-10-80; 8:45 am]

BILLING CODE 4000-01-M

Intergovernmental Advisory Council on Education; Meeting

AGENCY: Intergovernmental Advisory Council on Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the first meeting of the Intergovernmental Advisory Council on Education. This notice also describes the functions of the council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: September 30, 1980.

ADDRESS: George Washington University, Gilman Library, Conference Room 202, 22nd & H Street, N.W., Washington, D.C. 20052.

FOR FURTHER INFORMATION CONTACT: Donna Rhodes, Office of the Deputy Under Secretary for Intergovernmental Affairs, Department of Education, 400 Maryland Ave., S.W., Washington, D.C. 20202 (202) 245-7904.

SUPPLEMENTARY INFORMATION: The Intergovernmental Advisory Council on Education is established under section 213 of the Department of Education Organization Act. The council advises the Secretary of the Department of Education and the President concerning intergovernmental policies relating to education.

The meeting of the Council is open to the public. The proposed agenda includes:

1. Introductory remarks by the Secretary, Under Secretary, and Chairman
2. Background about the Council
3. Identification of intergovernmental problems and policies by Council members
4. Council organization and selection of search committee for Council staff
5. Organization of the Department

Records are kept of all Council proceedings and are available for public inspection at the Office of the Deputy Under Secretary for Intergovernmental Affairs between the hours of 8:30 a.m. and 3:00 p.m. at the Department of Education, 400 Maryland Ave., S.W., Washington, D.C. 20202.

Signed at Washington, D.C. on September 5, 1980.

Michael J. Bakalis,

Deputy Under Secretary for Intergovernmental Affairs.

[FR Doc. 80-28099 Filed 9-10-80; 8:45 am]

BILLING CODE 4000-01-M

National Advisory Council on Vocational Education

Meeting of Executive Committee.

AGENCY: National Advisory Council on Vocational Education.

ACTION: Amendment to notice of meeting of Executive Committee.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the Executive Committee of the National Advisory Council on Vocational Education, and amends the date and location of the meeting as published on September 5, 1980, 45 FR 58935 from September 17, 1980 in Washington, DC to September 26, 1980, in Des Moines, Iowa. This notice also describes the functions of the Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act, and is intended to notify the General public of its opportunity to attend.

DATE: September 26, 1980, 8:30 a.m.

ADDRESS: Howard Johnson's North, 4800 Merle Hay Road, Des Moines, Iowa.

FOR FURTHER INFORMATION CONTACT: Virginia Solt, NACVE Staff, 425—13th Street NW, Suite 412, Washington, DC (Tel: 202/376–8873).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Vocational Education is established under Section 104 of the Vocational Education Amendments of 1968, P.L. 90–576. The Council is established to:

(A) Advise the President, the Congress, and the Secretary concerning the administration of, preparation of general regulations for, and operation of, vocational education programs supported with assistance under this title;

(B) Review the administration and operation of vocational education programs under this title, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changes in the provisions of this title) to the Secretary for transmittal to the Congress; and

(C) Conduct independent evaluations of programs carried out under this title and publish and distribute the results thereof.

The meeting of the Executive Committee is open to the public, and the proposed agenda includes: Review of Work Plan for FY '81–'82, Review Budgeting Process, Review Practices and Policies.

Records are kept of all Committee proceedings, and are available for public inspection at the office of the National Advisory Council on Vocational Education, 425—13th Street NW, Suite 412, Washington, D.C. 20004.

Signed at Washington, D.C., on September 8, 1980.

Raymond C. Parrott,

Executive Director.

[FR Doc. 80–27946 Filed 9–10–80; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

National Petroleum Council, Coordinating Subcommittee of the Committee on Arctic Oil and Gas Resources; Meeting

Notice is hereby given that the Coordinating Subcommittee of the Committee on Arctic Oil and Gas Resources will meet in October 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 Arctic Oil and Gas Resources will analyze the various issues bearing on expeditious resource development of this promising frontier area. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location and agenda of the Coordinating Subcommittee meeting follows:

The meeting will be on Friday, October 3, 1980, to convene immediately following the adjournment of the October 3, 1980, meeting of the Committee on Arctic Oil and Gas Resources (approximately 11:00 a.m.), in the Conference Room of the National Petroleum Council, 1625 K Street, N.W., Washington, D.C.

The tentative agenda for the meeting follows:

1. Review assignments from the NPC Committee on Arctic Oil and Gas Resources.

2. Discuss study assignments for the task groups.

3. Discuss schedule of Subcommittee and task group activities.

4. Discuss any other matters pertinent to the overall assignment from the Secretary.

The meeting is open to the public. The Chairman of the Coordinating Subcommittee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Coordinating Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform R. D. Langenkamp, Deputy Assistant Secretary, Resource Development and Operations, Office of Resource Applications, 202/633–8400, 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, S.W., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on August 29, 1980.

R. D. Langenkamp,

Deputy Assistant Administrator Resource Development and Operations.

[FR Doc. 80–27944 Filed 9–10–80; 8:45 am]

BILLING CODE 6450–01–M

National Petroleum Council, Coordinating Subcommittee of the Committee on Arctic Oil and Gas Resources; Meeting

Notice is hereby given that the Coordinating Subcommittee of the Committee on Arctic Oil and Gas Resources will meet in September 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 Arctic Oil and Gas Resources will analyze the various issues bearing on expeditious resource development of this promising frontier area. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location and agenda of the Coordinating Subcommittee meeting follows:

The meeting will be on Wednesday, September 17, 1980, starting at 10:00 a.m., in Room 1283, Arco Oil and Gas Company's office, Energy Center One, 717 Seventeenth Street, Denver, Colorado.

The tentative agenda for the meeting follows:

1. Review the proposal for the scope, organization, and timetable of the study to be conducted in response to the Secretary of Energy's request for an analysis of issues bearing on Arctic oil and gas resources.

2. Discuss membership of proposed task groups for the study.

3. Discuss any other matters pertinent to the overall assignment from the Secretary.

The meeting is open to the public. The Chairman of the Coordinating

Subcommittee 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 Coordinating Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform R. D. Langenkamp, Deputy Assistant Secretary, Resource Development and Operations, Office of Resource Applications, 202/633–8400, 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, S.W., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on August 29, 1980.

R. D. Langenkamp,

Deputy Assistant Administrator, Resource Development and Operations.

[FR Doc. 80–27945 Filed 9–10–80; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Case No. 50154–6010–01–82, 50154–6010–02–82]

Baltimore Gas & Electric Co.; Intention To Proceed With Prohibition Order Proceedings

The Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of its intention to proceed with the pending prohibition order proceedings relating to two powerplants, Brandon Shores 1 and 2, owned by Baltimore Gas and Electric Company (BG&E) and located in Anne Arundel County, Maryland.

Pursuant to Sections 301 (b) and 701(b) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), 42 U.S.C. 8301 *et seq.*, proposed prohibition orders for Brandon Shores 1 and 2 were issued by ERA on October 9, 1979 and published in the **Federal Register** on October 15, 1979 (44 FR 200).

Description of Prohibition Order Proceedings

In accordance with Section 501.51 of the implementing FUA regulations applicable to existing powerplants (Regulations), 10 CFR Part 501, the proposed prohibition orders commenced an initial public comment period, during which period BG&E was given an opportunity to challenge ERA's initial finding that Brandon Shores 1 and 2 have the technical capability to burn an alternate fuel (coal) as a primary energy source. During this period the utility was required to furnish ERA with evidence bearing upon the other statutory findings which ERA must make prior to the issuance of a final prohibition order. The utility must also identify, during this period, any exemptions for which the powerplants may qualify, but the recipient of a proposed order need not, during this period, submit evidence attempting to demonstrate entitlement to an exemption.

The publication of this notice of intention to proceed commences a second comment period during which BG&E may present evidence to demonstrate that the powerplants would qualify for an exemption, which would constitute a defense to the issuance of a final prohibition order.

Subsequent to the end of the second comment period ERA will, if it intends to issue a final prohibition order, prepare and publish a notice of availability of a tentative staff decision concerning the findings ERA must make prior to issuance of a final prohibition order. Those findings, which are required by Section 301(b) of FUA, are (1) that the powerplant has the technical capability to use coal or another alternate fuel as a primary energy source, or it could have such capability without (A) substantial physical modification of the powerplant or (B) substantial reduction in the rated capacity of the powerplant; and (2) that it is financially feasible for the powerplant to use coal or another alternate fuel as its primary energy source.

The provisions of Section 701(d) of FUA and Section 501.33 of the Regulations afford any interested person an opportunity to request a public hearing on a proposed prohibition order and tentative staff decision. Interested persons wishing a hearing must make their request, in writing, no later than 45 days after publication of the notice of availability of the tentative staff decision. If a hearing is requested, the hearing will be held in accordance with subpart C of 10 CFR Part 501. Interested persons may also submit written comments during this 45 day period.

After the hearing and comment period closes, ERA shall determine whether a final prohibition order will be issued, based upon ERA's review of the entire administrative record. Any final prohibition order, together with a summary of the basis therefor, will be published in the **Federal Register.** Such order shall not take effect earlier than sixty days after publication.

Comments and Written Submissions Received on Proposed Prohibition Orders

During the initial comment period, neither BG&E nor the other interested person submitted any comments expressing approval or disapproval of the proposed conversion of Brandon Shores 1 and 2 or any information contrary to ERA's initial finding that Brandon Shores 1 and 2 have the technical capability to burn an alternate fuel (coal) as a primary energy source.

In accordance with § 501.51 of the Regulations, BG&E also submitted evidence relating to the other findings that ERA is required to make under Section 301(b) of FUA, and identified the temporary public interest exemption in Section 311(e) of FUA as an exemption for which Brandon Shores 1 may qualify

For further information contact:

Wiliam L. Webb, Office of Public Information, Economic Regulatory Administration, Department of Energy, 2000 M Street, NW., Room B–110, Washington, D.C. 20461, (202) 653–4055.

Elmer Lee, Existing Powerplants Branch, Office of Fuels Conversion, Economic Regulatory Administration, Department of Energy, 2000 M Street, NW., Room 3302D, Washington, DC. 20461, (202) 653–4201.

Edward L. Lublin, Office of General Counsel, Department of Energy, Forrestal Building, Room 6G–087, Washington, D.C. 20585, (202) 252–2967.

Issued in Washington, D.C. September 5, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80–28080 Filed 9–10–80; 8:45 am]

BILLING CODE 6450–01–M

El Paso Natural Gas Co.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account

established pursuant to the Consent Order.

DATES: Effective Date: September 3, 1980.

COMMENTS BY: October 14, 1980.

ADDRESS: Send comments to: Wayne I. Tucker, District Manager of Enforcement, Southwest District, Department of Energy, P.O. Box 35228, Dallas, Texas 75235.

FOR FURTHER INFORMATION CONTACT: Wayne I. Tucker, District Manager of Enforcement, Southwest District, Department of Energy, P.O. Box 35228, Dallas, Texas 75235, phone 214/767–7745.

SUPPLEMENTARY INFORMATION: On September 3, 1980, the Office of Enforcement of the ERA executed a Consent Order with El Paso Natural Gas Company of El Paso, Texas. Under 10 CFR 205.199J(b), the Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

El Paso Natural Gas Company, with its office located in El Paso, Texas, is a firm engaged in crude oil production, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211, 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of crude oil sales, the Office of Enforcement, ERA, and El Paso Natural Gas Company, entered into a Consent Order, the significant terms of which are as follows:

1. The period covered by the audit was September 1, 1977 through September 30, 1978, and it included all sales of crude oil which were made during that period.

2. El Paso Natural Gas Company allegedly misapplied the provisions of 6 CFR Part 150, Subpart L, and 10 CFR Part 212, Subpart D, when determining the prices to be charged for crude oil; and as a consequence, charged prices in excess of the maximum lawful sales prices resulting in overcharges to its customers.

3. In order to expedite resolution of the disputes involved, the DOE and El Paso Natural Gas have agreed to a settlement in the amount of $430,100.00. The negotiated settlement was determined to be in the public interest as well as the best interests of the DOE and El Paso Natural Gas Company.

4. Because the sales of crude oil were made to refiners and the ultimate consumers are not readily identifiable, the refund will be made through the DOE in accordance with the Consent Order.

5. The provisions of 10 CFR 205.199J, including the publication of this Notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In this Consent Order, El Paso Natural Gas Company agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I.1. above, the sum of $430,100.00 to be made payable within twelve (12) months from the effective date of this Order. Refunded overcharges will be in the form of a certified check made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order. You should send your comments or written notification of a claim to Wayne I. Tucker, District Manager of Enforcement, Southwest District, Department of Energy, P.O. Box 35228, Dallas, Texas 75235. You may obtain a free copy of this Consent Order by writing to the same address or by calling 214/767–7745.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on El Paso Natural Gas Company Consent Order." We will consider all comments we received by 4:30 p.m., local time, on October 3, 1980. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Dallas, Texas on the 3rd day of September, 1980.

Wayne I. Tucker,

District Manager, Southwest District Enforcement Economic Regulatory Administration.

[FR Doc. 80-28078 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-01-M

Proposed Remedial Order; Traders Oil & Royalty

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 Traders Oil & Royalty (Traders), Post Office Box 188, Seguin, Texas, 78155. This Proposed Remedial Order charges Traders with pricing violations in the amount of $340,849.31 connected with the sale of crude oil during the time period September 1, 1973, through March 31, 1977, in the State of Texas.

A copy of the Proposed Remedial Order with confidential information deleted, may be obtained from Wayne I. Tucker, District Manager of Enforcement, P.O. Box 35228, Dallas, Texas, 75235, phone (214) 767–7745. Within 15 days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearing and Appeals, 2000 M Street NW., Washington, D.C. 20461, in accordance with 10 CFR 205.193 of the DOE Regulations.

Issued in Dallas, Texas, on the 3rd day of September, 1980.

Wayne I. Tucker,

District Manager for Enforcement, Southwest District Economic Regulatory Administration.

[FR Doc. 80-28077 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-01-M

West Ashley Exxon; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order (PRO) which was issued to West Ashley Exxon, Charleston, S.C., on August 11, 1980.

This PRO charges West Ashley Exxon with selling gasoline in excess of the Maximum Lawful Selling Price in violation of 10 CFR 212.93. It was determined that West Ashley Exxon violated the Federal Energy pricing guidelines by selling above the maximum lawful selling price in the amount of 1.3¢ for Premium Leaded.

Pursuant to 10 CFR 205.192, West Ashley Exxon is required by the PRO to reduce its prices at the pump to the maximum lawful selling price for this grade to be in compliance with the Federal Energy pricing regulations.

A copy of the PRO, with confidential information deleted, may be obtained from James C. Easterday, District Manager of Enforcement, Southeast District, Office of Enforcement, 1655 Peachtree Street, N.E., Atlanta, Georgia 30367, Telephone number (404) 881-2396. Within 15 days of publication of this Notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, N.W., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Atlanta, Georgia, on the 29th day of August 1980.

James C. Easterday,

District Manager.

Concurrence:

Leonard F. Bittner,

Chief Enforcement Counsel.

[FR Doc. 80-28076 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Volume 262]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: August 25, 1980.

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" after the section code. Estimated annual production (PROD) is in million cubic feet MMcf).

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before September 26, 1980.

Please reference the FERC Control Number (JD NO) in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

BILLING CODE 6450-85-M

JD NO	JA TKT	API NO.	SEC T WELL NAME	FIELD NAME	PRICE	PURCHASER
NORTH DAKOTA GEOLOGICAL SURVEY						
*ENERGETICS INC			RECEIVED: 07/24/80 JA: ND			
8048939	245	3305300658 103	INGA GILBERTSON 44-12	UNION CENTER	14,1	MONTAN*DAKOTA UTILIT
*GULF OIL CORPORATION			RECEIVED: 07/24/80 JA: ND			
8048942	252	3300700367 102	IAN HOUGHTON 1-1-2A	LITTLE KNIFE	3,0	MONTANA*DAKOTA UTILI
8048940	253	3302500139 102	LEONARD KOSTELNAK 3-29-2D	LITTLE KNIFE	20,0	MONTANA*DAKOTA UTILI
8048941	251	3300700337 102	TEDROW 4-11-3A	LITTLE KNIFE	7,0	MONTANA*DAKOTA UTILI
OKLAHOMA CORPORATION COMMISSION						
*AL MCCORD INC			RECEIVED: 07/23/80 JA: OK			
8048799	03551	3507321987 103	ENGLEKING 1	EAST LOYAL	165,0	CITIES SERVICE GAS C
*AMERICAN PUBLIC ENERGY CO			RECEIVED: 07/23/80 JA: OK			
8048804	03760	3513921118 103	ROLLINS #1	WEST DUMBEY	50,0	WESTERN GAS INTERSTA
*AMOCO PRODUCTION CO			RECEIVED: 07/23/80 JA: OK			
8048831	01155	3509321523 103	BUTTEL UNIT C #2	NE CEDARDALE	365,0	MICHIGAN WISCONSIN P
8048828	04644	3504552017 108	K L MITCHELL #1	CATESBY NE	15,8	MICHIGAN WISCONSIN P
8048899	04089	3504520714 103	MASSEY UNIT #1	NORTH CHANEY	300,0	MICHIGAN WISCONSIN P
8048781	01307	3500721547 103	MOREAU GAS UNIT #3	MOCANE*LAVERNE GAS AREA	48,0	PANHANDLE EASTERN PI
8048874	04510	3505920132 108	STAATS UNIT #2	MOCANE*LAVERNE	13,5	MICHIGAN WISCONSIN P
*AN*SON CORPORATION			RECEIVED: 07/23/80 JA: OK			
8048926	04661	3501520825 102	RUTH #1-23	S EAKLY	183,0	DELHI GAS PIPELINE
*ANDOVER OIL COMPANY			RECEIVED: 07/23/80 JA: OK			
8048918	04631	3501721177 102	WALTER G CLOUSE #5-1	WILDCAT	180,0	DELHI GAS PIPELINE C
*ARCO OIL AND GAS COMPANY			RECEIVED: 07/23/80 JA: OK			
8048933	03711	3505920799 103	CANFIELD GAS UNIT #4	NORTHWEST LOVEDALE	73,0	CITIES SERVICE GAS C
8048868	01138	3509321284 103	HELEN BLOOMER WELL NO 2	N E CEDARDALE	182,5	MICHIGAN WISCONSIN P
8048928	03114	3504900000 108	I L MCDANIEL #4	GOLDEN TREND	0,5	WARREN PETROLEUM CO
8048882	03223	3509321516 103	KERNER UNIT WELL NO 3	N E CEDARDALE	73,0	MICHIGAN WISCONSIN P
8048930	03710	3505920809 103	MCCLUNG UNIT #3-X	LAVERNE	182,5	MICHIGAN WISCONSIN P
8048858	03600	3515120516 108	MERLIN CAMP UNIT #2-10 NC/CH/	NE WAYNOKA	16,1	PANHANDLE EASTERN PI
8048869	01156	3509321495 103	PARKER E BLOOMER WELL NO 2	N/E CEDARDALE	182,5	MICHIGAN WISCONSIN P
8048859	03668	3505920732 103	R R BAKER #2	LAVERNE	183,0	MICHIGAN WISCONSIN P
8048805	01091	3504320811 103	VANDERWORK WELL NO 3	PUTNAM	45,6	MICHIGAN WISCONSIN P
*BLAIK OIL COMPANY			RECEIVED: 07/23/80 JA: OK			
8048891	04564	3504721977 103	WOOD #2	SOONER TREND	63,0	CHAMPLIN PETROLEUM C
*BRIDGER PETROLEUM CORPORATION			RECEIVED: 07/23/80 JA: OK			
*8048802	01291	3500721427 103	BENNETT #1	MOCANE*LAVERNE	122,0	NORTHERN NATURAL GAS
*CABOT CORPORATION			RECEIVED: 07/23/80 JA: OK			
8048863	04673	3500721676 103	BARBY RANCH 2-56	LAVERNE MORROW	225,0	NORTHERN NATURAL GAS
8048862	04669	3513921211 103	CALVERT #6	UNALLOCATED GAS WELL	128,0	KOKOMO GAS & FUEL CO
*CHAMPLIN PETROLEUM COMPANY			RECEIVED: 07/23/80 JA: OK			

JD NO	JA OKT	API NO	SEC	WELL NAME	FIELD NAME	PROD	PURCHASER
8048886	04569	3500300000	108	CLAUDE C CLARK #1	E CHANEY DELL	5,0	CHAMPLIN PETROLEUM C
8048885	04568	3509300000	108	E E ROBERTSON NO 1-27	E CHANEY DELL	7,0	CHAMPLIN PETROLEUM C
8048883	04566	3509300000	108	E F SEMRAY #1	E CHANEY DELL	7,0	CHAMPLIN PETROLEUM C
8048845	04554	3507300000	108	FANNIE MCCANDELESS NO 1	DOVER-HENNESSEY	6,0	EXXON CORP
8048837	04572	3500300000	108	FORSYTHE - VORBEES #1	E CHANEY DELL	4,0	UNION TEXAS PETROLEU
8048840	04576	3509300000	108	HARRY C EBERHART NO 1	CHANEY DELL	7,0	CHAMPLIN PETROLEUM C
8048846	04555	3507300000	108	INEY JONES A NO 1	DOVER-HENNESSEY	6,0	EXXON CORP
8048844	04553	3507300000	108	INEY JONES NO 1	DEVER-HENNESSEY	5,0	EXXON CORP
8048842	04577	3509300000	108	J L SCHULTY NO 1	E CHANEY DELL	7,0	CHAMPLIN PETROLEUM C
8048850	04563	3509300000	108	JACOB J JANTZEN NO 1	E CHANEY DELL	11,0	CHAMPLIN PETROLEUM C
8048898	04571	3509300000	108	JANTYEN-VNRUK NO 1	E CHANEY DELL	8,0	CHAMPLIN PETROLEUM C
8048839	04575	3500300000	108	MARJORIE M MC GILL A #1	E CHANEY DELL	5,0	CHAMPLIN PETROLEUM C
8048849	04562	3509300000	108	MATA KEELN NO 1	E CHANEY DELL	3,6	UNION TEXAS PETROLEU
8048843	04578	3505300000	108	PAUL SCHULKE UNIT NO 1	EUREKA	7,0	SUNISY DX OIL CO
8048851	04558	3507300000	108	R V STURGEON UNIT NO 1	SOONER TREND	10,0	PHILLIPS PETROLEUM C
8048852	04559	3507300000	108	ROY RATHMINE NO 1	SOONERS TREND	15,0	PHILLIPS PETROLEUM C
8048838	04574	3500300000	108	SUSIE K LEIERER A-1	E CHANEY DELL	5,0	CHAMPLIN PETROLEUM
8048853	04560	3507300000	108	T C BLUDGETT UNIT NO 1	SOONER TREND	10,0	PHILLIPS PETROLEUM C
8048887	04547	3508700000	108	TED R LAMAR #1	WASHINGTON AREA	16,0	SUN RAY DX
8048884	04567	3509300000	108	V C MARSH NO 1	E CHANEY DELL	4,0	CHAMPLIN PETROLEUM
8048847	04557	3507300000	108	VERNAN I SWART NO 1	SOONER TREND	15,0	PHILLIPS PETROLEUM C
-CHARLES B WILSON JR LTD				RECEIVED: 07/23/80 JA: OK			
8048896	03835	3502500000	108	D ROSA B NEFF #1-1	KEYES	18,0	COLORADO INTERSTATE
-CHASE EXPLORATION CORP				RECEIVED: 07/23/80 JA: OK			
*8048888	04542	3507121173	103	WOOD #1-31	UNNAMED	15,0	CITIES SERVICE GAS C
*8048835	04544	3507121639	103	WOOD #2-31	UNNAMED	20,1	CITIES SERVICE GAS C
*8048836	04545	3507121488	103	WRIGHT #1-31	UNNAMED	11,5	CITIES SERVICE GAS C
*8048834	04543	3507100000	108	WRIGHT #2-31	UNNAMED	14,2	CITIES SERVICE GAS C
-CIMARRON PETROLEUM CORPORATION				RECEIVED: 07/23/80 JA: OK			
8048904	04706	3500721646	103	WILSON CPC #120	IVANHOE	219,0	NORTHERN NATURAL GAS
-CONOCO INC				RECEIVED: 07/23/80 JA: OK			
8048897	01209	3500300000	108	P J SYMNS NO 1	N E CHEROKEE	5,2	OKLAHOMA NATURAL GAS
-COTTON PETROLEUM CORPORATION				RECEIVED: 07/23/80 JA: OK			
8048815	04620	3501120952	103	LOLA NO 1	ELM GROVE	365,0	TRANSOK PIPE LINE CO
8048818	04512	3501520803	103	PATTERSON NO 1	BINGER	700,0	TRANSOK PIPE LINE CO
8048784	04621	3501120970	103	SEIGMAN NO 1	FLATHEAD	365,0	TRANSOK PIPE LINE CO
-CROUCH PETROLEUM COMPANY				RECEIVED: 07/23/80 JA: OK			
8048894	01495	3505500000	103	D FROST #1	SOUTH BLOOMINGTON	8,8	EL PASO NATURAL GAS
-DAMSON OIL CORPORATION				RECEIVED: 07/23/80 JA: OK			
8048931	02880	3505520065	108	GRIFFIS #1	SOUTH BLOOMINGTON	6,0	ARKANSAS LOUISIANA G
8048912	07562	3505520179	108	GRIFFIS #2	SOUTH BLOOMINGTON	6,0	ARKANSAS LOUISIANA G
8048936	02893	3505500000	108	HEFFEL 1-A	SOUTH BLOOMINGTON	1,0	EL PASO NATURAL GAS
-DAVIS OIL COMPANY				RECEIVED: 07/23/80 JA: OK			
8048784	04625	3503920297	103	CRALL #1	SOUTH THOMAS	450,0	PUBLIC SERVICE CO OF
-EAGLE PETROLEUM CORP				RECEIVED: 07/23/80 JA: OK			
8048861	04196	3504721648	103	TEFFT #1	NORTH ENID	54,8	UNION OF TEXAS OIL C
-EL PASO NATURAL GAS COMPANY				RECEIVED: 07/23/80 JA: OK			
8048867	07681	3514920055	107	EASLEY #1A	ELK CITY SPRINGER	140,0	EL PASO NATURAL GAS
-EXXON CORPORATION				RECEIVED: 07/23/80 JA: OK			
8048893	04611	3500700000	108	BALDWIN UNIT #1	COMO	20,0	NORTHERN NATURAL GAS
-F M BUXTON				RECEIVED: 07/23/80 JA: OK			
8048811	04537	3508300000	103	RECTOR NO 1	SOONER TREND	110,0	CONOCO INC

JD NO	JA DAT	API NO	SEC	D	WELL NAME
*GASANADARKO LTD					RECEIVED: 07/23/80 JA: OK
8048816	01172	3515300000	108		BOOTH 1-28 153-50126
*GULF OIL CORPORATION					RECEIVED: 07/23/80 JA: OK
8048795	04610	3513722012	103		C QUINN #11-26
8048821	04535	3501721209	103		JOHN F KASTL NO 2-14
8048810	04536	3501721208	103		KASTL JOHN F #1-14
8048796	04606	3509321566	103		PHILLIPS M L #1-17
8048822	04602	3501721210	103		T A DOBRY NO 1-23
8048798	04603	3501721163	103		YECK FRED B 1-23
*H & L OPERATING COMPANY					RECEIVED: 07/23/80 JA: OK
8048914	03573	3513921055	103		PHILLIPS #1 139-56893
*HADSON PETROLEUM CORP					RECEIVED: 07/23/80 JA: OK
8048865	04546	3505120771	103		WINHAM #1-23
*HAMILTON BROTHERS OIL CO					RECEIVED: 07/23/80 JA: OK
8048879	04671	3513921215	103		JEFFUS NO 1-5
*HARPER OIL COMPANY					RECEIVED: 07/23/80 JA: OK
8048788	04622	3501120975	103		HELEN WALKER #1
8048783	04529	3508321202	103		KINDSCHI #1
8048786	04624	3501120862	103		REGINA #1
*8048785	04626	3507322238	103		SYDENA #1
8048794	01148	3504721563	103	D	TOM HAYES #3
8048787	04623	3501120798	103		WEYGANDT #1
*HB OIL & GAS INC					RECEIVED: 07/23/80 JA: OK
8048872	04020	3511920779	103		SANTA FE #1
*HOOVER & BRACKEN ENERGIES					RECEIVED: 07/23/80 JA: OK
8048797	04605	3501121004	103		ACRE 1-20
*JACK BOWLES					RECEIVED: 07/23/80 JA: OK
8048813	04616	3504721679	103		JOHNSON NO 1
*JET OIL COMPANY					RECEIVED: 07/23/80 JA: OK
*8048791	01895	3509321239	103		LIEBRAND #1
8048934	01374	3508120325	108		MARATHON #1
*JICO INC STE 102G					RECEIVED: 07/23/80 JA: OK
8048800	00988	3502520339	103		HARRYMAN #1
*JONES & PELLUM OIL CO					RECEIVED: 07/23/80 JA: OK
8048907	04101	3501921900	103		STRINGER #32-1
*K P EXPLORATION INC					RECEIVED: 07/23/80 JA: OK
8048915	00998	3513921114	102		DAVIS NO 2-22
*KEITH F WALKER					RECEIVED: 07/23/80 JA: OK
8048808	03980	3501900000	103		COLEMAN
*KERR-MCGEE CORPORATION					RECEIVED: 07/23/80 JA: OK
8048803	04612	3512120665	103		BASDEN WELL NO 1
*KETAL OIL PRODUCING CO					RECEIVED: 07/23/80 JA: OK
8048870	03575	3511920995	103		DOTTER #3
*LADD PETROLEUM CORPORATION					RECEIVED: 07/23/80 JA: OK
8048855	00583	3509300000	108		LAW #2 (MISS)
*LUBELL OIL CO					RECEIVED: 07/23/80 JA: OK
8048871	03959	3512120670	103		LUBELL NO 1-13 COX
*MACKELLAR INC					RECEIVED: 07/23/80 JA: OK
8048856	04615	3510320882	103		MARVIN #1
*MICHIGAN WISCONSIN PIPE LINE CO					RECEIVED: 07/23/80 JA: OK
8048877	04531	3509321645	103		KLUCKNER #1
*MONSANTO COMPANY					RECEIVED: 07/23/80 JA: OK

FIELD NAME	PROD	PURCHASER
S E ALABASTER	6,4	CITIES SERVICE GAS C
VELMA	400,0	
YUKON W-HUNTON UPPER-HUN	200,0	PHILLIPS PETROLEUM C
YUKON W-MISSISSIPPI-HUNT	223,0	PHILLIPS PETROLEUM C
CHEYENNE VALLEY (MISS &	286,0	PUBLIC SERVICE CO OF
YUKON WEST/MISSISSIPPI U	336,0	PHILLIPS PETROLEUM C
NORTH YUKON	43,0	PHILLIPS PETROLEUM C
GUYMON-HUGOTON	30,0	KANSAS-NEBRASKA NATU
PLEASANTVIEW	125,0	MOBIL OIL CORP
WILDCAT	360,0	NORTHERN NATURAL GAS
SQUAW CREEK	36,0	TRANSOK PIPE LINE CO
S LUCIEN	55,0	EASON OIL CO
SQUAW CREEK	20,0	TRANSOK PIPE LINE CO
SOONER TREND	18,0	CITIES SERVICE GAS C
SOONER TREND	33,0	ARKANSAS LOUISIANA G
E FAY	37,0	TRANSOK PIPE LINE CO
MARCH	123,0	SUN GAS CO
SW CANTON	365,0	
E KREMLIN	72,0	
RINGWOOD	10,0	UNION TEXAS PETROLEU
N WELLSTON	15,0	OKLAHOMA GAS & ELECT
KEYES	259,0	PANHANDLE EASTERN PI
	40,0	AMINOIL USA INC
S E DAGUE	360,0	NATURAL GAS PIPELINE
OIL CITY	73,0	MOBIL OIL CORP
RUSSELLVILLE	0,0	SOUTHEAST TRANSMISSI
LOST CREEK	7,0	SUN GAS CO
RINGWOOD	10,0	OKLAHOMA NATURAL GAS
ULAN	30,0	
NORTH LUCIEN	36,0	ARCO OIL & GAS
SOUTH CEDAR SPRINGS	150,0	PANHANDLE EASTERN PI

JD NO	JA DKT	API NO	SEC	D WELL NAME			
8048878	04651	3515520276	108	FERGUSON NO 1			
•N W GLADE				RECEIVED: 07/23/80	JA:	OK	
8048909	04397	3511900000	103	EATON #1			
•NORTHWEST OIL CO				RECEIVED: 07/23/80	JA:	OK	
8048801	04614	3502720330	103	BERRY NO 1			
•NOVA ENERGY CORPORATION				RECEIVED: 07/23/80	JA:	OK	
8048917	04659	3505120664	102	MCGAUGHEY NO 1-14			
•PARKFORD PETROLEUM INC				RECEIVED: 07/23/80	JA:	OK	
8048832	01415	3511920851	102	LOZIER NO 1			
8048833	01416	3511900000	102	LOZIER NO 2			
•PELICAN PRODUCTION CORP				RECEIVED: 07/23/80	JA:	OK	
8048807	03705	3508300000	102	MULLINS #1			
•PHILLIPS PETROLEUM COMPANY				RECEIVED: 07/23/80	JA:	OK	
8048875	04514	3513900000	108	BACKHOUSE NO 1			
8048827	04634	3513900000	108	CRESSWELL NO 1			
8048790	01088	3508350056	108	HASKELL - A #1			
8048782	04628	3500700000	108	LOESCH A NO 3			
8048876	04515	3500700000	108	MERCER A NO 1			
•PHOENIX RESOURCES COMPANY				RECEIVED: 07/23/80	JA:	OK	
8048817	01923	3504520175	108	FEERER #1-32			
8048920	01267	3500735585	108	D NOE NO 1			
•POTTS-STEPHENSON EXPLORATION CO				RECEIVED: 07/23/80	JA:	OK	
8048860	03735	3507920327	103	WHITE NO 1-36			
•R & N ASSOCIATES - G M NEUBERT AGT				RECEIVED: 07/23/80	JA:	OK	
8048913	07682	3508300000	108	HARMAN NO 1			
•READING & BATES PETROLEUM CO				RECEIVED: 07/23/80	JA:	OK	
8048825	04632	3507300000	108	HLADIK NO 1			
8048826	04633	3507300000	108	JOE MALY JR NO 1			
•REPUBLIC GAS GATHERING SYSTEMS INC				RECEIVED: 07/23/80	JA:	OK	
8048819	04347	3500721731	103	HENNIGH #1			
•RESERVE OIL INC				RECEIVED: 07/23/80	JA:	OK	
8048806	01544	3507920251	102	TOLBERT #21-1T			
•RICK BUCK				RECEIVED: 07/23/80	JA:	OK	
8048890	04551	3501721015	103	AKINS NO 1-3			
8048892	04548	3501721336	103	CURTSINGER NO 1-3			
8048906	04550	3501721150	103	KOUBA NO 1-30			
•SABINE CORP				RECEIVED: 07/23/80	JA:	OK	
8048929	03805	3504500000	108	LATTA UNIT #1-10			
8048916	01102	3504500000	108	MCCARTOR NO 1-11			
8048919	01526	3501700000	102	PETREE NO 1-18			
8048848	01069	3501720919	102	PETREE NO 1-9			
•SCARTH OIL & GAS CO				RECEIVED: 07/23/80	JA:	OK	
8048792	04635	3500721538	103	DONDELINGER NO 1			
•SEARCH DRILLING CO				RECEIVED: 07/23/80	JA:	OK	
8048793	04635	3500721720	103	BARBY #1-36			
8048814	04619	3500721634	103	BEARD #1			
•SERVICE DRILLING CO				RECEIVED: 07/23/80	JA:	OK	
8048905	04398	3515120917	103	ANTHIS #1			
•SOUTHLAND ROYALTY CO				RECEIVED: 07/23/80	JA:	OK	
8048937	03970	3513921197	103	BECKER #1-9			
8048881	02234	3515120845	103	MOONEYHAM 1-5			
•SOVEREIGN EXPLORATION CO				RECEIVED: 07/23/80	JA:	OK	

FIELD NAME	PROD	PURCHASER
NORTH WOODWARD	21,0	TRANSWESTERN PIPELIN
INGALLS	0,0	COLORADO GAS COMPRES
NORTHWEST NORMAN	70,0	SUN GAS CO
	90,0	TRANSOK PIPE LINE CO
BUTCHER FIELD	5,0	COLORADO GAS COMPRES
NW AGRA FIELD	55,0	COLORADO GAS COMPRES
WILDCAT	30,0	CITIES SERVICE GAS C
GUYMON HUGOTON	18,0	PANHANDLE EASTERN PI
GUYMON HUGOTON	20,0	PANHANDLE EASTERN PI
N CASHION	11,5	CHAMPLIN PETROLEUM C
COMO - SE - TONKAWA	5,9	EL PASO NATURAL GAS
S E COMO	1,0	EL PASO NATURAL GAS
FARGO	2,0	NORTHERN NATURAL GAS
DOWER	21,0	NORTHERN NATURAL GAS
KINTA	0,0	
CASHION	16,8	SWAB CORPORATION
WEST MENNESSEY	7,5	EXXON CO USA
WEST BISON	2,2	EXXON CO USA
MOCANE-LAVERNE	400,0	EL PASO NATURAL GAS
KINTA	365,0	ARKANSAS LOUISIANA G
N YUKON	50,0	PHILLIPS PETROLEUM C
N YUKON	75,0	PHILLIPS PETROLEUM C
S YUKON	120,0	PHILLIPS PETROLEUM C
N E GAGE	15,1	NORTHERN NATURAL GAS
S E ARNETT	19,7	NORTHERN NATURAL GAS
S W EL RENO	10,9	MICHIGAN WISCONSIN P
SW EL RENO	270,8	MICHIGAN WISCONSIN P
MOCANE-LAVERN FIELD	204,0	PANHANDLE EASTERN PI
S W GATE	94,0	NORTHERN NATURAL GAS
MOCANE-LAVERNE	250,0	PANHANDLE EASTERN PI
	3,6	DIAMOND S GAS SYSTEM
CAPLE	150,0	NORTHERN NATURAL GAS
AVARD SW	225,0	PANHANDLE EASTERN PI

JD NO	JA DAT	API NO	SEC	D WELL NAME	FIELD NAME	PROD	PURCHASER
8048880	00150	3500721498	103	SOVEREIGN NO 1 JETT	IVANHOE	150,0	NORTHERN NATURAL GAS
*SUN OIL COMPANY (DELAWARE)				RECEIVED: 07/23/80 JA: OK			
8048873	04501	3501120925	103	CRUMP UNIT NO 1	N GEARY	365,0	OKLAHOMA GAS & ELECT
*TEEL PRODUCTION COMPANY				RECEIVED: 07/23/80 JA: OK			
8048932	01543	3512100000	108	D F C SMITH #3	WIRTH	0,0	PUBLIC SERVICE CO
*TENNECO OIL COMPANY				RECEIVED: 07/23/80 JA: OK			
8048935	02634	3502960048	108	MAYER SISTERS #1	CENTRAHOMA	225,7	ARKANSAS LOUISIANA G
*TEXACO INC				RECEIVED: 07/23/80 JA: OK			
8048780	01167	3515120804	103	E P BUELL NO 2	WAYNOKA NE	382,0	CITIES SERVICE GAS C
8048910	02749	3507350197	108	LINCOLN NORTH UNIT TR 115 WELL NO 1	SOONER TREND	5,0	EXXON COMPANY USA
8048854	02758	3507320029	108	LINCOLN NORTH UNIT TR 14 WELL NO 2	SOONER TREND	11,0	EXXON COMPANY USA
8048903	02770	3507320292	108	LINCOLN NORTH UNIT TR 25 WELL NO 1	SOONER TREND	7,0	EXXON COMPANY USA
8048902	02771	3507320187	108	LINCOLN NORTH UNIT TR 28 WELL NO 1	SOONER TREND	7,0	EXXON COMPANY USA
8048901	02766	3507350307	108	LINCOLN NORTH UNIT TR 58 WELL NO 1	SOONER TREND	7,0	EXXON COMPANY USA
8048911	02750	3507350173	108	LINCOLN NORTH UNIT TR 76 WELL NO 1	SOONER TREND	8,0	EXXON COMPANY USA
*TEXAS OIL & GAS CORP				RECEIVED: 07/23/80 JA: OK			
8048889	04516	3507720190	103	GALLAGHER #1		150,7	
8048895	01956	3515120475	108	GOVERNMENT #19-1	N E WAYNOKA	8,0	DELMI GAS PIPELINE C
8048809	04532	3504721894	103	INGHAM A #1	N W HUNTER	312,0	
8048900	01832	3509320848	108	SMITH B #1	S W FAIRVIEW	8,2	DELMI GAS PIPELINE C
8048866	04583	3512120660	103	TURNEY A #1		124,5	DELMI GAS PIPELINE C
*TRIGG DRILLING COMPANY INC				RECEIVED: 07/23/80 JA: OK			
8048927	03606	3512900000	102	DAVIS NO 1-30		365,0	MICHIGAN WISCONSIN P
8048841	06829	3514920066	107	J C WALTER #1-19	ELK CITY	3,6	MICH WISC PIPELINE C
*UNION OIL COMPANY OF CALIF				RECEIVED: 07/23/80 JA: OK			
8048829	02303	3503721985	103	R P RICHARDS #27	CUSHING	3,0	ATLANTIC RICHFIELD C
8048830	02302	3503721986	103	R P RICHARDS #28	CUSHING	1,0	ARCO OIL & GAS CO
*US MINERAL & ROYALTY CORP				RECEIVED: 07/23/80 JA: OK			
8048923	02358	3512720008	102	BRAME #1-13	SOUTHWEST MOYERS	18,0	U S GAS GATHERING CO
8048924	02362	3512720010	102	MACKEY #1-22	SOUTHWEST MOYERS	1,8	US GAS GATHERING CO
8048925	02359	3512720009	102	STEPHENSON #1-10	SOUTHWEST MOYERS	18,0	US GAS GATHERING CO
8048922	02294	3500520050	102	WYRICK #1-26	DAISY	0,0	
*VULCAN ENERGY CORP				RECEIVED: 07/23/80 JA: OK			
8048857	03537	3507322169	103	SHAFENBERG #1	SOONER TREND	100,0	PHILLIPS PETROLEUM
*WAGNER & BROWN				RECEIVED: 07/23/80 JA: OK			
8048820	04528	3512920369	103	STATE OF OKLAHOMA #1	REYDON	128,0	EL PASO NATURAL GAS
*WALLACE OIL & GAS INC				RECEIVED: 07/23/80 JA: OK			
8048908	04653	3502520596	103	WALLACE OIL & GAS INC #1 WELLS	S E GRIGGS	0,0	TRANSWESTERN PIPELIN
*WALTER A KELLY JR				RECEIVED: 07/23/80 JA: OK			
8048864	04235	3511900000	103	AMERADA #1A	NORTH MARCH	0,0	COLORADO GAS COMPRES
*WARREN DRILLING CO INC				RECEIVED: 07/23/80 JA: OK			
8048812	04538	3509300000	103	OLSON #1	RINGWOOD	0,0	PHILLIPS PETROLEUM C
*WILLIAM MOSS PROPERTIES INC				RECEIVED: 07/23/80 JA: OK			
8048823	04608	3500302066	103	STATE 16 WELL NO 1	SOONER TREND	73,0	PANHANDLE EASTERN PI
8048824	04609	3500320680	103	STATE 16 WELL NO 2	SOONER TREND	73,0	PANHANDLE EASTERN PI
*WORLD EXPLORATION CORP				RECEIVED: 07/23/80 JA: OK			
8048921	02094	3511100000	108	D BENNETT #1	N BEGGS	0,0	
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PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES							
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*BAKER GAS INC				RECEIVED: 07/24/80 JA: PA			
8049177	5184	3700500000	108	J A KLINGENSMITH #3	MATEER	6,4	APOLLO GAS CO

JD NO	JA DKT	API NO	SEC D	WELL NAME	FIELD NAME	PROD	PURCHASER
8049178	5185	3700520546	108	J A KLINGENSMITH #4	MATEER	6,5	APOLLO GAS CO
8049170	5186	3700520681	108	J A KLINGENSMITH #5	MATEER	5,3	APOLLO GAS CO
*BOYD & SHRIVER				RECEIVED: 07/24/80 JA: PA			
8049174	5178	3706500000	108	169-REESMAN	PORTER	15,2	T W PHILLIPS GAS AND
8049155	2136	3706321726	108	408-HAMILTON	E MAHONING	11,0	CONSOLIDATED GAS SUP
8049154	2128	3706321735	108	409-WALRATH	E MAHONING	19,7	CONSOLIDATED GAS SUP
8049152	2027	3706321848	108	411-STIVER	GRANT	7,9	CONSOLIDATED GAS SUP
8049151	2026	3706321869	108	412-CARPENTER	E MAHONING	17,6	CONSOLIDATED GAS SUP
8049153	2095	3706321859	108	413-OBERLIN	E MAHONING	16,3	CONSOLIDATED GAS SUP
8049147	2014	3706321868	108	414-BAUN	E MAHONING	17,2	CONSOLIDATED GAS SUP
8049150	2022	3706322049	108	418-HAMILTON	E MAHONING	12,8	CONSOLIDATED GAS SUP
8049149	2018	3706322239	108	422-BRUTHERS	E MAHONING	8,2	CONSOLIDATED GAS SUP
8049148	2016	3706322402	108	424-JULUCK	GRANT	5,3	CONSOLIDATED GAS SUP
8049165	5170	3706323928	103	469-BRUWN	GRANT	36,3	CONSOLIDATED GAS SUP
8049175	5179	3706324390	103	475-MCISAAC	N MAHONING	73,3	T W PHILLIPS GAS & O
8049168	5173	3706324159	103	488-LOWMAN HEIRS	GRANT	46,9	T W PHILLIPS GAS & O
8049176	5181	3706324148	103	489-LOWMAN HEIRS	GRANT	46,9	T W PHILLIPS GAS & O
8049171	5175	3706324365	103	492-DUTY	ROCHESTER MILLS	59,9	CONSOLIDATED GAS SUP
8049169	5174	3706324373	103	493-DUTY	GRANT	59,9	CONSOLIDATED GAS SUP
8049166	5171	3706324571	108	502 - B HAMILTON	N MAHONING TOWNSHIP	54,0	CONSOLIDATED GAS SUP
8049163	5168	3706324581	103	503 - R NEVLING	E MAHONING TOWNSHIP	14,0	PEOPLES NATURAL GAS
8049173	5177	3706324584	103	504-LEASURE	E MAHONING	57,2	T W PHILLIPS GAS AND
8049172	5176	3706521819	103	505-HETRICK	BEAVER	389,0	T W PHILLIPS GAS & O
8049162	5167	3700522309	103	506-WEAVER	REDBANK	70,7	PEOPLES NATURAL GAS
8049164	5169	3706521879	103	510-GEARHART	PORTER	14,2	PEOPLES NATURAL GAS
8049167	5172	3706324909	103	514-GERALD MOORE	GRANT	30,3	T W PHILLIPS GAS & O
*CASTLE GAS CO INC				RECEIVED: 07/24/80 JA: PA			
8048944	728	3706323513	108	A C EDWARDS #1 C-310 IND-23313	EAST MAHONING TWP	16,0	PEOPLES NATURAL GAS
8048950	741	3700521496	108	A E BOARTS #1 (C-65) ARM21496	COWANSHANNOCK	5,0	PEOPLES NATURAL GAS
8048951	742	3700521497	108	A F BOARTS #2 (C-66) ARM-21497	COWANSHANNOCK	5,0	PEOPLES NATURAL GAS
8049014	830	3706322339	108	A F LAVEEN #1 (C-154) IND-22339	YOUNG TWP	7,0	COLUMBIA GAS TRANSMI
8049015	831	3706322340	108	A F LAVEEN #2 (C-155) IND-22340	YOUNG TWP	7,0	COLUMBIA GAS TRANSMI
8048955	746	3700521505	108	A GOTTSCHALK #2 C-69 ARM-21505	COWANSHANNOCK TWP	5,0	PEOPLES NATURAL GAS
8049120	998	3712922677	108	A J RUFFNER #2 (C-185) WES-22677	DERRY TOWNSHIP	14,0	PEOPLES NATURAL GAS
8049090	951	3706321902	108	A M POTTS #1 (C-31) IND-21902	WASHINGTON TWP	11,0	PEOPLES NATURAL GAS
8048946	732	3706322681	108	A SIMPSON #2 (C-232) IND-22681	EAST MAHONING TOWNSHIP	16,0	PEOPLES NATURAL GAS
8048947	733	3706322072	108	A SIMPSON #3 (C-233) IND-22072	EAST MAHONING TOWNSHIP	16,0	PEOPLES NATURAL GAS
8049119	997	3712922676	108	A T RUFFNER #1 (C-184) WES-22676	DERRY TOWNSHIP	14,0	PEOPLES NATURAL GAS
8048964	755	3700521468	108	A YARRUS #1 (C-39) ARM-21468	COWANSHANNOCK TOWNSHIP	5,0	PEOPLES NATURAL GAS
8048965	756	3700521469	108	A YARRUS #2 (C-40) ARM-21469	COWANSHANNOCK TOWNSHIP	5,0	PEOPLES NATURAL GAS
8049077	904	3706322829	108	B CUNNINGHAM #1 (C-256) IND-22829	YOUNG TWP	16,0	PEOPLES NATURAL GAS
8049078	905	3706322828	108	B CUNNINGHAM #2 C-257 IND-22828	YOUNG TWP	16,0	PEOPLES NATURAL GAS
8049079	906	3706322827	108	B CUNNINGHAM #3 C-258 IND-22827	YOUNG TWP	16,0	PEOPLES NATURAL GAS
8049124	1003	3706321750	108	B&S COAL #1 (22A) C-19 IND-21750	SOUTH MAHONING	19,0	EQUITABLE GAS CO
8049125	1004	3706321708	108	B&S COAL #1 (44A) C-12 IND-21708	SOUTH MAHONING TWP	17,0	EQUITABLE GAS CO
8049049	869	3706322055	108	BERT ORR #2 (C-97) IND-22055	SOUTH MAHONING TWP	6,0	PEOPLES NATURAL GAS
8049050	870	3706322051	108	BERT ORR #3 (C-98) IND-22051	SOUTH MAHONING TWP	6,0	PEOPLES NATURAL GAS
8049071	895	3706321956	108	C A REARIC #2 (C-55) IND-21956	ARMSTRONG TOWNSHIP	11,0	PEOPLES NATURAL GAS
8049099	960	3712920739	108	C ACKERMAN #1 C-252 WES-20739	DERRY TWP	14,0	PEOPLES NATURAL GAS
8049100	961	3712920740	108	C ACKERMAN #2 C-253 WES-20740	DERRY TWP	14,0	PEOPLES NATURAL GAS
8049129	1011	3706322074	108	C L LEARN #1 (C-101) IND-22074	SOUTH MAHONING TWP	19,0	EQUITABLE GAS CO
8049059	879	3706322100	108	C L WARREN #1 (C-109) IND-22100	SOUTH MAHONING TOWNSHIP	6,0	PEOPLES NATURAL GAS
8048977	771	3706321865	108	C L WARREN #2 (C-36) IND-21865	SOUTH MAHONING TOWNSHIP	12,0	PEOPLES NATURAL GAS

JD NO	JA DAT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8048978	772	3706321867	108		C L WARREN #4 (C=38) IND=21867	SOUTH MAHONING TOWNSHIP	2,0	PEOPLES NATURAL GAS
8049127	1009	3700521478	108		CAROLINE FISCHER #2 C=52 ARM=21478	COWANSHANNOCK TWP	14,0	EQUITABLE GAS CO
8049128	1010	3700521479	108		CAROLINE FISCHER #3 C=53 ARM=21479	COWANSHANNOCK TWP	14,0	EQUITABLE GAS CO
8048975	766	3706323057	108		CHARLES F SUNDBURG #2(C=302)	WHITE TOWNSHIP	16,0	PEOPLES NATURAL GAS
8049146	1036	3700521388	108		CHRIST RUPP LUTHERAN CHURCH #1	KITTANNING TOWNSHIP	3,0	APOLLO GAS CO
8049102	964	3712920769	108		D AMMON #1 C=289 WES=20769	DERRY TWP	14,0	PEOPLES NATURAL GAS
8048995	806	3706323566	108		D F MCHENRY #1 (C=344) IND=23566	RAYNE TWP	14,0	COLUMBIA GAS TRANSMI
8048996	807	3706323567	108		D F MCHENRY #2 (C=345) IND=23567	RAYNE TWP	14,0	COLUMBIA GAS TRANSMI
8048997	808	3706323568	108		D F MCHENRY #3 (C=395) IND=23568	RAYNE TWP	14,0	COLUMBIA GAS TRANSMI
8049006	821	3706322132	108		D M CLAWSON #1 C=116 IND=22132	YOUNG	7,0	COLUMBIA GAS TRANSMI
8049007	822	3706322345	108		D M CLAWSON #2 C=148 IND=22345	YOUNG	7,0	COLUMBIA GAS TRANSMI
8048959	750	3700521508	108		D MCCAUSLAND #2 (C=74) ARM21508	COWANSHANNOCK TWP	5,0	PEOPLES NATURAL GAS
8048960	751	3700521507	108		D MCCAUSLAND #3 (C=73) ARM=21507	COWANSHANNOCK TWP	5,0	PEOPLES NATURAL GAS
8048943	323	3706324375	103		DC LEASURE #1 (182A)(C=427)	WASHINGTON TOWNSHIP	25,0	COLUMBIA GAS TRANSMI
8049139	1022	3706323260	108		DUKE #1 (C=335) IND=23260	NORTH MAHONING TWP	13,0	T W PHILLIPS GAS & O
8049008	823	3706322131	108		E J FAILS #1 C=118 IND=22131	BLACKLICK TWP	7,0	COLUMBIA GAS TRANSMI
8049009	824	3706322272	108		E J FAILS #2 C=142 IND=22272	YOUNG TWP	7,0	COLUMBIA GAS TRANSMI
8049010	825	3706322314	108		E J FAILS #3 C=147 IND=22314	YOUNG TWP	7,0	COLUMBIA GAS TRANSMI
8049086	920	3712920738	108		E LIEBEL #3 (C=219) WES=20738	DERRY TWP	21,0	PEOPLES NATURAL GAS
8049060	880	3706321917	108		E M CARNAHAN #1 C=45 IND=21917	ARMSTRONG	11,0	PEOPLES NATURAL GAS
8049061	881	3706321918	108		E M CARNAHAN #2 C=46 IND=21918	ARMSTRONG	11,0	PEOPLES NATURAL GAS
8049087	940	3706321710	108		EARL BEATTY #1 (C=15) IND=21710	SOUTH MAHONING TWP	11,0	PEOPLES NATURAL GAS
8049051	871	3706322070	108		EDWARD R SIMPSON #1 (C=102)	SOUTH MAHONING TOWNSHIP	6,0	PEOPLES NATURAL GAS
8049052	872	3706322107	108		EDWARD R SIMPSON #2 (C=110)	SOUTH MAHONING TOWNSHIP	6,0	PEOPLES NATURAL GAS
8048983	788	3706322229	108		EMMA LEARN #2(C=136) IND=22229	ARMSTRONG TWP	7,0	COLUMBIA GAS TRANSMI
8049144	1033	3706321312	108		ETHEL E WHEELER #1 IND=21312=R	NORTH MAHONING TOWNSHIP	13,0	T W PHILLIPS GAS & O
8048952	743	3700521377	108		EUGENE FRAILEY #2 (C=10) ARM=21377	COWANSHANNOCK TOWNSHIP	5,0	PEOPLES NATURAL GAS
8048954	745	3700521495	108		EUGENE FRAILEY #4 C=42 ARM=21495	COWANSHANNOCK	5,0	PEOPLES NATURAL GAS
8048953	744	3700521494	108		EUGENE FRALLEY #3 C=41 ARM=21494	COWANSHANNOCK TWP	5,0	PEOPLES NATURAL GAS
8049142	1031	3706321199	108		FRED MUSSER #2 IND=21199	SOUTH MAHONING TWP	45,0	T W PHILLIPS GAS & O
8049143	1032	3706321375	108		FRED MUSSER #3 IND=21375	SOUTH MAHONING TWP	45,0	T W PHILLIPS GAS & O
8049093	954	3706321719	108		FREDERICK J TOST #1 (C=13)	SOUTH MAHONING TOWNSHIP	11,0	PEOPLES NATURAL GAS
8049094	955	3706321720	108		FREDERICK J TOST #2 (C=17)	SOUTH MAHONING TWP	11,0	PEOPLES NATURAL GAS
8049095	956	3706321754	108		FREDERICK J TOST #3 (C=22)	SOUTH MAHONING TOWNSHIP	11,0	PEOPLES NATURAL GAS
8049096	957	3706322007	108		FREDERICK T TOST #4 (C=81)	BOROUGH OF PLUMVILLE	11,0	PEOPLES NATURAL GAS
8049108	970	3706320776	108		G A COATI JR #3 C=267 IND=20776	DERRY TWP	14,0	PEOPLES NATURAL GAS
8049106	968	3706320744	108		G A CONTI JR #1 C=265 IND=20744	DERRY TWP	14,0	PEOPLES NATURAL GAS
8049107	969	3706320745	108		G A CONTI JR #2 C=266 IND=20745	DERRY TWP	14,0	PEOPLES NATURAL GAS
8048980	782	3706322360	108		G FOUSE #1 C=161 IND=22360	SOUTH MAHONING TWP	8,0	PEOPLES NATURAL GAS
8049130	1012	3706321755	108		G MAXTON #1 (C=18) IND=21755	SOUTH MAHONING TWP	10,0	EQUITABLE GAS CO
8049134	1016	3700521313	108		G W SMELTZER #5 (C=1) ARM21313	COWANSHANNOCK TOWNSHIP	7,0	EQUITABLE GAS CO
8049029	847	3706322346	108		H G REEGER #1(C=151) IND=22346	YOUNG TOWNSHIP	7,0	COLUMBIA GAS TRANSMI
8049030	848	3706322347	108		H G REEGER #2 (C=152) IND=22347	YOUNG TOWNSHIP	7,0	COLUMBIA GAS TRANSMI
8049062	886	3706322010	108		H L GEORGE #3 (150A) C=78 IND=22010	ARMSTRONG TWP	11,0	PEOPLES NATURAL GAS
8049063	887	3706322400	108		H L GEORGE #4 (150A) C=168	ARMSTRONG TWP	11,0	PEOPLES NATURAL GAS
8049064	888	3706322397	108		H L GEORGE #5 (150A) C=169	ARMSTRONG TWP	11,0	PEOPLES NATURAL GAS
8049041	860	3706322431	108		H W FOLTS #1 C=173 IND=22431	SOUTH MAHONING TWP	6,0	PEOPLE NATURAL GAS C
8049042	861	3706322428	108		H W FOLTZ #2 C=174 IND=22428	EAST MAHONING TWP	6,0	PEOPLES NATURAL GAS
8048969	760	3706323178	108		HARRY D HILL #1 (C=315) IND=23178	WHITE TWP	10,0	PEOPLES NATURAL GAS
8048970	761	3706323230	108		HARRY D HILL #2 (C=321) IND=23230	WHITE TWP	16,0	PEOPLES NATURAL GAS
8048971	762	3706323231	108		HARRY D HILL #3 (C=322) IND=23231	WHITE TWP	16,0	PEOPLES NATURAL GAS
8048972	763	3706323232	108		HARRY D HILL #4 (C=323) IND=23232	WHITE TWP	16,0	PEOPLES NATURAL GAS

JD NO	JA DAT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8049040	859	3706322035	108		I D DE HAVEN #3 C-91 IND-22035	SOUTH MAHONING TWP	6,0	PEOPLES NATURAL GAS
8048999	810	3706323569	108		J & S MCKEE #1 (C-396) IND-23569	WHITE TOWNSHIP	14,0	COLUMBIA GAS TRANSMI
8049000	811	3706323611	108		J & S MCKEE #2 (C-401) IND-23611	WHITE TOWNSHIP	14,0	COLUMBIA GAS TRANSMI
8049001	812	3706323612	108		J & S MCKEE #3 (C-402) IND-23612	WHITE TOWNSHIP	14,0	COLUMBIA GAS TRANSMI
8049016	832	3706322133	108		J A MCKELVEY #1 (C-117) IND-22133	BLACKLICK TWP	7,0	COLUMBIA GAS TRANSMI
8049017	833	3706322134	108		J A MCKELVEY #2 (C-120) IND-22134	BLACKLICK TWP	7,0	COLUMBIA GAS TRANSMI
8049018	834	3706322147	108		J A MCKELVEY #3 (C-121) IND-22147	BLACKLICK TWP	7,0	COLUMBIA GAS TRANSMI
8049048	868	3706322651	108		J B LAPSLEY #3(C-198) IND-22651	EAST MAHONING TWP	6,0	PEOPLES NATURAL GAS
8049133	1015	3706321705	108		J B POTTS #3 (C-10) IND-21705	WASHINGTON TOWNSHIP	8,0	EQUITABLE GAS CO
8049038	857	3706322036	108		J DANKMEYER #1 C-87 IND-22036	EAST MAHONING TWP	6,0	PEOPLES NATURAL GAS
8049057	877	3706322039	108		J E WALKER #1 (C-88) IND-22039	EAST MAHONING TOWNSHIP	6,0	PEOPLES NATURAL GAS
8049058	878	3706322040	108		J E WALKER #2 (C-90) IND-22040	EAST MAHONING TOWNSHIP	6,0	PEOPLES NATURAL GAS
8048945	729	3706323179	108		J HASTINGS #1 C-318 IND-23179	EAST MAHONING	16,0	PEOPLES NATURAL GAS
8049031	849	3706322338	108		J L REEGER #1 (C-153) IND-22338	YOUNG TOWNSHIP	7,0	COLUMBIA GAS TRANSMI
8049135	1018	3706323518	108		J LUKEMART #2 (C-387) IND-23518	SOUTH MAHONING	30,0	T W PHILLIPS GAS & O
8048949	739	3706321913	108		J M CARBAUGH #1 C-47 IND-21913	RAYNE TWP	2,0	PEOPLES NATURAL GAS
8049110	986	3712920746	108		J PIGNUCCO #1 (C-273) WES-20746	DERRY TOWNSHIP	14,0	PEOPLES NATURAL GAS
8049111	989	3712920761	108		J PIGNUCCO #2(C-275) WES-20761	DERRY TOWNSHIP	14,0	PEOPLES NATURAL GAS
8049112	990	3712920762	108		J PIGNUCCO #3 (C-276) WES-20762	DERRY TOWNSHIP	14,0	PEOPLES NATURAL GAS
8049073	900	3706323028	108		J W ARMBRUST #4(C-298) IND-23028	YOUNG TOWNSHIP	16,0	PEOPLES NATURAL GAS
8049033	851	3706322555	108		J YOUNG #1 (C-212) IND-22555	YOUNG TOWNSHIP	7,0	COLUMBIA GAS TRANSMI
8049019	837	3706322348	108		JAMES MCKEE #2(C-157) IND-22348	YOUNG TWP	7,0	COLUMBIA GAS TRANSMI
8049020	838	3706322349	108		JAMES MCKEE #3(C-158) IND-22349	BLACKLICK TWP	7,0	COLUMBIA GAS TRANSMI
8049021	839	3706322461	108		JAMES MCKEE #4(C-105) IND-22461	BLACKLICK TWP	7,0	COLUMBIA GAS TRANSMI
8049022	840	3706322398	108		JAMES MCKEE #5(C-166) IND-22398	YOUNG TWP	7,0	COLUMBIA GAS TRANSMI
8049136	1019	3706323565	108		JANE LUKEMART #3 (C-394) IND-23565	SOUTH MAHONING TWP	30,0	T W PHILLIPS GAS & O
8048963	754	3700521504	108		JANE M STRICKLER #2 (C-68)	COWANSHANNOCK TOWNSHIP	5,0	PEOPLES NATURAL GAS
8049035	853	3712920866	108		KEYSTONE PARK ESTATES #1 (C-341)	DERRY TOWNSHIP	22,0	PEOPLES NATURAL GAS
8049036	854	3712920867	108		KEYSTONE PARK ESTATES #2(C-342)	DERRY TWP	22,0	PEOPLES NATURAL GAS
8048961	752	3700521433	108		L C SHELLHAMMER #1 (C-27) ARM-21433	COWANSHANNOCK TOWNSHIP	5,0	PEOPLES NATURAL GAS
8048962	753	3700521434	108		L C SHELLHAMMER #2 (C-28) ARM-21434	COWANSHANNOCK TOWNSHIP	5,0	PEOPLES NATURAL GAS
8049039	858	3706322034	108		L D DE HAVEN #2 C-89 IND-22034	SOUTH MAHONING TWP	6,0	PEOPLES NATURAL GAS
8049103	965	3712920747	108		LEE A BARNHART #1 C-268 WES-20747	DERRY TWP	14,0	PEOPLES NATURAL GAS
8049104	966	3712920748	108		LEE A BARNHART #2 C-269 WES-20748	DERRY TWP	14,0	PEOPLES NATURAL GAS
8049105	967	3712920749	108		LEE A BARNHART #3 C-270 WES-20749	DERRY TWP	14,0	PEOPLES NATURAL GAS
8049140	1027	3706321819	108		LESLIE MILTY #1 (C-34) IND-21819	ARMSTRONG TWP	27,0	T W PHILLIPS GAS & O
8049141	1028	3706322112	108		LESLIE MILTY #2 (C-112) IND-22112	ARMSTRONG TWP	27,0	T W PHILLIPS GAS & O
8048976	767	3706322249	108		LESLIE P BERESNYAK #1(C-138)	SOUTH MAHONING TWP	2,0	PEOPLES NATURAL GAS
8048967	758	3706323054	108		M F DILLS #1 C-299 IND-23054	WHITE TWP	16,0	PEOPLES NATURAL GAS
8048968	759	3706323055	108		M F DILLS #2 C-300 IND-23055	WHITE TWP	16,0	PEOPLES NATURAL GAS
8049015	829	3706322337	108		M J JACK #1 (C-150) IND-22337	BLACKLICK TWP	7,0	COLUMBIA GAS TRANSMI
8049097	958	3706322014	108		M WHITESELL #1 (C-7) IND-22014-M	SOUTH MAHONING TOWNSHIP	11,0	PEOPLES NATURAL GAS
8049137	1020	3706321546	108		MARK ANTHONY #1 IND-21546	NORTH MAHONING TWP	27,0	T W PHILLIPS GAS & O
8049138	1021	3706321383	108		MARK ANTHONY #2 IND-21383	NORTH MAHONING TWP	27,0	T W PHILLIPS GAS & O
8049080	907	3706322850	108		MARY HART RINN #1 (C-260) IND-22850	YOUNG TOWNSHIP	16,0	PEOPLES NATURAL GAS
8049081	908	3706322851	108		MARY HART RINN #2 (C-261) IND-22851	YOUNG TOWNSHIP	16,0	PEOPLES NATURAL GAS
8049082	909	3706322852	108		MARY HART RINN #3 (C-262) IND-22852	YOUNG TOWNSHIP	16,0	PEOPLES NATURAL GAS
8049083	910	3706322853	108		MARY HART RINN #4 (C-263) IND-22853	YOUNG TOWNSHIP	16,0	PEOPLES NATURAL GAS
8049084	911	3706322854	108		MARY HART RINN #5 (C-264) IND-22854	YOUNG TOWNSHIP	16,0	PEOPLES NATURAL GAS
8049011	827	3706322519	108		MARY J IRWIN #2 (C-208) IND-22519	YOUNG TWP	7,0	COLUMBIA GAS TRANSMI
8049012	828	3706322520	108		MARY J IRWIN #3 (C-209) IND-22520	YOUNG TWP	7,0	COLUMBIA GAS TRANSMI
8049088	949	3706321756	108		MATTHEW L ORR #1 (C-25) IND 21756	WASHINGTON TWP	11,0	PEOPLES NATURAL GAS

JD NO	JA DAT	API NO	SEC	D	WELL NAME	FIELD NAME	PRID	PURCHASER
8049089	950	3706321757	108		MATTHEW ORR #2 (C=26) IND=21757	WASHINGTON TWP	11,0	PEOPLES NATURAL GAS
8049098	959	3706321663	108		MAX WHITESELL #2 (C=8) IND=21663	SOUTH MAHONING TOWNSHIP	11,0	PEOPLES NATURAL GAS
8049068	892	3706321248	108		N E MCINTIRE #1 (C=76) IND=21248=R	CENTER TWP	11,0	PEOPLES NATURAL GAS
8049023	841	3706322275	108		N MEANS #1(C=139) IND=22275	YOUNG TWP	7,0	COLUMBIA GAS TRANSMI
8049025	843	3706322146	108		N MEANS #1(194=A) (C=117) IND=22146	BLACKLICK TWP	7,0	COLUMBIA GAS TRANSMI
8049024	842	3706322274	108		N MEANS #2(C=140) IND=22274	YOUNG TWP	7,0	COLUMBIA GAS TRANSMI
8049026	844	3706322269	108		N MEANS #2(194=A) (C=141) IND=22269	YOUNG TWP	7,0	COLUMBIA GAS TRANSMI
8049027	845	3706322282	108		N MEANS #3 194=A (C=146) IND=22282	YOUNG TWP	7,0	COLUMBIA GAS TRANSMI
8049028	846	3706322336	108		N MEANS #4 194=A (C=149) IND=22336	BLACKLICK TWP	7,0	COLUMBIA GAS TRANSMI
8048973	764	3706323167	108		O F MILL #1(34=A) (C=314) IND=23167	WHITE TWP	16,0	PEOPLES NATURAL GAS
8048974	765	3706323056	108		O F MILL #1(40=A) (C=301)IND=23056	WHITE TWP	16,0	PEOPLES NATURAL GAS
8049122	1001	3706321049	108		OLIN M BOYER #1 (C=) IND=21049	SOUTH MAHONING	21,0	EQUITABLE GAS CO
8049123	1002	3706321197	108		OLIN M BOYER #2 IND=21197	SOUTH MAHONING	21,0	EQUITABLE GAS CO
8049072	896	3706322446	108		ORVILLE WATSON #2 (C=176) IND=22446	ARMSTRONG TOWNSHIP	11,0	PEOPLES NATURAL GAS
8049121	999	3706321602	108		P BLATTENBERGER #2 C=3 IND=21602	SOUTH MAHONING TWP	9,0	EQUITABLE GAS CO
8049002	813	3706323622	108		P F RHOADS #2 (C=405) IND=23622	RAYNE TOWNSHIP	14,0	COLUMBIA GAS TRANSMI
8049003	815	3706323624	108		P F RHOADS #4 (C=407) IND=23624	RAYNE TOWNSHIP	14,0	COLUMBIA GAS TRANSMI
8049004	816	3706323625	108		P F RHOADS #5 (C=408) IND=23625	RAYNE TOWNSHIP	14,0	COLUMBIA GAS TRANSMI
8049005	817	3706323626	108		P F RHOADS #6 (C=409) IND=23626	RAYNE TOWNSHIP	14,0	COLUMBIA GAS TRANSMI
8048979	781	3706323401	108		PAUL A STEWART #2 (C=374) IND=23401	EAST MAHONING TWP	18,0	PEOPLES NATURAL GAS
8049157	4384	3706324520	103	D	R & P COAL CO A W COCHRAN #1	WHITE TOWNSHIP	70,0	COLUMBIA GAS TRANSMI
8049074	901	3706320053	108		R BELLA #1 C=326 IND=53=R	YOUNG TWP	16,0	PEOPLES NATURAL GAS
8049075	902	3706322830	108		R BELLA #2 C=254 IND=22830	YOUNG TWP	16,0	PEOPLES NATURAL GAS
8049076	903	3706322831	108		R BELLA #3 C=255 IND=22831	YOUNG TWP	16,0	PEOPLES NATURAL GAS
8049156	4336	3706322358	108		R BERESNYAK #1 (C=159) IND=22358	SOUTH MAHONING TWP	8,0	PEOPLES NATURAL GAS
8048984	791	3706322280	108		R CUNNINGHAM #1 C=144 IND=22280	YOUNG TWP	6,0	COLUMBIA GAS TRANSMI
8048985	792	3706322281	108		R CUNNINGHAM #2 C=145 IND=22281	YOUNG TWP	6,0	COLUMBIA GAS TRANSMI
8049069	893	3706321920	108		R E MILLEN #1(C=43) IND=21920	ARMSTRONG TWP	11,0	PEOPLES NATURAL GAS
8049034	852	3712920832	108		R HUESSENER #1 (C=308) WES=20832	DERRY TWP	9,0	PEOPLES NATURAL GAS
8049101	963	3712920873	108		R J ACKERMAN #1 C=359 WES=20873	DERRY TWP	14,0	PEOPLES NAT GAS CO
8049046	866	3706322071	108		R M HERMAN #1 C=103 IND=2071	SOUTH MAHONING TWP	6,0	PEOPLES NATURAL GAS
8049047	867	3706322101	108		R M HERMAN #2 C=108 IND=2101	SOUTH MAHONING TWP	6,0	PEOPLES NATURAL GAS
8049109	985	3712920808	108		R PEARSON #1 (C=307) WES=20808	DERRY TOWNSHIP	14,0	PEOPLES NATURAL GAS
8048986	794	3706322930	108		R S HENRY #1 C=179 IND=22930	YOUNG TWP	6,0	COLUMBIA GAS TRANSMI
8048987	795	3706322444	108		R S HENRY #2 C=180 IND=22444	YOUNG TWP	6,0	COLUMBIA GAS TRANSMI
8048988	796	3706322931	108		R S HENRY #3 C=181 IND=22931	YOUNG TWP	6,0	COLUMBIA GAS TRANSMI
8049158	4389	3706324389	103		R&P COAL CO (FMLY J W BRADLEY) #1	RAYNE TOWNSHIP	65,0	COLUMBIA GAS TRANSMI
8048994	805	3706302165	108		R&P COAL CO G L STEWART #4 (C=128)	YOUNG TOWNSHIP	6,0	COLUMBIA GAS TRANSMI
8049126	1008	3706321665	108		RAFFAELA FARRARO #2 C=6 IND=21665	SOUTH MAHONING TWP	8,0	EQUITABLE GAS CO
8049131	1013	3706321601	108		RALPH PISANI #1 (C=4) IND=21601=R	SOUTH MAHONING TOWNSHIP	11,0	EQUITABLE GAS CO
8049132	1014	3706321558	108		RALPH PISANI #2 (C=2) IND=21558	SOUTH MAHONING TOWNSHIP	8,0	EQUITABLE GAS CO
8048989	797	3706322156	108		S BELLE JEWELL #1 (C=124) IND=22156	YOUNG TWP	6,0	COLUMBIA GAS TRANSMI
8048990	798	3706322187	108		S BELLE JEWELL #3 (C=130) IND=22187	YOUNG TWP	6,0	COLUMBIA GAS TRANSMI
8049032	850	3706322471	108		S F STAHL #1 (C=194) IND=2471	YOUNG TOWNSHIP	7,0	COLUMBIA GAS TRANSMI
8049043	862	3706322018	108		S G HARBRIGE #2 C=82 IND=22018	SOUTH MAHONING TWP	6,0	PEOPLES NATURAL GAS
8049044	863	3706322032	108		S G HARBRIGE #3 C=83 IND=22032	SOUTH MAHONING TWP	6,0	PEOPLES NATURAL GAS
8049045	865	3706322020	108		S G HARBRIGE #5 C=85 IND=22020	SOUTH MAHONING TWP	6,0	PEOPLES NATURAL GAS
8048957	748	3700521492	108		S MATTILIO #1 (C=71) ARM=21492	COWANSHANNOCK TWP	5,0	PEOPLES NATURAL GAS
8048958	749	3700521506	108		S MATTILIO #2 (C=70) ARM=21506	COWANSHANNOCK TWP	5,0	PEOPLES NATURAL GAS
8048998	809	3706323628	108		S MCHENRY #1 (C=411) IND=23628	RAYNE TWP	14,0	COLUMBIA GAS TRANSMI
8049037	856	3706322059	108		T S BARBUR #3 C=99 IND=22059	SOUTH MAHONING TWP	6,0	PEOPLES NATURAL GAS
8049113	991	3712920868	108		T SCHUTT ROBINSON #1 (C=360)	DERRY TOWNSHIP	14,0	PEOPLES NATURAL GAS

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8049114	992	3712920869	108		T SCHOTT RUBINSON #2 (C-361)	DERRY TOWNSHIP	14,0	PEOPLES NATURAL GAS
8049115	993	3712920884	108		T SCHOTT RUBINSON #3 (C-366)	DERRY TOWNSHIP	14,0	PEOPLES NATURAL GAS
8049116	994	3712920888	108		T SCHOTT RUBINSON #4 (C-368)	DERRY TOWNSHIP	14,0	PEOPLES NATURAL GAS
8049053	873	3706322404	108		T SIMPSON #1 (C-170) IND-22404-R	SOUTH MAHONING TOWNSHIP	6,0	PEOPLES NATURAL GAS
8049054	874	3706322033	108		T SIMPSON #2 (C-86) IND-22033	SOUTH MAHONING TOWNSHIP	6,0	PEOPLES NATURAL GAS
8049065	889	3706321943	108		W H GEURGE #3 C-51 IND-21943	ARMSTRONG TWP	11,0	PEOPLES NATURAL GAS
8049066	890	3706322006	108		W H GEURGE #5 C-80 IND-22006	ARMSTRONG	11,0	PEOPLES NATURAL GAS
8049067	891	3706322440	108		W H GEURGE #6 C-175 IND-22440	ARMSTRONG TWP	11,0	PEOPLES NATURAL GAS
8048991	799	3706322154	108		W H MARTIN #1 (C-123) IND-22154	YOUNG TWP	6,0	COLUMBIA GAS TRANSMI
8048992	800	3706322162	108		W H MARTIN #2 (C-125) IND-22162	YOUNG TWP	6,0	COLUMBIA GAS TRANSMI
8048993	801	3706322163	108		W H MARTIN #4 (C-126) IND-22163	YOUNG TWP	6,0	COLUMBIA GAS TRANSMI
8048966	757	3706323242	108		W L CRAMER #1 (C-327) IND-23242	WHITE TWP	16,0	PEOPLES NATURAL GAS
8049145	1034	3706320083	108		W O MOOREHEAD #1 (L-4477) IND-83	BRUSHVALLEY TOWNSHIP	8,0	T W PHILLIPS GAS & O
8049085	912	3706323304	108		W P SHUSTER #1 (C-248) IND-23304	YOUNG TOWNSHIP	16,0	PEOPLES NATURAL GAS
8048981	786	3706322363	108		W R MARSHALL #1(C-164) IND-22363	SOUTH MAHONING TWP	8,0	PEOPLES NATURAL GAS
8048982	787	3706322429	108		W R MARSHALL #2(C-171) IND-22429	SOUTH MAHONING TWP	8,0	PEOPLES NATURAL GAS
8049117	995	3712920689	108	D	W ROCKWELL #1 (C-205) WES-20689	DERRY TOWNSHIP	14,0	PEOPLES NAT GAS CO
8049118	996	3712920690	108		W ROCKWELL #2 (C-206) WES-20690	DERRY TOWNSHIP	14,0	PEOPLES NATURAL GAS
8049055	875	3706322046	108		W SIMPSON #1 (C-94) IND-22046	SOUTH MAHONING TOWNSHIP	6,0	PEOPLES NATURAL GAS
8049056	876	3706322044	108		W SIMPSON #2 (C-95) IND-22044	SOUTH MAHONING TOWNSHIP	6,0	PEOPLES NATURAL GAS
8048948	736	3706322671	108		W SMITH #3 (C-234) IND-22671	EAST MAHONING TOWNSHIP	16,0	PEOPLES NATURAL GAS
8049091	952	3706321884	108		WAYNE E STEAR #1 (C-29) IND-1884	SOUTH MAHONING TOWNSHIP	11,0	PEOPLES NATURAL GAS
8049092	953	3706301901	108		WAYNE E STEAR #2 (C-30) IND-1901	WASHINGTON TOWNSHIP	11,0	PEOPLES NATURAL GAS
8048956	747	3700521509	108		WILLIAM MILL #1 (C-72) ARM-21509	COWANSHANNOCK TWP	5,0	PEOPLES NATURAL GAS
8049070	894	3706222081	108		WOODROW PYMIRE #1 (23A)(C-106)	ARMSTRONG TWP	11,0	PEOPLES NATURAL GAS
*CONSOLIDATED GAS SUPPLY CORPORATION					RECEIVED: 07/24/80 JA: PA			
8049159	4571	3703320861	108		ARMAND D ELLINGER WN-1749	SALEM 625030	14,0	GENERAL SYSTEM PURCH
*FRED J RUSSELL DBA LOUDEN PROPERTIE					RECEIVED: 07/24/80 JA: PA			
8049160	4901	3701900000	108		LERNER 1064-T1	WINFIELD	0,4	CRUCIBLE INC
*QUAKER STATE OIL REFINING CORP					RECEIVED: 07/24/80 JA: PA			
8049161	5142	3712327546	103		01 BONANZA (LOT 689)	KLONDIKE POOL	3,7	NATIONAL FUEL GAS CO
**********								
VIRGINIA DEPARTMENT OF LABOR & INDUSTRY								
**********								
*JAMES F SCUTT					RECEIVED: 04/22/80 JA: VA			
8044599		4516519698	102		R J WHETZEL #1	BERGTON - CRAB RUN	27,0	COLUMBIA GAS TRANSMI
8042132		4516519693	102		S L MOYERS #1	BERGTON - CRAB RUN	27,0	COLUMBIA GAS TRANSMI
**********								
WEST VIRGINIA DEPARTMENT OF MINES								
**********								
*TRIO PETROLEUM CORP					RECEIVED: 08/01/80 JA: WV			
8048212		4702102875	108		MCPHERSON A NO 1	GLENVILLE SOUTH	14,6	CONSOLIDATED GAS SUP

OTHER PURCHASERS

8086785	CITIES SERVICE CO
8086791	OKLAHOMA GAS & ELEC CO
8086802	COLORADO INTERSTATE GAS CO
8086834	CHASE GATHERING SYSTEM INC
8086835	CHASE GATHERING SYSTEM INC
8086856	CHASE GATHERING SYSTEM INC
8086862	CHASE GATH SYSTEM INC

[FR Doc. 80-27862 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-C

[Volume 263]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: August 25, 1980.

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" after the section code. Estimated annual production (PROD) is in million cubic feet (MMcf).

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before September 26, 1980.

Please reference the FERC Control Number (JD NO) in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

BILLING CODE 6450-85-M

JD NO	JA DAT	API NO	SEC D WELL NAME	FIELD NAME	PROD	PURCHASER
*****	******	******	--- - ----------	----------	----	---------
**********						
MISSISSIPPI OIL & GAS BOARD						
**********						
*ENSERCH EXPLORATION INC			RECEIVED: 07/25/80 JA: MS			
8049201	67-79-224	2304520042 102	GEX NO 1	WAVELAND	28,0	UNITED GAS PIPE LINE
*GULF OIL CORPORATION			RECEIVED: 07/25/80 JA: MS			
8049198	58-80-11	2307320189 103	J M ANDREW NO 72	BAXTERVILLE	14,0	UNITED GAS PIPE LINE
*MARION CORPORATION			RECEIVED: 07/25/80 JA: MS			
8049195	51-80-372	2312720042 103	BERRY ESTATE WELL #1	OAK GROVE FIELD	216,0	MISSISSIPPI POWER &
*PURSUE ENERGY CORP			RECEIVED: 07/25/80 JA: MS			
8049202	55-80-310	2312120063 107	D LO ROYALTIES UNIT #1	THOMASVILLE/SMACKOVER	3650,0	SOUTHERN NATURAL GAS
8049199	56-80-310	2312100000 107	D LO ROYALTIES UNIT #2	THOMASVILLE/SMACKOVER	36,5	SOUTHERN NATURAL GAS
8049194	53-80-310	2312100000 107	KENNEDY UNIT #1	THOMASVILLE/SMACKOVER	36,5	SOUTHERN NATURAL GAS
8049200	54-80-310	2312100000 107	SCHUSTER UNIT #1	THOMASVILLE/SMACKOVER	36,5	SOUTHERN NATURAL GAS
*SHELL OIL CO			RECEIVED: 07/25/80 JA: MS			
8049196	50-80-494	2302520020 102	JAMES C FOSTER 29-3	WEST POINT	788,0	TEXAS EASTERN TRANSM
*SYSTEM FUELS INC			RECEIVED: 07/25/80 JA: MS			
8049197	49-80-420	2306520138 107	A M SPEIGHTS 30-13 NO 1 WELL	HOLIDAY CREEK FIELD	73,0	SYSTEM FUELS INC
**********						
NORTH DAKOTA GEOLOGICAL SURVEY						
**********						
*AMERADA HESS CORPORATION			RECEIVED: 07/25/80 JA: ND			
8049182	265	3310500000 108	D BEAVER LODGE MADISON UNIT #P024	BEAVER LODGE	0,3	MONTANA DAKOTA UTILI
8049181	264	3310500000 108	D BEAVER LODGE MADISON UNIT #0013	BEAVER LODGE	7,9	MONTANA DAKOTA UTILI
8049180	263	3305300000 108	D HAWKEYE MADISON UNIT #D610	HAWKEYE	1,1	MONTANA DAKOTA UTILI
*DOME PETROLEUM CORP			RECEIVED: 07/25/80 JA: ND			
8049191	248	3305300880 102	BURNS 1-34	MONDAK	0,0	SHELL OIL
8049193	250	3305300960 102	BURNS 1-35	MON = DAK	34,7	SHELL OIL CO
*KERR-MCGEE CORPORATION			RECEIVED: 07/25/80 JA: ND			
8049183	254	3305300976 102	BURNS WELL NO 2-29	MONDAK	2,0	SHELL OIL CO
8049185	256	3305300977 102	BURNS WELL NO 3-20	MONDAK	2,9	SHELL OIL CO
8049188	259	3305300978 102	BURNS WELL NO 3-29	MONDAK	2,5	SHELL OIL CO
8049187	258	3305300993 102	CHRIS NO 3-28	MONDAK	1,0	SHELL OIL CO
8049186	257	3305300994 102	RAU WELL NO 1-32	MONDAK	4,0	SHELL OIL CO
8049184	255	3305300992 102	RAU WELL NO 1-33	MONDAK	4,0	SHELL OIL CO
*SHELL OIL CO			RECEIVED: 07/25/80 JA: ND			
8049192	249	3305300891 102	STATE 24-36	BICENTENNIAL	10,0	MONTANA DAKOTA UTILI
*TEXACO INC			RECEIVED: 07/25/80 JA: ND			
8049190	247	3305300940 102	C LOVAAS (NCT-1) NO 5	BLUE BUTTES	184,0	MONTANA DAKOTA UTILI
8049189	246	3305300910 102	SILURIAN UNIT 8 WELL NO 1	CHARLSON	296,0	MONTANA DAKOTA UTILI
**********						
NEW MEXICO DEPARTMENT OF ENERGY & MINERALS						
**********						
*AMERADA HESS CORPORATION			RECEIVED: 07/25/80 JA: NM			

JD NO	JA OKI	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8049208		3002510394	108		E WOOD #9	EUNICE	18,7	NORTHERN NATURAL GAS
8049207		3002520139	108		I WIMBERLEY #16 (DUAL - D & G)	JUSTIS	17,8	EL PASO NATURAL GAS
					RECEIVED: 07/25/80 JA: NM			
-AMOCO PRODUCTION CO								
8049215		3004507821	108		ABRAMS GAS COM A #1	AZTEC - PICTURED CLIFFS	21,0	EL PASO NATURAL GAS
8049216		3004523756	103		BERGIN GAS COM WELL #1E	BASIN DAKOTA	74,0	EL PASO NATURAL GAS
*8049224		3002526647	103		BYERS B #35	UND HOBBS DRINKARD	9,9	PHILLIPS PETROLEUM C
8049219		3004523724	103		CHAVEZ GAS COM D WELL #1E	BASIN DAKOTA	31,0	EL PASO NATURAL GAS
8049252		3004524011	103		CRAWFORD GAS COM B WELL #1E	BASIN DAKOTA	103,0	EL PASO NATURAL GAS
8049243		3001522543	103		EMPIRE SOUTH DEEP UNIT #19	UND SOUTH EMPIRE MORROW	24,7	EL PASO NATURAL GAS
8049223		3004523752	103		GUTIERREZ GAS COM B WELL #1E	BASIN DAKOTA	74,0	EL PASO NATURAL GAS
8049217		3004523726	103		HEATH GAS COM J WELL #1E	BASIN DAKOTA	92,0	EL PASO NATURAL GAS
8049209		3004508699	108		JAQUEZ GAS COM D #1 (2ND FILING)	BASIN DAKOTA	20,0	EL PASO NATURAL GAS
8049218		3004523855	103		MCDANIEL GAS COM B WELL #1E	BASIN DAKOTA	57,0	EL PASO NATURAL GAS
*8049254		3002526623	103		STATE A #37	HOBBS DRINKARD	61,3	PHILLIPS PETROLEUM C
*8049221		3002526109	103		STATE C TRACT 11 #9	UND BLINEBRY	3,6	GETTY OIL CO
8049251		3004524083	103		SULLIVAN GAS COM D WELL #1E	BASIN DAKOTA	116,0	EL PASO NATURAL GAS
-ARCO OIL AND GAS COMPANY								
					RECEIVED: 07/25/80 JA: NM			
8049253		3002526487	103		FREDERICK M CURRY WN #2	LANGLIE MATTIX	80,0	EL PASO NATURAL GAS
8049228		3002526659	103		STATE 157 D WELL #14	DRINKARD	40,0	WARREN PETROLEUM CO
-BASS ENTERPRISES PRODUCTION CO								
					RECEIVED: 07/25/80 JA: NM			
8049242		3002526337	103		BASS STATE 36 NO 1	TOWNSEND WOLFCAMP	14,7	TIPPERARY CORP
-BETA DEVELOPMENT CO								
					RECEIVED: 07/25/80 JA: NM			
8049210		3004300000	108		CHARLES HUTTON #1	BASIN DAKOTA	20,0	EL PASO NATURAL GAS
*8049211		3004509606	108		GLEN SWIKE #1	BASIN DAKOTA	21,0	EL PASO NATURAL GAS
-C & E OPERATORS INC								
					RECEIVED: 07/25/80 JA: NM			
8049213		3004500000	108		JONES #1	AZTEC PICTURED CLIFFS	15,0	EL PASO NATURAL GAS
-CONOCO INC								
					RECEIVED: 07/25/80 JA: NM			
8049203		3002500000	108		STATE F-1 NO 6(ENH. REC.)	ARROWHEAD E-M-E	31,0	EL PASO NATURAL GAS
8049204		3002500000	108		STATE F-1 NO 6	ARROWHEAD E-M-E	16,0	EL PASO NATURAL GAS
8049220		3002526277	103		STATE KN-12 NO 7	EUMONT - MONUMENT	215,0	EL PASO NATURAL GAS
-CONSOLIDATED OIL & GAS INC								
					RECEIVED: 07/25/80 JA: NM			
8049248		3004524198	103		PHILLIPS 1-E(MV)	BLANCO MESAVERDE	0,0	SOUTHERN UNION GATHE
8049249		3004524198	103		PHILLIPS 1-E(DK)	BASIN-DAKOTA	0,0	SOUTHERN UNION GATHE
8049256		3004523414	103		RIPLEY 2-A(MV)	BLANCO MESAVERDE	0,0	SOUTHERN UNION GATHE
8049257		3004523414	103		RIPLEY 2-A(DK)	BASIN-DAKOTA	0,0	SOUTHERN UNION GATHE
-DOYLE HARTMAN OIL OPERATOR								
					RECEIVED: 07/25/80 JA: NM			
8049255		3002526739	103		R H HUSTON JR NO 4	EUNICE-MONUMENT	90,0	EL PASO NATURAL GAS
-EL PASO NATURAL GAS COMPANY								
					RECEIVED: 07/25/80 JA: NM			
8049212		3004521319	108		ALLISON UNIT #18	BASIN-DAKOTA GAS	21,0	EL PASO NATURAL GAS
8049206		3003700000	108		SAN JUAN 30-6 UNIT #41	BLANCO-MESAVERDE GAS	15,0	EL PASO NATURAL GAS
8049250		3004523557	103		SCHULTZ #2K	BLANCO SOUTH PICTURED CL	40,0	EL PASO NATURAL GAS
-GULF OIL CORPORATION								
					RECEIVED: 07/25/80 JA: NM			
8049246		3002526757	103		ARNOTT RAMSAY (NCT-B) WELL NO 9	LANGLIE MATTIX	0,0	EL PASO NATURAL GAS
-JAKE L HAMON								
					RECEIVED: 07/25/80 JA: NM			
8049244		3001300000	103		STATE LG-2985 #1	TURKEY TRACK NORTH MORRO	830,0	LLANO INC
-MARALO INC								
					RECEIVED: 07/25/80 JA: NM			
8049227		3002500000	103		JALMAT YATES UNIT #25	JALMAT	110,0	EL PASO NATURAL GAS
8049222		3002500000	103		MARALO 16 STATE #7	SIOUX YATES POOL	113,7	EL PASO NATURAL GAS
8049247		3002500000	103		MARALO 16 STATE #8	SIOUX YATES POOL	68,4	EL PASO NATURAL GAS
-MILLARD DECK								
					RECEIVED: 07/25/80 JA: NM			
*8049245		3002526760	103		POSSH NO 1	LANGLIE MATTIX	73,0	EL PASO NATURAL GAS
-MOBIL PROD TEXAS & NEW MEXICO INC								
					RECEIVED: 07/25/80 JA: NM			

JD NO	JA DKT	API NO	SEC	D WELL NAME	FIELD NAME	PROD	PURCHASER
*8049205		3002500000	108	GENERAL G STATE 1=C & 1=T	EUMONT QUEEN (GAS)	11,0	NORTHERN NATURAL GAS
8049214		3001521488	108	STATE SS WELL NO 2	SOUTH CARLSBAD MORROW	3,4	LLANO INC
=PHILLIPS PETROLEUM COMPANY				RECEIVED: 07/25/80 JA: NM			
8049258		3002511477	108	C D WOOLWORTH GROUP 3 NO 1	JALMAT=GAS	17,0	EL PASO NATURAL GAS
=SUMMIT ENERGY INC				RECEIVED: 07/25/80 JA: NM			
8049225		3002500000	103	AMANDA SIMS NO 2	WANTZ GRANITE WASH	50,0	GETTY OIL CO
=TENNECO OIL COMPANY				RECEIVED: 07/25/80 JA: NM			
8049229		3001523203	103	CATCLAW DRAW UNIT #15	CATCLAW DRAW MORROW	360,0	TUCO INC
=WARREN PETR CO A DIV OF GULF OIL CO				RECEIVED: 07/25/80 JA: NM			
8049226		3002526687	103	LEA YM STATE WELL NO 4	AIRSTRIP UPPER BONE SPRI	0,0	EL PASO NATURAL GAS
=YATES PETROLEUM CORPORATION				RECEIVED: 07/25/80 JA: NM			
8049239		3001523182	103	DOWELL MV NO 2	ATOKA=YESO	0,0	TRANSWESTERN PIPELIN
8049236		3001523163	103	EDDIE NE NO 1	ATOKA=YESO	0,0	TRANSWESTERN PIPELIN
8049241		3001523297	103	GREASEWOOD BD STATE NO 9	PENASCO DRAW SA YESO	0,0	TRANSWESTERN PIPELIN
8049230		3001523257	103	IRISH HILLS YESO JE STATE NO 3	PENASCO DRAW SA YESO	0,0	TRANSWESTERN PIPELIN
8049237		3001523258	103	IRISH HILLS YESO JE STATE NO 4	PENASCO DRAW SA YESO	0,0	TRANSWESTERN PIPELIN
8049238		3001523154	103	JACKSON ESTATE BY NO 9	EAST EAGLE CREEK ATOKA M	0,0	TRANSWESTERN PIPELIN
8049234		3001520692	103	LOVELESS STATE LQ NO 1	TOM=TOM	0,0	
8049231		3001560665	103	NINE MILES LV STATE COM NO 1	BUFFALO VALLEY PENN	0,0	TRANSWESTERN PIPELIN
8049233		3000500000	103	PAUL LR NO 1	TOM=TOM	0,0	
8049240		3001523237	103	PENASCO IW SHALLOW NO 3	PENASCO DRAW SA YESO	0,0	TRANSWESTERN PIPELIN
8049232		3001523227	103	RIO PENASCO KD COM NO 1	BOYD MORROW	0,0	TRANSWESTERN PIPELIN
8049235		3001523149	103	SRC STATE KZ NO 6	PENASCO DRAW MORROW	0,0	TRANSWESTERN PIPELIN

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WEST VIRGINIA DEPARTMENT OF MINES

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=A A PURSLEY				RECEIVED: 07/28/80 JA: WV			
8049379		4704121222	108	S B MULLINEX #1=A	CANOE RUN (COLLINS SETTL	1,4	CONSOLIDATED GAS SUP
=ALLEGHENY & WESTERN ENERGY CORP				RECEIVED: 07/28/80 JA: WV			
8049452		4703903369	108	IMPERIAL COAL #10	CABIN CREEK	12,0	COLUMBIA GAS TRANSMI
8049453		4703903370	108	IMPERIAL COAL #11	CABIN CREEK	12,0	COLUMBIA GAS TRANSMI
8049478		4703903360	108	IMPERIAL COAL #5=R	CABIN CREEK	12,0	COLUMBIA GAS TRANSMI
8049449		4703903362	108	IMPERIAL COAL #6	CABIN CREEK	12,0	COLUMBIA GAS TRANSMI
8049450		4703903363	108	IMPERIAL COAL #7	CABIN CREEK	12,0	COLUMBIA GAS TRANSMI
8049451		4703903368	108	IMPERIAL COAL #9	CABIN CREEK	12,0	COLUMBIA GAS TRANSMI
8049432		4703501484	103	JOHN J PFOST FARM #9	WASHINGTON	8,0	COLUMBIA GAS TRANSMI
8049436		4703501473	103	JOHN J PFOST FARM NO 1	WASHINGTON	18,0	
8049434		4703501474	103	JOHN J PFOST FARM NO 2	WASHINGTON	18,0	
8049431		4703501477	103	JOHN J PFOST FARM NO 3	WASHINGTON	18,0	
8049435		4703501478	103	JOHN J PFOST FARM NO 4	WASHINGTON	18,0	
8049430		4703501482	103	JOHN J PFOST FARM NO 7	WASHINGTON	18,0	COLUMBIA GAS TRANSMI
8049433		4703501483	103	JOHN J PFOST FARM NO 8	WASHINGTON	18,0	COLUMBIA GAS TRANSMI
8049454		4703903371	108	OHLEY TRUST #1	CABIN CREEK	12,0	COLUMBIA GAS TRANSMI
8049455		4703903372	108	OHLEY TRUST #2	CABIN CREEK	12,0	COLUMBIA GAS TRANSMI
8049456		4703903376	108	OHLEY TRUST #3	CABIN CREEK	12,0	COLUMBIA GAS TRANSMI
8049457		4703903378	108	OHLEY TRUST #4	CABIN CREEK	12,0	COLUMBIA GAS TRANSMI
8049458		4703903379	108	OHLEY TRUST #5	CABIN CREEK	12,0	COLUMBIA GAS TRANSMI
=ALLEGHENY LAND & MINERAL COMPANY				RECEIVED: 07/25/80 JA: WV			
8049263		4701702621	108	A=2	SOUTHWEST DISTRICT	4,8	CONSOLIDATED GAS SUP
8049264		4708501874	108	A=7	UNION	2,6	CONSOLIDATED GAS SUP
=ALLEGHENY LAND & MINERAL COMPANY				RECEIVED: 07/28/80 JA: WV			
8049469		4709702054	103	A=860	WASHINGTON DISTRICT	0,0	COLUMBIA GAS TRANSMI

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8049468		4709702029	103		A-865	WASHINGTON DISTRICT	0,0	CONSOLIDATED GAS SUP
8049470		4709702059	103		A-883	WASHINGTON DISTRICT	0,0	CONSOLIDATED GAS SUP
8049380		4708501892	108		A-9	UNION DISTRICT	1,8	CONSOLIDATED GAS SUP
*ALLERTON MILLER					RECEIVED: 07/28/80 JA: WV			
8049404		4704101065	108		JEROME KRUNGOLD #2 M-315	SKIN CREEK DISTRICT	11,8	COLUMBIA GAS TRANS C
*APPALACHIAN ENERGY INC					RECEIVED: 07/28/80 JA: WV			
8049439		4706120579	103		HILLMAN COAL CO #1 A-E-7			
*APPALACHIAN EXPLORATION & DEVEL INC					RECEIVED: 07/25/80 JA: WV			
8049276		4708100513	103		BROWN PAYNE #1	UNION	30,0	CONSOLIDATED GAS SUP
*APPALACHIAN EXPLORATION & DEVEL INC					RECEIVED: 07/28/80 JA: WV			
8049429		4706700459	102		A B KOONTZ #1	TOWN	25,0	COLUMBIA GAS TRANSMI
*B & L OIL CO					RECEIVED: 07/28/80 JA: WV			
8049383		4705501520	108		T I HARTLEY #1 PER-12-30-20 234A	GRANT	106,2	EQUITABLE GAS CO
*BLUE CREEK GAS COMPANY					RECEIVED: 07/28/80 JA: WV			
8049519		4700700907	108		SINGLETON 49 ACRES	LIVERPOOL	1,9	PENNZOIL CO
*C S MAXWELL GAS CO					RECEIVED: 07/28/80 JA: WV			
8049381		4702101011	108		C S MAXWELL GAS CO #1	SALT LICK DISTRICT	6,0	EQUITABLE GAS CO
*CARL E WALTERS ETAL					RECEIVED: 07/25/80 JA: WV			
8049269		4709500072	108		ANDREW MATTHEWS NO 3	GRASS RUN DEKALB DISTRIC	1,0	CARNEGIE NATURAL GAS
*CITIES SERVICE COMPANY					RECEIVED: 07/28/80 JA: WV			
8049384		4709300038	102		MULLENAX A-1	STRINGTOWN	5,5	PENNZOIL
*CLYDE P LAW					RECEIVED: 07/28/80 JA: WV			
8049447		4708504844	108		GOLDEN #10	LEADMINE	569,0	COLUMBIA GAS TRANSMI
8049448		4708504845	108		GOLDEN #11			
8049480		4708548841	108		GOLDEN #6	OXBOW	0,9	CONSOLIDATED GAS SUP
8049488		4708501842	108		GOLDEN #8	OXBOW	0,9	CONSOLIDATED GAS SUP
8049446		4708500000	108		GOLDEN #9	OXBOW	0,9	CONSOLIDATED GAS SUP
*COLUMBIA GAS TRANSMISSION CORP					RECEIVED: 07/28/80 JA: WV	OXBOW	0,9	CONSOLIDATED GAS SUP
8049472		4703902449	108		CLYDA F RUSS NO 1 809736			
8049417		4709901658	108		COLUMBIA COAL GASIF 809809	ROCKY FORK	4,0	COLUMBIA GAS TRANS C
8049416		4709901660	108		COLUMBIA COAL GASIF 809811	FIELD AREA B	2,8	COLUMBIA GAS TRANS C
8049415		4709901661	108		COLUMBIA COAL GASIF 809812	FIELD AREA B	1,3	COLUMBIA GAS TRANS C
8049473		4704500922	108		DINGESS RUM COAL CO 809776	FIELD AREA B	3,2	COLUMBIA GAS TRANS C
8049474		4704500925	108		DINGESS RUM COAL CO 809777	FIELD AREA B	2,2	COLUMBIA GAS TRANS C
8049475		4704500937	108		DINGESS RUM COAL COMPANY 820032	FIELD AREA B	1,0	COLUMBIA GAS TRANS C
8049471		4703900504	108		S S BEANE 820361	FIELD AREA B	0,5	COLUMBIA GAS TRANS C
*CONSOLIDATED GAS SUPPLY CORPORATION					RECEIVED: 07/25/80 JA: WV	ROCKY FORK	0,8	COLUMBIA GAS TRANS C
8049265		4704102550	103		JAMES BURNS 12448			
*CONSOLIDATED GAS SUPPLY CORPORATION					RECEIVED: 07/28/80 JA: WV	W VA OTHER A83772	24,0	GENERAL SYSTEM PURCH
8049461		4700501063	108		CHARLESTON NATIONAL BANK 12348			
8049463		4700101228	103		CORA D NESTOR 12621	PINEVILLE A59442	20,0	GENERAL SYSTEM PURCH
						WEST VIRGINIA OTHER A857	30,0	GENERAL SYSTEM PURCH
8049382		4703301700	108		J C NICHOLS 12306			
8049467		4703300861	108		L MAYMOND 11857	WEST VIRGINIA OTHER A857	6,0	GENERAL SYSTEM PURCH
8049460		4700100986	108		LUCILLE CHESSEN 12535	W VA OTHER A83772	11,0	GENERAL SYSTEM PURCH
8049462		4700101168	103		O C RIGGS 12596	WEST VIRGINIA OTHER A857	7,0	GENERAL SYSTEM PURCH
8049459		4700100752	108		WM T CARDER 12108	WEST VIRGINIA OTHER 1259	30,0	GENERAL SYSTEM PURCH
*CUMBERLAND GAS COMPANY					RECEIVED: 07/28/80 JA: WV	WEST VIRGINIA OTHER A857	12,0	GENERAL SYSTEM PURCH
8049517		4704320241	108		E L ADKINS #BR-30			
*DORAN & ASSOCIATES INC					RECEIVED: 07/25/80 JA: WV	UNION	0,2	COLUMBIA GAS TRANS C
8049278		4704920658	103		R LUCAS #1 K-L-118			
*DOTSON BRANCH GAS CO					RECEIVED: 07/25/80 JA: WV	MANNINGTON DIST	30,0	CONSOLIDATED GAS SUP
8049279		4704322357	108		HUNTINGTON DEV & GAS CO #3			
						LAUREL HILL DISTRICT	9,9	COLUMBIA GAS TRANSMI

JD NO	JA DKT	API NO	SEC	WELL NAME	FIELD NAME	PROD	PURCHASER
*EAGLE GAS CO				RECEIVED: 07/25/80 JA: WV			
8049271		4703320133	108	FANNIE E DAWSON #2 NU 70	EAGLE DISTRICT	9,0	LUMBERPORT-SHINNSTON
*ELAMS GAS CO				RECEIVED: 07/28/80 JA: WV			
8049377		4709901695	103	JARRELL VINSON #1	LINCOLN DISTRICT	18,0	COLUMBIA GAS TRANSMI
*FRANKLIN ADKINS				RECEIVED: 07/25/80 JA: WV			
8049274		4709921590	108	ROMANS #1	LINCOLN	14,0	COLUMBIA GAS TRANS
*FUEL RESOURCES DEVELOPMENT CO				RECEIVED: 07/28/80 JA: WV			
*8049444		4700120636	108	C CATHELL #1	VALLEY DISTRICT	16,0	CONSOLIDATED GAS SUP
*8049443		4700120814	108	C WHITE #1	VALLEY DISTRICT	21,0	CONSOLIDATED GAS SUP
*8049445		4700120643	108	H ESSEG #1	VALLEY DISTRICT	20,0	CONSOLIDATED GAS SUP
*8049490		4700120858	108	J REEL HRS #1	VALLEY DISTRICT	20,0	CONSOLIDATED GAS SUP
*8049492		4700120869	108	J RICUTELLI #1	VALLEY DISTRICT	28,0	CONSOLIDATED GAS SUP
*8049442		4700120847	108	N TALLMAN #1	VALLEY DISTRICT	27,8	CONSOLIDATED GAS SUP
*8049491		4700120863	108	V ZIRKLE #1	VALLEY DISTRICT	16,0	CONSOLIDATED GAS SUP
*8049489		4700120857	108	W R KING #1	VALLEY DISTRICT	20,0	CONSOLIDATED GAS SUP
*GARNER & GAMTHROP INC				RECEIVED: 07/25/80 JA: WV			
8049266		4703302284	108	ASHBY RICE	ASHBY RICE	2,3	PENNZOIL CO
8049267		4703302346	108	J W MONROE #4	J W MONROE	8,4	PENNZOIL CO
*GENE STALNAKER INC				RECEIVED: 07/28/80 JA: WV			
8049357		4702102986	108	E C PICKENS #1	GLENVILLE	2,8	CARNEGIE NATURAL GAS
8049364		4702103236	108	JOHN KILLINGSWORTH #6	GLENVILLE FIELD	0,0	EQUITABLE GAS CO
8049365		4702103021	108	OBRIEN HEIRS #1	GLENVILLE FIELD	2,4	CARNEGIE NATURAL GAS
*GILCO GAS CO				RECEIVED: 07/28/80 JA: WV			
8049440		4700701489	103	LUCY F NAUGH #1	PIPERS FORK OF CROOKED F	25,0	
*GLENN W JOHNSON DBA JOHNSON PRODUCI				RECEIVED: 07/25/80 JA: WV			
8049323		4709702212	108	A M GOULD #2	MEADE	0,3	EQUITABLE GAS CO
8049329		4709702705	108	B C FREEMAN #2	MEADE	2,0	EQUITABLE GAS CO
8049326		4709721944	108	E C ALLMAN #3	BUCKMANNON	5,0	EQUITABLE GAS CO
8049331		4702121774	108	E D FULTON #1 7A	GLENVILLE	1,4	EQUITABLE GAS CO
8049322		4702121766	108	E D FULTON #2 4-A	GLENVILLE	2,4	EQUITABLE GAS CO
8049321		4702121763	108	E D FULTON #3 3-A	GLENVILLE	1,3	EQUITABLE GAS CO
8049327		4709702763	108	E D WILSON #2	BANKS	2,8	EQUITABLE GAS CO
8049328		4709702752	108	J E GREENE #1	MEADE	5,3	EQUITABLE GAS CO
8049330		4709702642	108	J KELLEY #1	MEADE	9,5	EQUITABLE GAS CO
8049325		4709702266	108	O G MCCUE #2	MEADE	4,1	EQUITABLE GAS CO
8049324		4709702622	108	U L HARDMAN #1	MEADE	3,1	EQUITABLE GAS CO
8049320		4709702014	108	TALBOTT #1	MEADE	40,0	EQUITABLE GAS CO
8049319		4709700226	108	W J GOULD #1	MEADE	0,3	EQUITABLE GAS CO
*GLOVER GAS CO				RECEIVED: 07/28/80 JA: WV			
8049477		4703903629	108	BONER #1	ELK & BIG SANDY DISTRICT	5,2	COLUMBIA GAS TRANSMI
8049476		4703903628	108	BONER #2	ELK & BIG SANDY DISTRICT	3,2	COLUMBIA GAS TRANSMI
8049466		4703903630	108	BONER #3	ELK & BIG SANDY DISTRICT	3,2	COLUMBIA GAS TRANSMI
*GU DISTRIBUTION CO INC				RECEIVED: 07/28/80 JA: WV			
8049514		4708523102	108	KEISTER #2	UNION	1,0	EQUITABLE GAS CO
8049513		4708523260	108	KEISTER #3	UNION	1,2	EQUITABLE GAS CO
8049515		4708522719	108	SHIELDS #2	GRANT	0,1	CONSOLIDATED GAS SUP
8049512		4708522680	108	SHIELDS #3	GRANT	0,1	CONSOLIDATED GAS SUP
*GULF OIL CORPORATION				RECEIVED: 07/28/80 JA: WV			
8049464		4702100078	108	GAINER HEIRS #4	HENRIETTA DE CALB	1,8	CONSOLIDATED GAS SUP
8049465		4702100082	108	GAINER HEIRS #5	HENRIETTA DE CALB	1,8	CONSOLIDATED GAS SUP
*H C BUZZARD GAS CO				RECEIVED: 07/28/80 JA: WV			
8049360		4708521087	108	H C BUZZARD GAS CO #1218 NO 1	MURPHY DISTRICT	0,3	HOPE NATURAL GAS CO

JD NO.	JA DAT	API NO.	SEC	D WELL NAME	FIELD NAME	PROD	PURCHASER
8049361		4708501120	108	H C BUZZARD GAS CO #1218 WELL #2	MURPHY DISTRICT	0,3	HOPE NATURAL GAS CO
*H M DEEM				RECEIVED: 07/25/80 JA: WV			
8049273		4708524596	108	H DEEM	H DEEM	10,0	CONSUMERS GAS UTILIT
*HUGH SPENCER				RECEIVED: 07/28/80 JA: WV			
8049426		4703302587	108	B L GAWTHROP #1	CLARK DISTRICT	1,0	CONSOLIDATED GAS SUP
8049441		4701702745	108	GATTRELL #1	SOUTHWEST	1,5	EQUITABLE GAS CO
8049427		4703302386	108	L E BARNETT #1	CLARK DISTRICT	0,2	CONSOLIDATED GAS SUP
8049413		4703302542	108	MARY V PECK #1	UNION DISTRICT	0,3	CONSOLIDATED GAS SUP
8049428		4704102919	108	R A KRAUSE 1-A	FREEMANS CREEK DISTRICT	2,3	CARNEGIE NATURAL GAS
8049414		4701702746	108	R H ROBINSON #1	MCCLELLAN DISTRICT	6,5	CONSOLIDATED GAS SUP
*HUNTER RUN OIL & GAS CO				RECEIVED: 07/25/80 JA: WV			
8049272		4707300834	108	S L SHULTZ #1	ST MARYS	0,0	CONSOLIDATED GAS SUP
*J & J ENTERPRISES INC				RECEIVED: 07/28/80 JA: WV			
8049421		4700100948	103	B-103	UNION	50,0	CONSOLIDATED GAS SUP
8049420		4700101034	103	B-162	PHILIPPI	50,0	CONSOLIDATED GAS SUP
8049419		4700101091	103	B-250	PHILIPPI	50,0	CONSOLIDATED GAS SUP
8049418		4703302190	103	B-296	SARDIS	50,0	CONSOLIDATED GAS SUP
*JACKSON GAS CO				RECEIVED: 07/25/80 JA: WV			
8049277		4704320353	108	RICHARD MILLER #1	JEFFERSON	2,9	PENNZOIL CO
8049259		4704320369	108	WILLARD MILLER #1	JEFFERSON	0,2	PENNZOIL CO
*LAUDERMAN OIL & GAS DRILLING				RECEIVED: 07/28/80 JA: WV			
8049479		4707300759	103	A P ALLEN HEIRS #2	UNION	18,3	UNION CARBIDE CORP
8049482		4707300760	103	A P ALLEN HEIRS #3	UNION	18,5	UNION CARBIDE CORP
8049486		4709500725	103	CHARLES SHEPHERD #1	MEADE	18,3	UNION CARBIDE CORP
8049483		4707300761	103	GENE CARR #1	UNION	365,0	UNION CARBIDE CORP
8049484		4707300762	103	GENE CARR #2	UNION	36,0	UNION CARBIDE CORP
8049487		4709500732	103	RALPH HAUGHT #1	UNION	365,0	UNION CARBIDE CORP
8049485		4709500720	103	ROBERT METZEL #2	UNION	36,5	UNION CARBIDE CORP
*LELAND PETROLEUM PRODUCTION INC				RECEIVED: 07/28/80 JA: WV			
*8049335		4701501268	108	MARBLE BROWN #2	MIDDLE SYCAMORE	10,0	SOUTHEASTERN GAS CO
*8049334		4701501270	108	T H NEAL #3	MIDDLE SYCAMORE	10,0	SOUTHEASTERN GAS CO
*LOCK 3 OIL COAL & DOCK COMPANY				RECEIVED: 07/28/80 JA: WV			
8049438		4700100489	108	CHAPMAN #1	ELK CREEK - OVERFIELD	9,5	CONSOLIDATED GAS SUP
*MORGANTOWN GAS CO				RECEIVED: 07/25/80 JA: WV			
8049275		4706100233	108	#1 DAVIDSON	MORGANTOWN	2,0	CONSOLIDATED GAS SUP
*MILTON CAIN OWNER				RECEIVED: 07/28/80 JA: WV			
8049481		4701320351	108	MOLLIE CAIN NO 1	SHERIDAN DISTRICT	10,2	CABOT CORP
*OPPENHEIMER OIL & GAS CO				RECEIVED: 07/28/80 JA: WV			
8049378		4706504124	103	ERNEST GOFF H-637	MURPHY	0,0	CABOT CORP
*ORLAN FREDERICK GAS CO				RECEIVED: 07/28/80 JA: WV			
8049362		4708522126	108	ORLAN FREDERICK GAS CO #2113	MURPHY DISTRICT	1,6	HOPE NATURAL GAS CO
*PENNZOIL COMPANY				RECEIVED: 07/25/80 JA: WV			
8049289		4703301862	108	A J WILLIAMS #2	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049295		4703301864	108	A J WILLIAMS #4	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049294		4703301866	108	A J WILLIAMS #6	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049297		4703301867	108	A J WILLIAMS #7	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049303		4704102515	108	ALICE WHITE #2	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049284		4703301684	108	B M BROWN #1	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049299		4703301737	108	B M BROWN #12	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049285		4703301724	108	B M BROWN #5	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049282		4703301742	108	E M ESTLACK #1	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049298		4701702247	108	E S SLUSSAR #6	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049287		4701701289	108	EDITH A STOUT #2	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP

JD NO	JA DAT	API NO	SEC	WELL NAME	FIELD NAME	PROD	PURCHASER
8049288		4701701288	108	EDITH A STOUT #3	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049286		4701701357	108	EDITH A STOUT #4	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049293		4703301761	108	J T GOODWIN #10	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049318		4703301869	108	J T WILLIAMS #2	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049300		4703301870	108	J T WILLIAMS #3	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049301		4703301872	108	J T WILLIAMS #5	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049283		4703301738	108	J W DENNISON #3	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049291		4703301834	108	JESSE SPROUT #2	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049302		4703301904	108	L MAYMOND #23	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049280		4701702278	108	M T WILLIAMS #2	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049281		4703301756	108	NATHAN GUFF #23	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049292		4703301808	108	SANFORD NUZUM #4	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049290		4703301729	108	W B CARPENTER #8	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049296		4701702248	108	W L SLUSSAR #1	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
*PENNZOIL COMPANY				RECEIVED: 07/28/80 JA: WV			
8049501		4703302678	108	A C BAILEY #3	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049507		4703301663	108	B H BROWN #4	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049508		4703301725	108	B H BROWN #8	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049509		4703301735	108	B W CUNNINGHAM #1	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049511		4703301740	108	E A DUNCAN #5	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049494		4703301759	108	J T GOODWIN #1	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049495		4703301875	108	J T WILLIAMS #11	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049502		4701701356	108	L E WILLIAMS #3	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049505		4701702245	108	L F RANDOLPH #3	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049510		4703301736	108	M T CUNNINGHAM #1	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049503		4701701571	108	M T WILLIAMS #15	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049499		4703302383	108	NATHAN GUFF #40	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049500		4703302384	108	NATHAN GUFF #43	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049496		4703301877	108	P C WILLIAMS #1	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049497		4703301878	108	P C WILLIAMS #2	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049498		4703301883	108	P C WILLIAMS #9	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049504		4701702200	108	R R CHIPPS #2	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049506		4703301550	108	RANDOLPH VARNER #5	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
8049493		4703301744	108	SILAS FITTRO #6	WOLF SUMMIT	0,0	CONSOLIDATED GAS SUP
*PERKINS OIL & GAS INC				RECEIVED: 07/25/80 JA: WV			
8049270		4701302418	108	BENNETT WELL NO 42	BENNETT	2,5	CONSOLIDATED GAS SUP
*PERKINS OIL & GAS INC				RECEIVED: 07/28/80 JA: WV			
8049521		4708504509	108	CREED CULLINS #1-4342	BONDS CREEK	3,0	EQUITABLE GAS
*PETROLEUM DEVELOPMENT CORP				RECEIVED: 07/25/80 JA: WV			
8049309		4700120930	108	A STOUT #3	ELK CREEK	0,0	CONSOLIDATED GAS SUP
8049308		4700120927	108	ABNER STOUT #2	ELK CREEK	0,0	CONSOLIDATED GAS SUP
8049307		4700120907	108	D C MCBEE #1	CLEMTOWN	0,0	CONSOLIDATED GAS SUP
8049313		4703321115	108	FARIS HEIRS #9	BRIDGEPORT	0,0	CONSOLIDATED GAS SUP
8049310		4700120947	108	G A LODGE #1	ELK CREEK	0,0	CONSOLIDATED GAS SUP
8049316		4703321171	108	J J HUMMER #2	BRIDGEPORT	0,0	CONSOLIDATED GAS SUP
8049311		4703321017	108	JOHN SNIDER ET AL #2	BRIDGEPORT	0,0	CONSOLIDATED GAS SUP
8049314		4703321139	108	JOHNSON - LANG #2	GLADE RUN	0,0	CONSOLIDATED GAS SUP
8049305		4700120848	108	NAOMI MCVICKER #1	CLEMTOWN	0,0	CONSOLIDATED GAS SUP
8049317		4703321185	108	NOAH D PARKS #3	BRIDGEPORT	0,0	CONSOLIDATED GAS SUP
8049333		4703321016	108	O CARL MORRIS #2	BRIDGEPORT	0,0	CONSOLIDATED GAS SUP
8049315		4703321140	108	PATTON-LANG #2	GLADE RUN	0,0	CONSOLIDATED GAS SUP
8049312		4703321065	108	PHOEBE TYSON #1	BRIDGEPORT	0,0	CONSOLIDATED GAS SUP

JO NO	JA DAT	API NO	SEL	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8049304		4701722294	103		ROY FENREBEE #1	ASHLEY	0,1	CARNEGIE NATURAL GAS
8049306		4700120904	108		T WOODFORD #1	TAYLOR DRAIN	0,0	CONSOLIDATED GAS SUP
*QUAKER STATE OIL REFINING CORP					RECEIVED: 07/28/80 JA: WV			
8049406		4701720170	108		ALVADORE SMITH 61273-1	GRANT DISTRICT	1,4	CONSOLIDATED GAS SUP
8049408		4701721401	108		BLANCHE PEARCY 61240-1	NEW MILTON DISTRICT	1,6	CONSOLIDATED GAS SUP
8049412		4708721673	108		C P LOUNEY #1	SMITHFIELD DISTRICT	1,7	COLUMBIA GAS TRANS C
8049411		4701720059	108		DALLAS POWELL 61273	GRANT DISTRICT	2,7	PENNZOIL CO
8049405		4701302553	108		DESPARD HEIRS #1 61250-1	LEE DISTRICT	7,1	CONSOLIDATED GAS SUP
8049407		4701720174	108		F H UNDERWOOD 61273-1	GRANT DISTRICT	3,9	CONSOLIDATED GAS SUP
8049409		4703320429	108		LEEMAN MAXWELL #1 61245-1	TEN MILE DISTRICT	20,8	CONSOLIDATED GAS SUP
8049410		4709520414	108		M MESLIP 61053-1	LINCOLN DISTRICT	2,5	CONSOLIDATED GAS SUP
*RHOADES MINING CORP					RECEIVED: 07/25/80 JA: WV			
8049268		4709700331	108		DENISON #1		4,5	COLUMBIA GAS TRANSMI
*ROBERT WEEKS					RECEIVED: 07/28/80 JA: WV			
8049358		4701701457	108		BURTON NO 1	AUBURN	0,2	EQUITABLE GAS SUPPLY
*SALVAGE OIL & GAS CORP					RECEIVED: 07/28/80 JA: WV			
8049359		4708503871	108		FRED WOLFE #1	MURPHY	0,0	CONSOLIDATED GAS SUP
8049516		4708503005	108		WM BAKER #1	MURPHY	2,7	CONSOLIDATED GAS SUP
*STERLING DRILLING & PROD CO INC					RECEIVED: 07/25/80 JA: WV			
8049260		4701501685	103		ALUI #25 SOP #185	BUFFALO DISTRICT	7,2	EQUITABLE GAS CO
*STONESTREET LANDS CO					RECEIVED: 07/28/80 JA: WV			
8049387		4700701417	103		ADA GIBSON #1-S-19	ELMIRA	39,0	COLUMBIA GAS TRANSMI
8049393		4701500617	103		ALMA ARNOLD #1-S-15	ELMIRA	44,0	COLUMBIA GAS TRANSMI
8049402		4701501648	103		BRAXTON DAVENPORT #1-S-34	ELMIRA	47,0	COLUMBIA GAS TRANSMI
8049396		4701501627	103		C J HALL #1-S-24	ELMIRA	44,0	COLUMBIA GAS TRANSMI
8049397		4701501631	103		C M SIERS - P VAUGHN #1-S-13	ELMIRA	42,0	COLUMBIA GAS TRANSMI
8049385		4700701406	103		C W CHENOWETH #2-S-9	ELMIRA	33,0	COLUMBIA GAS TRANSMI
8049398		4701501632	103		H NICHOLS #1-S-12	ELMIRA	42,5	COLUMBIA GAS TRANSMI
8049389		4701302960	103		J A DYE #1-S-11	ELMIRA	46,0	COLUMBIA GAS TRANSMI
8049388		4701302890	103		J A DYE #2-S-10	ELMIRA	50,0	COLUMBIA GAS TRANSMI
8049390		4701302964	103		J A DYE #3-S-21	ELMIRA	34,0	COLUMBIA GAS TRANSMI
8049386		4700701416	103		J A JARVIS #1-S-32	ELMIRA	30,0	COLUMBIA GAS TRANSMI
8049401		4701501647	103		J E YOUNG 1-S-33	ELMIRA	34,0	COLUMBIA GAS TRANSMI
8049399		4701501633	103		J L SIERS #1-S-17	ELMIRA	49,0	COLUMBIA GAS TRANSMI
8049391		4701501611	103		ORLA SIERS #1-S-35	ELMIRA	42,0	COLUMBIA GAS TRANSMI
8049392		4701501614	103		ORLA SIERS #2-S-46	ELMIRA	48,0	COLUMBIA GAS TRANSMI
8049403		4700701467	103		P M MORRIS #1-S-16	ELMIRA	24,0	COLUMBIA GAS TRANSMI
8049400		4701501635	103		SIERS - SAMPSON #1-S-27	ELMIRA	30,0	COLUMBIA GAS TRANSMI
8049395		4701501619	103		T DOWNEY #2-S-22	ELMIRA	30,0	COLUMBIA GAS TRANSMI
8049394		4701501618	103		TOM DOWNEY #1-S-14	ELMIRA	43,0	COLUMBIA GAS TRANSMI
*SWIFT ENERGY CO					RECEIVED: 07/28/80 JA: WV			
8049437		4702103569	103		SANDY #1-A	GLENVILLE NORTH	50,0	COLUMBIA GAS TRANSMI
*TRI-COUNTY OIL & GAS INC					RECEIVED: 07/28/80 JA: WV			
8049424		4710301179	108		ENOCH ANDERSON #1	CLAY DISTRICT	6,2	COLUMBIA GAS TRANSMI
8049425		4704900674	108		EVA NEPTUNE #1	LINCOLN DISTRICT	1,1	CARNEGIE NATURAL GAS
8049422		4710301181	108		J S TAYLOR #1	CHURCH DISTRICT	2,7	EQUITABLE GAS CO
8049423		4710301180	108		W P HUBBARD #1	CLAY DISTRICT	8,4	CARNEGIE NATURAL GAS
*TRIO PETROLEUM CORP					RECEIVED: 07/28/80 JA: WV			
8049520		4700700352	108		RAYMOND NO 1	GLENVILLE SOUTH	2,7	EQUITABLE GAS CO
*VA ROY HILDRETH					RECEIVED: 07/25/80 JA: WV			
8049261		4701322364	108		D BRANNON - #5	LEE DISTRICT	5,0	CABOT CORP
8049332		4701323131	108		D BRANNON #1	LEE DISTRICT	2,9	CABOT CORP

JD NO	JA DAT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8049262		4701323132	108		D BRANNON #2	LEE DISTRICT	2,9	CABOT CORP
=M & M OIL & GAS CO			RECEIVED: 07/28/80 JA: WV					
8049518		4701701543	108		BERLIN SPURGEON #2	AUBURN	1,0	EQUITABLE GAS CO
=M H MOSSUR			RECEIVED: 07/28/80 JA: WV					
8049352		4702121544	108		BUD MOORE #1	DOC MOORE	0,2	CONSOLIDATED GAS SUP
8049373		4704121094	108		CHAPMAN #1	D D CHAPMAN FARM	5,0	CONSOLIDATED GAS SUP
8049354		4704120710	108		DAWSON #1	DAWSON OIL & GAS CO	1,0	EQUITABLE GAS CO
8049340		4704121066	108		DAWSON #2	DAWSON #2 OIL AND GAS	1,0	EQUITABLE GAS CO
8049339		4704121362	108		DAWSON #3	DAWSON #3 OIL & GAS CO	1,0	EQUITABLE GAS CO
8049337		4704121515	108		DAWSON #4	DAWSON #4 OIL AND GAS	1,0	EQUITABLE GAS CO
8049375		4704121006	108		DENNISON #1	DENNISON OIL & GAS CO	0,2	CONSOLIDATED GAS SUP
8049372		4708522061	108		EVANS #1	EVANS OIL & GAS CO	0,9	CONSOLIDATED GAS SUP
8049351		4701321657	108		FLUHARTY #1	FLUHARTY OIL CO	4,5	COLUMBIA GAS TRANSMI
8049341		4704102843	108		HARLAN Z	HARLAN Z OIL AND GAS CO	1,0	EQUITABLE GAS CO
8049338		4704121486	108		HARLAN Z-3	HARLAN Z-3 OIL & GAS CO	1,0	EQUITABLE GAS CO
8049366		4708521152	108		HOLSTINE #1	J T JOHNSON	0,5	CONSOLIDATED GAS SUP
8049376		4704120844	108		HURST #2	HURST 3 OIL AND GAS CO	0,2	CONSOLIDATED GAS SUP
8049371		4704121205	108		HURST #3	HURST #3 OIL & GAS CO	0,2	CONSOLIDATED GAS SUP
8049370		4704121206	108		HURST #4	HURST 4 OIL AND GAS CO	0,3	CONSOLIDATED GAS SUP
8049353		4704120709	108		HURST #1	HURST I OIL & GAS CO	0,2	CONSOLIDATED GAS SUP
8049347		4708522067	108		JOHNSON #1	A M JOHNSON	1,0	CONSOLIDATED GAS SUP
8049367		4707320496	108		LAMP #1	S K LAMP	2,5	CONSOLIDATED GAS SUP
8049350		4708521949	108		MAXSON #1	GLENN MAXSON FARM	0,1	EQUITABLE GAS CO
8049343		4708521955	108		OVERFIELD #1	HATTIE OVER FIELD FARM	1,0	CONSOLIDATED GAS SUP
8049345		4704120948	108		PERTZ #1	JASON BAILEY FARM	0,2	CONSOLIDATED GAS SUP
8049336		4708522097	108		PIERCE #1	B M PIERCE FARM	2,3	EQUITABLE GAS CO
8049368		4704121517	108		RALSTON #2	RALSTON #1 OIL & GAS CO	0,2	CONSOLIDATED GAS SUP
8049344		4704120848	108		RALSTON 1	RALSTON 1 OIL AND GAS CO	0,2	CONSOLIDATED GAS SUP
8049356		4704120795	108		RINEHART #1	H D RINEHART FARM	0,2	CONSOLIDATED GAS SUP
8049374		4704121024	108		RINEHART #2	H D RINEHART FARM	0,2	CONSOLIDATED GAS SUP
8049342		4708522109	108		RUBY DAVISSON	DAVISSON OIL & GAS CO	20,0	CONSOLIDATED GAS SUP
8049346		4704121028	108		STARCHER #2	W R STARCHER FARM	0,2	CONSOLIDATED GAS SUP
8049369		4704121516	108		STARCHER #3	W R STARCHER FARM	0,1	CONSOLIDATED GAS SUP
8049365		4704120845	108		TYSON #1	MAUDIE TYSON FARM	0,1	CONSOLIDATED GAS SUP
8049355		4704120716	108		W R STARCHER #1	W R STARCHER FARM	0,6	CONSOLIDATED GAS SUP
8049349		4708521429	108		WILSON #1	BAHR WILSON	1,5	EQUITABLE GAS CO
8049348		4704120681	108		WISEMAN #1	WISEMAN OIL AND GAS CO	0,1	EQUITABLE GAS CO
**********								
** U.S. GEOLOGICAL SURVEY - ALBUQUERQUE,NM								
**********								
=SUPRON ENERGY CORPURATION			RECEIVED: 07/25/80 JA: NM 4					
8048938	NM-0437-80	3004505708	108		D NICKSON #8	BALLARD PICTURE CLIFFS	7,0	GAS CO OF NEW MEXICO

OTHER PURCHASERS

8049205	WARREN PETROLEUM CO
8049211	EL PASO NATURAL GAS CO
8049221	EL PASO NATURAL GAS COMPANY
8049224	EL PASO NATURAL GAS COMPANY
8049245	EL PASO NATURAL GAS COMPANY
8049254	EL PASO NATURAL GAS CO
8049334	CONSOLIDATED GAS SUPPLY CORP
8049335	CONSOLIDATED GAS SUPPLY CORP
8049442	BROOKLYN UNION GAS CO
8049443	BROOKLYN UNION GAS CO
8049444	BROOKLYN UNION GAS CO
8049445	BROOKLYN UNION GAS CO
8049480	BROOKLYN UNION GAS CO
8049490	BROOKLYN UNION GAS CO
8049491	BROOKLYN UNION GAS CO
8049492	BROOKLYN UNION GAS CO

[FR Doc. 80-26863 Filed 9-10-80; 8:45 am]
BILLING CODE 6450-85-C

[Volume 264]

Determinations by Jursidictional Agencies Under the Natural Gas Policy Act of 1978

Issued: August 25, 1980.

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" after the section code. Estimated annual production (PROD) is in million cubic feet (MMcf).

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before September 26, 1980.

Please reference the FERC Control Number (JD NO) in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

BILLING CODE 6450-85-M

JD NO	JA DAT	API NO	SEC	D WELL NAME	FIELD NAME	PROD	PURCHASER
KANSAS CORPORATION COMMISSION							
*A SCOTT RITCHIE				RECEIVED: 07/28/80 JA: KS			
8049561	K-80-0233	1511920367	102	#1 CROOKED L RANCH UNIT	WILDCAT	160,0	
*ANADARKO PRODUCTION COMPANY				RECEIVED: 07/28/80 JA: KS			
8049540	K-80-0354	1517520431	102	HITCH I NO 1	SHUCK	229,0	CIMARRON-QUINQUE
*BRADEN OIL CO				RECEIVED: 07/28/80 JA: KS			
8049550	K-80-0390	1500720826	102	SCRIPSICK #1	MCGUIRE-GOEMANN TWP 32 S	25,0	
*CACTUS CORP				RECEIVED: 07/28/80 JA: KS			
8049543	K-80-0269	1509520864	102	NO 1 SWANDER ET AL	CUNNINGHAM	50,0	KANSAS GAS SUPPLY CO
*CITIES SERVICE COMPANY				RECEIVED: 07/28/80 JA: KS			
8049547	K-80-0264	1512920386	103	DUGAN A-1	N TALUGA	150,0	COLORADO INTERSTATE
*CONTINENTAL ENERGY				RECEIVED: 07/28/80 JA: KS			
8049558	K-80-0391	1505520352	103	BEACH #1	HUGOTON	62,0	NORTHERN NATURAL GAS
8049555	K-80-0395	1514300000	108	HALL #1	BENSON	5,9	KANSAS-NEBRASKA NATU
8049556	K-80-0393	1509320628	103	MANNING #2	HUGOTON	620,0	NORTHERN NATURAL GAS
8049557	K-80-0392	1505520391	103	RENICK #1	HUGOTON	720,0	NORTHERN NATURAL GAS
*DOME PETROLEUM CORP				RECEIVED: 07/28/80 JA: KS			
8049554	K-80-0396	1507520306	103	LEVENS #2	BRADSHAW	155,8	SUNFLOWER ELECTRIC C
*EDMISTON OIL CO INC				RECEIVED: 07/28/80 JA: KS			
8049528	K-80-0385	1500720563	103	GREEN #1	SPIVEY-GRABS	12,0	
8049560	K-80-0386	1500720581	103	MUIR B #1	SPIVEY-GRABS	12,0	
*F G HOLL				RECEIVED: 07/28/80 JA: KS			
8049535	K-80-0262	1504720124	108	ENLOW NO 3	WIL	13,0	NORTHERN NATURAL GAS
*GEORGE R JONES				RECEIVED: 07/28/80 JA: KS			
8049552	K-80-0267	1500720727	102	HERNDON NO 1	WILDCAT	18,0	KANSAS GAS SUPPLY CO
*GETTY OIL COMPANY				RECEIVED: 07/28/80 JA: KS			
8049553	K-80-0398	1511520219	108	E A BARTEL NO 1	FRENCH CREEK	12,8	CLOVER PIPELINE CORP
*GRAVES DRILLING CO INC				RECEIVED: 07/28/80 JA: KS			
8049527	K-80-0384	1500720799	103	WISCAVER NO 1	BLOOM NORTH SW NE SW SEC	21,6	KANSAS POWER & LIGHT
*IMPERIAL OIL COMPANY				RECEIVED: 07/28/80 JA: KS			
8049541	K-80-0271	1504720427	102	MCLEAN #1-9	WC	110,0	KANSAS-NEBRASKA NATU
8049549	K-80-0272	1504720514	102	MUNDHENKE #1-5	WC	75,0	KANSAS-NEBRASKA NATU
*INCA OIL CO				RECEIVED: 07/28/80 JA: KS			
8049537	K-80-0240	1517520368	103	DAVIES #2	WILDCAT	182,5	ANADARKO PRODUCTION
8049551	K-80-0238	1517520146	102	HITTLE #1	WILDCAT	98,9	PANHANDLE EASTERN PI
8049538	K-80-0239	1517520430	103	WHITE #1	WILDCAT	246,3	PANHANDLE EASTERN PI
*LEAR PETROLEUM CORPORATION				RECEIVED: 07/28/80 JA: KS			
8049546	K-80-0266	1503320324	102	ZIELKE #1	WILDCAT	120,0	
*LEITH OPERATIONS				RECEIVED: 07/28/80 JA: KS			
8049534	K-80-0261	1509520834	103	REIDA NO 1	REIDA	55,0	KANSAS GAS SUPPLY CO
*LINDELL R CHURCH				RECEIVED: 07/28/80 JA: KS			

JD NO	JA DKT	API NO	SEC	T	R	WELL NAME	FIELD NAME	PROD	PURCHASER
8049532	K-80-0376	1509921108	102			C RUTTGEN #3	BARTLETT	0,0	CITIES SERVICE GAS C
8049531	K-80-0377	1509921111	102			C RUTTGEN #6	BARTLETT	0,0	CITIES SERVICE GAS C
8049528	K-80-0380	1509921072	102			HART #4	BARTLETT	36,0	CITIES SERVICE GAS C
8049530	K-80-0378	1509921068	102			HENDRICKSON #4	BARTLETT	36,0	CITIES SERVICE GAS C
8049529	K-80-0379	1509921069	102			HENDRICKSON #5	BARTLETT	36,0	CITIES SERVICE GAS C
*MOBIL OIL CORP			RECEIVED: 07/28/80 JA: KS						
8049559	K-80-0389	1518920494	103			COBB NU 1 UNIT NU 2	PANOMA	70,0	NORTHERN NATURAL GAS
8049536	K-80-0260	1500700000	108			ROBERT B COOK B #1	HARDTNER	12,4	CITIES SERVICE GAS C
*NORTHERN NATURAL GAS PRODUCING CO			RECEIVED: 07/28/80 JA: KS						
8049539	K-80-0235	1518920489	103			DONNING NO 1-B UNIT NO 2	HUGOTON	50,0	NORTHERN NATURAL GAS
*OIL PROPERTIES CO INC			RECEIVED: 07/28/80 JA: KS						
8049544	K-80-0268	1504720577	103			ZUERCHER NO 3	HIL	75,0	NORTHERN NATURAL GAS
*PETROLEUM INC			RECEIVED: 07/28/80 JA: KS						
8049542	K-80-0270	1518700000	108			HERRICK GAS UNIT #1	HUGOTON	12,0	CITIES SERVICE GAS C
*RANGE OIL COMPANY INC			RECEIVED: 07/28/80 JA: KS						
8049548	K-80-0337	1503522199	102			#1 DUNCAN	HALNUT BEND	29,2	COLONIAL CORP
*TEMA OIL CO			RECEIVED: 07/28/80 JA: KS						
8049535	K-80-0256	1508120177	103			MOSSBARGER 3-23	PANOMA COUNCIL GROVE	180,0	CITIES SERVICE GAS C
*TEXAS OIL & GAS CORP			RECEIVED: 07/28/80 JA: KS						
8049545	K-80-0265	1509720573	103			EINSEL G #1	MARTIN-POOL	365,0	KANSAS-NEBRASKA NATU

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MISSISSIPPI OIL & GAS BOARD

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*TOMLINSON INTERESTS INC			RECEIVED: 07/28/80 JA: MS						
8049525	57-80-467	2309120091	107			CLINTON V MORGAN NU 1	EAST MORGANTOWN	1460,0	TRANSCONTINENTAL GAS

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MONTANA BOARD OF OIL & GAS CONSERVATION

****

*MIDLANDS GAS CORPORATION			RECEIVED: 07/28/80 JA: MT						
*8049522	6-80-132	2510521143	102			1707 STROMMEN	WILDCAT	3,0	KANSAS-NEBRASKA NATU
*8049524	6-80-130	2510521144	102			3406 PORTEEN	WILDCAT	91,0	KANSAS-NEBRASKA NATU
*8049523	6-80-134	2510521111	102			3606 #1 STATE	WILDCAT	34,0	KANSAS-NEBRASKA NATU

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OKLAHOMA CORPORATION COMMISSION

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*AN-SUN CORPORATION			RECEIVED: 07/28/80 JA: OK						
8049592	03060	3501120923	103			VIERSEN #1-20	VIERSEN #1-20	109,5	ARKANSAS-LOUISIANA
*ARKANSAS WESTERN PRODUCTION CO			RECEIVED: 07/28/80 JA: OK						
8049605	01889	3509321488	108			#1 NOLTING	RINGWOOD	6,2	OKLAHOMA GAS & ELEC
*ARKOMA GAS CO			RECEIVED: 07/28/80 JA: OK						
8049603	03823	3512120496	102			L M NULL GAS UNIT #1-19	N W CABANISS	20,0	ARKLA GAS CO
8049602	03822	3512120481	102			W J HILSENECK #1-8	NW CABANISS	0,0	ARKLA GAS CO
8049604	03824	3512120482	102			W J HILSENECK #1-9	N W CABANISS	0,0	ARKLA GAS CO
8049601	03821	3512120483	102			W J HILSENECK 1-15	CABANISS NORTH WEST	0,0	ARKLA GAS CO
*BOSWELL ENERGY CORP			RECEIVED: 07/28/80 JA: OK						
8049563	03969	3515120943	102			PARKER 1-24	NE LOOKOUT	365,0	
*BRIDGER PETROLEUM CORPORATION			RECEIVED: 07/28/80 JA: OK						
*8049598	01824	3509321216	103			HAYS MG 8	RINGWOOD	96,0	OKLAHOMA NAT GAS GAT
*CABOT CORPORATION			RECEIVED: 07/28/80 JA: OK						
8049574	04674	3500736115	108			LEON ALLEN #5	LAVERNE CHESTER	16,0	NORTHERN NATURAL GAS
*CENTEX OIL & GAS INC			RECEIVED: 07/28/80 JA: OK						
8049564	03993	3504320931	102			SHAW NU 2	S E OAKWOOD AREA (CHESTE	0,0	ARKANSAS LOUISIANA G
*CHAMPLIN EXPLORATION INC			RECEIVED: 07/28/80 JA: OK						

JD NO	JA DKT	API NO	SEC	D WELL NAME	FIELD NAME	PROD	PURCHASER
8049597	01856	3509321268	108	BULLER NO 3	ORIENTA	4,2	UNION TEXAS PETROLEU
*CUTTON PETROLEUM CORPORATION				RECEIVED: 07/28/80 JA: OK			
8049593	03544	3512920321	103	NEWELL NO 1	SOUTH BISHOP	329,0	CITIES SERVICE GAS C
*DONALD C SLAWSON				RECEIVED: 07/28/80 JA: OK			
8049600	04075	3501720760	102	#1 HALL B UNIT	WATONGA TREND	20,0	CITIES SERVICE GAS C
8049576	04314	3501721181	102	#1 SHELBY UNIT	WATONGA TREND	220,0	CITIES SERVICE GAS C
*ELDER & VAUGHN				RECEIVED: 07/28/80 JA: OK			
8049578	01017	3500721462	103	VERDEEN #1	MOCANE	0,0	PANHANDLE EASTERN PI
*H & L OPERATING COMPANY				RECEIVED: 07/28/80 JA: OK			
8049570	03412	3502520365	103	CAVIS #1	SAMPSEL NORTHEAST	182,0	PANHANDLE EASTERN PI
8049571	03732	3513921051	103	HITCH TRUST #1	GUYMON-HUGOTON	25,0	NORTHERN NATURAL GAS
*HANOVER MANAGEMENT CO				RECEIVED: 07/28/80 JA: OK			
8049580	07771	3503920340	107	BELL #2	SIMPSON	730,0	TRANSWESTERN PIPELIN
*HB OIL & GAS INC				RECEIVED: 07/28/80 JA: OK			
8049562	04020	3511920779	102	SANTA FE #1	MARCH	123,0	SUN GAS CO
*HOOVER & BRACKEN ENERGIES				RECEIVED: 07/28/80 JA: OK			
8049577	04719	3503920249	102	INDIAN #1-17	NORTH WEATHERFORD	73,0	MICHIGAN WISCONSIN P
*LPCX CORPORATION				RECEIVED: 07/28/80 JA: OK			
8049599	01469	3505120621	103	TAYLOR NO 1	NORTH ALEX	36,0	MOBIL OIL CORP
*MAYLON ENERGY				RECEIVED: 07/28/80 JA: OK			
8049586	01438	3503520119	108	METZEN #2 OTC NO 03553781	NW WELCH	0,0	CITIES SERVICE GAS C
8049568	01444	3503520120	108	METZEN #3 OTC NO 03553781	NW WELCH	0,0	CITIES SERVICE GAS C
8049565	01440	3503520122	108	METZEN #5 OTC NO 03553781	NW WELCH	0,0	CITIES SERVICE GAS C
8049583	01433	3503520124	108	METZEN #7 OTC NO 03553781	NW WELCH	0,0	CITIES SERVICE GAS C
8049585	01437	3503520135	108	METZEN #8 OTC NO 03553781	NW WELCH	0,0	CITIES SERVICE GAS C
8049567	01442	3503520126	108	METZEN #9 OTC NO 03553781	NW WELCH	0,0	CITIES SERVICE GAS C
8049584	01434	3503520219	108	WALKER #1 OTC NO 03553782	NW WELCH	0,0	CITIES SERVICE GAS C
8049582	01431	3503520128	108	WALKER #2 OTC NO 03553782	NW WELCH	0,0	CITIES SERVICE GAS C
8049566	01441	3503520129	108	WALKER #3 OTC NO 03553782	NW WELCH	0,0	CITIES SERVICE GAS C
*PAR PETROLEUM INC				RECEIVED: 07/28/80 JA: OK			
8049573	04672	3513920964	108	MIRES #1	W DOMBY	16,0	PANHANDLE EASTERN PI
*PHILLIPS PETROLEUM COMPANY				RECEIVED: 07/28/80 JA: OK			
8049572	04670	3500700000	108	VERNON A NO 1	LAVERNE HOOVER	20,0	MICHIGAN WISCONSIN P
*SOUTHPORT EXPLORATION INC				RECEIVED: 07/28/80 JA: OK			
8049581	03025	3505100000	102	W M PRITCHETT NO 1	EAST ALEX	237,0	
*TEXACO INC				RECEIVED: 07/28/80 JA: OK			
8049591	02778	3504730483	108	A KOKOJAN B NO 1	SOONER TREND	12,0	EXXON CO USA
8049569	02799	3515120908	103	DUNCAN-BIXLER UNIT NO 3	WAYNOKA	36,0	CITIES SERVICE GAS C
8049588	02753	3507350198	108	LINCOLN NORTH TR 114 NO 1	SOONER TREND	5,0	EXXON COMPANY USA
8049589	02762	3507350247	108	LINCOLN NORTH TR 56 NO 1 (KINSLOW)	SOONER TREND	5,0	EXXON COMPANY USA
8049590	02774	3507300000	108	Z BURROWS NO 1	SOONER TREND	10,0	EXXON CO USA
*TEXAS OIL & GAS CORP				RECEIVED: 07/28/80 JA: OK			
8049579	01963	3505920254	108	EASTERWOOD #1	E MAY	12,8	DELMI GAS PIPELINE C
*UNIVERSAL RESOURCES CORPORATION				RECEIVED: 07/28/80 JA: OK			
8049575	02901	3501720822	103	MCLAIN #3-20	RICHLAND N	65,0	PUBLIC SERVICE CO OF
*WESSELY ENERGY CORPORATION				RECEIVED: 07/28/80 JA: OK			
8049587	04508	3504300000	103	#1-26 ELLINGTON	PUTNAM	116,0	DELMI GAS PIPELINE C
8049596	04505	3504300000	103	#1-31 COURSEY	PUTNAM	104,0	DELMI GAS PIPELINE C
8049606	04507	3504300000	103	#1-35 ELLINGTON	PUTNAM	434,0	DELMI GAS PIPELINE C
8049595	04503	3504300000	103	#2-2 FARRIS	PUTNAM	292,0	DELMI GAS PIPELINE C
8049594	04502	3504300000	103	#2-7 FARRIS	PUTNAM	255,0	DELMI GAS PIPELINE C

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TEXAS RAILROAD COMMISSION

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*(HUNTER OIL) CORP RECEIVED: 07/28/80 JA: TX

JD NO	JA DKT	API NO	SEC	WELL NAME	FIELD NAME	PROD	PURCHASER
8049628	04727	4223300000	108	BETTY 25237	PANHANDLE WEST	2,5	PHILLIPS PETROLEUM C
8049627	04707	4223300000	108	BILL 25238	PANHANDLE WEST	7,0	PHILLIPS PETROLEUM C
8049626	04666	4223300000	108	LEON 25242	PANHANDLE WEST	0,0	PHILLIPS PETROLEUM C
*AMERICAN PETROFINA COMPANY OF TEXAS				RECEIVED: 07/28/80 JA: TX			
8049728	15975	4242330354	103	ARNOLD GAS UNIT NO 1	OVERTON (COTTON VALLEY S	253,0	UNITED GAS PIPE LINE
*AMOCO PRODUCTION CO				RECEIVED: 07/28/80 JA: TX			
8049785	16939	4218930305	103	ANTON IRISH CLEARFORK UNIT #414	ANTON IRISH	5,1	PIONEER NATURAL GAS
8049799	17173	4230330483	103	ANTON IRISH CLEARFORK UNIT #420	ANTON IRISH	1,0	PIONEER NATURAL GAS
8049800	17177	4218930317	103	ANTON IRISH CLEARFORK UNIT #426	ANTON IRISH	1,0	PIONEER NATURAL GAS
8049788	16942	4222731506	103	CORA LEE ECHOLS /A/ #10	IATAN EAST/HOWARD/	1,4	GETTY OIL CO
8049787	16941	4222731596	103	CORA LEE ECHOLS /A/ #11	IATAN EAST/HOWARD/	1,4	GETTY OIL CO
8049790	16944	4222731597	103	CORA LEE ECHOLS /A/ #12	IATAN EAST/HOWARD/	1,4	GETTY OIL CO
8049786	16940	4222731598	103	CORA LEE ECHOLS /A/ #13	IATAN EAST/HOWARD/	1,4	GETTY OIL CO
8049765	16828	4222731737	103	CORA LEE ECHOLS /A/ #17	IATAN EAST/HOWARD/	1,4	GETTY OIL COMPANY
8049767	16830	4222731793	103	CORA LEE ECHOLS /A/ #18	IATAN EAST/HOWARD/	1,4	GETTY OIL COMPANY
8049789	16943	4222731505	103	CORA LEE ECHOLS /A/ #9	IATAN EAST/HOWARD/	1,4	GETTY OIL CO
8049763	16824	4222731789	103	CORA LEE ECHOLS/B/ #13	IATAN EAST /HOWARD/	1,4	GETTY OIL CO
8049764	16827	4222731788	103	CORA LEE ECHOLS/B/ #16	IATAN EAST /HOWARD/	1,4	GETTY OIL COMPANY
8049766	16829	4222731787	103	CORA LEE ECHOLS/B/ #17	IATAN EAST /HOWARD/	1,4	GETTY OIL COMPANY
8049762	16819	4222731594	103	CORA LEE ECHOLS/B/ #2	IATAN EAST /HOWARD/	1,4	GETTY OIL CO
8049842	17448	4221130906	108	GEORGE UNIT #1-11	BUFFALO WALLOW	14,6	PIONEER NATURAL GAS
8049793	16948	4222731601	103	JOHN W DAVIS #4	IATAN EAST/HOWARD/	1,4	GETTY OIL CO
8049768	16831	4222731745	103	JOHN W DAVIS #5	IATAN EAST/HOWARD/	1,4	GETTY OIL CO
8049769	16832	4222731734	103	JOHN W DAVIS #6	IATAN EAST/HOWARD/	1,4	GETTY OIL CO
8049801	17178	4221932681	103	LEVELLAND UNIT #746	LEVELLAND	1,0	EL PASO NATURAL GAS
8049843	17449	4239300000	108	LIPS RANCH A #6	LIPS-MORROW	21,0	NORTHERN NATURAL GAS
8049770	16834	4241330795	103	ROUSSELOT DORIS MAYER B #2	SAWYER/CANYON	36,5	LONE STAR GAS CO
8049682	13281	4221932551	103	SLAUGHTER ESTATE UNIT #2-129	SLAUGHTER	3,0	EL PASO NATURAL GAS
8049792	16947	4222731847	103	TEX LAND/MTGE CO /A/ R/A /A/ #54	IATAN EAST/HOWARD/	1,4	GETTY OIL CO
8049775	16839	4222731747	103	TEX LAND/MTGE CO /A/ R/A /A/ #55	IATAN EAST/HOWARD/	1,4	GETTY OIL CO
8049791	16946	4222731709	103	TEX LAND/MTGE CO /A/ R/A /A/ #90	IATAN EAST/HOWARD/	1,4	GETTY OIL CO
8049771	16835	4222731177	103	TEX LAND/MTGE CO /A/ R/A /B/ #33	IATAN EAST/HOWARD/	1,4	GETTY OIL COMPANY
8049772	16836	4222731839	103	TEX LAND/MTGE CO /A/ R/A /B/ #42	IATAN EAST/HOWARD/	1,4	GETTY OIL CO
8049773	16837	4222731731	103	TEX LAND/MTGE CO /A/ R/A /B/ #51	IATAN EAST/HOWARD/	1,4	GETTY OIL CO
8049774	16838	4222731837	103	TEX LAND/MTGE CO /A/ R/A /B/ #53	IATAN EAST/HOWARD/	1,4	GETTY OIL CO
8049761	16794	4222731771	103	TEX LAND/MTGE CO /A/ R/A /B/ #95	IATAN EAST/HOWARD/	1,4	GETTY OIL CO
8049776	16840	4222731733	103	TEX LAND/MTGE CO /A/R/A/A/ #56	IATAN EAST/HOWARD/	1,4	GETTY OIL CO
8049777	16841	4222731748	103	TEX LAND/MTGE CO /A/R/A/A/ #65	IATAN EAST/HOWARD/	1,4	GETTY OIL CO
8049778	16843	4222731843	103	TEX LAND/MTGE CO /A/R/A/A/ #81	IATAN EAST/HOWARD/	1,4	GETTY OIL COMPANY
8049779	16845	4222731770	103	TEX LAND/MTGE CO /A/R/A/A/ #97	IATAN EAST/HOWARD/	1,4	GETTY OIL CO
*ARCO OIL AND GAS COMPANY				RECEIVED: 07/28/80 JA: TX			
*8049727	15966	4207901170	108	BUCKSHOT UNIT #323	BUCKSHOT 4950 SAND	1,0	WARREN PETROLEUM CO
8049735	16022	4200331926	103	EMMA COWDEN #62	EMMA	6,5	EL PASO NATURAL GAS
8049683	13445	4200310840	108	GOLDSMITH NSA CONSOLIDATED UNIT #14	NORTH GOLDSMITH CONSOLID	0,9	PHILLIPS PETROLEUM C
8049634	06256	4215533049	103	GOLDSMITH-CUMMINS S A UNIT NO 218	GOLDSMITH	27,0	PHILLIPS PETROLEUM C
8049633	06232	4210530750	108	RUBY HELBING 26 NO 1-L	HUNT-BAGGETT (STRAWN)	13,1	NORTHERN NATURAL GAS
8049736	16028	4200300515	108	SOUTH MCFARLAND QUEEN UNIT #16	MCFARLAND	0,4	PHILLIPS PETROLEUM C
8049737	16029	4223500032	108	W M NOELKE ESTATE #10	MERTZON	0,6	NORTHERN NATURAL GAS
8049738	16030	4223500034	108	W M NOELKE ESTATE #12	MERTZON	0,3	NORTHERN NATURAL GAS
8049739	16031	4223500053	108	W M NOELKE ESTATE #31	MERTZON	0,5	NORTHERN NATURAL GAS
8049740	16032	4223500055	108	W M NOELKE ESTATE #33	MERTZON	1,0	NORTHERN NATURAL GAS
8049741	16033	4223510285	108	W M NOELKE ESTATE #36	MERTZON	10,0	NORTHERN NATURAL GAS

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8049742	16035	4223510289	108		W M NOELKE ESTATE #41	MERTZON	5,0	NORTHERN NATURAL GAS
8049743	16037	4223530384	108		W M NOELKE ESTATE #48	MERTZON	0,3	NORTHERN NATURAL GAS
8049744	16038	4223530520	108		W M NOELKE ESTATE #49	MERTZON	0,3	NORTHERN NATURAL GAS
8049745	16039	4223530518	108		W M NOELKE ESTATE #51	MERTZON	0,3	NORTHERN NATURAL GAS
*ATAPCO					RECEIVED: 07/28/80 JA: TX			
8049671	12126	4249700000	108		E E KELLER #1 (32335)	ALVORD CADDO CONGLOMERAT	5,6	CITIES SERVICE CO
8049809	17300	4247531861	103		F H SCUTT #2 25366	SCUTT (DELAWARE)	62,0	TRANSWESTERN PIPELIN
8049810	17301	4247531862	103		F H SCUTT #3 25366	SCUTT (DELAWARE)	62,0	TRANSWESTERN PIPELIN
*B & M OPERATING CO INC					RECEIVED: 07/28/80 JA: TX			
8049616	01368	4235130313	102		HARTBURG LUMBER CO NO 1 ID 80192	GIST (HACKBERRY 7100)	290,0	TEXAS EASTERN TRANSM
*BELCO PETROLEUM CORPORATION					RECEIVED: 07/28/80 JA: TX			
8049804	17238	4239130308	108		TATTON B 1 ID 58524	TWIN CREEK (MARG)	11,0	TEXAS EASTERN TRANSM
*BILL FURNEY INC					RECEIVED: 07/28/80 JA: TX			
8049684	13453	4229731854	102		A H STEINMEYER 1A-L	CHARLINE (FORNEY 6) FIEL	550,0	TRANSCONTINENTAL GAS
*C & K PETROLEUM INC					RECEIVED: 07/28/80 JA: TX			
8049794	16953	4233531487	103		V T MCCABE WELL NO 1	JAMESON NORTH (STRAWN)	30,0	SUN GAS CO
*CANUS PETROLEUM INC					RECEIVED: 07/28/80 JA: TX			
*8049677	12660	4235500000	102		#1 JOHNNY C WILSON UNIT 75855	CORPUS CHRISTI WEST (AND	365,0	UNITED GAS PIPELINE
*CARMICHAEL OIL CO INC					RECEIVED: 07/28/80 JA: TX			
8049811	17302	4208331675	103		W H HENDERSON #2	BURKETT SW (DUFFER GAS)	72,5	UNION TEXAS PETROLEU
*CHAMPLIN PETROLEUM COMPANY					RECEIVED: 07/28/80 JA: TX			
8049754	16470	4245130496	103		A H DUFF ESTATE NO 2	DOVE CREEK (CANYON D)	182,0	NORTHERN NATURAL GAS
*CHEVRON U S A INC					RECEIVED: 07/28/80 JA: TX			
8049635	06412	4241530880	103		SACROC UNIT 262 A-8	KELLY-SNYDER	30,0	EL PASO NATURAL GAS
*CITIES SERVICE COMPANY					RECEIVED: 07/28/80 JA: TX			
8049816	17368	4210532381	103		UNIVERSITY BW #1	HOWARDS CREEK (PENN)	18,0	
8049815	17367	4210532392	103		UNIVERSITY BX #1	HOWARDS CREEK (PENN)	14,0	
*CONSOLIDATED OIL & GAS INC					RECEIVED: 07/28/80 JA: TX			
8049780	16872	4248300000	108		DAMRON NO 1	PANHANDLE EAST	3,5	EL PASO NATURAL GAS
*CONOCO INC					RECEIVED: 07/28/80 JA: TX			
8049882	17729	4222700000	108		H R CLAY A #31 ID #02691	HOWARD GLASSCOCK	0,1	PHILLIPS PET CO
8049883	17731	4222700000	108		H R CLAY E #7 ID #02692	HOWARD GLASSCOCK	1,1	PHILLIPS PET CO
8049632	05948	4250530964	102		J G RATHMELL B NO 1 76925	HUNDIDO (LOBO)	90,8	HOUSTON PIPELINE CO
8049678	12699	4232330381	108		N J CHITTIM NO 6538 02082	SACATOSA (SAN MIGUEL #1	0,4	LOVACA GATHERING CO
8049679	12703	4232330427	108		N J CHITTIM NO 6634 02082	SACATOSA (SAN MIGUEL #1	0,4	LOVACA GATHERING CO
8049833	17405	4250531078	103		SANCHEZ-MCMURREY NO 2 85037	HUNDIDO (LOBO)	43,8	E I DUPONT DE NEMOUR
8049836	17430	4203301923	103		W T FORD #56 ID #01665	FUHRMAN-MASCHO	12,8	PHILLIPS PETROLEUM C
*CORPUS CHRISTI OIL AND GAS CO					RECEIVED: 07/28/80 JA: TX			
8049746	16091	4270530124	102		STATE TRACT 596-L NE/4 NO 3-LT	SHERMAN OFFSHORE SW (395	0,0	HOUSTON PIPE LINE CO
8049662	09384	4242731254	102		SURVEY 287 GAS UNIT NO 2	ARKANSAS CITY N (5500)	100,0	LOVACA GATHERING CO
*COTTON PETROLEUM CORPORATION					RECEIVED: 07/28/80 JA: TX			
8049694	15198	4229530533	103		BRADFORD B NO 2	BRADFORD (CLEVELAND)	18,0	TRANSWESTERN PIPELIN
8049817	17369	4243130753	103		FUSTER A-1	CONGER (PENN)	17,5	ESPERANZA PIPELINE C
8049812	17304	4249530900	103		UNIVERSITY 58 #1	WINK SOUTH	20,0	WARREN PETROLEUM CO
*D L BISHOP					RECEIVED: 07/28/80 JA: TX			
8049802	17184	4238331400	103		UNIVERSITY 24-A #1 (RRC #08015)	FARMER (SAN ANDRES)	3,6	BIG LAKE GASOLINE PL
*DIAMOND SHAMROCK CORPORATION					RECEIVED: 07/28/80 JA: TX			
8049685	13659	4216100000	102		BAUM A NO 1	SIMSBORO N	40,0	UNITED TEXAS TRANSMI
8049795	16955	4235730922	103		DREW ELLIS B NO 5	ELLIS RANCH	90,0	NATURAL GAS PIPELINE
8049818	17372	4236731669	103		JAMES L WARREN NO 1	RENO	21,9	
8049819	17373	4236731681	103		JAMES W GREGORY NO 1	RENO	36,1	
*DILLEY PRODUCTION CO					RECEIVED: 07/28/80 JA: TX			

JD NO	JA DKT	API NO	SEC	D WELL NAME	FIELD NAME	PROD	PURCHASER
8049668	10901	4232331260	102	LAS VEGAS RANCH NO 2	LOS CUATROS (GLEN ROSE)	250,0	TEXCOL GAS SERVICES
*DINERO OIL CO				RECEIVED: 07/28/80 JA: TX			
8049734	16014	4250731201	103	R B WILLOUGHBY #1	LEONA (ELAINE)	200,0	LO VACA GATHERING CO
*DONALD C SLAWSON				RECEIVED: 07/28/80 JA: TX			
8049747	16093	4221131069	103	FLOWERS #1-1	CANADIAN SW (MORROW UPPE	1500,0	NORTHERN NATURAL GAS
*ENSERCH EXPLORATION INC				RECEIVED: 07/28/80 JA: TX			
8049837	17431	4249700000	108	C H ADMIRE NO 1-T	MUKRIS	5,0	LONE STAR GAS CO
8049813	17305	4232130862	103	STATE TRACT 181 NO 2-L	MATAGORDA BAY	69,6	LONE STAR GAS CO
*ESTATE OIL & GAS CORP				RECEIVED: 07/28/80 JA: TX			
8049886	18190	4220330604	102	HENRY PITTS GAS UNIT NO 1 81010	LANSING NORTH (TRAVIS-PE	400,0	TEJAS GAS CORP
*EXPANDO PRODUCTION CO				RECEIVED: 07/28/80 JA: TX			
8049757	16499	4239100000	108	O H DAVENPORT #15	MISSION RIVER 5300	19,8	UNITED GAS PIPE LINE
8049758	16501	4239100000	108	O H DAVENPORT #8	REFUGIO HEARD 5700	0,8	UNITED GAS PIPE LINE
*EXXON CORPORATION				RECEIVED: 07/28/80 JA: TX			
*8049820	17378	4247330308	103	KATY GAS FIELD UNIT II W-50	KATY (FIRST WILCOX)	60,0	AMOCO GAS
8049759	16549	4247330305	103	KATY GAS FLD CONSOL UNIT 4404-D	KATY (IV)	2117,0	UNITED TEXAS TRANSMI
8049805	17250	4204730741	103	SANTA FE RANCH 45-D (84336)	SANTA FE EAST (M-89)	365,0	NATURAL GAS PIPELINE
*FROST OIL CO INC				RECEIVED: 07/28/80 JA: TX			
8049729	15988	4245930424	103	H J TRAMMELL GAS UNIT #1	GILMER	730,0	
*G C HERRMANN CO				RECEIVED: 07/28/80 JA: TX			
8049798	17160	4217930674	103	MCCONNELL B NO 1	PANHANDLE	6826,0	GETTY OIL CO
*GAS PRODUCING ENTERPRISES INC				RECEIVED: 07/28/80 JA: TX			
8049665	10316	4232331226	102	J F CUNNINGHAM #1	LOS CUATROS (LOWER CRETA	200,0	TEXCOL GAS SERVICES
*GEODYNAMICS OIL & GAS INC				RECEIVED: 07/28/80 JA: TX			
8049814	17309	4205130551	102	JOE VYCHOPEN #1	CALDWELL (AUSTIN CHALK)	107,0	UNI OIL INC
*GETTY OIL COMPANY				RECEIVED: 07/28/80 JA: TX			
8049717	15717	4243330935	103	FLOWERS CANYON SAND UNIT #164	FLOWERS (CANYON SAND)	5,0	CITIES SERVICE CO
8049725	15932	4235531380	103	T S T NO 6	REDFISH BAY	405,0	UNITED GAS PIPELINE
8049722	15850	4236500000	103	WERNER-LEWIN NO 3	CARTHAGE (COTTON VALLEY)	50,0	DELHI GAS PIPELINE C
*GREAT BASINS PETROLEUM CO				RECEIVED: 07/28/80 JA: TX			
8049821	17379	4221530889	103	E E GUERRA #1	SCHMIDT	12,5	SOUTH TEXAS NATURAL
*GULF OIL CORPORATION				RECEIVED: 07/28/80 JA: TX			
8049864	17587	4223300000	108	CHRISTIAN ET AL GPC FEE /A/ NO 1	PANHANDLE HUTCHINSON	1,3	PHILLIPS PETROLEUM C
8049862	17589	4223300000	108	CHRISTIAN ET AL GPC FEE /D/ NO 4	PANHANDLE HUTCHINSON	1,4	PHILLIPS PETROLEUM C
8049863	17588	4223300000	108	CHRISTIAN ET AL GPC FEE /E/ NO 2	PANHANDLE HUTCHINSON	1,8	PHILLIPS PETROLEUM C
8049861	17590	4223300000	108	CHRISTIAN ET AL GPC FEE /E/ NO 5	PANHANDLE HUTCHINSON	1,4	PHILLIPS PETROLEUM C
8049846	17515	4223300000	108	LEWIS /A/ #1	PANHANDLE HUTCHINSON	0,8	GETTY OIL CO
8049847	17516	4223300000	108	LEWIS /A/ #2	PANHANDLE HUTCHINSON	0,8	GETTY OIL CO
8049848	17517	4223300000	108	LEWIS /A/ #3	PANHANDLE HUTCHINSON	0,8	GETTY OIL CO
8049849	17518	4223300000	108	LEWIS /A/ #4	PANHANDLE HUTCHINSON	0,8	GETTY OIL CO
8049850	17519	4223300000	108	LEWIS /A/ #5	PANHANDLE HUTCHINSON	0,8	GETTY OIL CO
8049851	17520	4223300000	108	LEWIS /A/ #6	PANHANDLE HUTCHINSON	0,8	GETTY OIL CO
8049721	15779	4232900000	108	MCCLINTIC C A ET AL NO 10	SPRABERRY (TREND AREA)	1,9	PECOS CO
8049719	15777	4232900000	108	MCCLINTIC C A ET AL NO 2	SPRABERRY (TREND AREA)	2,7	PECOS CO
8049720	15778	4232900000	108	MCCLINTIC C A ET AL NO 8	SPRABERRY (TREND AREA)	5,4	PECOS CO
8049852	17521	4223300000	108	MOORE J W #1	PANHANDLE HUTCHINSON	1,2	GETTY OIL CO
8049853	17522	4223300000	108	MOORE J W #2	PANHANDLE HUTCHINSON	1,2	GETTY OIL CO
8049854	17523	4223300000	108	MOORE J W #5	PANHANDLE HUTCHINSON	1,2	GETTY OIL CO
8049855	17524	4223300000	108	MOORE J W #6	PANHANDLE HUTCHINSON	1,2	GETTY OIL CO
8049856	17525	4223300000	108	MOORE J W #7	PANHANDLE HUTCHINSON	1,2	GETTY OIL CO
8049698	15379	4238331156	103	STATE WP NO 1	AMIGO (SAN ANDRES)	3,0	NORTHERN NATURAL GAS
8049699	15380	4238331190	103	STATE WP NO 2	AMIGO (SAN ANDRES)	3,5	NORTHERN NATURAL GAS

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8049700	15381	4238331191	103		STATE WW NO 1	AMIGO (SAN ANDRES)	12,0	NORTHERN NATURAL GAS
8049857	17527	4223300000	108		TIMMS #2	PANHANDLE HUTCHINSON	0,1	GETTY OIL CO
8049858	17528	4223300000	108		TIMMS #4	PANHANDLE HUTCHINSON	0,1	GETTY OIL CO
8049859	17529	4223300000	108		TIMMS #7	PANHANDLE HUTCHINSON	0,1	GETTY OIL CO
8049860	17530	4223300000	108		TIMMS #8	PANHANDLE HUTCHINSON	0,1	GETTY OIL CO
*H V RISIEN					RECEIVED: 07/28/80 JA: TX			
8049644	07219	4224930866	102		GARCIA-PENA #1	MAGNOLIA CITY FIELD	100,0	TENNESSEE GAS TRANSM
*HAROLD D COURSON					RECEIVED: 07/28/80 JA: TX			
8049884	17963	4235730781	102		SCHROEDER #1	MARSH (DOUGLAS)	250,0	PHILLIPS PETROLEUM C
*HARRISON INTERESTS LTD					RECEIVED: 07/28/80 JA: TX			
8049730	16004	4210532363	102		NO 14 UNIVERSITY LAND 4-32	HOWARDS CREEK (PENN)	110,0	
*HEWIT & DOUGHERTY					RECEIVED: 07/28/80 JA: TX			
8049695	15202	4235531173	103		CULLEN C WRIGHT NO 3 79877	RIVERSIDE EAST (6100)	275,0	TENNESSEE GAS PIPELI
*HNG OIL COMPANY					RECEIVED: 07/28/80 JA: TX			
8049870	17598	4243530037	108		ALLISON 54 #1 52979	SAWYER (CANYON)	23,0	INTRATEX GAS CO
8049874	17604	4243530158	108		ESPY 33 #1 52997	SAWYER (CANYON)	13,0	INTRATEX GAS CO
8049880	17612	4243531968	108		FIELDS 19 #3 74479	SAWYER (CANYON)	17,0	INTRATEX GAS CO
8049879	17611	4243531990	108		FIELDS 20 #3 75096	SAWYER (CANYON)	5,0	INTRATEX GAS CO
8049876	17607	4243530124	108		FRIESS 8 #1-C 55269	SAWYER (WOLFCAMP)	14,0	INTRATEX GAS CO
8049866	17591	4243531121	108		JONES 120 #4-A 63986	SAWYER (CANYON)	19,0	INTRATEX GAS CO
8049875	17605	4243530257	108		MAYFIELD 45 #1 57365	SAWYER (CANYON)	17,0	INTRATEX GAS CO
8049868	17593	4241330322	108		MEADOR 65 #1 65787	SAWYER (CANYON)	18,0	INTRATEX GAS CO
8049869	17594	4243530233	108		PFLUGER 103 #1-A 55048	SAWYER (CANYON)	20,0	INTRATEX GAS CO
8049873	17603	4243530766	108		PFLUGER 84 #4 59424	SAWYER (CANYON)	16,0	INTRATEX GAS CO
8049867	17592	4243531441	108		PFLUGER 86 #4 71980	SAWYER (CANYON)	5,0	INTRATEX GAS CO
8049877	17608	4243530999	108		REED 100 #4 62250	SAWYER (CANYON)	17,0	INTRATEX GAS CO
8049871	17599	4243530940	108		SAWYER 112 #3 61390	SAWYER (CANYON)	14,0	INTRATEX GAS CO
8049872	17602	4243530923	108		STEWART 6 #1 60853	SAWYER (CANYON)	15,0	INTRATEX GAS CO
8049731	16000	4250530590	103		SULLIVAN-HEIN #3 75796	LA PERLA (WILCOX FIRST)	28,0	HOUSTON PIPE LINE CO
8049826	17391	4249531049	103		UNIVERSITY BLK 21 GU #142-U 84131	APOLLO (RUSSELMAN)	204,4	INTRATEX GAS CO
8049825	17390	4249531049	103		UNIVERSITY BLOCK 21 GU #142-L 84132	APOLLO (ELLENBURGER)	95,0	INTRATEX GAS CO
8049878	17609	4243530067	108		VANDERSTUCKEN 49 #1 52972	SAWYER (CANYON)	19,0	INTRATEX GAS CO
*HAWN BROS & VENUS OIL CO					RECEIVED: 07/28/80 JA: TX			
8049638	06860	4247900000	102		ROSA V DE BENAVIDES ID 78666	COLE WEST (1260)	0,0	AMISTAD GATHERING CO
8049639	06861	4247900000	102		ROSA V DE BENAVIDES WELL #25	COLE WEST (1260)	0,0	AMISTAD GATHERING CO
*HOOKS BROTHERS OIL CO					RECEIVED: 07/28/80 JA: TX			
8049646	08353	4223300000	108		SMITH #6	PANHANDLE	1,7	PHILLIPS PETROLEUM C
8049647	08357	4223300000	108		SMITH #8	PANHANDLE	1,7	PHILLIPS PETROLEUM C
8049645	08330	4223300000	108		SMITH T #3	PANHANDLE	1,7	PHILLIPS PETROLEUM C
*HYDROC OIL CO					RECEIVED: 07/28/80 JA: TX			
8049666	10860	4206500000	108		MCCRAY #7 WELL	WEST PANHANDLE FIELD	29,0	DIAMOND SHAMROCK COR
8049667	10862	4206500000	108		MCCRAY #9 WELL	WEST PANHANDLE FIELD	29,0	DIAMOND SHAMROCK COR
*JOSEPH G GIBSON					RECEIVED: 07/28/80 JA: TX			
8049672	12185	4224730852	102		A K EAST FEE NO 10	BLACK DIAMOND	5,0	
*JOHN L COX					RECEIVED: 07/28/80 JA: TX			
8049655	08952	4232930780	103		BRAUN B NO 1 RRC #24859	PARKS (PENNSYLVANIAN)	16,0	MOBIL OIL CORP
8049656	08953	4232930768	103		BRAUN NO 1 RRC #24736	PARKS (SPRABERRY)	5,0	MOBIL OIL CORP
8049658	08958	4217330449	103		COLE NO 1 RRC #24510	CLYDE REYNOLDS (WOLFCAMP	12,0	PHILLIPS PETROLEUM C
8049659	08964	4246131284	103		CRAVENS 31 NO 1 RRC #07456	SPRABERRY (TREND AREA)	26,0	PHILLIPS PETROLEUM C
8049652	08925	4246131266	103		DUFF NO 1 RRC #07417	SPRABERRY (TREND AREA)	21,0	PHILLIPS PETROLEUM C
8049655	08948	4246131334	103		HALFF ESTATE B NO 1 RRC #07647	OLD UPLAND (BEND)	50,0	PHILLIPS PETROLEUM C
8049654	08951	4246131370	103		LYNCH NO 1 RRC #07730	OLD UPLAND (WOLFCAMP)	10,0	PHILLIPS PETROLEUM C

JD NO	JA DAT	API NO	SEC	D WELL NAME
8049660	08965	4246131330	103	MORGAN NO 5 RRC #07412
8049657	08957	4217330892	103	REYNOLDS #5 RRC #23752
*JOHN L HADA JR				RECEIVED: 07/28/80 JA: TX
8049688	13955	4235531370	103	CARVER NO 1
*JOHN R THOMPSON OPERATING INC				RECEIVED: 07/28/80 JA: TX
8049760	16559	4212330982	103	A M N VAUGHN NO B-1 WELL
*JOSEPH F CORPENING				RECEIVED: 07/28/80 JA: TX
8049838	17434	4223732622	103	COUNTS #1 WELL
*KEN PETROLEUM CORP				RECEIVED: 07/28/80 JA: TX
8049755	16474	4223931435	103	LORENZEN WELL NO 1
*KERR-MCGEE CORPORATION				RECEIVED: 07/28/80 JA: TX
8049796	17148	4234130562	103	EMMA MC DOWELL WELL NO 5
8049797	17149	4234130563	103	EMMA MCDOWELL NO 6
*KEY PRODUCTION COMPANY				RECEIVED: 07/28/80 JA: TX
8049669	11034	4220330587	102	L N SKIPPER 81516
*KILROY COMPANY OF TEXAS INC				RECEIVED: 07/28/80 JA: TX
8049649	08552	4231130581	102	HAYS & EZZELL NO 1-T
8049650	08553	4231130581	102	HAYS & EZZELL NO 1-C
8049651	08555	4231120894	102	HAYS & EZZELL NO 2-T
*KNOX INDUSTRIES INC				RECEIVED: 07/28/80 JA: TX
8049834	17413	4238331402	103	TURNER C-1
*KOMANCHE OIL & GAS				RECEIVED: 07/28/80 JA: TX
8049637	06492	4217900000	108	SOUTH JACKSON 00549 WELL #2
*L JACK GROSS PRODUCTION				RECEIVED: 07/28/80 JA: TX
8049692	15094	4206500000	108	BURNETT G-4
*LAGUNA PETROLEUM CO				RECEIVED: 07/28/80 JA: TX
*8049839	17435	4246131390	103	FULMER B #1
*MACDONALD EXPLORATIONS INC				RECEIVED: 07/28/80 JA: TX
8049670	11132	4239330642	102	M L LEDRICK #1 WELL
*MARATHON OIL COMPANY				RECEIVED: 07/28/80 JA: TX
8049703	15477	4226330647	103	R R CHISUM NO 4
*MAURICE L BROWN CO				RECEIVED: 07/28/80 JA: TX
8049705	15539	4220300000	108	LAWLESS GAS UNIT #1
*MAY PETROLEUM INC				RECEIVED: 07/28/80 JA: TX
8049693	15097	4229530648	102	DUKE A NO 1 (83279)
*MCCOMMONS OIL COMPANY				RECEIVED: 07/28/80 JA: TX
8049726	15935	4249700000	108	#1 J B MASSEY
*MCMORAN EXPLORATION CO				RECEIVED: 07/28/80 JA: TX
8049676	12543	4235531393	102	STATE TRACT 342 WELL NO 2
*MEWBOURNE OIL COMPANY				RECEIVED: 07/28/80 JA: TX
8049827	17393	4219500000	103	COLLARD 1-A ID #84010
8049828	17395	4229530683	103	PEERY #3 ID #04432
*MGU DEVELOPMENT CO				RECEIVED: 07/28/80 JA: TX
8049663	09885	4213213080	102	ROSENTHAL-CROCKER NO A1-L
8049664	09886	4232130837	102	ROSENTHAL-SLOAN NO 1-L
*MITCHELL ENERGY CORPORATION				RECEIVED: 07/28/80 JA: TX
8049630	04974	4249731320	103	CARL R JONES #1 79376
8049631	05059	4249731282	103	MARGARET YOUNG #2 80343
8049753	16191	4249731533	103	TELLIE WRIGHT #2
8049689	14833	4236731562	103	W H SPRINGFIELD #1 82424
*MOBIL OIL CORP				RECEIVED: 07/28/80 JA: TX
*8049822	17381	4237132759	103	EFFIE POTTS SIBLEY B NO 3
8049830	17398	4200331924	103	J W KUYKENDALL-HUMBLE #13

FIELD NAME	PROD	PURCHASER
SPRABERRY (TREND AREA)	16,0	PHILLIPS PETROLEUM C
CLYDE REYNOLDS (WOLFCAMP	7,0	PHILLIPS PETROLEUM C
AGUA DULCE - (8400)	700,0	LO-VACA GATHERING CO
AMADOR (1000 MIOCENE)	0,0	LOVACA GATHERING CO
JACK COUNTY REGULAR	18,0	LONE STAR GAS CO
EL TORO (FRIO 5960)	0,0	UNITED TEXAS TRANSMI
PANHANDLE MOORE	40,8	PHILLIPS PETROLEUM C
PANHANDLE-MOORE FIELD	38,6	PHILLIPS PETROLEUM C
ALPINE (TRAVIS PEAK) FIE	0,0	ARKANSAS LOUISIANA G
SAN CAJA (BLOCK 85 SD)	180,0	NATURAL GAS PIPELINE
SAN CAJA (BLOCK 85 SD)	180,0	NATURAL GAS PIPELINE
SAN CAJA (BLOCK 86 SD)	180,0	NATURAL GAS PIPELINE
SPRABERRY	0,0	
WEST PANHANDLE	14,6	PHILLIPS PETROLEUM C
PANHANDLE (CARBON)	0,0	PHILLIPS PETROLEUM C
SPRAYBERRY TREND AREA	32,4	PHILLIPS PETROLEUM C
LEDRICK RANCH (MORROW UP	35,0	TRANSWESTERN PIPELIN
CLAIREMONT (LOWER PENN)	25,0	SUN OIL CO
BETHANY	5,0	TENNESSEE GAS PIPELI
MAY (BASAL MORROW)	1460,0	NORTHERN NATURAL GAS
BOUNSVILLE (BEND CONG)	11,5	NATURAL GAS PIPELINE
RED FISH BAY N (K-2) (PR	1400,0	UNITED GAS PIPELINE
SHAPLEY (MORROW)	50,0	
PEERY (MARMATON)	36,0	TRANSWESTERN PIPELIN
HAMMAN (ROSENTHAL) FIELD	180,0	TENNESSEE GAS PIPELI
HAMMAN (-V- SAND) FIELD	180,0	TENNESSEE GAS PIPELI
BOUNSVILLE (BEND CONGL G	182,5	NATURAL GAS PIPELINE
BOUNSVILLE (BEND CONGL G	20,0	NATURAL GAS PIPELINE
BOUNSVILLE (BEND CONGL G	150,0	NATURAL GAS PIPELINE
BOUNSVILLE (BEND CONGL G	42,0	NATURAL GAS PIPELINE
COYANOSA NO (DELAWARE)	31,0	EL PASO NATURAL GAS
FUHRMAN-MASCHO	10,5	PHILLIPS PET CO

JD NO	JA DAT	API NO	SEC U WELL NAME	FIELD NAME	PROD	PURCHASER
*8049841	17438	4237132860	103 JAMES U NEAL NU 10	COYANOSA N (DELAWARE)	92,0	EL PASO NATURAL GAS
*8049840	17437	4237132859	103 JAMES U NEAL NU 7	COYANOSA N (DELAWARE)	92,0	EL PASO NATURAL GAS
8049823	17385	4221932627	103 MALLETT C NO 10	SLAUGHTER	2,5	AMOCO PRODUCTION CO
8049824	17386	4221932670	103 MAPLE WILSON NU 77	SLAUGHTER	156,5	AMOCO PRODUCTION CO
8049829	17397	4221932702	103 MAPLE WILSON NU 81	SLAUGHTER	41,5	AMOCO PRODUCTION CO
8049831	17399	4216531648	103 PATRICK J DONAHUE NO 4	HOMANN (SAN ANDRES)	3,6	PHILLIPS PET CO
=MONSANTO COMPANY			RECEIVED: 07/28/80 JA: TX			
8049615	01316	4221130982	103 STUDER NU 5 #78339	HUMPHREYS (DOUGLAS)	560,0	CITIES SERVICE OIL C
=MORAN EXPLORATION INC			RECEIVED: 07/28/80 JA: TX			
8049706	15657	4223530361	108 ROCKER B N NO 6	SPRABERRY (TREND AREA)	2,6	NORTHERN NATURAL GAS
8049707	15658	4223530328	108 ROCKER B N NO 7	SPRABERRY (TREND AREA)	2,6	NORTHERN NATURAL GAS
8049708	15659	4223530355	108 ROCKER B O #1	SPRABERRY (TREND AREA)	3,7	NORTHERN NATURAL GAS
8049714	15666	4223530350	108 ROCKER B U #10	SPRABERRY (TREND AREA)	3,7	NORTHERN NATURAL GAS
8049715	15667	4223530332	108 ROCKER B O #11	SPRABERRY (TREND AREA)	3,7	NORTHERN NATURAL GAS
8049716	15668	4223530340	108 ROCKER B O #12	SPRABERRY (TREND AREA)	3,7	NORTHERN NATURAL GAS
8049709	15660	4223530356	108 ROCKER B U #2	SPRABERRY (TREND AREA)	3,7	NORTHERN NATURAL GAS
8049710	15661	4223530323	108 ROCKER B O #3	SPRABERRY (TREND AREA)	3,7	NORTHERN NATURAL GAS
8049711	15662	4223530353	108 ROCKER B O #5	SPRABERRY (TREND AREA)	3,7	NORTHERN NATURAL GAS
8049712	15663	4223530352	108 ROCKER B O #6	SPRABERRY (TREND AREA)	3,7	NORTHERN NATURAL GAS
8049713	15664	4223530339	108 ROCKER B O #7	SPRABERRY (TREND AREA)	3,7	NORTHERN NATURAL GAS
=MORMAC OIL & GAS CO			RECEIVED: 07/28/80 JA: TX			
8049885	18167	4212731854	102 STUMBERG RANCH NO 1	STUMBERG (OLMOS 4150)	40,0	LOVACA GATHERING CO
=MURPHY H BAXTER			RECEIVED: 07/28/80 JA: TX			
8049887	18407	4223931433	102 STANFORD NU 1 RRC NO 85052	STANFORD (FRIO 6800) FIE	200,0	UNITED TEXAS TRANSMI
=MUSTANG EXPLORATION CO INC			RECEIVED: 07/28/80 JA: TX			
8049691	14927	4246931426	102 KRUEGER #3 83031	NURSERY (3150)	140,0	SUNBURST ENERGIES IN
8049733	16007	4246931432	102 KRUEGER #4	NURSERY (3000)	140,0	SUNBURST ENERGIES IN
=N D STOVALL & SON			RECEIVED: 07/28/80 JA: TX			
8049704	15524	4236332067	103 STUVALL FEE U NO 1	PALO PINTO REGULAR GAS	73,0	BRAZOS FUEL CO INC
=NARBO FARMS			RECEIVED: 07/28/80 JA: TX			
8049680	12867	4230100000	108 HAMILL ELLIS WELL #1	WHEAT	6,0	PHILLIPS PETROLEUM C
=NATIONAL EXPLORATION COMPANY			RECEIVED: 07/28/80 JA: TX			
8049718	15756	4246530305	103 BLEDSOE NO B-2	DEVILS RIVER (STRAWN)	0,0	LOVACA GATHERING CO
=PAR PRODUCING CO			RECEIVED: 07/28/80 JA: TX			
8049618	02909	4208130715	103 M C HENDRY A NU 1	JAMESON (STRAWN)	20,0	SUN OIL CO
=PARAFFINE OIL CORP			RECEIVED: 07/28/80 JA: TX			
8049696	15234	4205730920	102 P H WELDER B NO 4-C	KATIE WELDER (N-8)	365,0	FLORIDA GAS TRANSMIS
8049697	15235	4205730920	102 P H WELDER B NU 4T	KATIE WELDER (N-9)	365,0	FLORIDA GAS TRANSMIS
=PARKER & PARSLEY INC			RECEIVED: 07/28/80 JA: TX			
8049781	16893	4246131457	103 MORGAN B WELL NO 1	SPRABERRY (TREND AREA)	15,0	PHILLIPS PETROLEUM C
=PENNZOIL PRODUCING COMPANY			RECEIVED: 07/28/80 JA: TX			
8049607	00078	4236530577	103 CHADWICK UNIT NO 3C	CARTHAGE/TRAVIS PEAK-CHA	180,0	UNITED GAS PIPE LINE
=PETRO-SEARCH INC			RECEIVED: 07/28/80 JA: TX			
8049640	07008	4217900000	108 READ #1 (1-090-02709-3)	PANHANDLE	7,5	DORCHESTER GAS PRODU
=PHILLIPS PETROLEUM COMPANY			RECEIVED: 07/28/80 JA: TX			
8049845	17504	4249503439	108 (03335) JENKINS NO 1	KEYSTONE (DEVONIAN)	2,0	BID RICHARDSON GASOL
8049835	17419	4200304621	108 (05496) TEXAS UNIV-T NU 1	SHAFTER LAKE (CLEARFORK)	0,5	EL PASO NATURAL GAS
8049844	17503	4213503765	108 (18713) GOLDSMITH ADOBE UNIT NO 17	GOLDSMITH (5600)	0,4	EL PASO NATURAL GAS
8049686	13738	4213531301	108 (19297) S COWDEN UNIT NO 08-15	COWDEN S (GRAYBURG)	2,0	ODESSA NATURAL GAS C
8049803	17209	4221100000	103 BOWERS B NO 3	WASHITA CREEK	1000,0	NATURAL GAS PIPELINE
8049865	17542	4229500000	108 DUKE E NU 1	KIOWA CREEK	4,0	PANHANDLE EASTERN PI
8049806	17283	4213504353	108 NOBLES NO 4 (34958)	GOLDSMITH N (SAN ANDRES	19,0	EL PASO NATURAL GAS

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8049687	13800	4237103785	108		ODOM-D NO 2 (20644)	PUCKETT (ELLENBURGER)	19,5	NORTHERN NATURAL GAS
-R LACY INC					RECEIVED: 07/28/80 JA: TX			
8049608	00449	4236500000	108		BURNETT BROS #2-C ID 29742	CARTHAGE (UPPER PETTIT)	11,0	NATURAL GAS PIPELINE
8049612	00454	4236500000	108		BURNETT BROS #7 ID 29743	CARTHAGE (TRAVIS PEAK)	8,0	NATURAL GAS PIPELINE
8049613	00455	4236500000	108		BURNETT BROS #9 ID 29745	CARTHAGE (UPPER PETTIT)	18,0	NATURAL GAS PIPELINE
8049611	00452	4236500000	108		CAMERON LBR CO #2-C ID 29748	CARTHAGE (UPPER PETTIT)	10,0	NATURAL GAS PIPELINE
8049610	00451	4236500000	108		CAMERON UNIT #3 WELL #3-A ID 40651	CARTHAGE N (GLEN ROSE 37	12,0	NATURAL GAS PIPELINE
8049609	00450	4236500000	108		J W COOKE UNIT 2 WELL #2-A ID 39404	CARTHAGE N (GLEN ROSE 37	9,0	NATURAL GAS PIPELINE
8049614	00456	4236500000	108		RICHARDSON #2 ID 39451	CARTHAGE N (GLEN ROSE 37	11,0	NATURAL GAS PIPELINE
-R-R OIL CO					RECEIVED: 07/28/80 JA: TX			
8049674	12256	4217900000	108		WORL #1	PANHANDLE	10,8	PHILLIPS PETROLEUM C
-ROGER M WHEELER					RECEIVED: 07/28/80 JA: TX			
8049724	15897	4235700000	108		BUZZARD #1 RRC #40117	ELLIS RANCH	10,0	NORTHERN NATURAL GAS
8049723	15896	4235700000	108		BUZZARD #2 RRC #03448	FARNSWORTH	0,0	PHILLIPS PETROLEUM C
-SHELL OIL CO					RECEIVED: 07/28/80 JA: TX			
8049782	F-04-016900	4242731312	103		BENTSEN BROS B NO 11	LACOPITA (VICKSBURG Z SW	64,0	TENNESSEE GAS PIPELI
*8049661	09258	4208930997	103		SHERIDAN GAS UNIT NO 79	SHERIDAN (WILCOX)	200,0	NATIONAL FUEL GAS SU
-SIMPSON-MANN OIL PRODUCERS					RECEIVED: 07/28/80 JA: TX			
8049732	23050	4223531354	103		WINTERBOTHAM #1-785	DOVE CREEK (CISCO)	180,0	NORTHERN NATURAL GAS
-SOVEREIGN EXPLORATION CO					RECEIVED: 07/28/80 JA: TX			
8049807	17286	4246931491	103		SOVEREIGN #1 PANTEL	EBEN HABEN (3350)	300,0	LOVACA GATHERING CO
8049643	07419	4202530953	102		SOVEREIGN NO 1 ELLA MAY	BLANCONIA (2900)	55,0	UNITED GAS PIPELINE
-SUN OIL COMPANY (DELAWARE)					RECEIVED: 07/28/80 JA: TX			
8049783	16902	4207130947	103		R M WHITE NO 29	ANAHUAC	68,0	HOUSTON PIPE LINE CO
-TENNECO OIL COMPANY					RECEIVED: 07/28/80 JA: TX			
8049648	08456	4217930620	103		WORLEY NO 89	PANHANDLE GRAY COUNTY	2,0	PHILLIPS PETROLEUM C
-TEXACO INC					RECEIVED: 07/28/80 JA: TX			
8049881	17630	4217502053	108		WILSON DEEP GAS UNIT WELL #1	DALLAS HUSKY (WILCOX 900	0,0	TEXAS EASTERN TRANSM
-TEXAS OIL & GAS CORP					RECEIVED: 07/28/80 JA: TX			
8049748	16104	4223500000	103		JONES K #1	DOVE CREEK (CANYON D)	220,0	COLUMBIA GAS TRANSMI
8049832	17403	4248131862	103		KNIPLING G U #2	WHARCO-SMILLING	15,0	DELHI GAS PIPELINE
8049749	16107	4219500000	103		LANDIS A #1(MISS)	HANSFORD(MISSISSIP) HANS	310,0	NORTHERN NATURAL GAS
8049750	16108	4219500000	103		LANDIS A #1(CLEVE)	HORIZON (CLEVELAND)	310,0	NORTHERN NATURAL GAS
8049751	16109	4219500000	103		LANDIS A #1(MORROW)	HANSFORD (MORROW LOWER)	310,0	NORTHERN NATURAL GAS
8049690	14863	4223931359	102		MILLER U #1	MORALES (4390) PROPOSED	135,0	TENNESSEE GAS PIPELI
8049808	17288	4220330669	103		SAUNDERS #1	SCOTTSVILLE N (PETTIT LO	0,0	UNITED GAS PIPE LINE
-TEXAS PACIFIC OIL COMPANY INC					RECEIVED: 07/28/80 JA: TX			
8049701	15435	4221932507	103		NORTHEAST LEVELLAND UNIT #19	LEVELLAND	9,7	AMOCO PRODUCTION CO
8049702	15436	4221932506	103		NORTHEAST LEVELLAND UNIT #20	LEVELLAND	5,7	AMOCO PRODUCTION CO
8049756	16488	4221932703	103		SOUTHEAST LEVELLAND UNIT WELL NO 2	LEVELLAND/SAN ANDRES	12,3	AMOCO PRODUCTION CO
-THE SUPERIOR OIL COMPANY					RECEIVED: 07/28/80 JA: TX			
8049673	12199	4228531234	102		FANNIE V MATTHEW 1	WILD CAT	0,0	
-THOMAS C CANAN					RECEIVED: 07/28/80 JA: TX			
8049617	01770	4242931569	108		RAGLIN NO 1 72968	STEPHENS COUNTY REGULAR	5,0	WARREN PETROLEUM CO
-THOMAS D COFFMAN					RECEIVED: 07/28/80 JA: TX			
8049641	07136	4228730206	103		PRAIRIE #1	GIDDINGS (AUSTIN CHALK/B	10,0	PGP GAS PRODUCTS INC
-THREE-B OIL CO					RECEIVED: 07/28/80 JA: TX			
8049752	16160	4237132785	103		ARCO CURDZ NO 1 049329	PAYTON	36,5	EL PASO NATURAL GAS
-TRAVELERS OIL CO G-V PROJECT					RECEIVED: 07/28/80 JA: TX			
8049636	06459	4217900000	108		OBRIEN #1 04065	PANHANDLE-GRAY COUNTY	6,1	PHILLIPS PETROLEUM C
-TUCKER DRILLING COMPANY INC					RECEIVED: 07/28/80 JA: TX			
8049784	16906	4241330745	103		GLASS 50-1	REG (LIME 5900)	54,0	NORTHERN NATURAL GAS

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JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
*UNION TEXAS PETROLEUM					RECEIVED: 07/28/80 JA: TX			
8049681	12869	4214930292	102		H A BERGMANN NO 1	WINEDALE	3,0	SWELCO INC
*W A MONCRIEF JR					RECEIVED: 07/28/80 JA: TX			
8049642	07200	4203931188	103		LETA HUGHEY #3	HASTINGS WEST	19,0	AMOCO PRODUCTION CO
*W B D OIL & GAS CO					RECEIVED: 07/28/80 JA: TX			
8049624	04414	4234100000	108		BOX #1 RRC #03537	PANHANDLE	23,3	PHILLIPS PETROLEUM C
8049621	04411	4234100000	108		BOX LEASE WELL #2 RRC #03537	PANHANDLE	23,3	PHILLIPS PETROLEUM C
8049619	03500	4234100000	108		BOX LEASE WELL #4 RRC #03537	PANHANDLE FIELD	23,3	PHILLIPS PETROLEUM C
*W L BRUCE OPERATOR					RECEIVED: 07/28/80 JA: TX			
8049622	04412	4234100000	108		BOX #3 RRC 0537	PANHANDLE	23,3	PHILLIPS PETROLEUM C
8049623	04413	4217900000	108		BOX #5 RRC 03537	PANHANDLE FIELD	23,3	PHILLIPS PETROLEUM C
8049625	04415	4217900000	108		BOX #7 RRC	PANHANDLE	23,3	PHILLIPS PETROLEUM C
*WARREN PETR CO A DIV OF GULF OIL CO					RECEIVED: 07/28/80 JA: TX			
8049675	12383	4210331180	108		C-BAR SAN ANDRES UNIT NO G-15	C-BAR SAN ANDRES	1,0	EL PASO NATURAL GAS
8049629	04779	4210331952	103		P J LEA ET AL #72	LEA (SAN ANDRES)	10,0	EL PASO NATURAL GAS
8049620	03968	4210331927	103		P J LEA ET AL #75	LEA (SAN ANDRES)	16,0	EL PASO NATURAL GAS

OTHER PURCHASERS

8049522	MONTANA-DAKOTA UTILITIES CO
8049523	MONTANA-DAKOTA UTILITIES CO
8049524	MONTANA-DAKOTA UTILITIES CO
8049598	PIONEER GAS PRODUCTS CO
8049661	HOUSTON PIPE LINE CO
8049677	TENNGAS CO GAS GATHERING CO
8049727	CITIES SERVICE CO
8049820	TENNEGAS CO GAS GATH CO
8049822	DELHI GAS P L CORP
8049839	NORTHERN NAT GAS CO
8049840	PIONEER NAT GAS CO
8049841	PIONEER NAT GAS CO

[FR Doc. 80-26864 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-C

[Volume 265]

Determinations by Jursidictional Agencies Under the Natural Gas Policy Act of 1978

Issued: August 25, 1980.

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" after the section code. Estimated annual production (PROD) is in million cubic feet (MMcf).

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before September 26, 1980.

Please reference the FERC Control Number (JD NO) in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

BILLING CODE 6450-85-M

JD NO	JA DAT	API NO	SEC T	WELL NAME	FIELD NAME	PROD	PURCHASER
KANSAS CORPORATION COMMISSION							
*AMOCO PRODUCTION CO				RECEIVED: 07/30/80 JA: KS			
8049990	K-80-0128	1512920390	103	OSBORNE GAS UNIT B WELL #3	KINSLER	550,0	CITIES SERVICE GAS C
*ANADARKO PRODUCTION COMPANY				RECEIVED: 07/29/80 JA: KS			
8049957	K-80-0276	1512920399	103	KNELLER B NO 1	WILBURTON NORTH	150,0	PANHANDLE EASTERN PI
*ARROWHEAD PETROLEUM INC				RECEIVED: 07/29/80 JA: KS			
8049951	K-80-0287	1518520992	103	GRAYBILL #1	FARMINGTON	0,0	CENTRAL STATES GAS C
*BENSON MINERAL GROUP				RECEIVED: 07/29/80 JA: KS			
8049928	K-80-0315	1504720612	102	GALLUP #1-9	WIL	0,0	PANHANDLE EASTERN PI
8049939	K-80-0319	1504720314	103	GIBSON #2	WIL	10,8	PANHANDLE EASTERN PI
8049926	K-80-0317	1504720344	103	GIBSON #3	WIL	10,8	PANHANDLE EASTERN PI
8049940	K-80-0318	1504720474	103	SCHULTZ A-3	WIL	36,4	PANHANDLE EASTERN PI
*BENSON MINERAL GROUP				RECEIVED: 07/30/80 JA: KS			
8049981	K-79-1854	1514520427	108	BAUER #1	BRYANT SE	13,1	NORTHERN NATURAL GAS
8049993	K-80-0046	1512522191	103	BOLTE #1-5	JEFFERSON-SYCAMORE	13,9	UNION GAS SYSTEMS IN
8049982	K-79-1853	1514520488	108	STEFFEN #1	STEFFEN SOUTH	0,3	NORTHERN NATURAL GAS
*BEREN CORPORATION				RECEIVED: 07/30/80 JA: KS			
8049984	K-79-1730	1518720301	103	RAMSEY #1	HUGOTON	110,0	COLORADO INTERSTATE
8049983	K-79-1731	1518720302	103	RAMSEY A #1	HUGOTON	30,0	COLORADO INTERSTATE
*BRADEN-DEEM INC				RECEIVED: 07/30/80 JA: KS			
8049992	K-80-0070	1500700000	108	WHEAT #1	AETNA	15,0	KANSAS POWER & LIGHT
*BUTTONWOOD PETROLEUM INC				RECEIVED: 07/29/80 JA: KS			
8049948	K-80-0336	1511920374	103	RICHARDSON #1	STEVENS	182,5	PANHANDLE EASTERN PI
*CITIES SERVICE COMPANY				RECEIVED: 07/29/80 JA: KS			
8049930	K-80-0313	1515520622	103	HEYLMUN D #1	PLEVNA NORTH	97,7	PEOPLES NATURAL GAS
*COURSON OIL & GAS INC				RECEIVED: 07/30/80 JA: KS			
8049961	K-80-0404	1511920135	108	BERRYMAN A #1	HUCKETT	10,0	NORTHERN NATURAL GAS
*D R LAUCK OIL CO INC				RECEIVED: 07/30/80 JA: KS			
8049972	K-80-0299	1504720610	103	BREITENBACH D #1	EMBRY	72,0	NORTHERN NATURAL GAS
*DIAMOND SHAMROCK CORPORATION				RECEIVED: 07/29/80 JA: KS			
8049927	K-80-0316	1511920387	103	OTTO FELDMAN NO 2	UNDESIGNATED	15,0	PANHANDLE EASTERN PI
*DIETRICH PETROLEUM CORP				RECEIVED: 07/30/80 JA: KS			
8049994	K-80-0043	1507520315	103	TATE #34-41	BRADSHAW	40,0	KANSAS-NEBRASKA NATU
*E K LOEWEN				RECEIVED: 07/29/80 JA: KS			
8049947	K-80-0338	1511300000	103	CHAVEZ #2	GRABER	7,3	PEOPLES NATURAL GAS
*ENERGY EXPLORATION & PRODUCTION INC				RECEIVED: 07/29/80 JA: KS			
8049945	K-80-0341	1505520358	103	HIBBERT #1	HUGOTON	0,0	NORTHERN NATURAL GAS
*ENERGY EXPLORATION INC				RECEIVED: 07/30/80 JA: KS			
8049985	K-80-0216	1515520614	103	HARLEY #1	HUNTSVILLE TOWNSHIP	365,0	PEOPLES NATURAL GS D
8049986	K-80-0215	1515520615	103	HESTER #1	HUNTSVILLE TOWNSHIP	273,0	PEOPLES NATURAL GAS
*EXCALIBUR PRODUCTION CO INC				RECEIVED: 07/30/80 JA: KS			
8049980	K-79-2009	1507920356	103	TED JONES #1	BURRTON	30,0	PEOPLES NATURAL GAS

JD NO	JA DKT	API NO	SEC	D WELL NAME
*F & M OIL CO INC				RECEIVED: 07/29/80 JA: KS
8049956	K-80-0282	1504720626	103	#1 RIEKENBURG
*F G HOLL				RECEIVED: 07/29/80 JA: KS
8049929	K-80-0314	1514520643	102	HOAR B NO 1 - 31
*FERGUSON OIL & GAS COMPANY INC				RECEIVED: 07/30/80 JA: KS
8049991	K-80-0113	1500720783	103	STONE B NO 2
*GETTY OIL COMPANY				RECEIVED: 07/30/80 JA: KS
8049966	K-80-0399	1511520459	108	E A BARTEL NO 12-9
*GRAHAM-MICHAELIS CORP				RECEIVED: 07/30/80 JA: KS
8049973	K-80-0298	1518700000	108	DEWELL #1-32
*8049974	K-80-0296	1509300000	108	LOWE #1
8049976	K-80-0293	1518700000	108	PLUMMER C #1
8049975	K-80-0295	1517500000	108	PRINTZ #1
*GRAVES DRILLING CO INC				RECEIVED: 07/29/80 JA: KS
8049946	K-80-0339	1509520165	108	MORISSE NO 1
*GRAVES DRILLING CO INC				RECEIVED: 07/30/80 JA: KS
8049968	K-80-0304	1500720718	103	KNOX NO 1
8050002	K-80-0327	1500720643	103	KREMBIEL NO 1
*GULF OIL CORPORATION				RECEIVED: 07/29/80 JA: KS
8049944	K-80-0342	1500700000	108	INSLEE /A/ NO 1
8049950	K-80-0334	1500700000	108	VERNON G COLEMAN NO 1
*HELMERICH & PAYNE INC				RECEIVED: 07/29/80 JA: KS
8049958	K-80-0275	1505500000	103	RIGGS A NO 1
*HINKLE OIL COMPANY				RECEIVED: 07/30/80 JA: KS
8050001	K-80-0328	1514520660	102	#1-A SPENCE
8050004	K-80-0325	1500720885	103	SHRIVER #2
*HITCH ENERGY CORP				RECEIVED: 07/29/80 JA: KS
8049937	K-80-0321	1515520585	103	CULVER NO 1
8049938	K-80-0320	1515520588	103	DRAKE G NO 2
8049935	K-80-0323	1515520424	103	DRAKE NO 1
8049936	K-80-0322	1515520600	103	KEY NO 1
*IMPERIAL OIL COMPANY				RECEIVED: 07/29/80 JA: KS
8049943	K-80-0343	1509720602	103	LIGHT-WOOTTON #1-3
8049941	K-80-0345	1509720614	103	RINKEL A #2-11
8049942	K-80-0344	1509720598	103	RINKEL B #1-11
*KANSAS NATURAL GAS INC				RECEIVED: 07/29/80 JA: KS
8049934	K-80-0306	1509320654	103	CAMPBELL #2
*KANSAS NATURAL GAS INC				RECEIVED: 07/30/80 JA: KS
8049967	K-80-0305	1509320655	103	TATE #2
*KANSAS-NEBRASKA NATURAL GAS CO INC				RECEIVED: 07/30/80 JA: KS
8049988	K-80-0175	1502320044	102	HOLZWARTH 1-1
*LEAR PETROLEUM EXPLORATION INC				RECEIVED: 07/29/80 JA: KS
8049931	K-80-0311	1503320307	103	LEMON #1
*MCCOY PETROLEUM CORP				RECEIVED: 07/30/80 JA: KS
8049970	K-80-0302	1509520249	108	DUMARS UNIT #3
8049989	K-80-0169	1507720544	103	LEEPER D #1
*MOBIL OIL CORP				RECEIVED: 07/29/80 JA: KS
8049932	K-80-0309	1512920419	103	ELIJAH D THOMPSON UNIT NO 2
8049933	K-80-0307	1505520398	103	JENNIE BARKER NO 2 WELL
*MOBIL OIL CORP				RECEIVED: 07/30/80 JA: KS
8049977	K-79-0559	1506720534	103	JOHN MICKEY UNIT NO 2
*MURAN OIL COMPANY				RECEIVED: 07/30/80 JA: KS

FIELD NAME	PROD	PURCHASER
MCCARTNEY NE	91250,0	CENTRAL STATES GAS C
GARFIELD SW	350,0	KANSAS-NEBRASKA NATU
N HARBAUGH	0,0	PANHANDLE EASTERN PI
FRENCH CREEK	7,3	CLOVER PIPELINE CORP
E SPARKS	10,0	COLORADO INTERSTATE
HUGOTON FIELD	14,0	CITIES SERVICE CO
HUGOTON	19,0	COLORADO INTERSTATE
HUGOTON	20,0	NORTHERN NATURAL GAS
ALMA EXT	9,4	PEOPLES NATURAL GAS
BLOOM NO C W/2 SE SW SEC	22,2	KANSAS POWER & LIGHT
BLOOM NORTH NW NE NW SEC	18,1	KANSAS POWER & LIGHT
RHODES/MISSISSIPPI	7,9	CITIES SERVICE GAS C
RHODES NE	17,0	CITIES SERVICE GAS C
PANOMA GAS AREA 538159	110,0	COLORADO INTERSTATE
GATTERMAN SEC 35-23S-18W	180,0	NATURAL GAS PIPELINE
JEM SW 440 FNL 440 FEL N	36,5	CENTRAL STATES GAS C
WISBY	11,0	GARFIELD GAS GATHERI
WISBY	8,0	GARFIELD GAS GATHERI
WISBY	10,0	GARFIELD GAS GATHERI
WISBY	10,0	GARFIELD GAS GATHERI
WELLSFORD NE	116,4	PANHANDLE EASTERN PI
WELLSFORD NE	124,0	PANHANDLE EASTERN PI
WELLSFORD NE	66,7	PANHANDLE EASTERN PI
PANOMA - COUNCIL GROVE	100,0	KANSAS-NEBRASKA NATU
PANOMA - COUNCIL GROVE	100,0	KANSAS-NEBRASKA NATU
BENKLEMAN	69,0	
WILDCAT	250,0	
SPIVEY-GRABS	12,0	NORTHERN NATURAL GAS
SPIVEY-GRABS EAST	6,0	
PANOMA	70,0	NORTHERN NATURAL GAS
PANOMA	70,0	CITIES SERVICE GAS C
PANOMA	70,0	CITIES SERVICE GAS C

JD NO	JA OR I	API NO	SEC	D WELL NAME	FIELD NAME	PROD	PURCHASER
8049979	K-80-0037	1503522291	102	MURET B #2	POSEY	27,5	COLONIAL CORP
8049978	K-80-0038	1503522284	102	MURET B #3	POSEY	27,5	COLONIAL CORP
-NATIONAL OIL COMPANY				RECEIVED: 07/29/80 JA: KS			
8049952	K-80-0286	1504720600	103	#2 MOORE	BRITTON	36,0	KANSAS-NEBRASKA NATU
-PAR PETROLEUM INC				RECEIVED: 07/30/80 JA: KS			
8049965	K-80-0400	1515120684	103	HENSLEY #1	MOURE SW	18,5	CENTRAL STATES GAS C
-PETROLEUM MANAGEMENT INC				RECEIVED: 07/29/80 JA: KS			
8049955	K-80-0283	1517500000	108	COOK #1 P01808000	LIBERAL SE	8,4	PANHANDLE EASTERN PI
-PHILLIPS PETROLEUM COMPANY				RECEIVED: 07/29/80 JA: KS			
8049954	K-80-0284	1509500000	108	ALDRICH - AB NO 3	SPIDEY-GRABS	0,0	KANSAS POWER & LIGHT
8049953	K-80-0285	1509500000	108	ALDRICH - BB NO 4	SPIVEY GRABS	0,0	KANSAS POWER & LIGHT
-PICKRELL DRILLING COMPANY				RECEIVED: 07/29/80 JA: KS			
8049960	K-80-0273	1509720589	103	EDMONSTON D #1		36,5	
8049959	K-80-0274	1502520304	103	SHATTUCK A #3	GRANGER CREEK NW	27,3	KANSAS POWER AND LIG
-PICKRELL DRILLING COMPANY				RECEIVED: 07/30/80 JA: KS			
8050005	K-80-0324	1502520323	103	BARBY-HARPER A #1	HARPER RANCH	65,7	NORTHERN NATURAL GAS
-RAMOIL				RECEIVED: 07/30/80 JA: KS			
8049995	K-80-0040	1503522212	102	ALBRIGHT #1	POSEY	36,0	COLONIAL CORP
-ROBERT F WHITE				RECEIVED: 07/30/80 JA: KS			
8049971	K-80-0300	1511520523	103	CARLSON #1	EAST ANTELOPE FIELD	30,0	CLOVER PIPELINE CORP
-SILVER CREEK PRODUCTION CO INC				RECEIVED: 07/30/80 JA: KS			
8049987	K-80-0190	1503522417	103	MCCOLLUM B 2	TISDALE GAS AREA	4,6	CITIES SERVICE GAS C
-STELBAR OIL CORP INC				RECEIVED: 07/30/80 JA: KS			
8049969	K-80-0303	1519120890	102	JORDAN TRUST #1	STUHLSATZ	190,0	DELHI GAS PIPELINE C
-STERLING DRILLING & PROD CO INC				RECEIVED: 07/30/80 JA: KS			
8049962	K-80-0403	1504700000	108	MITCHELL #1	ENLOW EXTENSION	6,0	KANSAS NEBRASKA NATU
-TEMA OIL CO				RECEIVED: 07/30/80 JA: KS			
8049964	K-80-0401	1508120180	103	HUXMAN #11-14 MARAMATON	PANOMA MARMATON	114,0	PANHANDLE EASTERN PI
8049963	K-80-0402	1508120180	103	HUXMAN 11-14 MORROW	PANOMA MORROW 80/0402	260,0	PANHANDLE EASTERN PI
-TEXAS ENERGIES INC				RECEIVED: 07/29/80 JA: KS			
8049949	K-80-0335	1515120722	103	SHAW NO 2	HOPEWELL EXTENSION	292,0	CENTRAL STATES GAS C
-TEXAS ENERGIES INC				RECEIVED: 07/30/80 JA: KS			
8050003	K-80-0326	1515120673	103	NEWBY 1-14	CARVER-ROBBINS	111,3	PANHANDLE EASTERN PI
-THE SUPERIOR OIL COMPANY				RECEIVED: 07/30/80 JA: KS			
8050000	K-80-0329	1512900000	108	BOYD UNIT NO 1	GREENWOOD	18,0	COLORADO INTERSTATE
8049998	K-80-0331	1500700000	108	GRAVES UNIT #1	HARDTNER	18,0	CITIES SERVICE GAS C
8049999	K-80-0330	1512900000	108	HANNA UNIT NO 1	GREENWOOD	9,0	COLORADO INTERSTATE
8049997	K-80-0332	1500700000	108	HOLMES #2	DRIFTWOOD	6,0	CITIES SERVICE GAS C
8049996	K-80-0333	1500700000	108	STERLING A #1	HARDTNER	19,5	CITIES SERVICE GAS C
**********							
NORTH DAKOTA GEOLOGICAL SURVEY							
**********							
-DOME PETROLEUM CORP				RECEIVED: 07/29/80 JA: ND			
8049889	262	3310500815	103	JOYCE 1-2	TIOGA	56,9	AMINOIL USA INC
**********							
WEST VIRGINIA DEPARTMENT OF MINES							
**********							
-ADKINS DRILLING CO				RECEIVED: 07/29/80 JA: WV			
8049901		4709901704	108	EPLIN #2	STONEWALL	1,6	DEVON CORP
-BOWSER GAS & OIL CO				RECEIVED: 07/29/80 JA: WV			
8049902		4708501974	108	PRUNTY HEIRS #2	MURPHY DISTRICT	1,2	CONSOLIDATED GAS SUP
-CLYDE P LAW				RECEIVED: 07/29/80 JA: WV			

JD NO	JA DAT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8049913		4701302433	108		MALLOHAN #3	BIG BEND	1,9	CONSOLIDATED GAS SUP
8049914		4701302445	108		MALLOHAN #4	BIG BEND	1,9	CONSOLIDATED GAS SUP
*CONSOLIDATED GAS SUPPLY CORPORATION					RECEIVED: 07/29/80 JA: WV			
8049897		4710300721	108		BARR TRACT 7145	GRANT DISTRICT	3,0	GENERAL SYSTEM PURCH
8049915		4706700355	108		FITZWATER-BARKUS 11923	WEST VIRGINIA OTHER A-85	8,0	GENERAL SYSTEM PURCH
8049898		4710500754	108		LUCINDA BUSH 5717	WEST VIRGINIA OTHER A-85	5,0	GENERAL SYSTEM PURCH
*DAVIS & POWELL					RECEIVED: 07/29/80 JA: WV			
8049904		4701702613	108		D HUFF	DAVIS & POWELL	0,0	CONSOLDDTED GAS SUPP
*GARNER & GAWTHROP INC					RECEIVED: 07/29/80 JA: WV			
8049899		4703302345	108		FURNER #2	JOHN H FURNER	8,4	CONSOLIDATED GAS SUP
8049900		4703302401	108		FURNER #4	JOHN H FURNER	8,4	CONSOLIDATED GAS SUP
*GO DISTRIBUTION CO INC					RECEIVED: 07/29/80 JA: WV			
8049893		4708522877	108		BECK HRS #1	UNION	0,4	EQUITABLE GAS CO
8049892		4708523049	108		EDW PIERCE #2	UNION	1,7	EQUITABLE GAS CO
8049891		4708523083	108		KEISTER #1	UNION	1,2	EQUITABLE GAS CO
8049896		4708522585	108		PRIMM #1	CLAY	1,5	EQUITABLE GAS CO
8049894		4708522677	108		PRIMM #2	CLAY	1,5	EQUITABLE GAS CO
8049895		4708522627	108		SHIELDS #2	GRANT	0,1	CONSOLIDATED GAS SUP
*GULF OIL CORPORATION					RECEIVED: 07/29/80 JA: WV			
8049907		4701302261	108		D A RULEY #5	HENRIETTA DE CALB	0,9	CONSOLIDATION GAS SU
*GUYL MEABON H E & VIRGINIA					RECEIVED: 07/29/80 JA: WV			
8049903		4704302463	108		GOYL MEABON H E & VIRGINIA BURNS	BEREA	4,8	COLUMBIA GAS TRANSMI
*MORRIS & PERRILL					RECEIVED: 07/29/80 JA: WV			
8049912		4702101541	108		TIMMA MICK #2	HEATERS FORK	2,0	CONSOLIDATED GAS SUP
*P & S OIL AND GAS CORPORATION					RECEIVED: 07/29/80 JA: WV			
8049908		4704500135	108		W B PHIPPS	CHAPMANVILLE DIST	2,0	CONSOLIDATED GAS SUP
*QUAKER STATE OIL REFINING CORP					RECEIVED: 07/29/80 JA: WV			
8049906		4701702756	108		JOSEPH SMITH #1	WEST UNION DISTRICT	1,1	PENNZOIL CO
*R & S GAS COMPANY					RECEIVED: 07/29/80 JA: WV			
8049905		4708520360	108		ELIZABETH CAMPBELL NO 1	MURPHY DISTRICT	4,0	CABOT CORP
*RIDDLE & FLANAGAN					RECEIVED: 07/29/80 JA: WV			
8049909		4708501435	108		S OF SATTER FIELD WELL #1	D W SATTERFIELD WELL #1	4,7	CONSUMERS GAS UTILIT
*W H MOSSOR					RECEIVED: 07/29/80 JA: WV			
8049911		4708522068	108		HAYES #1	SHIRLEY GOFF	9,0	EQUITABLE GAS CO
*WACO OIL AND GAS CO INC					RECEIVED: 07/29/80 JA: WV			
8049910		4702101631	108		ASA COLLINS #1	JERSEY WOOD RUN	3,0	CONSOLIDATED GAS SUP
8049919		4702101892	108		C P SNIDER #1	GLENVILLE DISTRICT	15,0	EQUITABLE GAS CO
8049920		4702101425	108		D J BLACK HEIRS #1	ELLIS	10,0	EQUITABLE GAS CO
8049917		4702102371	108		GRANVILLE COLLINS #2	GLENVILLE DISTRICT	12,0	EQUITABLE GAS CO
8049922		4702101354	108		JOHN WALDECK #1	BULL RUN	0,0	EQUITABLE GAS CO
8049921		4702102161	108		JOHN WALDECK #1A	BULL RUN	0,0	EQUITABLE GAS CO
8049925		4700700987	108		JOHN WALDECK #2A	OTTER DISTRICT	12,0	EQUITABLE GAS CO
8049924		4700700989	108		JOHN WALDECK #3A	OTTER DISTRICT	10,0	EQUITABLE GAS CO
8049923		4700700990	108		JOHN WALDECK #4A	OTTER DISTRICT	10,0	EQUITABLE GAS CO
8049916		4702102358	108		M E LYNCH #1	GLENVILLE DISTRICT	12,0	EQUITABLE GAS CO
8049918		4702102270	108		MARSHALL T WIANT #1	SAND FORK	20,0	EQUITABLE GAS CO
**********								
** U.S. GEOLOGICAL SURVEY - METAIRIE,LA								
**********								
*ARCO OIL AND GAS COMPANY					RECEIVED: 07/29/80 JA: LA 3			
8049890 GO-1234		1770040218	102		OCS-G-2834 #A-1	WEST CAMERON BLOCK	5000,0	NORTHERN NATURAL GAS
**********								
** U.S. GEOLOGICAL SURVEY - CASPER,WY								
**********								
*PROVIDENT RESOURCES INC					RECEIVED: 07/30/80 JA: CO 5			

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JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8050021	CC-1329-9	0504506019	108		GOVERNMENT 1-14	ROCK CANYON	15,0	NORTHWEST PIPELINE C
*FALCON-COLORADO EXPLORATION INC					RECEIVED: 07/30/80 JA: MT 5			
8050011	M-1334-9	2510521169	102		1-29 KILROY	SWANSON CREEK	0,1	MONTANA-DAKOTA UTILI
*MIDLANDS GAS CORPORATION					RECEIVED: 07/30/80 JA: MT 5			
*8050023	M-1347-9	2507121200	108	D	1913 FEDERAL #1	BOWDOIN	2,1	KANSAS-NEBRASKA-NATU
*8050010	M-1333-9	2507121167	103		2812 FEDERAL #1	BOWDOIN	79,0	KANSAS-NEBRASKA NATU
*SOUTHLAND ROYALTY CO					RECEIVED: 07/30/80 JA: MT 5			
8050015	M-1347-9	2507121701	103		FEDERAL 1-17-25NE	BOWDOIN-SWANSON CREEK	36,0	KANSAS NEBRASKA NATU
*BROWNLIE WALLACE ARMSTRONG & BANDER					RECEIVED: 07/30/80 JA: ND 5			
8050009	ND1304-9	3305300845	102		ALLEN FEDERAL #12-21	MONDAK	7,5	MONTANA-DAKOTA UTILI
8050008	ND 1301-9	3305300878	102		FEDERAL 3-22	MONDAK	15,0	MONTANA-DAKOTA UTILI
*GETTY OIL COMPANY					RECEIVED: 07/30/80 JA: ND 5			
*8050025	ND-1332-9	3300700375	102		MYSTERY CREEK B WELL NO 6-5	T R FIELD	36,0	KOCH HYDROCARBON CO
8050024	ND 1331-9	3300700314	102		MYSTERY CREEK WELL NO 1-1	T R	12,0	WESTERN GAS PROCESSO
*GAS PRODUCING ENTERPRISES INC					RECEIVED: 07/30/80 JA: UT 5			
8050006	UC 1351-9	4304730480	103		NBU 56-11B 30480	NATURAL BUTTES UNIT	42,0	COLORADO INTERSTATE
8050017	UC 1352-9	4304730466	103		NBU 63-12B 30466	NATURAL BUTTES UNIT	45,6	COLORADO INTERSTATE
8050019	UC1310-9	4304730463	103		NBU 57-12B 30463	NATURAL BUTTES UNIT	16,5	COLORADO INTERSTATE
*GRACE PETROLEUM CORPORATION					RECEIVED: 07/30/80 JA: UT 5			
8050016	UC11219	4301915647	108		FEDERAL #1	WESTWATER	7,0	NORTHWEST PIPELINE C
*J C THOMPSON					RECEIVED: 07/30/80 JA: UT 5			
8050018	UC1111-9	4301915656	108		O-2 (CASTLEGATE)	WESTWATER	1,6	NORTHWEST PIPELINE C
*DAVIS OIL COMPANY					RECEIVED: 07/30/80 JA: WY 5			
8050012	W1537-9	4903721104	103		FARSON CUTOFF NO 1	STURM SHELTER	22,0	PANHANDLE EASTERN PI
8050022	W-1330-9	4903721502	102		J T FEDERAL #1-A	HAY RESERVOIR	578,0	PANHANDLE EASTERN PI
*EQUITY OIL COMPANY					RECEIVED: 07/30/80 JA: WY 5			
8050014	W-1182-9	4903721236	103		SIBERIA RIDGE NO 11	SIBERIA RIDGE	23,7	COLORADO INTERSTATE
*INEXCO OIL COMPANY					RECEIVED: 07/30/80 JA: WY 5			
8050013	W-1336-9	4900921540	103		WEBER FEDERAL 1-32	SCOTT	18,0	CHINOOK CONSTRUCTION
*SINCLAIR OIL CORPORATION					RECEIVED: 07/30/80 JA: WY 5			
8050007	W-1348-9	4900720425	103		BAUMGARTNER FEDERAL 1-6-1892	STANDARD DRAW	65,6	COLORADO INTERSTATE
*UNIVERSAL RESOURCES CORPORATION					RECEIVED: 07/30/80 JA: WY 5			
8050020	W1511 9	4902320325	103		LAWLER FEDERAL 1-32	BRUFF	10,0	NORTHWEST PIPELINE C

OTHER PURCHASERS

8049978	MARTIN MAR
8050010	MONTANA DAKOTA UTILITIES CO
8050023	MONTANA DAKOTA UTILITIES CO
8050025	WESTERN GAS PROCESSORS LTD

[FR Doc. 80-26865 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-C

[Project No. 2146]

Alabama Power Co.; Applications for Approval of Change in Land Rights

September 4, 1980.

Take notice that two applications were filed under the Federal Power Act, 16 U.S.C 791(a)—825(r), by the Alabama Power Company (Applicant) for changes in land rights, described below, concerning the H. Neely Henry Development of the Coosa River Project No. 2146 in Etowah County, Alabama, near the City of Gadsden. Correspondence with the Applicant should be directed to: Mr. R. P. McDonald, Vice President, Alabama Power Company, P.O. Box 2641, Birmingham, Alabama 35291.

Applicant Filed on October 1, 1979—Applicant proposes to modify the project boundary by removing approximately 3.9 acres of land from the project. The land does not abut the project reservoir. Applicant proposes to sell 2.9 acres of land to Global Sports, Inc., for the development of public racquet ball courts, a miniature golf course, and tennis courts. Removal of the 2.9 acres from the project, and the subsequent development, would isolate an additional one acre of project land. Applicant proposes that the remaining one acre also be removed from the project to correct a past error in survey of the boundary. Applicant states that removal of the land from the project would not affect project operations, as the land lies above the normal maximum reservoir elevation.

Application Filed on October 19, 1979—Applicant proposes to modify the project boundary by removing 25 acres of land from the project for the purpose of maintaining and operating a previously constructed extension to an existing ash disposal pond. According to the application, the extension was necessary to ensure adequate ash disposal facilities for the Gadsden Steam Electric Generating Plant owned and operated by the Applicant, and located directly across the Coosa River from the ash pond. The ash pond extension covers approximately 45 acres in total, of which 25 acres is project land. Applicant states the removal of the lands would not affect the recreational use of the reservoir because the surrounding industrialized and commercialized areas are unsuitable for recreational use.

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about these applications should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before October 20, 1980. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27898 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-713]

Arkansas Power & Light Co., Filing

September 4, 1980.

The filing Company submits the following:

Take notice that Arkansas Power & Light Company (AP&L), on August 28, 1980, tendered for filing proposed changes in its rates and charges to five municipalities, as reflected in proposed Rate Schedule WM3, and one rural electric cooperative, as reflected in proposed Rate Schedule WC3. The proposed changes would increase revenues from jurisdictional sales and services to these customers by $9,970,000, based on billing determinants for the 12 month period ending August 31, 1979.

AP&L states that the proposed increased rates are necessitated by the fact that it is realizing an unreasonably low rate of return on sales to its affected jurisdictional customers. The Company states that the proposed rates for service to the municipal and cooperative customers have been prepared in accordance with the provisions of the August 8, 1980 Settlement Agreement between the Company and those customers, which is enclosed with the Company's filing. AP&L requests approval of the August 8, 1980 Settlement Agreement.

Copies of the proposed rate schedules and statements comparing the sales and revenues therefrom were served on AP&L's jurisdictional customers affected by the filing. Copies were also served on the Arkansas Public Service Commission, the Louisiana Public Service Commission and the Tennessee 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. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 24, 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. 80-27899 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-707]

Central Vermont Public Service Corp.; Proposed Tariff Change

September 4, 1980.

The filing Company submits the following:

Take notice that Central Vermont Public Service Corporation (Company) on August 27, 1980, tendered for filing proposed changes in its FERC Electric Service Rate No. 99. The proposed changes would decrease revenues from jurisdictional sales and service by $80 for the 10 month period ending October 31, 1980.

The change is proposed in accordance with the provisions of Article III of the Company's transmission service agreement with the Village of Hyde Park Water and Light Department which provides that charges will be updated annually to incorporate the Company's cost experience for the preceding calendar year.

Copies of the filing were served upon the Village of Hyde Park Water and Light Department and the Vermont Public Service Board.

Any person desiring to be heard or to protest said application shall file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR

1.8, 1.10). All such petitions or protests should be filed on or before September 23, 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. 80-27900 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-709]

Central Vermont Public Service Corp.; Proposed Tariff Change

September 4, 1980.

The filing Company submits the following:

Take notice that Central Vermont Public Service Corporation (Company) on Augurst 27, 1980, tendered for filing proposed changes in its FERC Electric Service Rate No. 102. The proposed changes would decrease revenues from jurisdictional sales and service by $110 for the 10 month period ending October 31, 1980.

The change is proposed in accordance with the provisions of Article III of the Company's transmission service agreement with the Rochester Electric Light and Power Company which provides that charges will be updated annually to incorporate the Company's cost experience for the preceding calendar year.

Copies of the filing were served upon the Rochester Electric Light and Power Company and the Vermont Public Service Board.

Any person desiring to be heard or to protest said application shall file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 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 September 23, 1980. Protests will be considered by the commission in determining the apprropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a 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. 80-27901 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-708]

Central Vermont Public Service Corp.; Proposed Tariff Change

September 4, 1980.

The filing Company submits the following:

Take notice that Central Vermont Public Service Corporation (Company) on August 27, 1980, tendered for filing proposed changes in its FERC Electric Service Rate No. 101. The proposed changes would decrease revenues from jurisdictional sales and service by $280 for the 10 month period ending October 31, 1980.

The change is proposed in accordance with the provisions of Article III of the company's transmission service agreement with the Allied Power and Light Company which provides that charges will be updated annually to incorporate the Company's cost experience for the preceding calendar year.

Copies of the filng were served upon the Allied Power and Light Company and the Vermont Public Service Board.

Any person desiring to be heard or to protest said application shall file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 23, 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. 80-27902 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-710]

Central Vermont Public Service Corp., Proposed Tariff Change

September 4, 1980.

The filing Company submits the following:

Take notice that Central Vermont Public Service Corporation (Company) on August 27, 1980, tendered for filing proposed changes in its FERC Electric Service Rate No. 103. The proposed changes would decrease revenues from jurisdictional sales and service by $110 for the 10 month period ending October 31, 1980.

The change is proposed in accordance with the provisions of Article III of the Company's transmission service agreement with the Village of Johnson Water and Light Department which provides that charges will be updated to incorporate the Company's cost experience for the preceding calendar year.

Copies of the filing were served upon the Village of Johnson Water and Light Department and the Vermont Public Service Board.

Any person desiring to be heard or to protest said application shall file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 23, 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. 80-27903 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Dockets Nos. CP79-436, CP80-32, CP80-149, CP80-243, and CP80-290]

Columbia Gas Transmission Corp.; Petition To Amend

September 4, 1980.

Take notice that on August 15, 1980, Columbia Gas Transmission Corporation (Petitioner), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket Nos. CP79-436, *et al.* a petition to amend the orders issued in the instant dockets pursuant to Section 7(c) of the Natural Gas Act so as to authorize delivery of natural gas to Dayton Power & Light Company (Dayton Power) rather than Columbia Gas of Ohio, Inc. (Columbia Ohio), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that in each of Docket Nos. CP79–436, CP80–32, CP80–149, CP80–243, and CP80–290 authorization requested for delivery of natural gas to Columbia Ohio should have been requested for Dayton Power. In each instance Petitioner proposes to establish a new delivery point to deliver natural gas for use by a customer of Dayton Power rather than Columbia Ohio. It is stated that Dayton Power has indicated that it has received authorization from the appropriate state regulatory agency to attach new customers and that it would serve these customers under its existing contract demand.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before September 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) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27904 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP76-474]

Columbia Gas Transmission Corp.; Amendment to Application

September 4, 1980.

Take notice that on August 14, 1980, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP76–474, an amendment to its application filed pursuant to Section 7(b) of the Natural Gas Act on August 11, 1976,[1] in the instant docket so as to request permission and approval to abandon certain pipeline and related facilities without terminating service to 19 residential consumers supplied by these facilities, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant states that in its original application it requested permission and approval to abandon 7.0 miles of its Line 8059 in Randolph and Barbour Counties, West Virginia, because of the age and deteriorating condition of this segment and because it was no longer useful in Applicant's transmission operations. The proposed abandonment would have resulted in the discontinuance of service to an affiliate, Columbia Gas of West Virginia, Inc. (Columbia W. Va.), at 19 points of delivery from which Columbia W. Va. serves a like number of residential consumers. It is stated that Columbia W. Va. filed an application on September 15, 1976, with the Public Service Commission of West Virginia (PSCWV) seeking permission to abandon service to the affected residential consumers and that the PSCWV denied this request by order issued July 1, 1977, in Case No. 8802. As a result of this action by the PSCWV, Applicant has revised its plans so as to assure continued service to the 19 residential consumers served by Line 8059.

Applicant now proposes to retain in operation 1.3 miles of Line 8059 extending in a southerly direction from the Bellington area in Barbour County, West Virginia. This northern section of the line would be kept in operation in order to continue service to six residential consumers and for potential utilization in gathering local production in the area.

Applicant now proposes to abandon approximately 6.0 miles of 6-inch Line 8059, as well as approximately 0.2 mile of 3-inch Line 8065 and related measuring and regulating facilities. Applicant states that it would abandon by sale to Columbia W. Va. approximately 3.6 miles of Line 8059 in Randolph County, West Virginia, to be operated and maintained by Columbia W. Va. in order to continue service to the remaining 13 residential consumers. Applicant also proposes to abandon by sale to Columbia W. Va. 0.2 mile of 3-inch line in Randolph County, West Virginia, which is currently used to supply a point of delivery to Columbia W. Va. from a point on Line 8059.

It is asserted that the proposed abandonment by sale to Columbia W. Va. would not result in the termination of natural gas service to any residential consumers. Applicant states that it has been advised by Columbia W. Va. that the facilities transferred to Columbia W. Va. would be connected to Columbia W. Va.'s existing distribution system in the area which is supplied by Applicant via an existing point of delivery from Applicant's Line 8224 south of the interconnection of Lines 8059 and 8065. The level of deliveries from Applicant to Columbia W. Va. in this area would remain unchanged, it is stated.

Applicant notes that the sale of Line 8065 to Columbia W. Va. would render unnecessary the existing point of delivery to Columbia W. Va. on Line 8065. Applicant, therefore, proposes to abandon said point of delivery and related measuring and regulating facilities. Applicant also proposes to abandon the central segment of Line 8059 which extends approximately 2.4 miles over Laurel Mountain in Randolph and Barbour Counties, West Virginia, because it does not serve a useful transmission function or supply any points of delivery to Columbia W. Va.

It is stated that the consideration for the transfer of pipeline and related facilities from Applicant to Columbia W. Va. would be the net depreciated original cost of such facilities at the time of transfer. According to Applicant, this value as of July 31, 1980, was $14,360.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before September 22, 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) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27905 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-511]

Consolidated System LNG Co.; Application

September 4, 1980.

Take notice that on August 20, 1980, Consolidated System LNG Company (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP80–511 an application pursuant to Section 7(c) of the Natural Gas Act and Section 157.7(b) of the

[1] The proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

Regulations thereunder (18 CFR 157.7(b)) for a certificate of public convenience and necessity authorizing the construction, during an indefinite period commencing August 15, 1980, and operation of facilities to enable Applicant to take into its certificated main pipeline system natural gas supplies, all as more fully set forth in the application on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in connecting to its pipeline system supplies of natural gas which may become available from various producing areas generally coextensive with its pipeline system or the systems of other pipeline companies which may be authorized to transport gas for the account of or exchange gas with Applicant and supplies of natural gas from Applicant's own production acquired for system supply under Sections 311 or 312 of the Natural Gas Policy Act of 1978.

Applicant states that the total cost of the proposed facilities would not exceed $300,000 for the period commencing August 15, 1980, and thereafter $300,000 per calendar year. The cost of the proposed facilities would be financed in part from funds on hand and in part from funds to be obtained from Applicant's parent corporation, Consolidated Natural Gas Company, it is said.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 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) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application of no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27906 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER78-414]

Delmarva Power & Light Co.; Filing

September 4, 1980.

The filing Company submits the following:

Take notice that on August 20, 1980, Delmarva Power and Light Company submitted for filing a compliance report pursuant to the Commission's letter order issued on July 17, 1980, in the above referenced proceeding.

A copy of this filing has been sent to the Board of Public Works of Lewes, Delaware and to the Delaware Public Service Commission.

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 §§ 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 September 22, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27907 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-481]

Florida Gas Transmission Co. and Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Application

September 4, 1980.

Take notice that on August 4, 1980, Florida Gas Transmission Company (Florida Gas), P.O. Box 44, Winter Park, Florida 32790, and Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee Gas), P.O. Box 254, Houston, Texas 77002, filed in Docket No. CP80-481 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline facilities extending from the Sabine Pass Area, offshore Texas and Louisiana, to points of interconnection with Applicants' respective pipeline facilities in Calcasieu Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that Florida Gas has executed a gas purchase contract with Shell Oil Company for the purchase of approximately 60 percent of the production from Sabine Pass Blocks 10 and 17, offshore Texas and Louisiana, and is presently negotiating with producers holding the majority of the remaining interests in the subject blocks for the purchase of their share of the production therefrom. It is also stated that Tennessee Gas is negotiating gas purchase contracts with its affiliate, Tenneco Oil Company, for its share of the production from Sabine Pass Blocks 8, 11, 13 and 18 and with Gulf Oil Corporation for its share of the production from Sabine Pass Block 13. In order to receive the gas that would be made available from the subject blocks, Applicants propose to construct the following:

Offshore

Jointly Owned Facilities

1. 20.2 miles of 30-inch pipeline from the proposed central gathering platform in Sabine Pass Block 18 to a point onshore in Cameron Parish, Louisiana, at the site of a proposed 1,100 horsepower compressor station and dehydration plant.

2. 4.2 miles of 24-inch pipeline extending from a subsea connection in Sabine Pass Block 10 to the proposed central gathering platform in Sabine Pass Block 18.

3. A central gathering platform located in Sabine Pass Block 18.

Florida Gas Facilities

1. Metering facilities on the producer-owned platforms in Sabine Pass Blocks 10 and 17.

2. 3.0 miles of 10-inch pipeline extending from the Sabine Pass Block 17 platform to the Sabine Pass Block 10 platform.

3. Two 1,300 horsepower compressors on Sabine Pass Block 10.

4. 0.2 mile of 24-inch pipeline extending from the Sabine Pass Block 10

platform to a subsea connection with the 4.2 miles of 24-inch pipeline described above.

Tennessee Gas Facilities

1. Meter stations on the producer owned production platforms in Sabine Pass Blocks 11, 13 and 18.

2. 0.5 mile of 16-inch pipeline from Platform 18–A to the proposed pipeline junction platform in Sabine Pass Block 18.

3. 2.2 miles of 12-inch pipeline from Platform 11–A to a subsea tie-in with 9.7 miles of 16-inch pipeline extending from the Sabine Pass Block 13–A platform.

Onshore

Jointly Owned Facilities

34.2 miles of 30-inch pipeline from the 1,100 horsepower compressor station and dehydration plant site proposed to be located at a point onshore in Cameron Parish, Louisiana, to a point of interconnection with Florida Gas's mainline near Vinton, Calcasieu Parish, Louisiana.

Tennessee Gas Facilities

4.5 miles of 30-inch pipeline extending from Florida Gas's existing 24-inch mainline to Tennessee Gas's existing 30-inch mainline near Vinton, Calcasieu Parish, Louisiana, together with metering facilities.

Florida Gas Facilities

Metering facilities at the point where the joint facilities would interconnect with Florida Gas's 24-inch mainline in Calcasieu Parish, Louisiana.

Applicants estimate that total recoverable reserves of 494,000,000 Mcf are contained within Sabine Pass Blocks 8, 10, 11, 13, 17 and 18. It is projected that these reserves would yield an annual average daily deliverability in 1984 of approximately 253,500 Mcf, with initial deliveries scheduled to commence in early 1981.

Applicants estimate the total cost of the proposed facilities to be $101,137,000 and the cost of the jointly-owned facilities alone to be $74,570,000. It is stated that Florida Gas would contribute 28.7 percent of the cost of the jointly owned facilities or approximately $21,400,000 while Tennessee Gas would contribute 71.3 percent of the cost or approximately $53,200,000. Applicants indicate that each party would own an undivided interest in the jointly-owned facilities equal to its contribution as a percentage of the cost. The proposed facilities would be financed initially from internally generated funds. Applicants state that to the extent permanent financing is required, it would be done as part of Applicants' long-term financing programs.

Tennessee, it is further stated, would be operator of the proposed project.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 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) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80–27908 Filed 9–10–80; 8:45 am]

BILLING CODE 6450–85–M

[Docket No. CP62–251]

Florida Gas Transmission Co.; Petition To Amend

September 4, 1980.

Take notice that on August 11, 1980, Florida Gas Transmission Company (Petition), P.O. Box 44, Winter Part, Florida 32790, filed in Docket No. CP62–251 a petition to amend the order issued in the instant docket on November 19, 1962,[1] pursuant to Section 7(c) of the Natural Gas Act so as to authorize the construction and operation of a tap and valve in order to provide a new delivery point for W.R. Grace, Inc. (Grace), an existing direct sale customer, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By order of November 19, 1962, Petitioner was authorized to construct and operate certain facilities in order to sell natural gas to Grace for use in its Ridgwood dry mill and superphospate plant near Bartow, Polk County, Florida, it is said. Petitioner states that it has been advised by Grace that Grace intends to raze its existing plant and utilize the gas that had been previously utilized therein in a new fertilizer plant which would be located approximately 1.1 miles from the old plant site. In order to deliver gas to the contemplated facility Petitioner proposed to tap its pipeline and install a valve, and Grace would construct or cause to be constructed a pipeline connecting Petitioner's facilities with the proposed fertilizer plant.

Petitioner states that the estimated cost of the tap and valve is $3,000 for which Grace has agreed to reimburse Petitioner.

The proposed modification would not change Grace's volumetric entitlement, it is asserted.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before September 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) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80–27909 Filed 9–10–80; 8:45 am]

BILLING CODE 6450–85–M

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[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

[Docket No. ER80-694]

Idaho Power Co.; Filing

September 4, 1980.

Take notice that Idaho Power Company (Idaho) on August 21, 1980, tendered for filing 2nd Revised Sheet No. 1 (supersedes 1st Revised Sheet No. 1) and 1st Revised Sheet No. 9 (supersedes Original Sheet No. 9) of Idaho's 1st Revised FERC Electric Tariff.

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 September 23, 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. 80-27910 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-712]

Indianapolis Power & Light Co.; Filing

September 4, 1980.

The filing Company submits the following:

Take notice that Indianapolis Power & Light Company tendered for filing on August 27, 1980, A Supplement A to the Federal Energy Regulatory Commission Rate Schedules No. 1, 6 and 8, which represent, respectively, Interconnection Agreements with Indiana & Michigan Electric Company and Southern Indiana Gas & Electric Company and the Kentucky-Indiana Pool Planning and Operating Agreement with Public Service Company of Indiana, Inc., Kentucky Utilities Company and East Kentucky Power Cooperative Inc. This proposed Supplement is stated to be an interim filing in compliance with Federal Energy Regulatory Commission's Order No. 84, issued May 7, 1980 as modified by Order No. 84-B issued August 11, 1980. Copies of this filing were sent to all parties involved.

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 September 24, 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. 80-27911 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3272]

Joseph M. Keating; Application for Preliminary Permit

September 4, 1980.

Take notice that Joseph M. Keating (Applicant) filed on July 29, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for proposed Project No. 3272 to be known as the Leggett Project located on Lee Vining Creek in Mono County, California. The proposed project would affect U.S. lands under the administration of the Inyo National Forest. Correspondence with the Applicant should be directed to: Mr. Joseph M. Keating, 847 Pacific Street, Placerville, California 95667.

Project Decription—The proposed project would consist of: (1) an 8-foot high concrete gravity diversion dam; (2) an intake structure; (3) a 1.8-mile long buried pipeline; (4) a powerhouse containing a generating unit rated at 1,500 kW; (5) a 600-foot long transmission line; and (6) appurtenant facilities. The average annual energy generation is estimated to be 3,750 MWh and would be based on water discharges from the Southern California Edison Company's Poole Powerhouse.

Purpose of Project—The power output of the project would be sold to the Southern California Edison Company.

Proposed Scope and Cost of Studies under Permit—Applicant seeks issuance of a preliminary permit for a period of 12 months, during which time it would conduct engineering studies and surveys, perform preliminary designs and do a feasibility analysis, prepare an environmental report, make a historical review, and prepare an FERC license application. No new roads are required to conduct the studies. Applicant has filed a work plan for the studies for the new dam construction. The field studies to be conducted are line surveys, visual inspections, and seismic surveys.

The estimated cost of the work to be performed under the preliminary permit is $45,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before November 10, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than January 9, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (*as amended*, 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (*as amended*, 44 FR 61328, October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a

party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before November 10, 1980. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27912 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-488]

Louisiana-Nevada Transit Co.; Application.

September 4, 1980

Take notice that on August 7, 1980, Louisiana-Nevada Transit Company (Applicant), P.O. Box 8789, Denver, Colorado 80201, filed in Docket No. CP80-488 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to sell natural gas to United Gas Pipe Line Company (United), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that on August 25, 1978, it and United entered into a ten-year contract under which United receives gas to which Applicant is contractually entitled at the tailgate of the Beacon Gasoline Plant in Webster Parish, Louisiana. In turn, equivalent volumes of gas to which United is contractually entitled were to be delivered to Applicant at the outer side of the Cotton Valley Operators Committee (CVOC) Plant in Webster Parish. Applicant states that this arrangement is a gas-for-gas exchange.

Applicant asserts that in the course of the authorized exchange it has become apparent that the operator of the CVOC plant does not have facilities available to deliver consistently sufficient volumes of gas to United for redelivery to Applicant at the outlet of said plant and there are no acceptable alternatives for such redelivery. Applicant submits that this has resulted in an imbalance in exchange gas. Additionally, Applicant states, from time to time it has available at its facilities located at the sites of the Beacon and CVOC plants supplies of gas in excess of the requirements and capacity of its pipeline system and that through the use of the existing facilities of the Beacon and CVOC plants, it could deliver such excess supplies of gas to United.

Accordingly, Applicant seeks authorization to implement the terms of a two-year contract between it and United dated August 5, 1980, under which Applicant would sell to United the imbalance gas, estimated to be 200,000 Mcf as of November 1, 1979, and such further volumes of gas as Applicant may have available from time to time at the outlet of the Beacon Plant up to a daily volume of 2,000 Mcf, or at the outlet of the CVOC plant up to a daily volume of 10,000 Mcf.

The base price per Mcf which Applicant would charge United for said imbalance gas would be the rate after deferred cost and current adjustments then in effect under Applicant's Rate Schedule PGA-1.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 22, 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) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27913 Filed 9-10-80; 8:45 am]

BILLING CODE 6450 6450-85-M

[Docket No. ST80-277]

Louisiana Resources Co., Application for Approval of Rates

September 4, 1980.

Take notice that on August 4, 1980, Louisiana Resources Company (Applicant) P.O. Box 3102, Tulsa, Oklahoma 74101, filed in Docket No. ST80-277 an application pursuant to Section 284.123 of the Commission's Regulations for approval of rates for transportation services to be provided by Applicant on behalf of Transcontinental Gas Pipe Line Corporation (Transco), all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that it has entered into a gas transportation agreement dated July 22, 1980, with Transco to transport by exchange on behalf of Transco up to 20,000 million Btu equivalent of gas per day. It is stated that this agreement provides for a transportation charge of 22.25 cents per million Btu. Applicant asserts that this is a fair and equitable rate because

(1) the Louisiana Commissioner of Conservation has determined that it is comparable to the average rate that Applicant is allowed to charge its intrastate customers for similar transportation services,

(2) the Louisiana Commissioner of Conservation has determined that it would result in revenues which are "reasonable, necessary and proper and are not more than is required to enable Applicant to serve its existing customers," and

(3) it is the same rate approved by the Commission on July 10, 1980, in Docket Nos. ST79-26 and ST80-153.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 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 Procedures (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 a 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. 80-27914 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-665]

Madison Gas & Electric Co.; Filing

September 4, 1980.

Take notice that on August 26, 1980, Madison Gas and Electric Company (Madison) tendered for filing a Certificate of Concurrence to the August 10, 1980, Amendment to Interconnection Agreement dated June 3, 1965, between Wisconsin Electric Power Company and Madison.

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 §§ 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 September 24, 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. 80-27915 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-508]

Michigan Gas Storage Co.; Application

September 4, 1980.

Take notice that on August 18, 1980, Michigan Gas Storage Company (Applicant), 212 West Michigan Avenue, Jackson, Michigan 49201, filed in Docket No. CP80-508 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon its Winterfield 12-inch Lateral South and appurtenant facilities located in Winterfield Township, Clare County, Michigan, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant proposes to abandon approximately 3 miles of 12-inch pipeline and appurtenant facilities (Winterfield 12-inch Lateral South). It is stated that these facilities have, since their construction in 1946, been used as part of Applicant's storage and transmission system.

Applicant states that the Winterfield 12-inch Lateral South has not been used since January 8, 1980, when it failed in two places due to an accidental overpressuring. It is asserted that the cost of returning said facility to service is estimated to be more than $500,000. Applicant further asserts that the proposed abandonment would relieve it of the cost of repairing and maintaining the subject facilities yet would not adversely affect its gas storage and transmission operations in that the gas that flowed through the Winterfield 12-inch Lateral South of Applicant's Muskegon River Compressor Station can and now does arrive at the same plant by the alternate means of flowing through the Winterfield 24-inch line into the Winterfield 20-inch line.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 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) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as 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 or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27916 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RP80-135]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

September 3, 1980.

Take notice that on August 29, 1980, National Fuel Gas Supply Corporation (National Fuel) tendered for filing the following proposed changes in its FERC Gas Tariff to be effective September 30, 1980.

Original Volume No. 1

Seventh Revised Sheet No. 36 Superseding Sixth Revised Sheet No. 36
Fourth Revised Sheet No. 36A Superseding Third Revised Sheet No. 36A
First Revised Sheet No. 36B Superseding Original Sheet No. 36B
First Revised Sheet No. 36C Superseding Original Sheet No. 36C
First Revised Sheet No. 36D Superseding Original Sheet No. 36D

These proposed tariff sheets provide for the flow-through of supplier refunds in a lump-sum in lieu of rate reductions through Account 191 as presently provided. The proposed tariff changes apply to non-exempt industrial boiler fuel facilities prior to January 1, 1980, as required by Section 282.506 of the Commission's Regulations, as well as other supplier refunds. National Fuel states that the proposed method of flow-through is the most practical method and is more equitable as it is based upon actual rather than estimated sales patterns as currently required by Section 154.38 of the Commission's Regulations.

A copy of this filing was served on all of National Fuel's jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 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 Sept. 16, 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. 80-27917 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RP80-11]

Natural Gas Pipeline Co. of America; Proposed Changes in FERC GAS Tariff

September 3, 1980.

Take notice that on August 29, 1980 Natural Gas Pipeline Company of America (Natural) tendered for filing Substitute Original Sheet No. 154 to its FERC GAS Tariff, Third Revised Volume No. 1.

Natural states the purpose of the filing is to incorporate minor changes in the supplier refund plan filed on June 27, 1980. The changes result from an informal conference held on August 20, 1980 between Natural, the Commission Staff and Natural's customers. The substitute tariff sheet reflects changes to report on a quarterly basis and clarifies that interest on refunds held in excess of thirty days would be calculated from the date of receipt until the date of payment. Natural has requested waiver of the notice requirements and a short intervention period because the changes to the plan submitted on June 27 are minor in nature, several of its customers have filed statements supporting the plan and approval will permit the expeditious flow through of nearly $7 million of supplier refunds currently being held by Natural.

Natural also requested the Commission to remove the conditional acceptance of its incremental pricing tariff sheets filed in Docket No. RP80-11 as revised to reflect the supplier refund proposal.

Copies of this filing were served upon the company's customers, interested state commissions, and intervenors in Docket No. RP80-11.

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 §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedures (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 17, 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 in intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27918 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP61-139]

Northern Natural Gas Co., Division of InterNorth, Inc.; Petition To Amend

September 4, 1980.

Take notice that on August 7, 1980, Northern Natural Gas Company, Division of InterNorth, Inc., (Petitioner) Omaha, Nebraska 68102, filed in Docket No. CP1-139 a petition to amend the order issued January 11, 1965,[1] in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize the establishment of an additional point of receipt of exchange gas from El Paso Natural Gas Company (El Paso), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that pursuant to an August 17, 1962, service agreement, Petitioner and El Paso were authorized to construct and operate facilities for the delivery, receipt, transportation and exchange of natural gas. Petitioner further states that El Paso has contracted to purchase 33.80 percent interest in the production of Abraham Unit No. 1 well in Roger Mills County, Oklahoma, of which Petitioner has a 64.80 percent interest and that El Paso has advised Petitioner of its desire to make the gas available to Petitioner as part of the exchange agreement. Petitioner states that El Paso would deliver the gas to Petitioner at the well commingled with gas purchased by and delivered into Petitioner's system through common measurement facilities.

Petitioner asserts that since it is already connected to the well it has agreed to accept volumes of gas from El Paso's share of the production of Abraham Unit No. 1 well thereby obviating the necessity for construction by El Paso of duplicate facilities.

Petitioner further asserts that the additional point of exchange would not increase the presently authorized total daily exchange of volumes.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before September 22, 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) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27927 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-M

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

[Project No. 3139]

Northern Wasco County People's Utility District; Granting Intervention

September 4, 1980.

On May 14, 1980 Northern Wasco County People's Utility District (Applicant) filed an application for a preliminary permit for proposed Project No. 3139 located on the White River in Wasco County, Oregon. That application was filed as a competing preliminary permit application to the proposed Tygh Valley Power Plant Project, Project No. 3005.

The Public Utility Commission of Oregon, having jurisdiction to regulate rates and charges for the sale of electric energy and natural gas to consumers within the state of Oregon, filed a petition to intervene. No response to the petition has been received.

Intervention by the petitioners appears to be in the public interest.

Pursuant to § 375.302 of the Commission's regulations, 45 FR 21216 (1980), amending 18 CFR 3.5(a) 1979, as promulgated by Federal Energy Regulatory Commission rulemaking RM78-19 (issued August 14, 1978), the Petitioner is permitted to intervene in this proceeding subject to the Commission's Rules and Regulations under the Federal Power Act, 16 U.S.C. 791(a)-825(r). Participation of the intervenor shall be limited to matters affecting asserted rights and interests specifically set forth in its petition to intervene. The admission of the intervenor shall not be construed as recognition by the Commission that it

might be aggrieved by any order entered in this proceeding.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27928 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP79-277]

Northwest Pipeline Corp., Amendment to Application

September 4, 1980.

Take notice that on August 6, 1980, Northwest Pipeline Corporation (Applicant), P.O. Box 1526, Salt Lake City, Utah 84110, filed in Docket No. CP79-277 an amendment to its application for a certificate of public convenience and necessity pending in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize service in excess of that initially proposed to be rendered pursuant to its Rate Schedule WS-1, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant states that it initially proposed to initiate a new winter gas service to certain of its existing customers utilizing the storage capability of the Clay Basin Storage Field in Daggett County, Utah, only through the 1981-82 heating season because gas purchases at the Kingsgate import point were scheduled to expire on December 31, 1981. It is stated that the extension of the gas export license of one of Applicant's gas suppliers, Westcoast Transmission Company (Westcoast), along with the addition of new domestic supplies from Wyoming, Colorado, and New Mexico have permitted Applicant to offer expanded winter service and to extend the term of the service.

Applicant herein proposes revised service under its Rate Schedule WS-1 during the 1980-81 and 1981-82 seasons and the sale and delivery of natural gas under Rate Schedule WS-1 for the 1982-83 season through 1988-89 season as set forth below:

Customer	Volume (Mcf at 14.73 psia)	
	Daily	Seasonal
1980-81 season:		
Colorado Interstate Gas Company (CIG)	45,000	4,500,000
Southwest Gas Corporation (Southwest)	15,000	1,500,000
Washington Natural Gas Company (Washington)	15,000	1,500,000
Mountain Fuel Supply Company (Mountain Fuel)	25,000	2,500,000
Total	100,000	10,000,000
1981-82 season:		
CIG	135,000	20,250,000
Washington	15,000	1,500,000
Mountain Fuel	25,000	2,500,000
Total	175,000	24,250,000
1982-83 through 1988-89 seasons:		
CIG	135,000	20,250,000
Washington	15,000	1,500,000
Mountain Fuel		
Total	150,000	21,750,000

Applicant states that CIG may require additional facilities on its Wyoming main transmission system prior to the 1981-82 heating season to accommodate the increased level of service but that CIG has sufficient mainline capacity to transport the 45,000 Mcf of winter service volumes available to CIG during the forthcoming heating season.

Applicant asserts that is has sufficient gas supply and storage capacity to meet the peak day requirements of its customers and has dedicated a portion of the capacity available to it from the Clay Basin Storage Field as assurance that it can meet its contract obligations. Applicant further states that El Paso Natural Gas Company is proposing to phase down its utilization of Clay Basin storage thereby increasing the Clay Basin capacity available to Applicant for base load storage and for winter storage.

It is stated that Applicant, along with Mountain Fuel Resources, Inc., is currently authorized to operate the Clay Basin Storage Field so as to store gas in amounts up to 250,000 Mcf per day and 20,000,000 Mcf during a heating season. Applicant asserts that such authorizations are sufficient to enable it to provide the level of winter service proposed for the 1981-82 and subsequent heating seasons and that it proposes to utilize the Clay Basin storage as follows:

	Daily (Mcf/day)	Seasonal (Mcf)
1980-81 heating season:		
Winter Service	100,000	10,000,000
Contract Demand Protection	50,000	7,500,000
Total	150,000	17,500,000
1981-82 heating season:		
Winter Service	175,000	24,250,000
Contact Demand Protection	75,000	10,000,000
Total	250,000	34,250,000
1982-83 through the 1988-89 heating seasons:		
Winter Service	150,000	21,750,000
Contract Demand Protection	75,000	10,000,000
Total	225,000	31,750,000

Any person desiring to be heard or to make any protest with reference to said amendment should on or before September 22, 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) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27929 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ERP80-695]

Public Service Co. of Oklahoma; Cancellation

September 4, 1980.

Take notice that the Public Service Company of Oklahoma (PSCo) on August 26, 1980 tendered to FERC Rate Schedule No. 118, dated May 28, 1980.

PSCo indicates that this cancellation is to be effective as of October 4, 1980.

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, 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 September 23, 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. 80-27930 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-700]

Puget Spund Power & Light Co.; Rate Schedule Filing

September 4, 1980.

The filing Company submits the following:

Take notice that Puget Sound Power & Light Company (Puget) on August 27, 1980, tendered for filing, in accordance with Section 35.12 of the Commission's Regulations, Contract No. 14-03-39215 dated February 6, 1973 and Amendatory Agreement No. 1 to Contract No. 14-03-39215 dated May 31, 1974 executed by the Bonneville Power Administration (BPA), Washington Public Power Supply System (WPPSS), and Puget providing for power exchange.

Puget requests waiver of the Commission's notice requirements to permit this rate schedule to become effective July 1, 1980, which is the date of commencement of service.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 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 September 24, 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. 80-27931 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-M

Docket No. ER80-235]

Public Service Co. of New Mexico; Order Denying Request for Waiver of Notice Requirements, Deferring Action on Rate Filing, and Granting Interventions

September 4, 1980.

On February 12, 1980, Public Service Company of New Mexico (PSNM) submitted for filing an executed Contingent Capacity Sales Agreement between PSNM and San Diego Gas and Electric Company (SDGE). Pursuant to the agreement, PSNM would sell to SDGE 236 MW of capacity and associated energy from PSNM's coal-fired San Juan Unit No. 4. According to PSNM, the sale is intended to commence with commercial operation of the unit—currently expected to be May 1, 1982—and will extend until April 30, 1988. PSNM states that the sale would allow SDGE to reduce oil consumption in its generation. PSNM requests waiver of the 120 day notice requirement [1] in order to facilitate long-range resources planning.

The rate for the proposed sale consists of a demand charge ranging from $20.50 per kw/month during the first year of operation to $15.25 per kw/month in year six. These charges were developed on the basis of a depreciating plant investment base. The rate of return is to remain constant throughout the life of the agreement at 10.24 percent overall, with 14.6 percent on common equity. In addition to the demand charge, the agreement proposes a monthly energy charge equal to the average cost per kWh at the San Juan station for fuel, operations and maintenance (O&M), other taxes, and allocable administrative and general (A&G) expenses.

Notice of this filing was issued on February 22, 1980 [2] with petitions to intervene due on or before March 7, 1980. On March 5, 1980 the New Mexico Public Service Commission (NPSC) filed a Notice of Intervention in which it requested an opportunity to participate in any proceeding that might be initiated. On June 30, 1980, NPSC supplemented its earlier filing. In its supplement, NPSC states that it has the authority to regulate the rates charged by PSNM to ultimate ratepayers in New Mexico, and to assure that New Mexico ratepayers receive adequate and efficient service. [3] Furthermore, NPSC states that the proposed sale concerns a contingency which, in accordance with an NPSC Certificate of Public Convenience and Necessity issued to PNM, [4] requires NPSC action prior to the sale. Specifically, NPSC claims that it must first determine (1) that PSNM has the necessary excess capacity, (2) that sale of the excess capacity will meet certain minimum conditions, and (3) that the sale would not harm New Mexico consumers. Accordingly, NPSC requests that we not approve the sale until it has reached its determination on the aforementioned issues. Moreover, NPSC also requests that a complete investigation be initiated by this Commission one year prior to the proposed in-service date of San Juan Unit No. 4.

On April 15, 1980, the Attorney General of the state of New Mexico requested intervention in this proceeding. The Attorney General's untimely petition expressed concern with respect to the impact of the proposed sale on PSNM's retail customers.

Discussion

Since NPSC has jurisdiction to regulate charges for retail sale of electric energy within the State of New Mexico, its timely filing of a Notice of Intervention is sufficient to initiate its participation in this proceeding. [5] Furthermore, we find that good cause exists to permit the Attorney General of New Mexico to intervene out of time. Accordingly, the petition to intervene will be granted.

As support for its proposed charges, PSNM has submitted actual data through August, 1979, and projected balances through May, 1982. Approximately 67 percent of PSNM's claimed San Juan plant investment is based on estimated data. Furthermore, similar estimates are provided in support of general plant, working capital, depreciation, and deferred tax balances.

Although our preliminary analysis indicates that the method employed by PSNM in developing its demand charges appears reasonable, the magnitude (67 percent) of the cost projections in relation to total plant investment and the fact that the estimates are for three years into the future, indicates that there is not an adequate basis for definitive analysis. While long-range power planning is a desirable objective, we are unable to conclude on the basis of the cost support currently available that the rates proposed to become effective in 1982 or later would be just and reasonable. This is particularly true in light of the objections raised to PSNM's submittal. Accordingly, we shall deny PSNM's request for waiver of the 120 day filing requirements at this time and we shall defer further action on the filing. We note, however, that this action is without prejudice to a renewed request for waiver of the filing

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[1] *See* 18 CFR § 35.3(a).

[2] 45 FR 14098 (1980).

[3] N.M. Stat. Ann. §§ 62-8-1, 62-8-2 (1978).

[4] The Certificate of Public Convenience and Necessity was issued on January 16, 1979, in order to enable PSNM to purchase the 236 MW interest in San Juan Unit No. 4 from Tucson Gas and Electric Company.

[5] 18 CFR § 1.8(a)(1). As to NPSC's jurisdiction, see note 4, *supra.*

requirements one year prior to the expected commercial operation date of San Juan Unit No. 4, if that request is accompanied by updated cost support and a request to revive the instant filing. At that time, the Commission would consider the need for further investigation of the proposed rates and the designation of an appropriate effective date. In the interim, our deferral of action with respect to the proposed agreement should allow the intervenors an opportunity to conduct such inquiries or investigations as they consider necessary.

The Commission orders:

(A) Waiver of the 120 day notice provision of section 35.3 of the Commission's regulations is hereby denied, without prejudice.

(B) Further action with respect to PSNM's submittal is hereby deferred. This docket shall be held in abeyance, without prejudice to reopening the proceedings one year in advance of the expected in-service date of San Juan Unit No. 4, upon request by PSNM accompanied by updated cost support for the proposed rates.

(C) All petitions to intervene are granted subject to the rules and regulations of the Commission; *Provided, however,* that participation by the intervenors shall be limited to matters set forth in their petitions to intervene; and *Provided, further,* that the admission of any intervenor shall not be construed as recognition by the Commission that it might be aggrieved because of any order or orders by the Commission entered in this proceeding.

(D) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission. Commissioner Holden concurring filed a separate statement appended hereto.

Kenneth F. Plumb,

Secretary.

Holden, Commissioner, *Concurring:*

Issued September 4, 1980.

I agree with the Commission's action in denying the request to waive the Notice requirements, to defer action on the rate filing, and to grant the interventions of the New Mexico Public Service Commission of the Attorney General of the State of New Mexico. I would take the occasion merely to accentuate the area of potential legal and policy difficultly which makes the Commission's action particularly appropriate.

The Federal Energy Regulatory Commission has jurisdiction over wholesale electric rates. The state utility commissions exercise jurisdiction over retail electric rates and, in cases such as that of New Mexico, also have jurisdiction over certificates of convenience and necessary issued to electric companies. The potential area of difficultly is that the FERC might, unintentionally, so exercise its rate jurisdiction as to impede the State's exercise of its certificate jurisdiction. I do not judge whether the New Mexico Public Service Commission's arguments are sound or not, but they raise the possibility of a conflict between the Federal rate jurisdiction and the state certificate jurisdiction. The present order provides the best opportunity to disentangle those two sets of relationships, without pre-determining the final result.

It would be my hope that when the matter is once more before the Commission, we will have sufficient legal exposition and factual recitation as will minimize the chance of blind collision.

Matthew Holden, Jr.,

Commissioner.

[FR Doc. 80-27932 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3062]

Schneider Lift Translator Corp.; Approval by Operation of Law

September 3, 1980.

Take notice that the Commission has agreed to take no action on the application for an exemption from licensing for the Richvale Irrigation District Power Plant Project No. 3062, filed on February 8, 1980, by the Schneider Lift Translator Corp.

Accordingly, the exemption is deemed granted by operation of law under § 4.93(d) of the Commission's regulations [18 CFR 4.93(d)], subject to the standard terms and conditions set forth in § 4.94 of the Commission's regulations [18 CFR 4.94].

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27933 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. EL78-23]

Sierra Pacific Power Co., v. Utah Power & Light Co.; Order Denying Rehearing

September 3, 1980.

Background

On August 4, 1980, The Utah Public Service Commission, the State of Utah, the Division of Public Utilities of the Department of Business Regulation of the State of Utah, and the Committee of Consumer Services of the State of Utah (governmental intervenors) filed an application for rehearing of the Commission's Order Granting in Part and Denying in Part Petition for Declaratory Order issued in this docket on July 3, 1980. A complete restatement of the facts is unnecessary because they have already been set forth in the provious order. However, to put the present application for rehearing in context, we will briefly summarize the relevant facts.

Sierra Pacific Power Company (Sierra Pacific) purchases firm power service from Utah Power & Light Company (Utah P&L) pursuant to an interconnection agreement on file with this Commission as part of Utah P&L's filed rate schedule. The Utah Public Service Commission (state commission) has orderd Utah P&L to terminate service to Sierra Pacific on December 31, 1984, unless the rate for such service is modified and approved by the state commission. On May 12, 1978, Sierra Pacific filed a petition seeking a declaration from this Commission that (1) the service agreement between Utah P&L and Sierra Pacific is subject to the FERC's exclusive jurisdication, (2) the order of the Utah Public Service Commission is an unlawful interference with the jurisdiction of the FERC and is to be disregarded by Utah P&L, and (3) Utah P&L be required to comply with the terms of the service agreement, the Federal Power Act, and this Commission's rules and regulations.

Petition for Rehearing

The instant petition for rehearing arises out of the Commission's order issued July 3, 1980, (Declaratory Order) granting in part and denying in part Sierra Pacific's request. The petitioners' take seven exceptions to the Commissioner's order. They allege:

1. The Commission erred in its apparent conclusion that, other than rates, it has exclusive jurisdiction to determine whether service will be provided and over all terms of such service under the wholesale power contracts in question.

2. The Commission erred in concluding that the Utah Public Service Commission has no jurisdiction to approve the terms of wholesale power contracts which require utilities to construct generating facilities and which make use of local transmission facilities.

3. The Commission erred in not holding hearings to determine whether and to what extent service under the contract in question was provided by generation facilities and transmission facilities used in local distribution.

4. The Commission erred in requiring Utah Power to honor the terms of service under the contracts in question because such order indirectly requires Utah Power to construct and to dedicate generation facilities to provide such service and thus indirectly extends FERC jurisdiction over such generating facilities in excess of its authority under the Federal Power Act.

5. The Commission erred in concluding that the Utah Public Service Commission should have intervened in Docket No. ER77–587 to modify the contract because the contract itself was never valid, its terms being specifically conditioned upon the prior approval of all "regulatory authorities having jurisdiction," and approval of the Utah Public Service Commission pursuant to its jurisdiction never having been obtained.

6. The Commission erred in its apparent failure to consider that the contract provision conditioning it upon approval of regulatory bodies "having jurisdiction" did not of necessity mean "jurisdiction under the Federal Power Act," and failure to receive evidence as to the intention of the parties as to this contract clause was also in error.

7. The Commission erred in refusing to hold hearings while at the same time arriving at its conclusion from facts not in the record in this proceeding and which the Utah intervenors has no opportunity to examine and respond to, in violation of the parties' rights to procedural fairness and due process.

Discussion

The order issued July 3, 1980, addressed the first four allegations raised in the petition for rehearing. Briefly summarized, the declaratory order pointed out that the state commission's order calling for the termination of service between two jurisdictional utilities, unless the rate for such service is modified, was in effect a collateral attack upon a rate schedule filed with this Commission. The order found that the rate and all terms of service contained in the rate schedule are subject to the FERC's exclusive jurisdiction under *Attleboro* [1] and the Federal Power Act. Therefore, the service agreement as part of the filed rate schedule could not be ordered modified or terminated by a state commission in a manner inconsistent with the Federal Power Act. The order further pointed out that any party aggrieved by the rates or terms of service could seek appropriate relief before this Commission under the applicable standards of the Federal Power Act.[2]

The order was limited to the issue of the jurisdiction over rate schedules filed with the FERC by jurisdictional utilities. It did not direct Utah P&L to install generating facilities nor did it speculate as to how Utah P&L would supply the service under the contract in question. The Commission directed Utah P&L to comply with the terms of its filed rate schedule unless and until modified in a manner consistent with the Federal Power Act.

Over the Utah governmental intervenors' objection, the order granted Sierra Pacific's request for summary disposition. Summary disposition was found to be appropriate because the sole issue raised was one of law and none of the pleadings raised a material issue of fact. The order did not grant Sierra Pacific's request to instruct Utah P&L to disregard the state commission's order, to the extent that this request was not implicitly granted by our finding of exclusive jurisdiction over the service and contract.

The petitioners raise for the first time on rehearing the remaining allegations numbered five, six and seven. The governmental intervenors maintain in allegation number five that the interconnection agreement contains a condition precedent which requires the approval of the Utah Public Service Commission in order to bind the parties to the terms of the contract. The agreement contains a provision which reads: "This agreement is subject to the approval of regulatory authorities having jurisdiction." The petitioners interpret this clause to mean that in order to have a valid contract, fulfillment of the condition precedent required the procurement of approval from all regulatory authorities having jurisdiction over the contract.

Petitioners contend that under Utah law the Public Service Commission has plenary power over all business conducted by every public utility in the state.[3] Furthermore, the petition cites a state commission order[4] which requires utilities entering into contracts for the slae of power to any customers, either in or out of the State of Utah, to seek prior approval of the Public Service Commission. The governmental intervenors conclude that the state commission has concurrent jurisdiction with the FERC over the contract and therefore both commissions must approve the contract before it will bind the parties.

We disagree with the petitioners' interpretation of the above-quoted provision. While we agree that the clause clearly refers to regulatory "authorities" having jurisdiction over the contract, we disagree with the state commission's assertion of jurisdiction over the service in question. We have determined in our previous order that the subject of the contract is the sale of electricity for resale in interstate commerce. As such, the sale falls within our exclusive grant of jurisdiction under the Federal Power Act. Although the state commission maintains jurisdiction over certain aspects of Utah P&L's activities, it is beyond the state agency's authority to control sales in interstate commerce. Therefore, the clause referring to authorities having jurisdiction over the contract cannot refer to the Utah Public Service Commission. Consequently, the state commission cannot deny the binding effect of the contract by withholding its approval.

In exception number 6 the intervenors contend that even if the state commission is without jurisdiction over the contract sale, the parties intended the clause "authorities having jurisdiction" to include the Utah Public Service Commission in light of the order issued by that commission on August 4, 1974, cited above.[5] The record does not contain any evidence of the parties agreeing to such an interpretation. Moreover, there is no claim by either party that there is a dispute as to the interpretation of the contract language. Utah P&L, in its pleadings, has not interpreted this clause to include authorities lacking jurisdiction over the

[1] *Public Utilities Commission of Rhode Island* v. *Attleboro Steam and Electric Company*, 273 U.S. 83 (1926).

[2] The contract is for a fixed term subject to early termination by Sierra Pacific only. Therefore, a party other than Sierra Pacific seeking to prematurely terminate service under the contract would have to meet the so-called *Sierra* burden of proving that the term of the contract adversely affects the public interest. See *FPC* v. *Sierra Pacific Power Company*, 350 U.S. 348 (1956). The question of how Utah P&L may change its rates under the contract is currently before the Commission on exceptions to the "Initial Decision on Increased Rate Filing," in Docket No. ER79–121, issued May 7, 1980.

[3] Utah Code Ann., § 54–4–1, provides that the Utah Public Service Commission "is vested with the power and jurisdiction to * * * supervise all of the business of every * * * public utility in this state, and to do all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of such power and jurisdiction. * * *"

[4] Utah Public Service Commission Order, issued August 13, 1974, in Case No. 6978.

[5] We note that virtually identical language is contained in Service Schedule C–1: "This Service Schedule C–1 is subject to approval of regulatory authorities having jurisdiction." That contract was executed May 19, 1971, and provides for the sale of firm power and energy between the parties. The parties could not have intended this similar language to reflect the state commission's order three years before it was issued.

contract. According to the pleadings of Sierra Pacific, whose factual assertions are uncontested by Utah P&L, the parties did not intend that the withholding of approval by the state commission would void the contract unless the state commission had jurisdiction over the contract. Prior to filing the agreement, the parties disagreed as to the state commission's jurisdiction. Utah P&L contended that although this Commission has paramount authority over the rates for sales in interstate commerce, approval of the state commission was required because of the above cited order. In discussions with Utah P&L, Sierra Pacific maintained that this Commission has exclusive jurisdiction over the transaction and that the state commission's actions would have no effect on the validity of the contract. The parties therefore agreed only as to this Commission's jurisdiction, and disagreed only as to whether this jurisdiction is exclusive. Consequently, there was no agreement that the state commission's approval be required under the contract.

With respect to point number seven, petitioners allege that the parties had a right to prior notice and the ability to respond to all documents relied upon by the Commission. The July 3 order was based solely upon the pleadings, the contract itself, Commission orders and regulations, published case law, and statutes. All of these materials are available to the public and were properly the subject of official notice.

In view of the fact that no new significant issues of fact or law are raised in the application for rehearing, we shall deny rehearing.

The Commission orders:

(A) The Governmental Intervenors application for rehearing is hereby denied.

(B) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27935 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RP80-75]

Southern Natural Gas Co.; Compliance Filing

September 3, 1980.

Take notice that in accordance with Ordering Paragraph (A) of the Commission's Order Granting Rehearing for Purposes of Futher Consideration issued in this docket on July 30, 1980, Souther Natural Gas Company (Southern) has filed documentation intended to support its contention that it received certain refunds from United Gas Pipe Line Company on December 31, 1979, rather than December 28, 1979. This documentation consists of an affidavit of Mr. Robert C. Sims, Manager-Gas Accounting for Southern, a photocopy of a check from United Gas Pipe Line Company dated, December 28, 1979 bearing a date stamp bearing the initials of Mr. Sims and the date of December 31, 1979, and a copy of the transmittal letter from United Gas Pipe Line Company Dated December 28, 1979.

Any person wishing to protest the filing of this documentation or to dispute the facts alleged therein should do so by filing a protest or petition to intervene in accordance with the Commission's Rules of Practice and Procedure (18 CFR § 1.10 or 1.18) with the federal Energy Regulatory Commission on or before September 17, 1980. 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 accorance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27936 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. FP80-20]

Tennessee Gas Pipeline Co.; Third Party Protest[1]

September 4, 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 Associated Gas Distributors (AGD) protested on August 12, 1980, the assertion by the Tennesee Gas Pipeline Company (Tennesee) and certain producers that the contracts identified in it protests constitute contractual authority for the producers to charge and collect any applicable maximum lawful price under the Natural Gas Policy Act of 1978 (NGPA).

[1] Term "third party protest" refers to a protest filed by a party who is not a party to the contact 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.

AGD stated that the language of the following contracts does not constitute authority for the producer to increase prices to the extent claimed by Tennessee in its evidentiary submission:

Seller	Rate schedule No.	Date
First National Bank of Shreveport, Trustee of the Ed. E. & Gladys Hurley Foundation (PIS to Getty Oil Co.).	CS 71-1063	
American Petrofina Co. of Texas.	72	Nov. 1, 1974. Jan. 12, 1979.
Wainoco Oil & Gas Co. (PIS to Highland Resources, Inc.).	CS 73-135	
Tenneco Oil Co	16	Nov. 1, 1961.
Lyons Petroleum Inc., *et al.*	CS 72-660	
Gulf Oil Corp	170	
Shell Oil Co	216	June 26, 1959. Nov. 1 1979.
Exxon Corp	241	Dec. 30, 1959. Oct. 11, 1979.
Bert Fields, Jr	CS 71-297	June 1, 1954 Nov. 26, 1979.
Jeanne Fields Shelby	CS 71-297	June 1, 1954. Dec. 7, 1979.
Gulf Oil Corp	498	
Terra Resources Inc	12	Oct. 3, 1968.
Amoco Production Co	284	Dec. 29, 1959. Nov. 1, 1979.
Amoco Production Co	811	Aug. 16, 1979.
A. Nelson McCarter, Inc.	CS 77-525	
Tenneco Oil Co	417	July 23, 1979.

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 September 19, 1980, a petiton to intervene in accordance with 18 CFR 1.8. The seller need not file for intervention because under 18 CFR 154.94(j)(4)(ii), the seller in the first sale is automatically joined as a party.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27919 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-501]

Texas Gas Transmission Corp.; Application

September 4, 1980.

Take notice that on August 15, 1980, Texas Gas Transmission Corporation (Applicant), P.O. Box 1160, Owensboro, Kentucky 42301, filed in Docket No. CP80-501 an application pursuant to Section 7(c) of the Natural Gas Act and § 157.7(d) of the Regulations thereunder (18 CFR 157.7(d)) for a certificate of public convenience and necessity authorizing the construction, during a 36-month period commencing February 10, 1980, and operation of certain natural

gas facilities for the testing and development of underground storage reservoirs, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the purpose of this budget-type application is to augment Applicant's ability to engage in a continuing program of testing and developing reservoirs for the underground storage of natural gas for the benefit of Applicant's system operations and service to its customers.

Applicant proposes to investigate the more promising structures through the acquisition of surface and subsurface rights that may be necessary or convenient for testing operations, drill structure test holes and wells and run pump tests to determine relevant reservoir characteristics.

Applicant further proposes to make gas injections and withdrawals in additional underground storage reservoirs as they are located in order to test and develop only those reservoirs anticipated to respond favorably to development as usable storage facilities. Applicant states that in this regard it would drill injection and withdrawal wells and construct and operate compressor, pipeline and appurtenant facilities as may be required to effectuate the proposed injections and withdrawals of gas to test properly and develop such potential storage reservoirs.

Applicant states that the total volume of natural gas to be injected into the prospective storage fields would not exceed 10,000,000 Mcf, with no more than 2,000,000 Mcf being injected into any single field and with injections being made only during off-peak periods. Total expenditures for the proposed 36-month project would not exceed $3,000,000 and would not exceed $1,000,000 in any one year. Applicant proposes to finance these costs from funds on hand.

Applicant states that upon successful completion of the testing and development of any underground storage reservoir. Applicant would file an application for authorization to utilize said storage reservoir as an integral part of its transmission system.

Any person desiring to be heard or to make any protest with reference to said application should on or before Septebmer 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) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kennethg F. Plumb,

Secretary.

[FR Doc. 80-27920 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-492]

Texas Gas Transmission Corp.; Application

September 4, 1980.

Take notice that on August 8, 1980, Texas Gas Transmission Coporation (Applicant), P.O. Box 1160, Owensboro, Kentucky 42301, filed in Docket No. CP80-492 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a new sales meter station and for permission and approval to abandon certain facilities used to serve Western Kentucky Gas Company (Western Kentucky), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to abandon and remove the Robards Sales Meter Station located approximately one-fourth of a mile south of Robards, Henderson County, Kentucky. It is stated that such station is presently used as a point of delivery to Western Kentucky, an existing resale customer of Applicant. Applicant also proposes to abandon by sale to Western Kentucky approximately 750 feet of 2-inch pipeline located between Applicant's Dixie 12-inch and 16-inch pipelines and the Robards Sales Meter Station together with all land, rights of way, and easements appurtenant thereto. Such facilities to be sold to Western Kentucky are presently used exclusively to serve Western Kentucky, Applicant asserts.

Additionally, Applicant proposes to construct and operate a new sales meter station and related facilities on its Dixie Tributary lines at milepost 1.26 Henderson County, Kentucky. The cost of the construction of these facilities is estimated to be $32,000, it is said. Applicant would be reimbursed by Western Kentucky for such costs, but title would remain with Applicant.

Applicant submits that the abandonment of the 2-inch pipeline and the relocation of the Robards Sales Meter Station would provide Western Kentucky with the ability to receive additional volumes of natural gas so as to enable it better to accommodate future residential, commercial, and industrial customers. It is further submitted that the relocation of the sales meter station would not result in an increase in Western Kentucky's existing contract demand and quantity entitlement.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 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 or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the

certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27921 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-485]

Transcontinental Gas Pipe Line Corp.; Application

September 4, 1980.

Take notice that on August 7, 1980, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP80-485 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of pipeline taps and appurtenant facilities necessary for the injection of propane or other liquid petroleum gas (LPG) to enrich the Btu content of Applicant's gas supply during the winter heating season, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that its Btu enrichment project is designed to augment Applicant's total gas supply available to its customers. In that connection, Applicant projects a substantial decline in gas supply available from its presently committed sources. Applicant states that while it expects to be able to offset partially such decline by purchasing new gas reserves in its traditional supply area, it is also actively seeking to augment its traditional sources of gas with supplies from non-traditional sources. Applicant further states that its Btu enrichment project could be brought onstream by the 1981-82 winter season or substantially sooner than other non-traditional supplemental supplies, that the project would increase significantly the winter delivery capability of its system in terms of total energy transported, and that the pipeline injection process is one which has been employed successfully by Applicant and others.

Applicant proposes to locate two Btu enrichment sites each consisting of pipeline taps and appurtenant facilities on its mainline at Station No. 80 near Sandersville, Mississippi, and at Station No. 145 near Grover, North Carolina. Btu monitoring facilities would be installed at Station No. 100 near Billingsley, Alabama, and at Station No. 150 near Davidson, North Carolina, it is stated.

It is estimated that these facilities would cost $3,310,000. Applicant states that the cost of these facilities would be financed initially through short-term loans and available cash with permanent financing to be undertaken as a part of an overall long-term financing program at a later date.

Applicant states that its Btu enrichment project is intended to become operational during the 1981-82 winter and is planned to be terminated at the conclusion of the 1986-87 winter although it would retain the option, subject to Commission approval, to extend the project as required by the supply and marketing conditions existing at that time. Applicant contemplates purchasing on an annual basis up to about 8.8 million barrels of propane which contains the Btu equivalent of about 32 million dt net of fuel on Applicant's system or an average of more than 200,000 dt per day of Applicant's pipeline supply throughout the winter period, it is stated. Under normal operating conditions, Applicant plans to inject up to about 7.5 million barrels of this total at Station No. 80 and up to about 1.3 million barrels at Station No. 145 in order to maximize the amount of additional energy into the system at the lowest unit cost. Applicant anticipates that during the first winter of operation propane would be utilized at about 50 percent of the maximum amounts to be purchased during the subsequent years of operation. Applicant further states that most of the operations and services required to deliver propane to Station Nos. 80 and 105 would involve the use of existing propane pipelines and storage facilities. Applicant expects that in view of the expected worldwide surplus of LPG during the period in question it would encounter no difficulties in obtaining the required propane supplies under a combination of long-term and spot or short-term contracts.

Applicant states that it proposes to utilize the injected propane primarily as additional system gas supply and proposes that the costs thereof be included as a part of system gas supply costs. During the proposed term of the Btu enrichment project, it is Applicant's goal to supply from all sources at least 720 million each year to its customers under its Rate Schedules CD and ACQ.

According to Applicant, if the combination of Applicant's other gas supplies and propane results in estimated supplies available to these customers in excess of 720 million dt per year, Applicant would offer its customers the opportunity to purchase for a one-year period and on an incremental basis quantities related to injected propane. Applicant states that any requests for authority to render such incremental winter season service would be the subject of a separate application to be filed with the Commission. However, if and to the extent that Applicant has arranged for propane supplies on a firm contract basis and its customers do not elect to purchase such propane-related supplies in excess of the 720 million dt system supply level on an incremental basis, Applicant says that it would treat such quantities as additional system gas supply.

Applicant states that propane to be used for the Btu enrichment project would be purchased by Applicant from an affiliate on a cost of service basis and that the cost of propane delivered to its mainline would include the cost of the propane as well as any import and handling fees, terminalling fees, transportation and storage charges, and the costs of service related to facilities installed specifically to handle Applicant's propane purchases. Each of these costs would be established either by published rates or tariffs or by contracts entered into at arms length with unaffiliated parties. Applicant requests waiver of the requirements of Section 154.38(d)(4)(iv)(a) of the Regulations so that Applicant may include LPG costs in its semi-annual purchased gas adjustment filing to be effective September 1, 1981, two months in advance of the initial injection.

Any person desiring to be heard or to make any protest with reference to said application should on or before Septermber 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) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a

petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27922 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP79-322]

Transcontinental Gas Pipe Line Corp., et al.; Petition To Amend

September 4, 1980.

Take notice that on July 31, 1980, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77001, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42301, and Michigan Wisconsin Pipe Line Company (Mich Wis), One Woodward Avenue, Detroit, Michigan 48226, filed in Docket No. CP79-322 a joint petition to amend the order of December 10, 1979, issuing a certificate of public convenience and necessity in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize Northern and Mich Wis to own and operate jointly with Transco, Columbia Gulf, and Texas Gas certain offshore pipeline and related facilities and to authorize Northern to increase its current interest in certain of such facilities authorized by the order of December 10, 1979, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Petitioners state that the order of December 10, 1979, authorized Transco, Columbia Gulf, Northern, and Texas Gas to construct and operate the following facilities, known collectively as Project HI-531:

1. Approximately 5.40 miles of 16-inch pipeline and appurtenant facilities, such pipeline extending from a proposed underwater connection in Galveston Area Block A-157 (Block A-157) to the producer-owned platform in Galveston Area Block A-131 (Block A-131), offshore Texas, together with a meter and regulator station on such Block A-131 platform.

2. Approximately 0.38 mile of 12-inch pipeline and appurtenant facilities, such pipeline extending from a proposed underwater connection in Block A-157 to the producer-owned platform in Block A-157 together with a meter and regulator station on such A-157 platform.

3. Approximately 13.53 miles of 16-inch pipeline and other appurtenant facilities, such pipeline extending from a proposed underwater connection in Block A-157 to proposed underwater connection in High Island Area Block A-531 (Block A-531), offshore Texas.

4. Approximately 3.06 miles of 20-inch pipeline and other appurtenant facilities, such pipeline extending from a proposed underwater connection in High Island Area Block 537 (Block A-537), offshore Texas, to a proposed underwater connection in Block A-531.

5. Approximately 5.43 miles of 20-inch pipeline and appurtenant facilities, such pipeline extending from a proposed underwater connection with High Island Offshore System in High Island Area Block A-555 (Block A-555), offshore Texas, to a proposed underwater connection in Block A-537.

It is stated that the distribution of associated cost, ownership and capacity was based on the assumption that Transco would contract for all of Kerr-McGee Corporation, *et al.*'s 25 percent interest in Blocks A-131 and A-157.

Pursuant to a gas purchase contract dated January 8, 1980, Mich Wis has acquired the right to purhase the gas reserves attributable to a 4.1667 percent interest of Cabot Corporation in Blocks A-131 and A-157, it is stated. Mich Wis projects the deliverability attributable to this interest to be approximately 2,900 Mcf of natural gas per day.

It is stated that pursuant to various gas purchase contracts, Northern has acquired the right to purchase the gas reserves attributable to an aggregate of 20 percent interest in Blocks A-131 and A-157. The deliverability attributable to this interest is projected by Northern to be approximately 14,000 Mcf of natural gas per day. Petitioners state that the following list indicates the producers with which Northern has contracted to purchase gas, the respective interest in the block dedicated to Northern and the docket numbers at which the producers have received authority for the sale of their interest in Blocks A-131 and A-157 to Northern.

Producer	Block	Percentage interest	FERC docket No.
Kerr-McGee Corporation	A-131	14.5834	CI80-143
Kerr-McGee Corporation	A-157	14.5834	CI80-145
Norse Petroleum (US) Inc.	A-131	2.5000	CS79-148
Norse Petroleum (US) Inc.	A-157	2.5000	CS79-148
Case-Pomery Oil Corporation	A-131	0.5833	CI80-228
Case-Pomery Oil Corporation	A-157	0.5833	CI80-227
Filmont Oil Corporation	A-131	2.3333	CI80-230
Filmont Oil Corporation	A-157	2.3333	CI80-229

Transco, Columbia Gulf, and Texas Gas state that they have agreed to permit Northern and Mich Wis to share in the ownership and operation of the Project HI-531 facilities in order to assist Northern and Mich Wis in receiving gas from Blocks A-131 and A-157. In the case of those Project HI-531 facilities described in 4 and 5 above Northern would increase its authorized ownership interest. Petitioners state that in accordance with the terms and conditions of a construction and ownership agreement date May 3, 1979, as amended January 16, 1980, among Petitioners the individual ownership percentages in the Project HI-531 facilities would be as follows:

1. 5.40 miles of 16-inch pipeline, 0.38 mile of 12-inch pipeline, 13.53 miles of 16-inch pipeline, meter and regulator stations on Blocks A-131 and A-157, and appurtenant facilities

Transco	45.830%
Columbia Gulf	30.000%
Northern	20.000%
Mich Wis	4.170%

2. 2.29 miles of 12-inch pipeline, 0.30 mile of 20-inch pipeline, 0.07 mile of 12-inch pipeline, meter and regulator stations on Blocks A-536, A-531, and A-537, and appurtenant facilities

Transco	35.000%
Northern	50.000%
Texas Gas	15.000%

3. 3.06 miles of 20-inch pipeline and appurtenant facilities

Transco	39.829%
Columbia Gulf	13.376%
Northern	36.624%
Texas Gas	8.312%
Mich Wis	1.859%

4. 5.43 miles of 20–inch pipeline and other appurtenant facilities

Transco	38.698%
Columbia Gulf	10.244%
Northern	39.756%
Texas Gas	9.878%
Mich Wis	1.424%

Transco would relinquish enough of its ownership interest in the various facilities to allow the participation by Northern and Mich Wis set forth above, it is stated.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before September 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) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80–27923 Filed 9–10–80; 8:45 am]

BILLING CODE 6450–85–M

[Docket No. CP80–490]

United Gas Pipe Line Co.; Application

September 4, 1980.

Take notice that on August 8, 1980, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP80–490 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the installation of a tap to enable Entex, Inc. (Entex) to provide gas service in Hinds County, Mississippi, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Specifically, Applicant requests authorization to install a 2-inch tap on its existing Griffin 2-inch lateral located in Hinds County, Mississippi.

Applicant states that pursuant to an existing service agreement between it and Entex, it delivers gas to Entex, a local distributor, for its various distribution systems in the State of Mississippi including the supply which is provided through taps on Applicants McComb 6-inch line in the the McComb Summit Service Area in Hinds County, Mississippi. Applicant further states that it has been informed by Entex by letter dated June 17, 1980, that due to a load shift on its system the proposed 2-inch tap would be required to enable Entex to receive a portion of its supply from Applicant on the east rather than the west side of the McComb 6-inch line.

The proposed tap is estimated to Cost $1,200 which would be financed with funds on hand, it is said.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 23, 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) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80–27924 Filed 9–10–80; 8:45 am]

BILLING CODE 6450–85–M

[Project No. 3222]

Water Power Development Corp., Application for Preliminary Permit

September 3, 1980.

Take notice that the Water Power Development Corporation (Applicant) filed on June 20, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)] for proposed Project No. 3222 to be known as the South Milton Project located on the Salmon Falls River in Strafford County, New Hampshire, and York County, Maine. Correspondence with the Applicant should be directed to: Mr. Kenneth E. Mayo, President, Water Power Development Corporation, 23 Temple St., Nashua, New Hampshire.

Project Description—The proposed project would consist of the following existing works: (1) a 240-foot long stone dam having a height of 17 feet; (2) a 35 acre reservoir having a negligible storage capacity; (3) two mill buildings containing turbine and generators with a total capacity of 700 kW; and (4) appurtenant facilities. The Applicant proposes to redevelop the project so as to give it a total installed capacity of 2,400 kW. It is estimated that the average annual energy output would be 10,000,000 kWh.

Proposed Scope and Cost of Studies under Permit—Applicant seeks issuance of a preliminary permit for a period of three years, during which time Applicant would investigate the engineering, economic, environmental, historic, and recreational aspects of the project. Depending upon the outcome of the studies, the applicant would decide whether to proceed with an application for license. Applicant estimates the cost of studies under the permit would be $50,000.

Purpose of a Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other necessary information for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues

relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before November 7, 1980 either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than January 5, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (*as amended*, 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (*as amended*, 44 FR 61328, October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding, to become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before November 7, 1980. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-27925 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-663]

Wisconsin Public Service Corp.; Filing

September 4, 1980.

Take notice that on August 26, 1980, the Wisconsin Public Service Corporation (WPS) tendered for filing a Certificate of Concurrence concurring to the Amendment to the Interconnection Agreement between Wisconsin Electric Power Company and WPS which WPS has filed by letter dated August 8, 1980.

WPS states that this filing is in compliance with Order No. 84 issued on May 7, 1980.

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 September 23, 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. 80-27926 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-85-M

Office of the Special Counsel for Compliance

Proposed Consent Order, Tenneco Oil Co.

AGENCY: Department of Energy (DOE).

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Office of the Special Counsel for Compliance (OSC) hereby gives the notice required by 10 CFR 205.199J that it entered into a consent order with Tenneco Oil Company (Tenneco) on August 21, 1980. The consent order resolves all issues of compliance with the DOE Petroleum Price Regulations for the period August 19, 1973, through February 29, 1980, as applied to Tenneco's calculation of its May 1973 per gallon cost of purchased motor gasoline. To remedy any overcharges that may have occurred during the period, Tenneco agrees to $22.26 million in remedies.

As required by the regulation cited above, OSC will receive comments on the consent order for a period of not less than 30 days following publication of this notice. OSC will consider any comments received before determining whether to make the consent order final. Although the consent order has been signed and accepted by the parties, the OSC may, after the expiration of the comment period, withdraw its acceptance of the consent order and attempt to obtain a modification of the consent order or issue the consent order as proposed.

COMMENTS: Comments must be received by 5:00 p.m. October 14, 1980 to be considered.

ADDRESS: Address comments to: Tenneco Consent Order Comments, Office of Special Counsel, Department of Energy, 1200 Pennsylvania Avenue, N.W., Room 2140, Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT: George Kielman, Associate Solicitor to the Special Counsel for Compliance, Department of Energy, 1200 Pennsylvania Avenue, N.W., Room 2140, Washington, D.C. 20461, 202-633-9557.

Copies of the consent order may be received free of charge by written request to: Tenneco Oil Company, Consent Order Request, Office of Special Counsel, Department of Energy, 1200 Pennsylvania Avenue, N.W., Room 2140, Washington, D.C. 20461.

Copies may also be obtained in person in room 3109 of the same street address noted above or at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, S.W., Room 5B-180, Washington, D.C. 20461.

SUPPLEMENTARY INFORMATION: Tenneco Oil Company is one of the 34 major refiners presently subject to audit by the Office of Special Counsel to determine compliance with the DOE Petroleum Price Regulations (Regulations). Tenneco engages in, among other things, the refining and marketing, and purchasing and reselling of motor gasoline. The instant audit concerned the propriety of Tenneco's calculation of its May 1973 purchase motor gasoline cost for purposes of compliance with the Regulations. The audit was initiated by the Department's predecessors. Responsibility for the audit was assumed by the Office of Special Counsel for Compliance in October 1977. During the audit, questions and issues were raised and enforcement documents were issued, including a Remedial Order issued on February 2, 1977 and a Revised Remedial Order issued on February 15, 1978. Tenneco subsequently challenged those orders as upheld by the Department's Office of Hearings and Appeals, in the District Court for the District of Delaware (C.A. No. 77-486), and the United States conterclaimed to enforce the Orders, as upheld, for the period stated therein and to enforce compliance with the Regulations for the follow-on period. This consent order resolves all issues not previously resolved concerning the

computation of Tenneco's May 1973 per gallon cost of purchased product for purposes of compliance with the Regulations for the period through February 29, 1980.

Neither OSC nor Tenneco has disavowed positions taken previously on the issues addressed by this consent order and each believes that its position on these issues is meritorious. Notwithstanding DOE's position to the contrary, Tenneco maintains that it has calculated its cost of purchased motor gasoline and determined its maximum allowable prices in accordance with applicable statutes and regulations. The parties desire, however, to resolve the issues raised without continued resort to complex, lengthy and expensive litigation. OSC believes that the terms and conditions of this consent order provide a satisfactory resolution of disputed issues and an appropriate remedy for possible overcharges, and thus the consent order is in the best interests of the United States.

Terms and Conditions of the Consent Order

Tenneco has agreed to undertake certain actions totalling $22.26 million. The settlement consists of three major components: a refund of $1,244,100 to existing wholesale purchasers who purchased from Tenneco in June 1974; a cash payment of $1,017,900, for disposition by the Department; and a reduciton to Tenneco's current motor gasoline bank of $20,000,000.

1. The $1,244,100 refund shall be implemented as follows. Tenneco shall prepare a list of wholesale customers who purchased motor gasoline from it in June 1974, along with the amount to be refunded to each. Upon review and approval by OSC, and within forty five (45) days of the effective date of the Consent Order, Tenneco shall refund such amounts to such customers by check or credit memorandum. If any portion of the $1,244,100 is not acutally refunded to Tenneco's wholesale customers, due to failure of any such customers to accept such refund, such portion shall be added to the cash payment discussed below.

2. The cash payment of $1,017,900 shall be paid within fourteen (14) days of the effective date of the Consent Order, made payable to the United States Department of Energy and under its exclusive control.

3. As of the effective date of the Consent Order, Tenneco shall reduce its then-current bank of unrecovered increased costs attributable to motor gasoline by the sum of $20,000,000. These reductions shall be evidenced in Tenneco's form EIA–14 filed for the month in which this Consent Order becomes effective.

The Consent Order provides that Tenneco shall maintain records to demonstrate compliance with its terms and that the OSC shall have access to such information as may be required to audit Tenneco's performance of its commitments pursuant to the consent order. The consent order provides details regarding procedures concerning enforcement of the provisions of the consent order. Upon becoming final after consideration of public comments, the order will be a final order of DOE to which Tenneco has waived its right to an administrative or judicial appeal.

Submission of Written Comments

Interested persons are invited to submit written comments concerning this consent order to the address noted above. All comments received by 5:00 p.m. on October 14, 1980, will be considered by OSC before determining whether to adopt the consent order as a final order. Modifications of the consent order which, in the opinion of OSC, significantly change the terms or impact of the consent order will be published for comment.

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures of 10 CFR 205.9(f).

Issued in Washington, D.C. September 4, 1980.

Paul L. Bloom,

Special Counsel for Compliance.

[FR Doc. 80-28079 Filed 9-10-80; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP 50500; FRL 1603-01]

Pesticides; Extension of Experimental Use Permits

The Environmental Protection Agency (EPA) has issued extensions of experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

1471–EUP–43. Elanco Products Co., PO Box 1750, Indianapolis, IN 46206. This experimental use permit allows the use of 66,500 pounds of the herbicide tebuthiuron (N-[5-(1,1-dimethylethyl)-1,3,4-thiadiazol-2–yl]-*N,N'*dimethylurea) on rangelands and pasturelands to evaluate control of brush. A total of 4,989 acres are involved. The program is authorized in the 48 contiguous States, except Oklahoma and Texas. The experimental use program is effective from July 9, 1980 to July 9, 1981. A temporary tolerance for the residues of the active ingredient on pasture grasses and grass hay has been extended. (PM 25, Robert J. Taylor, Rm. E–359, 202–755–2196)

707—EUP–95. Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105. This experimental use permit allows the use of 2,036 pounds of the hybridizing agent postassium (1-(p-chlorophenyl)-1,4-dihydro-6-methyl-4-oxopyridazine-3-carboxylic acid on wheat to evaluate hybridizing. A total of 1,018 acres are involved. The program is authorized only in the States of Colorado, Illinois, Indiana, Kansas, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, Oregon, and Pennsylvania. The permit is issued with the limitation that all treated crops destroyed or used for research purposes only. The program is effective from October 18, 1980 to October 18, 1981. (PM 25, Robert J. Taylor, Rm. E–359, 202–755–2196)

1021–EUP–26. McLaughlin Gormley King Co., 8810 Tenth Avenue North, Minneapolis, MN 55427. This experimental use permit allows the use of the remaining quanitity of 122 pounds of the insecticide permethrin (3-phenoxybenzyl d-cis and trans 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate on swamps to evaluate its control as a mosquito adulticide. A total of 500 acres are involved. The program is authorized only in the States of California, Florida, Maryland, Minnesota, and New Jersey. The permit is issued with the limitation permethrin will not enter the food chain. The program is effective from August 8, 1980 to August 8, 1981. (PM 17, Franklin D.R. Gee, Rm. E–341, 202–426–9417)

Persons wishing to review the experimental, use permits are referred to the designated Product Manager (PM), Registration Division (TS–767), Office of Pesticide Programs, EPA, 401 M Street, SW, Washington, D.C. 20460. Inquiries regarding this permit should be directed to the contact persons given above. It is suggested that interested persons call before visiting the EPA Headquarters Office so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m. Monday through Friday, exclusing holidays.

(Sec. 5, 92 Stat. 819 as amended, (7 U.S.C. 136))

Dated: September 5, 1980.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-28008 Filed 9-10-80; 8:45 am]

BILLING CODE 6560-01-M

[OPP 50498; FRL 1603-2]

Pesticides; Issuance of Experimental Use Permits

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

43382-EUP-1. Biochem Products, PO Box 264, Montchanin, DE 19710. This experimental use permit allows the use of 1,000 pounds of Bacillus Thuringiensis, Israelensis on bodies of water to control mosquito and black fly larvae. The program is authorized in the States of Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, North Carolina, Ohio, South Carolina, Tennessee, Texas, Virginia, Washington, and West Virginia; and Puerto Rico. The permit is being issued under the limitation that none of the treated area will enter into the food chain. The program is effective from July 21, 1980 to July 21, 1981. (PM 17, Fanklin D. R. Gee, Rm. E-341, 202-426-9417)

1529-EUP-2. GAF Corp., 140 W. 51st St., NY, NY 10020. This experimental use permit allows the use of 2,000 pounds of the plant growth regulator ethephon [(2-chloroethyl) phosphionic acid] on cotton to evaluate hastening effect on the opening of mature cotton bolls. A total of 795 acres are involved. The program is authorized only in the States of Alabama, Arizona, Arkansas, California, Georgia, Louisiana, Mississippi, Missouri, New Mexico, Oklahoma, South Carolina, Tennessee, and Texas.

1529-EUP-3. GAF Corp., 51st St., NY, NY 10020. This experimental use permit allows the use of 2,000 pounds of the plant growth regulator ethephon on cotton to evaluate hastening effects on opening of mature cotton bolls. A total 795 acres are involved. This program is authorized in the same States as the permit above. Both programs are effective from July 22, 1980 to July 22, 1981. These permits are being issued with the limitation that all treated crops are destroyed or used for experimental purposes only. (PM 25, Robert J. Taylor, Rm. E-359, 202-755-2196)

Person wishing to review the experimental use permits are referred to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M St., SW, Washington, D.C. 20460. Inquiries regarding these permits should be directed to the contact persons given above.

Interested persons should call before visiting the EPA Headquarters Office so that the appropriate file may be made available for inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

(Sec. 5, Stat. 819 as amended (7 U.S.C. 136))

Dated: September 5, 1980.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-28009 Filed 9-10-80; 8:45 am]

BILLING CODE 6560-01-M

[OPTS-51122; FRL 1603-4]

Certain Chemicals; Toxic Substances Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the **Federal Register** certain information about each PMN within 5 working days after receipt. This Notice announces receipt of seven PMN's and provides a summary of each.

DATE: Written comments by October 7, 1980.

ADDRESS: Written comments to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, 202-755-8050.

FOR FURTHER INFORMATION CONTACT: George Bagley, Premanufacturing Review Division (TS-794), Office of Pesticides and Toxic Substances; Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, 202-426-3936.

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under Section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notice of availability of the Initial Inventory was published in the **Federal Register** of May 15, 1979 (44 FR 28558). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the **Federal Register** issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in Section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the **Federal Register.**

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the PMN submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use(s), the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will

publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register.**

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, summaries of the data taken from the PMN's are published herein.

Interested persons may, on or before October 7, 1980, submit to the Document Control Officer (TS-793), Rm. E-447, Office of Pesticides and Toxic Substances, 401 M St., SW, Washington, DC 20460, written comments regarding these notices. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-51122]" and the specific PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: September 5, 1980

Warren R. Muir,

Deputy Assistant Administrator for Toxic Substances.

PMN 80-199.

Close of Review Period. November 6, 1980.

Importer's Identity. Claimed confidential. Generic information provided: Annual sales—In excess of $500 million.

Specific Chemical Identity. Claimed confidential. Generic name provided: Methyl aminoheteropolycycle.

The following summary is taken from data submitted by the importer in the PMN.

Use. Claimed confidential. The importer states that the PMN substance will be used in a contained use that will release more than 50 kilograms but less than 5,000 to the environment per year.

Import Estimates.

	Kilograms per year	
	Minimum	Maximum
1st year	1,000	10,000
2d year	1,000	10,000
3d year	1,000	10,000

Physical/Chemical Properties.

Sublimation point—Between 100°C and 200°C.

Water solubility—Between .01 and 1.0 g/l at 25°C.

Toxicity Data. No data were submitted.

Exposure.

Activity	Exposure route	Maximum number exposed	Maximum duration		Concentration (ppm)	
			Hour/day	Day/year	Average	Peak
Processing (2 sites)	Dermal inhalation.	30-150	24	250-335	0-1	0-1
Disposal (1 site)	Dermal inhalation.	4	24	335	0-1	0-1

Environmental Release/Disposal.

Media—Amount of Chemical Release (kg/yr).
Air—Less than 10.
Water—10 to 1,000.
Land—10 to 100.

Particulate filters are used at weighbooths and mix vessel to abate air emissions. All liquid and solid wastes will either be destroyed in a thermal oxidize with appropriate emission controls or will be disposed of in an approved secure chemical landfill apart from those wastewater streams which are compatible with the publicly owned treatment works facility.

PMN 80-200.

Close of Review Period. November 6, 1980.

Manufacturer's Identity. Claimed confidential. Generic information provided: Annual sales—In excess of $500 million.

Specific Chemical Identity. Claimed confidential. Generic name provided: 1-Substituted-1-(p-substitutedphenyl) ethane.

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Chemical intermediate.

Production Estimates. The submitter states that between 20 to 800 kilograms (kg) of the PMN substance will be produced during each of the first three years.

Physical/Chemical Properties.

Melting point: 50-100°C.

Toxicity Data. No data were submitted.

Exposure.

Activity	Exposure route	number exposed	Maximum duration		Concentration (mg/m^3)	
			Hour/day	Day/year	Average	Peak
Manufacture	Dermal inhalation.	Site dependent.	Site dependent		0-1	0-1
Processing	Dermal inhalation.	Site dependent.	Site dependent		0-1	0-1

Environmental Release/Disposal.

Manufacturing media—Amount of Chemical Release (kg/yr).
Air—Less than 10.
Water—Less than 10.
Land—10-100.

All liquid and solid wastes, apart from those wastewater streams which are approved for discharge into the publicly owned treatment works (POTW), will be drummed for destruction in a licensed thermal oxidizer or for disposal in a licensed chemically secure landfill. Air emissions will be scrubbed prior to release.

PMN 80–200.

Close of Review Period. November 6, 1980.

Manufacturer's Identity. Claimed confidential. Generic information provided: Annual sales—In excess of $500 million.

Specific Chemical Identity. Claimed confidential. Generic name provided: 1-Substituted-1-(4-(substituted-heteromonocyclic) phenyl) ethane.

The following summary is taken from data submitted by the manufacturer in the PMN.

Exposure.

Activity	Exposure route	Maximum number exposed	Maximum duration		Concentration (mg/m³)	
			Hour/day	Day/year	Average	Peak
Manufacture	Dermal inhalation	Site dependent.	Site dependent.		0–1	0–1
Processing	Dermal inhalation.	Site dependent.	Site dependent.		0–1	0–1

Environmental Release/Disposal.

Manufacturing Media—Amount of Chemical Release (kg/yr).

Air—Less than 10.

Water—Less than 10.

Land—10–100.

All liquid and solid wastes, apart from those wastewater streams which are approved for discharge into the publicly owned treatment works (POTW), will be drummed for destruction in a licensed thermal oxidizer or for disposal in a licensed chemically secure landfill. Air emissions will be scrubbed prior to release.

PMN 80–202.

Close of Review Period. November 6, 1980.

Manufacturer's Identity. Claimed confidential. Generic information provided:

Exposure.

Activity	Exposure route	Maximum number exposed	Maximum duration		Concentration (mg/m³)	
			Hour/day	Day/year	Average	Peak
Submitter's site:						
Manufacture	Dermal inhalation.	(1)	(1)	(1)	0–1	0–1
Processing	Dermal inhalation.	150	24	335	0–1	0–1
Submitter's site: Processing	Dermal inhalation	30	24	250	0–1	0–1

[1] Site dependent.

Environmental Release/Disposal. The manufacturer states that between 50 and 5,000 kg of the substance will be released to the environment per year at the maximum production rates.

Use. Chemical intermediate.

Production Estimates. The submitter states that between 20 to 800 of the PMN substance will be produced during each of the first three years.

Physical/Chemical Properties.

Melting points—>100°C.

Solubility—>10 g/l in water at 60°C.

Toxicity Data. No data were submitted.

Annual sales—In excess of $500 million.

Specific Chemical Identity. Claimed confidential. Generic name provided: 1-Substituted-1-(4-(substitutedheteromonocyclic)phenyl)ethane.

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Claimed confidential.

Production Estimates. The submitter states that between 20 to 800 kg of the PMN substance will be produced during each of the first three years.

Physical/Chemical Properties.

Melting point>100°C.

Solubility—10 g/l in water at 60°C.

Toxicity Data. No data were submitted.

At the manufacturer's site where both manufacturing and processing of the substances are involved, all liquid and solid wastes, apart from those wastewater streams which are approved for discharge into the publicly owned treatment works (POTW), will be drummed for destruction in a licensed thermal oxidizer or for disposal in a licensed chemically secure landfill. Air emissions will be scrubbed prior to release.

In the manufacturer's site where only processing of the substance is involved, particulate filters are used at weighbooths and mix vessels to abate air emissions. All liquid and solid wastes will either be destroyed in a thermal oxidizer with appropriate emission controls in compliance with local and federal standards, or will be disposed of in an approved secure chemical landfill apart from those wastewater streams which are compatible with the POTW. Recycle and recovery operations will be initiated wherever feasible.

PMN 80–203.

Close of Review Period. November 6, 1980.

Manufaturer's Identity. Claimed confidential. Generic information provided: Annual sales—In excess of $500 million.

Specific Chemical Identify. Claimed confidential. Generic name provided: *p*-(Methylsubstituted) (substituedbenzene), triethylammonium salt.

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Chemical intermediate.

Production Estimtes. The submitter states that between 20 to 800 kg of the PMN substance will be produced during each of the first three years.

Physical/Chemical Properties.

Melting point—50–100°C.

Solubility—>10 g/l in water at 60°C.

Toxicity Data. No data were submitted.

Exposure.

Activity	Exposure route	Maximum number exposed	Maximum duration		Concentration (mg/m³)	
			Hour/day	Day/year	Average	Peak
Manufacture	Dermal inhalation.	Site dependent.	Site dependent		0–1	0–1
Processing	Dermal inhalation.	Site dependent.	Site dependent		0–1	0–1

Environmental Release/Disposal.

Manufacturing Media—Amount of Chemical Release (kg/yr).
Air—Less than 10.
Water—Less than 10.
Land—10–100.

All liquid and solid wastes, apart from those wastewater streams which are approved for discharge into the publicly owned treatment works (POTW), will be drummed for destruction in a licensed thermal oxidizer or for disposal in a licensed chemically secure landfill. Air emissions will be scrubbed prior to release.

PMN 80–204.

Close of Review Period. November 6, 1980.

Manufacturer's Identity. Claimed confidential. Generic information provided:

Annual sales—In excess of $500 million.

Specific Chemical Identity. Claimed confidential. Generic name provided: 1-Substituted-4-(methylsubstituted) benzene.

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Chemical intermediate.

Production Estimates. The submitter states that between 20 to 800 kg of the PMN substance will be produced during each of the first three years.

Physical/Chemical Properties.

Vapor pressure—10–100 torr at 167°C.

Toxicity Data. No data were submitted.

Exposure.

Activity	Exposure route	Maximum number exposed	Maximum duration		Concentration(mg/m³)	
			Hour/day	Day/year	Average	Peak
Manufacture	Dermal inhalation.	Site dependent.	Site dependent		0–1	0–1
Processing	Dermal inhalation.	Site dependent.	Site dependent		0–1	0–1

Environmental/Release/Disposal.

Manufacturing Media—Amount of Chemical Release (kg/yr).
Air—Less than 10.
Land—10–100.

All liquid and solid wastes, apart from those wastewater streams which are approved for discharge into the publicly owned treatment works (POTW), will be drummed for destruction in a licensed thermal oxidizer or for disposal in a licensed chemically secure landfill. Air emissions will be scrubbed prior to release.

PMN 80–205.

Close of Review Period. November 6, 1980.

Manufacturer's Identity. Claimed confidential. Generic information provided:

Annual sales—In excess of $500 million.

Specific Chemical Identity. Claimed confidential. Generic name provided: 1-(Methylsubstituted)-4-(substitutedheteromonocyclic) benzene.

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Chemical intermediate.

Production Estimates. The submitter states that between 20 to 800 kg of the PMN substance will be produced during each of the first three years.

Physical/Chemical Properties.

Melting point—<100°C.
Solubility—<10 g/l in water at 60°<.

Toxicity Data. No data were submitted.

Exposure.

Activity	Exposure route	Maximum numbers exposed	Maximum duration		Concentration (mg/m³)	
			Hour/day	Day/year	Average	Peak
Manufacturer	Dermal inhalation.	Site dependent.	Site dependent		0–1	0–1
Processing	Dermal inhalation.	Site dependent.	Site dependent		0–1	0–1

Environmental Release/Disposal.

Manufacturing Media—Amount of Chemical Release (kg/yr).
Air—Less than 10.
Land—10–100.

All liquid and solid wastes, apart from those wastewater streams which are approved for discharge into the publicly owned treatment works (POTW), will be drummed for destruction in a licensed thermal oxidizer or for disposal in a licensed chemically secure landfill. Air emissions will be scrubbed prior to release.

[FR Doc. 80–28010 Filed 9–10–80; 8:45 am]
BILLING CODE 6560–01–M

[OPTS–51125; FRL 1603–5]

Certain Chemicals; Toxic substances Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemcial substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) reqires EPA to publish in the **Federal Register** certain information about each PMN within 5 working days after receipt. This Notice announces receipt of four PMN's and provides a summary of each.

DATE: Written comments by October 12, 1980.

ADDRESS: Written comments to: Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, 202–755–8050.

FOR FURTHER INFORMATION CONTACT: Carolyn Brown, Premanufacturing Review Division (TS–794), Office of Pesticides and Toxic Substances; Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, 202–426–3980.

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new

chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemcial substance is any substance that is not on the Inventory of existing substances complied by EPA under Section 8(b) of TSCA. EPA first published the Initial Inventory was published in the **Federal Register** of May 15, 1979 (44 FR 28558). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the **Federal Register** issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in Section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or uses(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the **Federal Register.**

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the PMN submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use(s), the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register.**

Once the review period ends, the submitter may manufacture the substances unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, summaries of the data taken from the PMN's are published herein.

Interested persons may, on or before October 12, 1980, submit to the Document Control Officer (TS–793), Rm. E–447, Office of Pesticides and Toxic Substances, 401 M St., SW., Washington, DC 20460, written comments regarding these notices. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS–5112S]" and the specific PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: September 5, 1980.

Warren R. Muir,

Deputy Assistant Administrator for Toxic Substances.

PMN 80–209.

Close of Review Period. November 11, 1980.

Manufacturer's Identity. Claimed confidential.

Specific Chemical Identity. Claimed confidential. Generic name provided: Bis(l-polyamino-2-alkyl imidazoline).

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Adhesive.

Production Estimates. Claimed confidential.

Physical/Chemical Properties. Claimed confidential.

Toxicity Data. None submitted.

Exposure.

Activity	Exposure route	Maximum number exposed	Maximum duration		Concentration (mg/m³)	
			Hour/day	Day/year	Average	Peak
Manufacturing—Claimed confidential.						
Use	Dermal, inhalation.	2	0.5	15	0–1	1–10

Environmental Release/Disposal. The manufacturer states that between 1,000 to 10,000 kilograms (kg) of the PMN substance will be released into the environment (land) per year. Disposal of waste material will be by incineration in accordance with Resource Conservation Recovery Act (RCRA) regulations for ignitable materials.

PNM 80–210.

Close of Review Period. November 11, 1980.

Manufacturer's Identity. Claimed confidential.

Specific Chemical Identity. Claimed confidential. Generic name provided: Bis(1-polyamino-2-alkyl imidazolene).

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Adhesive.

Production Estimates. Claimed confidential.

Physical/Chemical Properties. Claimed confidential.

Toxicity Data. Claimed confidential.

Exposure.

Activity	Exposure route	Maximum number exposed	Maximum duration		Concentration (mg/m³)	
			Hour/day	Day/year	Average	Peak
Manufacturing—Claimed confidential.						
Use	Dermal, inhalation.	2	0.50	15	0–1	0–1

Environmental Release/Disposal. The manufacturer states that between 1,000 to 10,000 kg of the PMN substance will be released into the environment (land) per year. Disposal of waste material will be by incineration in accordance with RCRA regulations for ignitable materials. The manufacturer further states that no waste water will be discharged to the local sewage treatment plant and that there is probably a slight atmospheric emission from the vacumn pumps although all vapors pass through the condenser.

PNM 80-211.

Close of Review Period. November 11, 1980.

Manufacturer's Identity. Claimed confidential.

Specific Chemical Identity. Claimed confidential. Generic name provided: Polytetramethylene glycol, aliphatic polyglycol, and alkyl diisocyanate.

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Forming material.

Production Estimates. Claimed confidential.

Physical/Chemical Properties. Claimed confidential.

Toxicity Data. None. submitted.

Exposure. Claimed confidential.

Environmental Release/Disposal. Claimed confidential.

PMN 80-212.

Close of Review Period. November 11, 1980.

Manufacturer's Identity. Claimed confidential.

Specific Chemical Identity. Claimed confidential. Generic name provided: Adduct of polytetramethylene glycol, aliphatic polyglycol, aliphatic diisocyanate, and an alkyl diisocyanate.

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Forming material.

Production Estimates. Claimed confidential.

Physical/Chemical Properties. Claimed confidential.

Toxicity Data. Claimed confidential.

Exposure.

Activity	Exposure route	Maximum number exposed	Maximum duration		Concentration (ppm)	
			Hour/day	Day/year	Average	Peak
Manufacturing—Claimed confidential.						
Use	Dermal inhalation.	2	6	20	0-1	

Environmental Release/Disposal.

Media—Amount/Duration of Chemical Release (kg/yr).
Air—Less than 10. 6 hr/da; 20 da/yr.
Water—None.
Land—Less than 10.

The manufacturer states that disposal of waste materials will be by incineration in accordance with RCRA regulations for ignitable materials.

[FR Doc. 80-28011 Filed 9-10-80; 8:45 am]

BILLING CODE 6560-01-M

[OPTS-51128; FRL 1603-6]

Halogenated Copolyester Resin; Toxic Substances Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the **Federal Register** certain information about each PMN within 5 working days after receipt. This Notice announces receipt of a PMN and provides a summary.

DATE: Written comments by October 17, 1980.

ADDRESS: Written comments to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, 202-755-8050.

FOR FURTHER INFORMATION CONTACT: Carolyn Brown, Premanufacturing Review Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, 202-426-3980.

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under Section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notice of availability of the Initial Inventory was published in the **Federal Register** of May 15, 1979 (44 FR 28558). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the **Federal Register** issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in Section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information

submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the **Federal Register.**

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use(s), the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register.**

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, a summary of the data taken from the PMN is published herein.

Interested persons may, on or before October 17, 1980, submit to the Document Control Officer (TS–793), Rm. E–447, Office of Pesticides and Toxic Substances, 401 M St., SW, Washington, DC 20460, written comments regarding these notices. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS–51128]" and the specific PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: September 5, 1980.

Warren R. Muir,

Deputy Assistant Administrator for Toxic Substances.

PMN 80–213.

Close of Review Period. November 16, 1980.

Manufacturer's Identity. Claimed confidential. Generic information provided:

Annual sales—Between $10 million and $99,999,999.

Exposure.

Activity	Exposure route	Maximum number exposed	Maximum duration		Concentration (ppm)	
			Hour/day	Day/year	Average	Peak
Manufacturer	Dermal	2	1	18	0–1	
Processing	Dermal	2	1	18	0–1	
Use	Dermal	1–2	1	200	0–1	

Environmental Release/Disposal.

Media/Activity—Amount/Duration of Chemical Release (kg/yr).
Air/Manufacture—Less than 10. 24 hr/da; 18 da/yr.
Air/Use—Less than 10. 1–2 hr/da; 200 da/yr.

[FR Doc. 80–28012 Filed 9–10–80; 8:45 am]

BILLING CODE 6560–01–M

[OPTS–51124; FRL 1603–7]

Polester; Toxic Substances Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacturer notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the **Federal Register** certain information about each PMN within 5 working days after receipt. This Notice announces receipt of a PMN and provides a summary.

DATE: Written comments by October 17, 1980.

ADDRESS: Written comments to: Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, 202–755–8050.

Manufacturing site—East-north central region, U.S.

Standard Industrial Classification Code—282.

Specific Chemical Identity. Claimed confidential. Generic name provided: Halogenated copolyester resin.

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Ingredient for insulating structural foam.

Production Estimates. Claimed confidential.

Physical/Chemical Properties.

Viscosity—Approximately 120,000 cps at 77° F.

Hydroxyl value—435.

Acid value—Less than 1.

Toxicity Data. No data were submitted.

FOR FURTHER INFORMATION CONTACT: Rick Green, Premanufacturing Review Division (TS–794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, 202/426–2601.

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under Section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notice of availability of the Initial Inventory was published in the **Federal Register** of May 15, 1979 (44 FR 28558). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the **Federal Register** issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations,

however, are not yet in effect. Intersted persons should consult the Agency's Interim Policy published in the **Federal Register**. of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in Section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this informaton is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the **Federal Register**.

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use(s), the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register**.

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, a summary of the data taken from the PMN is published herein.

Interested persons may, on or before October 17, 1980, submit to the Document Control Officer (TS–793), Rm. E–447, Office of Pesticides and Toxic Substances, 401 M St., SW, Washington, DC 20460, written comments regarding these notices. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS–51124]" and the specific PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: September 5, 1980.

Warren R. Muir,

Deputy Assistant Administrator for Toxic Substances.

PMN 80–214.

Close of Review Period. November 16, 1980.

Manufacturer's Identity. Claimed confidential. Generic information Provided:

Annual sales—Between $10 million and $99 million.
Manufacturing site—North central region, U.S.
Standard Industrial Classification Code—285.

Specific Chemical Identity. Claimed confidential. Generic name provided: Polyester of aliphatic polyols and aromatic diacids.

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Foam polyol.

Production Estimates.

	Pounds per year	
	Minimum	Maximum
1 year	1,000,000	3,000,000
2 year	3,000,000	5,000,000
3 year	7,000,000	10,000,000

Physical/Chemical Properties.

Viscosity—42,000–47,000 cps.
Non-volatile—99±1
Acid number—6 Max.
Color—18+
Weight/gallon—10.45 lb.

Toxicity Data. No data were submitted.

Occupational exposure.

Activity	Exposure route	Maximum number exposed	Maximum duration		Concentration (PPM)	
			Hour/day	Day/year	Average	Peak
Manufacture	Inhalation	2	1	251		1–10
Processing	Inhalation	1	1	251		1–10
Use	Inhalation	3(?)	8	251		1–10
Dispsal	Inhalation	2	8	251		1–10

Environmental Release/Disposal. The manufacturer states that less than 10 pounds of the PMN substance will be released into the environment per year and that wastewater [water of esterification) will be disposed of through a sanitary sewer and methyl alcohol will be reclaimed as solvent.

[FR Doc. 80–28013 Filed 9–10–80; 8:45 am]

BILLING CODE 6560–01–M

[FRL 1602–8]

Ground Water System of the Quaternary Wisconsin Stratified Drift Deposits in the Upper Rockaway Basin Municipalities, Rockaway, N.J.; Request for EPA Determination Regarding an Aquifer

A petition has been submitted by the Upper Rockaway River Watershed Association, Denville, New Jersey, pursuant to Section 1424(e) of the Safe Drinking Water Act, P.L. 93–523, requesting the administrator of the Environmental Protection Agency to make a determination that the aquifer underlying the Upper Rockaway Basin New Jersey is the sole or principal drinking water source for many municipalities in Morris County, New Jersey, which if contaminated, would

create a significant hazard to public health.

This petition is reprinted in full below:

Petition

Under Section 1424 (e) of the Safe Drinking Water Act of 1974, the Upper Rockaway River Watershed Association petitions the U.S. Environmental Protection Agency Administrator Douglas Costle and the U.S. Environmental Protection Agency Region II Acting Regional Administrator Richard T. Dewling to designate the Quaternary Wisconsin Stratified Drift deposits in the Upper Rockaway Basin municipalities as a sole or principal source aquifer which if contaminated, would create a significant hazard to public health.

The petition is submitted in conformance with the EPA's proposed Rule for Sole or Principal Source Aquifer Areas, Federal Register, September 29, 1977, Subpart B, 148.10 Submission of Petitions.

1. The Upper Rockaway River Watershed Association is a non-profit organization incorporated in 1978. This corporation was formed to protect and conserve our supplies of potable water, reduce and control polluting elements in the surface and ground waters and to do all things suitable and appropriate to protect and improve the water quality of the area within the Rockaway watershed. The Board of Trustees of the Association consists of representatives from member municipalities and trustees elected from the general membership.

2. Contamination of the aquifer would result in significant hazard to public health because public water supply systems, as well as many private wells, depend upon this aquifer as a sole or principal source of drinking water. Chlorination is the principal method of treatment for municipal water systems. The majority of private wells do not need chlorination or treatment. The 300,000 people who receive their water from the Boonton Reservoir, owned by Jersey City, are also threatened with health hazards in the event of contamination of the aquifer with materials that cannot be removed in the treatment process utilized by the Jersey City water system. At the present time ground water quality meets federal drinking water standards. Surface water quality is generally good and meets New Jersey FW–2 criteria except for sporadic violations of Fecal coliform levels.

3. The Quaternary Wisconsin stratified drift deposits form the mineral framework for the most highly developed ground-water reservoir in the basin. All of the public supply ground water withdrawals from the area come from wells screened in stratified drift. These deposits consist of clay and sand layers mixed with gravelly sand zones. The discontinuous nature of the sand layers is due to deposition by melt water streams. Both confined and unconfined deposits occur in the area. The stratified drift deposits occur, principally, north of the terminal moraine of the Wisconsin glaciation and in buried channels under the terminal moraine, and are closely associated with the Rockaway River drainage network. As can be seen from the mapping which accompanies this petition, the areal extent of the aquifer is relatively small in relation to the size of the basin.

4. The Wisconsin stratified drift deposits are the sole or principal source of drinking water for many municipalities in Morris County (listed below). In addition, the aquifer is an important source of stream flow for the Rockaway River. The Boonton Reservoir, owned by Jersey City, is an impoundment of the Rockaway River. Thus, the municipalities and customers in Hudson, Essex and Bergen Counties served by the Jersey City Water Department, whose sold supply is the Boonton Reservoir, are also dependent upon the aquifer.

Estimated 1978 Population—New Jersey Department of Labor and Industry

Morris County municipalities:	
Boonton Town	8,788
Boonton Township	3,065
Denville	13,873
Dover	14,465
Jefferson	15,308
Mine Hill	3,429
Mountain Lakes	4,403
Randolph	18,458
Rockaway Borough	6,648
Rockaway Township	19,975
Roxbury	17,805
Victory Gardens	1,208
Wharton	5,758
Total	133,183
Municipalities served by Jersey City Water Dept.:	
Jersey City	227,521
Hoboken	40,571
Lyndhurst	20,641
West Caldwell	11,425
Total	300,158

5. Public water supply systems drawing from the aquifer supply an estimated 89,387 people in the above listed 13 municipalities in Morris County. In addition to those served by public water supply wells drawing from the stratified drift deposits, there are an estimated 30,000 people (Tetra Tech) served by individual wells drawing from the glacial deposits and the Precambrian and Paleozoic rock aquifers. The glacial deposits supply over 67% of the public drinking water for the area. The Paleozoic aquifers, while supplying water to rural areas, have poor water-bearing properties and are capable of sustaining only small domestic supplies (Gill & Vecchioli). Precambrian aquifers which underlie the area are usually reliable sources of ground water for domestic use. Industrial and public supply wells in Precambrian crystalline rocks have been only moderately successful in New Jersey, according to the N.J. Bureau of Geology. Reported yields of over 1,000 domestic wells in the Precambrian aquifer show a median yield of 8 gallons per minute, but 46% yield 5 gallons per minute or less (Bureau of Geology Bulletin No. 73). According to Special Bulletin No. 25, the hydraulic characteristics of Precambrian rocks indicate that extreme care must be taken in developing new supplies near existing ones. Wells should be located to provide the least practical amount of mutual interference. Well pollution is most apt to occur in rock wells which intersect large open fractures. Open fractures have little filtration capability and act as open conduits. Historically, when areas of well pollution occur in bedrock zones, municipalities have had to extend public water service to the areas. This emphasizes the importance of the stratified drift areas as the alternative water supply for developed areas presently drawing from Precambrian and Paleozoic aquifers.

6. There are no alternative sources of drinking water available which are sufficient to supply the needs of the Basin. The Town of Boonton has a small reservoir (125 million gallons) located within the basin. The reservoir water is of poor quality and has been used principally to supply industrial customers. The Town has recently constructed a water treatment plant in order to meet potable water standards for the reservoir water. With the exception of this reservoir, all other surface water supplies which have been developed in the basin have been for consumers outside of the basin who are served by the Jersey City Water Department. Alternative sources of drinking water are available to Jersey City and its customers through system interconnections during shortages and other emergencies. But at best, the availability is of a temporary nature and cannot be depended upon in times of severe drought when all surface supply systems will be impacted. During the dry years of 1965–1966, the Jersey City Water Department's Rockaway supplies delivered 4,312 million gallons of water to the Hackensack, Bayonne and Newark systems. The Jersey City system is presently drawing more than the safe yield of their reservoir based on the record drought. The safe yield of Jersey City's water supply reservoir is 57.5 million gallons daily based on the 1961–1966 drought. This safe yield allows for a release of 7.5 million gallons daily from the Boonton Reservoir. During years of normal rainfall, the yield of the City's system is estimated to be over 80 million gallons daily. Stream flows are recorded at the U.S. Geological Survey's gauging station near the inlet to the Boonton Reservoir. Average discharge between 1960 and 1977 was 129 million gallons daily. During the record drought of 1964 flow averaged 63.3 million gallons daily.

7. The unconfined aquifer is recharged directly from precipitation on the outcrop areas of the stratified drift (Gill & Vecchioli, 1965). Thus, the aquifer recharge zones are primarily the soils overlying the aquifer. These soils are associated with the stratified drift deposits of the Wisconsin glaciation. The location of the zones of prime recharge have been identified in several recent studies conducted by governmental agencies. Excerpts from these studies are attached (attachment No. 1.). The investigations have shown that the majority of the large yielding wells drawing from the stratified drift aquifer are located adjacent to the bed of the Rockaway River and some are in hydraulic continuity with it. The aquifer system provides base flow to the Rockaway River; while the Rockaway River and its tributaries flowing through stratified areas provide recharge to the aquifer during high flow conditions. It is thought that recharge from the Precambrian rocks underlying the drift deposits is very small because of the poor transmissivities of Precambrian rock.

8. The shallow nature of the aquifer and the permeability of the overlying soils make the aquifer readily conducive to contamination. In 1979 two public supply wells in Wharton and Dover have been found to be

contaminated with Xylene attributed to an upstream industrial source. Traces of pesticides and other toxic chemicals and metals not natural to ground water have been detected in public and private wells tested by the New Jersey Department of Environmental Protection during 1978–1979. At the present time, however, the quality of water obtained from the majority of wells in the Quaternary aquifer is high and levels of chemical constituents do not violate water quality standards. Major interstate and local highways are situated adjacent to and over the stratified drift deposits. Present development impacts on the aquifer in many locations. Nonpoint pollution is a major threat to the purity of the water in the aquifer due to its porous nature. The Rockaway Valley Regional Sewerage Authority has recently constructed an interceptor sewer line which has been placed in the aquifer and is in close proximity to many public wells. Future projects for additional sewer service lines may be proposed to be located in the aquifer zones. If not properly constructed and wisely located, these projects might contaminate the aquifer through the recharge zones.

9. 1976 groundwater withdrawals for public supply were 9.41 million gallons daily. Water treatment consists mainly of chlorination with some filtration, iron removal and Ph adjustment. The following public supply systems utilize water from the aquifer:

Water Departments of; and estimated population served.

Town of Boonton (serves portions of Boonton Twp.)	9,469
Denville (serves portions of Randolph, Boonton Twp.)	15,059
Dover (serves Victory Gardens, portions of Randolph, Rockaway Twp., Wharton, Mine Hill)	[1]22,416
Jefferson	773
Mountain Lakes (serves portion of Boonton Twp.)	5,102
Rockaway Borough (serves portion of Rockaway Twp.)	6,604
Rockaway Township	13,496
Roxbury	1,561
Wharton	6,000
Morris County Municipal Utilities Authority (serves portions of Randolph and Mine Hill)	8,907
Total	89,387

[1] Draft State Water Master Plan, 4C–10.

Source: "Determination of Available Water Supply in the Rockaway Valley Regional Sewerage Authority Service Area" Tetra Tech, Inc., June, 1978.

10. Mapping showing the location and boundaries of the aquifer and the areas underlain by the aquifer is attached (Attachment No. 2).

We, therefore, conclude that the Quaternary Wisconsin Stratified Drift Aquifer is the sole or principal source of drinking water in the region, and contamination of this aquifer would create a significant hazard to public health. Therefore, we respectfully request that the Administrator and the Acting Regional Administrator of the U.S. Environmental Protection Agency determine that the Quaternary Wisconsin Stratified Drift Aquifer in the Upper Rockaway Basin municipalities be designated as the sole or principal drinking water-source for the area and that this determination be printed in the **Federal Register** as required by Section 1424 (3) of the Safe Drinking Water Act of 1974.

Respectively submitted,

Constance Stroh,

President, Board of Trustees.

Upper Rockaway River Watershed Association
95 East Main Street
Denville, New Jersey 07834
Area Code: 201 627–8900 Ex. 29 or 263–0102.

November 30, 1979

EPA intends to deicde whether to make the requested determination at the earliest time consistent with a complete review of the relevant data and information, and a full opportunity for public participation. In this regard, the Agency is developing a full factual record, and solicits comments, data and references to additional sources of information relevant to the determination required by Section 1424(e). In particular, information is sought concerning the hydrogeology of the Upper Rockaway Basin, the boundaries of the aquifer and its recharge areas. In addition, EPA request information concerning the area or areas dependent upon the aquifer the drinking water, the significance of current or anticipated projects receiving federal financial assistance that may result in contamination of the aquifer, the prospects that such contamination will occur as a result of current activities or events that may be anticipated, and any other relevant information.

Comments, data, and references in response to this notice should be submitted in writing to Charles Warren, Regional Administrator, Environmental Protection Agency, Region II, 26 Federal Plaza, New York, NY 10278, attention: Upper Rockaway Aquifer; within 60 days of this Notice. Information and maps submitted by the Upper Rockaway River Watershed Association concerning the Upper Rockaway Basin Aquifer system will be available for inspection in the Water Supply Branch office at the above address.

In addition to considering public comments sent to EPA, the agency will hold a Public Hearing on the evening (7:00 pm to 10:00 pm) of Wednesday October 15, 1980, at the Municipal Building, Council Chambers (second floor) 95 E. Main Street, Denville, New Jersey.

Persons who wish to present prepared statements at the public hearing are urged to give notice to Ms. Eileen Reilly/Wiedow, Water Supply Branch, Environmental Protection Agency, Region II, 26 Federal Plaza, New York NY 10278, 212–264–1332. Written copies of these statements should be submitted at the hearing for inclusion in the record.

Dated: August 28, 1980.

Charles Warren,

Regional Administrator.

[FR Doc. 80-28002 Filed 9-10-80; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL COMMUNICATIONS COMMISSION

[FCC 80–465; BC Docket No. 80–434, File No. BRET–31; BC Docket No. 80–435, File No. BPET–549]

Board of Education of Jefferson County, Ky.; for Renewal of License of Station WKPC-TV, Louisville, Ky., and Metropolitan Louisville Public Television, Inc., Louisville, Ky.; for Construction Permit; Memorandum Opinion and Order

Adopted: July 31, 1980.

Released: September 9, 1980 .

By the Commission: Commissioner Quello concurring in the result.

1. The Commission has before it for consideration the renewal application of the Board of Education of Jefferson County, Kentucky (Board) for noncommercial television station WKPC–TV, Louisville, Kentucky, and the application for a construction permit for a noncommercial television station for Channel 15, Louisville, Kentucky, filed by Metropolitan Louisville Public Television, Inc. (MLPTV). The applications are mutually exclusive and must be designated for a comparative hearing.

2. *The MLPTV Application.* New applicants are required to give local public notice upon the filing of their applications, pursuant to § 73.3580(f) of the Commission's rules.[1] They must then file with the Commission the statement described in § 73.3580(h) of the rules. There is no evidence in the file that MLPTV published the required notice. To remedy this deficiency, MLPTV will be required to publish local notice of its application and to file a statement of publication with the presiding Administrative Law Judge.

3. Corporate applicants must file with their applications a copy of their articles of incorporation and by-laws, certified by the Secretary of State or other appropriate official (FCC Form 340, Section II, Paragraph 3(a)). MLPTV did submit a copy of its articles of incorporation and by-laws (Exhibits II–A and II–B). However, neither document

[1] Formerly, § 1.580.

appears to be certified by the Kentucky Secretary of State or other appropriate official. Accordingly, MLPTV will be required to submit a certified copy of its articles of incorporation and by-laws.

4. The channels reserved for educational use are intended to serve the educational and cultural broadcast needs of the entire community to which they are assigned. *Fostering Expanded Use of UHF Television Channels,* 2 FCC 2d 527 at 542 (1965). Therefore, non-commercial television applicants which are non-profit organizations are required to show that their officers, directors and governing board are broadly representative of the educational, cultural and civic groups in the community (FCC Form 340, Section II, Paragraph 11(a)). MLPTV's current officers—a physician, two businessmen and a housewife—do not appear to be representative of such groups in the community. Accordingly, an issue will be specified.

5. Moreover, these individuals are only the "Initial Members" of the applicant corporation. MLPTV's by-laws state that the initial members will hold a first annual meeting at an undetermined date and elect 27 persons to a "broadly representative" board of directors which will take over the business, property and affairs of the applicant. In addition, MLPTV has submitted a proposed agreement with the University of Louisville which gives the University the right to become a member of the corporation and the power to appoint one-half of the directors. As a result, the Commission has no information regarding the identity of the individuals who will govern the station as its board of directors and whether they meet the Commission's legal qualification requirements as set forth in Section II of the application. Moreover, working control and the right to determine MLPTV's policies and manner of operation may actually reside in an entity other than the applicant, i.e., the University of Louisville. Accordingly, an inquiry is necessitated and an appropriate issue will be specified.

6. MLPTV's application reveals the following estimated costs for construction and three months' operation:

Transmitter	$174,900
Antenna system	156,765
Frequency and modulation monitors	27,700
Studio technical equipment	181,350
Lease of Land	1
Buildings	38,000
Total construction costs	578,716
Operting costs (three months)	[1] 104,275
Total	682,991

[1] MLPTV estimated cost of operation for one year as $417,100.

MLPTV submits a proposed agreement (Exhibit II–C) with the University of Louisville under which each party will provide certain facilities and equipment. MLPTV's costs under this arrangement (for its provision of equipment and for reimbursement to the University) are not specified in the agreement. Nor has MLPTV submitted a sales contract or other written basis for the estimated equipment costs. Finally, MLPTV has not provided for installation costs and legal fees. Accordingly, an inquiry is warranted.

7. Further, assuming arguendo the validity of its cost estimates, MLPTV has not shown the availability of sufficient funds to construct and operate as proposed. It appears that MLPTV has improperly listed certain of the same figures twice. For example, a $250,000 Corporation for Public Broadcasting grant and $125,000 in donations are applied to both construction and operating funds. New capital for construction in the amount of $70,000 is listed again under operating funds as civic group donations. Equipment rentals valued at $20,000 under construction funds reappear under operating funds as project income. As a result, it is impossible to determine MLPTV's estimate of available construction and operating funds. Moreover, MLPTV has not provided documentation to substantiate any of the financial data, other than $1000 cash. Therefore, a general financial issue will be specified.

8. When MLPTV filed its application, noncommercial applicants and licensees were not required to submit documentation regarding efforts to ascertain community problems and needs. *Ascertainment of Community Problems,* 58 FCC 2d 526, 543 (1976). However, even though *formal* ascertainment procedures were not then in effect for noncommercial broadcasters, it was firmly established Commission policy that noncommercial licensees must ascertain the needs and interests of their communities and program to meet those needs. *Alabama Educational Television Commission,* 50 FCC 2d 461 (1975). Formal ascertainment rules for non-commercial applicants have been in effect now for more than three years. The question, therefore, is what showing should be made by MLPTV. The Commission can not make a finding that grant of MLPTV's application is in the public interest without a demonstration by MLPTV that it has ascertained its community's problems and prepared programs to address those problems. Moreover, we note that the Board complied with our ascertainment rules in its 1979 supplemental renewal application. Accordingly, we believe that the public interest, as well as the equities of the comparative situation, will be best served by requiring MLPTV to amend its application to demonstrate compliance with our current ascertainment rules. (*See,* Section IV, Paragraphs 7, 8 and 9, FCC Form 340, July 1979 edition).

9. MLPTV proposes to use the existing transmitter site of station WKPC–TV and therefore would be short-spaced to station WTIU in Bloomington, Indiana. Since this would be a continuation of the present situation, good cause exists for a waiver of § 73.610 of the rules (minimum distance separations between stations).

10. *The Board's Renewal Application.* Examination of the Board's application indicates that it is legally, financially and technically qualified to operate as proposed. However, since its application is mutually exclusive with that of MLPTV, both applications must be designated for hearing as specified below.

11. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the captioned applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

(a) To determine with respect to Metropolitan Louisville Public Television, Inc.:

(i) Whether its current officers, directors, and members of the governing board are broadly representative of the educational, cultural and civic groups in the community.

(ii) The facts and circumstances concerning its proposed election of directors and proposed agreement with the University of Louisville relating to appointment of directors; and the effect of these proposals on its structure and control;

(iii) The effect of the evidence adduced pursuant to issues (i) and (ii) above on its basic and/or comparative qualifications.

(b) To determine with respect to Metropolitan Louisville Public Television, Inc., the funds necessary to construct and operate the proposed station; the funds available to meet these costs; and, in light of the above, whether the applicant is financially qualified.

(c) To determine (i) the extent to which the past and proposed operation of the Board of Education of Jefferson County, Kentucky and the proposed operation of Metropolitan Louisville

Public Television, Inc., will be integrated into the overall cultural and educational objectives of the respective applicants, (ii) the manner in which the past and proposed operation of the Board of Education of Jefferson County, Kentucky and the proposed operation of Metropolitan Louisville Public Television, Inc., meet the needs of the community to be served, and (iii) whether these factors demonstrate that one applicant will provide a superior noncommercial television broadcast service; and

(d) In light of the evidence adduced pursuant to the foregoing issues, to determine which of the applications should be granted.

12. It is further ordered, That MLPTV shall publish local public notice of its application and shall file a statement of publication with the presiding Administrative Law Judge within 40 days after this Order is published in the **Federal Register.**

13. It is further ordered, That MLPTV shall file a properly certified copy of its articles of incorporation and by-laws with the presiding Administrative Law Judge within 40 days after this Order is published in the **Federal Register.**

14. It is further ordered, That MLPTV shall amend its application to comply with the Commission's noncommercial television ascertainment procedures and shall file such amendment with the presiding Administrative Law Judge within 60 days after this Order is published in the **Federal Register,** or within such time as the presiding judge directs.

15. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

16. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing, (either individually or, if feasible and consistent with the Rules, jointly) within the time and manner prescribed in that Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

17. It is further ordered, That the Secretary of the Commission shall mail to the parties herein, a copy of this Memorandum Opinion and Order by Certified Mail, Return Receipt Requested.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-27953 Filed 9-10-80; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1247]

Petitions for Reconsideration of Actions in Rule Making Proceedings

September 4, 1980.

The following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to 47 C.F.R. § 1.429(e). Oppositions to such petitions for reconsideration must be filed within 15 days after publication of this Public Notice in the **Federal Register.** Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Request to require the broadcasting of public service announcements regarding the existence and available services of the Consumer Assistance Office. (RM-3632)

Rule Section: 73.

Filed By: Nolan A. Bowie, Attorney for Citizens Communications Center on 8-25-80.

Subject: Establishment of Policies and Procedures for Consideration of Applications to Provide Specialized Common Carrier Services in the Domestic Public Point-to-Point Microwave Radio Service and Proposed Amendments to Parts 21, 43 and 61 of the Commission's Rules. (Docket No. 18920)

Filed By: Victor J. Toth and Mary F. Dominiak, Attorneys for The Rolm Corporation on 8-15-80.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-27952 Filed 9-10-80; 8:45 am]

BILLING CODE 6712-01-M

[FCC 80-501]

Emergency Broadcast System; During the Week of September 15, 1980

September 3, 1980.

A test of the Emergency Broadcast System (EBS) has been scheduled during the week of September 15, 1980. Only ABC, MBS, NPR, AP Radio, CBS, IMN NBC, and UPI Audio Radio network affiliates will receive the Test Program for the Closed Circuity Test. AP and UPI wire service clients will receive activation and termination messages of the Closed Circuit Test. Television networks are not participating in the Test.

Network and press wire service affiliates will be notified of the test procedures via their network approximately 30 to 45 minutes prior to the test.

Final evaluation of the test is scheduled to be made about 1 month after the test.

This is a closed circuit test and will not be broadcast over the air.

Action by the Commission August 28, 1980. Commissioners Ferris (Chairman), Lee, Quello, Washburn, Fogarty, Brown and Jones.

Federal Communications Commission

William J. Tricarico,

Secretary.

[FR Doc. 80-27951 Filed 9-10-80; 8:45 am]

BILLING CODE 6712-01-M

Radio Technical Commission for Marine Services

The meeting of Special Committee 75, "MPS—Automatic Coordinate Conversion Systems," previously announced for 9:00 a.m., September 19 (45 FR 56189, August 22, 1980) has been rescheduled for 9:00 a.m. on Tuesday, September 30. The site and agenda are not changed. For questions concerning this meeting, contact the Executive Secretary, RTCM, at (202) 632-6490.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-27950 Filed 9-10-80; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Allied Bancshares, Inc.; Acquisition of Bank

Allied Bancshares, Inc., Houston, Texas, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 per cent of the voting shares of First Bank of Edna, Edna, Texas. The factors that are considerd in acting on the application are set forth in section 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 Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than October 6, 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, September 5, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-27987 Filed 9-10-80; 8:45 am]

BILLING CODE 6210-01-M

Allied Bancshares, Inc.; Acquisition of Bank

Allied Bancshares, Inc., Houston, Texas, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 per cent of the voting shares of Security National Bank, Houston, Texas. The factors that are considerd in acting on the application are set forth in section 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 Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than October 6, 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, September 5, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-27989 Filed 9-10-80; 8:45 am]

BILLING CODE 6210-01-M

Antioch Holding Co.; Formation of Bank Holding Company

Antioch Holding Company, Antioch, Illinois, has applied for the Board's approval under Section 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 State Bank of Antioch, Antioch, Illinois. The factors that are considered in acting on the application are set forth in Section 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 Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than October 6, 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, September 5, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-27988 Filed 9-10-80; 8:45 am]

BILLING CODE 6210-01-M

Chase Manhattan Corp.; Proposed Issuance and Sale of Travelers Checks

The Chase Manhattan Corporation, New York, New York, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR § 225.4(b)(2)), for permission to engage *de novo* in the issuance and sale of travelers checks.

These activites would be performed from offices of financial and non-financial selling agents, and the geographic area to be served is worldwide. The activity of issuing traveler's checks has not been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies but the Board has approved the activity by order. The activity of selling travelers checks has been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

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 interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors of at the Federal Reserve Bank of New York.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than October 3, 1980.

Board of Governors of the Federal Reserve System, September 4, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-27986 Filed 9-10-80; 8:45 am]

BILLING CODE 6210-01-M

Duroc Investment Co.; Proposed Retention of Commercial Finance Activities

Duroc Investment Company, Table Rock, Nebraska, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Y Regulation (12 CFR § 225.4(b)(2), for permission to retain its commercial finance activities.

Applicant states that it would continue to engage in the activity of purchasing participations in commercial loans made by affiliated banks. These activities would be performed from Applicant's offices in Table Rock, Nebraska, and the geographic area to be served is the area surrounding Table Rock, Nebraska. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

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 interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than October 6, 1980.

Board of Governors of the Federal Reserve System, September 5, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-27991 Filed 9-10-80; 8:45 am]

BILLING CODE 6210-01-M

First City Bancorp. Inc.; Formation of Bank Holding Company

First City Bancorp. Inc., Marietta, Georgia, has applied for the Board's approval under section 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 of the voting shares of The First National Bank of Cobb County, Marietta, Georgia. The factors that are considered in acting on the application are set forth in section 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 Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than October 6, 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, September 5, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-27997 Filed 9-10-80; 8:45 am]

BILLING CODE 6210-01-M

First Keyes Bancshares, Inc.; Formation of Bank Holding Company

First Keyes Bancshares, Inc., Keyes, Oklahoma, has applied for the Board's approval under section 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 The First State Bank, Keyes, Oklahoma. The factors that are considered in acting on the application are set forth in section 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 Octoberr 6, 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, September 5, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-27996 Filed 9-10-80; 8:45 am]

BILLING CODE 6210-01-M

First National Bancshares of Louisiana, Inc.; Formation of Bank Holding Company

First National Bancshares of Louisiana, Inc., Alexandria, Louisiana, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 90.34 per cent of the voting shares of Security First National Bank, Alexandira, Louisiana, thus increassing its interest in the bank's voting shared to 100 per cent. 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 Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than October 6, 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, September 5, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-27985 Filed 9-10-80; 8:45 am]

BILLING CODE 6210-01-M

Gwinnett Holding Co.; Formation of Bank Holding Company

Gwinnett Holding Company, Snellville, Georgia, has applied for the Board's approval under section 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 Gwinnett County Bank, Snellville, Georgia. The factors that are considered in acting on the application are set forth in section 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 Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than October 6, 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, September 5, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-27995 Filed 9-10-80; 8:45 am]

BILLING CODE 6210-01-M

Lumbermans Mutual Casualty Co. and Kemper Corp.; Nonbanking Activities

Lumbermans Mutual Casualty Company and its subsidiary, Kemper Corporation, both of Long Grove, Illinois, has applied, pursuant to Section 4(d) of the Bank Holding Company Act (12 U.S.C. 1843(d)), for an exemption from the provisions of the Act limiting the nonbanking activities of a bank holding company. Applicant controls Bank of Chicago, Chicago, Illinois.

Under Section 4(d), the exemption may be granted "(1) to avoid disrupting business relationships that have existed over a long period of years without adversely affecting the banks or communities involved, or (2) to avoid forceds ales of small locally owned banks to purchasers not similarly representative of community interests, or (3) to allow retention of banks that are so small in relation to the holding company's total interests and so small in relation to the banking market to be served as to minimize the likelihood that the bank's powers to grant or deny credit may be influenced by a desired to further the holding company's other interests."

Interested persons may express their views on this matter. The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any request for a hearing on this matter should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

Any views or requests for a hearing should be submitted in writing and

received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than October 3, 1980.

Board of Governors of the Federal Reserve system, September 4, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-27992 Filed 9-10-80; 8:45 am]

BILLING CODE 6210-01-M

Marsh Investments, N.V., et al.; Acquisition of Bank

Marsh Investments, N.V., Curacao, Netherlands Antilles; Marsh Investments, B.V., Rotterdam, The Netherlands; and M.F.G. Investments, Inc., Hialeah, Florida, have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 31 percent or more of the voting shares of Deerfield Beach State Bank, Deerfield Beach, Florida. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the applications should submit views in writing to the Reserve Bank to be received not later than October 6, 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, September 5, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-27990 Filed 9-10-80; 8:45 am]

BILLING CODE 6210-01-M

Western Bancshares of Truth or Consequences, Inc.; Formation of Bank Holding Company

Western Bancshares of Truth or Consequences, Inc., Truth or Consequences, New Mexico, has applied for the Board's approval under section 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 Western Bank, Truth or Consequences, New Mexico. The factors that are considered in acting on the application are set forth in section 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 Dallas. 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 October 3, 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, September 4, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-27994 Filed 9-10-80; 8:45 am]

BILLING CODE 6210-01-M

Wyoming Bancorporation; Acquisition of Bank

Wyoming Bancorporation, Cheyenne, Wyoming, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 98 per cent or more of the voting shares of First Wyoming Bank-Wright, Wright, Wyoming, a proposed new bank. The factors that are considered in acting on the application are set forth in section 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 October 6, 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, September 5, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-27993 Filed 9-10-80; 8:45 am]

BILLING CODE 6210-01-M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report Proposals

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Review Staff, GAO, on September 5, 1980. See 44 U.S.C. 3512(c) and (d). The purpose of publishing this notice in the **Federal Register** is to inform the public of such receipt.

The notice includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed NRC requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before September 29, 1980, and should be addressed to Mr. John M. Lovelady, Senior Group Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

Nuclear Regulatory Commission

The NRC requests clearance of revisions to 10 CFR Part 50, Domestic Licensing of Production and Utilization Facilities, to: (1) require applicant/licensee to submit emergency plans, as well as State and local government response plans to NRC, (2) require that emergency planning considerations be extended to "Emergency Planning Zones" (EPZs) as identified in NUREG-0396, and (3) upgrade 10 CFR 50, Appendix E. The Commission's interest in emergency planning is focused primarily on situations that may cause or may threaten to cause radiological risks affecting the health and safety of workers or the public. The NRC and the public have recognized the increasing importance of emergency planning. Emergency plans should be directed toward mitigating the consequences of the emergencies and should provide reasonable assurance that appropriate measures can and will be taken to protect the public health and safety in the event of an emergency. Although it is not possible to develop a completely detailed plan encompassing every conceivable type of emergency, advance planning can create a high order of preparedness (including provisions of necessary equipment, supplies, and services) and ensure an orderly and timely decisionmaking process at times of stress. The specific sections that are amended are as follows: paragraph (g) of section 50.33; a new section 50.47;

new paragraphs (q), (r), (s), (t) and (u) of section 50.54; and Appendix E is amended. The NRC estimates that approximately 200 licensees are subject to these regulations and that reporting burden will average 4,160 hours per licensee.

The NRC requests clearance for the application and reporting requirements contained in new section 70.32(i) of 10 CFR Part 70, Domestic Licensing of Special Nuclear Material. The Commission is amending this part of its regulations to require certain Special Nuclear Material licensees (those licensees engaged in fuel processing and fabrication, scrap recovery or conversion of uranium hexafluroide) to maintain their emergency plans up to date. Section 70.32(i) states that licensees required to submit emergency plans in accordance with section 70.22(i) shall follow and maintain in effect, an emergency plan approved by the Commission. Licensees may make changes to the approved plan without Commission approval only if such changes do not decrease the effectiveness of the plan and the plan as changed continues to meet the requirements of Appendix E, Section IV, of 10 CFR Part 50. Licensees are required to submit a report to the NRC which describes each change made to the plan within six months after the change is made. Proposed changes that would decrease the effectiveness of the approved emergency plan may not be implemented without application to and approval by the Commission. The NRC estimates the number of licensees subject to these requirements are 30 and that annually approximately 4 licensees will file reports involving insignificant changes to plans which will average 4 hours per report, and one licensee will file a report involving significant changes to the plan which will average 2,080 per report.

Norman F. Heyl,

Regulatory Reports, Review Officer.

[FR Doc. 80-28095 Filed 9-10-80; 8:45 am]

BILLING CODE 1610-01-M

GENERAL SERVICES ADMINISTRATION

[D-80-5]

Delegation of Authority to the Director of Central Intelligence

1. *Purpose.* This delegation authorizes the Director of Central Intelligence to lease office space for the domestic field offices of the Central Intelligence Agency.

2. *Effective date.* This delegation is effective immediately.

3. *Expiration date.* This delegation shall remain in effect until revoked.

4. *Delegation.* a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, authority is hereby delegated to the Director of Central Intelligence to perform all functions in connection with the leasing of office space, up to 5,000 square feet per field office, to meet the requirements of the Central Intelligence Agency domestic field offices.

b. This delegation shall extend to leasing space under authority in section 210(h)(1) of the above-cited act (40 U.S.C. 490(h)(1)).

c. The Director of Central Intelligence may redelegate this authority to any official or employee of the Central Intelligence Agency.

d. This authority shall be exercised in accordance with the applicable limitations and requirements of the above-cited act; section 322 of the Act of June 30, 1932 (40 U.S.C. 278a), as amended; other applicable statutes; and regulations, policies, procedures, and controls prescribed by the General Services Administration.

Dated: August 29, 1980.

R. G. Freeman III,

Administrator of General Services.

[FR Doc. 80-27876 Filed 9-10-80; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Services Administration

Community Health Center and Migrant Health Center Projects in Certain Areas in Idaho; Announcement of Availability of Grants

The Health Services Administration announces that the Regional Office, Region X, Seattle, Washington, will accept applications from public and nonprofit private entities for project grants in fiscal year 1981 to support the development and operation of jointly funded community health center and migrant health center projects in the Caldwell, Payette, Burley, Twin Falls, and Blackfoot, Idaho areas. An application may be for any one or combination of these sites. The Region intends, where feasible and appropriate, to integrate the grant resources of the Community Health Centers program (authorized by section 330 of the Public Health Service Act), the Migrant Health Centers program (authorized by section 329 of the PHS Act), and the health manpower resources of the National Health Service Corps (authorized by sections 331-338 of the Act) to support these projects. The approximate amounts of the grants for these projects in fiscal year 1981 are expected to be:

Caldwell—$250,000
Payette—$250,000
Burley—$250,000
Twin Falls—$250,000
Blackfoot—$200,000

Program descriptions appear at 13.224, 13.246, and 13.258 in the *Catalogue of Federal Domestic Assistance.*

Program guidance material, application forms, instructions, consultation and technical assistance regarding development of an application may be requested from: Ms. Berykl Cochran, Regional Program Consultant for Community Health Centers, Department of Health and Human Services, Public Health Service, Region X, 1321 Second Avenue M/S 835, Seattle, Washington 98101, Telephone: (206) 442-0513.

Applications must be received in the Regional Office postmarked by November 1, 1980, to be considered for funding, and will be subject to competitive, objective review, taking into account the criteria set forth in the community health services regulations at 42 CFR 51c.204, 51c.305, 56.204, and 56.305. Applications must be submitted to the appropriate Health Systems Agency for review according to the instructions provided by the Regional Office.

Dated: August 28, 1980.

George I. Lythcott,

Administrator, Health Services Administration.

[FR Doc. 80-27880 Filed 9-10-80; 8:45 am]

BILLING CODE 4110-84-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-80-615]

Designation of General Deputy Assistant Secretary for Policy Development and Research

David F. Garrison is hereby designated General Deputy Assistant Secretary for Policy Development and Research and is authorized to exercise all the authority vested in the Assistant Secretary for Policy Development and Research.

Effective date: This designation shall be effective immediately.

Moon Landrieu,
Secretary of Housing and Urban Development.

[FR Doc. 80-27973 Filed 9-10-80; 8:45 am]
BILLING CODE 4210-01-M

[Docket No. N-80-1020]

Privacy Act of 1974; Deletion of Systems of Records.

AGENCY: Department of Housing and Urban Development.

ACTION: Deletion of systems of records.

SUMMARY: Notice is given that seven Privacy Act Systems of records are deleted.

EFFECTIVE DATE: September 11, 1980.

ADDRESS: Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW., 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: On December 13, 1979, the Department published in the **Federal Register** (44 FR 72288-72308) an annual notice of the Privacy Act systems of records it maintains. The seven record systems being deleted were described in that notice. The systems are HUD/DEPT-59, Disaster Assistance Personnel Reserve Files; HUD/FIA-1, Federal Crime Insurance; HUD/FIA-2, The National Insurance Application and Related Documents Files; HUD/FDAA-1, Disaster Recovery Assistance Files; HUD-H-2, HUD Temporary Housing File; HUD/DEPT-35, Personnel Medical Records; and HUD/H-4, Mortgage Activities Review System. This notice deletes the systems of records for the following reasons: HUD/DEPT-59, HUD/FIA-1, HUD/FIA-2, HUD/FDAA-1, and HUD/H-2 have been transferred to the Federal Emergency Management Agency. HUD/DEPT-35 has been subsumed by OPM/GOVT-1, General Personnel Records, published by the Office of Personnel Management. HUD/H-4 is deleted because the records are organized by firms applying to become HUD-approved mortgages, and information is not retrieved by individual name or identifier, but rather by the firm identifier.

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., September 3, 1980.

William A. Medina,
Assistant Secretary for Administration.

[FR Doc. 80-28062 Filed 9-10-80; 8:45 am]
BILLING CODE 4210-01-M

[Docket No. N-80-1021]

Privacy Act of 1974; New System of Records

AGENCY: Department of Housing and Urban Development.

ACTION: Notification of new system of records.

SUMMARY: The Department is giving notice of a new system of records it intends to maintain which is subject to the Privacy Act of 1974.

EFFECTIVE DATE: The system shall become effective without further notice October 11, 1980, unless comments are received on or berfore 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 system is Grievance Records (HUD/DEPT-66). The system will contain records of grievances filed by HUD employees. This system was previously published by the Office of Personnel Management as Grievance Records (OPM/GOVT-2). The Office of Personnel Management has indicated that it plans to cancel OPM/GOVT-2. Therefore HUD is publishing HUD/DEPT-66 to ensure coverage for records maintained on employee grievances. This notice duplicates information in the Office of Personnel Management notice, except for making the notice specific to the Department of Housing and Urban Development. Therefore, no report on a new system of records has been submitted. Appendix A, which lists the addresses of HUD's field offices was published at 44 FR 72307 (December 13, 1979) and supplemented at 45 FR 6479 (January 28, 1980).

HUD/DEPT-66

SYSTEM NAME:

Grievance Records.

SYSTEM LOCATION:

Headquarters and field offices. For a complete list of these offices, with addresses, see Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former HUD employees who have submitted grievances in accordance with part 771 of OPM regulations (5 CFR 771), HUD regulations, or a negotiated procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to grievances filed by agency employees. These case files contain all documents related to the grievance, including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the original and final decision, and related correspondence and exhibits. This system includes files and records of internal grievance and arbitration systems that HUD may establish through negotiations with recognized labor organizations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 3302, E.O. 10577, 3 CFR 1954-1958 Comp., p. 218, EO 10987, 3 CFR 1959-1963 Comp., p. 519.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used: a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to any source from which additional information is requested in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request and identify the type of information requested.

c. To disclose information to a Federal agency in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to requesting the agency's decision on the matter.

d. To provide information to a congressional office from the record of an individual in response to an inquiry

from that congressional office made at the request of that individual.

e. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

f. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2908.

g. By the agency maintaining the records or the OPM in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

h. To disclose information to officials of the Merit Systems Protection Board, including the office of the Special Counsel, the Federal Labor Relations Authority and its General Counsel, or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

i. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

j. To provide information to officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

These records are disposed of 3 years after closing of the case. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Employee Relations and Equal Opportunity Division, Office of Personnel, 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 appropriate location in accorance with 24 CFR Part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURES:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. However, after the action has been closed an individual may request access to the official copy of the grievance file.

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 Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency ruling on the case, and will not include a review of the merits of the action, determination, or finding. 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 appropriate location. A list of all locations 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:

Information in this system of records is provided: a. By the individual on whom the record is maintained.

b. By testimony of witnesses.

c. By agency officials.

d. From related correspondence from organizations or persons.

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., September 3, 1980.

William A. Medina,

Assistant Secretary for Administration.

[FR Doc. 80-28063 Filed 9-10-80; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Environmental Impact Statement on Management of River Flows To Mitigate Loss of Anadromous Fishery of Trinity River, Calif.; Public Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that a draft Environmental Impact Statement on the management of flow releases to the Trinity River to protect and restore declining fishery resources is available for public review and that a public meeting has been scheduled to receive comments. Comments and suggestions are requested.

The U.S. Department of the Interior proposes to increase flows on the Trinity River in northern California for the primary purpose of protecting and restoring chinook salmon and steelhead trout populations. Increasing flows for fishery conservation purposes would reduce economic benefits associated with agricultural irrigation and hydroelectric power generation; increase economic benefits associated with commercial, sport and Indian harvest of fish; enhance water quality on the Trinity; reduce the availability of water for meeting other needs of the Central Valley of California; and enhance water-dependent recreational opportunities on the Trinity.

DATES: Public Meeting beginning 9 a.m., September 23, 1980. Written comments are requested by October 17, 1980.

ADDRESSES: Oral comments should be presented at the Public Meeting: Resources Agency, Auditorium, Main Floor, 1416 Ninth Street, Sacramento, California.

Written comments should be addressed to: Area Manager, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E-2740, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Jody Hoffman, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E-2727, Sacramento, California 95825, (916) 484-4731.

Copies of the EIS have been distributed to all participants in the

scoping process, those who have already requested copies, identified agencies and organizations representing interested user groups, and central libraries within the following counties: Fresno, Humboldt, Santa Clara, Shasta, Sacramento, and Trinity. Anyone requiring a copy of the EIS for review should immediately contact the above individual.

SUPPLEMENTAL INFORMATION: The U.S. Department of the Interior proposes to increase streamflows on the Trinity River in Northern California for the purpose of protecting and restoring chinook salmon and steelhead trout populations. Three agencies within the Interior Department are involved in the proposal—the U.S. Fish and Wildlife Service (FWS), the U.S. Water and Power Resources Service (WPRS), and the U.S. Bureau of Indian Affairs (BIA). The Secretary of the Interior has designated FWS as the lead agency because the proposal directly addresses problems associated with declining populations of anadromous salmonid resources. Because the proposal would also impact operation of a Federal water resource project and Indian utilization of the fishery resource, both WPRS and BIA have been designated as cooperating agencies in the preparation of the EIS.

Pre-project (and general restoration goals) versus post-project (present) runs of adult chinook salmon and steelhead trout into the Trinity River above the North Fork are estimated as follows:

	Preproject (goal)	Postproject (present)
Chinook salmon	50,000	11,000
Steelhead trout	24,000	10,000

The Secretary of the Interior has authority under the authorizing legislation for the Trinity River Division (69 Stat. 719) to increase flow releases from Lewiston Dam. Under Section 2 of the Trinity River Act (Pub. L. 84–386) the Secretary is "* * * authorized and directed to adopt appropriate measures to insure the preservation and propogation of fish and wildlife, including, but not limited to, the maintenance of the flow of the Trinity River below the diversion point at not less than 150 feet per second for the months of July through November * * *"

Eight flow release alternatives are presented in the EIS. They span a range of flows varying from a low of 120,500 acre-feet per year (the minimum release level established by prior agreement between WPRS and the California Department of Fish and Game) to a high of 340,000 acre-feet per year. An intermediate level of 215,000 acre-feet reflects the recommendations contained in a draft proposed fish and wildlife management program for the Trinity Basin, prepared by a private consultant. A second intermediate level alternative of 287,000 acre-feet represents the FWS minimum release alternative to maintain and prevent further degradation of existing habitat.

Alt. 1—120,500 acre-feet annual releases in all years (no action alternative)
Alt. 2—215,000 acre-feet annual releases in all years
Alt. 3a—287,000 acre-feet annual releases in all years
Alt. 3b—287,000 acre-feet annual releases in normal water years with reduction to 12,500 acre-feet in dry and critically dry years
Alt. 4a—340,000 acre-feet release in all years
Alt. 4b—340,000 acre-feet release in normal water years with reduction to 120,500 acre-feet in dry and critically dry years
Alt. 4c—340,000 acre-feet annual release in normal years; 220,00 acre-feet dry years; 120,500 acre-feet critically dry years
Alt. 4d—340,000 acre-feet annual release in all years until "interim water" is exhausted; thereafter, same release as Alternative 4c

All alternatives, with the exception of Alternative 1, would be accompanied by An intensive streambed management program that could include sediment removal, erosion control, provisions of instream cover and removal of encroaching riparian vegetation. Increased flows combined with an intensive management program, would improve and maintain fish habitat over existing conditions which is expected to lead to restoration of fish populations.

The economic consequences of increasing flow releases to the Trinity River are discussed in terms of how such releases would impact the operations of the vast Central Valley Project (CVP), a major WPRS water resource development project which transports water from Northern California to the Sacramento Valley and to water deficient areas in the San Joaquin Valley and Tulare Lake Basin to the south for agricultural production.

The CVP also contracts for the sale of hydroelectric power to municipal utility districts in central and northern California and to the Pacific Gas and Electric Company. The ability of the CVP to meet existing and future power generation needs would be affected by a decision to increase flow releases down the Trinity River.

Another potential impact associated with increased flow releases on the Trinity would be reduced availability of water for other CVP needs, including possibly the need to meet water quality standards in the Sacramento/San Joaquin Delta. Water quality conditions in the Delta are directly related to the volume of freshwater Delta inflow, which helps to repel salt water intrusions. Meeting the more stringent standards under the new D–1485 standards established by the California State Water Resources Control Board, could require up to 800,000 acre-feet of CVP water annually. As upstream project uses and project exports increase, the ability of the CVP to maintain Delta water quality is reduced.

Flow increases on the Trinity would be expected to result in a stimulative effect on recreational use. The river currently receives heavy use from recreationists and is considered a major recreational attraction in Northern California. In addition to sport fishing, the river also receives about 250,000 visitor days spent in swimming, picnicking, sightseeing, and camping activities. Water dependent uses such as canoeing and white water rafting are particularly popular during the summer months. Recreational uses are expected to increase in the future, assuming continued increases in disposable income and leisure time. The degree to which flow increases on the Trinity would further stimulate and enhance recreational uses in and along the river has not been quantified. Also unquantified are the spin-off economic benefits associated with increased recreational use. Generally, however, it is expected that with more water available during the high use summer months, water dependent uses in particular would see some expansion above and beyond normal increases in recreational use.

Of particular concern in this EIS is the relationship of the Indian fishery to proposed increases in streamflow releases. With sufficient flows and an intensive streambed and watershed rehabilitation program, indications are that fish runs on the Trinity River could be restored. Restoration of the Trinity fish runs would have significant economic effects on the Indian fishery. Generations of Hupa and Yurok Indians have resided on the Klamath and Trinity Rivers below the present Lewiston Dam site. They have depended upon the salmon and steelhead fisheries for subsistence, ceremonial and economic needs. The fisheries have historically

provided the mainstay of the Indian Economy in the area. The decline of the fisheries preempted opportunities to achieve status and wealth; and greatly reduced opportunities for employment and dollar revenue.

Dated: September 8, 1980.

Michael J. Spear,

Acting Director, U.S. Fish and Wildlife.

[FR Doc. 80-28101 Filed 9-10-80; 8:45 am]

BILLING CODE 4310-55-M

National Fish and Wildlife Laboratory, Washington, D.C.; Issuance of Permit for Marine Mammals

On July 3, 1980 a notice was published in the **Federal Register** (45 FR No. 80-20489), that an application had been filed with the Fish and Wildlife Service by the National Fish and Wildlife Laboratory, Washington, D.C. for a permit to take 35 sea otters (*Enhydra lutris*) per year for the purpose of marking and release for future observation.

Notice is hereby given that on August 25, 1980, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Fish and Wildlife Service issued a permit (PRT 2-6669), to the National Fish and Wildlife Laboratory subject to certain conditions set forth therein.

The permit is available for public inspection during normal busines hours at the Fish and Wildlife Service's office in Room 605, 1000 N. Glebe Road, Arlington, Virginia.

Dated: September 4, 1980.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office.

[FR Doc. 80-27872 Filed 9-10-80; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Receipt of Application

Applicant: Woodland Park Zoological Garden, 5500 Phinney Ave. N., Seattle, Washington 98103.

The applicant requests a permit to export one captive-bred male snow leopard (*Panthera uncia*) to the Jersey Wildlife Preservation Trust in the British Isles and to import one captive-bred male snow leopard from Zoo Zurich in Switzerland for the purpose of enhancement of propagation.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 605, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), P.O. Box 3654, Arlington, VA 22203.

This application has been assigned file number PRT 2-6949. Interested persons may comment on this application on or before October 14, 1980, by submitting written data, views, or arguments to the Director at the above address. Please refer to the file number when submitting comments.

Dated: September 5, 1980.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office, Fish and Wildlife Service.

[FR Doc. 80-27873 Filed 9-10-80; 8:45 am]

BILLING CODE 4310-55-M

Geological Survey

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production Plan.

SUMMARY: Notice is hereby given that Conoco Inc. has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS-G 3383, Block 459, West Cameron Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: September 4, 1980.

E. A. Marsh,

Staff Assistant. for Operations, Gulf of Mexico OCS Region.

[FR Doc. 80-27878 Filed 9-10-80; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Amoco Production Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS-G 1069, Block 35, West Delta Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: September 4, 1980.

E. A. Marsh

Staff Assistant for Operations, Gulf of Mexico OCS Region.

[FR Doc. 80-27879 Filed 9-10-80; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Land Management

Canon City District Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Public Law 92-463 that a meeting of the Cannon City District Grazing

Advisory Board will be held on October 22, 1980.

The meeting will begin at 10:00 a.m. at the San Luis Resource Area Office of the Bureau of Land Management at 1921 State Avenue, Alamosa, Colorado 81101.

The agenda for the meeting will include: (1) expenditure of range betterment funds for proposed range improvements; (2) a review of Allotment Management Plan implementation in the San Luis Valley; (3) Review of Allotment Management Plans proposed in the Royal Gorge Resource Area and; (4) reports on old business.

The meeting is opened to the public. Interested persons may make oral statements to the board between 10:00 a.m. and 12:00 noon on October 22, or file written statements for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 3080 East Main Street, Canon City, Colorado 81212 or the Area Manager, San Luis Resource Area, Bureau of Land Management, 1921 State Avenue, Alamosa, Colorado 81101, by October 10, 1980. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the board meeting will be maintained in the District Office at Canon City and be available for public inspection and reproduction during regular business hours (Monday through Friday, 7:45 a.m.–4:30 p.m.) within 30 days following the meeting.

Melvin D. Clausen,

District Manager.

[FR Doc. 80-27892 Filed 9-10-80; 8:45 am]

BILLING CODE 4310-84-M

Canon City District Advisory Council; Meeting

AGENCY: Bureau of Land Management

ACTION: Canon City District Advisory Council Meeting

SUMMARY: Notice is hereby given, in accordance with Pub. L. 94–579, that a meeting of the Canon City District Advisory Council will be held on Thursday, October 9, 1980.

The meeting will begin at 10:00 a.m. in the conference room of the Ramada Inn, Hwy. 50 and Dozier, Canon City, Colorado.

The agenda of the meeting will include:

(1) Introductions

(2) Role of the Advisory Council

(3) Summary of FY 81 Annual Work Plan with emphasis on major priority programs

(4) Election of Officers

(5) Discussion of need for bylaws

(6) Establishment of next meeting date and possible agenda

(7) Instructions for filling out travel vouchers

(8) Questions and answers

The meeting will be open to the public and interested persons may make oral statements to the council during allotted time period beginning at 2:00 p.m. and lasting at least one-half hour. The District Manager may establish a time limit for oral statements depending on the number of people wishing to speak.

EFFECTIVE DATE: August 27, 1980.

ADDRESS: Anyone wishing to address the council must notify the District Manager, Bureau of Land Management, 3080 East Main, (P.O. Box 311), Canon City, Colorado 81212 by October 2, 1980.

FOR FURTHER INFORMATION CONTACT: Mel Calusen, District Manager, Canon City District, Canon City, Colorado 81212.

SUPPLEMENTARY INFORMATION: Summary minutes of the council meeting will be maintained in the Canon City BLM District Office and will be available for public inspections and reproduction (during regular business hours).

Mel Clausen,

District Manager.

August 25, 1980.

[FR Doc. 80-27947 Filed 9-10-80; 8:45 am]

BILLING CODE 4310-84-M

[OR 19006]

Oregon; Proposed Continuation of Withdrawal

The Bureau of Land Management, U.S. Department of the Interior, proposes to continue an existing withdrawal of land for a public water reserve for a 20-year period, pursuant to section 204 of the Federal Land Policy and Management Act of October 21, 1976, 90 Stat. 2751; 43 U.S.C. 1714. The land was withdrawn by Executive Order 8009 dated November 18, 1938, which withdrew lands in several states for Public Water Reserve No. 160. The withdrawn land located in Oregon is included in this proposed continuation. The land is described as follows:

Willamette Meridian

T. 9 S., R. 23 E.,
Sec. 18, NE¼SW¼.
Containing 40 acres in Wheeler County, Oregon.

The land is currently segregated from location and entry under the public land laws generally, including location under the mining laws for non-metalliferous mining. The land is otherwise open to the mining and mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

Notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal continuation. All interested persons who desire to be heard on the proposal must submit a written request for a hearing to the undersigned on or before October 20, 1980. Upon determination by the State Director, Bureau of Land Management, that a public hearing will be held, a notice will be published in the **Federal Register** giving the time and place of such hearing. In lieu of or in addition to attendance at a scheduled public hearing, written comments or objections to the proposed withdrawal continuation may be filed with the undersigned officer on or before October 20, 1980.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. He will review the withdrawal rejustification to insure that continuation would be consistent with the statutory objectives of the programs for which the land is dedicated; the area involved is the minimum essential to meet the desired needs; the maximum concurrent utilization of the land is provided for; and an agreement is reached on the concurrent management of the land and its resources. He will also prepare a report for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

All communications in connection with this proposed withdrawal continuation should be addressed to the undersigned officer, Bureau of Land Management, U.S. Department of the Interior, P.O. Box 2965, Portland, Oregon 97208.

Dated: September 2, 1980.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 80-27893 Filed 9-10-80; 8:45 am]

BILLING CODE 4310-84-M

[OR 18994, OR 19000, OR 20234-B, 20242]

Oregon; Proposed Continuation of Withdrawls

The Bureau of Land Management, U.S. Department of the Interior, proposes to continue four existing withdrawals of land for public water reserves for a period of 20 years, pursuant to section 204 of the Federal Land Policy and Management Act of October 21, 1976, 90 Stat. 2751; 43 U.S.C. 1714. The following described lands are included in the proposed continuations:

Willamette Meridan

(OR 18994)
Public Water Reserve No. 118, Executive Order of February 13, 1929 (as to lands in Crook County).
T. 17 S., R. 20 E.,
Sec. 12, NE¼NE¼.
T. 17 S., R. 21 E.,
Sec. 6, Lot 7 and SE¼SW¼.
Aggregating 119.90 acres.
(OR 19000)
Public Water Reserve No. 142, Executive Order 5650 dated June 18, 1931, (in its entirety).
T. 19 S., R. 18 E.,
Sec. 18, Lot 7, 8, 9, and 10, SW¼NE¼.
Containing 200 acres.
(OR 20234-B)
Public Water Reserve No. 87, Executive Order of November 9, 1923 (as to lands in Crook County).
T. 16 S., R. 25 E.,
Sec. 1, NW¼SW¼;
Sec. 2, SW¼SW¼.
Containing 80 acres.
(OR 20242)
Public Water Reserve No. 110, Executive Order of September 20, 1927 (in its entirety).
T. 20 S., R. E.,
Sec. 13, SW¼SW¼.
Containing 40 acres.

The areas described aggregate 439.90 acres in Crook County, Oregon.

The lands are currently segregated from location and entry under the public land laws generally, including location under the mining laws for non-metalliferous minerals. The lands are otherwise open to the mining and mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawals.

Notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal continuations. All interested persons who desire to be heard on the proposal must submit a written request for a hearing to undersigned on or before October 20, 1980. Upon determination by the State Director, Bureau of Land Management, that a public hearing will be held, a notice will be published in the **Federal Register** giving the time and place of such hearing. In lieu of or in addition to attendance at a scheduled public hearing, written comments or objections to the proposed withdrawal continuations may be filed with the undersigned officer on or before October 20, 1980.

The authorized officer of the Bueau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. He will review the withdrawal rejustifications to insure that continuation would be consistent with the statutory objectives of the programs for which the lands are dedicated; the area involved is the minimum essential to meet the desired needs; the maximum concurrent utilization of the lands is provided for; and an agreement is reached on the concurrent management of the lands and their resources. He will also prepare a report for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued and is so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

All communications in connection with these proposed withdrawal continuations should be addressed to the undesigned officer, Bureau of Land Management, U.S. Department of the Interior, P.O. Box 2965, Portland, Oregon 97208.

Dated: September 2, 1980.

Harold A. Berends,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 80-27894 Filed 9-10-80; 8:45 am]
BILLING CODE 4310-84-M

Status of Wilderness Review of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Status of Wilderness Review of Public Lands.

SUMMARY: This notice summarizes the present status of the wilderness review of roadless public lands and islands required by the Federal Land Policy and Management Act, section 603(a). The purposes of this notice and calendar of events are to provide (1) one source of information summarizing current wilderness review activities, and (2) advance notice of upcoming decisions and public review periods.

DATE: All information in this notice is current through September 3, 1980.

FOR FURTHER INFORMATION CONTACT:
Gary G. Marsh, Bureau of Land Management, Division of Wilderness and Environmental Areas, 18th and C Streets, N.W., Washington, D.C. 20240, Telephone: (202) 343-6064.

SUPPLEMENTARY INFORMATION: This calendar of events is the eighth of a series whose last notice appeared in the **Federal Register** August 7, 1980, (p. 52462). The calendar of events focuses only on the current status of all ongoing wilderness review activities. Those inventories whose final decisions are in effect, as well as studies of reports not yet initiated, are not reported in this notice. For detailed information regarding each specific activity, reference is made either to the appropriate notice previously appearing in the **Federal Register,** or to notices which are anticipated to be published in the upcoming 30 days. It must be noted that "anticipated" dates are projected only, and thus are subject to change.

The Bureau of Land Management wilderness review includes (1) an inventory of public lands to identify roadless lands and islands having wilderness characteristics; (2) a study of those areas found to have wilderness characteristics (wilderness study areas or "WSA's"); and (3) a report from the Secretary of the Interior to the President as to whether each WSA is more suitable for wilderness or other resource uses. The President will send his recommendations to Congress. Only Congress can actually designate an area as wilderness.

The inventory process has two stages: (1) an initial inventory designed to quickly identify and release from wilderness review those lands which clearly and obviously lack wilderness characteristics; and (2) an intensive inventory for those lands which may possess wilderness characteristics. The initial inventory process was completed in the contiguous Western States by October 1, 1979. In instances where important resource use decisions are pending, the inventory process may be accelerated in order to reach final decisions as quickly as possible. Such inventories are referred to as "special project inventories" or "accelerated intensive inventories."

The Federal Land Policy and Management Act (FLPMA) also requires early study of 55 natural and primitive areas which were formally identified by the Secretary of the Interior prior to November 1, 1975. They are referred to as "instant study areas" (ISA's). As of September 1, 1980, the reports are under administrative review.

The wilderness inventory deadline for the contiguous Western States has been extended to November 15, 1980, as announced in the **Federal Register** on June 17, 1980 (p. 41074).

The statistical summary table reflects both proposed and final intensive inventory decisions in the contiguous Western States, Minnesota, and a special Nonwilderness Assessment in Alaska related to the Alaska Natural Gas Transportation System route. All acreages are presented by State political boundaries and not BLM administrative boundaries. Some final decisions listed under the "inventory completed" column may be under protest or appeal. In those instances, decisions are not yet in effect and are subject to interim management requirements as required by the FLPMA, section 603(c). Any appeals of the State Directors' intensive inventory decisions will be subject to the procedures as outlined in Title 43 *Code of Federal Regulations*, Part 4. This regulation identifies the Interior Board of Land Appeals as the office to hear and evaluate such appeals.

Dated: September 8, 1980.

James W. Monroe,

Assistant Director.

Calendar of Events

Alaska

Accelerated Nonwilderness Assessment

—Final decision on the Nonwilderness Assessment of the Alaska natural Gas Transportation System Route as announced in the **Federal Register** June 2, 1980 (p. 37304) is in effect due to no appeals filed, as announced in **Federal Register** August 1, 1980 (p. 51289).

Arizona

Statewide Intensive Inventory

—Proposed decision announced in **Federal Register** May 30, 1980 (p. 36525); supplemental information published in **Federal Register** July 24, 1980 (p. 49364); 90-day public comment period ended August 28, 1980; public comments being analyzed prior to final decision.

Accelerated Intensive Inventory

—Hualapai-Aquarius final decision anticipated October 1980. Affects units 2–37, 2–43, 2–46, 2–48, 2–50, 2–51 to 2–54, 2–56 to 2–63, 2–65, 2–67.

—State Director's decision on protests for the Overthrust Belt anticipated October 1980. Affects units: 1–105 to 1–109, 1–112 to 1–115, 1–119 to 1–124, 1–127 to 1–130, 1–134, 1–135.

—Safford District units contiguous to Coronado National Forest—final decision announced in **Federal Register** July 11, 1980 (p. 46913); initiating protest period which ended August 18, 1980, without protest. Affects units 4–66, 4–70, 4–72, 4–73, 4–79, 4–80, 4–81.

Study/Reporting

—Aravaipa Canyon Instant Study Area final environmental impact statement and suitability report complete; under administrative review.

—Paiute, Paria, and Vermillion Cliffs ISA's draft suitability report and draft environmental impact statement availability announced in **Federal Register** April 22, 1980 (p. 27022); public comment period will start 30 days after the U.S. Geological Survey and Bureau of Mines reports are made available to the public, as announced in **Federal Register** May 8, 1980 (p. 30547). Availability of reports anticipated October 1980.

California

Statewide Intensive Inventory

—State Director's announcement of decision on protests for 93 units announced in **Federal Register** August 28, 1980 (p. 57549); this initiated a 30-day appeal period ending Septemer 26, 1980, for only nine non-CDCA units: 010–064, 075; 020–211, 609, 1013; 030–402, 501, 504; 060–026.

—Proposed decision for Oregon-California interstate units announced in **Federal Register** April 3, 1980 (p. 22198); 90-day public comment period ended June 25, 1980.

—Proposed decision for Nevada-California interstate units announced in **Federal Register** April 3, 1980 (p. 22198); 90-day public comment period ended June 30, 1980.

Units Under Appeal to IBLA

—Notices of appeal announced in **Federal Register** January 7, 1980 (p. 1456). Affects CDCA intensive inventory units: 117, 131, 136, 137A, 143, 150, 156, 158, 172, 217, 221, 222, 227, 242, 263, 264, 265, 266, 271, 299, 305, 321, 325, 334, 343, 348, 376. Appeal on units 207, 251, and 251A dismissed by IBLA August 5, 1980, due to appellant's failure to file statement of reasons in accordance with 43 CFR 4.

—Notice of appeal announced in **Federal Register** January 7, 1980 (p. 1457). Affects non-CDCA initial inventory units: 010–031, 033, 047, 069, 087, 101; 020–701, 901, 1001; 030–300, 400, 500.

—Notice of appeal announced in **Federal Register** August 28, 1980 (p. 57549). Affects non-CDCA intensive inventory units 010–040, 060, 063, 065, 068; 050–131, 134, 135, 211.

Study/Reporting

—Proposed CDCA plan expected to be released September 30, 1980.

Colorado

Statewide Intensive Inventory

—Proposed decision announced in **Federal Register** February 1, 1980 (p. 7312); 90-day public comment period ended April 30, 1980; public comments being analyzed prior to final decision.

Units Under Appeal to IBLA

—Notice of appeal filed January 21, 1980. Affects initial inventory unit 070–031.

Study/Reporting

—Powerhorn ISA draft environmental impact statement and draft suitability report availability announced in **Federal Register** May 7, 1980 (p. 30141); public comment period ended July 1, 1980.

Eastern States

Statewide Intensive Inventory (Minnesota Only)

—Proposed decision on remaining 174 islands announced in **Federal Register** May 20, 1980 (p. 33730); 90-day public comment period ended August 18, 1980; public comments being analyzed prior to final decision.

Idaho

Statewide Initial Inventory

—State Director's proposed intensive inventory decision on unit 23–1 announced in **Federal Register** June 4, 1980 (p. 37738) initiating 90-day comment period, which ended September 2, 1980; public comments being anlyzed prior to final decision.

Statewide Intensive Inventory

—Proposed decision announced in **Federal Register** April 3, 1980 (p. 22195); 90-day public comment period ended July 3, 1980; public comments being analyzed prior to final decision.

Accelerated Intensive Inventory

—State Director's announcement of decision on protests for Owyhee Planning Area anticipated October 1980. Affects units 16–26, 16–28, 16–36, 16–40, to 16–42, 16–44, 16–45, 16–47, 16–49 a, b, d, e, 16–52.

Study/Reporting

—Great Rift (Grassland Kipuka) ISA draft environmental impact statement availability announced in **Federal Register** March 5, 1980 (p. 14251); public comment period ended May 27, 1980; under administrative review.

Units Under Appeal to IBLA

—Notice of appeal filed April 11, 1980, affecting stateline initial inventory units 16–48 a, b, and c, 16–53, 16–56a, 16–59, 16–70e, 17–19, 17–21, 17–26, 22–1.

—Two notices of appeal filed April 11, 1980, affecting Challis Planning Area intensive inventory units 46–11, 46–13, 46–14, 46–14a.

—Notice of appeal filed July 30, 1980, affecting initial inventory units 35–3, 35–4, 35–5.

Montana

Statewide Intensive Inventory

—Proposed decision announced in **Federal Register** March 28, 1980 (p. 20570); public comment period extended from June 30 to August 30, 1980; public comments being analyzed prior to final decision.

Accelerated Intensive Inventory

—Bitter Creek (064–356) as affected by proposed Alaska Natural Gas Transportation System final decision announced in **Federal Register** April 9, 1980 (p. 24254); protest period ended May 9, 1980; protests received.

—State Director's Overthurst Belt decision on protests announced in **Federal Register** August 7, 1980 (p. 52465), initiating a 30-day appeal period. Affects units 074–151 a and b, 155; 075–102, 105 to 107, 110, 114, 115, 123, 133, 138; 076–001, 003, 006 to 008, 011, 015, 022, 025, 029, 033, 034, 059, 063, 069, 070, 079. Protest period extended until September 15, 1980, for three Overthrust Belt units adjusted as a result of new information received. Affects units 076–002, 026, 028.

Units Under Appeal to IBLA

—Notice of appeal filed June 11, 1980. Affects intensive inventory unit 076–026.

—Notice of appeal filed July 27, 1980. Affects accelerated intensive inventory units 075–123; 076–003, 011, 025.

Study/Reporting

—Humbug Spires and Bear Trap Canyon ISA's draft environmental impact statements and draft suitability reports availability announced in **Federal Register** April 18, 1980 (p. 26477) and April 30, 1980 (p. 28823); public comment period ended June 17, 1980.

Nevada

Statewise Intensive Inventory

—Proposed decision announced in **Federal Register** April 1, 1980 (p. 21356); 90-day public comment period ended June 30, 1980; public comments being analyzed prior to final decision.

Accelerated Intensive Inventory

—State Director's announcement of Overthrust Belt decision on protests announced in **Federal Register** July 31, 1980 (p. 50942); appeals period ended August 31, 1980, no appeals received; protest decision in effect for units 0161, 0231, 0233, 0235, 0236, 0238, 0411, 0412, 0423, 0438, 04R–15.

New Mexico

Statewide Intensive Inventory

—Proposed decision announced in **Federal Register** March 28, 1980 (p. 20572); corrections announced in **Federal Register** May 2, 1980 (p. 29417); public comment period extended from June 30 to July 21, 1980, as announced in **Federal Register** June 27, 1980 (p. 43477); public comments being analyzed prior to final decision.

Oregon

Statewide Intensive Inventory (includes Washington)

—Proposed decision announced in **Federal Register** March 27, 1980 (p. 20167); 90-day public comment period ended June 25, 1980; public comments being analyzed prior to final decision.

Accelerated Intensive Inventory

—State Director's decision on protests announced in **Federal Register** August 5, 1980 (p. 51925), initiating appeal period ending September 4, 1980. Affects units: 1–76, 1–77, 1–105; 2–1, 2–11, 2–23E, 2–26, 2–74E, 2–74N, 2–81L, 2–82H, 3–154, 5–14.

Units Under Appeal to IBLA

—Notice of appeal announced in **Federal Register** November 29, 1979 (p. 68526); affects initial inventory unit 11–6.

Utah

Statwide Intensive Inventory

—90-day public comment period ended June 30, 1980; public comments being analyzed prior to final decision.

Accelerated Intensive Inventory

—Protests received as announced in **Federal Register** June 18, 1980 (p. 41223), on Devil's Garden and Link Flats ISA's.

Units Under Appeal to IBLA

—Notice of appeal filed January 24, 1980. Affects accelerated inventory units 050–233; 060–007, 011, 012.

—Notice of appeal announced in **Federal Register** July 17, 1980 (p. 47936). Affects accelerated intensive inventory unit 050–236.

Wyoming

Statewide Intensive Inventory

—Proposed decision announced in **Federal Register** April 4, 1980 (p. 23073); public comment period extended as announced in **Federal Register** on June 5, 1980 (p. 37894); supplemental information amending proposed intensive inventory decision unit (040–406) published in **Federal Register** August 14, 1980 (p. 54147); public comment period ended August 19, 1980; comments being analyzed prior to final decision.

Units Under Appeal to IBLA

—Three notices of appeal filed April 14, 1980. Affects accelerated intensive inventory units 040–110, 221, 222, 223.

BILLING CODE 4310-84-M

STATISTICAL SUMMARY TABLE

BLM Wilderness Inventory Results (Shown in Acres) as of September 1, 1980

Contiguous Western States	Public lands subject to wilderness inventory	Proposed Intensive Inventory Decisions			Inventory Completed Final Decisions Announced	
		Not yet announced	Announced Subject to Public Review			
			Lacking wilderness characteristics	With wilderness characteristics	Lacking wilderness characteristics	Wilderness study areas
AZ	12,596,000	0	2,705,000	2,164,000	7,210,000	517,000
CA	16,585,000	0	120,000	9,000	10,118,000	6,338,000
CO	7,996,000	0	491,000	765,000	6,690,000	50,000
ID	11,949,000	252,000	1,090,000	804,000	8,983,000	820,000
MT	8,140,000	0	1,357,000	475,000	6,000,000	308,000
NV	49,118,000	17,000	11,319,000	3,079,000	33,077,000	1,626,000
NM	12,847,000	0	1,327,000	886,000	10,486,000	148,000
ND	68,000	0	0	0	68,000	0
OK	7,000	0	0	0	7,000	0
OR	13,965,000*	0	4,192,000	1,750,000	7,584,000	439,000
SD	277,000	0	5,000	0	272,000	0
UT	22,076,000	0	3,190,000	1,752,000	16,707,000	427,000
WA	310,000	0	14,000	15	296,000	0
WY	17,793,000	0	562,000	497,000	16,678,000	56,000
Subtotal	173,727,000	269,000	26,372,000	12,181,000	124,176,000	10,729,000
Eastern States						
MN	45,000**	0	701	0	44,299	0

Alaska -- Nonwilderness Assessment of the Alaska Natural Gas Transportation System route reviewed 2,482,000 acres of public land, of which 1,474,000 acres were removed from wilderness review and interim management policy (IMP) constraints and 1,008,000 acres are subject to the IMP and further inventory at a later date. Final decision in Federal Register, June 2, 1980 (p. 37304).

* Does not include 1,759,200 acres of Oregon and California Grant Lands which are exempt from wilderness review.

** Includes an estimated 2,000 acres of unsurveyed islands.

[FR Doc. 80-27912 Filed 9-10-80; 8:45 am]

BILLING CODE 4310-84-C

Worland District Multiple Use Advisory Council; Meeting

September 4, 1980.

Notice is hereby given, in accordance with Public Law 94–579 and 43 CFR Part 1780, that a meeting of the Worland District Multiple Use Advisory Council will be held on Wednesday, November 12, 1980, at 9:00 A.M., at the Bureau of Land Management Office Annex, 1701 Robertson Avenue, Worland, Wyoming 82401.

Agenda for the meeting will include:

1. Briefings and discussions of Worland District programs to include, but not limited to, the Grass Creek Planning Program, Wilderness Program, Access, and Environmental Assessments (EA's).

2. Presentation on the "Sagebrush Rebellion."

3. Establishment of committees.

4. Agenda and arrangements for next meeting.

The meeting is open to the public. Interested persons may make oral statements to the Council between 1:30 and 2:00 P.M., or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager at the above address on or before Friday, November 7, 1980. Written statements must be received by close of business, Monday, November 10, 1980. (Tuesday, November 11, is a holiday). Depending on the number of persons who wish to make an oral statement, a per person time limit may be established.

Summary minutes of the meeting will be maintained in the District office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

John A. Kwiatkowski,

District Manager.

[FR Doc. 80-27891 Filed 9-10-80; 8:45 am]

BILLING CODE 4310-84-M

[AR-034684]

Arizona: Order Providing for Opening of Public Lands and National Forest Lands

1. By order dated May 6, 1976, the Federal Power Commission (now the Federal Energy Regulatory Commission) vacated the land withdrawal in its entirety for Power Project No. 150 of May 16, 1921, as supplemented August 23, 1921, as to the following described lands:

Gila and Salt River Meridian, Arizona

All portions of the following tracts lying within 20 feet of the center line of the transmission line location shown on maps designated as Exhibit J (1), sheets 1 to 8, inclusive, and entitled "Map of Location of Transmission Line of the Pacific Gas and Electric Company," and filed in the office of the Federal Power Commission on May 16, 1921:

T. 5 N., R. 2 E.,
Sec. 35, SW¼NE¼, N½SE¼, SE¼SE¼.
T. 6 N., R. 2 E.,
Sec. 3 Lots 1, 2, S½NE¼, W½SE¼;
Sec. 10, W½NE¼, SE¼NW¼, E½SW¼;
Sec. 15, N½NW¼, SW¼NW¼, W½SW¼;
Sec. 22, NW¼NW¼, W½SW¼, SE¼SW¼;
Sec. 27, E½E½;
Sec. 34, Lots 3, 4, E½NW¼, NE¼SW¼, NW¼SE¼.
T. 7 N., R. 2 E.,
Sec. 3, Lots 2, 3, S½NE¼, NE¼SE¼;
Sec. 11, E½W½;
Sec. 14, W½NE¼, E½NW¼, W½SE¼;
Sec. 23, Lot 2, SW¼NE¼, SE¼SW¼, W½SE¼;
Sec. 26, Lots 4, 5, 6, Lots 11 and 12 now described as Lots 35 and 36, Lots 22, 23, 25, 26, E½NW¼ now described as Lots 55, 56 and 58, NE¼NW¼, N½NE¼, SE¼NW¼, S½SW¼SE¼NW¼;
Sec. 34, Lots 8, 9, 10, Lots 15 and 16 now described as Lots 59 and 60, Lot 18 now described as part of Lots 61 and 62, Lots 19, 30, 31, 35, 36, 53, and 54.
T. 8 N., R. 2 E.,
Sec. 10, E½NW¼, N½SW¼, SW¼SW¼;
Sec. 15, W½;
Sec. 22, NW¼, NW¼SW¼;
Sec. 27, SW¼NW¼;
Sec. 34, E½NW¼, SW¼.
T. 9 N., R. 2 E.,
Sec. 25, NE¼SE¼.
T. 9 N. R. 3 E.,
Sec. 20, SW¼NE¼, NW¼SE¼;
Sec. 30, Lots 2, 3, N½NE¼, E½NW¼, and that portion of the township which is unsurveyed.
T. 9½ N., R. 3 E.,
Sec. 25, E½NE¼, NE¼SE¼, S½SE¼;
Sec. 36, W½NE¼, E½SW¼, NW¼SE¼.
T. 9½ N., R. 4 E.,
Sec. 19, Lots 1, 2, 5, 6;
Sec. 30, Lot 1.
T. 10 N., R. 4 E.,
Sec. 5, Lots 2, 3, SW¼NE¼, SE¼NW¼, E½SW¼;
Sec. 8, E½W½, SW¼SW¼;
Sec. 17, N½NW¼, SW¼NW¼;
Sec. 18, E½NE¼, SW¼SE¼, E½SE¼;
Sec. 19, NE¼, E½SW¼, W½SE¼;
Sec. 30, Lots 2, 3, 4, E½NW¼, NE¼SW¼, SE¼SW¼, SW¼SE¼;
Sec. 31, Lots 1, 2.
T. 11 N., R. 4 E.,
Sec. 5, SW¼NE¼, NW¼SE¼, S½SE¼;
Sec. 8, NE¼NE¼;
Sec. 9, W½NW¼, N½SW¼, SE¼SW¼;
Sec. 16, E½W½;
Sec. 21, E½NW¼, NE¼SW¼, S½SW¼, and that portion of the township which is unsurveyed.

The areas described contain approximately 200 acres in Maricopa and Yavapai Counties.

Some of the lands are public lands and some are patented with a mineral reservation to the United States under the jurisdiction of Bureau of Land Management; the remainder is National Forest land under the jurisdiction of the Department of Agriculture. The status of any tract of land may be ascertained by inquiry to the Bureau of Land Management, 2400 Valley Bank Center, 201 North Central, Phoenix, Arizona 85073; (602) 261–3706.

2. The State of Arizona has waived its preference right of application for highway rights-of-way or material sites as provided by the Federal Power Act of June 10, 1920, 16 U.S.C. 818.

3. Under the authority delegated by Bureau of Land Management Order No. 701 dated July 23, 1964 (29 FR 10526), as amended, it is ordered that at 10:00 a.m. on November 1, 1980, the public lands and those lands having mineral interests reserved to the United States, under the jurisdiction of the Bureau of Land Management, are hereby opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws. All valid applications received at or prior to 10:00 a.m. on November 1, 1980 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 10:00 a.m. November 1, 1980, the National Forest lands shall be open to such forms of disposition as may by law be made of National Forest lands, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law.

5. The lands described in paragraph 1 have been and remain open to applications and offers under the mineral leasing laws.

Mario L. Lopez,

Chief, Branch of Lands and Minerals Operations.

September 2, 1980.

[FR Doc. 80-27949 Filed 9-10-80; 8:45 am]

BILLING CODE 4310-84-M

Miles City District Advisory Council Meeting

Notice is hereby given, in accordance with Public Law 94–579 and 43 CFR Part 1780, that a meeting of the Miles City District Advisory Council will be held on Thursday, October 16, 1980, at 10:00 a.m. in the Bureau of Land Management District Office, West Highway 10–12, Miles City, Montana.

Agenda for the meeting will include:

1. Presentation and background of District projects for Council consideration.

2. Selection of projects by the Council.

3. Discussion of priority projects and Council consideration.

4. Council recommendations.

5. Arrangements for the next meeting.

This meeting is open to the public. The public may make oral statements before the Council or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, Miles City District Office, BLM, P.O. Box 940, Miles City, Montana 59301, by October 10, 1980. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Robert A. Teegarden,

Acting District Manager.

[FR Doc. 80-28067 Filed 9-10-80; 8:45 am]

BILLING CODE 4310-84-M

[Coal Exploration License Application M 48587]

Montana; Invitation

September 3, 1980.

Members of the public are hereby invited to participate with Tenneco Coal Company in a program for the exploration of coal deposits owned by the United States of America in the following-described lands located in Wibaux County, Montana,

T. 13 N., R. 60 E., P.M.M.,
Sec. 2, Lots, 1, 2, S½NE¼;
Sec. 10, NW¼;
Sec. 12, N½, SW¼;
Sec. 14, NE¼, SW¼;
Sec. 18, Lots 1, 2, E½NW¼;
Sec. 24, NW¼.

T. 14 N., R. 60 E., P.M.M.,
Sec. 2, SE¼;
Sec. 10, N½NE¼, SE¼NE¼, NW¼SW¼;
Sec. 12, SW¼;
Sec. 14, SW¼;
Sec. 22, E½;
Sec. 24, NW¼SW¼, SE¼;
Sec. 26, NW¼, SE¼;
Sec. 28, S½;
Sec. 34, SW¼.

T. 15 N., R. 60 E., P.M.M.,
Sec. 26, SW¼;
Sec. 34, NW¼SW¼, S½SW¼.

T. 13 N., R. 61 E., P.M.M.,
Sec. 6, Lots 3, 4;
Sec. 18, Lots 2, 3.

T. 14 N., R. 61 E., P.M.M.,
Sec. 30, Lots 1, 2.

Any party electing to participate in this exploration program shall notify, *in writing*, both the State Director, Bureau of Land Management, P.O. Box 30157, Billings, Montana 59107; and Tenneco Coal Company, P.O. Box 2511, Houston, Texas 77001. Such written notice must refer to serial number M 48587 and be received no later than 30 calendar days after publication of this notice in the **Federal Register** or 10 calendar days after the last publication in this newspaper, whichever is later. This Notice will be published for two consecutive weeks. The proposed exploration plan is fully described and will be conducted pursuant to an exploration plan to be approved by U.S. Geological Survey and the Bureau of Land Management. Copies of the exploration plan as submitted by Tenneco Coal Company may be examined during normal business hours at the Bureau of Land Management State Office, Granite Tower Building, 222 North 32nd Street, Billings, Montana.

Edgar D. Stark,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 80-28081 Filed 9-10-80; 8:45 am]

BILLING CODE 4310-84-M

[DES 80-56]

Proposed 10-Year Timber Management, Sustained Yield Unit 13 (SYU-13); Availability of Draft Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Ukiah District, Bureau of Land Management, Department of the Interior has prepared a draft environmental impact statement for a proposed 10-year timber management program on 48,600 acres of public land.

Most of the public lands in SYU-13 lie in a scattered ownership configuration intermixed with privately owned lands in Mendocino, Humboldt, Sonoma, and Trinity Counties, California. The statement analysis excludes the King Range Conservation Area Sustained Yield Unit 8 (SYU-8).

Six timber management alternatives including the proposed action are presented for consideration and are analyzed in terms of their potential environmental effects.

The proposed action alternative assessed in the DEIS calls for a 10-year allowable cut of 97 million board feet (MMBF) (Scribner log rule). The five other alternatives assessed in this analyis have differing harvest levels and degrees of management intensity. They are:

1. No Action—essentially a continuance of past harvest levels and intensity of management with a 10-year harvest level of 78 MMBF.

2. Limited Investment—timber production on a natural stand basis, limiting investments to those associated with harvest and artificial reforestation. The 10-year allowable cut would be 65 MMBF.

3. Accelerated Harvest No. 1—accelerated rate of harvest of 105 MMBF for the 10-year period.

4. Accelerated Harvest No. 2—accelerated harvest for the 10-year period of 146 MMBF.

5. Managed Old-Growth—an intensive timber management alternative similar to the proposal, but calling for a unit-wide retention of 12 trees per acre over two rotations. The harvest level for this alternative would be 85 MMBF for the 10-year period.

Written comments on the draft are being solicited from public agencies and interest citizens. Comments should be addressed to the District Manager, Ukiah District Office, Bureau of Land Management, P.O. Box 940, Ukiah, California 95482. Comments should be received by November 25, 1980.

A limited number of copies of the DEIS are available upon request to the District Manager at the above address. Public reading copies will be available for review at the following locations: Bureau of Land Management, Office of Public Affairs, 18th and C Streets, N.W., Washington, D.C. 20240, Phone: (202) 343-4151; Bureau of Land Management, California State Office, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825; Bureau of Land Management, Ukiah District Office, 555 Leslie Street, Ukiah, California 95482.

Dated: September 8, 1980.

Ed Hastey,

Associate Director.

[FR Doc. 80-28100 Filed 9-10-80; 8:45 am]

BILLING CODE 4310-84-M

INTERSTATE COMMERCE COMMISSION

[Exparte No. 311]

Expedited Procedures for Recovery of Fuel Costs

Decided September 3, 1980.

In our decision of May 13, 20, 27, June 3, 10, 17, 24, July 1, 8, 15, 22, and 29, and August 5, 12, 19, and 26, 1980, a 13-percent surcharge was authorized on all owner-operator traffic, and on all truckload traffic whether or not owner-operators were employed. We ordered

that all owner-operators were to receive compensation at this level.

The weekly figures set forth in the appendix for transportation performed by owner-operators and for truckload traffic is 13.4-percent. We are authorizing that the 13-percent surcharge for this traffic remain in effect, and that all owner-operators are to receive compensation at this level.

No change is authorized in the 2.3-percent surcharge on less-than-truckload (LTL) traffic performed by carriers not utilizing owner operators, the 1.3-percent surcharge for United Parcel Service, nor in the 5.0-percent surcharge authorized for the bus carriers.

Notice shall be given to the general public by mailing a copy of this decision to the Governor of each State and to the Public Utilities Commissions or Boards of each State having jurisdiction over transportation, by depositing a copy in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., for public inspection and by delivering a copy to the Director, Office of the Federal Register for publication therein.

It is ordered:

This decision shall become effective Friday 12:01 a.m. September 5, 1980.

By the Commission, Chairman Gaskins, Vice-Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam. Commissioners Clapp and Alexis absent and not participating.

Agatha L. Mergenovich,

Secretary.

Appendix—*Fuel Surcharge*

Base date and price per gallon (including tax)

January 1, 1979 ..... 63.5¢

Date of current price measurement and price per gallon (including tax)

September 2, 1980 ..... 113.9¢

	Transportation performed by—			
	Owner operator (1)	Other (2)	Bus carrier (3)	UPS (4)
Average percent fuel expenses (including taxes) of total revenue	16.9	2.9	6.3D3.3	
Percent surcharge developed	13.4	2.3	5.0	[1] 2.1
Percent surcharge allowed	13.0	2.3	5.0	[2] 1.3

[1] The percentage surcharge developed for UPS is calculated by applying 81 percent of the percentage increase in the current price per gallon over the base price per gallon to UPS average percent of fuel expense to revenue figure as of January 1, 1979 (3.3 percent).

[2] The developed surcharge figure is reduced 0.8 percent to reflect fuel related increases already included in UPS rates.

[FR Doc. 80-27957 Filed 9-10-80; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-3 (Sub-No. 22F)]

Missouri Pacific Railroad Co.—Abandonment—Between Spaulding, Rio Grande City, and Hidalgo, Tex.; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision decided July 10, 1980, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, the public convenience and necessity permit the abandonment by the Missouri Pacific Railroad Company of 2 segments of a rail line known as the Mission Subdivision: (1) the Spaulding/Rio Grande segment; and (2) the Hidalgo segment. The Spaulding/Rio Grande segment extends from railroad milepost 56.5 near Spaulding, TX, to milepost 73.6 at Rio Grande City, TX, a distance of 17.1 miles located in Hidalgo and Starr Counties, TX. The Hidalgo segment extends from milepost 3.1 near Hidalgo, TX, to the end of the line at Hidalgo, a distance of 3.1 miles located in Hidalgo County, TX, subject to the conditions for the protection of employees discussed in *Oregon Short Line R. Co.—Abandonment Goshen,* 360 I.C.C. 91 (1979). A certificate of abandonment will be issued to the Missouri Pacific Railroad Company based on the above-described finding of abandonment, 30 days after publication of this notice, unless within 30 days from the date of publication, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued. The offer must be filed and served no later than 15 days after publication of this Notice; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railraod and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the **Federal Register** on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978, at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-27955 Filed 9-10-80; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29455F]

Norfolk & Western Railway Co.—Purchase—Illinois Terminal Railroad Co.; Notice of Intent

Norfolk and Western Railway Company (NW) and Illinois Terminal Railroad Company (IT) hereby give notice that they will file with the Interstate Commerce Commission on or about December 1, 1980, a joint application under 49 U.S.C. 11343 seeking approval and authorization of the acquisition by NW of the equipment and principal assets of IT.

NW and IT also intend to file on or about December 1, 1980, an application directly related to the purchase application, seeking authorization under 49 U.S.C. 11301 to issue securities and assume obligations.

NW and IT intend to prepare a rail traffic diversion study for purposes of their purchase application. This study will be based upon traffic for the 1979 calendar year. This application will be filed under the requirements of 49 CFR Part 1111 relating to major transactions.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-27956 Filed 9-10-80; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. MC-96 (Sub-5)]

Passenger Broker "Tauck" Conditions

AGENCY: Interstate Commerce Commission.

ACTION: Policy statement.

SUMMARY: The Commission is adopting a policy to allow passenger brokers to collect commissions form motor carriers of passengers in all circumstances.

Further, the Commission is eliminating a requirement that tour patrons designate the broker as agent for the group, and that the transportation contract reflect this fact.

The Commission is adopting this change in policy because the former policy had ceased to serve a useful purpose.

DATE: This policy is effective September 11, 1980.

FOR FURTHER INFORMATION: Peter Metrinko, 202–275–7805 or Edward E. Guthrie, 202–275–7691.

SUPPLEMENTARY INFORMATION: The notice of proposed policy statement in this proceeding was published in the Federal Register of June 5, 1980, at 45 FR 37911.

Public comment was unanimous in favor of the proposal.

The reasons for the change in policy were fully stated in the previous notice, and it is not necessary to expand those reasons.

Accordingly, we adopt the policy statement as it appeared in the previous notice:

The Commission has in the past issued passenger broker decisions and licenses with admonitions or express conditions that the holder observe the *Tauck* conditions, referring to *Tauck Tours, Inc., Extension-New York, N.Y.*, 54 M.C.C. 291 (1952). Passenger brokers need no longer abide by those conditions, and they will not be imposed in the future. It is sufficient for a passenger broker employing a motor carrier with charter operations authority to be conducting a bona fide tour and to pay the carrier its full published charter fare. If the carrier expressly agrees, the broker may deduct a commission from the fare charged.

This proceeding is not a major Federal action significantly affecting the quality of the human environment or energy consumption.

Issued under the authority of 5 U.S.C. 553 and 49 U.S.C. 10321.

Decided: August 28, 1980.

By the Commission, Chairman Gaskins, Vice-Chairman Gresham, Commissioners Stafford, Clapp, Trantum, Alexis, and Gilliam. Commissioner Stafford not participating.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-27962 Filed 9-10-80; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. OP4-034]

Permanent Authority Decisions; Decision-Notice

Decided: August 28, 1980.

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 traffic 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 adminstrative 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.gs., 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 Energey 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 on or before October 14, 1980 (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 on or before October 14, 1980, or the application shall stand denied.

By the Commission, Review Board Number 1. Members Carleton, Joyce, and Jones. Member Jones not participating.

Note.—All applications are for authority to operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, except as otherwise noted.

Agatha L. Mergenovich,

Secretary.

MC 120477 (Sub-3F), filed June 10, 1980. Applicant: INTERNATIONAL TRANSPORT, INC., 432 C St., Boston, MA 02210. Representative: William J. Lippman, 50 South Steele St., Suite 330, Denver, CO 80209. Transporting *general commodities* (except classes A and B explosives), between points in commercial zone of New York, NY, restricted to traffic having a prior or subsequent movement by water.

[FR Doc. 80-27965 Filed 9-10-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Finance Applications; Decision-Notice

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR § 1100.240). These rules provide, among other things, that opposition to the granting of an application must be filed with the Commission within 30 days after the date of notice of filing of the application is published in the **Federal Register.** Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. Opposition under these rules should comply with Rule 240(c) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, and specify with particularity the facts, matters and things relied upon, but shall not include issues or allegations phrased generally. Opposition not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of any protest shall be filed with the Commission, and a copy shall also be served upon applicant's representative or applicant if no representative is named. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 240(c)(4) of the special rules and shall include the certification required.

Section 240(e) further provides, in part, that an applicant who does not intend timely to prosecute its application shall promptly request its dismissal.

Further processing steps will be by Commission notice or order which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication except for good cause shown.*

Any authority granted may reflect administratively acceptable restrictive amendments to the transaction proposed. Some of the applications may have been modified to conform with Commission policy.

We find with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as 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, preliminary and in the absence of the issue being raised by a protestant, that the proposed dual operations are consistent with the public interest and the national transportation policy subject to the right of the Commission, which is expressly reserved, to impose such conditions as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930.

In the absence of legally sufficient protests as to the finance application *or* any application directly related thereto filed on or before October 14, 1980 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Decided: August 28, 1980.

By the Commission, Review Board Number 5, Members Krock, Taylor, and Williams (member Williams not participating).

MC-F-14085F, CRST, INC.—Purchase (Portion)—WESTERN TRANSPORTATION COMPANY, filed July 17, 1979. Representative: Robert E. Konchar, 2720 First Avenue NE., P.O. Box 1943, Cedar Rapids, IA 52406. The above application was granted by the Commission, Review Board Number 5, by decision dated March 28, 1980. In a supplemental decision dated June 24, 1980, Review Board Number 5 authorized the purchase of the following additional authority, which was intended to be transferred but was omitted from the initial publication of the authority involved in the application on August 29, 1970 at 44 FR 50680. To transport *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), in interstate or foreign commerce, over regular routes, (1) serving the Sears Roebuck and Co. retail Store at Washington, IA as an off-route point in connection with carrier's presently authorized regular-route operations between Chicago, IL and points in Iowa and (2) serving the

facilities of Minnesota Mining and Manufacturing Company at or near Knoxville, IA as an off-route point in connection with carrier's otherwise authorized regular-route operations. Protests to the transfer of the above authority should be filed within 30 days of the date of publication.

MC–F–14352F, filed March 25, 1980. MERCHANTS HOME DELIVERY SERVICE, INC. (Merchants) (P.O. Box 5067, Oxnard, CA 93030)—Control through management—MERCHANTS HOME DELIVERY SERVICE OF TEXAS, INC. (Merchants of Texas) (2400 Latigo Avenue, Oxnard, CA, 93031). Representative: David B. Schneider, P.O. Box 1540, Edmond, OK 73034. Merchants seeks authority to acquire control through management of Merchants of Texas. Robert L. Hays, the majority stockholder of Merchants, seeks authority to acquire control of Merchants of Texas through the transaction. Merchants of Texas presently holds only temporary authority from the Commission. However, it has been granted authority to operate as a motor common carrier in MC–145782 (Sub-Nos. 1F and 2F), and is presently awaiting the issuance of certificates. Also, under in MC–F–1435/F, filed concurrently with this application, Merchants of Texas, Inc., seeks authority to purchase a portion of the interstate operating rights of Merchants. Merchants is a motor common carrier pursuant to authority issued in MC–143503 and sub-numbers thereunder. (Hearing site: Oxnard, CA, or Los Angeles, CA.)

MC–F–14432, filed June 20, 1980. KENAN TRANSPORT COMPANY (Kenan) (P.O. Box 2729, Chapel Hill, NC 27514)—Purchase (Portion)—FLEET TRANSPORT COMPANY, INC. (Fleet), 934 44th Ave. North, Nashville, TN 37209. Representative: Francis W. McInerny, 100 16th St., N.W., Washington, D.C. 20026. Kenan seeks authority to purchase a portion of the interstate operating rights of Fleet. Frank H. Kenan, the majority stockholder of Kenan, also seeks authority to acquire control of said rights through the transaction. Kenan is purchasing that portion of Fleet's operating rights in MC–103051, and Sub-No. 149 thereunder, which authorizes the transportation, as a motor common carrier, over irregular routes, as follows: *liquefied petroleum gas,* (a) from the facilities of the Dixie Pipe Line Company near Griffin, GA, to points in Alabama on and east of a line beginning at the Tennessee-Alabama state line and extending along U.S. Hwy 31 to Birmingham, AL, then along U.S. Hwy 280 to the Alabama-Georgia state line, and to points in Hamilton County, TN, and (b) from the facilities of the Dixie Pipe Line Company near Opelika, AL, to points in Georgia; *propane and butane,* (a) from the facilities of Trans-Southern pipeline, at or near Anderson, SC, to points in Georgia on and east of a line beginning at the Georgia-North Carolina state line just north of Ivy Log, GA, and extending along U.S. Hwy 129 to Athens, GA, then along U.S. Hwy 78 to Thomson, GA, then along Georgia Hwy 17 to junction U.S. Hwy 1 near Wrens, GA, and then along U.S. Hwy 1 to the Georgia-Florida state line just south of Folkston, GA, and (b) from the facilities of Trans-Southern pipeline, at or near Jonesboro, GA, to points in Alabama on and east of a line beginning at the Alabama-Tennessee state line, near Elkmont Springs, TN, and extending along U.S. Hwy 31 to Birmingham, AL, then along U.S. Hwy 280 via Sylacauga and Opelika, AL, to the Alabama-Georgia state line, at Phenix City, AL, and to points in Hamilton County, TN; and *liquefied petroleum gases,* from the facilities of Dixie Pipeline Company, at or near Albany, and at or near Alma, GA, to points in Florida, Georgia, and Alabama (except to points in Barbour, Bullock, Coffee, Dale, Geneva, Henry, Houston, Lee, Macon, Pike and Russell Counties, AL). Kenan is authorized to operate as a common carrier in interstate and foreign commerce, over irreguar routes, pursuant to certificates issued in MC–124306 and subnumbers thereunder. Fleet will not retain authority duplicating that sought in the application.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80–27958 Filed 9–10–80; 8:45 am]

BILLING CODE 7035–01–M

Motor Carrier Finance Applications; Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR § 1100.240). An interim proposed final Rule 240 reflecting changes to comport with the Motor Carrier Act of 1980 was published in the July 3, 1980, **Federal Register** at 45 FR 45529 under Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. §§ 11344 and 11349.* Those rules provides among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register.** Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 240(C) of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.240(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment of $10.00, in accordance with 49 CFR 1100.240(A)(h).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed on or before October 27, 1980 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Decided: August 29, 1980.

By the Commission, Review Board Number 5, Members Krock, Taylor, and Williams. (Member Williams not participating).

MC–F–14464F, filed August 22, 1980. ASHCRAFT TRUCKING, INC. (Ashcraft) (125–127 East Franklin Street, Shelbyville, IN 46176)—purchase—LEE MOTOR LINES, INC. (Lee) (4319 S. Madison, Muncie, IN). Representative: Donald W. Smith, Suite 945–9000 Keystone Crossing, Indianapolis, IN 46240. Ashcraft seeks authority to purchase the interstate operating rights of Lee. Glyndon Ashcraft, the sole stockholder of Ashcraft, did not join in the application to seek authority to acquire control of said rights through this transaction. Such request for joinder will be required as condition to this approval. Ashcraft is purchasing the interstate operating rights of Lee evidenced by certificate No. MC–109612 and (Sub-Nos. 2, 5, 7, 12, 13, 14, 20, 27, 29, 30, 31, 34, 35, 38, 39, 40, and 41), which authorize the transportation, as a motor common carrier of (A) Regular routes, (1) *roofing materials, building insulation, and* binder twine, from Chicago, IL, to Lafayette, IN, serving no intermediate points; from Chicago over U.S. Hwy 41 to junction U.S. Hwy 52, then over U.S. Hwy 52 to Lafayette; and from Chicago over IL Hwy 1A to junction U.S. Hwy 30, then over U.S. Hwy 30 to junction U.S. Hwy 41, then to Lafayette, as specified above, (2) *hides, animal greases, and burlap, and cotton bags,* from Lafayette, IN, to Chicago, IL, serving no intermediate points; from Lafayette over the above-specified routes, to Chicago, (3) *petroleum products,* in containers, from Robinson, IL, to Lafayette, IN, serving the intermediate point of Greencastle, IN, and the off-route points of Bainbridge, Ladoga, Colfax, Wingate, and Russellville, IN, restricted to delivery only; from Robinson over IL Hwy 33 to junction IL Hwy 1, then over IL Hwy 1 to junction U.S. Hwy 40, then over U.S. Hwy 40 to junction U.S. Hwy 231, and then over U.S. Hwy 231 to Lafayette, (4) *empty petroleum products containers,* from Lafayette, IN, to Robinson, IL serving the intermediate point of Greencastle, IN, and the off-route points of Bainbridge, Ladoga, Colfax, Wingate, and Russellville, IN, restricted to pick-up only, from Lafayette over the route specified immediately above to Robinson, (5) *petroleum products in containers, and hard green soap,* from Cincinnati, OH, to Frankfort, IN, serving no intermediate points; from Cincinnati over U.S. Hwy 52 to Lebanon, IN, then over IN Hwy 39 to Frankfort, and return over the same route, (B) Irregular routes, (1) *rostone building materials, and materials* used in its erection, from Lafayette, IN, to points in IL, (2) *rosite, rostone, and materials* used in the erection of rostone, from Lafayette, IN, to points in OH, and MI, (3) *metal track or strips,* used in the erection of rostone, from Harvey, IL, and Kalamazoo, MI, to Lafayette, IN, (4) *rosite products,* from Lafayette, IN, to Beaver and Pittsburgh, PA, (5) *rostone building material and articles and materials* used in its erection, from Lafayette, IN, to points in WI, (6) *used cardboard cartons,* and *cardboard separators,* from points in OH, and points in the southern peninsula of MI, to Lafayette, IN, (7) *lime,* in bags, from Ste. Genevieve, MO, to Lafayette, IN, (8) *coloring materials,* from St. Louis, MO, to Lafayette, IN, (9) *asbestos,* from Cincinnati, OH, to Lafayette, IN, (10) *vinegar,* in bulk, in tank vehicles, from Cincinnati, OH, Chicago, IL, and Benton Harbor, MI, to Terre Haute, IN, (11) *rostone products and materials* used in the application or erection of rostone products, from Lafayette, IN, to points in MO which are on the Mississippi River, points in KY which are on the Ohio River, and points in IA, (12) *milk, cream and liquid products,* in bulk in tank vehicles, and *liquid cream, frozen cream, and dried, powdered, flaked or condensed milk,* in packages or containers, from Lafayette, IN, to Boston, Baltimore, MD, Norfolk, VA, and points in OH, PA, and DC, (13) *empty containers* used in the transportation of the commodities specified immediately above, from Boston, MA, Baltimore, MD, Norfolk, VA, and points in OH, PA, and DC, to Lafayette, IN, (14) *glass containers, caps, lids and covers,* from the plant site and warehouse facilities of Anchor Hocking Glass Corporation at or near Gurnee, IL, to St. Louis, MO, Owensboro, Henderson, and Paducah, KY, and points in IN, OH, and the Lower Peninsula of MI (except Detroit), (15) *return shipments* of the above specified commodities, from St. Louis, MO, Owensboro, Henderson, and Paducah, KY, and points in IN, OH, and the Lower Peninsula of MI, (except Detroit) to the plant site and warehouse facilities of Anchor Hocking Glass Corporation at or near Gurnee, IL, (16) *Fly ash,* in bags, from Trenton, MI, to Lafayette, and Spencer, IN, (17) *Malt beverages,* from Oshkosh, WI, to Muncie, IN, (18) *Glass containers, container closures, labels, and knocked-down paper cartons,* (a) from Muncie, IN, to points in that part of IL south of U.S. Hwy. 50; and (b) from Muncie, IN to points in that part of IL, on and north of U.S. Hwy. 50, (19) *returned shipments* of the above described commodities, (a) from points in that part of IL south of U.S. Hwy. 50 to Muncie, IN, and (b) from points in that part of IL on and north of U.S. Hwy. 50 to Muncie, IN, (20) *Glass containers, container closures, labels, and cartons,* from the plant sites and warehouses of Anchor Hocking Glass Corporation at Winchester and Richmond, IN, to points in IL, St. Louis, MO and Milwaukee, WI, (21) *Returned shipments, empty pallets and skids,* from points in IL, St. Louis, MO, and Milwaukee, WI, to the plant sites and warehouses of Anchor Hocking Glass Corporation at Winchester and Richmond, IN, (22) *Glass containers, container closures, and materials and supplies* used in their manufacture (except such commodities in bulk) (a) between Chicago, Joliet, and Mundelein, IL., on the one hand, and on the other, points in IN, (except Terre Haute); (b) between Muncie, IN, on the one hand, and on the other, points in IL, restricted to traffic originating at or destined to a plant site or warehouse of the Ball Bros. Company, (23) *Glass containers,* from the plant site of Anchor Hocking Glass Corporation at Winchester, IN, to Oconomotoc and Racine, WI, (24) *returned shipments* of the above described commodities from Oconomowoc and Racine, WI to the plant site of Anchor Hocking Glass Corporation at Winchester, IN, (25) *Glass containers,* from Oconomotoc and Racine, WI, to Gurnee, IL, (26) *Glass containers,* from Marion, Dunkirk, and Lawrenceburg, IN, to Chicago, IL, restricted to the transportation of traffic originating at the named origins and destined to the indicated destination; from the plant site of Metro Glass, a division of National Dairy Products Corp., Dalton, IL, to Cincinnati, OH, and points in MI, on and south of a line beginning at the intersection of Interstate Hwy. 94 and the IN–MI State Line to its junction with MI Hwy. 78, then to the junction of MI Hwy. 78 and Interstate Hwy. 96 to Detroit, MI (except Battle Creek and Kalamazoo), restricted to traffic originating at such plant site and destined to the indicated destinations; from Alton and Streator, IL, to Evansville, IN, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations; (27) *caps, covers, and discs for bottles and jars,* from Muncie, IN, to points in KY, IL, (except

the commercial zone of Chicago) OH, and points in MI on and south of a line beginning at the intersection of Interstate Hwy. 94 and the IN–MI state line to its junction with MI Hwy. 78, thence to the junction of MI Hwy. 78 and Interstate Hwy. 95 to Detroit, MI, (Except Battle Creek and Kalamazoo), restricted to traffic originating at the named origin and destined to the indicated destinations, (28) *zinc battery shells, engravers, and lithographers' plates,* from Muncie, IN, to points in KY, IL, OH, and points in MI., on and south of a line beginning at the intersection of Interstate Hwy. 94 and the IN–MI state line to its junction with MI Hwy. 78, then to the junction of MI Hwy. 78 and Interstate 96 to Detroit, MI (except Battle Creek and Kalamazoo), and (29) *paper packaging materials,* from Monroe, MI to Cook County, IL, and Muncie and Winchester, IN, restricted to traffic originating at the named origin and destined to the indicated destinations, (30) *Glass containers, and closures, caps, and covers for glass containers,* from the plant site and warehouse facilities of Anchor Hocking Glass Corporation at Winchester, IN to points in KY, MI, and OH, (31) *Glass containers, and enclosures* therefor, from the plant site of Kerr Glass Manufacturing Corporation at Dunkirk, IN, to St. Louis, MO, Watertown and Clyman, WI., points in IL, and those points in that part of WI on and south of U.S. Hwy. 18, restricted to traffic originating at the said plant site, (32) *Glass containers and closures therefor, paper boxes, and partitions,* from the plant site of Thatcher Glass Manufacturing Company at Streator, IL, to Lawrenceburg, IN, and points in KY (except points in the Commercial Zone of Cincinnati, OH), restricted to traffic originating at the plant site of Thatcher Glass Manufacturing Company at Streator, IL, (33) *Tin cans,* from Chicago, IL, to Muncie, IN, restricted to traffic destined to the plant sites and storage facilities of Marhoefer Packing Co., Inc., (34) *Returned shipments of glass containers, pallets, skids and returned cartons,* from Milwaukee, Racine, and Oconomotoc, WI, to the plant and warehouse sites of Anchor Hocking Glass Corporation at Gurnee, IL, (35) *Glassware and closures for glass containers,* from Dunkirk, IN, to points in KY, and TN, from Fort Wayne, Muncie, and Anderson, IN to St. Louis, MO, Watertown and Clyman, WI, and points in IL, KY, TN, and that part of WI on and south of U.S. Hwy. 18, (36) *Glass containers and closures therefor,* from Terre Haute, IN to points in IL, OH, (except Cincinnati, OH), Lower Peninsula of MI and points in that part of WI on and south of U.S. Hwy. 18, restricted to shipments originating at Terre Haute, IN and destined to the above named destination points, (37) *Paper products,* from Hartford City, IN to Frankfort and Louisville, KY., Battle Creek, Coloma, Constantine, and Niles, MI, St. Louis, MO, and point in IL and OH, (38) *Corrugated and fiberboard boxes and paper products,* from Hartford City, IN, to points in MI, on and south of a line beginning at Benton Harbor, MI, and extending along Interstate Hwy. 94 (portion formerly U.S. Hwy. 12) to Battle Creek, MI, then along MI Hwy 78 to Flint, MI, thence along MI Hwy. 21 to junction MI Hwy. 19, and on and west of a line beginning at junction MI Hwys. 21 and 19 and extending along MI Hwy 19 to junction U.S. Hwy. 23, then along U.S. Hwy. 25 to junction Interstate Hwy. 94 (portion formerly MI Hwy. 29), and thence along Interstate Hwy. 94 to Grosse Pointe, MI, (except Battle Creek, Colome, Constantine, and Niles, MI), (39) *Structural steel,* which because of size or weight requires the use of special equipment or special handling, from the plant sites of Baystone Construction, IN, and Baystone Steel, IN, located in Muncie, IN to points in IL, IN, OH, KY, MI, WI, and TN, restricted to traffic originating at the facilities named above and destined to the above named points, (40) *Glass containers and closures therefor,* from Terre Haute, IN, to points in TN, and KY (except those points in KY within the Commercial Zone of Cincinnati, OH), (41) *Glass containers and closures therefor,* from Lapel, IN, to points in IL, KY, points in that part of WI, on and south of U.S. Hwy. 18, and the lower peninsula of MI, (42) *Glass containers, caps and closures for glass containers and corrugated boxes,* from the facilities of Universal Glass Products, Star City Glass Division of National Bottle Corp., at Joliet, IL, to Louisville, KY, (43) *Glass containers and caps, and closures therefor,* and *corrugated boxes, knocked down,* from the facilities of Universal Glass Products, Star City Division of National Bottle Corp. at or near Joliet, IL to Bardstown, Clairmont, Owensboro, Frankfort, Lexington and Stanley, KY, (44) *Plastic containers and plastic articles,* (except in bulk) from Seymour, IN to points in IL, OH, and WI, (45) *Glass containers and paper cartons,* from the facilities used by Thatcher Glass Mfg. Co., Division of Dart Industries, Inc. at Streator, IL, to points in OH, and the lower Peninsula of MI, and from Lawrenceburg, IN and the facilities of Thatcher Glass Mfg. Co., Division of Dart Industries, Inc. at Cincinnati, OH to points in the above named states, restricted to traffic originating at the named origins and destined to the named destinations. Ashcraft is authorized to operate as a common carrier pursuant to certificates issued in MC–135052 and sub-numbers thereunder. Impediment: Authorization and approval of this transaction is conditioned upon the prior receipt by the Commission of an affidavit from Glyndon Ashcraft, the sole stockholder of Ashcraft, stating that he is the person in control of applicant and that he joins in this application. (Hearing site: Indianapolis, IN, or Chicago, IL.)

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-27959 Filed 9-10-80; 8:45 am]

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[Volume No. 28]

Petitions, Applications, Finance Matters (Including Temporary Authorities), Alternate Route Deviations, Intrastate Applications, Gateways, and Pack and Crate

Peitions for Modification, Interpretation, or Reinstatement of Motor Carrier Operating Rights Authority

The following petitions seek modification or interpretation of existing motor carrier operating rights authority, or reinstatement or terminated motor carrier operating rights authority.

All pleadings and documents must clearly specify the suffix numbers (e.g., M1 F, M2 F) where the docket is so identified in this notice.

The following petitions, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). These rules provide, among other things, that a *petition to intervene either with or without leave* must be filed with the Commission within 30 days after the date of publication in the **Federal Register** with a copy being furnished the applicant. Protests to these applications will be *rejected.*

A petition for intervention without leave must comply with rule 247(k) which requires petitioner to demonstrate that if (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l). In deciding whether to grant leave to intervene, the Commission considers, among other things, whether petitioner has (a) solicited the traffic or business of those persons supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. Another factor considered is the effects of any decision on petitioner's interests.

Samples of petitions and the text and explanation of the intervention rules can be found at 43 FR 50908, as modified at 43 FR 60277.

Petitions not in reasonable compliance with these rules may be rejected. Note that Rule 247(e), where not inconsistent with the intervention rules, still applies. Especially refer to Rule 247(e) for requirments as to supplying a copy of conflicting authority, serving the petition on applicant's representative, and oral hearing requests.

MC 30374 (M1F) and MC 30374 (Sub-21) (M1F), notice of filing of petition to modify certificates, filed June 23, 1980. Petitioner: TRI-STATE TRANSPORTATION CO., INC., P.O. Box 488, Bellmawr, NJ 08031. Representive: Michael R. Werner, 167 Fairfield Rd., P.O. Box 1409, Fairfield, NJ 07006. Petitioner holds motor *common carrier* authority in MC 30374 and MC 30374 (Sub-21), served November 19, 1963 and September 27, 1974, respectively. MC 30374 authorizes over regular routes, the transportation of *men's and women's garments*, and *materials, supplies, equipment, and machinery* used in the manufacture or such garments, between Philadelphia, PA, and New York, NY, and Bordentown, NJ, serving the intermediate points of Minotola, Hammonton, Camden, and Vineland, NJ, and the off-route points of Richland, Mizpah, Mays Landing, Egg Harbor City, Millville, Bridgeton, and New Brunswick, NJ, over specified routes, and *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 Woodbine, NJ, and Philadelphia, PA, serving all intermediate points, and the off-route points of Dorchester, Leesburg, and Dennisville, NJ, over specified routes, Over Irregular Routes, transporting *general commodities*, with the usual exceptions, between Egg Harbor City, NJ, and points within 20 miles thereof, on the one hand, and, on the other, New York, NY, *Men's garments*, on hangers, *pants, and vests*, and *materials and supplies* used in the manufacture of men's garments, between Boston, MA, and Woodbine, NJ, with restriction, *clothing and hatters' supplies*, from Woodbine, NJ, to New York, NY, and *Materials and supplies* used in the manufacture of clothing, from New York, NY, to Woodbine, NJ, *Rubber heels*, from Woodbine, NJ, to New York, NY, and Marlboro, MA, and *Rubber cement*, from Woodbine, NJ, to New York, NY, *Rejected shipments* of the four next above-specified commodities, from the four next above-specified destination points, to Woodbine, NJ, *Materials and supplies* used in the manufacture of shoes, and *rejected shipments* thereof, between Woodbine, NJ, on the one hand, and, on the other, New York, NY, and Marlboro, MA, and *Clothing and wearing apparel*, on hangers, and *component parts* used in the manufacture of such garments, as described in Appendix X to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, between points in Cumberland and Atlantic Counties, NJ, on the one hand, and, on the other, Martinsburg, WV. MC 30374 (Sub-21) authorizes over irregular routes, the transportation of (a) *general commodities*, with the usual exception, between New York, NY, and Philadelphia, PA, and (b) *wearing apparel*, and *materials and supplies and equipment* used in the manufacture of wearing apparel, (except commodities in bulk), between points in Hudson, Passaic, Bergen, and Essex Counties, NJ, on the one hand, and, on the other, Philadelphia, PA, with a specific restriction. By the instant petition, petitioner seeks to modify the above authority to include the following: "(1) *wearing apparel*, on hangers and in cartons, (2) *materials, supplies and equipment* used in the manufacture of wearing apparel and (3) *department store merchandise* moving in mixed loads with (1) and (2), over regular routes, (1A) (i) between Philadelphia, PA, and New York, NY, and Bordentown, NJ, serving all intermediate points, and serving points in NJ as off-route points, from Philadelphia across the Delaware River to Camden, NJ, then over NJ Hwy 45 to junction NJ Hwy 47, then over NJ Hwy 47 to junction NJ Hwy 540 via Vineland, NJ, to junction unnumbered hwy, then over unnumbered hwy via Minotola, NJ, to junction NJ Hwy 54, then over NJ Hwy 54 to junction U.S. Hwy 206, then over U.S. Hwy 206 to junction U.S. Hwy 130, then over U.S. Hwy 130 to junction U.S. Hwy 1, and then over U.S. Hwy 1 to New York, and return over the same route, and (ii) from Philadelphia across the Delaware River to Camden, NJ, then over U.S. Hwy 130 to junction unnumbered hwy near Bordentown, NJ, and then over unnumbered hwy to Bordentown, and return over the same route, (1B) between Woodbine, NJ, and Philadelphia, PA, serving all intermediate points, and serving points in NJ as off-route points, from Woodbine, over NJ Secondary Hwy 557 to Marshallville, NJ, then return over NJ Secondary Hwy 557 to junction NJ Hwy 47, then over Hwy 47 via Millville, NJ to Fairview, NJ, then over NJ Hwy 41 to Runnemede, NJ, then over NJ Hwy 168 to Camden, NJ, and then across the Delaware River to Philadelphia; and, return from Philadelphia to Millville, NJ, as specified above, then over NJ Hwy 49 to junction NJ Secondary Hwy 557, and then over NJ Secondary Hwy 557 to Woodbine, and (C) between Philadelphia, PA, and Egg Harbor City, NJ, serving all intermediate points, and serving points in NJ as off-route points, over U.S. Hwy 30.

MC 44932 (M1F) (notice of petition for modification of certificate), filed May 5, 1980. Petitioner: W. W. YOUNG & SON, INC., 11861 South Cottage Grove Avenue, Chicago, IL 60628. Representative: William H. Shawn, Suite 501, 1730 M St., NW., Washington, DC 20036. Petitioner holds a motor *common carrier* certificate in MC 44932 issued March 18, 1942 (in part) authorizing the transportation of *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 points in the Chicago, IL, commercial zone, as defined by the Commission in 1 M.C.C. 673. By the instant petition, petitioner seeks to modify the authority above by authorizing transportation of the commodities between points within a 200-mile radius of the Chicago, IL commerical zone.

MC 115212 (M1F) (Notice of petition for modification of permit), filed June 3, 1980. Petitioner: H.M.H. MOTOR SERVICE, a corporation, Route 130, Cranbury, NJ 08512. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048. Petitioner holds a *contract carrier* permit in MC 115212, issued May 25, 1978, authorizing transportation in interstate or foreign commerce over irregular route, transporting: *Such*

commodities as are dealt in by retail women's and children's ready-to-wear apparel stores, and, in connection therewith, supplies and equipment used in the conduct of such businesses, between New York, NY, on the one hand, and, on the other, points in IN, OH, MI, WI, IL, and MI, between North Bergen, NJ, on the one hand, and on the other, points in VA, NC, GA, FL, AL, MS, KY, TN WV, IN OH, MI, WI, IL, PA and MN, between North Bergen, NJ, on the one hand, and, on the other, Elmont, NY. Restriction: The operations authorized herein above are limited to a transportation service to be performed under a continuing contract, or contracts, with Diana Stores Corporation, of New York, NY, and Daylin, Inc., of North Bergen, NJ, between North Bergen, NJ, on the one hand, and, on the other, points in OK, TX, LA, NE, and NM, between North Bergen, NJ, on the one hand, and, on the other, points in AZ, AR, CA, CO, ID, IA, KS, MD, MO, MT, NV, ND, OR, SD, WA, and WY. Restriction: The operations authorized in the 2 route descriptions next-above are limited to a transportation service to be performed, under a continuing contract(s) with Diana Stores Corporation, and Daylin, Inc., of North Bergen, NJ. *Women's and children's wearing apparel* (except millinery and shoes), and *supplies and equipment used in retail women's and children's ready-to-wear apparel stores*, between New York, NY, on the one hand, and, on the other, points in KY, TN, and WV. Restriction: The operations in the route description next-above are limited to a transportation service to be performed, under a continuing contract(s) with Diana Stores Corporation, of New York, NY, and Daylin, Inc., of North Bergen, NJ. *Clothing, such as is dealt in by discount department stores*, between the New York, NY, commercial zone, as defined in *Commercial Zones and Terminal Areas*, 53 M.C.C. 451, within which local operations may be conducted pursuant to the partial exemption of section 203(b)(8) of the Interstate Commerce Act (the "exempt zone"), on the one hand, and, on the other, points in ME, VT, NH, MA, NC, RI, CT, NY, SC, PA, NJ, DE, VA, MD, and DC. Restriction: The operations authorized in the route description next-above are limited to a transportation service to be performed under a continuing contract(s), with Mammoth Mart, Inc., of West Bridgewater, Mass. *Such commodities as are dealt in by retail women's and children's ready-to-wear apparel stores, and in connection therewith, supplies and equipment used in the conduct of such business*, between New York, NY, and those points in New Jersey within 5 miles of New York, NY, and all of any New Jersey municipality any part of which is within 5 miles of New York, N.Y, on the one hand, and, on the other, points in VA, NC, SC, GA, FL, and AL, between New York NY, and points in AL, FL, GA, NC, SC, and VA. Restriction: The operations authorized in the route description next-above are limited to a transportation service to be performed under a continuing contract(s) with Diana Stores Corporation and Daylin, Inc., both of North Bergen, NJ. By the instant petition, petitioner seeks to modify the permit as follows: Add K Mart Apparel Corp. of North Bergen, NJ, as a new contracting shipper.

MC 138512 (Sub-35F) (M1F) (notice of petition for modification of permit), filed June 13, 1980. Petitioner: ROLAND'S TRANSPORTATION SERVICES, INC., d.b.a. WISCONSIN PROVISIONS EXPRESS, P.O. Box 656, Cudahy, WI 53110. Representative: Richard C. Alexander, 710 North Plankinton Avenue, Milwaukee, WI 53202. Petitioner holds *contract carrier* permit in MC–138512 (Sub-35F), issued October 3, 1979, authorizing transportation over irregular routes of *foodstuffs, and equipment, materials, and supplies* used in the manufacture of foodstuffs (except commodities in bulk), between Carthage and Monett, MO, Logan, UT, and points in WI, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with L. D. Schreiber Cheese Co., Inc., of Green Bay, WI. By the instant petition petitioner seeks to be authorized to serve as additional contracting shippers for Swiss Colony, Inc., and Swiss Colony Stores, Inc., of Monroe, WI.

MC 142710 (Sub-1) (M1F) (notice of filing of petition to modify certificate) filed August 14, 1979. Petitioner: NOMADIC ENTERPRISES, INC., d.b.a. AMERIKAMP OVERLAND ADVENTURE TOURS, 40 Highland Ave., Easthampton, MA 01027. Representative: David M. Marshall, 101 State St., Suite 304, Springfield, MA 01103. Petitioner holds motor *common carrier* certificate in MC 142710 Sub 1 authorizing the transportation, over irregular routes, of *passengers and their baggage and camping equipment*, in special operations, in camping tours, between Portland, ME, Portsmouth, NH, New Haven, Hartford, Storrs, Fairfield, New London, and Bradley International Airport, CT, Providence, RI, Los Angeles, Berkeley, and San Francisco International Airport, CA, Syracuse, Albany, Buffalo, Hamilton and Plattsburgh, NY, Logan International Airport, MA, points in Worcester, Hampden, Hampshire, Franklin, and Berkshire Counties, MA, Red Bank and Asbury Park, NJ, Washington, DC, Atlanta, GA, Miami, Orlando, Tampa, and Daytona Beach, FL, New Orleans, LA, Houston, Austin, and Dallas, TX, Ann Arbor, Kalamazoo, and Detroit, MI, Durango and Boulder, CO, Seattle, Tacoma, and Bellingham, WA, St. Paul, MN, Portland and Eugene, OR, Anchorage, AK, and Albuquerque, NM, on the one hand, and, on the other, points in the U.S. (including AK, but excluding HI), with service at Logan International Airport restricted to the transportation of passengers having a prior or subsequent movement by air in foreign commerce, and service at San Francisco International Airport, restricted to the transportation of passengers having a prior or subsequent movement by air. By the instant petition, petitioner seeks to modify the territorial description by adding New York, NY as an additional origin point and by eliminating the restriction on the transportation of passengers having a prior or subsequent movement by air at San Francisco International Airport.

Permanent Authority Decisions Volume; Decision-Notice

Decided: September 5, 1980.

The following broker, freight forwarder or water carrier applications are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR § 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the application is published in the **Federal Register**. Failure to file a protest within 30 days will be considered as a waiver of opposition to the application. A protest under these rules shall comply with Rule 247(e)(3) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding, as specifically noted below), and specify with particularity the facts, matters, and things relied upon. The protest shall not include issues or allegations phrased generally. A protestant shall include a copy of the specific portion of its authority which it believes to be in conflict with that sought in the application, and describe in detail the method—whether by joinder, interline, or other means—by which protestant would use this authority to provide all or part of the service proposed. Protests not in reasonable compliance with the

requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission. A copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named. If the protest includes a request for oral hearing, the request shall meet the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service is either (a) required by the public convenience and necessity, or, (b) will be consistent with the public interest and the transportation policy of 49 U.S.C. 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill. Member Fortier not participating.

MC 130871F, filed April 21, 1980. Applicant: FRANK E. QUINN, 2255 South Highland Ave., Lombard, IL 60148. Representative: Frank E. Quinn (same address as applicant). To engage in operations, in interstate or foreign commerce, as a *broker,* at Lombard, IL in arranging for the transportation, by motor vehicle, of *household goods,* between points in the U.S. (including AK and HI).

Motor Carrier Alternate Route Deviations; Notice

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Property (49 CFR 1042.4(c)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of this **Federal Register** notice.

Each applicant states that there will be no significant effect on either the quality of the human environment or energy policy and conservation.

Motor Carriers of Property

MC 10343 (Deviation No. 28), CHURCHILL TRUCK LINES, INC., Highway 36 West, Chillicothe, MO 64601, filed August 18, 1980. Carrier proposes to operate as a *common carrier,* by motor vehicle, of *general commodities,* with certain exceptions, over deviation routes as follows: (1) From Rockford, IL over IL Hwy 2 to junction IL Hwy 75, then over IL Hwy 75 to junction Interstate Hwy 90, then over Interstate Hwy 90 to junction Interstate Hwy 94, then over Interstate Hwy 94 to Minneapolis, MN, (2) From Rockford, IL over US Hwy 20 to Dubuque, IA, (3) From Milwaukee, WI over Interstate Hwy 94 to Minneapolis, MN and (4) From Chicago, IL over Interstate Hwy 94 to Milwaukee, WI and return over the same routes for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over pertinent service routes as follows: (1) From Rockford, IL over IL Hwy 2 to junction unnumbered Hwy (formerly portion IL Hwy 2), near Dixon, IL, then over unnumbered Hwy via Palmyra, IL to junction IL Hwy 2 near Sterling, IL, then over IL Hwy 2 to Silvis, IL, then over IL Hwy 92 (formerly shown as portion US Hwy 6) to junction US Hwy 6, then over US Hwy 6 to Davenport, IA, then over US Hwy 61 to junction US Hwy 52, then over US Hwy 52 to Minneapolis, MN, (2) From Milwaukee, WI over WI Hwy 15 to the WI–IL State line near Beloit, WI, then over IL Hwy 2 to Rockford, IL, then over the specified route in (1) above to Minneapolis, MN, and (3) From Chicago, IL over US Hwy 20 to Rockford, IL, then over the specified route in (2) above to Milwaukee, WI and return over the same routes.

MC 95540 (Deviation No. 7), WATKINS MOTOR LINES, INC., 1144 W. Griffin Road, P.O. Box 1636, Lakeland, FL 33802, filed August 25, 1980. Carrier proposes to operate as a *common carrier,* by motor vehicle, of *general commodities,* with certain exceptions, over deviation routes as follows: (1) From junction U.S. Hwy 1 and FL Hwy 100 near Bunnell, FL over FL Hwy 100 to junction U.S. Hwy 90 near Lake City, FL, (2) From junction U.S. Hwy 29 and U.S. Hwy 441 near Athens, GA, over U.S. Hwy 29 to junction GA Hwy 120, then over GA Hwy 120 to junction GA Hwy 316, then over GA Hwy 316 to junction Interstate Hwy 85, (3) From junction U.S. Hwy 1 and U.S. Hwy 70 near Raleigh, NC over U.S. Hwy 1 to junction Interstate Hwy 85 near Henderson, NC, (4) From junction Interstate Hwy 95 and NC Hwy 87 near Fayetteville, NC over NC Hwy 87 to junction U.S. Hwy 421 near Sanford, NC, then over U.S. Hwy 421 to junction Interstate Hwy 85 near Greensboro, NC, and (5) From junction U.S. Hwy 231 and AL Hwy 52 near Dothan, AL over AL Hwy 52 to the AL/GA State line, then over GA Hwy 62 to junction U.S. Hwy 82 near Albany, GA and return over the same routes for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over pertinent service routes as follows: (1) From junction U.S. Hwy 1 and FL Hwy 100 near Bunnell, FL over U.S. Hwy 1 to junction U.S. Hwy 90 near Jacksonville, FL, then over U.S. Hwy 90 to junction FL Hwy 100 near Lake City, FL, (2) From junction U.S. Hwy 29 and U.S. Hwy 441 near Athens,

GA, over U.S. Hwy 441 to junction Interstate Hwy 85 near Commerce, GA, then over Interstate Hwy 85 to junction GA Hwy 316 near Atlanta, GA, (3) From junction U.S. Hwy 70 and U.S. Hwy 1 near Raleigh, NC over U.S. Hwy 70 to junction Interstate Hwy 85 near Durham, NC, then over Interstate Hwy 85 to junction U.S. Hwy 1 near Henderson, NC, (4) From junction Interstate Hwy 95 and NC Hwy 87 near Fayetteville, NC over Interstate Hwy 95 to junction U.S. Hwy 70 near Smithfield, NC, then over U.S. Hwy 70 to junction Interstate Hwy 85 near Durham, NC, then over Interstate Hwy 85 to junction U.S. Hwy 421 near Greensboro, NC, and (5) From junction U.S. Hwy 84 and AL Hwy 52 near Dothan, AL over U.S. Hwy 84 to junctions U.S. Hwy 19 near Thomasville, GA, then over U.S. Hwy 19 to junction U.S. Hwy 82 and GA Hwy 62 near Albany, GA and return over the same routes.

Permanent Authority Notices Substitution Applications: Single-Line Service for Existing Joint-Line Service

The following applications, filed on or after April 1, 1979, are governed by the special procedures set forth in Part 1062.2 of Title 49 of the Code of Federal Regulations (49 CFR 1062.2). These proposals are published as "service sought", (as opposed to decision-notices), because in each case it appears questionable as to whether all or part of the authority sought should be issued, weighing applicant's evidence under 49 CFR 1062.2. (For example, questions may be raised relating to applicant's contentions concerning why the involved joint-line service has been cancelled or is in a state of deterioration which warrant a decision on the merits, regardless of whether the application is opposed.)

The rules provide, in part, that carriers may file petitions with this Commission for the purpose of seeking intervention in these proceedings. Such petitions may seek intervention either with or without leave as discussed below. However, all such petitions must be filed in the form of verified statements, and contain all of the information offered by the submitting party in opposition. Petitions must be filed with the Commission within 30 days of publication of this decision-notice.

Petitions for intervention without leave (i.e., automatic intervention), may be filed only by carriers which are, or have been, participating in the joint-line service sought to be replaced by applicant's single-line proposal, and then only if such participation has occurred within the one-year period immediately proceeding the applicant's filing. Only carriers which fall within this filing category can base their opposition upon the issue of the public need for the proposed service.

Petitions for intervention with leave may be filed by any carrier. The nature of the opposition, however, must be limited to issues other than the public need for the proposed service. The appropriate basis for opposition, i.e., applicant's fitness, may include challenges concerning the veracity of the applicant's supporting information, and the bona-fides of the joint-line service sought to be replaced (including the issue of its substantiality). Petitions containing only unsupported and undocumented allegations will be rejected.

Petitions not in reasonable compliance with the requirements of the rules may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

MC 135082 Sub 86F, filed May 23, 1979 and published in the **Federal Register** April 15, 1980 and republished as corrected this issue. Applicant: ROADRUNNER TRUCKING, INC., P.O. Box 26748, 4100 Edith Blvd, NE, Albuquerque, NM 87125. Representative: Randall R. Sain (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *lumber, lumber products, wood products, and millwork*, (except commodities in bulk, in tank vehicles), between points in AR, AZ, CA, CO, ID, KS, LA, MO, OK, MI, NM, NV, OR, TX, UT, WA, and WY. (Hearing site: Albuquerque, NM.) The purpose of this correctly show "KA" to read "LA" and "MT" to read "MI".

Note.—The sole purpose of this application is to substitute single-line for joint-line operations.

Permanent Authority Decisions, Decision-Notice, Substitution Applications: Single-Line Service for Existing Joint-Line Service

The following applications, filed on or after April 1, 1979, are governed by the special procedures set forth in Part 1062.2 of Title 49 of the Code of Federal Regulations (49 CFR 1062.2).

The rules provide, in part, that carriers may file petitions with this Commission for the purpose of seeking intervention in these proceedings. Such petitions may seek intervention either with or without leave as discussed below. However, all such petitions must be filed in the form of verified statements, and contain all of the information offered by the submitting party in opposition. Petitions must be filed with the Commission within 30 days of publication of this decision-notice.

Petitions for intervention without leave (i.e. automatic intervention), may be filed only by carriers which are, or have been, participating in the joint-line service sought to be replaced by applicant's single-line proposal, and then only if such participation has occurred within the one-year period immediately proceeding the application's filing. Only carriers which fall within this filing category can base their opposition upon the issue of the public need for the proposed service.

Petitions for intervention with leave may be filed by any carrier. The nature of the opposition; however, must be limited to issues other than the public need for the proposed service. The appropriate basis for opposition, i.e. applicant's fitness, may include challenges concerning the veracity of the applicant's supporting information, and the bona-fides of the joint-line service sought to be replaced (including the issue of its substantiality). Petitions containing only unsupported and undocumented allegations will be rejected.

Petitions not in reasonable compliance with the requirements of the rules may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, unresolved fitness questions,

and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930(a) (formerly section 210 of the Interstate Commerce Act).

In the absence of legally sufficient petitions for intervention, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 4, Members Fitzpatrick, Fisher, and Dowell.

MC 113908 (Sub-507F), filed June 2, 1980. Applicant: ERICKSON TRANSPORT CORP., 2255 North Packer Road, P.O. Box 10068 G.S., Springfield, MO 65804. Representative: John E. Jandera, P.O. Box 1979, Topeka, KS 66601. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *chemicals*, from points in IL to points in AR, AZ, CA, CO, MO, MT, NV, OK, OR, TX, and UT.

Note.—The sole purpose of this application is to substitute single-line for joint line operations.

Irregular-Route Motor Common Carriers of Property—Elimination of Gateway Letter Notices

The following letter-notices of proposals to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's *Gateway Elimination Rules* (49 CFR 1065), and notice thereof to all interested persons is hereby given as provided in such rules.

An original and two copies of protests against the proposed elimination of any gateway herein described may be filed with the Interstate Commerce Commission *within 10 days* from the date of this publication. A copy must also be served upon applicant or its representative. Protests against the elimination of a gateway will *not* operate to stay commencement of the proposed operation.

Successively filed letter-notices of the same carrier under these rules will be numbered consecutively for convenience in identification. Protests, if any, must refer to such letter-notices by number.

The following applicants seek to operate as a *common carrier*, by motor vehicles, over irregular routes.

MC 113908 (Sub-E217, E220, E224, E233, E241, E349, E352) filed December 5, 1974. Applicant: ERICKSON TRANSPORT CORP., P.O. Box 3180-Glenstone Station, Springfield, MO 65804. Representative: John E. Jandera, 641 Harrison Street, Topeka, KS 66603. (E217 *Vinegar and vinegar stock*, in tank vehicles, from points in MI on and north of I Hwy. 94, to Hutchinson, KS (Oklahoma City, OK*). (E220) *Vinegar*, in tank vehicles, from Chicago, IL, to points in CA on and south of a line by connecting US Hwy 50 with I Hwy 80 (Memphis, TN*). (E224) *Vinegar*, in tank vehicles, from Kansas City and Springfield, MO, to points in CA on and south of a line by connecting US Hwy 50 with I Hwy 80 (Paris, TX*). (E233) *Vinegar*, in tank vehicles, from Yakima, WA, to points in OK east of US Hwy 81 and points in AR. (Marionville, MO*). (E241) *Vinegar*, in tank vehicles, from Hutchinson and Wichita, KS, to points in CA in and north of I Hwys 40 and 15 (Dallas, TX*). (E349) *Vinegar and vinegar stock*, and *apple juice*, in tank vehicles, from St. Paul, MN, to points in GA, AL, points in LA on and south of US Hwy 84, and points in MS on and south of US Hwy 98 (Belding, MI*). (E352) *Vinegar, vinegar stock*, and *apple juice*, in tank vehicles, from Chicago, IL, to points in CO and points in NE in and west of NE Hwy 61 (Belding, MI*). (Gateways eliminated: asterisked)

MC 113908 (Sub-E268, E338) filed December 5, 1974. Applicant: ERICKSON TRANSPORT CORP., P.O. Box 3180-Glenstone Station, Springfield, MO 65804. Representative: John E. Jandera, 641 Harrison Street, Topeka, KS 66603. (E268) *Vinegar*, in tank vehicles, from Kansas City, MO, to points in CA south of US Hwys. 80 and 20 and in and north of Santa Cruz, Santa Clara, Merced, Marera, Fresno, and Inyo Counties. (Gateway eliminated: Memphis, TN) (E338) *Vinegar*, in tank vehicles, from Wenatchee and Yakima, WA, to points in OK, AR, MO, points in IA on and east of US Hwy. 61 between the IA–MO State line and Rock Island, points in IL on and south of I Hwy. 80, and points in TX on and east of a line beginning at the TX–NM State line extending along US Hwy. 180 to junction US Hwy. 87, then along US Hwy. 87 to junction US Hwy. 277, then along US Hwy. 277 to the US—MX International Boundary line. (Gateway eliminated: Wichita, KS.)

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-27960 Filed 9-10-80; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 55 (Sub-47]

Policy on Transfer of Certificates of Registration to Multi-State Carrier

AGENCY: Interstate Commerce Commission.

ACTION: Final policy statement.

SUMMARY: The Commission adopts a final policy statement directing a multi-state carrier seeking to acquire a Certificate of Registration to file concurrently, as a directly related matter, a transfer application under 49 U.S.C. 10926 along with a conversion application under 49 U.S.C. 10922 or 10923, when the transaction is not subject to 49 U.S.C. 11343–11344. In these circumstances, only the filing fee for a transfer application need be paid. Procedurally, the Commission will handle these cases on a consolidated basis with the transfer application as the lead proceeding.

EFFECTIVE DATE: SEPTEMBER 11, 1980.

FOR FURTHER INFORMATION CONTACT: Richard Kelly (202–275–7564).

Les Miller (202–275–7266).

SUPPLEMENTARY INFORMATION: Multi-state carriers acquiring Certificates of Registration are required to file only a conversion application under 49 U.S.C. 10922 or 10923 if the transaction was not subject to 49 U.S.C. 11343–11344. The procedure to be followed was set forth in *Las Vegas Tank Lines, Inc., Extension,* 107 M.C.C. 589, 596 (1968), and in footnote 2 to 49 C.F.R. 1132.1(b). Recent changes in statutes and rules make revision of this policy appropriate.

The modification of the transfer regulations in Ex Parte No. MC–111, served June 27, 1979, deleted footnote 2. The Motor Carrier Act of 1980 raised the jurisdictional exemption in 49 U.S.C. 11343(d)(1) from $300,000 to $2,000,000 which will increase the number of filings under section 10926. Finally, jurisdiction over transfer function was shifted from the Motor Carrier Board to the Review Boards in Ex Parte No. MC–67 (Sub-No. 9), published in the **Federal Register** issue of July 3, 1980 at 45 FR 45525. Unlike the Motor Carrier Board, the Review Boards have authority to decide conversion applications directly related to proposed transfers.

In the future, multi-state carriers purchasing Certificates of Registration must concurrently file both a transfer application under 49 U.S.C. 10926 (unless 49 U.S.C. 11343–11344 apply) and a directly related conversion application under 49 U.S.C. 10922 or 10923. This will provide guidance to carriers, and to establish uniform treatment of these transaction under both 49 U.S.C. 10926 and 11343–11344, and will reflect more accurately the actual intent of the parties.

The additional evidentiary burden imposed on affected carriers should be minimal, since Ex Parte No. MC–111 simplified and shortened the transfer application form. Applicants will benefit from paying only the basic fee for the transfer application (currently $100) rather than the $350 presently required for applications under 49 U.S.C. 10922 or 10923. See 49 CFR 1002.2(c).

This statement interprets Commission rules and modifies other rules relating to agency practice and procedure. Therefore, the final rule is being adopted without prior notice or public proceedings, in accordance with the provisions of 5 U.S.C. 553(b)(A).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

This document is promulgated under the authority contained in 49 U.S.C. 10321(a) and 5 U.S.C. 553 and 559.

Decided: August 29, 1980.

By the Commission, Chairman Gaskins, Vice-Chairman Gresham, Commissioners Stafford, Clapp, Trantum, Alexis, and Gilliam. Commissioner Stafford not participating.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80–27961 Filed 9–10–80; 8:45 am]

BILLING CODE 7035–01–M

Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the **Federal Register** of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication 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.gs., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before October 27, 1980 (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 notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operation right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP4–032

Decided: August 28, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones. Member Jones not participating.

MC 5117 (Sub-15F), filed August 26, 1980. Applicant: VAN SOMEREN TRANSFER, INC., Baldwin, WI 54002. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440. 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, River Falls and Woodville, WI.

MC 129387 (Sub-115F), filed August 26, 1980. Applicant: PAYNE TRANSPORTATION, INC., P.O. Box 1271, Huron, SD 57350. Representative: Charles E. Dye (same address as applicant). Transporting *cleaning, washing, buffing or polishing compounds, textile, softeners, lubricating oil or grease, and deodorants and disinfectants,* (except commodities in bulk), from South Holland, IL, to points in CA, CO, IA, MO, NE, ND, and SD.

MC 144416 (Sub-6F), filed August 26, 1980. Applicant: C. F. MCGRAW, P.O. Box 498, Garden City, KS 67846. Representative: Herbert Alan Dubin, 818 Connecticut Ave., N.W., Washington, DC 20006. 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 commodities in bulk and hides), between points in Finney County, KS, on the one hand, and, on the other, those points in the U.S. in and west of MT, WY, CO, OK, AR, and LA.

MC 148127 (Sub-13F), filed August 26, 1980. Applicant: LINEHAUL EXPRESS CORPORATION, P.O. Box 5078, Manchester, NH 03108. Representative: John A. Sykas (same address as applicant). Transporting *plastic film,*

sheeting, and bags, and *plastic articles,* between points in the U.S., restricted to traffic originating at or destined to the facilities of Mobil Chemical Co.

MC 148827 (Sub-1F), filed August 25, 1980. Applicant: DAVID ALGER, d.b.a. D & C TRANSPORTATION, 2 Chandler Ave., Ext., Orleans, VT 05860. Representative: Frederick T. O'Sullivan, P.O. Box 2184, Peabody, MA 01960. Transporting *petroleum and petroleum products,* in tank vehicles, from Portland, ME, to points in Orleans County, VT.

Volume No. OP4–035

Decided: August 29, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones. Member Jones not participating.

MC 130997F, filed August 26, 1980. Applicant: AMERICAN AUTOMOBILE ASSOCIATION, INC., d.b.a. AAA WORLD WIDE TRAVEL AGENCY, 433 W. Washington Ave., Madison, WI 53703. Representative: Edward M. Amsdell (same address as applicant). To engage in operations, in interstate or foreign commerce, as a *broker* at Madison, WI, in arranging for the transportation, by motor vehicle, of *passengers and their baggage,* in charter operations, between points in the U.S., including AK and HI.

MC 134467 (Sub-68F), filed April 27, 1980. Applicant: POLAR EXPRESS, INC., P.O. Box 845, Springdale, AR 72764. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. Transporting (1) *foodstuffs* (except in bulk), and (2) *materials, equipment, and supplies* used by restaurants or restaurant suppliers, between points in the U.S., restricted to traffic destined to the facilities of Franchise Services, Inc.

MC 135326 (Sub-28F), filed August 27, 1980. Applicant: SOUTHERN GULF TRANSPORT, INC., P.O. Box 7959, Shreveport, LA 71107. Representative: Hugh T. Matthews, 2340 Fidelity Union Tower, Dallas, TX 75201. Transporting *fertilizer,* in bulk, from Tyler, TX, to points in OK, AR, and LA.

MC 139966 (Sub-3F), filed August 27, 1980. Applicant: FAIRPORT TRUCKING COMPANY, a corporation, P.O. Box 217, Williams St., Grand River, OH 44045. Representative: Richard H. Brandon, P.O. Box 97, 220 W. Bridge St., Dublin, OH 43017. Transporting *cement,* in bulk, (1) from Wampum and Bessemer, PA, to points in OH, and (2) from Ashtabula, OH, to points in OH and PA.

MC 145557 (Sub-12), filed August 27, 1980. Applicant: LIBERTY TRANSPORT, INC., P.O. Box 9182, Kansas City, MO 64168. Representative: Arthur J. Cerra, 2100 TenMain Center, P.O. Box 19251, Kansas City, MO 64141. Transporting (1) *non-exempt food or kindred products* as described in Item 20 of the Standard Transportation Commodity Code Tariff, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S.

MC 146166 (Sub-2F), filed August 27, 1980. Applicant: TRIANGLE TRANSPORT CO., INC., 74 Sulyma St., Cumberland, RI 02864. Representative: William F. Poole, 41 Bea Dr., North Kingstown, RI 02852. Transporting (1) *soaps and soap by-products,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S., under continuing contract(s) with Original Bradford Soap Works, Inc., of West Warwick, RI.

MC 149536F, filed August 26, 1980. Applicant: RODCO LEASING, INC., 380 Union St., West Springfield, MA 01089. Representative: James M. Burns, 1383 Main St., Suite 413, Springfield, MA 01103. Transporting (1) *office and school supplies and equipment,* and (2) *materials* used in the manufacture and distribution of the commodities in (1) above, (3) *paper and paper articles,* and (4) *materials, equipment, and supplies* used in the manufacture and distribution of paper and paper articles, between points in the U.S.

MC 150607 (Sub-1F), filed August 27, 1980. Applicant: B & B TRUCKING, INC., 240 West 13th St., Williston, ND 58801. Representative: Todd W. Foss, 502 First National Bank Bldg., Fargo, ND 58126. Transporting (1) *dry drilling fluid additives,* and (2) *storage houses and vans* for the commodities in (1) above, between points in ND, on the one hand, and, on the other, points in SD, WY, and MT.

MC 151656F, filed August 25, 1980. Applicant: F.M.R. LEASING CO., INC., 115 Jacobus Ave., South Kearny, NJ 07032. Representative: James A. Fagan (same address as applicant). Transporting *such commodities* as are dealt in or used by grocery, drug and food business houses, between New York, NY, on the one hand, and, on the other, points in CT, MA, MD, NY, NJ, and PA.

MC 151657F, filed August 25, 1980. Applicant: ARM TRANSPORTATION CORPORATION, P.O. Box 9480, Amarillo, TX 79105. Representative: A. J. Swanson, P.O. Box 1103, 226 N. Phillips Ave., Sioux Falls, SD 57101. 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 Carriers Certificates,* 61 M.C.C. 209 and 766 (except commodities in bulk), between points in the U.S., under continuing contract(s) with National Beef Packing Co., Inc., of Liberal, KS.

Volume No. OP4–036

Decided: September 2, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones. Member Jones not participating.

MC 118866 (Sub-15F), filed August 28, 1980. Applicant: PAUL L. ZAMBERLAN & SONS, INC., P.O. Box 15, Lewis Run, PA 16738. Representative: Chester A. Zyblut, 366 Exectutive Bldg., 1030 15th St., N.W., Washington, DC 20005. Transporting (1) *clay products* and (2) *materials equipment, and supplies* used in the manufacture and distribution of clay products, (except commodities in bulk), between Lewis Run, PA, on the one hand, and, on the other, points in the U.S. (except AK, HI, CT, MA, VT, NJ, DE, MD, VA, WV, OH, MI, IN, IL, NC, SC, and WI.)

MC 120077 (Sub-2F), filed August 28, 1980. Applicant: CLETUS CASEY, d.b.a. HOLMEN–LA CROSSE TRUCK LINE, 115 West 3rd St., Ettrick, WI 54627. Representative: Joseph E. Ludden, 324 Exchange Bldg., P.O. Box 1567, La Crosse, WI 54601. 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), between Galesville and Whitehall, WI, over U.S. Hwy 53, serving the intermediate points of Balir and Ettrick, WI.

MC 123476 (Sub-58F), filed August 28, 1980. Applicant: CURTIS TRANSPORT, INC., P.O. Box 388, Arnold, MO 63010. Representative: David G. Dimit (same address as applicant). Transporting (1) *paper products,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of paper products, between points in St. Claire County, IL and Elkhart County, IN, on the one hand, and, on the other, those points in the U.S. on and east of U.S. Hwy 85.

MC 135306 (Sub-5F), filed August 28, 1980. Applicant: DAN'S TRANSIT, INC., 1254 Median Rd., Medina, OH 44256. Representative: James M. Burtch, 100 E. Broad St., Columbus, OH 43215. Transporting (1) *iron and steel articles,* and (2) *materials equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in OH, IN, IL, MI, WV, and PA, on the one hand, and, on

the other, points in AL, CT, DE, FL, GA, KY, MD, MA, MS, ME, NH, NC, RI, SC, TN, TX, VT, and VA.

MC 146886 (Sub-5F), filed August 28, 1980. Applicant: CONLAN TRUCK LINES, INC., 6160 South 116th St., Hales Corner, WI 53130. Representative: Richard A. Westley, 4506 Regent St., Suite 100, Madison, WI 53705. Transporting *such commodities* as are dealt in by distributors of household products, between points in Dubuque and Polk Counties, IA, La Crosse County WI, and Brown County, SD, on the one hand, and, on the other, points in MN, ND, and SD.

MC 151316 (Sub-1F), filed August 28, 1980. Applicant: AERO DISTRIBUTING CO., INC., 4814 Fulton Industrial Blvd., Atlanta, GA 30301. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. Transporting (1) *waste or scrap materials,* and (2) *plastic articles,* between points in Fulton County, GA, on the one hand, and, on the other, points in TX, OK, AR, LA, MO, KY, MS, TN, FL, IL, AL, WV, VA, NC, SC, and GA.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-27963 Filed 9-10-80; 8:45 am]

BILLING CODE 7035-01-M

Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the **Federal Register** on July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication 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.gs., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before October 27, 1980 (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 notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP2–036

Decided: September 5, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill.

MC 59332 (Sub-11F), filed August 25, 1980. Applicant: TAYLOR'S EXPRESS, INC., 425 North 37th St., Pennsauken, NJ 08110. Representative: Micheal R. Werner, 167 Fairfield Rd., P.O. Box 1409, Fairfield, NJ 07006. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 71593 (Sub-75F), filed September 2, 1980. Applicant: FORWARDERS TRANSPORT, INC., 1608 E. Second St., Scotch Plains, NJ 07076. Representative: David W. Swenson (same address as applicant). Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 115092 (Sub-111F), filed August 25, 1980. Applicant: TOMAHAWK TRUCKING, INC., P.O. Box 0, Vernal, UT 84078. Representative: Walter Kobos, 1016 Kehoe Dr., St. Charles, IL 60174. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 151613F, filed August 20, 1980. Applicant: LEWIS C. HARVEY, Rt. 2, P.O. Box 118, Arlington, VA 22922. Representative: Lewis C. Harvey (same as applicant). Transporting *food and other edible products* (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, agricultural limestone and other soil conditioners, and agricultural fertilizers, if such transportation is provided with the owner of the motor vehicle in such vehicle, except in emergency situations, between points in the U.S.

Volume No. OP3–015

Decided Sept. 2, 1980.

By the Commission, Review Board Number 3, Members Parker Fortier, and Hill. Member Fortier not participating.

MC 9644 (Sub-7F), filed August 22, 1980. Applicant: B.T.L., INCORPORATED, P.O. Box 4060, Kansas City, MO 64101. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 130995F, filed August 21, 1980. Applicant: WESTERN FREIGHT EXCHANGE, INC., 1328 Burton Ave., Bldg. B, N. 8, Salinas, CA 93901. Representative: A. J. Swanson, Quaintance & Swanson, P.O. Box 1103, 226 North Phillips Ave. (Suite 210), Sioux Falls, SD 57101. As a *broker,* to arrange for the transportation of *general commodities* (except household goods), between points in the U.S.

Volume No. OP4–033

Decided: August 28, 1980.

By the Commission, Review Board Number 1, three Members Carleton, Joyce, and Jones. Members Jones not participating.

MC 109847 (Sub-32F), filed August 12, 1980. Applicant: BOSS-LINCO LINES, INC., 3909 Genesee St., Cheektowaga, NY 14225. Representative: Harold G. Hernley, Jr., 110 S. Columbus St., Alexandria, VA 22314. Transporting *general commodities* (except used

household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 117676 (Sub-23F), filed August 25, 1980. Applicant: HERMS TRUCKING, INC., 620 Pear St., Trenton, NJ 08648. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 144667 (Sub-19F), filed August 26, 1980. Applicant: ARTHUR E. SMITH & SON TRUCKING, INC., P.O. Box 1054, Scottsbluff, NE 69361. Representative: Bradford E. Kistler, P.O. Box 82028, Linclon, NE 68501. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

Volume No. OP4–037

Decided: September 2, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones. Member Jones not participating.

MC 150896 (Sub-1F), filed August 28, 1980. Applicant: HUMCO, INC., Suite TC–106, East Furnace Branch Road, Glen Burnie, MD 21061. Representative: Richard P. Taylor, 1250 Connecticut Ave., N.W., Washington, D.C. 20036. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80–27964 Filed 9–10–80; 8:45 am]

BILLING CODE 7035–01–M

Permanent Authority Decisions; Decision-Notice

Correction

In FR Doc. 80–23333, appearing at page 51960 in the issue of Tuesday, August 5, 1980, please make the following correction:

On page 51961, first column, the MC designation for Associated Air Freight Inc., in the first line of the last paragraph, now reading "MC 151219 (Sub-9F)", should read "MC-151219F".

BILLING CODE 1505–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacture of Controlled Substances; Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 28, 1979, Warner-Lambert Company, 188 Howard Avenue, Holland, Michigan 49423 made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic class of controlled substances listed below:

Drug and Schedule	
Oxycodone	II
Methylphenidate	II
Methaqualone	II
Pentabarbital	II

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, N.W., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1203), and must be filed no later than October 13, 1980.

Dated: September 4, 1980.

Frederick A. Rody,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 80–28089 Filed 9–10–80; 8:45 am]

BILLING CODE 4410–09–M

Manufacture of Controlled Substances; Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 26, 1980, Penick Corporation, 530 New York Avenue, Lyndhurst, New Jersey 07071, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic class of controlled substances listed below:

Drug	Schedule
LAAM	I
Diphenoxylate	II
Methadone	II
Methadone-Intermediate	II
Conc. of Poppy Straw	II

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, N.W., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1203), and must be filed no later than October 13, 1980.

Dated: September 4, 1980.

Frederick A. Rody, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 80–28091 Filed 9–10–80; 8:45 am]

BILLING CODE 4410–09–M

Antitrust Division

[Civil Action No. 79–0962–T]

United States v. Merck & Co., Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Southern District of California in *United States of America v. Merck & Co., Inc.*, Civil Action No. 79–0962–T. The Complaint in this case alleged that the acquisition of Alginate Industries Limited, a United Kingdom corporation that is the largest producer of alginate in the world, by defendant, whose Kelco Division is the largest producer of alginate in the United States and the second largest producer in the world, was in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Sections 1 and 2 of the Sherman Act, 15 U.S.C. 1, 2. Six alginate uses were alleged as areas in which to measure the competitive impact of the acquisition. The proposed Final Judgment requires the defendant to divest itself of Scotia Marine Products Limited, its wholly-owned Canadian subsidiary that produces alginate in Nova Scotia, and to furnish the purchaser information and assistance that should allow the purchaser to use

Scotia Marine Products Limited to compete effectively in the sale of alginate in the United States for the six alginate uses. The proposed Judgment further enjoins defendant for a period of ten years from the date of entry of the Judgment from acquiring, other than through a corporate reorganization or with the consent of the United States, all or any part of the voting securities of any producer, distributor, or seller of alginate, or the assets of such a company used in production, distribution, or sale or alginate, unless the assets are acquired in the normal course of business.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the Federal Register and filed with the Court. Comments should be directed to Roger B. Andewelt, Assistant Chief, Intellectual Property Section, Antitrust Division (Safe–704), United States Department of Justice, Washington, D.C. 20530 (telephone: 202/724–7966).

Joseph H. Widmar,

Director of Operations.

P. Terry Lubeck, Andrew L. Pringle, Sanford M. Adler, Antitrust Division, United States Department of Justice, Washington, DC 20530, Telephone: 202/724–7974; Robert E. Noel, Assistant United States Attorney, United States Courthouse, 940 Front Street, San Diego, CA 92189, Telephone: 714/293–5662, *Attorneys for Plaintiff.*

Robert J. Sisk, Hughes Hubbard & Reed, One Wall Street, New York, NY 10005, Telephone: 212/943–6500; Jack W. Crumley, Luce, Forward, Hamilton & Scripps, The Bank of California Plaza, 110 West A Street, San Diego, CA 92101, Telephone: 714/236–1414, *Attorneys for Defendant.*

U.S. District Court, Southern District of California

United States of America Plaintiff, v. *Merck & Co., Inc.,* Defendant.

Civil Action No. 79–0962–T.

Filed: September 2, 1980.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

For the Plaintiff: Sanford M. Litwack, *Assistant Attorney General;* Joseph H. Widmar, Charles F. B. McAleer, *Attorneys, Department of Justice.*

For the Defendant: Hughes Hubbard & Reed, By: Robert J. Sisk, *A Member of the Firm,* Luce, Forward, Hamilton & Scripps, By: Jack W. Crumley, *A Member of the Firm;* P. Terry Lubeck, Andrew L. Pringle, Sanford M. Adler, *Attorneys, Department of Justice, Antitrust Division, Department of Justice, Washington, DC 20530.*

It is so ordered:

Dated:

Howard B. Turrentine,

Judge of the District Court.

P. Terry Lubeck, Andrew L. Pringle, Sanford M. Adler, Antitrust Division, United States Department of Justice, Washington, DC 20530, Telephone: 202/724–7974; Robert E. Noel, Assistant United States Attorney, United States Courthouse, 940 Front Street, San Diego, CA 92189, Telephone: 714/293–5662, Attorneys for Plaintiff.

Robert J. Sisk, Hughes Hubbard & Reed, One Wall Street, New York, NY 10005, Telephone: 212/943–6500; Jack W. Crumley, Luce, Forward, Hamilton & Scripps, The Bank of California Plaza, 110 West A Street, San Diego, CA 92101, Telephone: 714/236–1414, Attorneys for Defendant.

U.S. District Court, Southern District of California

United States of America, Plaintiff, v. *Merck & Co., Inc.,* Defendant.

Civil Action No. 79–0962–T

Final Judgment

Filed: September 2, 1980.

Plaintiff, United States of America, having filed its complaint herein on August 17, 1979, defendant having filed its answer thereto, and plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and upon consent of the parties hereto, it is hereby,

Ordered, adjudged, and decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The complaint states a claim upon which relief may be granted against defendant under Section 7 of the Clayton Act (15 U.S.C. § 18).

II

As used in this Final Judgment:

(A) "Alginate" means alginic acid derived from Seaweed; its various salts, such as sodium alginate, potassium alginate, and ammonium alginate; and its esters, such as PGA.

(B) "Alginate Industries" means Alginate Industries Limited, an indirect wholly-owned subsidiary of defendant, organized and existing under the laws of the United Kingdom; and any subdivision, subsidiary, or affiliate thereof.

(C) "Antimigrant" means a substance added to a bath containing dye or pigment for coloring textiles that prevents or retards movement of the dye or the pigment.

(D) "Buttered Syrup" means any and/or all Table Syrups containing at least two (2) percent butter by weight of the syrup.

(E) "Dental Impression Material" means any type of material that is used to register or make a negative form or impression of a part of the oral cavity, including some or all of the oral tissues in an edentulous mouth and some or all of the oral tissues and/or teeth in other mouths.

(F) "Emulsifier" means a substance that facilitates or assists in the formation of an Emulsion.

(G) "Emulsion" means an intimate mixture of two immiscible liquids, such as oil and water, in which one liquid phase is dispersed throughout the other in the form of small discrete droplets.

(H) "Foam Stabilizer" means a substance or combination of substances that helps protect or maintain foam on a Malted Beverage.

(I) "Kelco" means the Kelco Division of Merck.

(J) "Malted Beverage" means a "malt beverage" as that term is defined in 27 C.F.R. § 7.10 and includes such products as beer, ale, malt liquor, porter, stout, lager, or lager beer.

(K) "Merck" means defendant, Merck & Co., Inc., a corporation organized and existing under the laws of the State of New Jersey; and any subdivision, subsidiary, or affiliate thereof.

(L) "Person" means any individual, partnership, association, firm, corporation, proprietorship, joint venture, or other legal or business entity.

(M) "PGA" means propylene glycol alginate.

(N) "Pourable Dressing" means a liquid food that is used to flavor salads and that is prepared from, among other things, oil, water, vinegar, lemon juice, lime juice, sugar, and/or flavoring agents, or from a combination of dry ingredients to which oil, water, vinegar, or another liquid is added.

(O) "Print Paste Thickener" means a substance added to a print paste for printing textiles to increase viscosity.

(P) "Purchaser" means one or more Persons acquiring all the stock of Scotia Marine or all the business and assets of Scotia Marine pursuant to this Final Judgment.

(Q) "Sale of Scotia Marine" means the sale of all the stock of Scotia Marine or all the business and assets of Scotia Marine pursuant to this Final Judgment.

(R) "Scotia Marine" means Scotia Marine Products Limited, a wholly-owned subsidiary

of defendant, organized and existing under the laws of Nova Scotia, Canada.

(S) "Seaweed" means all seaweed containing alginic acid, other than seaweed of the genus Macrocystis and seaweed of the genera and species Durvillea potatorum and Lessonia flavicans.

(T) "Specified Function" means to serve as a Stabilizer, Emulsifier, or Thickener in a Pourable Dressing; as a gelling agent in a Dental Impression Material; as a Foam Stablizer in a Malted Beverage; as a foaming or gelling agent in antacids; as a Stabilizer, Emulsifier, or Thickener in a Buttered Syrup; or as an Antimigrant or a Print Paste Thickener.

(U) "Specified Product" means, for each Alginate product offered for sale by Kelco for one or more Specified Functions within two (2) years preceding the date of entry of this Final Judgement, the Alginate Product produced by Alginate Industries during that period that is the closest functional equivalent of that Kelco Alginate product.

(V) "Stabilizer" means a substance that helps protect and maintain an Emulsion or a Suspension.

(W) "Suspension" means a system in which solid particles are dispersed throughout a continuous liquid phase.

(X) "Table Syrup" means any type or kind of syrup defined or described in 21 C.F.R. § 168.180.

(Y) "Thickener" means a substance that increases viscosity.

III

This Final Judgment applies to defendant and to its officers, directors, agents, employees, subsidiaries, successors, and assigns, and to all other Persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise. This Final Judgment shall apply to Scotia Marine until it is sold pursuant to this Final Judgment, and the Purchaser shall not solely by virtue of its purchase of Scotia Marine be considered a successor or assign of defendant.

IV

Any Sale of Scotia Marine shall be to a Purchaser who has the ability to operate Scotia Marine as a single ongoing business; provided, however, that a producer of Alginate may not purchase Scotia Marine pursuant to this Final Judgment unless plaintiff furnishes prior written approval of the sale.

V

Merck is ordered and directed to complete the Sale of Scotia Marine. Upon request of any bona fide prospective Purchaser, but subject to Sections XI and XII, Merck shall furnish on an equal and nondiscriminatory basis information regarding Scotia Marine and the assistance Merck shall provide pursuant to Sections XIX through XXIV to enable the prospective Purchaser to decide whether to purchase Scotia Marine and shall permit the prospective Purchaser to inspect Scotia Marine solely for that purpose. If within sixty (60) days from the date of entry of this Final Judgment Merck has not entered into a contract for Sale of Scotia Marine, upon written request of plaintiff thereafter, Merck shall:

(A) Prepare a brochure describing Scotia Marine and the assistance Merck shall provide the Purchaser pursuant to Sections XIX through XXIV.

(B) Forward the brochure along with a copy of this Final Judgment to each Person requesting the brochure, to each prospective Purchaser known to Merck, and to each Person to whom plaintiff requests Merck to send the brochure.

(C) Direct a Person holding a middle management position with Merck to devote his or her best efforts and a substantial portion of his or her time to promote and complete the Sale of Scotia Marine.

VI

Sixty (60) days before the date when plaintiff may be able to petition this Court to appoint a trustee, Merck shall promptly notify this Court and plaintiff. Within thirty (30) days of the giving of the notice, each party shall exchange with the other party a written list of the names and qualifications of not more than three (3) Persons that the party nominates for the position of trustee for the Sale of Scotia Marine. The parties shall attempt to agree upon one of the nominees to serve as the trustee. Within thirty (30) days of the exchange of lists, Merck shall furnish this Court copies of the written lists and shall notify this Court whether the parties were able to agree and, if so, upon whom the parties agreed. This Court may hear the parties as to the qualifications of the nominees and shall select a trustee.

VII

(A) If within one (1) year following the date of entry of this Final Judgment Merck has not entered into a contract for Sale of Scotia Marine approved pursuant to Subsection XIV(B) and Subsection XV(A), Merck shall notify this Court and plaintiff. Upon petition by plaintiff thereafter, with prior written notice to Merck, this Court shall appoint for a period of two (2) years the trustee selected pursuant to Section VI to secure a Purchaser.

(B) The term of the trusteeship shall be tolled from the date the trustee first submits to plaintiff or to Merck a copy of the proposed contract for Sale of Scotia Marine to and including the date on which it is finally determined, either by plaintiff pursuant to Subsection XIV(B), by this Court pursuant to Section IX or Subsection XIV(B), or by the Canadian government pursuant to Subsection XV(A), that the proposed sale may not be consummated.

(C) Upon appointment of the trustee, Merck shall no longer attempt to sell Scotia Marine, but shall utilize its best efforts to assist the trustee to accomplish the purpose of the trust.

(D) If at the conclusion of the two (2) years for which the trustee is appointed pursuant to Subsection VII(A) as tolled pursuant to Subsection VII(B) there has not been a Sale of Scotia Marine, Merck shall have the right to petiton the Court which may, upon a proper showing, relieve Merck of its obligation to complete the Sale of Scotia Marine.

VIII

The purpose of the trust shall be prompt Sale of Scotia Marine. The trustee shall have all powers necessary and proper to accomplish the purpose of the trust. In exercising these powers, the trustee may, without limitation:

(A) Subject to Sections XI and XII, inspect and copy any records, including financial, accounting, production, and customer records, relating to Alginate production, distribution, or sale in the possession or under the control of Scotia Marine that the trustee may deem necessary to accomplishing the purpose of the trust.

(B) Permit inspection of Scotia Marine by a prospective Purchaser and accompany the prospective Purchaser during the inspection.

(C) Engage investment bankers, business opportunity brokers, accountants, appraisers, consultants, attorneys, and any other Persons as may be reasonably necessary to help the trustee accomplish the purpose of the trust.

IX

(A) When the trustee has reached agreement with a prospective Purchaser on a proposed contract for Sale of Scotia Marine, the trustee shall promptly submit to plaintiff and to Merck a copy of the proposed contract and all other pertinent information respecting the proposed sale. Within twenty (20) days after receipt of the submission, both Merck and plaintiff may request information from the trustee and plaintiff may request information from Merck. The trustee shall promptly furnish to Merck and to plaintiff, and Merck shall promptly furnish to plaintiff, all requested information that it can along with a statement identifying the requested information not furnished and the reasons the information was not furnished.

(B) Within thirty (30) days after the trustee submits to Merck a copy of a proposed contract for Sale of Scotia Marine or, if Merck has requested additional information, within thirty (30) days after it has received all requested information and statements to be submitted, Merck shall either enter into the proposed contract or object to the proposed sale and petition the Court for review of the price, terms, or conditions. If Merck withdraws the petition, Merck shall promptly enter into the contract for Sale of Scotia Marine.

X

The trustee shall perform at the expense of Merck under a court-approved schedule of costs, fees, and incentive compensation for prompt accomplishment of the purpose of the trust. The schedule shall be fixed at the time of the trustee's appointment; however, the trustee shall have the right at any time to petition this Court, with prior written notice thereof to the parties, for further costs, fees, or incentive compensation.

XI

(A) Prior to providing information to a prospective Purchaser and to the trustee, Merck shall designate "confidential" any information that it in good faith believes constitutes trade secrets or other confidential research, development, or commercial information, as such terms are used in Fed. R.

Civ. P. 26(c)(7), of Scotia Marine. Prior to providing to a prospective Purchaser information designated "confidential" my Merck, the trustee shall assure that the information is designated "confidential."

(B) Merck and the trustee shall not permit any inspection of Scotia Marine or submit to a prospective Purchaser any information designated "confidential" unless and until the prospective Purchaser enters into a reasonable confidentiality agreement with Scotia Marine and, if requested by Merck, a reasonable confidentiality agreement with Merck that at least shall require the prospective Purchaser unless and until obtaining the information by other means (including purchase of Scotia Marine pursuant to this Final Judgment) not to disclose to any other Person any information obtained through inspection of Scotia Marine or any "confidential" information submitted, not to use any of the information for any purpose other than deciding whether to purchase Scotia Marine and, in the event the prospective Purchaser does not purchase Scotia Marine, to destroy all material containing any of the information.

(C) At the time of Sale of Scotia Marine, at the Purchaser's option, Merck shall enter into a reasonable confidentiality agreement with the Purchaser prohibiting disclosure to Persons other than Merck of information of Scotia Marine that Merck possesses and information about Scotia Marine or the Purchaser that Merck may obtain in connection with furnishing assistance pursuant to Sections XIX through XXIII.

XII

(A) Prior to providing information to a prospective Purchaser and to the trustee, Merck shall have the right to designate "secret" any information that it in good faith believes constitutes trade secrets or other confidential research, development, or commercial information, as such terms are used in Fed. R. Civ. P. 26(c)(7), of Merck, so long as the trade secrets or other confidential information are not solely those of Scotia Marine. Prior to providing to a prospective Purchaser information designated "secret" by Merck, the trustee shall assure that the information is designated "secret."

(B) Prior to providing to a prospective Purchaser information designated "secret" by Merck, the trustee shall give written notice to the parties identifying the information and to whom it is to be disclosed. Merck shall have ten (10) days from receipt of the notice within which to object to disclosure and to petition this Court to review the intended disclosure. The trustee shall not disclose the information during that ten (10) day period and, if Merck objects during that period, until this Court rules on the intended disclosure or Merck withdraws its objection.

(C) Merck need not and the trustee shall not submit to a prospective Purchaser any information designated "secret" unless and until the prospective Purchaser enters into a reasonable confidentiality agreement with Merck that at least shall require the prospective Purchaser unless and until obtaining the information by other means (including being furnished assistance pursuant to this Final Judgment) not to disclose to any other Person any "secret" information submitted, not to use any of the information for any purpose other than deciding whether to purchase Scotia Marine and, in the event the prospective Purchaser does not purchase Scotia Marine, to destroy all material containing any of the information.

XIII

Ninety (90) days after the date of entry of this Final Judgment and every ninety (90) days thereafter during the term of the trusteeship until the Sale of Scotia Marine, Merck and the trustee shall serve upon plaintiff an affidavit describing in detail for the preceding ninety (90) day period each offer for Scotia Marine received and the efforts made to promote and complete the Sale of Scotia Marine. The trustee shall serve its affidavit upon Merck, and Merck shall serve its affidavit upon the trustee. Merck and the trustee shall promptly supplement the affidavit with any additional information requested.

XIV

(A) When a contract for Sale of Scotia Marine has been entered into, Merck shall promptly submit to plaintiff a copy of the contract for Sale of Scotia Marine and all other pertinent information respecting the proposed sale. Within twenty (20) days after receipt of the submission, plaintiff may request additional information from Merck and from the trustee. Merck shall promptly furnish to plaintiff, and the trustee shall promptly furnish to plaintiff and to Merck, all requested information that it can along with a statement identifying the requested information not furnished and the reasons the information was not furnished.

(B) Subject to Subsection XV(B), within thirty (30) days after plaintiff has received the submission, or if plaintiff has requested additional information, within thirty (30) days after plaintiff has received all requested information and statements to be furnished, plaintiff shall advise Merck and the trustee in writing of plaintiff's approval or plaintiff's objection to the proposed sale. No contract for Sale of Scotia Marine shall be consummated unless and until plaintiff furnishes Merck written approval of the proposed sale or this Court approves the proposed sale after a hearing at which Merck shall have the burden of proving that the sale is consistent with this Final Judgment. In deciding whether to approve a proposed Sale of Scotia Marine to which plaintiff has objected, this Court shall consider, among other relevant factors, the ability of the prospective Purchaser to use Scotia Marine and Merck's assistance to be provided pursuant to Sections XIX through XXIV to compete effectively in the sale of Alginate in the United States for Specified Functions.

(C) The one (1) year time period set forth in Subsection VII(A) shall be tolled from the date Merck first submits to plaintiff a copy of the contract for Sale of Scotia Marine to and including the date on which it is finally determined, either by plaintiff or this Court pursuant to Subsection XIV(B), or by the Canadian government pursuant to Subsection XV(A), that the proposed sale may not be consummated. If that time period is tolled pursuant to this Subsection XIV(D), plaintiff shall not petition to have a trustee appointed until the tolled time period expires or sixty (60) days after it has finally been determined that the proposed sale may not be consummated, whichever occurs later. The tolling provided for in this Subsection XIV(D) shall apply only to the first contract for Sale of Scotia Marine that Merck submits to plaintiff.

XV

(A) Merck shall use its best efforts to obtain promptly any necessary approval by the Canadian government, including any necessary approval under the Foreign Investment Review Act, for the Sale of Scotia Marine. Copies of all submissions made by Merck to the Canadian government with regard to the proposed sale shall be furnished to plaintiff. Merck shall promptly notify plaintiff and the trustee in writing of each decision reached by the Canadian government with regard to the proposed sale and shall submit with the notice a copy of the decision. The notice shall describe any conditions to the proposed sale imposed by the Canadian government. If additional information is requested by plaintiff within ten (10) days after receipt of the notice, Merck shall promptly supplement the notice with all requested information that it can along with a statement identifying the requested information not furnished and the reasons the information was not furnished.

(B) In the event that approval by the Canadian government is conditional, if plaintiff has not approved or objected to the proposed sale pursuant to Subsection XIV(B), plaintiff shall have the greater of the time provided in Subsection XIV(B) for plaintiff to approve or object or thirty (30) days after receipt of the notice and all requested information and statements to be submitted pursuant to Subsection XV(A), in which to approve or object, and if plaintiff has approved the proposed sale pursuant to Subsection XIV(B), plaintiff shall have twenty (20) days after receipt of the notice and all requested information and statements to be submitted pursuant to Subsection XV(A) in which to reconsider its prior approval.

XVI

Any contract for Sale of Scotia Marine shall require the Purchaser to file with this Court and serve upon plantiff and Merck, prior to the anticipated date of Sale of Scotia Marine, an affidavit in which the Purchaser represents that it intends to use Scotia Marine, or its assets, and the assistance Merck shall provide the Purchaser pursuant to Section XIX through XXIV to compete effectively in the sale of Alginate in the United States for Specified Functions.

XVII

(A) The Sale of Scotia Marine ordered and directed by this Final Judgment shall be made in good faith and shall be absolute and unqualified; however, noting in this Final Judgment shall prohibit Merck from securing full payment for the stock or assets of Scotia Marine by retaining, accepting, enforcing, and settling a bona fide lien, mortgage, deed of

trust, or other form of security on the stock or assets. If, after Sale of Scotia Marine, Merck by enforcement or settlement of a bona fide lien, mortgage, deed of trust, or other form of security regains ownership or control of any stock or assets of Scotia Marine, Merck shall sell or, if a trustee shall be appointed, the trustee shall secure a Purchaser for the regained stock or assets pursuant to the provisions of this Final Judgment (including Sections IV, VII, and XIX through XXIV) and within the times specified therein measured from the date Merck regained the stock or assets. Merck shall take no action that will impair or impede the Sale of Scotia Marine or the furnishing of assistance pursuant to Sections XIX through XXIV.

(B) The choice whether to purchase all the stock of Scotia Marine or all the business and assets of Scotia Marine shall lie solely with the Purchaser.

XVIII

The Hold Separate Order entered in this action on September 13, 1979, is hereby dissolved.

XIX

(A) Upon request of the Purchaser within three (3) months following the date of Sale of Scotia Marine, Merck shall use its best efforts expeditiously to furnish the Purchaser within three (3) months and at no charge all information and know-how in the possession or under the control of Merck on the date of the request concerning analyzing and harvesting Seaweed; drying, milling, baling, storing, or otherwise preparing Seaweed for use in producing Alginate; and locating supplies and suppliers of Seaweed.

(B) Upon request of the Purchaser within three (3) months following the date of Sale of Scotia Marine, Merck shall use its best efforts expeditiously to furnish the Purchaser within six (6) months and at no charge such information and know-how in the possession or under the control or Merck on the date of the request that is related to the production methods used by Alginate Industries and that may be reasonably necessary for Scotia Marine to produce economically and efficiently all Specified Products that do not contain PGA and/or their functional equivalents.

(C) Upon request of the Purchaser within three (3) months following the date of Sale of Scotia Marine, Merck shall use its best efforts expeditiously to furnish the Purchaser within three (3) months and at no charge such information and know-how in the possession or under the control of Merck on the date of the request as may be reasonably necessary for the Purchaser to decide whether to produce PGA. If, within six (6) months following receipt of the information, or one (1) year following the date of Sale of Scotia Marine, whichever occurs later, the Purchaser states that it intends to build a production line capable of producing PGA, Merck shall use its best efforts expeditiously to furnish the Purchaser within six (6) months following the statement and at no charge such information and know-how, including design and engineering data, in the possession or under the control of Merck on the date of the statement or three (3) months following the date of Sale of Scotia Marine, whichever occurs earlier, as may be reasonably necessary for Scotia Marine to produce economically and efficiently all Specified Products that contain PGA and/or their functional equivalents.

(D) Upon request of the Purchaser within three (3) months following the date of Sale of Scotia Marine, Merck shall use its best efforts to furnish the Purchaser within three (3) months and at no charge all information in the possession or under the control of Merck on the date of the request with respect to research and development of Alginate Industries concerning new Alginate products for and use of Alginate in the Specified Functions.

XX

(A) Upon request of the Purchaser, Merck shall use its best efforts to make available, at a reasonable time and place and for a period not to exceed one (1) year from the date of Sale of Scotia Marine, qualified technical personnel to assist the Purchaser to design a laboratory for research and development with respect to Alginate, and to hire and train a sales and technical support staff for marketing Alginate for Specified Functions.

(B) If the Purchaser requests information from Merck pursuant to Subsection XIX(A), upon further request of the Purchaser, Merck shall use its best efforts to make available, at a reasonable time and place and for a period not to exceed eighteen (18) monthts from the date the information is provided, qualified technical personnel to advise the Purchaser on harvesting in Nova Scotia Seaweed of the genus Laminaria and on producing Specified Products from that Seaweed.

(C) If the Purchaser requests information from Merck pursuant to Subsection XIX(B), upon further request of the Purchaser, Merck shall use its best efforts to make available, at a reasonable time and place and for a period not to exceed one (1) year from the date the information is provided, qualified technical personnel to advise the Purchaser on producing Specified Products that do not contain PGA.

(D) If the Purchaser pursuant to Subsection XIX(C) states that it intends to build a production line capable of producing PGA, upon request of the Purchaser, Merck shall use its best efforts to make available, at a reasonable time and place and until six (6) months following the completion of the production line, qualified technical personnel to advise the Purchaser on constructing the production line and producing on that line Specified Products that contain PGA and other Alginate products for the Specified Functions that may be produced using that line.

(E) All assistance and advice made available pursuant to this Section XX shall be made available at cost (salary, benefits, and out-of-pocket expenses), determined in accordance with generally accepted accounting principles. Any controversy concerning the cost of the assistance and advice shall be settled by arbitration.

XXI

(A) At the time of the Sale of Scotia Marine, Merck shall cause Alginate Industries to grant to the Purchaser an option for a period of one (1) year to purchase from Alginate Industries its facility for drying and milling Seaweed at Keose, on the Isle of Lewis, Outer Hebrides, Scotland. In the event the option is exercised, Merck shall not within two (2) years following the date of the purchase construct on the Isle of Lewis a new facility for the drying and milling of Seaweed.

(B) The purchase price of the facility under the option shall be the book value (cost less depreciation) of the facility at the time of purchase, determined in accordance with generally accepted accounting principles. The option shall be nonassignable and shall provide that in the event the option is exercised, the Purchaser shall not within one (1) year following the date of the purchase sell the facility. Any controversy concerning the book value of the facility shall be settled by arbitration.

XXII

(A) Upon request of the Purchaser at the time of Sale of Scotia Marine, Merck shall enter into a supply contract pursuant to which it will supply to the Purchaser for a period of one (1) year from the date of Sale of Scotia Marine, at the option of the Purchaser, Specified Products and/or Kelco products that are the closest functional equivalents of Specified Products. Merck shall not be required to supply more than 100,000 pounds of such products pursuant to the supply contract in any period of six (6) months. In the case of Kelco products, the supply contract shall provide for seles prices equal to Kelco's retail price, less a reasonable distributorship discount, and such other terms and conditions of sale as are reasonable. In the case of Specified Products, the supply contract shall provide for sales prices (FOB British port) and other terms and conditions that are no less favorable to the Purchaser than the lowest prices and the best terms and conditions at or upon which such products are then being sold by Alginate Industries to independent third party distributors, plus any commission which Alginate Industries may be obligated to pay an existing distributor. Any controversy concerning sales prices or other terms and conditions of sale shall be settled by arbitration.

(B) If the Purchaser, within the time period specified in Subsection XIX(C), states that it intends to build a production line capable of producing PGA, the term of any supply contract shall be extended at the request of the Purchaser to a date two (2) years following the statement or to the date the production line is commercially operational, whichever occurs first. During the term of the extension, Merck shall be required to supply only products containing PGA and other Alginate products for the Specified Functions that may be produced using the production line.

XXIII

At the time of Sale of Scotia Marine, Merck shall furnish to the Purchaser at no charge a list, based on information in the possession of Kelco and not acquired from Alginate Industries, of: the names and addresses of Persons in the United States or Canada who,

at any time during the two (2) years preceding the date of Sale of Scotia Marine, purchased any Alginate product sold by Kelco for use in one or more Specified Functions; the names and addresses of Persons in the United States or Canada who, at any time during the two (2) years preceding the date of Sale of Scotia Marine, purchased any Alginate product produced by Alginate Industries; the names and addresses of Persons who, at any time during the two (2) years preceding the date of Sale of Scotia Marine, purchased any Alginate product produced by Scotia Marine; and for each Person listed, the Alginate product purchased by the Person and the products in which the Person used the Alginate product.

XXIV

At the time of Sale of Scotia Marine, Merck shall grant and cause Alginate Industries to grant to Scotia Marine nonexclusive, royalty-free licenses to all patents owned by Merck that are issued on applications filed prior to the date of Sale of Scotia Marine and that are necessary for Scotia Marine to harvest and process Seaweed and to produce and sell in the United States and Canada Specified Products or their functional equivalents and any other Alginate products that Scotia Marine produced during the two (2) years preceding the date of Sale of Scotia Marine. The licenses shall be for the life of the patents and may provide that the rights granted thereby may not be transferred by assignment, sublicense, or otherwise, except in connection with a sale of all or substantially all of the assets of Scotia Marine.

XXV

Merck shall not be required to furnish any information to the Purchaser pursuant to Sections XIX or XX, unless the Purchaser enters into a reasonable confidentiality agreement with Merck concerning the information that at least shall require the Purchaser unless and until obtaining the information by other means not to disclose the information to any other Person except in connection with a sale of Scotia Marine or of all or substantially all of the assets of Scotia Marine and an agreement to return to Merck all such information received pursuant to Subsection XIX(C) and Subsection XX(D) in the event that the Purchaser does not build a production line capable of producing PGA.

XXVI

At the time of Sale of Scotia Marine, Merck shall enter into a reasonable arbitration agreement with the Purchaser concerning controversies to be settled by arbitration pursuant to this Final Judgment. When any controversy is submitted to arbitration, Merck shall promptly notify plaintiff in writing of the controversy being arbitrated and shall promptly serve a copy of the final award on plaintiff.

XXVII

No license or right to use any trademark or company name or trade name of defendant, Kelco, or Alginate Industries shall be granted or implied in connection with any transaction pursuant to this Final Judgment, and the Purchaser of Scotia Marine shall have no right to use any such trademark, company name, or trade name.

XXVIII

(A) Merck is enjoined and restrained for a period of ten (10) years from the date of entry of this Final Judgment from acquiring, without the prior written consent of the plaintiff, all or any part of the assets used in production, distribution, or sale of Alginate (other than in the normal course of business) or voting securities of any producer, distributor, or seller of Alginate. Merck is not, however, enjoined from the acquisition of all or part of the securities or assets of any of its subsidiaries and the formation of subsidiaries by the transfer thereto of assets of Merck or of other subsidiaries.

(B) Merck is further enjoined and restrained for a period of five (5) years from the date of entry of this Final Judgment from entering into any contract for a term longer than one (1) year for the sale of Alginate to a purchaser other than a distributor.

XXIX

Merck shall acquire, as a condition of the sale or other disposition of all, or substantially all, of the assets used by it in the production, distribution, and sale of Alginate, other than those of Scotia Marine, that the acquiring party agree to be bound by the provisions of this Final Judgment, and that such agreement be filed with this Court.

XXX

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant made to its principal office, be permitted:

(1) Access during office hours of defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) subject to the reasonable convenience of defendant and without restraint or interference from it, to interview officers, employees and agents of defendant, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to defendant's principal office, defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section XXX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(C) If at the time information or documents are furnished by Merck to plaintiff, Merck represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Merck marks each pertinent page of such material, "Subject to claim of protection under Rule 26 (c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to Merck prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Merck is not a party.

XXXI

This Final Judgment will expire on the tenth anniversary of its date of entry.

XXXII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XXXIII

Entry of this Final Judgment is in the public interest.

Dated:

Howard B. Turrentine,

Judge of the District Court.

P. Terry Lubeck, Andrew L. Pringle, Sanford M. Adler, Antitrust Division, United States Department of Justice, Washington, DC 20530, Telephone: 202/724-7974; Robert E. Noel, Assistant United States Attorney, United States Courthouse, 940 Front Street, San Diego, CA 92189, Telephone: 714/293-5662, Attorneys for Plaintiff.

U.S. District Court, Southern District of California

United States of America, Plaintiff, v. *Merck & Co., Inc.*, Defendant.

Civil Action No. 79-0962-T.

Filed: September 2, 1980.

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalities Act, 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

This civil action began on August 17, 1979, when the United States filed a Complaint challenging the acquisition of alginate Industries Ltd. of England ("AIL") by Merck & Co., Inc. ("Merck") as a violation of Section 7 of the Clayton Act (15 U.S.C. § 18) and Sections 1 and 2 of the Sherman Act (15

U.S.C. §§ 1, 2). The complaint alleges that by acquiring AIL, Merck would substantially lessen actual and potential competition, unreasonably restrain trade, and tend to create a monopoly in the United States in sales of alginate for several specified uses. The Complaint requests that Merck be prevented from owning any interest in AIL. A Stipulated Order of the Court requires Merck until final resolution of the case, to maintain AIL as an economically viable business, with separate assets and operations, and prohibits Merck from using any of AIL's confidetial manufacturing technology.

The United States and Merck have stipulated that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalities Act. Entry of the proposed Judgment will terminate the action, except the Court will retain jruisdiction to construe, modify, or enforce the proposed Judgment, and to punish violations of the proposed Judgment. The Stipulated Order will be dissolved upon entry of the proposed Judgment.

II

Events Giving Rise to the Alleged Violation

In August 1979, Merck acquired AIL, a United Kingdom corporation primarily engaged in the production and sale of alginate. Alginate, a seaweed extract, is used to control water-based systems by thickening, stabilizing, suspending, film-forming, emulsifying, or gelling. Alginate is sold in several forms: alginic acid, its various salts, and its ester propylene glycol alginate ("PGA").

The Kelco Company ("Kelco"), a division of Merck primarily engaged in the production of alginate and xanthan gum, is the largest alginate producer in the United States and the second largest in the world. AIL is the largest alginate producer in the world. In 1978, Kelco and AIL together produced approximately 62 percent of the worldwide alginate supply; Kelco produced approximately 80 percent of all alginate sold in the United States, and AIL produced approximately 75 percent of all alginate imported into the United States. Kelco is the only producer of PGA in the United States, and AIL is the only other significant producer of PGA in the world.

Alginate has many commercially significant uses. In particular, PGA is superior to other beer foam stabilizers and buttered syrup emulsifiers, and except for xanthan gum, to other pourable salad dressing stabilizers. Alginate's special properties make it unique for use as a gelling agent in some dental impression materials and as a foaming agent in some antacids. Alginate has distinct advantage over other antimigrants in dyeing textiles and print paste thickeners in printing textiles. The Complaint alleges the acquisition would impair competition in sales of alginate for these particular uses.

In 1978, sales of Kelco-brand alginate and xanthan gum accounted for a significant share of all pourable dressing stabilizers sold in the United States, and sales of Kelco-brand alginate accounted for a significant share of United States sales of products for the other uses. The following table lists the approximate share of sales accounted for by Kelco-brand products, along with the approximate, corresponding share accounted for by AIL-brand alginate.

1978 Market Shares

	Kelco share	AIL share
All pourable salad dressing stabilizers	80	1
All beer foam stabilizers	80	0
All buttered syrup emulsifiers	93	7
Alginate impression material gelling agent	80	3
Alginate Antacid foaming agent	91	9
Alginate antimigrant and print paste thickener	50	40

III

Explanation of the Proposed Final Judgment and Its Anticipated Effects on Competition

The United States brought this case because Merck's acquisition of AIL eliminated a competitive source of alginate for the United States. The anticompetitive effects of Merck's ownership of AIL would be eliminated if the actual and potential competition AIL provided is replaced. The object of the proposed Final Judgment is to create a new competitive source of alginate to replace AIL. The proposed Judgment requires Merck to sell Scotia Marine Products Limited ("Scotia Marine"), a wholly-owned Canadian subsidiary of Merck which manufactures alginate in Nova Scotia, Canada. The United States may have a trustee appointed to sell Scotia Marine if Merck does not. Merck is also obligated to furnish the purchaser of Scotia Marine certain information and assistance that should enable the purchaser to compete effectively in the United States in sales of alginate for the particular alginate uses that were the focus of the Complaint.

Scotia Marine currently produces alginate products that Merck sells in the United States, Canada, and elsewhere. In 1979, Scotia Marine's alginate was sold under the Kelco brand for use in various industries, including the textile, paper, and food industries. Scotia Marine employs a manufacturing process similar to the one used by AIL. This process uses significantly less energy than the energy-intensive process employed by Kelco in San Diego. Scotia Marine has a production capacity of about two million pounds per year, and is able to produce the complete line of sodium alginate products sold by Merck under its Keltex and Kelgin trademarks. Scotia Marine lacks equipment needed to produce PGA.

One goal of the proposed Final Judgment is to provide Scotia Marine with the ability to produce economically and efficiently a full line of alginate products of the type sold by Kelco in the United States for the particular uses. The proposed Judgment sets as a standard of quality for the Scotia Marine products the corresponding alginate products produced by AIL. It obligates Merck to furnish the purchaser information and know-how relating to the production methods of AIL that may be reasonably necessary for Scotia Marine to produce the products economically and efficiently. The obligation includes furnishing data on constructing a production line capable of producing PGA. Moreover, Merck must make available qualified technical personnel to advise the purchaser on producing all of the products. With Merck's information, know-how, and advice, Scotia Marine should be able to produce all of the products, using AIL technology where needed to minimize production costs.

Since Scotia Marine will not be able immediately to produce all of the products, the proposed Judgment requires Merck to enter a contract to supply them to the purchaser. The purchaser may select whatever mixture of AIL products and Kelco products the purchaser wants, up to a maximum of 100,000 pounds in any six-month period. The purchaser may resell these products in the United States. The initial term of the supply contract is one year from the date of sale of Scotia Marine. Before the end of this one-year period, Scotia Marine should be able to produce all of the products that do not contain PGA. The term of the supply contract may be extended. During the extension, the purchaser's selection is limited to the products that contain PGA or that may be produced using a PGA production line. The supply contract will allow Scotia Marine, while it develops the ability to produce the products, both to compete for sales of them and to develop business contacts in preparation for the day when it can produce them.

Another goal of the proposed Judgment is to assure that Scotia Marine has access to sufficient seaweed to allow it to produce substantial amounts of alginate. Scotia Marine produces alginate primarily from a type of seaweed known as Ascophyllum, which it mechanically harvests from nearby tidal waters. Scotia Marine has exclusive, long-term rights to substantial amounts of Ascophyllum. Significantly more Ascophyllum is available in nearby tidal waters not leased by Scotia Marine.

In addition, Laminaria, another type of seaweed, grows in abundance beyond the tidal waters. Scotia Marine does not have the ability either to harvest this seaweed mechanically or to produce alginate from it, but AIL does. The proposed Judgement requires Merck to provide information and know-how and to advise the purchaser on harvesting Laminaria mechnically and producing alginate from it.

Scotia Marine will have available other sources of seaweed. The proposed Judgment requires Merck to have AIL grant to the purchaser an option for a period of one year to purchase the AIL facility for drying and milling seaweed at Keose, on the Isle of Lewis, Outer Hebrides, Scotland. This facility processes Ascophyllum gathered from the shores of the island. In addition, there are a number of companies that sell dried seaweed. In the past, Scotia Marine has obtained some seaweed from one of these companies. To help Scotia Marine compete for this dried seaweed if the need arises, the proposed Judgment requires Merck to provide information and know-how useful in obtaining dry seaweed.

Further goals of the proposed Judgment are to enable the purchaser to distribute its alginate for the particular uses and to

conduct alginate research and development. To this end, among other things, Merck must assist the purchaser to hire and train for the particular uses and alginate sales staff and a technical support staff. Merck must also assist the purchaser to design a laboratory for alginate research and development and furnish the purchaser all information Merck has regarding current AIL research and development on alginate and the particular uses.

The selection of the purchaser of Scotia Marine is an important aspect of the proposed Judgment. A suitable purchaser must have the ability to operate Scotia Marine as a single ongoing business and the intent to use Scotia Marine and Merck's aid to compete effectively in the United States in the sale of alginate for the particular uses. Merck cannot sell Scotia Marine to a firm that produces alginate, unless the United States approves the sale. If the United States objects to any other proposed purchaser, Merck may complete the sale if it demonstrates to the Court that the proposed sale is consistent with the proposed Judgment.

The divestiture of Scotia Marine should provide a replacement for AIL as a competitive source of alginate for the United States. Scotia Marine's current capacity of two million pounds of alginate per year is more than twice the amount of AIL-brand alginate sold in the United States in 1978. As a result of the substantial seaweed available and the information to be transferred, the purchaser should be able to expand significantly Scotia Marine's capacity and the line of alginate products it produces. With the combination of its own technology and AIL technology to be transferred, Scotia Marine should have production costs comparable to AIL's costs. In addition, since Scotia Marine's manufacturing plant is much closer to the United States than AIL's plant, Scotia Marine will have lower shipping costs in competing in the United States.

IV

Remedies Available to Potential Private Litigants

Section 4 of Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage actions. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the proposed Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against the defendant.

V

Procedures Available for Modification of the Proposed Final Judgment

The United States and defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the Antitrust Procedures and Penalties Act, provided that the United States has not withdrawn its consent. The Act conditions entry upon the Court's determination that the proposed Judgment is in the public interest.

The Act provides a period of at least sixty (60) days preceding the effective date of the proposed Judgment within which any person may submit to the government written comments regarding the proposed Judgment. Any person who wants to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the court and published in the **Federal Register**.

Written comments should be submitted to: Roger B. Andewelt, Assistant Chief, Intellectual Property Section, Antitrust Division (SAFE–704), U.S. Department of Justice, Washington, DC 20530.

VI

Alternatives to the Proposed Final Judgment

The United States actually considered only one alternative to divestiture of Scotia Marine, divestiture of AIL. The proposed Final Judgment is considered superior for several reasons to seeking divestiture of AIL via a trial on the merits.

Scotia Marine may prove to be a superior competitor in the United States. While Scotia Marine's production costs parallel those of AIL, Scotia Marine's shipping costs are lower because it is closer to the United States than AIL. AIL does not have its own United States distribution force, but with Merck's aid, the purchaser of Scotia Marine will be able to develop an effective United States distribution force. Many potential purchasers of Scotia Marine have existing United States marketing forces selling related products. Such a firm would be able economically to add alginate to the products it markets in the United States.

Next, the proposed Judgment has the benefit of protecting competition in the United States without interfering with Merck's efforts to improve its competitive position in foreign markets.

Litigation of case would be lengthy and expensive. Even if the United States were to prevail after a trial on the merits, and there is some risk it may not, the Court may order Merck to sell Scotia Marine, rather than AIL, because Scotia Marine should be a sufficient replacement for AIL as a competitive source of alginate for the United States.

Under the circumstances, the United States believes that on balance, the proposed Final Judgment is in the public interest.

VII

Other Materials

During the course of settlement discussions, Merck furnished to the United States materials that caused it to change its view on relief in the case. In the Complaint, the United States requested that Merck sell AIL; after reviewing these materials, the United States determined that proposed Final Judgment was in the public interest. These materials include Merck written representations and transcripts of depositions the United States took of Merck personnel regarding Scotia Marine. These materials contain commercially sensitive business information, and a Court Protective Order prohibits their disclosure to the public.

Dated: August 25, 1980.

Respectfully Submitted,

Roger B. Andewelt, *Attorney, U.S. Department of Justice;* P. Terry Lubeck, Andrew L. Pringle, Sanford M. Adler, *Attorneys, U.S. Department of Justice.*

[FR Doc. 80–27887 Filed 9–10–80; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (80–59)]

NASA Advisory Council (NAC) Space and Terrestrial Applications Advisory Committee (STAAC); Meeting

The *Ad Hoc* Informal Advisory Subcommittee on Materials Processing in Space (MPS) of the NAC–STAAC will meet in Room 226A of Federal Building 10B at the National Aeronautics and Space Administration in Washington D.C., from 9:30 a.m. to 3:30 p.m. on September 26, 1980.

The Subcommittee will first discuss management interfaces between Headquarters and NASA Centers and staffing status in the Headquarters program office. The second area of discussion will concern the program philosophy concerning simple, inexpensive, and easily available experimental capabilities for both ground and space operations. Thirdly, the status and rationale for new program elements, cloud physics, combustion science, and vacuum science will be presented and discussed.

The approved agenda for the meeting is as follows:

September 26, 1980

Time and Topic

9:30 a.m. Introductory Remarks
10:00 a.m. Management Interfaces and Headquarters staffing
11:30 a.m. Experiment Operations Philosophy
1:30 p.m. New Program Elements
2:30 p.m. Adjourn

At 2:30 p.m., the Subcommittee will reconvene to recommend candidates for membership on its own Subcommittee and on an ad hoc review panel to perform scientific evaluations of technical proposals received by the program. In these discussions, the areas of expertise of the candidates and the need to avoid conflicts of interest on the part of the investigators who are known to be associated with the program or

who are known to be preparing proposals will be considered. Public discussion of the professional qualifications of candidates for membership in the panel would invade the privacy of these scientists and other individuals associated with their research. Since the afternoon session of the Subcommittee meeting will be concerned throughout with the matters listed in 5 U.S.C. 552b(c)(6) as described above, it has been determined that this session should be closed to the public.

The STAAC ad hoc Informal Advisory Subcommittee was established to advise NASA on the Materials Processing in Space program's accomplishments, ongoing research, and long range plans. The Subcommittee has six members representing the scientific and industrial communities and is chaired by Dr. Martin Glicksman. For further information, contact Dr. John R. Carruthers, Executive Secretary of the NAC–STAAC ad hoc Informal Advisory Subcommittee on Materials Processing in Space, Code EM–7, NASA Headquarters, Washington, D.C., 20546 (202/755–2070).

Gerald D. Griffin,

Acting Associate Administrator for External Relations.

September 3, 1980.

[FR Doc. 80–27874 Filed 9–10–80; 8:45 am]

BILLING CODE 7510–01–M

[Notice (80–60)]

NASA Advisory Council (NAC) Life Sciences Advisory Committee; Meeting

The NAC Life Sciences Advisory Committee (LSAC) will meet on October 11, 1980. The meeting will take place from 8:30 a.m. to 5:00 p.m. on October 11 at the Endicott House of the Massachusetts Institute of Technology, 80 Haven Street, Dedham, Massachusetts 02026. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including 11 Committee members and participants). Visitors will be requested to sign a visitor's register.

The Life Sciences Advisory Committee consults with and advises the Council and NASA on the accomplishments and plans of NASA's Life Sciences Programs. These programs bear on the health and well-being of all who travel aboard U.S. spacecraft. As such, they encompass the practice of space medicine, research into the effects of space flight on the human organism and research into systems by which life can be protected and supported in space. The programs also concern the possible use of space flight to enhance understanding of biological processes and they seek to understand how life originated on Earth and whether it occurs elsewhere. The Committee is chaired by Dr. Richard Wurtman. Following is the approved agenda for the meeting:

Agenda

October 11, 1980

8:30 a.m. Introductory Remarks
9:00 a.m. Life Sciences Flight Experiment Program Overview
10:00 a.m. Payload Selection Process
11:00 a.m. Discussion
1:30 p.m. Peer Review Procedures
2:30 p.m. New Research Directions
4:00 p.m. Shuttle Medical Operations Preparedness
5:00 p.m. Adjourn

For further information please contact Dr. Paul Rambaut, Executive Secretary of the Committee, Code SBR–3, National Aeronautics and Space Administration, Washington, DC 20546, Telephone (202) 755–3723.

Gerald Griffin,

Acting Associate Administrator for External Relations.

September 3, 1980.

[FR Doc. 80–27875 Filed 9–10–80; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Joint Meeting of the Media Arts and Design Arts Panels; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a JOINT meeting of the Media Arts and Design Arts panels to the National Council on the Arts will be held September 29, 1980 from 9:00 a.m. to 5:30 p.m. and September 30, 1980 from 9:00 a.m. to 5:30 p.m. in the AFI Screening Room, Kennedy Center, Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9 (b) of section 552b of Title 5, United States Code.

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.

September 4, 1980.

[FR Doc. 80–27890 Filed 9–10–80; 8:45 am]

BILLING CODE 7537–01–M

Visual Arts Panel (Policy); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given that a meeting of the Visual Arts Panel (Policy) to the National Council on the Arts will be held September 29, 1980 from 9:00 a.m. to 5:30 p.m. September 30, 1980, 9:00 a.m. to 5:30 p.m., and October 1, 1980, 9:00 a.m. to 5:30 p.m. in Room 1340, Columbia Plaza Office Complex, 2401 E St., N.W., Washington, D.C.

This meeting will be open to the public on a space available basis. The topic for discussion will be policy and guidelines.

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.

September 4, 1980.

[FR Doc. 80–27897 Filed 9–10–80; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

[N–AR 80–37]

Safety Recommendations, Responses, and Closeouts; Availability

Aviation Safety Recommendation Letter

A–80–85 to the Federal Aviation Administration, August 28, 1980.—A "Class I, Urgent Action" recommendation has been issued by the National Transportation Safety Board as a result of investigation of an incident which occurred August 26 involving an Aerospatiale helicopter. The helicopter, N3596N, owned and operated by Petroleum Helicopters, Inc., of Lafayette, Louisiana, was inbound to Quonset Point, Rhode Island, with a crew of two and seven passengers when, about 2 miles east-southeast of Quonset, the crew reported a fire in the passenger compartment. The onboard fire extinguishers were used to put out the

fire, and the helicopter landed without further incident.

The continuing investigation of this incident has determined that wire number 1XP2BF contacted or shorted, and burned through hydraulic line 330A75 5311 02 causing a high-pressure hydraulic leak and fire. The Safety Board believes that a similar incident occurred with a like model helicopter belonging to Petroleum Helicopters, Inc., about 2 years ago, causing extensive damage.

To prevent a fire that might result from friction between electrical wires and hydraulic cables on the Aerospatiale SA–330 helicopter, the Safety Board recommends that FAA:

Issue an emergency Airworthiness Directive for all Aerospatiale helicopter models SA–330 to inspect, separate, and secure electrical wires that are near hydraulic lines between fuselage stations 5295 and 5600. (A–80–85)

Responses to Safety Recommendations

Aviation

A–78–4, from the Federal Aviation Administration, August 27, 1980.—Letter is in response to the Safety Board's request of May 5, 1980, that FAA reevaluate this recommendation, issued February 16, 1978, following investigation of the crash of a Piper PA–31 Navajo shortly after takeoff from Lake Minchumina, Alaska. The accident occurred September 24, 1977. The recommendation asked FAA to issue an Airworthiness Directive applicable to Piper Cheyenne, Navajo, and Aztec airplanes to require a periodic inspection of the forward baggage door locks, and to establish an inspection procedure and repair or replacement requirements; this inspection should insure that the baggage door lock tang will not disengage from the door handle and that the latching load imposed during handle operation is a specified minimum consistent with dynamic loads which can be encountered during all ground and flight operations. (See 43 FR 8600, March 2, 1978.)

The Safety Board's May 5 letter notes that in FAA's initial response of May 5, 1978 (43 FR 25869, June 15, 1978) it was indicated that FAA had reviewed the design and had physically examined the latch and lock mechanisms of the door. FAA did not believe that the door, in good condition, would open in flight if it had been properly latched and locked. The Board said the key words here are *in good condition* and reflect the essential concern of the Safety Board to insure that the locks are in good condition. This is precisely why the Board recommended that they be inspected and repaired or replaced as necessary.

The Board further noted that on June 9, 1978, the Piper Aircraft Corporation issued Service Bulletin No. 604 dealing with modification of the forward baggage door locking systems installed on the above-mentioned airplanes. Also, on June 8, 1979, Piper issued Service Bulletin No. 604A which superseded Bulletin No. 604. The new bulletin revised serial numbers of the affected aircraft models, added kit information, and provided for modification of the door locking system as well as an inspection of the door lock arm assembly. Compliance with this bulletin to insure that the door is in good condition requires the installation of one or more kits, the availability of lock engagement tolerance data, and the nonroutine removal of the baggage door lock arm assemblies. In connection with the purpose of Bulletin 604A, Piper states in part that:

. . . It is possible to close the door and turn the lock to the locked position without the lock tang actually engaging the door handle. As a result, the door would not be properly secured and could possibly come open in flight; this could adversely affect the flight characteristics of the airplane.

In response to the Safety Board's recent comments, FAA's August 27 letter indicates that the FAA central Region, the lead region for certification of small aircraft, has initiated a study to evaluate the problems associated with the nose baggage door locking mechanisms of all small multiengine aircraft. FAA will ensure a reassessment of the door lock problems associated with the Piper Cheyenne, Navajo, and Aztec airplanes. FAA will inform the Board of the results of the study and subsequent action.

A–79–80 and –81, from the Federal Aviation Administration, August 27, 1980.—Letter is in response to letters forwarded by the Safety Board on February 7 (commenting on FAA's response of January 15 (45 FR 7019, January 31, 1980)) and on July 9 (requesting a progress report). The recommendations were issued last October 17 following the Safety Board's investigation of several commuter air carrier accidents.

Recommendation A–79–80 asked FAA to require that pilots involved in 14 CFR Part 135 operations be thoroughly trained on the performance capabilities and handling qualities of aircraft when loaded to their maximum certificated gross weight or to the limits of their c.g. envelope, or both. FAA now reports that Amendment No. 135–3 to Part 135, issued January 30 requiring additional operating experience for commuter pilots-in-command, was effective March 1. A notice providing specific flight testing standards for Part 135 pilots was issued on January 14 and should result in pilots being more knowledgeable about their aircraft and its limitations, FAA stated.

FAA notes that revised Part 135 provides training in weight and balance, runway limitations for takeoff and landing, aircraft performance data, and operating limitations during initial, transition, and upgrade ground training for pilots. In April 1979, increased Part 135 surveillance requirements were initiated which involved additional en route inspections and other FAA emphasis items. Crewmembers demonstrated their knowledge of weight and balance procedures and aircraft performance as part of the surveillance. Further, FAA notes that the revised training and testing requirements and the exposure to various weight and loading conditions that the pilot will receive during the acquisition of operating experience now required in Amendment No. 135 will provide the needed additional familiarization and knowledge of aircraft performance deficiencies.

In response to recommendation A–79–81, which asked FAA to expedite rulemaking which would make the flight time and duty time limitations and rest requirements for commuter air carriers the same as those specified for domestic air carrier crewmembers under 14 CFR Part 121, FAA reports that on August 4, 1980, a supplemental notice of proposed rulemaking, No. 78–3B, Docket No. 17669, was issued. The proposal would revise the flight and duty time limitations and rest requirements for flight crewmembers utilized by domestic, flag, and supplemental air carriers, commercial operators, and air taxi operators.

A–80–44, from the Federal Aviation Administration, August 26, 1980.—Response is to a recommendation issued May 28 following Safety Board investigation of a bird strike to a Royale Airlines Beech B–99 at Lafayette, La., on April 5, 1979. The recommendation called on FAA to conduct a study to determine whether the structural characteristics of general aviation aircraft windscreens equipped with heating elements are enhanced by the use of such elements and apprise operators of optimal procedures through inclusion in appropriate flight manuals or issuance of an advisory circular. (See 45 FR 37918, June 5, 1980.)

FAA reports that it is initiating a study of general aviation and commuter airplane accidents to evaluate bird strike history. As a part of the effort,

FAA is reviewing windshield designs to determine the feasibility of developing guidelines for heating general aviation airplane windshields. Progress in this effort will be reported in January 1981.

Highway

H–77–6, from the Federal Highway Administration, August 19, 1980.—Letter concerns a recommendation issued by the Safety Board on May 27, 1977, to FHWA's Bureau of Motor Carrier Safety calling for issuance of an ON–GUARD bulletin to warn the drivers of cargo tank trucks and of tractors hauling cargo tank semitrailers of the hazard of lateral surge of liquid cargoes, and to inform the drivers of the correct operating procedures to use whenever the tank is partially loaded. (See 42 FR 28195, June 2, 1977.)

FHWA notes that during the safety recommendations review meeting last March 24 FHWA representatives indicated that an ON GUARD was being considered to discuss the effects of cargo shifting on vehicle handling. This ON GUARD is directly concerned with recommendation H–77–6 and is titled, "Anything Other Than Full or Empty" (Volume 11, No. 2, June 1980). Copies were provided to the Safety Board.

H–80–2 through –4, from the Federal Highway Administration, August 25, 1980.—Response is to recommendations issued last January 10 following investigation of the tractor-semitrailer accident which occurred February 7, 1979, on I–70 at New Stanton, Pa. (See 45 FR 5852, January 24, 1980.)

In response to recommendation H–80–2, which asked FHWA to require the States to establish a program which will assure prompt identification, reporting and corrections of hazardous highway conditions, FHWA notes that a statement of national policy addressing this need is contained in Highway Safety Program Standard 12 and is supplemented with guidance in Highway Safety Program Manual Volume 12. FHWA states that currently all States have procedures for identifying maintenance work and potentially hazardous conditions, and FHWA does not agree that additional Federal regulatory action would be an effective way to significantly improve existing State procedures. FHWA believes that training for maintenance personnel is desirable and can be a very effective way to improve State practices. A training course that is directly related to recommendation H–80–2 is being developed for release in mid-1980; entitled "Functional Requirements of Highway Safety Features," this training course includes identification of safety problems and solutions.

FHWA states that it fully supports the intent of recommendation H–80–3, which called for development of a course for use by the State and local highway officials to train maintenance personnel to recognize hazardous conditions and the need to report them. Actions already taken by FHWA in this area include:

The "Maintenance and Highway Safety Handbook," originally published by the Highway Users Federation for Safety and Mobility in 1970, updated in 1977 by FHWA and over 30,000 copies distributed. The FHWA Maintenance Inspection Review Manual is available at most highway agencies and identifies many potentially hazardous situations by description and photographs.

A maintenance Aid Digest, MAD–21, published in February 1979 by the American Association of State Highway and Transportation Officials (AASHTO), with FHWA assistance; contains descriptions of maintenance training materials currently available, many of the listed training courses directly addressing identification of safety needs and corrective or preventive actions. These State safety training materials apply to maintenance crew training and are prepared and offered for exchange between highway agencies.

Highway safety courses offered by the National Highway Institute; some apply to maintenance, and some course descriptions specifically state that problem identification and resolution are part of the course objective.

A training course entitled "Functional Requirements of Highway Safety Features," now being developed by FHWA. This course is in the "pilot" or final stage of development. A discussion of proper reporting and documenting of potential hazards will be included. This 1- to 2-day course, aimed at personnel involved in construction, operation, and maintenance, is made up of 1–1½ hour modules including slide-tape presentations, to be given with or without instructors. Each is to be suitable for presentation independently or in combinations appropriate to the participants, and will discuss the purpose and performance requirements of highway features, how they function, what can go wrong, and how to recognize and correct problems. Corrective action may require upgrading of existing or the installation of new features.

With respect to recommendation H–80–4, which asked FHWA to require the States to include in their annual Interstate maintenance program a description of the planned training for maintenance personnel, FHWA states that it encourages all types of maintenance and safety training and finds that most States are providing training for maintenance and safety practices. FHWA also states, "The *requiring* of such training is not related to the Interstate Maintenance Guidelines and, therefore, cannot be made a mandatory part of that regulation." During the development of the State's Interstate maintenance programs, FHWA says it will consult and consider each State's safety training and discuss improvements that are needed.

Marine

M–78–16 through –30, from the United States Coast Guard, August 6, 1980.—Letter is in response to the Safety Board's comments forwarded January 30, 1979, with reference to Coast Guard's initial response of October 12, 1978 (43 FR 53515, November 16, 1978). The recommendations were issued June 1, 1978, following investigation of the sinking of the Great Lakes bulk cargo vessel SS Edmund Fitzgerald in eastern Lake Superior on November 10, 1975.

With respect to recommendation M–78–16, the Safety Board's January 30, 1979, letter stated that Coast Guard's determination that reduced freeboard will increase the probability of flooding through inadequate hatch covers satisfies the intent of the recommendation, and the Board considers it as "Closed—Acceptable Action." The Board agreed that the solution to the problem is through improvement in the weathertightness of the hatches.

Recommendation M–78–17 asked Coast Guard to initiate a design study to improve the current weathertight hatch cover and clamp designs used on Great Lakes bulk cargo vessels with a view toward requiring a more effective means of closure of such fittings. The Safety Board noted that Coast Guard's proposed study to evaluate hatch cover designs and clamps is an encouraging step toward solving the problem of nonweathertight hatch covers. Coast Guard's August 6 letter informs that the contract for phase one of the study to evaluate hatch cover designs and clamps was awarded in June 1979, and that two more phases of this study are planned. A Statement of Work containing a work schedule for phase two is attached to Coast Guard's letter. The contract for this phase is now being negotiated, and Coast Guard says completion of the study is expected in September 1981.

Referring to recommendation M–78–18, the Safety Board expressed concern about the statement that during the 1973–74 period, every Great Lakes bulk cargo vessel was required to produce a loading manual that included information on sequencing. Board investigation showed that the loading information about the Fitzgerald on November 10, 1975, did not contain information on intermediate stress during the loading sequence and did not contain any information on any aspect

of unloading. The Fitzgerald contained no information on ballasting and deballasting in conjunction with loading and unloading. The Board further noted that the Commandant's action on the recommendations made by the Marine Board of Investigation for the Fitzgerald (recommendation 9, page viii) states that the Coast Guard will develop performance criteria for loading manuals to include details on sequencing. This action is dated July 26, 1977. The Safety Board expressed confusion as to the apparent discrepancy between the manuals produced in 1973–74 and the proposed performance criteria, and requested further information.

Coast Guard's August 6 letter with respect to recommendation M–78–18 corrects statements made in the October 12, 1978, response. Coast Guard states that not all Great Lakes bulk carriers have loading manuals as a result of the 1973 load line regulations. Of the 123 certified dry bulk carriers, 95 have approved loading manuals. The 28 vessels that do not have manuals are older and smaller vessels. Coast Guard says that the necessity for loading manuals on older and smaller vessels was considered by the joint U.S. Canadian Technical Committee subsequent to the loss of the Daniel J. Morrell (November 29, 1966). Based on decades of satisfactory operation and the lesser sensitivity to loading than the longer and more deeply loaded vessels, the Coast Guard has concluded that the lack of loading manuals is not a problem and does not intend to make such a requirement. Coast Guard has decided not to proceed with the development of performance criteria for loading manuals as previously stated in the Commandant's action on Coast Guard recommendation 9 from the Fitzgerald Marine Board of Investigation for these reasons: (1) Loading manual performances criteria for operations alongside the dock are not needed, and there is no significant casualty history to suggest that the existing practice is improper; and (2) the concern is primarily with insuring that vessels are loaded as outlined in the manuals. Coast Guard will continue to study the loading situation on Great Lakes bulk vessels to determine if the variability of loading is a safety problem. The study was to start in July 1980 and be completed by July 1981, and further action will be based on the resuts of this study.

The Safety Board withheld comment on Coast Guard's initial response to recommendation M–78–19 pending receipt of an amended response. Coast Guard's August 6 letter notes that regulations currently allow existing ships (built prior to 1973) the option of retaining old freeboards and of not meeting all of the new regulations including the requirements for loading information. Most of the bulk carriers are already equipped with loading manuals. The number of nonbulk carriers is few in number by comparison. There are less than 15 existing cargo vessels over 150 gross tons and not in bulk cargo. None of these requires special ballasting. In size, they range from moderate length of 400 feet down to about 100 feet. Because of their size and service, the opportunity for overstressing is limited. Since there is no significant casualty record, Coast Guard does not believe the loading manuals would materially increase the level of safety for these vessels. Therefore, no further response is considered necessary.

In response to the Safety Board's request for information about the progress made by the Coast Guard and the Maritime Administration (MARAD) in reviewing the results of the MARAD study, as indicated in Coast Guard's initial response to recommendation M–78–20, Coast Guard now reports receipt of the MARAD study and is proceeding with a regulation project on subsidization for Great Lakes cargo vessels. The work plan and schedule for regulatory action is now under development; an advance notice of proposed rulemaking for the project was published on March 16, 1978. Coast Guard will update the progress of the project with a supplemental advance notice of proposed rulemaking, expected to be published in the summer of 1980.

With respect to recommendation M–78–21, the Safety Board's January 30, 1979, letter notes that Coast Guard's Marine Board of Investigation stated that a contributing factor to the loss of the Fitzgerald was that "The cargo hold was not fitted with a system of sounding tubes or other devices to detect the presence of flooding water," (p. 94). The Marine Board recommended that "any subsequent amendments to the Great Lakes Load Line Regulations . . . reflect full consideration of the necessity for a means of detecting and removing flooding water from the cargo hold . . ." (p. 105). The Board said it is aware of problems associated with measuring water in the cargo holds of Great Lakes bulk cargo vessels, and urged Coast Guard to more actively participate in solving the technical problems rather than the action "to monitor equipment development for application," as described in Coast Guard's initial response. The Board asked if there was ongoing research that could be expedited.

In response to the Board's comments on recommendation M–78–21, Coast Guard says it does not consider the use of water-level detection a viable approach to the problem of unwanted water in cargo holds. This view is due to unreliability of current equipment. As an alternate approach, Coast Guard has chosen to nearly eliminate the possibilty of flooding by ensuring weathertight integrity of all hatch covers and the soundness of hatch cover fasteners. Coast Guard notes that there has been a serious lack of concern for weathertightness but it believes that efforts to ensure weathertightness and to reeducate the crews to the importance of preventing water entrance to cargo holds meets the intent of this recommendation.

The Safety Board's January 30, 1979, letter commenting on Coast Guard's initial response to recommendation M–78–22 notes that the Commandant's action on Coast Guard's Marine Board of Investigation states: "The most probable cause of the sinking was the loss of buoyancy resulting from massive flooding of the cargo hold. . . . The flooding was probably concentrated forward." The Safety Board agrees that the present bilge system on Great Lakes bulk cargo vessels does not permit bilge pumping as a viable survival factor, and believes that bilge pumping should be made a viable survival factor as required by 46 CFR 56.50–50. Even when subdivision requirements are defined, the problems of clogged suctions and trim by the bow still need to be addressed. The Board believes that the Coast Guard should include a study of dewatering bulk cargo compartments as a part of the subdivision study discussed in response to M–78–20. In response to these comments reference M–78–22, the Coast Guard says that its subdivision study and regulation project will address dewatering of cargo holds including problems of trim by the bow and listing. Coast Guard holds that the first line of defense (as in recommendation M–78–21), is to prevent water from entering in the first place.

With respect to recommendation M–78–23, the Safety Board noted that there are currently no heel or trim measuring instruments required on Great Lakes bulk cargo vessels. The Board said it would consider an inclinometer as meeting the requirements for heel detection. The Board believes that these should be required even though they are now considered as standard equipment in the industry. Further, the Board said it would require a large weight shift or

addition on this type of vessel in order for trim to be discernible by visual means. The Board is interested in the detection of relatively small quantities of water or cargo movement during the early stages of flooding. These small weight changes can only be detected by means of instruments which are sensitive enough to gauge small changes in trim angle. Coast Guard's response points out that the Safety Board and the Coast Guard are in agreement that some form of inclinometer is standard equipment on board Great Lakes bulk cargo vessels. Coast Guard, referring to Executive Order 12044 concerning curtailing unneeded regulations, states there is no "need" to require a device which is already considered standard equipment aboard Great Lakes bulk carriers. Coast Guard points out further that the average pitching motion is 6 times greater than a trim change from 200 tons of water in the #1 hold. A small weight change can be masked in moderate seaway motion. Coast Guard does not believe that requirements for inclinometers or trim gauges would significantly improve safety on cargo ships.

The Safety Board's January 30, 1979, letter noted that Coast Guard would consider requiring a master to have information on the ability of his vessel to survive flooding as part of the regulation package on subdivision. Coast Guard's August 6 letter does not address this recommendation, No. M–78–24, or the Board's comments thereon.

In connection with recommendation M–78–25, the Safety Board said it looked forward to the final rulemaking on Emergency Position Indicating Radio Beacons (EPIRB's) for Great Lakes vesels, and asked to be provided with a schedule for Coast Guard's entire EPIRB regulatory activity. Coast Guard's August 6 response notes that current Federal Communications Commission rules authorize the voluntary use of Class C EPIRB's. Coast Guard has initiated a regulation project in cooperation with the FCC that will adopt the Class C EPIRB for use on survival craft and will require their carriage on Great Lakes vessels. This regulatory project is scheduled for proposed rulemaking in January 1981 and final rule in December 1981, with full operation by September 1983.

With reference to recommendations M–78–26 and –27, the Safety Board's letter commenting on Coast Guard's initial response notes that Great Lakes bulk cargo vessels are built to a structural standard significantly less than similar vessels in ocean service. The reason for this difference is that the maximum wave heights and wave lengths encountered on the Great Lakes are considerably less than those encountered on the open ocean. The American Bureau of Shipping Technical Report RD–78010, dated September 1978, states that the maximum low-frequency, wave-induced bending moments, used in the structural standard adopted by Coast Guard, were derived from wave data up to a significant wave height of 28 feet. From this, the Safety Board believes that Coast Guard can determine the maximum sea state applicable to the longitudinal strength of Great Lakes bulk cargo vessels. It is the Board's understanding that a vessel is subjected to a number of forces and that there is a need for the master to exercise his expertise. However, in order to properly exercise this expertise, the master must know the design limits of his vessel. The Board submits further that without this design limit knowledge, the master's expertise would be incomplete.

In addressing recommendation M–78–26, Coast Guard in its August 6 letter reaffirms its response of October 12, 1978, with the points that wave height or sea spectra used in design only approximate actual conditions and in a given sea state the loading on a vessel can vary greatly due to factors like speed, heading, vessel motion and trim. Coast Guard further contends that to write down all of the factors which determine a master's action would essentially be describing the art of seamanship. Coast Guard does not believe that words suitable for a loading or operations manual can be developed along these lines. With reference to recommendation M–78–27, Coast Guard states that based on the information provided in response to recommendation M–78–26, wave height cannot be used as a means of prohibiting ships from sailing the Great Lakes; therefore, no further response is considered necessary.

The Safety Board's January 30, 1979, letter reference recommendation M–78–28 refers to comments on M–78–17 of the same date. Coast Guard's letter indicates that its response to M–78–17, related to the hatch cover design study, is responsive to M–78–28.

Recommendation M–78–29 asked Coast Guard to require that all Great Lakes bulk cargo vessels have a fathometer. Coast Guard's October 12, 1978, response indicated that 33 CFR 164.35(h) and (i) as promulgated on January 31, 1977, now requires a fathometer and recording device on all self-propelled Great Lakes vessels of 1,600 gross tons and over. The Safety Board's January 30, 1979, letter states that the regulation cited satisfies the intent of this recommendation, which is now designated "Closed—Acceptable Action."

Also, the Safety Board's January 30, 1979, letter indicates that the level of effort expended in increasing the coverage of the Great Lakes by greater search and rescue activity satisfies the intent of recommendation M–78–30 and that recommendation has been designated "Closed—Acceptable Action."

Highway Safety Recommendations Closeouts

During the 18-month period January 1979 through June 1980, the Safety Board forwarded letters advising that the recommendations listed below have been classified as "Closed." The name of the addressee, the date of the last response, the date of the Safety Board letter, and the type of closeout action applied are shown in parentheses.

H–74–9: Performance criteria for crash cushions. (Federal Highway Administration (FHWA), October 10, 1979; NTSB, November 8, 1979; "Acceptable Action.")

H–74–36: Medical examinations for detection of health problems and possible sudden incapacitation of drivers. (FHWA, July 6, 1979; NTSB, November 19, 1979; "Closed—Reconsidered.")

H–75–18 through –21: Signing information on long/steep grades and runaway truck escape ramp design. (FHWA, February 9, 1978; NTSB, March 13, 1980; "Acceptable Action.")

H–75–23: Placement of warning devices when parked alongside the highway. (FHWA, July 6, 1979; NTSB, November 19, 1979; "Closed—Reconsidered.")

H–75–24: Highway design and operational practices related to highway safety. (FHWA, October 29, 1975; NTSB, March 21, 1980; "Closed—Reconsidered.")

H–75–45: Flexible hose for bus fire extinguisher. (FHWA, August 21, 1979; NTSB, November 8, 1979; "Unacceptable Action.")

H–76–16: Fifth-wheel separation during tractor-semitrailer accidents. (FHWA, July 6, 1979; NTSB, November 19, 1979; "Acceptable Alternate Action.")

H–76–20 and –27: Installation of flashing lights activated by wet pavement conditions to complement "slippery when wet" sign, and increase in superelevation of curve at accident site and resurfacing. (Maryland State Highway Administration, staff contacts, June 1979; NTSB, July 9, 1979; H–76–20, "No Longer Applicable," H–76–27, "Acceptable Action.")

H–76–31 and –32: Development and publication of models, formulae, and criteria for determining need for upgrading, consolidation or closure of rail/highway grade crossings. (FHWA, April 22, 1977; NTSB, April 17, 1979; H–76–31, "Acceptable Alternate Action," H–76–32, "Acceptable Action.")

H–77–1: Upgrading highway appurtenances. (FHWA, review by Safety Board of FHWA notice N–7560.4 and "Maintenance and Highway Safety Handbood"; NTSB, October 29, 1979; "Acceptable Alternate Action.")

H–77–23: Guardrail standards. (Colorado State Department of Highways, December 4, 1978; NTSB, January 17, 1979; "Acceptable Action.")

H–77–25: "Operation Lifesaver" rail/highway grade crossing safety program. (National Safety Council (NSC), April 23, 1979; NTSB, May 29, 1979; "Acceptable Action.")

H–77–26: Operation Lifesaver" rail/highway grade crossing safety program. (Association of American Railroads (AAR), review by Safety Board of NSC documents showing AAR commitment to the program; NTSB, June 19, 1979; "Acceptable Action.")

H–77–29: "Operation Lifesaver" rail/highway grade crossing safety program. (Federal Railroad Administration (FRA), review by Safety Board of NSC documents showing FRA commitment to the program; NTSB, June 19, 1979; "Acceptable Action.")

H–78–10: Schoolbus pop-out windshields. (National Highway Traffic Safety Administration (NHTSA), September 18, 1979; NTSB, November 13, 1979; "Acceptable Alternate Action.)

H–78–12: Policy statement relating to enforcement of the Federal Motor Carrier Safety Regulations. (FHWA, November 8, 1979; NTSB, December 18, 1979; "Acceptable Action.")

H–78–20: Safety-related information collection procedures. (FHWA, July 24, 1979; NTSB, September 27, 1979; "Acceptable Action.")

H–78–31 and –32: Accident surveillance and signing improvements at intersection of U.S. Route 206 and County Road 616 near Vincetown, N.J. (New Jersey State Department of Transportation, January 31, 1979; NTSB, March 1, 1979; "Acceptable Action.")

H–78–43: Special funding programs for truck escape ramps on steep grades. (FHWA, August 15, 1979; NTSB, October 25, 1979; "Acceptable Alternate Action.")

H–78–44: Emergency escape ramps. (FHWA, August 15, 1979; NTSB, September 18, 1979; "Acceptable Action.")

H–78–57, –59, and –60: Analyze and investigate the feasibility of green interval settings and multipoint detection and application of these principles on a State-wide basis. (Virginia State Deartment of Highways and Transportation, December 13, 1978; NTSB, February 5, 1979; "Acceptable Action.")

H–78–61: Need for increased oversight of the Georgia State Department of Transportation work zone safety program. (FHWA, May 8, 1979; NTSB, May 25, 1979; "Acceptable Action.")

H–78–63: Special roadside inspections. (FHWA, October 10, 1979; NTSB, November 8, 1979; "Acceptable Action.")

H–78–67 and –68: Guardrail installation feasibility study, and pavement markings. (Secretary of Transportation, State of North Carolina, December 12, 1978; NTSB, February 1, 1979: "Acceptable Action.")

H–78–69: Reduction in effectiveness of highway safety appurtenances due to build up of debris, surfacing materials, slope erosion, etc. (FHWA, January 5, 1979; NTSB, February 1, 1979; "Acceptable Alternate Action.")

H–78–70: Brake adjustment maintenance program. (Ryder Truck Rental of Miami, Fla.; October 11, 1978; NTSB, December 7, 1978; "Acceptable Action.)"

H–78–71: Cooperative effort of FHWA, FRA, National Railroad Passenger Corporation, Seaboard Coast Line Railroad, and Florida Department of Transportation to reduce the high frequency of accidents along the Jacksonville Tampa, Fla., Amtrak corridor. (FHWA, May 8, 1979; NTSB, October 25, 1979; "Acceptable Action.")

H–79–15: Comprehensive planning of highway transportation facilities to include operational safety. (FHWA, August 12, 1975; NTSB, May 28, 1980; "Acceptable Action.")

H–79–37: Replacement of crash-damaged guardrail. (California Department of Transportation, April 22, 1980; NTSB, May 28, 1980; "Unacceptable Action.")

H–79–38: Updating of crash-damaged bridgerail, contract award. (California Department of Transportation, January 11, 1980; NTSB, February 7, 1980; Acceptable Action.")

H–79–51: Survey of traffic records program for State of New York and overseeing progress of New York State Traffic Records System updating to include property damage accident reports from the local governments. (NHTSA, April 2, 1980; NTSB; May 21, 1980; "Acceptable Action.")

Note.—Copies of the Safety Board's recommendation letters, as well as responses and related correspondence, are provided free of charge. All requests for copies must be in writing, identified by recommendation number. Address requests to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

(49 U.S.C. 1903(a)(2), 1906)

Margaret L. Fisher,

Federal Register Liaison Officer.

[FR Doc. 80–28102 Filed 9–10–80; 8:45 am]

BILLING CODE 4910–58–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–261]

Carolina Power & Light Co.; Order for Modification of License

I

Carolina Power and Light Company (the licensee) is the holder of License No. DPR–23, which authorizes the operation of the H. B. Robinson Steam Electric Plant, Unit No. 2 at steady state reactor power levels not in excess of 2300 megawatts thermal (rated power). The facility consists of a pressurized water reactor located at the licensee's site in Darlington County, South Carolina.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulleting 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to be Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79–01B of January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarificaton was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR–23 is hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director, Division of Licensing by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing within 20 days of the date of this Order. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to G. F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective date: August 29, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80–28018 Filed 9–10–80; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–255]

Consumers Power Co.; Order for Modification of License

I

Consumers Power Company (the licensee) is the holder of Provisional Operating License No. DPR–20, which authorizes operation of the Palisades Plant at steady-state reactor power levels not in excess of 2530 megawatts thermal (rated power). The facility consists of a pressurized water reactor located at the licensee's site in Covert Township, Van Buren County, Michigan.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by

Bulletin 79-01B[1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982, all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG-0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG-0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by our letter of March 6, 1980, as modified by our letter of March 28, 1980, to provide information on emergency procedures and safety related systems. The licensee was requested to define and provide the basis for the hostile environment, inside and outside containment. This hostile environment would then be used, by the licensee, in the determination of unqualified equipment. A complete package, including justification for methods used, was requested.

Clarification was provided by supplemental information, briefings, and, in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest required that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Provisional Operating License No. DPR-20 is hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director, Division of Licensing by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing within 20 days of the date of this Order. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered the the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV of the Order. Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: August 29, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80-28022 Filed 9-10-80; 8:45 am]

BILLING CODE 7590-01-M

[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

[Dockets Nos. 50-321 and 50-366]

Georgia Power Co., et al.; Order for Modification of License

I

Georgia Power Company (licensee) and three other co-owners are the holders of Facility Operating Licenses Nos. DPR-57 and NPF-5, which authorize the operation of the Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2 at steady state reactor power levels not in excess of 2436 megawatts thermal (rated power) for each unit. The facilities are boiling water reactors located at the licensee's site in Appling County, Georgia.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and

NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79–01B of January 14, 1980, to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV

Accordingtly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating Licenses Nos. DPR–57 and NPF–5 are hereby amended to add the following provisions:

"Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director, Division of Licensing, by the licensee not later than November 1, 1980."

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing within 20 days of the date of this Order. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to G. F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licenses should be modified to require submission of information as set forth in Section IV of the Order.

Operating of the facilities on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: August 29, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80-28021 Filed 9-10-80; 8:45 am]

BILLING CODE 7590-01-M

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

[Docket Nos. 50–315 and 50–316]

Indiana and Michigan Electric Co.; Order for Modification of License

I

Indiana and Michigan Electric Company (the licensee) is the holder of License Nos. DPR–58 and DPR–74, which authorizes the operation of the Donald C. Cook Nuclear Power Plant, Unit Nos. 1 and 2 at steady state reactor power levels not in excess of 3250 and 3391 megawatts thermal (rated power), respectively. The facilities consists of two pressurized water reactors located at the licensee's site in Berrien County, Michigan.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Energency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the

Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualfication of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

III

The information developed during this proceeding emphasizes the importance of adquate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79–01B of January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the liensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License Nos. DPR–58 and DPR–74 are hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director, Divsion of Licensing by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing within 20 days of the date of this Order. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licenses should be modified to require submission of information as set forth in Section IV of the Order.

Operating of the facilities on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective date: August 29, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80–28019 Filed 9–10–80; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–289]

Metropolitan Edison Co., et al.; Order for Modification of License

I

Metropolitan Edison Company (licensee) and two other co-owners are the holders of Facility Operating License No. DPR–50, which authorizes the operation of the Three Mile Island Nuclear Station, Unit No. 1 at steady state reactor power levels not in excess of 2535 megawatts thermal (rated power). The facility consists of a pressurized water reactor located at the licensee's site near Harrisburg, Pennsylvania.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79–01B of January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR–50 is hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director, Division of Licensing by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing within 20 days of the date of this Order. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to G. F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW, Washington, D.C. 20036, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective date: August 29, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80-28020 Filed 9-10-80; 8:45 am]

BILLING CODE 7590-01-M

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

[Dockets Nos. 50-277 and 50-278]

Philadelphia Electric Co., et al.; Order for Modification of License

I

Philadelphia Electric Company (licensee) and three other co-owners are the holders of Facility Operating Licenses Nos. DPR-44 and DPR-56, which authorize the operation of the Peach Bottom Atomic Power Station, Units Nos. 2 and 3 at steady state reactor power levels not in excess of 3293 megawatts thermal (rated power) for each unit. The facilities are boiling water reactors located at the licensee's site in Peach Bottom, York County, Pennsylvania.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: Fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation. The prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG-0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG-0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79-01B of January 14, 1980, to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's responses, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the Staff should be established by Order effective immediately.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, It is ordered that effective immediately Facility Operating Licenses Nos. DPR-44 and DPR-56 are hereby amended to add the following provisions:

"Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director, Division of Licensing, by the licensee not later than November 1, 1980."

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing within 20 days of the date of this Order. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW, Washington, DC 20006, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licenses should be modified to require

[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

submission of information as set forth in Section IV. of the Order.

Operating of the facilities on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: August 29, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80-28017 Filed 9-10-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

The Toledo Edison Co. and the Cleveland Electric Illuminating Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 30 to Facility Operating License No. NPF-3, issued to the Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), which revised the license for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility) located in Ottawa County, Ohio. The amendment is effective as of its date of issuance.

This amendment deletes satisfied license condition 2.C.(3)(r) regarding the submittal of a seismic reanalysis.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated March 4, 1980, (2) Amendment No. 30 to License No. NPF-3, and (3) the commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Ida Rupp Public Library, 310 Madison Street, Port Clinton, Ohio.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 27th day of August 1980.

For the Nuclear Regulatory Commission.

Robert W. Reid,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 80-28015 Filed 9-10-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. STN 50-502]

Wisconsin Electric Power Co., Wisconsin Power & Light Co. and Wisconsin Public Service Corp.; Withdrawal of Application for Construction Permit

By letter, dated May 17, 1980, Wisconsin Electric Power Company, et al. (Applicants) withdrew their application to construct and operate the Haven Nuclear Plant. The site was located approximately 5 miles north of Sheboygan, Wisconsin, on the western shore of Lake Michigan. On July 30, 1980, the NRC Atomic Safety and Licensing Board granted the Applicant's May 17, 1980 request to terminate the construction permit proceeding in its "Order Dismissing the Proceeding."

Accordingly, the Commission considers the Haven construction permit application to be withdrawn and the corresponding licensing proceeding to be terminated.

Correspondence concerning this application will continue to be maintained at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555. In addition, correspondence concerning this application will be maintained for at least the next six months at the Madison Public Library, Business and Science Division, 201 West Mifflin Street, Madison, Wisconsin 53703 and at the Mead Public Library, 710 North Eighth Street, Sheboygan, Wisconsin 53081.

Dated at Bethesda, Maryland, this 3rd day of September, 1980.

For the Nuclear Regulatory Commission.

B. J. Youngblood,

Chief, Licensing Branch No. 1, Division of Licensing.

[FR Doc. 80-28016 Filed 9-10-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-348]

Alabama Power Co. (Joseph M. Farley Nuclear Plant, Unit No. 1); Order for Modification of License

I

Alabama Power Company, (the licensee) is the holder of License No. NPF-2, which authorizes the operation of the Joseph M. Farley Nuclear Power Plant, Unit No. 1 at steady state reactor power levels not in excess of 2652 megawatts thermal (rated power). The facility consists of a pressurized water reactor located at the licensee's site in Houston County near the City of Dothan, Alabama.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by

Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide by-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79–01B of January 14, 1980 to provide a detailed review of the environmental qualfication of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. NPF–2 is hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director, Division of Licensing by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing within 20 days of the date of this Order. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to George F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV. of the Order. Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: August 29, 1980
Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80–28033 Filed 9–10–80; 8:45 am]

BILLING CODE 7590–01–M

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

[Docket No. 50–10]

Commonwealth Edison Co. (Dresden Nuclear Power Station, Unit No. 1); Order for Modification of License

I

Commonwealth Edison Company (the licensee) is the holder of Facility Operating License No. DPR–2, which authorizes the operation of the Dresden Nuclear Power Station, Unit No. 1 at steady-state reactor power levels not in excess of 700 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Grundy County, Illinois.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) are NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must

meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B[1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by Febraury 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982, all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by our letter of March 6, 1980, as modified by our letter of March 28, 1980, to provide information on emergency procedures and safety related systems. The licensee was requested to define and provide the basis for the hostile environment, inside and outside containment. This hostile environment would then be used, by the licensee, in the determination of unqualified equipment. A complete package, including justification for methods used, was requested.

Clarification was provided by supplemental information, briefings, and, in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest required that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR–2 is hereby amended to add the following provisions:

Information which fully and completely responds the the staff's request as specified above, shall be submitted to the Director, Division of Licensing by the licensee not later than November 1, 1980.

An earlier reponse is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing within 20 days of the date of this Order. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Isham, Linclon & Beale, Counselors at Law, One First National Plaza, 42nd Floor, Chicago, Illinois 60603, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should be modified to require submission of information as set forth in Section IV. of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: August 29, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80–28024 Filed 9–10–80; 8:45 am]

BILLING CODE 7590–01–M

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

[Docket No. 50–237]

Commonwealth Edison Co., Dresden Nuclear Power Station, Unit No. 2; Order for Modification of License

I

Commonwealth Edison Company (the licensee) is the holder of Provisional Operating License No. DPR–19, which authorizes the operation of the Dresden Nuclear Power Station, Unit No. 2 at steady-state reactor power levels not in excess of 2527 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Grundy County, Illinois.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical

equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B[1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982, all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by our letter of March 6, 1980, as modified by our letter of March 28, 1980, to provide information on emergency procedures and safety related systems. The licensee was requested to define and provide the basis for the hostile environment, inside and outside containment. This hostile environment would then be used, by the licensee, in the determination of unqualified equipment. A complete package, including justification for methods used, was requested.

Clarification was provided by supplemental information, briefings, and, in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I hae concluded that the public health, safety, and interest required that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Provisional Operating License No. DPR–19 is hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director, Division of Licensing by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing within 20 days of the date of this Order. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Isham, Lincoln & Beale, Counselors at Law, One First National Plaza, 42nd Floor, Chicago, Illinois 60603, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV. Of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: August 29, 1980, Bethesda, Md.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80-28025 Filed 9-10-80; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-295 and 50-304]

Commonwealth Edison Co. (Zion Station, Unit Nos. 1 and 2; Order for Modification of License

I

Commonwealth Edison Company, (the licensee) is the holder of License Nos. DPR–39 and DPR–48, which authorizes the operation of the Zion Station, Unit Nos. 1 and 2 at steady state reactor power levels not in excess of 3250 megawatts thermal (rated power). Each facility consists of a pressurized water reactor located at the licensee's site in Zion, Illinois.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission ordered the NRC staff to take several related actions. UCS

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by our letter of March 5, 1980, as modified by our letter of March 20, 1980 to provide information on emergency procedures and safety-related systems. The licensee was requested to define and provide the basis for the hostile environment, inside and outside containment. This hostile environment would then be used, by the licensee, in the determination of unqualified equipment. A complete package, including justification for methods used, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License Nos. DPR–39 and DPR–48 are hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director, Division of Licensing by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing within 20 days of the date of this Order. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Phillip P. Steptoe, Esquire, Isham, Lincoln and Beale, Suite 4200, First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licenses should be modified to require submission of information as set forth in Section IV of the order.

Operating of the facilities on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: August 29, 1980, Bethesda, Md.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80–28034 Filed 9–10–80; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co., Haddam Neck Plant; Order for Modification of License

I

Connecticut Yankee Atomic Power Company (the licensee) is the holder of Facility Operating License No. DPR–61, which authorizes the operation of the Haddam Neck Plant at steady state reactor power levels not in excess of 1825 megawatts thermal (rated power). The facility consists of a pressurized water reactor located at the licensee's site in Middlesex County, Connecticut.

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982, all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by our letter of March 6, 1980, as modified by our letter of March 28, 1980, to provide information on emergency procedures and safety related systems. The licensee was requested to define and provide the basis for the hostile environment, inside and outside containment. This hostile environment would then be used, by the licensee, in the determination of unqualified equipment. A complete package, including justification for methods used, was requested.

Clarification was provided by supplemental information, briefings, and, in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest required that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR–61 is hereby amended to add the following provisions:

"Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director, Division of Licensing by the licensee not later than November 1, 1980."

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing within 20 days of the date of this Order. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Day, Berry & Howard, Counselors at Law, One Constitution Plaza, Hartford, Connecticut 06103, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV of the Order. Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: August 29, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80-28026 Filed 9-10-80; 8:45 am]

BILLING CODE 7590-01-M

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the Staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

[Docket No. 50-245]

Connecticut Light & Power, et al.; Order for Modification of License

I

In the Matter of Connecticut Light and Power, The Hartford Electric Light Company, Western Massachusetts Electric Company and Northeast Nuclear Energy Company, Millstone Nuclear Power Station Unit No. 1.

Connecticut Light and Power, the Hartford Electric Light Company, Western Massachusetts Electric Company and Northeast Nuclear Energy Company (the licensees) are the holders of Provisional Operating License No. DPR-21, which authorizes operation of the Millstone Nuclear Power Station, Unit No. 1 at steady-state reactor power levels not in excess of 2011 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Waterford, Connecticut.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B[1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982, all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG-0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG-0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection Northeast Nuclear Energy Company was requested by our letter of March 6, 1980, as modified by our letter of March 28, 1980, to provide information on emergency procedures and safety related systems. The licensee was requested to define and provide the basis for the hostile environment inside and outside containment. This hostile environment would then be used, by the licensee, in the determination of unqualified equipment. A complete package, including justification for methods used, was requested.

Clarification was provided by supplemental information, briefings, and, in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment andf timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest required that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Provisional Operating License No. DPR-21 is hereby amended to add the following provisions:

"Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director, Division of Licensing by the licensee not later than November 1, 1980."

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing within 20 days of the date of this Order. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to William H. Cuddy,

[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

Esquire, Day, Berry & Howard, Counselors at Law, One Constitution Plaza, Hartford, Connecticut 06103, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV. of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: August 29, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80-28023 File 9-10-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-155]

Consumers Power Co., Big Rock Point Plant; Order for Modification of License

Consumers Power Company (the licensee) is the holder of Facility Operating License No. DPR-6, which authorizes the operation of the Big Rock Point Plant at steady-state reactor power levels not in excess of 240 megawatts thermal (rated power). The facility consists of a boiling water reactor located in Charlevoix County, Michigan.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B[1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982, all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG—0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG-0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by our letter of March 6, 1980, as modified by our letter of March 28, 1980, to provide information on emergency procedures and safety related systems. The licensee was requested to define and provide the basis for the hostile environment, inside and outside containment. This hostile environment would then be used, by the licensee, in the determination of unqualified equipment. A complete package, including justification for methods used, was requested.

Clarification was provided by supplemental information, briefings, and, in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety , and interest required that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR-6 is hereby amended to add the following provisions:

"Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director, Division of Licensing by the licensee not later than November 1, 1980."

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may

[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

request a hearing within 20 days of the date of this Order. Any request for a hearing will no stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV. of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: August 29, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80-28027 Filed 9-10-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-247]

Consolidated Edison Co. of New York, Inc., Indian Point, Unit No. 2; Order for Modification of License

Consolidated Edison Company of New York, Inc. (the licensee) is the holder of License No. DPR-26, which authorizes the operation of the Indian Point, Unit No. 2 nuclear power plant at steady state reactor power levels not in excess of 2758 megawatts thermal (rated power). The facility consists of a pressurized water reactor located at the licensee's site in Westchester County, New York.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qaulification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B[1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the Staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG-0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG-0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by our letter of March 5, 1980, as modified by our letter of March 20, 1980 to provide information on emergency procedures and safety related systems. The licensee was requested to define and provide the basis for the hostile environment, inside and outside containment. This hostile environment would then be used, by the licensee, in the determination of unqualified equipment. A complete package, including justification for methods used, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR

Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR–26 is hereby amended to add the following provisions:

"Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director, Divsion of Licensing by the licensee not later than November 1, 1980."

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing within 20 days of the date of this Order. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Brent L. Brandenburg, Consolidated Edison Company of New York, Inc., 4 Irving Place, New York, New York 10019, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: August 29, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80–28029 Filed 9–10–80; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–334]

Duquesne Light Co., Beaver Valley Station, Unit No. 1; Order for Modification of License

I

The Duquesne Light Company (the licensee) is the holder of License No. DPR–66, which authorizes the operation of the Beaver Valley Power Station, Unit No. 1 at steady state reactor power levels not in excess of 2652 megawatts thermal (rated power). The facility consists of a pressurized water reactor located at the licensee's site in Beaver County, Pennsylvania.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate the environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by Fedruary 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide by-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable to staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by Bulletin 79–01B dated January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.1The Commission further directred the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR–66 is hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director, Division of Licensing by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing within 20 days of the date of this Order. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV. of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: August 29, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director of Division of Licensing.

[FR Doc. 80–28030 Filed 9–10–80; 8:45 am]

BILLING CODE 7590–01–M

[Dockets Nos. 50–250 and 50–251]

Florida Power & Light Co., Turkey Point, Units Nos. 3 and 4); Order for Modification of License

I

The Florida Power and Light Company (the licensee) is the holder of License Nos. DPR–31 and DPR–41, which authorize the operation of the Turkey Point Plant Unit Nos. 3 and 4 at steady state reactor power levels not in excess of 2200 megawatts thermal (rated power). The facility consists of a pressurized water reactor located at the licensee's site in Dade County near Miami, Florida.

II

On November 4, 1977, the Union of Concerned Scientists (USC) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission ordered the NRC staff to take several related actions. USC filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide by-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79–01B dated January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and, in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest required that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License Nos. DPR–31 and DPR–41 are hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director Division of Licensing by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing within 20 days of the date of this Order. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Mr. Robert Lowenstein, Esquire, Lowenstein, Newman, Reis and Axelrad, 1025 Connecticut Avenue, N.W., Suite 1214, Washington D.C. 20036, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licenses should be modified to require submission of information as set forth in Section IV. of the Order.

Operating of the facilities on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: August 29, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80–26035 Filed 9–10–80; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–219]

Jersey Central Power & Light Co., Oyster Creek Nuclear Generating Station; Order for Modification of License

I

Jersey Central Power & Light Company (the licensee) is the holder of the Provisional Operating License No. DPR–16, which authorizes operation of the Oyster Creek Nuclear Generating Station at steady-state reactor power levels not in excess of 1930 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Ocean County, New Jersey.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOE Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982, all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by our letter of March 6, 1980, as modified by our letter of March 28, 1980, to provide information on emergency procedures and safety related systems. The licensee was requested to define and provide the basis for the hostile environment, inside and outside containment. This hostile environment would then be used, by the licensee, in the determination of unqualified equipment. A complete package, including justification for methods used, was requested.

Clarification was provided by supplemental information, briefings, and, in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest required that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effectively immediately Provisional Operating License No. DPR–16 is hereby amended to add the following provision:

Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director, Division of Licensing by the licensee not later than November 1, 1980."

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing within 20 days of the date of this Order. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to G. F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV. of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective date: August 29, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80–28028 Filed 9–10–80; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–272]

Public Service Electric & Gas Co., Salem Nuclear Generating Station, Unit No. 1; Order for Modification of License

I

Public Service Electric and Gas Company (the licensee) is the holder of License No. DPR–70, which authorizes the operation of the Salem Nuclear Generating Station, Unit No. 1 at steady state reactor power levels not in excess of 3338 megawatts thermal (rated power). The facility consists of a pressurized water reactor located at the licensee's site in Salem County, New Jersey.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by IE Bulletin 79–01B dated January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all t he information previously requested by the staff should be established by Order effective immediately.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR–70 is hereby amended to add the following provisions:

"Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director, Division of Licensing by the licensee not later than November 1, 1980."

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing within 20 days of the date of this Order. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Mark J. Wetterhahn, Esquire, Conner, Moore and Corber, Suite 1050, 1747 Pennsylvania Avenue, N.W., Washington, D.C. 20006, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV. of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: August 29, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80-28032 Filed 9-10-80; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-280 and 50-281]

Virginia Electric & Power Co., Surry Power Station, Unit Nos. 1 and 2; Order for Modification of License

I

Virginia Electric and Power Company (the licensee) is the holder of License Nos. DPR–32 and DPR–37, which authorize the operation of the Surry Power Station, Unit Nos. 1 and 2 at steady state reactor power levels not in excess of 2441 megawatts thermal (rated power). Each facility consists of a pressurized water reactor located at the licensee's site in Surry County, Virginia.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

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[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79–01B of January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License Nos. DPR–32 and DPR–37 are hereby amended to add the following provisions:

"Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director Division of Licensing by the licensee not later than November 1, 1980."

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing within 20 days of the date of this Order. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Mr. Michael W. Maupin, Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licenses should be modified to require submission of information as set forth in Section IV. of the Order.

Operating of the facilities on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: August 29, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80–28031 Filed 9–10–80; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–368]

Arkansas Power & Light Co. (Arkansas Nuclear One—Unit 2); Order for Modification of License

I

Arkansas Power and Light Company (licensee) is the holder of License No. NPF–6, which authorizes the operation of the Arkansas Nuclear One—Unit 2 nuclear power plant at steady state reactor power levels not in excess of 2815 megawatts thermal (rated power). The facility consists of a Pressurized Water Reactor located at the licensee's site in Pope County, Arkansas.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by

Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by not later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79–01B dated January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. NPF–6 is hereby amended to add the following provisions:

"Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director Division of Licensing by the licensee not later than November 1, 1980."

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request for a hearing on or before October 1, 1980. Any request for a hearing will not stay the effecitive date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Nick Reynolds, Esq., DeBevoise & Liberman, 1200 Seventeenth Street, N.W., Washington D.C. 20036, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV of the Order.

Operating of the facilities on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: August 29, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrel G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80–28042 Filed 9–10–80; 8:45 am]

BILLING CODE 7590–01–M

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

[Dockets Nos. 50–317 and 50–318]

Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2); Order for Modification of Licenses

I

Baltimore Gas and Electric Company (licensee) is the holder of License Nos. DPR–53 and DPR–64 which authorize the operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 at steady state reactor power levels not in excess of 2700 megawatts thermal (rated power). The facilities consist of two Pressurized Water Reactors located at the licensee's site in Calvert County, Maryland.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on

Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B[1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significiant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79–01B dated January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualifcation of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License Nos. DPR–53 and DPR–69 are hereby amended to add the following provisions:

"Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director, Division of Licensing by the licensee not later than November 1, 1980."

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 1, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to George F. Trowbridge, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street N.W., Washington, D.C. 20036, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licenses should be modified to require submission of information as set forth in Section IV of the Order.

Operating of the facilities on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: August 29, 1980, Bethesda, Maryland.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80–28047 Filed 9–10–80; 8:45 am]

BILLING CODE 7590–01–M

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

[Docket No. 50–409]

Dairyland Power Cooperative (LaCrosse Boiling Water Reactor); Order for Modification of License

I

Dairyland Power Cooperative (the licensee) is the holder of the Provisional Operating License No. DPR–45, which authorizes operation of the LaCrosse Boiling Water Reactor at steady-state reactor power levels not in excess of 165 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Vernon County, Wisconsin.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the

Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B[1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by our letter of March 6, 1980, as modified by our letter of March 28, 1980, to provide information on emergency procedures and safety related systems. The licensee was requested to define and provide the basis for the hostile environment, inside and outside containment. This hostile environment would then be used, by the licensee, in the determination of unqualified equipment. A complete package, including justification for methods used, was requested.

Clarification was provided by supplemental information, briefings, and, in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest required that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Provisional Operating License No. DPR–45 is hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director, Division of Licensing by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 1, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to O. S. Heistand, Jr., Esquire, Morgan, Lewis & Bockius, 1800 M Street NW., Washington, D.C. 20036, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in section IV of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective date. August 29, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80–28051 Filed 9–10–80; 8:45 am]

BILLING CODE 7590–01–M

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

[Docket No. 50–335]

Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit. No. 1); Order for Modification of License

I

Florida Power and Light Company (licensee) is the holder of License No. DPR–67, which authorizes the operation of the St. Lucie Nuclear Power Plant Unit 1 at steady state reactor power levels not in excess of 2560 megawatts thermal (rated power). The facility consists of a Pressurized Water Reactor located at the licensee's site in St. Lucie County, Florida.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The

petition sought action in two areas; fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualifications of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588 "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts on operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualifications of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during the proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluation, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79–01B dated January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods of justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR–67 is hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director, Division of Licensing by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 1, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regualtory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Robert Lowenstein, Esq., Lowenstein, Newman, Reis and Alexrad, 1025 Connecticut Avenue, N.W., Wahington, D.C. 20036, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV. of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective date: August 29, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80–28050 Filed 9–10–80; 8:45 am]

BILLING CODE 7590–01–M

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulleting 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

[Docket No. 50-309]

Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station; Order for Modification of License

I

Maine Yankee Atomic Power Company (licensee) is the holder of License No. DPR-36, which authorizes the operation of the Maine Yankee Atomic Power Station at steady state reactor power levels not in excess of 2630 megawatts thermal (rated power). The facility consists of a Pressurized Water Reactor located at the licensee's site near Wiscasset, Maine.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." the Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add cetain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG-0588. A sigificant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG-0588, the qualifiations of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79-01B dated January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primay containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modification by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR-36 is hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director, Division of Licensing by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 1, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to John A. Ritsher, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require

[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meeting during months of February and March, 1980.

submission of information as set forth in Section IV of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: August 29, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80-28055 Filed 9-10-80, 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-298]

Nebraska Public Power District (Cooper Nuclear Power Station); Order for Modification of License

I

The Nebraska Public Power District (licensee) is the holder of Facility Operating License No. DPR-46 which authorizes the operation of the Cooper Nuclear Power Station at steady state reactor power levels not in excess of 2381 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Nemaha County, Nebraska.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposes a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promply."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG-0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG- 0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79-01B of January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognized all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR-46 is hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director, Division of Licensing by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 1, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S.

[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meeting during the months of February and March, 1980.

Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Arthur C. Gehr, Attorney, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85073, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: August 29, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80-28043 Filed 9-10-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-220]

Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station, Unit 1); Order for Modification of License

I

The Niagara Mohawk Power Corporation (licensee) is the holder of Facility Operating license No. DPR-63 which authorizes the operation of the Nine Mile Point Nuclear Station, Unit 1 at power levels up to 1850 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Oswego County, New York.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978, decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982, all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG-0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG-0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79-01B of January 14, 1980, to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, It is ordered that effective immediately Facility Operating License No. DPR-63 is hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director,

[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

Division of Licensing by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 1, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Eugene B. Thomas, Jr., Esquire, LeBoeuf, Lamb, Leiby & MacRae, 1333 New Hampshire Avenue, N.W., Suite 1100, Washington, D.C. 20036, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV. of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: August 29, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80-28041 Filed 9-10-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-336]

Northeast Nuclear Energy Co., et al. (Millstone Nuclear Power Station Unit No. 2) Order for Modification of License

I

In the Matter of Northeast Nuclear Energy Company, Connecticut Light and Power Company, Hartford Electric Light Company, Western Massachusetts Electric Company (Millstone Nuclear Power Station Unit No. 2).

Northeast Nuclear Energy Company, et al. (licensee) is the holder of License No. DPR-65, which authorizes the operation of the Millstone Nuclear Power Station, Unit No. 2 at Steady state reactor power levels not in excess of 2700 megawatts thermal (rated power). The facility consists of a Pressurized Water Reactor located at the lincensee's site in the Town of Waterford, Connecticut.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Energency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order dated May 23, 1980, the Commission reaffirmed its April 13, 1978, decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980, decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NURGE-0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff and add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG-0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG-0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79-01B dated January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of enironmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety.

[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the informaiton previously requested by the staff should be established by Order effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended and the Commission's regulations in 10 CFR Parts 2 and 50, It Is Ordered That Effective Immediately Facility Operating License No. DPR–65 is hereby amended to add the following provisions:

"Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director, Division of Licensing by the licensee not later than November 1, 1980."

An earlier response is encouraged to facilitate staff review and issuance of their safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 1, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to William H. Cuddy, Esq., Day, Berry & Howard, One Constitution Plaza, Hartford, Connecticut, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV. of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: August 29, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80–28037 Filed 9–10–80; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–263]

Northern States Power Co. (Monticello Nuclear Generating Plant); Order for Modification of License

I

The Northern States Power Company (the licensee) is the holder of Provisional Operating License No. DPR–22 which authorizes the operation of the Monticello Nuclear Generating Plant at steady state reactor power levels not in excess of 1670 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Wright County, Minnesota.

84II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978, decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B[1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79–01B of January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, It is ordered that effective immediately Provisional Operating License No. DPR–22 is hereby amended to add the following provisions:

"Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director, Division of Licensing by the licensee not later than November 1, 1980."

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 1, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV. of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: August 29, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80–28045 Filed 9–10–80; 8:45 am]

BILLING CODE 7590–01–M

[Dockets Nos. 50–282 and 50–306]

Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2); Order for Modification of Licenses

I

Northern States Power Company (licensee) is the holder of License Nos. DPR–42 and DPR–60 which authorize the operation of the Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2 at steady state reactor power levels not in excess of 1650 megawatts thermal (rated power). The facilities consist of two Pressurized Water Reactors located at the licensee's site in Goodhue County, Minnesota.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which icensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualification of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79–01B dated January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License Nos. DPR–42 and DPR–60 are hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director, Division of Licensing by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 1, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street NW., Washington, D.C. 20036, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licenses should be modified to require submission of information as set forth in section IV of the Order.

Operating of the facilities on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective date. August 29, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80–28036 Filed 9–10–80; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–285]

Omaha Public Power District (Fort Calhoun Station, Unit No. 1); Order for Modification of License

I

Omaha Public Power District (licensee) is the holder of License No. DPR–40, which authorizes the operation of the Fort Calhoun Station, Unit No. 1 at steady state reactor power levels not in excess of 1500 megawatts thermal (rated power). The facility consists of a Pressurized Water Reactor located at the licensee's site in Washington County, Nebraska.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B[1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

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[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79–01B dated January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR–40 is hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director, Division of Licensing by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 1, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Marilyn A. Tebor, Esq., LeBoeuf, Lamb, Leiby & MacRae, 1333 New Hampshire Avenue, N.W., Washington, D.C. 20036, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: August 29, 1980, Bethesda, Md.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80-28048 Filed 9-10-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-344]

Portland General Electric Co., et al. (Trojan Nuclear Plant); Order for Modification of License

I

In the Matter of Portland General Electric Company. The City of Eugene, Oregon, Pacific Power and Light Company (Trojan Nuclear Plant).

Portland General Electric Company, et al. (licensee) is the holder of License No. NPF–1, which authorizes the operation of the Trojan Nuclear Plant at steady state reactor power levels not in excess of 3,411 megawatts thermal (rated power). The facility consists of a Pressurized Water Reactor located at the licensee's site near Rainier, Oregon.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electric cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—The Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its reviews of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of the environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meeting during the months of February and March, 1980.

incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee form the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety—related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79–01B dated January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electircal equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, It Is Ordered That Effective Immediately Facility Operating License No. NPF–1 is hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director, Division of Licensing by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 1, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A Copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to J. W. Durham, Esq., Vice President and Corporate Counsel, Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV. of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: August 29, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80-28040 Filed 9-10-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-267]

Public Service Co. of Colorado (Fort St. Vrain Nuclear Generating Station); Order for Modification of License

I

The Public Service Company of Colorado (licensee) is the holder of License No. DPR–34 which authorizes the operation of the Fort St. Vrain Nuclear Generating Station at steady state reactor power levels not in excess of 842 megawatts thermal (rated power) with a current hold at 70%. The facility consists of a Gas-Cooled reactor located at the licensee's site in Weld County, Colorado:

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by

Bulletin 79-01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG-0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG-0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79-01B of January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, It is ordered that effective immediately Facility Operating License No. DPR-34 is hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director, Division of Licensing by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 1, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Bryant O'Donnell, Esq., Kelly, Stansfield and O'Donnell, 990 Public Service Company Building, Denver, Colorado 80202, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: August 29, 1980.
Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 80-28046 Filed 9-10-80; 8:45 am]

BILLING CODE 7590-01-M

[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

[Docket No. 50-244]

Rochester Gas & Electric Co. (R. E. Ginna Nuclear Power Plant;) Order for Modification of License

I

Rochester Gas & Electric Company (the licensee) is the holder of Provisional Operating License No. DPR-18, which authorizes the operation of the R. E. Ginna Nuclear Power Plant at steady-state reactor power levels not in excess of 1520 megawatts thermal (rated power). The facility consists of a pressurized water reactor located at the licensee's site in Wayne County, New York.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-

Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982, all safety related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by our letter of March 6, 1980, as modified by our letter of March 28, 1980, to provide information on emergency procedures and safety related systems. The licensee was requested to define and provide the basis for the hostile enviornment, inside and outside containment. This hostile environment would then be used, by the licensee, in the determination of unqualified equipment. A complete package, including justification for methods used, was requested.

Clarification was provided by supplemental information, briefings, and, in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest required that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, It is ordered that effective immediately Provisional Operating License No. DPR–18 is hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director, Division of Licensing by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 1, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Harry H. Voight, Esquire, LeBoeuf, Lamb, Leiby & MacRae, 1333 New Hampshire Avenue, NW., Suite 1100, Washington, D.C., attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: August 29, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80–28053 Filed 9–10–80; 8:45 am]

BILLING CODE 7590–01–M

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

[Docket No. 50–206]

Southern California Edison Co. and San Diego Gas & Electric Co. (San Onofre Nuclear Generating Station, Unit 1); Order for Modification of License

I

Southern California Edison Company and San Diego Gas and Electric Company (the licensees) are the holders of Provisional Operating License No. DPR–13, which authorizes operation of the San Onofre Nuclear Generating Station at steady-state reactor power levels not in excess of 1347 megawatts thermal (rated power). The facility consists of a pressurized water reactor located at the licensee's site in San Diego County, California.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a

Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors' (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982, all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by our letter of March 6, 1980, as modified by our letter of March 28, 1980, to provide information on emergency procedures and safety related systems. The licensee was requested to define and provide the basis for the hostile environment, inside and outside containment. This hostile environment would then be used, by the licensee, in the determination of unqualified equipment. A complete package, including justification for methods used, was requested.

Clarification was provided by supplemental information, briefings, and, in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest required that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, It is ordered that effective immediately Provisional Operating License No. DPR–13 is hereby amended to add the following provisions:

"Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director, Division of Licensing by the licensee not later than November 1, 1980."

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing within on or before October 1, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Charles L. Kocher, Assistant General Counsel, Southern California Edison Company, Post Office Box 800, Rosemead, California 91770, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV. of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: August 29, 1980.
Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80–28052 Filed 9–10–80; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–271]

Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Plant); Order for Modification of License

I

The Vermont Yankee Nuclear Power Corporation (licensee) is the holder of Facility Operating License No. DPR–28 which authorizes the operation of the Vermont Yankee Nuclear Power Plant at steady state reactor power levels not in excess of 1593 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Windham County, Vermont.

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79–01B of January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended and the Commission's regulations in 10 CFR Parts 2 and 50, It is ordered that effective immediately Facility Operating License No. DPR–28 is hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director, Division of Licensing by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of their safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 1, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to John A. Ritsher, Esquire, Ropes & Gray, 225 Franklin Street, Boston, Massachusetts 01581, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV. of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: August 29, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80-28044 Filed 9-10-80; 8:45 am]

BILLING CODE 7590-01-M

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

[Docket No. 50-338]

Virginia Electric & Power Co. (North Anna Power Station, Unit No. 1); Order for Modification of License

I

Virginia Electric and Power Company (licensee) is the holder of License No. NPF-4, which authorizes the operation of the North Anna Power Station Unit No. 1 at steady state reactor power levels not in excess of 2775 megawatts thermal (rated power). The facility consists of a Pressurized Water Reactor located at the licensee's site in Louisa County, Virginia.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B[1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG-0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG-0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79-01B dated January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and, in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest required that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. NPF-4 is hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director, Division of Licensing by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 1, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Michael W. Maupin, Esq., Hunton, Williams, Gay and Gibson, P.O. Box 1535, Richmond, Virginia 23212, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license

[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

should be modified to require submission of information as set forth in Section IV of the Order. Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: August 29, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80-28038 Filed 9-10-80; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-266 and 50-301]

Wisconsin Electric Power Co. (Point Beach Nuclear Plant Unit Nos. 1 and 2); Order for Modification of Licenses

I

Wisconsin Electric Power Company (licensee) is the holder of License Nos. DPR-24 and DPR-27 which authorize the operation of the Point Beach Nuclear Plant, Unit Nos. 1 and 2 at steady state reactor power levels not in excess of 1518 megawatts thermal (rated power). The facilities consist of two Pressurized Water Reactors located at the licensee's site at Two Creeks, Wisconsin.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualifed to the DOR Guidelines or NUREG-0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a license from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines of NUREG-0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG-0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79-01B dated January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required by function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, It is ordered that effective immediately Facility Operating License Nos. DPR-24 and DPR-27 are hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director, Division of Licensing by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 1, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be

[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Bruce Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street N.W., Washington, D.C. 20036, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licenses should be modified to require submission of information as set forth in Section IV. of the Order.

Operating of the facilities on terms consistent with this Order is not stayed by the pendency of any proceeding on the Order.

Effective Date: August 29, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80-28039 Filed 9-10-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-305]

Wisconsin Public Service Corp. et al. (Kewaunee Nuclear Power Plant); Order for Modification of License

I

Wisconsin Public Service Corporation, et al (the licensee) is the holder of License No. DPR-43 which authorizes the operation of the Kewaunee nuclear power plant at steady state reactor power levels not in excess of 1650 megawatts thermal (rated power). The facility consists of a pressurized water reactor located at the licensee's site in Kewaunee County, Wisconsin.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed liensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion [GDC-4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588." The Commission requested the staff to, "keep the commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG-0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG-0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79-01B of January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR-43 is hereby amended to add the following provisions:

[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director, Division of Licensing by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 1, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Foley & Lardner, First Wisconsin Center, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective date: August 29, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing

[FR Doc. 80-28054 Filed 9-10-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-29]

Yankee Atomic Electric Co. [Yankee Nuclear Power Station (Yankee Rowe)]; Order for Modification of License

I

Yankee Atomic Electric Company (the licensee) is the holder of Facility Operating License No. DPR-3, which authorizes the operation of the Yankee Nuclear Power Station (Yankee Rowe) at steady-state reactor power levels not in excess of 600 megawatts thermal (rated power). The facility consists of a pressurized water reactor located at the licensee's site in Franklin County, Rowe, Massachusetts.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982, all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588." The Commission requested the staff to, "keep the Commission and the public appraised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG-0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG-0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by our letter of March 6, 1980, as modified by our letter of March 28, 1980, to provide information on emergency procedures and safety related systems. The licensee was requested to define and provide the basis for the hostile environment, inside and outside containment. This hostile environment would then be used, by the licensee, in the determination of unqualified equipment. A complete package, including justification for methods used, was requested.

Clarification was provided by supplemental information, briefings, and, in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable

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[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest required that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR–3 is hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified above, shall be submitted to the Director, Division of Licensing by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 1, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Frederic Greenmond, Esquire, New England Electric System, 20 Turnpike Road, Westboro, Massachusetts 01581, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective date: August 29, 1980, Bethesda, Md.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 80–28049 Filed 9–10–80; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

President's Commission for a National Agenda for the Eighties; Meeting

September 4, 1980.

AGENCY: Office of Management and Budget.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is herby given for a meeting of the staff of Panel V (Policies and Priorities for the Metropolitan and Non-Metropolitan Areas) of The President's Commission for a National Agenda for the Eighties with the State and Local Government Advisory Board. The meeting will be held from 9:00 a.m.–12:00 p.m. on September 26, 1980, at the University of Houston Hotel, Houston, Texas.

The purpose of the meeting will be to discuss the panel's draft report.

The meeting is open to the public.

Seats are available on a first-come basis.

FOR FURTHER INFORMATION CONTACT: President's Commission for a National Agenda for the Eighties, Office of Administration, 744 Jackson Place, Northwest, Washington, D.C. 20006, (202) 275–0616.

Brenda Mayberry,

Acting Budget and Management Officer.

[FR Doc. 80–28062 Filed 9–10–80; 8:45 am]

BILLING CODE 3110–01–M

President's Commission for a National Agenda for the Eighties; Meeting

September 4, 1980.

AGENCY: Office of Management and Budget.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given for a meeting of the staff of Panel VI (Government and the Regulation of Individual and Corporate Decisions) of The President's Commission for a National Agenda for the Eighties. The meeting will be held from 9:00 a.m.–4:00 p.m. on October 3, 1980, at the New Executive Office Building, Room 10104, Washington, D.C.

The purpose of the meeting will be to discuss the panel's draft report.

The meeting is open to the public.

Seats are available on a first-come basis.

FOR FURTHER INFORMATION CONTACT: President's Commission for a National Agenda for the Eighties, Office of Administration, 744 Jackson Place, Northwest, Washington, D.C. 20006, (202) 275–0616.

Brenda Mayberry,

Acting Budget and Management Officer.

[FR Doc. 80–28063 Filed 9–10–80; 8:45 am]

BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 17123; SR–NSCC–80–16]

National Securities Clearing Corporation ("NSCC"); Order Approving Proposed Rule Change

September 5, 1980.

On May 12, 1980, NSCC filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b–4 thereunder, a proposed rule change establishing a "Demand As Of" service to assist in the resolution of uncompared trades in the over the counter market.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 16825, May 22, 1980) and by publication in the **Federal Register** (45 FR 36245, May 29, 1980). No written comments were received by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies, and in particular, the requirements of section 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80–28058 Filed 9–10–80; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 17124; SR–OCC–79–4]

Options Clearing Corp. ("OCC"); Order Approving Proposed Rule Change

September 5, 1980.

On July 9, 1979, OCC filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b–4 thereunder, a proposed rule change establishing procudures to follow when it determines that an imminent or pending tender offer, exchange offer, suspension of trading, or

other event in an underlying security threatens to reduce the available supply of that security to a level insufficient to permit the performance of the obligations under option contracts written on that security.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 16014, August 3, 1979) and by publication in the Federal Register (44 FR 47424, August 13, 1979). No written comments were received by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies, and in particular, the requirements of Section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-28057 Filed 9-10-80; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/321]

Advisory Committee to the U.S. National Section of the Inter-American Tropical Tuna Commission; Notice of Meeting

Notice is hereby given, pursuant to the provisions of Public Law 92-463, that a meeting of the Advisory Committee to the United States National Section of the Inter-American Tropical Tuna Commission will be held on September 25, 1980 from 8:30 a.m. to 11:30 a.m., in the auditorium of the Southwest Fisheries Center of the National Marine Fisheries Service at 8604 La Jolla Shores Drive, La Jolla, California.

The meeting will be open to the public and the public may participate in the discussions subject to the instructions of the Committee Chairman. Subjects to be discussed include an evaluation of the 1980 fishery experience, a preliminary outlook for the 1981 fishery and U.S. views on the overall quota and other aspects of the management program.

Requests for further information on the meeting should be directed to Brian Hallman, OES/OFA, Room 5806, Department of State. He may be reached by telephone on (202) 632-1073.

Dated: September 4, 1980.

Morris D. Busby,

Deputy Assistant Secretary for Oceans and Fisheries Affairs.

[FR Doc. 80-27982 Filed 9-10-80; 8:45 am]

BILLING CODE 4710-09-M

TENNESSEE VALLEY AUTHORITY

Proposed Development of a Coal Gasification Demonstration Plant; Public Hearing on Draft Environmental Impact Statement and Invitation for Public Comment

AGENCY: Tennessee Valley Authority.

ACTION: Notice is given that the Tennessee Valley Authority (TVA) will conduct a public hearing to receive comments on TVA's Draft Environmental Impact Statement (DEIS) issued August 1, 1980, for its proposed coal gasification plant. The draft assessed the environmental consequences of constructing and operating a commercial-scale coal gasification demonsration plant capable of processing approximately 20,000 tons of coal per day into medium-Btu gas. Of the alternative sites evaluated for the facility, the TVA-owned Murphy Hill site in Marshall County, Alabama, at Tennessee river mile (TRM) 370L approximately 11 miles northeast of Guntersville, Alabama, is considered to be preferable.

COMMENTS AND PUBLIC HEARING: TVA invites interested persons and agencies to attend this public hearing in order to give oral comments on the DEIS. Comments received at this meeting will be accorded the same weight as written comments. Written comments on the DEIS should be sent to Dr. Mohamed T. El-Ashry at the address provided below and must be received by October 1, 1980. the meeting will be held on September 23, 1980, at 7:00 p.m. CST at the Lake Guntersville State Park Lodge and Convention Center, Guntersville, Alabama 35976. A transcript of this hearing will be made by TVA and will be available at the following libraries: Guntersville Public Library, 1299 O'Brig Avenue, Guntersville, Alabama; Huntsville-Madison Library, 108 Fountain, Huntsville, Alabama; Muscle Shoals Regional Public Library, 1010 East Avalon, Muscle Shoals, Alabama; Scottsboro Public Library, 1002 South Broad Street, Scottsboro, Alabama; Tennessee Valley Authority Technical Libraries in Knoxville and Chattanooga, Tennessee, and in Muscle Shoals, Alabama; and Wheeler Basin Regional Library, 504 Cherry NE., Decatur, Alabama. Copies of the DEIS have been placed in these same libraries for public use. Individual copies may be obtained by calling the TVA Citizen Action Lines at the numbers given below.

FOR FURTHER INFORMATION CONTACT: Dr. Mohamed T. El-Ashry, Director of the Environmental Quality Staff, Office of Natural Resources, Forestry Building, Norris, Tennessee 37828, or call TVA's Citizen Action Office toll free: 1-800-362-9250 (in Tennessee) or 1-800-251-9242 (in Alabama, Georgia, Kentucky, Mississippi, North Carolina, and Virginia).

Dated: September 4, 1980.

W. F. Willis,

General Manager.

[FR Doc. 80-27890 Filed 9-10-80; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 80-102]

Equipment, Construction, and Materials

AGENCY: Coast Guard, DOT.

ACTION: Termination of approval notice.

1. Certain laws and regulations (46 CFR Chapter 1) require that various items of lifesaving, firefighting and miscellaneous equipment, construction, and materials used on board vessels subject to Coast Guard inspection, on certain motorboats and other recreational vessels, and on the artifical islands and fixed structures on the outer Continental Shelf be of the types approved by the Commandant, U.S. Coast Guard. The purpose of this document is to notify all interested persons that certain approvals have been terminated as herein described during the period from 14 May 1980 to 17 June 1980 (List No. 3-80). These actions were taken in accordance with the procedures set forth in 49 CFR 2.75-1 to 2.75-50.

2. The statutory authority for equipment, construction, and material approvals is generally set forth in sections 367, 375, 390b, 416, 481, 489, 526p, and 1333 of Title 46, United States Code, section 1333 of Title 43, United States Code, and section 198 of Title 50, United States Code. The Secretary of Transportation has delegated authority to the Commandant, U.S. Coast Guard with respect to these approvals (46 CFR 1.46(b)). The specifications prescribed by the Commandant, U.S. Coast Guard, for certain types of equipment, construction, and materials are set forth in 46 CFR Parts 160 to 164.

3. Notwithstanding the termination of approval listed in this document, the equipment affected may be used as long as it remains in good and serviceable condition.

Lifeboat Davit

Approval No. 160.032/185/0, Type 20–200 survival capsule launching system (winch type); approved as an alternate to a lifeboat davit for a maximum working load of 11,000 lbs. on a single-part fall, manufactured by Whittaker Corp., 5159 Baltimore Drive, La Mesa, CA 92041, approval was terminated effective 3 June 1980.

Approval No. 160.032/206/1, Type SS 5001, 50 person survival capsule launching system (winch type); approved as an alternate to a lifeboat davit for a maximum working load of 17,000 lbs. on a single-part fall, manufactured by Whittaker Corp., 5159 Baltimore Drive, La Mesa, CA 92041, approval was terminated effective 21 May 1980.

Lifeboat

Approval No. 160.035/460/0, 26.0′ x 9.0′ x 3.83′ fibrous glass reinforced plastic (FRP), motor-propelled Class 1 lifeboat, 48-person capacity, manufactured by Marine Safety Equipment Corp., Foot of Wycoff Road, Farmingdale, NJ 07727, approval was terminated effective 2 June 1980.

Marine Buoyant Device

Approval No. 160.064/121/1, Adult Small, Model No. 63262 SML, Type III PFD, manufactured by Ero Industries, Inc. for Sears, Roebuck and Co., Dept. 606, Sears Tower, Chicago, IL 60684, approval was terminated effective 17 June 1980.

Approval No. 160.064/122/1, Adult Medium, Model No. 63262 MED, Type III PFD, manufactured by Ero Industries, Inc. for Sears, Roebuck and Co., Dept. 606, Sears Tower, Chicago, IL 60684, approval was terminated effective 17 June 1980.

Approval No. 160.064/123/1, Adult Large, Model No. 63262 LGE, Type III PFD, manufactured by Ero Industries, Inc. for Sears, Roebuck and Co., Dept. 606, Sears Tower, Chicago, IL 60684, approval was terminated effective 17 June 1980.

Approval No. 160.064/190/1, Adult X-Small, Model No. 63262 XSML, Type III PFD, manufactured by Ero Industries, Inc. for Sears, Roebuck and Co., Dept. 606, Sears Tower, Chicago, IL 60684, approval was terminated effective 17 June 1980.

Approval No. 160.064/278/2, Adult Small, Model No. 63272 SML, Type III PFD, manufactured by Ero Industries, Inc. for Sears, Roebuck and Co., Dept. 606, Sears Tower, Chicago, IL 60684, approval was terminated effective 17 June 1980.

Approval No. 160.064/279/2, Adult Medium, Model No. 63272 MED, Type III PFD, manufactured by Ero Industries, Inc. for Sears, Roebuck and Co., Dept. 606, Sears Tower, Chicago, IL 60684, approval was terminated effective 17 June 1980.

Approval No. 160.064/280/2, Adult Large, Model No. 63272 LGE, Type III PFD, manufactured by Ero Industries, Inc. for Sears, Roebuck and Co., Dept. 606, Sears Tower, Chicago, IL 60684, approval was terminated effective 17 June 1980.

Approval No. 160.064/406/1, Child Medium, Model No. 63261, Type III PFD, manufactured by Ero Industries, Inc. for Sears, Roebuck and Co., Dept. 606, Sears Tower, Chicago, IL 60684, approval was terminated effective 17 June 1980.

Approval No. 160.064/407/1, Adult X-Large, Model No. 63262, Type III PFD, manufactured by Ero Industries, Inc. for Sears, Roebuck and Co., Dept. 606, Sears Tower, Chicago, IL 60684, approval was terminated effective 17 June 1980.

Approval No. 160.064/778/0, Child Small, Model No. 3985, Type III PFD, manufactured by Ero Industries, Inc., 189 West Madison Street, Chicago, IL 60602, approval was terminated effective 14 May 1980.

Approval No. 160.064/785/0, Child Small, Model No. 63261, Type III PFD, manufactured by Ero Industries, Inc. for Sears, Roebuck and Co., Dept. 606, Sears Tower, Chicago, IL 60684, approval was terminated effective 17 June 1980.

Approval No. 160.064/825/0, Adult, Model No. 3500, Type III PFD, manufactured by Ero Industries, Inc., 189 West Madison Street, Chicago, IL 60602, approval was terminated effective 14 May 1980.

Approval No. 160.064/1114/1, Child, Model No. 6038, Type III PFD, manufactured by Kent Sporting Goods Co. for Bass Pro Shops, 2023 South Glenstone, Springfield, MO 65804, approval was terminated effective 17 June 1980.

Approval No. 160.064/1115/1, Youth, Model No. 6138, Type III PFD, manufactured by Kent Sporting Goods Co. for Bass Pro Shops, 2023 South Glenstone, Springfield, MO 65804, approval was terminated effective 17 June 1980.

Approval No. 160.064/1116/1, Adult Small, Model No. 6538, Type III PFD, manufactured by Kent Sporting Goods Co. for Bass Pro Shops, 2023 South Glenstone, Springfield, MO 65804, approval was terminated effective 17 June 1980.

Approval No. 160.064/1117/1, Adult Medium, Model No. 6638, Type III PFD, manufactured by Kent Sporting Goods Co. for Bass Pro Shops, 2023 South Glenstone, Springfield, MO 65804, approval was terminated effective 17 June 1980.

Approval No. 160.064/1118/1, Adult Large, Model No. 6738, Type III PFD, manufactured by Kent Sporting Goods Co. for Bass Pro Shops, 2023 South Glenstone, Springfield, MO 65804, approval was terminated effective 17 June 1980.

Approval No. 160.064/1119/1, Adult X-Large, Model No. 6836, Type III PFD, manufactured by Kent Sporting Goods Co. for Bass Pro Shops, 2023 South Glenstone, Springfield, MO 65804, approval was terminated effective 17 June 1980.

Bulkhead Panel

Approval No. 164.008/60/0, Dansk Eternit-Fabrik A/S, bulkhead panel "Navilite 36 Type V-22", manufactured by Dansk Eternit-Fabrik A/S, DK–9100, Alborg, Denmark, approval was terminated effective 3 June 1980.

Approval No. 164.008/65/0, Dansk Eternit-Fabrik A/S, bulkhead panel "Navilite 36 Type Z–22", manufactured by Dansk Eternit-Fabrik A/S, DK–9100, Alborg, Denmark, approval was terminated effective 3 June 1980.

Incombustible Material

Approval No. 164.009/86/0, Porter Style CGAG woven combination Grade AAA asbestos and fibrous glass cloth type incombustible material, manufactured by H. K. Porter Co., Inc., Thermoid Div., 1250 Porter Bldg., Pittsburgh, PA 15219, approval was terminated effective 3 June 1980.

Approval No. 164.009/179/0, "Ultrafine CG No. 8" fibrous glass type incombustible hull board, manufactured by Certain-Teed Products Corp., Old Route 202, Eagle School Road, Valley Forge, PA 19481, approval was terminated effective 3 June 1980.

Approval No. 164.009/181/0, "Frigitemp Marine Acoustic Board" fibrous glass type incombustible material, manufactured by Frigitemp Marine, 585 Washington Street, New York, NY 10014, approval was terminated effective 3 June 1980.

Approval No. 164.009/182/0, "Frigitemp Marine Insulation Board" fibrous glass type incombustible material, manufactured by Frigitemp Marine, 585 Washington Street, New

York, NY 10014, approval was terminated effective 3 June 1980.

Henry H. Bell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

September 4, 1980.

[FR Doc. 80-28075 Filed 9-10-80; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Intent To Prepare an Environmental Impact Statement; Houston Intercontinental Airport Proposed Expansion, Houston, Tex.

The Federal Aviation Administration intends to prepare an Environmental Impact Statement for the proposed expansion of Houston Intercontinental Airport. Major development items proposed are: 1) New east/west parallel air carrier runway with full instrumentation, 2) new passenger terminal, and 3) relocation and expansion of access roadway system.

Alternatives to the proposed development include: 1) Not building the runway or terminal, 2) construction of a new runway in various locations, or 3) construction of a new terminal in several locations with various roadway systems.

The FAA intends to consult and coordinate with Federal, State and local agencies who have jurisdiction by law or who have special expertise with respect to any environmental impacts associated with the proposed project. To solicit input, a scoping meeting is scheduled in the Houston Airports District Office, 8800 Paul B. Koonce Drive, Room 225, Houston, Texas on September 25, 1980, at 1:00 p.m.

The purpose of this meeting is to determine the significant issues to be analyzed in depth in the environmental impact statement. Persons interested in attending the meeting or those who which further information should contact Bonnie Smith at 713-643-0661 (FTS 521-3173) in Houston, Texas.

Dated: September 2, 1980.

Gene Faulkner,

Chief, Planning and Programming—ASW 610.

[FR Doc. 80-27735 Filed 9-10-80; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

Minority Business Resource Center Advisory Committee

Pursuant to Section 19(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463); 5 U.S.C. App. I), notice is hereby given of a change in time of the Minority Business Resource Center Advisory Committee meeting published in the **Federal Register** on August 21, 1980. Vol. 45 FR 55890.

The time has been changed from 10:00 am to 2:00 pm.

Issued in Washington, D.C. on September 2, 1980.

Earl D. Proctor,

Executive Director, Minority Business Resource Center.

[FR Doc. 80-27701 Filed 9-10-80; 8:45 am]

BILLING CODE 4910-06-M

National Highway Traffic Safety Administration

Highway Safety Program; Amendment of Qualified Products List of Evidential Breath Measurement Devices

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

ACTION: Notice.

SUMMARY: This notice amends the Qualified Products List for devices which have been found to qualify under the Standard for Devices to Measure Breath Alcohol (38 FR 30459).

EFFECTIVE DATE: September 11, 1980.

ADDRESS: Administrator, NHTSA, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: John Moulden, Office of Driver and Pedestrian Programs, Traffic Safety Programs, NHTSA, Washington, D.C. 20590, 202-426-2180.

SUPPLEMENTARY INFORMATION: The Qualified Products List of Evidential Breath Measurement Devices was initially issued November 21, 1974 (39 FR 41399), and was most recently amended July 7, 1979 (44 FR 3261). Devices on the list may be purchased with Federal funds under the Highway Safety Act, Pub. L. 89-564, 80 Stat. 731, 23 U.S.C. 402, 403.

In accordance with the Breath Measurement Standard, semi-annual testing of devices was conducted during November and December 1979. At this testing four devices, not previously on the Qualified Products List, the Atalmeter, the Intoxilyzer 4011 AS-A, Intoximeter 3000, and the Auto-Alcolmeter met all performance requirements excluding those for Mobile Evidential Breath Testers.

The Qualified Products List is therefore amended as follows:

Qualified Products List

The qualified products meeting all performance requirements, including those for Mobile Evidential Breath Testers, are as follows, listed alphabetically by manufacturer:

Device and Manufacturer

1. Alert J3AD Breath Tester (battery powered), Alcohol Countermeasure Systems, Port Huron, Michigan (formerly Borg-Warner Corp., Des Plaines, Illinois).
2. Alert J3AC, Alcohol Countermeasure Systems, Port Huron, Michigan (formerly Borg-Warner Corp., Des Plaines, Illinois).
3. S-11 Breath Tester, Alcohol Countermeasure Systems, Port Huron, Michigan (formerly Borg-Warner Corp., Des Plaines, Illinois).
4. Intoxilyzer Model 4011, CMI, Inc., Minturn, Colorado.
5. Intoxilyzer 4011A, CMI, Inc., Minturn, Colorado.
6. Intoxilyzer 4011A 27-10100, CMI, Inc., Minturn, Colorado.
7. Intoxilyzer 4011A 27-10100 with fixed filter calibration option, CMI, Inc., Minturn, Colorado.
8. Intoxilyzer 4011AS, CMI, Inc., Minturn, Colorado.
9. Alco-limiter, Energetics Science, Inc., Elmsford, New York.
10. Auto-Intoximeter AI-1000, Intoximeters, Inc., St. Louis, Missouri.
11. Gas Chromatograph Intoximeter Mark IV, Intoximeters, Inc., St. Louis, Missouri.
12. Gas Chromatograph Mark IV A, Intoximeters, Inc., St. Louis, Missouri.
13. Mark II Gas Chromatograph, Intoximeters, Inc., St. Louis, Missouri.
14. Alcolmeter AE-D1, Lion Laboratories, Ltd., Cardiff, Wales, United Kingdom.
15. Intoxilyzer Model 4011, Omicron Systems Corp., Palo Alto, California.
16. Breathalyzer Models 900A, 1000, Smith & Wesson Electronics Co., Springfield, Massachusetts.
17. Roadside Breath Tester, U.S. Department of Transportation, Washington, D.C.

The qualified products meeting all performance requirements, excluding those for Mobile Evidential Breath Testers, are as follows, listed alphabetically by manufacturer:

1. Atalmeter, BDT, c/o Federal American Research Corp., Portsmouth, New Hampshire.
2. Intoxilyzer Model 4011 AS-A, CMI, Inc., Minturn, Colorado.
3. Alco-Tector Model 500, Decatur Electronics, Decatur, Illinois.
4. Auto-Intoximeter AI 1, Intoximeters, Inc., St. Louis, Missouri.
5. Intoximeter Model 3000, Intoximeters, Inc., St. Louis, Missouri.
6. Photo-Electronics Intoximeter, Intoximeters, Inc., St. Louis, Missouri.
7. Auto-Alcometer, Lion Laboratories, Cardiff, Wales, United Kingdom.

8. Alco-Analyzer Model 1000, Luckey Laboratories, Inc., San Bernardino, California.

Issued on: September 4, 1980.

Charles F. Livingston,

Associate Administrator, Traffic Safety Programs.

[FR Doc. 80-27677 Filed 9-10-80; 8:45 am]

BILLING CODE 4110-59-M

[Docket No. EX80-2; Notice 1]

Model A and Model T Motor Car Reproduction Corp.; Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard

The Model A and Model T Motor Car Reproduction Corporation of Detroit, Michigan ("Model A" herein) has petitioned for a temporary exemption of three years for its "Shay Reproduction 55 Bird" replica passenger car from Federal Motor Vehicle Safety Standard No. 301, *Fuel System Integrity*, on grounds of substantial economic hardship.

This notice of receipt of a petition for a temporary exemption is published in accordance with the NHTSA regulations on this subject (49 CFR 555.7), and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

The Shay Reproduction 55 Bird is a replica of the 1955 Ford Thunderbird. Petitioner believes that production models will conform to all applicable Federal motor vehicle safety standards including Standard No. 301 but avers that it lacks funds to conduct all tests necessary to demonstrate compliance. The fuel system in the engine compartment is one used by Ford Motor Company on certain of its 1980 model year vehicles. The remaining part of the system employs fuel and vapor lines of current production materials and a fuel tank of 13 gauge aluminum material seam welded, similar in configuration to tanks used in most of today's passenger cars. Petitioner states that it would cost $240,000 to verify compliance with Standard 301, which would be burdensome since its pre-tax loss in the fiscal year ending March 31, 1980, was $300,000. The company manufactured 2000 of its other product, a Model A replica, in the year preceding filing of the petition.

In support of its petition, Model A argues that an exemption would be in the public interest since 290 employees would lose their jobs if the company has to cease operations (46% of these employees have been beneficiaries of Federal and State employment programs). The company's factory is located around Battle Creek, Michigan which has been designated as an area of economic hardship. The petitioner argues that denial would have unfortunate consequences both for the company and for its vendors.

Interested persons are invited to submit comments on the petition of Model A and Model T Motor Car Reproduction Corporation described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street SW., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The application and supporting materials, and all comments received, are available for examination in the docket both before and after the closing date will also be filed and will be considered to the extent possible. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: October 13, 1980.

(Sec. 3, Pub. L. 92-548, 86 Stat. 1159 (15 U.S.C. 1410); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on September 2, 1980.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 80-27815 Filed 9-10-80; 8:45 am]

BILLING CODE 4910-59-M

Office of the Secretary

Privacy Act of 1974; Proposed Notices of System of Records

The Department of Transportation herewith publishes four new notices of systems of records and deletes one system notice which is no longer in operation.

Any person or agency may submit written comments on the proposed systems to the Privacy Act Officer (M-30), Room 7109 U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590. Comments must be received by October 20, 1980 to be considered.

If no comments are received, the proposed new systems will become effective on October 26, 1980. If comments are received, the comments will be considered and where adopted, the document will be republished with the changes.

Issued in Washington, D.C. on September 8, 1980.

Karen S. Lee,

Deputy Assistant Secretary for Administration.

Cancellation Notice

DOT/OST 60 "Medical Records of Participants in Study of Health Effects of Bicycling in Polluted Air" was dropped from the DOT Annual publication of Systems of Records February 21, 1980, in the **Federal Register** Vol 45, No 36, pages 11686-11788 because the project was completed by late 1979. The deletion announcement of DOT/OST 60 was inadvertently omitted; however, cancellation is official.

New Systems Proposed

The following four systems should be added to the Annual Publication referenced above when they become effective: DOT/OST 062, DOT/FAA 845 and 846, and DOT/NHTSA 470. Proposed systems notices are as follows:

DOT/OST 062

SYSTEM NAME:

Biographies of Key Officials Book DOT/OST.

SYSTEM LOCATION:

Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system of records contains information regarding DOT key officials. The key officials included in the book are subject to change because of personnel changes or at the request of the Secretary.

CATEGORIES OF RECORDS IN THE SYSTEM:

This record contains basic biographical information and pictures of persons holding key positions within the Department of Transportation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To provide the Secretary with the professional experience and educational background of his/her key executives, which allows him/her to become more familiar with top executives.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are maintained in locked file cabinets in a locked room.

RETRIEVABILITY:

The book is indexed first by organization, then position title and name.

SAFEGUARDS:

Access to and use of this record is limited to the Secretary and to those persons whose official duties require such access. (Not releasable under the Freedom of Information Act without the permission of those individuals in the book.)

RETENTION AND DISPOSAL:

These records are destroyed one year after the person has left the covered position.

SYSTEM MANAGER(S) AND ADDRESS:

Mail Address: Department of Transportation, Office of the Secretary, Executive Personnel Management Division (M–13), 400 7th Street, S.W., Washington, D.C. 20590, Office Location: Nassif Building, Room 9103.

RECORD ACCESS PROCEDURE:

Employees who wish to gain access or contest their records should contact the System Manager(s).

NOTIFICATION PROCEDURES:

Contact System Manager.

RECORD SOURCE CATEGORIES:

Information in this system of records either comes from the individual to whom it applies or is derived from information he supplied.

DOT/FAA 845

SYSTEM NAME:

Correspondence Control and Information System, DOT/FAA

SYSTEM LOCATION:

Federal Aviation Administration, Office of the Administrator, Administrative Staff, 800 Independence Ave, S.W., Washington, D.C. 20591.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who write, or are referred in writing by a second party, to the Administrator, to the Deputy Administrator, and their immediate offices; individuals who write, or are referred in writng by a second party to the Secretary, to the Deputy Secretary, to the Deputy Under Secretary and their immediate offices and the correspondence which has been referred to the Federal Aviation Administration; individuals who are the subject of an action requiring approval or action by one of the forenamed, such as appeals, actions, training, awards, foreign travel, promotions, selections, grievances, description, application of waivers from the Federal Aviation Administration.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence submitted by, or on behalf of, an individual, including resumes, letters of reference, etc; responses to such correspondence; staff recommendations on actions requiring approval or action by the Administrator, the Deputy Administrator, the Secretary, the Deputy Secretary, and the Deputy Under Secretary.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Referral to the appropriate action office within or outside the Department or agency for preparation of a response.

Referral to the appropriate agency for actions involving matters of law, or regulations beyond the responsibility of the agency or Department such as the Department of Justice in matters of law enforcement.

As a data source for management information, such as briefing material on hearings, trend analysis, responsiveness, etc.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Computer Magnetic disk.

RETRIEVABILITY:

Access is by suspense date, correspondence date, subject matter, senders name, referring individual, action office, and type.

SAFEGUARDS:

Terminal access through the system's software is limited to the Administrator's Administrative Staff.

RETENTION AND DISPOSAL:

Hard-copy records are transferred to the Federal Records Center when three years old to be destroyed when ten years old.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Administrative Staff, Office of the Administrator, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591.

NOTIFICATION PROCEDURE:

Individuals wishing to know if their records appear in this system of records may inquire in person or in writing to the System Manager.

RECORD ACCESS PROCEDURES:

Individuals who desire access to the information about themselves in this system of records should contact or address their inquiries to the System Manager.

CONTESTING RECORD PROCEDURES:

Individuals who desire to contest information about themselves contained in this system of records should contact or address their inquiries to the Administrator, or his delegate, at the following address: Federal Aviation Administration, Office of the Administrator, 800 Independence Avenue, S.W., Washington, D.C. 20591.

RECORD SOURCE CATEGORIES:

Correspondence from individuals, their representatives, or sponsors. Response to incoming correspondence. Related material for background as appropriate.

DOT/FAA 846

SYSTEM NAME:

Airport Solicitation Permit Application File, DOT/FAA

SYSTEM LOCATION:

Federal Aviation Administration, Operations Office, Washington National Airport, Washington, D.C. 20001.

Federal Aviation Administration, Operations Office, Dulles International Airport, Washington, D.C. 20041.

CATEGORIES OF RECORDS IN THE SYSTEM:

Completed applications for Airport Solicitation Permits; documentation of each solicitor's authority to represent the organization for which he or she claims to be soliciting.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the operation of this system is Public Law 96–193, enacted February 18, 1980.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Preparation and issuance of Airport Solicitation Permits, which indicate the solicitor's name and the organization for which he is soliciting. Permits will be issued by airport operations personnel.

Disclosure to members of the public upon request, to permit the public to be informed as to who is soliciting at the airport and for what cause.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Application forms and any attached documentation are retained at the Operations Offices of National and Dulles Airports.

RETRIEVABILITY:

Applications are maintained in chronological order, not by name. There is no means for retrieval of records pertaining to a particular individual other than manual search of the entire file.

SAFEGUARDS:

The file is in the custody of the Duty Operations Officer.

RETENTION AND DISPOSAL:

Applications will normally be destroyed within 60 days of the date submitted.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Operations Division, Washington National Airport, Federal Aviation Administration, Washington National Airport, Washington, D.C. 20001.

Chief, Operations Division, Dulles International Airport, Federal Aviation Administration, Dulles International Airport, Washington, D.C. 20041.

NOTIFICATION PROCEDURE:

Individuals wishing to know if their records appear in this system of records may inquire in person or in writing to the System Manager.

RECORD ACCESS PROCEDURES:

Individuals who desire access to the information about themselves in this system of records should contact or address their inquiries to the System Manager.

CONTESTING RECORD PROCEDURES:

Same as "Record access procedures."

RECORD SOURCE CATEGORIES:

Application forms and related documentation furnished by airport solicitors.

DOT/NHTSA 470

SYSTEM NAME:

Unreported Accident Survey, DOT/NHTSA.

SYSTEM LOCATION:

Westat, Inc., 11600 Nebel Street, Rockville, Maryland 20852.

CATEGORY OF INDIVIDUALS COVERED BY THE SYSTEM:

Licensed drivers living in households with telephones.

CATEGORY OF RECORDS IN THE SYSTEM:

Characteristics of drivers and motor vehicles involved in unreported accidents, including the environmental, vehicle and driver condition, and their severity in terms of injury and damage.

ROUTINE USES OF RECORDS IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The data will be used by the contractor to develop estimates of the frequency and severity of injury and property damage resulting from unreported accidents nationwide. The records will also be used to determine the need for periodic surveys of unreported accidents by comparing their characteristics with those reported accidents. If the data vary significantly, additional analysis will be necessary to ensure the continuing validity of agency records. Personal identifiers will be used initially to perform a quality control review of the data. Following completion of the interview stage (approximately three months), identifiers will be deleted and information will be maintained in a sanitized file.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Responses will be maintained initially on hard copy files, then on magnetic tape after personal identifiers have been removed.

RETRIEVABILITY:

Personal name with an assigned sequence number.

SAFEGUARDS:

Files are stored in locked cabinets within a secured area. Only individuals with the "need to know" are allowed access to this file.

RETENTION AND DISPOSAL:

File will be retrievable by personal name for approximately three months after the interview stage. After that, the sanitized file will be maintained for duration of the contract (about two years) and destroyed following contract completion.

SYSTEM MANGER(S) AND ADDRESS:

Chief, Information Systems Division, NRD–33, National Center for Statistics and Analysis, Room 6117, 400 7th Street, S.W., Washington, D.C. 20590.

NOTIFICATION PROCEDURE:

Apply to System Manager.

RECORD ACCESS PROCEDURES:

Apply to System Manager.

CONTESTING RECORD PROCEDURES:

Apply to System Manager.

RECORD SOURCE CATEGORIES:

Responses of household members to telephone inquiries.

[FR Doc. 80–28003 Filed 9–10–80; 8:45 am]
BILLING CODE 4910–62–M

VETERANS ADMINISTRATION

Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on October 15, 1980, at 10:00 a.m., the Veterans Administration Regional Office, Columbia, South Carolina Station Committee on Educational Allowances shall at Room 531, Conference Room, Fifth Floor, VA Regional Office, 1801 Assembly Street, Columbia, South Carolina, conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in Patterson's School of Barbering, 2353 Stark Street, Columbia, South Carolina, 29205, 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: September 2, 1980.

R. Stedman Sloan, Jr.,

Director, VA Regional Office.

[FR Doc. 80–27895 Filed 9–10–80; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 178
Thursday, September 11, 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).

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1

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, September 15, 1980, to consider the following matters:

Disposition of minutes of previous meetings.

Memorandum and Resolution re: Conforming Amendments to Part 335 of the Corporation's rules and regulations (Required by Section 12(i) of the Securities Exchange Act of 1934).

Memorandum and Resolution re: Delegations of Authority—Division of Liquidation.

Reports of committees and officers:

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 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: September 8, 1980.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.

[S–1676–80 Filed 9–9–80; 11:09 am]
BILLING CODE 6714–01–M

2

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of agency meeting.

Pursuant to the provsions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, September 15, 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:

Applications for Federal deposit insurance:

The Cape Cod Five Cents Savings Bank, an operating noninsured mutual savings bank, located in Harwich Port, Massachusetts, for Federal deposit insurance.

Gotham Bank of New York, a proposed new bank, to be located at 1412 Broadway, New York (Manhattan), New York, for Federal deposit insurance.

Stewardship Bank of Oregon, a proposed new bank, to be located at 1918 N.E. 181st Avenue, Multnomah County (P.O. Portland), Oregon, for Federal deposit insurance.

Empire State Bank of Layton, a proposed new bank, to be located at 1275 North Hill Field Road, Layton, Utah, for Federal deposity insurance.

Request for consent to retan assets at branch:

National Bank of Greece, S.A., Chicago, Illinois.

Notice of acquisition of control:

Pioner Bank, Salt Lake City, Utah.

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. 44–439–SR (Amended)—Citizens State Bank, Carrizo Springs, Texas.

Case No. 44,451–SR—American Bank & Trust Company, New York, New York.

Case No. 44,459–SR—Bank of Lake Helen, Lake Helen, Florida.

Case No. 44,460–VR—United States National Bank, San Diego, Calif.

Appeal, pursuant to the Freedom of Information Act, from the Corporation's earlier partial denial of a request for records.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents, or other persons participating in the conduct of the affairs 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 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 the Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: September 8, 1980.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.

[S–1677–80 Filed 9–9–80; 11:10 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 11:30 a.m. on Monday, September 8, 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 matters:

Recommendation regarding the liquidation of assets acquired by the Corporation from The Mission State Bank and Trust Company, Mission, Kansas (Case No. 44,463–L).

Recommendations regarding First Pennsylvania Bank N.A., Bala-Cynwyd, Pennsylvania and First Pennsylvania Corporation, Philadelphia, Pennsylvania.

The Board further determined, by that same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4) and (c)(9)(B)).

Dated: September 8, 1980.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S–1678–80 Filed 9–9–80; 11:13 am]

BILLING CODE 6714–01–M

4

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Tuesday, September 16, 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: Personnel, Litigation, Audits, Audit and Complaince Thresholds.

DATE AND TIME: Wednesday, September 17, 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: Any matters not concluded on September 16, 1980.

DATE AND TIME: Thursday, September 18, 1980 at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C. (fifth floor).

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 1980–94—John W. Kerr, Jr., Treasurer, Whitehurst for Congress Committee.
Draft AO 1980–95—Daniel L. Murphy, President, First National Bank of Florida.
Draft AO 1980–100—William B. Deyo, Jr., Revere Sugar Corporation.
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–1681–80 Filed 9–9–80; 11:09 am]

BILLING CODE 6714–01–M

5

INTERNATIONAL TRADE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 582967, September 2, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Tuesday, September 9, 1980.

CHANGES IN THE MEETING: Emergency action to close a portion of the meeting originally announced as open to the public.

Pursuant to the specific exemptions of 5 U.S.C. 552b(c)(4) and in conformity with 19 C.F.R. 201.36(b)(4), Commissioners Alberger, Calhoun, Moore, Bedell, and Stern voted by action jacket OPZ–80–143 to hold the briefing with respect to Item No. 5 [Investigation 303–TA–14 [Preliminary] (Animal Identification Tags from New Zealand)—briefing and vote] in closed session.

Commissioners Alberger, Calhoun, Moore, Bedell, and Stern also determined, pursuant to 19 C.F.R. 201.37(b) that Commission business requires the change in the determination of the Commission to open or close this portion of the meeting and directed the issuance of this notice at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Kenneth M. Mason, Secretary (202) 523–0161.

[S–1675–80 Filed 9–9–80; 9:55 am]

BILLING CODE 7020–02–M

6

NUCLEAR REGULATORY COMMISSION.

DATE: Monday, September 8, 1980.

PLACE: Commissioner's conference room, 1717 H Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

4 p.m.

1. Discussion of Commission Program to Review Operating License Applications (approximately 2 hours, public meeting).

ADDITIONAL INFORMATION: By vote of 3–0 (Commissioner Gilinsky not present) on September 8, the Commission determined pursuant to 5 U.S.C. 552b(e)(1) and § 9.107(a) of the Commission's rules that Commission business requires that the above agenda item be held on less than one week's notice to the public.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634–1410.

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634–1498.

Those planning to attend a meeting should reverify the status on the day of the meeting.

Roger M. Tweed,

Office of the Secretary.

[S–1680–80 Filed 9–9–80; 2:37 am]

BILLING CODE 7590–01–M

Reader Aids

Federal Register

Vol. 45, No. 178

Thursday, September 11, 1980

INFORMATION AND ASSISTANCE

Questions and requests for specific information may be directed to the following numbers. General inquiries may be made by dialing 202-523-5240.

Federal Register, Daily Issue:

202-783-3238	Subscription orders and problems (GPO)
	"Dial-a-Reg" (recorded summary of highlighted documents appearing in next day's issue):
202-523-5022	Washington, D.C.
312-663-0884	Chicago, Ill.
213-688-6694	Los Angeles, Calif.
202-523-3187	Scheduling of documents for publication
523-5240	Photo copies of documents appearing in the Federal Register
523-5237	Corrections
633-6930	Public Inspection Desk
523-5227	Index and Finding Aids
523-5235	Public Briefings: "How To Use the Federal Register."

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523-3419	
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523-5227	Index and Finding Aids

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523-5233	Executive Orders and Proclamations
523-5235	Public Papers of the Presidents, and Weekly Compilation of Presidential Documents

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523-5266 -5282	Public Law Numbers and Dates, Slip Laws, U.S. Statutes at Large, and Index
275-3030	Slip Law Orders (GPO)

Other Publications and Services:

523-5239	TTY for the Deaf
523-5230	U.S. Government Manual
523-3408	Automation
523-4534	Special Projects
523-3517	Privacy Act Compilation

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

ENERGY DEPARTMENT

Conservation and Solar Energy Office—

53714 8–12–80 / Energy conservation; test procedures for furnaces

HOUSING AND URBAN DEVELOPMENT

Assistant Secretary for Housing—Federal Housing Commissioner—

50731 7–31–80 / Mortgage and loan insurance programs; amendments to make section 8 replacement reserve provisions applicable to HUD-insured section 8 projects

50731, 51771 7–31–80 / Mortgage and loan insurance programs; section 8 replacement reserve provisions applicable to HUD-insured section 8 projects

50732 7–31–80 / Mortgage and loan insurance programs; limitation on distributions provisions applicable to HUD-insured section 8 projects

50734 7–31–80 / Mortgage insurance and interest reduction payment for rental projects; rental assistance payments, non-insured 236 projects

Government National Mortgage Association—

50734 7–31–80 / Combination mobile home and lot loans; mortgage-backed securities program

40556 6–13–80 / Guaranty of mortgage-backed securities; issuers' securities marketing and trading activities

List of Public Laws

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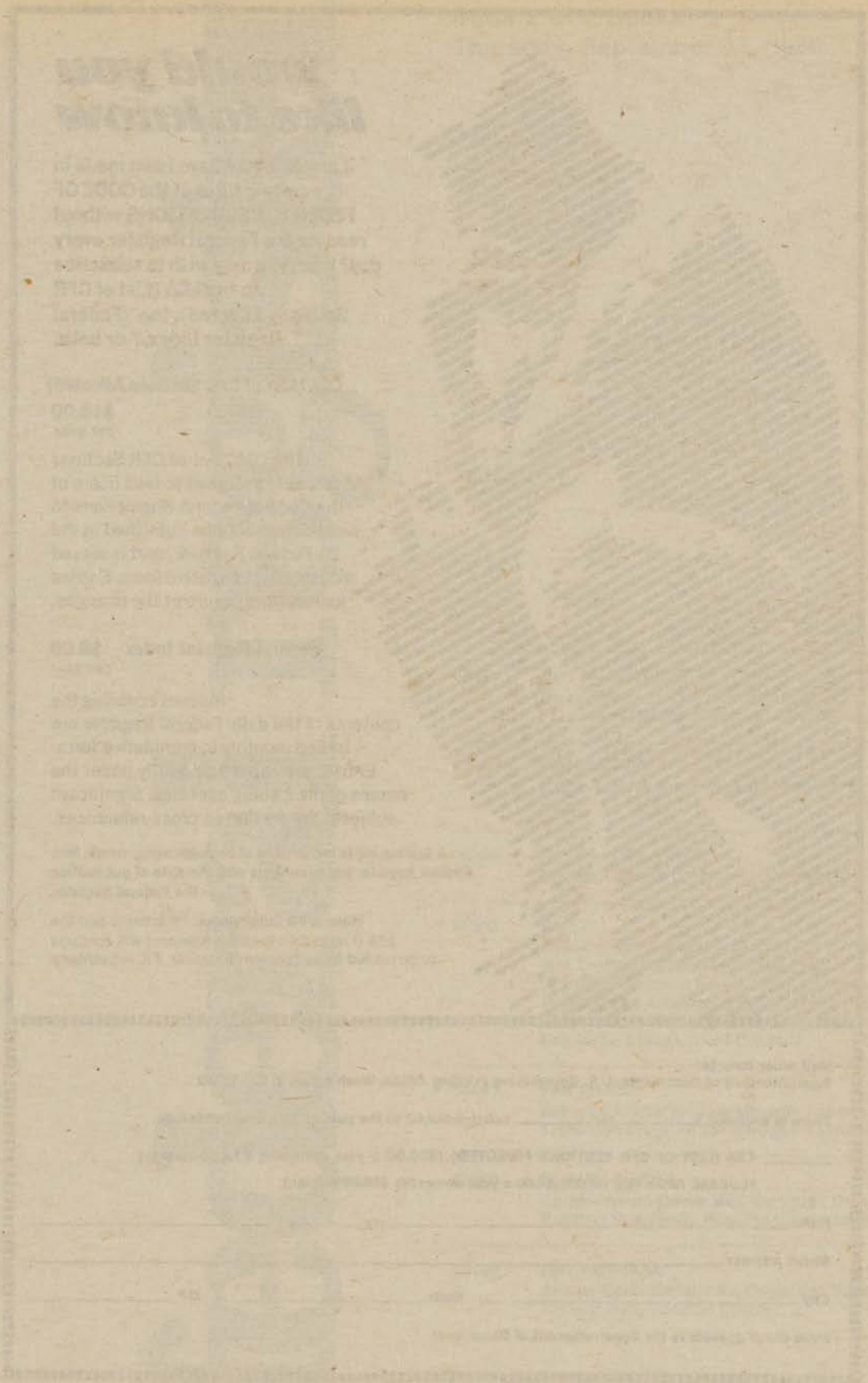
H.R. 8010 / Pub. L. 96–341 To amend the Comprehensive Employment and Training Act to designate a Job Corps Center as the "Earle C. Clements Job Corps Center". (Sept. 8, 1980; 94 Stat. 1076) Price: $1.

H.R. 6974 / Pub. L. 96–342 Department of Defense Authorization Act, 1981 (Sept. 8, 1980; 94 Stat. 1077) Price: $2.25.

H.R. 5168 / Pub. L. 96–343 Military Personnel and Compensation Amendments of 1980 (Sept. 8, 1980; 94 Stat. 1123) Price: $1.25.

S. 2680 / Pub. L. 96–344 To improve the administration of the Historic Sites, Buildings and Antiquities Act of 1935 (49 Stat. 666) (Sept. 8, 1980; 94 Stat. 1133) Price: $1.

H.R. 5892 / Pub. L. 96–345 Wind Energy Systems Act of 1980 (Sept. 8, 1980; 94 Stat. 1139) Price: $1.25.



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Part II

Department of Transportation

Federal Aviation Administration

Airworthiness Review Program; Amendment No. 8A: Aircraft, Engine, and Propeller Airworthiness, and Procedural Amendments

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11, 21, 23, 25, 27, 29, 31, 33, 35, 43, 45, and 91

[Docket Nos. 14779 and 14324; Amendments Nos. 11-20; 21-51; 23-26; 25-54; 27-18; 29-20; 31-4; 33-9; 35-5; 43-20; 45-12; and 91-167]

Airworthiness Review Program; Amendment No. 8A: Aircraft, Engine, and Propeller Airworthiness, and Procedural Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments to the Federal Aviation Regulations update and improve the airworthiness standards applicable to the type certification of aircraft, engines, propellers, related operating rules, and procedural requirements. These amendments are part of the Airworthiness Review Program.

EFFECTIVE DATE: October 14, 1980.

FOR FURTHER INFORMATION CONTACT: Marvin J. Walker, Regulatory Review Branch, AVS-22, Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; Telephone: (202) 755-8714.

SUPPLEMENTARY INFORMATION: These amendments are the ninth and last in a series of amendments issued as part of the Airworthiness Review Program.

The following amendments have previously been issued as part of this program:

Title and Federal Register (FR) Citation

Amendment No. 1: Form Number and Clarifying Revisions (40 FR 2576; Jan. 14, 1975)

Amendment No. 2: Rotorcraft Anticollision Light Standards (41 FR 5290; Feb. 5, 1976)

Amendment No. 3: Miscellaneous Amendments (41 FR 55454; Dec. 20, 1976)

Amendment No. 4: Powerplant Amendments (42 FR 15034; March 17, 1977)

Amendment No. 5: Equipment and Systems Amendments (42 FR 36960; July 18, 1977)

Amendment No. 6: Flight Amendments (43 FR 2302; Jan. 16, 1978)

Amendment No. 7: Airframe Amendments (43 FR 50578; Oct. 30, 1978)

Amendment No. 8: Cabin Safety and Flight Attendant Amendments (45 FR 7750; Feb. 4, 1980)

These amendments are for the most part based on Notice 75-31 which was published in the **Federal Register** on July 11, 1975 (40 FR 29410), as well as a number of proposals contained in the following notices of proposed rule making: Notice 75-10 (40 FR 10802; March 7, 1975); Notice 75-19 (40 FR 21866; May 19, 1975); and Notice 75-26 (40 FR 24802; June 10, 1975). Amendments based on the latter three notices have already been issued as a part of the Airworthiness Review Program, specifically those titled Miscellaneous Amendments, Powerplant Amendments, and Airframe Amendments, respectively. Final action on certain of the proposals was deferred, however, at the time the amendments were issued as further consideration and review of these proposals was considered necessary. In other cases, final action was deferred so that they could be considered together with related proposals contained in other notices.

Certain proposals identified as Group 2 in Appendix I to Notice 75-31 were deferred to be dealt with in a later notice as a part of the Airworthiness Review Program. These proposals all addressed the concept of periodically updating the certification basis of airplane models in long-term production. Such recertification every five or ten years would be intended to ensure that the level of safety of all airplanes in service keep pace with the current level of safety expectations. The FAA has now determined that these proposals more appropriately should be examined as a separate issue in a future regulatory action. Accordingly, the proposals identified as Group 2 in Appendix 1 to Notice 75-31 are being dropped from the Airworthiness Review Program.

Proposals relating to cabin safety and flight attendants, which are identified in this amendment, were extracted from Notice 75-31 (40 FR 29410; July 11, 1975) and handled on an expedited basis. Those rules were published in the Cabin Safety and Flight Attendant Amendments (45 FR 7750; February 4, 1980).

Interested persons have been given an opportunity to participate in the making of these amendments and due consideration has been given to all matters presented. The proposals and comments are discussed below. Substantive changes and changes of an editorial and clarifying nature have been made to the proposed rules based upon relevant comments received and further review within the FAA. Except for minor editorial and clarifying changes and the substantive changes discussed below, these amendments and the reasons for them are the same as those contained in Notices 75-10, 75-19, 75-26, and 75-31.

Discussion of Comments

The following discussions are keyed to the like-numbered proposals contained in Notices 75-10, 75-19, 75-26, and 75-31, and are presented in the same order as the corresponding amendments found in the rules portion of this document.

Proposal 8-1. The proposal to amend § 1.1 in order to transfer the definitions for rated power and thrust to a new § 33.6 is withdrawn. It is considered that such a change may introduce confusion in the administration of aircraft certification rules. See also Proposal 8-94.

Proposal 8-2. Several commenters object to proposed § 21.16(a) which would delete reference to a "novel and unusual design feature" as a necessary condition for the Administrator to issue special conditions. Special conditions become a part of the designated applicable regulations for type certification of a particular product (aircraft, aircraft engine, or propeller).

One commenter indicates that the proposed revision is unjustified and would lead to indiscriminate rule making, and that instead of simplifying the administration of the requirements it would introduce complexity. Another commenter claims that adoption of proposed § 21.16(a) would introduce uncertainty into design requirements.

One commenter suggests that in lieu of revising § 21.16, the FAA should perform a study of § 21.21(b)(2). (Section 21.21(b)(2) provides for denial of a type certificate if an unsafe feature or characteristic exists in the design under consideration. Before adoption of § 21.16, FAA used § 21.21(b)(2) to issue special conditions in letter form.) This commenter suggests that if § 21.21(b)(2) were to continue to be used to issue special conditions to cover an unsafe design feature or characteristic that is not "novel or unusual," it must be equally applicable to a condition that exists on more than one (earlier certificated) product, further stating that the other product or products must then have been type certificated using existing rules which did not adequately cover the unsafe design feature or characteristic. On this premise, the same commenter asks several relevant questions. When § 21.21(b)(2) is applied, does the FAA make it retroactive to the other involved models? Are Airworthiness Directives (Part 39)

issued? Why wasn't a special condition issued against the first applicant when the condition was, in fact, novel or unusual? Why was this not followed by a notice of proposed rule making for future application?

These comments and questions caused the FAA to completely reevaluate its practices in designating the applicable regulations for type certification under § 21.17(a), commonly referred to as defining a "type certification basis."

After further consideration of the comments received as well as FAA practice in designating the applicable regulations, and the objectives of proposed § 21.16, the FAA agrees that this proposal should be withdrawn because of the potential for possible abuse of general rulemaking procedures, of the requirements of the Administrative Procedure Act, and the intent of Executive Order 12044. As explained below, the objectives of proposed § 21.16 will be satisfied by the application of a new FAA policy affecting the designation of applicable regulations for the type certification of new aircraft, aircraft engines, and propeller designs. These future practices are consistent with the FAA General Rule-Making Procedures of Part 11, the Administrative Procedure Act, and Executive Order 12044.

Section 21.16 is one paragraph of a number of paragraphs used to define the type certification basis of a new product. Companion paragraphs of importance to this discussion include §§ 21.17 and 21.21. Section 21.17(a) provides that the applicable airworthiness standards are (1) those requirements of this subchapter that are effective on the date of application for a type certificate, unless otherwise specified by the Administrator or unless compliance with later effective amendments is elected by the applicant or required by special retroactive regulations (e.g., § 25.2), and (2) any special conditions prescribed by the Administrator in accordance with § 21.16. Section 21.16 provides for the issuance of special conditions when the Administrator finds that the existing airworthiness standards do not contain adequate or appropriate safety standards *because of novel or unusual design features* of the product to be type certificated. Section 21.21(b)(1) permits noncompliance with specific provisions of the airworthiness standards when there are compensating factors that provide an equivalent level of safety. Such determinations are commonly referred to as "equivalent safety findings." Section 21.21(b)(2) provides for the denial of a type certificate, notwithstanding a showing of compliance with the applicable airworthiness standards designated in accordance with § 21.17, if the Administrator finds an unsafe feature or characteristic or the product for the category in which certification is requested.

Sections 21.16, 21.17, and 21.21, taken together with FAA policy in designating the applicable regulations must recognize and balance four important considerations: (1) The FAA has an obligation under Section 601 of the Federal Aviation Act of 1958 to keep the airworthiness standards of this subchapter (i.e., FARs 23, 25, 27, 29, 31, 33, and 35) as current as practicable; (2) the type certificate applicant has a right and a need to know, in very specific terms, what the applicable airworthiness standards will be in order to finalize the detail design of its product and to enable the applicant to make reasonable performance guarantees to its potential customers; (3) in the interests of safety, rapid technological advances presently being made by the civil aircraft industry require that the FAA be able to issue special conditions to address truly novel or unusual design features that it has, as yet, not had an adequate opportunity to envisage in the airworthiness standards through the general rulemaking process; and (4) because the airworthiness standards of this subchapter are intentionally objective in nature to allow flexibility in design, the FAA must retain the prerogatives both to make equivalent safety findings and to deny a type certificate whenever an unsafe design feature or characteristic is found during the type certification process.

The phrase "novel or unusual" as used in § 21.16 is a very relative term. As used hereafter in applying § 21.16 to justify the issuance of special conditions, "novel or unusual" will be taken with respect to the state of technology envisaged by the applicable airworthiness standards of this subchapter. It must be recognized that in some areas which will vary from time to time the state of the regulations may somewhat lag the state of the art in new design because of the rapidity in which the state of the art is advancing in civil aeronautical design and because of the time required to develop the experience base needed by the FAA to proceed with general rule making. Applicants for type certification of a new design have the opportunity to mitigate the impact of not knowing the precise airworthiness standards to be applied for "novel or unusual design features" by consulting with the FAA early in their certification planning when such features are suspected or known by the applicant to exist. It should also be recognized that, because of the intentional objective nature of the airworthiness standards of this subchapter, many new design features which might be thought of as "novel or unusual design features" may already be adequately covered by existing regulations, thus obviating the need to issue special conditions.

Henceforth, the special condition will not be issued for general upgrading of the applicable airworthiness standards when novel or unusual design features are not involved. Whenever the FAA determines that an upgrading of the airworthiness standards of this subchapter is warranted, the upgrading will be promulgated as an amendment to this subchapter consistent with the general rulemaking procedures of FAR Part 11, the Administrative Procedure Act, and Executive Order 12044. Should the FAA conclude that there is a compelling safety need to apply a proposed amendment retroactively to designs already type certificated or to designs for which a type certificate application is in progress, the retroactive aspects of the proposed amendment, if supportable by a regulatory analysis completed in accordance with Executive Order 12044, will be announced in the notice of proposed rule making for that amendment. Public comments on the proposed retroactive aspects will be considered in determining the applicability of the adopted rule.

A number of products for which special conditions have not as yet been issued are undergoing type certification at the time of this amendment. Should the FAA conclude that recent or future amendments to this subchapter should be applied to these products that would not otherwise be applicable under § 21.17 (a) (1) then an amendment to require retroactive application will be proposed and acted upon through the general rulemaking process explained above, in lieu of issuing special conditions under § 21.16.

Also, the provisions of § 21.21(b)(2) will no longer be used to justify the issuance of special conditions. However, just as an Airworthiness Directive may be issued under Part 39 to require the correction of an unsafe condition that is likely to exist or develop in a product of the same type design, notwithstanding a showing of compliance with the applicable airworthiness standards, § 21.21(b)(2) may continue to be used to deny issuance of a type certificate if a similar unsafe feature or characteristic

is found during the type certification process, notwithstanding a showing of compliance with requirements designated by § 21.17. The unsafe features and characteristics envisaged by § 21.21 (b) (2) are those related to specific design configuration or product characteristics of a particular design, that one would not normally expect the applicable airworthiness standards to specifically preclude because of their intentionally objective nature.

It is the practice of the FAA to develop and publish a Type Certificate Data Sheet as an integral part of each type certificate. The type certification basis is recorded on the Type Certificate Data Sheet for public information. In the future the type certification basis statement will indentify not only the applicable regulation, including special conditions, but also will identify all exemptions issued pursuant to Part 11, together with "equivalent safety findings" made in accordance with § 21.21 (b) (1).

For the above reasons, Proposal 8–2 is withdrawn.

In considering its disposition of the proposal to amend § 21.16 (a), the FAA realizes that a "novel or unusual design feature" today may become a common design feature of the future. The issuance of a like special condition for several product designs will most likely compel general rule making on that subject and the history of that special condition could have a very strong influence on thinking when general rule making is initiated. Also, although special conditions are regulations on particular product applicability, they are issued only in the interest of public safety. For these reasons, Part 11, and § 21.16 of Part 21 are amended to require special conditions to be issued in accordance with the existing general rule-making procedures. As is now the case, a docket will continue to be maintained for each set of special conditions, and all material in the docket will continue to be available for public review.

Proposal 8–3. This proposal is one of a group of proposals dealing with the establishment of Instructions for Continued Airworthiness and the responsibilities of maintenance personnel and aircraft operators with respect to those instructions. The group is made up of the following proposals: 8–3, 8–5, 8–21, 8–25, 8–58, 8–62, 8–64, 8–67, 8–77, 8–80, 8–89, 8–91, 8–92, 8–93, 8–97, 8–98, 8–99, 8–104, 8–106, 8–107, 8–110, and 8–111.

A commenter representing a number of scheduled air carriers objects to the requirement in § 21.31(c) that the type design include the Airworthiness Limitations section of the Instructions for Continued Airworthiness because of the information to be included in that section. Although this commenter does not object to including mandatory replacement times for life-limited parts in the Airworthiness Limitations section, the commenter strongly objects to including inspection intervals and related procedures. Under proposed §§ 43.16 and 91.163(c), the commenter points out, air carriers would be required to comply with these maintenance-related airworthiness limitations. The FAA does not agree that inspection intervals and related procedures can be omitted from the Airworthiness Limitations section of the Instructions for Continued Airworthiness. For example, the proposed Airworthiness Limitations section on a transport category airplane must contain mandatory inspection intervals and related procedures because the damage-tolerance concept described in § 25.571 is predicated upon the use of such inspections to detect initial cracks in principal structural elements before crack growth under repeated loads could progress to a degree which would cause catastrophic failure of the ariplane. However, the FAA does agree that §§ 43.16 and 91.163(c) should permit modification of these intervals and procedures by other FAA approved methods. Accordingly, inspection programs approved under §§ 121.25(b), 121.45, 121.367, 123.21(b), 127.13(b), 127.133, 135.5, 135.17, 135.419, 135.421, and 135.425, as defined by approved operations specifications, or an inspection program approved under § 91.217(e) constitute acceptable alternatives. The appendices to Parts 23, 25, 29, 31, 33, and 35 as adopted in this amendment require the applicant to specify (in the Airworthiness Limitations section) mandatory replacement times, inspection intervals, and related procedures. Sections 43.16 and 91.163(c) have been revised to show that only the inspection times and procedures may be adjusted under approved alternative programs.

A commenter objects to § 21.31(c), which in general is applicable to manufacturers, since continued airworthiness, which is covered in the paragraph, is the responsibility of the operator. Because this comment pertains more directly to § 21.50, it is dealt with in conjunction with Proposal 8–5.

In addition to comments relating to the Instructions for Continued Airworthiness, a commenter objects to § 21.31(a) because the proposal to include a list of drawings and specifications in the type design was not mentioned at the Airworthiness Review Conference. In fact, this proposal did appear as an FAA comment on Proposal No. 565 in the Committee I Workbook (titled "Procedures and Special Subjects") made available to all participants at the conference, and may be found in the docket.

Several commenters object to § 21.31(d) because including analyses in the type design— (1) would be redundant, since it is already required as part of the substantiating data; (2) is unnecessary, since the drawings and specifications required under current § 21.31(a) provide the general information needed by the FAA; and (3) introduces the possibility that the FAA would require the manufacturer to provide any and all data used to prepare the drawings and specifications, thereby delaying type certification. The FAA agrees that proposed § 21.31(d) would serve no useful purpose and it is withdrawn.

Proposal 8–4. A commenter objects that § 21.35(b)(2) eliminates flight testing for reliability, contending that analysis and ground test are not dependable as a basis for certification. In the light of this comment, and after further consideration and experience, the FAA has determined that flight testing for reliability does provide safety information not necessarily obtainable from analysis and ground test. Accordingly, the proposal to delete the reference to reliability in § 21.35(b)(2) is withdrawn.

No adverse comment was received on the proposal to replace the word "airplanes" in § 21.35(b)(2) with the word "aircraft" and this amendment to § 21.35(b)(2) is adopted without change.

Proposal 8–5. A commenter objects to the continued airworthiness provisions of § 21.50(b) (and also proposed § 21.31(c)) contending that—(1) continued airworthiness is the responsibility of the operator/owner; (2) current regulations in Parts 23 and 25 already require manufacturers to make available recommended maintenance procedures for the product at the time of its delivery; (3) current operating rules require the operator/owner to establish and comply with a maintenance program; and (4) with respect to transport airplanes, the present FAA Maintenance Review Board (MRB) system is an entirely satisfactory way of establishing the means for maintaining airworthiness. Current FAA practice allows operators of new transport category airplanes to utilize FAA MRB recommendations (reference FAA Advisory Circular No. AC 121–22) for starting their maintenance programs, and then vary them with FAA approval

as experience and operating conditions dictate. The commenter points out that, contrary to that practice, the amendment will require the manufacturer to obtain FAA approval of its recommended maintenance procedures before the airplane is type certificated, and to obtain FAA approval of revisions to those procedures (necessitated by any improvement change in the airplane) before approval of the change itself. This, the commenter states, will impose a severe and unnecessary hardship on the manufacturer.

On the first and second points, although the operator/owner does have responsibility for continued airworthiness, the FAA has found that the recommended maintenance procedures made available under current regulations are frequently inadequate in scope and content, and often do not provide a sound basis for the operator/owner to maintain the airworthiness of the aircraft. The FAA has concluded that the lack of such recommended maintenance procedures can best be remedied by requiring that they be made available to owners and operators by the type certificate or supplemental type certificate holder. On the third point, while it is true that not all operators/owners are required to establish and comply with a continuous airworthiness program, those that voluntarily wish to set up such a program are often handicapped by the lack of comprehensive instructions, which would be remedied by § 21.50(b). On the other hand, those required to establish a program will benefit from the more detailed and comprehensive instructions made available to them under § 21.50(b). On the fourth point, which is directed toward aircraft that will be maintained in accordance with an FAA approved operations specification and maintenance program under Parts 121, 123, 127, 135, or an approved inspection program under § 91.217(e), the FAA recognizes that these procedures for maintaining airworthiness of the products have functioned satisfactorily. In this regard, the FAA expects that operating segments of the air transportation industry would continue to work with type certification applicants in defining adequate maintenance instructions prior to type certification. The FAA MRB document, which is a product of contributions made by both the operators and manufacturer, could be picked up by the type design holder and included as a part of the required Instructions for Continued Airworthiness, thus continuing the usefulness of the existing MRB practices for the original entry into service of new product designs. Likewise, the additional maintenance instructions that would be required and which are not typical to MRB documents, but are presently required in air carrier operators' FAA approved maintenance programs, could also be picked up by the type design holder. Therefore, the screening process that would be utilized by the FAA in reviewing such maintenance documents would not unnecessarily delay type certification or approval of design changes after certification. See also the discussion under Proposal 8–3.

A commenter questions the need for the provision in § 21.50(b) requiring that the Airworthiness Limitations section of the Instructions for Continued Airworthiness be furnished with each aircraft, engine, or propeller. The FAA agrees that this provision is unnecessary, as the type certificate holder must make the manual available, and the operator/owner must comply. To require a manual to be furnished with each equipment would be redundant, and in some instances, would be unnecessary. Accordingly, the requirement that the Airworthiness Limitations section be furnished with each airplane or product is revised to require that the section be furnished to each owner of the type.

A commenter objects to § 21.50(b) insofar as it applies to rotorcraft type certificated under Parts 27 and 29, contending that the manufacturer is already required under those parts to furnish a maintenance manual, which has allegedly been proven adequate. The FAA does not agree. The proposed Instructions for Continued Airworthiness, which are broader in scope and more detailed than the maintenance manual currently required under Parts 27 and 29, would provide the operator/owner with the minimum amount of information needed to maintain the airworthiness of increasingly complex rotorcraft currently being designed.

A commenter suggests that § 21.50(b) be revised to make it clear that an aircraft manufacturer need not supply Instructions for Continued Airworthiness pertaining to engines and propellers until the complete aircraft is delivered to the first retail purchaser. The continued airworthiness instructions for propellers and engines should be provided to the aircraft manufacturer to facilitate transmittal to purchasers of the aircraft.

A commenter notes that § 21.50(b) would require an aircraft manufacturer to make the Instructions for Continued Airworthiness available to the owner upon delivery of the aircraft and to any other person required to comply with any of the terms of those instructions *upon request*. Since such a request could be made before the first aircraft delivery, it could impose an unnecessary burden on the aircraft manufacturer. The commenter suggests that § 21.50(b) be revised so that such a request need not be filled until after delivery of an aircraft to the first owner. The FAA agrees that an early request for the Instructions for Continued Airworthiness could impose an unnecessary burden on the manufacturer. Additionally, the FAA notes that airplanes can be delivered to an operator, prior to full type certification, with a provisional airworthiness certificate to allow activities such as crew training, and therefore prior to the approval of the Airworthiness Limitations section. Accordingly, the phrase "upon request" has been deleted from § 21.50(b) and the language has been revised to require that at least one set of the complete Instructions for Continued Airworthiness be furnished upon delivery to the customer, or subsequent to issuance of the first standard certificate of airworthiness, whichever occurs later.

Proposal 8–6. Commenters object to the proposal to make § 21.97(b) applicable to all products rather than to engines only because—(1) the volume of paperwork would increase out of proportion to any benefits that might be gained; (2) the applications for supplemental type certificates would be significantly more complex, since there are frequently many configuration variations within an aircraft model and a fleet operator would have to list all of the configurations or make separate application for each; and (3) the term "specific configuration" must be defined if the proposal is to be properly administered. In light of these comments and after further consideration, the FAA concludes that this proposal requires additional study and it is withdrawn.

Proposal 8–7. No unfavorable comment was received on the proposal to amend § 21.123 to require a manufacturer to submit a manual describing its production inspection system and means for controlling materials and parts. Accordingly, the proposal is adopted without substantive change.

Proposal 8–8. A commenter objects to § 21.143(a)(2) contending that substitution of the word "supplier" for "subsidiary" introduces a major change to the requirements, involving increased

paperwork and costs. The FAA does not agree. The FAA has consistently administered § 21.143(a)(2) as applying to *all* raw materials, purchased items, parts, and assemblies supplied to the prime manufacturer. The change does not involve increased paperwork or costs because it is a semantic change which clarifies the definition of persons or entities subject to the quality control data requirements of § 21.143, without expanding any of those requirements. The use of the term "subsidiary" is unclear because it implies that there must be a corporate connection between the prime manufacturer and his supplier. Accordingly, the language has been revised to reflect the FAA's intent that the quality control data requirements of § 21.143(a)(2) apply to all "suppliers" of each prime manufacturer. For similar reasons and for internal consistency, § 21.143(b) is revised to replace the term "subsidiary manufacturers" with the term "suppliers".

Proposal 8–9. No unfavorable comment was received on the proposal to amend § 21.182 to ensure that the proposed new § 45.11(c) is cross referenced. Accordingly, the proposal is adopted without substantive change.

Proposal 8–10. A commenter raises the question whether a special flight permit issued under § 21.197(a)(3) would serve as a certificate of airworthiness for international flights. The FAA notes that international flights cannot be conducted under special flight permits issued under § 21.197 unless specifically authorized by the foreign authorities concerned.

Another commenter objects to § 21.197(a)(3)(ii) because as worded, the individual aircraft would have to be flown for at least 50 hours, thereby defeating the purpose of the original proposal (as submitted for the Airworthiness Review) which aimed at eliminating unnecessary delays in obtaining FAA approval of customer demonstration flights. The commenter suggests that this provision be changed to stipulate that the aircraft type must have been flown for at least 50 hours. The FAA agrees that since the proposal concerns aircraft manufactured under a production certificate, and since the aircraft type would have been flown for at least 50 hours during the type certification program, the 50 hours of flight provision is not necessary. However, the FAA does not agree with the commenter's suggested revision. It is necessary to require that production flight tests for the individual aircraft involved be satifactorily completed before the aircraft is flown on customer demonstration flights. Accordingly, § 21.197(a)(5) is added to perscribe this condition in place of the 50 hours of flight provision.

The same commenter also suggests that § 21.197(a)(3)(ii) should be made applicable to aircraft produced under a type certificate only, since such aircraft received close production surveillance by the FAA. The FAA agrees that a production certificate should not be the limiting factor in obtaining FAA approval of customer demonstration flights. If the aircraft has been demonstrated to otherwise meet all the safety requirements for a standard airworthiness certificate, then customer demonstration flights could be permitted. This proposal is adopted by the addition of § 21.197(a)(5).

In addition, the commenter suggests that proposed § 21.197(a)(3)(ii) be amended with a reference to the maintenance and inspection programs called for under § 21.195 for Experimental and Subpart C Provisional Type Certificates. Such procedures would unnecessarily complicate the issuance of permits for customer demonstration flights and would in effect nullify the original proposal. The portion of the proposal calling for maintenance and inspection programs in these instances is therefore withdrawn.

Proposal 8–11. No unfavorable comments were received on the proposal to amend § 23.253(b)(3) to ensure that high speed buffeting does not become severe enough to prevent the pilot from reading the instruments or controlling the airplane. Accordingly, the proposal is adopted without substantive change. Also see Proposal 8–28.

Proposal 8–12. No unfavorable comments were received on the proposal to amend § 23.361 to redefine the limit engine torque load conditions to be considered for turbine engine installations and to make other clarifying changes. Accordingly, the proposal is adopted without substantive change.

Proposal 8–13. The FAA does not agree with a commenter who suggests that the lead-in of § 23.371 be revised to make the gyroscopic load requirements applicable to piston as well as turbine engines. The FAA has no information to indicate a need for coverage of piston engines in this regulation, nor was any submitted by the commenter.

Another commenter concurs with § 23.371, assuming that a rational analysis of loads under § 23.371(a) is an alternate to the loads specified in § 23.371(b). This assumption is correct. No change to § 23.371 was proposed in this regard. Section 23.371 is adopted without substantive change.

Proposal 8–14. A commenter suggests that the word "operated" in § 23.729(c) be replaced by the word "lowered". The commenter states that the intent of the rule is to ensure that the gear can be lowered in an emergency. The FAA concurs, but the word "extended" is used to preserve the internal consistency of the section. Section 23.729(c) is revised accordingly.

This commenter also questions whether § 23.729(e) would require an "up lock". The commenter is evidently referring to a "lock" in the sense of a positive means other than hydraulic pressure, as required to keep the gear extended by § 23.729(b). Section 23.729(e) contains no such requirement.

Another commenter suggests that the second sentence of § 23.729(e) be revised to add the words "and secured" after the words "fully extended" and "fully retracted" in order to clarify what functions the lights would indicate to the pilot. The first sentence of the paragraph clearly states that the indicators should inform the pilot that the gear is secured in the extended or retracted position.

A commenter states that the proposal is redundant since the requirement is already in effect. The FAA does not agree. This is one of several new provisions being incorporated into the current regulations to assure the reliability of small land-plane landing gear systems.

After further review, the FAA has determined that the words "and warning device" should be removed from the heading of § 23.729(e) to preclude confusion between the requirements of this paragraph and those of § 23.729(f). Section 23.729 is adopted with editorial changes and the revisions discussed.

Proposal 8–15. A commenter objects to §23.903(f) on the grounds that it imposes new and unjustified criteria for restart capability of reciprocating engine powered airplanes. The FAA believes the requirement to be fully justified. Accidents have occurred with multiengine reciprocating powered, as well as turbine powered airplanes because pilots have not been adequately apprised of the engine restart envelope for their airplane. Therefore, the requirement must apply to both types of engine installations.

This commenter further states that §23.903(g) is acceptable provided that the "restart requirement is understood to be within the restart envelope for the aircraft (if one is approved for the aircraft)." Present §23.903(e)(3), as applicable to turbine engine powered small airplanes, states that it must be possible to restart an engine in flight, and §23.903(f) requires that an approved restart envelope be established.

Therefore, development of a restart envelope would be required for the approval of each turbine engine powered small airplane. As adopted, §23.903(g) requires that, following in-flight shutdown of all engines, electrical power for ignition exists throughout the approved restart envelope.

Another commenter states that it seems inconsistent to require that electrical power be provided for ignition but not for rotational capability sufficient for an engine start. The FAA does not agree. As adopted, the rule provides for those circumstances where engine windmilling speed is sufficient for restarting but insufficient to provide electrical power for ignition.

The proposal is adopted without substantive change. However §23.903(f) is revised to make it clear that the specified in-flight engine restart capability is required throughout the required altitude and airspeed envelope.

Proposal 8–16. No unfavorable comment was received on adding a new §23.905(d) referencing propeller blade pitch control system durability requirements. Accordingly, §23.905(d) is adopted without substantive change. For discussion of a related proposal to add a new § 35.42, see the discussion under Proposal 8–103

Proposal 8–17. A commenter suggests that since the requirement for fuel tanks to retain fuel during a landing with landing gear retracted or collapsed may be subject to individual interpretation, advisory material on compliance methods should be reviewed with industry prior to implementation of the rule. The FAA does not agree. The revision merely clarifies an existing requirement. Section 23.967 is adopted without substantive change.

Proposal 8–18. A commenter recommends that the Proposal to add a new §23.991(d) which requires that operation of any fuel pump does not adversely affect continuous engine operation, be withdrawn or its adoption delayed while the compatibility of engine and airplane fuel systems is studied. The compatibility between these systems must be established in the design process, and the relevant design considerations are well known. Delaying the requirement in favor of additional study is not warranted.

Another commenter contends that the requirement is beyond the needs of safety. The FAA agrees that the proposal requirement is too restrictive and §23.991 (d) is revised to provide that the operation of any fuel pump may not affect engine operation so as to create a hazard.

Two commenters disagree with adding a new § 23.991(d), contending that it eliminates present fuel system designs. The FAA has no information to suggest that compliance with the revised section, as discussed above, would be impossible using present fuel system designs, nor was any presented by the commenter.

The proposal is adopted with the revision discussed above.

Proposal 8–19. No unfavorable comments were received on the proposal to amend §23.1305(n) to permit movement of the propeller blade up to 8° below the flight low pitch position before an indication of the movement is required for the flight crew. Accordingly, the proposal is adopted without substantive change.

Proposal 8–20. For comments related to withdrawal of the proposal to revise § 23.1521(a), see Proposal 8–94.

Proposal 8–21. Since the proposal for § 23.1529 is substantively identical to those for §§ 25.1529 (Proposal 8–58), 27.1529 (Proposal 8–64), and 29.1529 (Proposal 8–77), all comments on these proposals are considered here.

A commenter notes that although the explanation for § 23.1529 makes it clear that the Instructions for Continued Airworthiness need not be finalized until delivery of the first airplane, the proposal itself seems to require that they be finalized before type certification. The commenter suggests that this point be clarified. The FAA agrees, and §§ 23.1529, 25.1529, 27.1529, 29.1529, 31.82, 33.4, and 35.4, are revised accordingly.

In response to a commenter representing a group of scheduled air carriers, the FAA notes that, except for the Airworthiness Limitations section, there is no requirement that any operator/owner use the Instructions for Continued Airworthiness referred to in §§ 23.1529, 25.1529, 27.1529 and 29.1529. Moreover, the new §§ 43.13(a), 43.16, and 91.163(c) allow the use of other methods. In particular, the use of maintenance manuals and continuous airworthiness maintenance programs developed under current Parts 121, 123, 127, and 135, or an inspection program approved under current § 91.217(e), would be acceptable alternatives to the Airworthiness Limitations section. This commenter suggests that language be added to § 25.1529 to make it clear that alternatives to the Instructions for Continued Airworthiness (except the Airworthiness Limitations section) may be used. This suggestion was not adopted because §§ 43.16 and 91.163(c) make this provision sufficiently clear.

Proposals 8–22, 8–23, and 8–24. Final action on Proposals 8–22, 8–23, and 8–24 was taken in Airworthiness Review Program, Amendment No. 7: Airframe Amendments (43 FR 50578; Oct. 30, 1978).

Proposal 8–25. The proposals to add an appendix to Parts 23, 25, 27, and 29 (Proposals 8–62, 8–67, and 8–80) setting forth Instructions for Continued Airworthiness are substantively identical and are discussed below. Unless otherwise stated, the discussion refers to the designated sections in each of the appendices mentioned above.

§ *XX.1(a).* A commenter objects to the concept of specifying requirements (as opposed to providing guidance) for the preparation of Instructions for Continued Airworthiness, contending that such requirements would lead to time-consuming negotiations between the manufacturer and the FAA, and that some flexibility in providing the instructions is necessary. The appendix sets forth, in broad objective terms, the *kinds* of information the Instructions for Continued Airworthiness must contain. Within this framework, the manufacturer would be free to develop detailed instructions appropriate to its aircraft. The FAA is confident that the appendix provides a reasonable measure of flexibility, and anticipates no difficulties or delays in determining the acceptability of the Instructions developed by the manufacturer.

§ *XX.1(b).* A commenter objects to the requirement that Instructions for Continued Airworthiness be provided for appliances, contending that—(1) this information is often not available from the appliance manufacturer; (2) even when available, the information sometimes has to be revised for the particular application in a manner not approved or intended by the appliance manufacturer; and (3) the information necessary for customized equipment installations would be unreasonably costly to develop. The FAA does not agree. Such information, which is essential to the continued airworthiness of the aircraft, should be provided for each required product. Accordingly, the language of § XX.1(b) is revised to make it clear that if the aircraft manufacturer does not supply continued airworthiness instructions for the product, the Instructions for Continued Airworthiness for the aircraft must include this information. See also the discussion under § XX.3(a)(5)(i).

A commenter objects to the proposal to include information on engines and all appliances in the Instructions for Continued Airworthiness, contending that—(1) such information should be furnished by the engine or appliance manufacturer; and (2) with respect to appliances, only those for which standards have been established by FAA should be covered. On the first

point, manufacturers of new engine designs are required to supply the information for their products under new § 33.4. Manufacturers of new aircraft using currently certificated engines are required by § XX.1(b) to provide the information for the engine in their Instructions for Continued Airworthiness for the aircraft. In practice, the FAA expects this information to be developed and supplied by the engine manufacturer. A similar requirement for appliances would be administratively impracticable because of the large number involved. On the second point, it should be noted that specific performance and safety standards have not been established for all essential appliances. However, upon further review, the FAA concludes that it would be unreasonable to require the aircraft manufacturer to cover appliances other than those required in applicable regulations. Accordingly, § XX.1(b), as adopted, refers only to appliances "required by this chapter."

§ *XX.2.* A commenter suggests a revision of this section to make clear that the Instructions for Continued Airworthiness may consist of a series of volumes, or may be supplied in other than book form, such as on microfilm or microfiche. The language in § XX.2 is sufficiently broad to cover these acceptable alternatives. Reference to the Air Transportation Association of America Specification No. 100 (where it appeared) is deleted from § XX.2(b) because it is nonregulatory.

§ *XX.3, lead-in-paragraph.* A commenter objects to the requirement that the contents of the manual "be prepared to be understood by the person who will be responsible for maintaining" the aircraft or product, contending that—(1) it would impose a subjective standard that would be impossible to meet; and (2) it could be interpreted to mean that, in some circumstances, manuals for aircraft to be exported must be prepared in the language of the country of export. In light of these comments, the first sentence of the lead-in paragraph of § XX.3, is revised to read as follows: "The contents of the manual or manuals must be prepared in the English language." This conveys the intent of the original proposal. A commenter points out that there may be different levels of maintenance instructions, directed at different classes of operators. For example, the maintenance instructions provided to a fleet operator or commuter airline may be more comprehensive than those provided to a fixed base operator. Any level of maintenance instructions considered appropriate by the manufacturer may be submitted, provided that those instructions comply with the minimum standards in the appendix.

§ *XX.3(a)(2).* A commenter recommends that the requirement for complete descriptions be limited in scope to the "standard" aircraft and "quantity-installed" optional equipment, contending that it would be virtually impossible to devise "custom" maintenance manuals for each product because of the many combinations of equipment that may be ordered by the purchaser. In addition, the commenter states that a manual containing all of these combinations would be difficult to use. The FAA does not agree. To achieve its purpose, the Instructions for Continued Airworthiness must contain information on each item of equipment required by regulation to be installed on the aircraft. The FAA notes that supplemental type certificates (STC's) are required for installation of equipment not a part of the type certificate, and that this maintenance manual requirement is equally applicable to the STC applicant.

§ *XX.3(a)(3).* A commenter recommends that since maintenance personnel have no need for the kind of operating information provided in a Pilot's Operating Handbook, the paragraph be revised to require only *basic* principles of equipment control and operation. The FAA agrees, and § XX.3(a)(3) now refers to "basic control and operation information."

§ *XX.3(a)(5)(i).* A commenter recommends that applicants be allowed to refer to a component manufacturer as a source of information instead of including the information in the Instructions for Continued Airworthiness. The commenter argues that many component manufacturers prefer to maintain control of their maintenance information to ensure that it is up to date. In other cases, maintenance at the factory may be required because of the complexity of the equipment. The FAA recognizes that some accessories, instruments, and equipment have an exceptionally high degree of complexity, requiring specialized maintenance techniques, test equipment, or expertise. In such cases, it would be in the interest of safety to allow the applicant to refer to the appropriate manufacturer in the maintenance instructions. The FAA does not agree, however, that such reference should be allowed in other circumstances. Section XX.3(a)(5)(i) (redesignated § XX.3(b)(1)) is revised accordingly.

A commenter recommends that the last sentence of § XX.3(a)(5)(i), be revised to allow reference to a separate inspection program, rather than include it in the maintenance instructions, so that the inspection program could be better kept current and also tailored to an individual operator's needs. The FAA does not agree. The inspection program must be set forth in the Instructions for Continued Airworthiness to ensure its availability to those who will benefit from it.

The FAA, after further study of § XX.3(a)(5)(i), has decided that the provision should specifically require a description of applicable maintenance or wear tolerances. Section XX.3(a)(5)(i) (redesignated § XX.3(b)(1)) is clarified in this regard.

§ *XX.3(a)(5)(ii).* A commenter objects to the words "could occur" in this paragraph because it encompasses everything within the realm of possibility, thereby unnecessarily increasing the volume of the maintenance instructions. The phrase "probable malfunctions" replaces the phrase "typical malfunctions that could occur" in § XX.3(a)(5)(ii) (redesignated § XX.3(b)(2)).

§ *XX.3(a)(5)(iii).* A commenter suggests that this paragraph would be clearer if the first three words and the last five words are deleted. Section XX.3(a)(5)(iii) (redesignated § XX.3(b)(3)) is revised accordingly.

§ *XX.3(a)(5)(iv).* A commenter suggests revision of this paragraph to make it clear that the overweight landing check refers to the condition in which a certificated landing weight is lower than certificated takeoff weight, since the aircraft manufacturer cannot speculate what damage might be done to an aircraft that takes off and must immediately land at a weight near the certificated takeoff weight. This comment may have merit for certain aircraft. Moreover, since an overweight landing is but one of several occurrences which would necessitate a check to determine aircraft damage, to single out one occurrence would imply that the others need not be covered in the maintenance instructions. Accordingly, the words "checks after an overweight landing" are deleted from § XX.3(a)(5)(iv) (redesignated § XX.3(b)(4)).

§ *XX.3(b).* A commenter recommends deletion of the requirement for an overhaul manual or section, contending that—(1) there are many products that, for safety reasons, should not to be overhauled; and (2) the manufacturer must make the technical assessment as to whether a product can be safely overhauled. In the light of these comments, and after further consideration, the FAA finds that those

portions of § XX.3(b) that provide for overhaul information only (except for engines), should not be required in the Instructions for Continued Airworthiness. Accordingly, §§ XX.3(b)(1)(i), XX.3(b)(1)(ii), XX.3(b)(1)(iv), XX.3(b)(1)(viii), and XX.3(b)(3), are withdrawn. The other provisions of § XX.3(b) specify information that is needed for purposes other than overhaul.

§ *XX.3(b)(1)(iii).* No adverse comment was received on this proposal to require structural access plate information. Accordingly, it is adopted as proposed, but redesignated § XX.3(c).

§ *XX.3(b)(1)(v).* No adverse comment was received on this proposal to require instructions on special inspection techniques. Accordingly, it is adopted as proposed, but redesignated § XX.3(d).

§ *XX.3(b)(1)(vi).* A commenter points out that no part can be restored to its original condition by protective coatings or treatments. The FAA agrees, and § XX.3(b)(1)(vi) (redesignated § XX.3(e)) is revised to make this clear and to require only the information necessary to apply protective treatments to the structure after inspection.

§ *XX.3(b)(1)(vii).* No adverse comment was received on this proposal to require data on structural fasteners. Accordingly, it is adopted as proposed, but redesignated § XX.3(f).

§ *XX.3(b)(1)(ix).* No adverse comment was received on the proposal to require a list of special tools. Accordingly, it is adopted as proposed, but redesignated § XX.3(g).

§ *XX.3(c).* Three commenters object to the concept of supplying generalized repair data. One contended that—(1) the nature of the damage may not be known in a particular case, though it may appear to fall under a general repair "fix"; (2) the safety of the product may be seriously impaired by repairs made in such instances; and (3) the manufacturer can provide alternate means for a mechanic to obtain repair data. In the light of these comments, the FAA agrees that it is not necessary to include the repair information in the Instructions for Continued Airworthiness as proposed. Accordingly, proposed § XX.3(c) is withdrawn.

§ *XX.4.* A commenter suggests that the manufacturer should be allowed to list items in the Airworthiness Limitations section that it deems necessary to maintain structural integrity, where such items are not called out in the applicable airworthiness standards. Another commenter, representiang the scheduled airlines, objects to the inclusion, in the Airworthiness Limitations section, of mandatory replacement times for parts other than life-limited parts and of mandatory inspection intervals. The resolution of these comments is discussed under Proposal 8–3. The language proposed for the Airworthiness Limitations sections of the appendices to Parts 23, 25, 27, and 29 is being retained, except that the mandatory replacement times, mandatory inspection intervals, and related procedures are specified as those associated with structural integrity—including those approved under current § XX.571. It also is made clear that FAA approved alternative programs may be used. To avoid unnecessary restriction being placed on operation, only these items are listed in the pertinent Airworthiness Limitations section. Other items can of course be listed in other sections of the Instructions for Continued Airworthiness.

Proposal 8–26. The addition of new §§ 25.101(i) and (j) would set forth requirements for automatic systems that affect performance, including automatic takeoff thrust control systems (ATTCS). In view of the evolving technology of automatic systems, the special features and functions of each design, and the complex interrelationships with other systems, the FAA has concluded that specific regulations are premature and that safety considerations can be more advantageously addressed in special conditions for specific systems. Accordingly, Proposal 8–26 and related Proposals 8–34, 8–48, and the § 25.1305(c)(9) portion of 8–50 are withdrawn.

Proposal 8–27. The revision of § 25.111(c)(4) will permit changes in power or thrust by an automatic takeoff thrust system but prohibit any change requiring action by the pilot when determining the takeoff path. Although specific proposals relating to criteria for automatic takeoff thrust systems have been withdrawn, the FAA believes that this proposal should be retained as it standardizes the procedure for determining the takeoff path, and is consistent with current practice.

One commenter implies that this rule change will add the task of monitoring conditions and instruments and thereby increase the pilot workload. Other commenters suggest that a limited provision for manual throttle setting be included, or are opposed to the proposal completely on the grounds that safety will be compromised in service. Since the rule will apply in the context of a determination of performance rather than an operating requirement, the proposal is adopted without change.

Proposal 8–28. A commenter suggests that the term "impair" in § 25.253(a)(2)(iii) be changed to "significantly impair". The FAA does not agree. In present high altitude, high Mach number jet airplanes, any recovery from upset or speed anomaly must be done essentially by reference to flight instruments. Therefore, any buffet or vibration condition which would in any way impair the pilot's ability to accurately interpret instrument information cannot be tolerated. The same commenter stated that some interpretative material on vibrational frequencies and levels of acceleration would be useful. Use of interpretative material would divert attention from the primary consideration, impairment of pilot ability, which is qualitative. Proposed § 25.253(a)(2)(iii) is adopted without substantive change.

Proposal 7–17. Although no unfavorable comment was received on the proposal to amend § 25.305(d), two commenters state that their agreement was with the understanding that both the discrete gust and the continuous turbulence analyses are required. Present § 25.341(a) requires that limit load factors be established by reference to a discrete gust encounter. Present § 25.305(d) specifies that the dynamic response of the airplane to vertical and lateral continuous turbulence must be taken into account. Both analyses are required.

Two commenters recommend that present § 25.341 be amended to require dynamic loads analysis by reference to discrete gusts having varying gust gradient distances. The FAA does not agree. The combination of discrete gust analysis under § 25.341 and continuous turbulence analysis under § 25.305 is less complex than the method described by these commenters and provides sufficient substantiation of strength. The proposal is adopted without substantive changes.

Proposal 8–29. Many negative comments were received on the proposal to revise § 25.307(a) to require ultimate load tests for each normal and failsafe critical load condition. Three commenters indicate that the proposed regulation would add to the cost and time required for certification although present airplane safety records do not support the need for a change. One commenter points out that the design philosophy used for commercial transports, due to the dominant influence of the economic requirement for long life without structural fatigue problems, often produces reserve margins of safety. Another commenter proposes that ultimate load tests be limited to structures such as composites, which substantially differ from conventional structure. The FAA agrees

that to conduct ultimate load tests for all critical load conditions would greatly increase the amount of testing required, which is not warranted by the safety record since there have been no service features which indicate that present methods of substantiation are inadequate. In many cases failures in service result from conditions such as fatigue or corrosion which are not covered by ultimate load tests. The proposal to require ultimate testing of all structural components therefore is deleted. In some cases, however, analysis must be supplemented by limit and/or ultimate load tests. The amendment, as adopted, is revised accordingly.

Proposal 8–30. Several negative comments were received on §§ 25.365 (e) and (f), requiring airplane designers to consider pressure vessel decompression resulting from the loss of any nonplug door, detonation of a bomb within the cabin at all probable locations, and engine disintegration. Several commenters oppose designing for the loss of a nonplug door, stating that there is no reason why nonplug doors cannot be designed to be as safe as plug doors. These commenters suggest that the door design criteria be upgraded to improve door integrity. The FAA agrees that door integrity should be improved to the extent that design for their loss is not justified. Therefore § 25.783 is revised in response to Proposal 8–35 to require this improved level and § 25.365(e)(1) is withdrawn.

Many commenters object to designing for all possible bomb detonations and probable bomb locations. A commenter points out that airworthiness requirements in the past have attempted to safeguard aircraft against structural and mechanical failure, human error, natural hazards, etc. They note that no one has attempted to incorporate into airworthiness requirements the consequences of homicidal or suicidal tendencies. Another commenter states that the aircraft industry has to accept responsibility for compensating the public for loss or injuries resulting from defects in its products, and the inclusion of a bomb damage requirement in Part 25 could significantly extend the grounds of possible product liability actions, particularly with the imprecise requirements of § 25.365(e). Many commenters state that the wording of § 25.365(e)(3) is so vague as to make its implementation impossible. The FAA notes that, ultimately, minimizing the loss of airplanes as a result of bomb explosions is a ground security problem.

A commenter suggests an alternative to § 25.365(e)(3) which would establish a relationship between the design maximum opening and the cross-sectional area of the pressurized shell. The FAA agrees that the proposed relationship provides an acceptable method for determining hole size. The FAA has determined that the maximum hole size required should be 20 square feet, a value contained in Airworthiness Directive 75–15–05 (August 11, 1975) pertaining to openings in wide-body transports. Section 25.365(e)(3) is revised to allow the maximum opening to vary as a function of the cross-sectional area of the pressurized shell to account for the differences in size between narrow and wide-body transports and is redesignated and adopted as § 25.365(e)(2).

The FAA finds that the maximum opening specified in adopted § 25.365(e)(2) will exceed the opening that would result from causes other than bomb explosions or engine disintegration, and that a probability safety analysis to determine hole size in passenger or cargo areas resulting from other causes is not needed. Thus, proposed § 25.365(f) is withdrawn.

In light of the comments received on proposed § 25.365(e)(4), and after further consideration, the FAA concludes that openings caused by airplane or equipment failures can occur in any compartment, and that partitions, bulkheads, and floors should be designed for openings from these causes. Thus, proposed § 25.365(e)(4) is revised accordingly, redesignated, and adopted as § 25.365(e)(3).

No adverse comments were received on proposed § 25.365(e)(2) to require design to withstand penetration of the cabin by a portion of an engine following engine disintegration and the proposal is redesignated § 25.365(e)(1) and adopted without substantive change.

Amendment to § 25.571(a)(3). Because of the change to § 25.1529 adopted in this amendment, the reference to the "maintenance manual" in § 25.571(a)(3) is no longer appropriate. For consistency, § 25.571(a)(3) references the Airworthiness Limitations section of the Instructions for Continued Airworthiness.

Proposal 8–31. Numerous unfavorable comments were received on the proposal to add a new § 25.633 requiring that essential systems be designed to minimize damage caused by detonation of a bomb in the airplane. Most commenters contend that there is no means to protect essential systems from all possible bomb detonations and that bomb size and location cannot be rationally defined. Several commenters indicate that the separation of essential systems on modern airplanes presently provides a measure of protection and that the proposed requirements of § 25.633 are beyond the state of the art.

The FAA agrees that rational means of determining and defining all possible bomb size/location combinations which would damage essential systems does not exist. Therefore, the proposal is withdrawn.

Proposal 8–32. Several commenters object to the proposed horizontal stabilizer "trim-in-motion" aural warning requirement of § 25.677(e) on the grounds that the aural environment in today's cockpits is already cluttered and that finding new and distinctive aural warnings is becoming difficult. They further suggest that small increments of trim change should not cause aural warning, and that warnings should be given only when a safety-of-flight hazard exists. One commenter suggests that there is no need for separate aural warning on aircraft having direct trim control wheels in the cockpit.

The FAA agrees with the comments and upon further review concludes that the proposal is premature and unworkable. Accordingly, it is withdrawn for further study.

Proposal 8–33. Several adverse and supporting comments were received on the proposal to add a new § 25.685(e) requiring arrangement of control systems to provide an airplane with the capability of continued safe flight and landing in the event of an inflight localized structural failure. Several commenters agree with the intent of the proposal and propose minor changes. One commenter agrees with the intent of the proposal, but believes that only failures which have not been shown to be extremely improbable need be considered. Commenters state that the intent of the proposed rule change is already encompassed by § 25.365(e) which would require that floor failure resulting from rapid decompression be shown to be extremely improbable.

A commenter further states that present § 25.671(c) requires control systems to be designed to be tolerant of failures, and that control system damage is more likely from other sources. The commenter claims that service experience and rational analysis show that the floor structure provides the best available protection for the control system from damage from these other sources.

After further study the FAA agrees with the commenters that the primary objectives of this proposal are adequately covered by several existing sections of FAR 25. For example: § 25.365(e) requires that the floor be

designed for pressure vessel opening which is a function of the cross-sectional area of the fuselage; § 25.571 requires all structure to be damage tolerant where practical; § 25.671 requires that control systems be tolerant of failures, including exterior damage; § 25.629 requires freedom from flutter under failure conditions; § 25.631 requires protection of controls in the empennage structure from bird strikes; and § 25.901(d) requires design precautions be taken to minimize the hazards to the airplane, including control systems, in the event of an engine rotor failure. The proposal therefore is withdrawn.

Proposal 8–34. For an explanation of the withdrawal of the proposals concerning automatic systems that affect airplane performance, one of which is the proposal to add a new § 25.705, see Proposal 8–26.

Proposals 8–35 and 2–59. Several commenters object to the requirement in § 25.783(e) that provisions for the inspection of door locking mechanisms must be discernable under all possible lighting conditions. The commenters state that allowance should be made for use of supplemental lighting such as a flashlight to aid in the inspection. The FAA agrees and the section is revised accordingly.

A commenter states that direct visual inspection is only needed for external doors for which the initial opening movement is not inward and which are pressurized or for which an inadvertent opening could prevent continued safe flight and landing. Although these comments have merit, they go beyond the scope of Proposal 8–35 and interested parties have not had an opportunity to comment on these changes. No change to the section is being made based on these comments. Several commenters object to the redundancy of a dual warning system requirement and state that in lieu of redundancy, a reliability level should be specified. Further comments state that all external doors do not require this level of reliability. The FAA agrees that this reliability level could be specified and should apply only to external doors for which initial movement is not inward, and the section is changed accordingly. The present language defining where door warning systems are required is retained, as no change in present practice is intended.

A commenter suggests that § 25.783(e) should specify several good design practices. These design practices are desirable but are not essential, since the necessary level of safety can be obtained by alternate means under § 25.783.

Several commenters object to new § 25.783(f), suggesting that it apply only to nonplug type doors and doors whose loss would present a probable hazard. The FAA agrees that provisions to prevent unsafe pressurization can be limited to doors whose loss would present a portable hazard. However, the FAA does not agree that it should be limited to nonplug type doors because a plug door is defined as one whose initial opening is inward and this feature does not necessarily provide complete assurance that an unsafe pressurization will not occur with subsequent opening of the door in flight. The clarifying phrase "to an unsafe level" has been added to § 25.783(f). The intent is to prevent pressurization to a level which would be hazardous if an unlocked external door inadvertently opened.

Several commenters object to proposed new § 25.783(g) (Proposal 8–25), stating that it would unnecessarily preclude the use of nonplug type doors above 45,000 ft. The FAA agrees that nonplug type doors can safely be used at altitudes above 45,000 ft., since adequate warning systems and door integrity are provided by § 25.783(e). Proposed new § 25.783(g) is withdrawn.

A commenter proposes that for the door whose opening would be a hazard, the door and immediate surrounding fuselage, door mechanisms, and warning system be design for any combination of failures (including improper operation) not shown to be extremely improbable. The FAA agrees. In place of the proposals in 8–30, with regard to §§ 25.365(e) (1), (3), and (4), a rule is included to require determination by safety analysis that inadvertent opening of doors which could prevent continued safe flight and landing is extremely improbable.

Two commenters state that the criteria for passenger egress in the revision to the second sentence of § 25.783(g) (Proposal 2–59 of Notice 75–10) should be evacuation time, and not the rate of passenger egress through a given exit. The FAA agrees. Revision of the second sentence of § 25.783(g) is redesignated as § 25.783(i) and the reference to § 25.561(a)(3) in the proposal is corrected to reference § 25.561(b)(3).

Numerous negative comments concern proposed new § 25.783(j), which requires that lavatory doors open into the cabin to preclude anyone from being trapped in the lavatory. The commenters state that this requirement is overly restrictive on design and that an outward opening door could have an adverse effect on aisle width and emergency evacuation capabilities if such a door jammed open. The FAA agrees that inward opening doors can be designed to prevent anyone being trapped in a lavatory in cases of incapacitation or for other reasons. Thus, new § 25.783(j) is revised to delete the requirement that lavatory doors open into the cabin.

Proposals 8–36, 2–60, and 8–37. Final action on Proposals 8–36, 2–60, and 8–37 was taken in Airworthiness Review Program, Amendment No. 8: Cabin Safety and Flight Attendant Amendments (45 FR 7750; February 4, 1980).

Proposal 8–38. One commenter objects to adding a new § 25.792 to require a sign indicating whether lavatories are occupied, asserting that it would be inappropriate for general aviation aircraft certificated under Part 25. Two commenters doubt that the proposed rule would achieve the objective of preventing aisle congestion near lavatories. They point out that many existing aircraft have similar signs which have not prevented people from "standing in line" for lavatories. Also, passengers can cause congestion in aisles for other reasons. One of the commenters states that lighted signs in a darkened cabin; i.e., during movies or rest periods, would annoy passengers, and that the rule might foster a proliferation of signs throughout the cabin. Finally, one commenter is concerned that any increase in the number of lighted signs might distract the passengers' attention from more essential notices.

Based on the comments and upon further review, the FAA finds that the proposed requirement would not achieve the objective sought. Accordingly, the proposal is withdrawn.

Proposal 8–39. Final action on Proposal 8–39 was taken in Airworthiness Review Program Amendment No. 8: Cabin Safety and Flight Attendant Amendments (45 FR 7750; February 4, 1980).

Proposal 8–40. Final action on Proposal 8–40 was taken in Operations Review Program Amendment No. 8 (45 FR 41586; June 19, 1980).

Proposal 8–41. A commenter suggests that new § 25.851(a)(5), which replaces current § 25.853(f), be expanded to prescribe four fire extinguishers for a passenger capacity of 100 or more, and to require at least one CO_2, dry chemical, or all-purpose fire extinguisher near lavatory and galley areas. These suggested changes are beyond the scope of the notice. However, changes in these requirements are appropriate and the FAA is conducting a research program to establish comprehensive standards and guidance information pertaining to the

selection of portable fire extinguishers, taking into consideration types and quantities of extinguisher agents, extinguisher performance, and other factors. Regulatory changes based on the findings of this research program will be proposed in the next airworthiness standards review.

Sections 25.851 (a)(5) and (a)(6), which consolidate hand fire extinguisher requirements, are adopted without substantive change.

Proposals 8–42, 2–18, 2–65, 2–114, and 2–160. Final action on Proposals 8–42, 2–18, 2–65, 2–114, and 2–160 was taken in Airworthiness Review Program, Amendment No. 8: Cabin Safety and Flight Attendant Amendments (45 FR 7750; February 4, 1980).

Proposal 8–43. Final action on Proposal 8–43 was taken in Airworthiness Review Program, Amendment No. 7: Airframe Amendments (43 FR 50578; October 30, 1978).

Proposal 8–44. For a discussion of proposed § 25.905(c), see the discussion under Proposal 8–103. The proposal to add a new § 25.905(c) is adopted without substantive change.

Proposals 8–45 and 8–96. The proposed amendments to §§ 25.939 and 33.65 are being deferred for consideration in a forthcoming notice of proposed rule making of the Aircraft Engine Regulatory Review Program.

Proposals 8–46, 3–35, and 8–47. Final action on Proposals 8–46, 3–35, and 8–47 was taken in Airworthiness Review Program, Amendment No. 7: Airframe Amendments (43 FR 50578; Oct. 30, 1978).

Proposal 8–48. For an explanation of the withdrawal of the proposals concerning automatic takeoff thrust control systems, one of which is the proposal to add a new § 25.1143(f), see Proposal 8–26.

Proposals 8–49 and 3–41. Final action on Proposals 8–49 and 3–41 was taken in Airworthiness Review Program, Amendment No. 7: Airframe Amendments (43 FR 50578; Oct. 30, 1978).

Proposal 8–50. For an explanation of withdrawal of the proposals concerning automatic takeoff thrust control systems, one of which is the addition of a new § 25.1305(c)(9), see Proposal 8–26.

One commenter objects to revising § 25.1305(d)(1), stating that significant aerodynamic forces acting on the powerplant nacelle make the direct measurement of thrust impractical. The FAA agrees that such forces may be significant. This commenter further objects to the revision, stating that it is beyond the state of the art to prohibit a parameter from being used if the accuracy of the indication will be adversely affected by any engine malfunction or damage. The FAA agrees that precise values of thrust provided by a malfunctioning, damaged, or deteriorated engine are unnecessary, provided that any changes in thrust due to engine malfunction, damage, or deterioration are indicated to the pilot. The paragraph is revised to require that the indication must be based on the direct measurement of thrust or of parameters that are directly related to thrust.

Although concurring with § 25.1305(d)(1), one commenter states that he would prefer to retain the existing requirements and delete the words ", or to indicate a gas stream pressure that can be related to thrust,". The FAA does not agree. The change suggested by this commenter would eliminate the requirement for thrust information and would retain the requirement for change-of-thrust information only. It also would provide a lower level of safety than the adopted paragraph.

This commenter also states that § 25.1305(d)(1) should be complementary to a similar requirement in Part 33 of this chapter. The FAA does not agree. In current practice, the airframe manufacturer determines how performance should be met. The choice of a means to indicate thrust is negotiated between the airplane manufacturer and the engine manufacturer. The factors which influence the final choice are substantial and may vary among airplane designs. These factors may not be known to the engine manufacturer at the time of engine type certification. Another commenter states that the need for an actual value of thrust is not obvious, whereas indication of a loss of thrust would satisfy the original proposal. The FAA agrees that the actual value of thrust is of little value to the pilot. Section 25.1305(d)(1) is revised to specify that the indicator indicate thrust, or a parameter related to thrust, to the pilot.

Proposal 8–51. No unfavorable comments were received on the proposal to change the reference in § 25.1307(h) for fire extinquishers in connection with Proposal 8–41. Accordingly, the proposal is adopted without substantive change.

Proposal 8–52. Final action on Proposal 8–52 was taken in Airworthiness Review Program, Amendment No. 8: Cabin Safety and Flight Attendant Amendments (45 FR 7750; February 4, 1980).

Proposal 8–53. Several commenters point out a number of service deficiencies with proposed § 25.1421 which defines the requirements for cargo compartment fire detection systems. They contend that the requirement for the detection system to actuate a warning within one minute of the start of a fire is too restrictive. One commenter cites the results of FAA tests which show average fire detection times to be from 1.75 to 5 minutes. The commenters also suggest that the tests necessary to show compliance with the warning requirements are not clearly defined. Finally, one commenter points out that fires in baggage containers and other enclosed containers can burn for a considerable time before detection is likely by fire detectors in the cargo compartment.

The FAA does not concur that the one-minute requirement is too restrictive. A survey of fire detection technology has indicated that the state of the art permits detection of a fire in less than one minute after inception. In addition, current standards do not define the test procedures necessary to show compliance with warning requirements. The new one-minute requirement is intended to improve the standards in this regard.

The proposal is adopted without substantive change.

Note.—This proposal has been carried erroneously under § 25.1421 which pertains to megaphones. It will be included in the amendment as a new § 25.858.

Proposal 8–54. Comments received from several commenters reflected confusion over the intent of proposed § 25.1439(c). It was noted that much of what was intended by proposed § 25.1439(c) is included in existing § 25.1439(a) as amended by Amendment 25–38 (40 FR 55454; 12/20/76), provided that the portable oxygen equipment requirements of § 25.1447(c)(4) are retained. Amendment 25–38 emanated from Airworthiness Review Program Notice No. 2 (40 FR 10813; 3/7/75), and was adopted (41 FR 55468; 12/20/76) after publication of Airworthiness Review Program Notice No. 8 (40 FR 29420; 7/11/75) which contained proposals 8–54 and 8–55. The FAA agrees that the existing regulations require much of what was intended by proposal 8–54, provided that proposal 8–55 is withdrawn. The FAA further agrees that additional clarifications are needed before further amendments are made to § 25.1439. Therefore the FAA withdraws both proposals 8–54 and 8–55. The subject of protective breathing equipment will be addressed in a forthcoming notice of proposed rule making.

Proposal 8–55. The proposal to delete § 25.1447(c)(4) is withdrawn for the

reasons stated for withdrawal of Proposal 8–54.

Proposal 8–56. For comments related to the proposal to revise § 25.1521(a), and for the withdrawal of that proposal, see Proposal 8–94.

Proposal 8–57. Final action on Proposal 8–57 was taken in Airworthiness Review Program, Amendment No. 7: Airframe Amendments (43 FR 50578; October 30, 1978).

Proposal 8–58. For comments related to the proposal to amend § 25.1529, see Proposal 8–21.

Proposal 8–59. A commenter objects to the proposed new § 25.1557(e), calling for a placard on each flight attendant seat to indicate that it may be occupied by a flight attendant, asserting that such placarding is redundant and that a proliferation of placards in the aircraft will only serve to confuse the passengers and make all placards less effective. The commenter also states that the proposal would prohibit non-flight attendant airline personnel who are cognizant of emergency procedures from occupying flight attendant seats when the aircraft is full. The FAA concludes that a new aircraft certification rule is unnecessary to achieve this result and the proposal is withdrawn.

Proposals 8–60 and 8–61. Final action on Proposals 8–60 and 8–61 was taken in Airworthiness Review Program, Amendment No. 7: Airframe Amendments (43 FR 50578; October 30, 1978).

Proposal 7–55. A commenter recommends that discrete gusts with varying gradient distances be added as a supplement to Appendix G to Part 25. The FAA disagrees because past experience with the use of discrete gusts with varying gust gradient distances has indicated that knowledge with regard to how gust intensity varies with gust gradient distance is not currently available to the designer. The research and development work accomplished in the area of dynamic response to continuous turbulence has indicated that the continuous turbulence criteria of Appendix G to Part 25 is the most rational approach currently available which gives consistent strength levels for airplanes of different characteristics and missions.

A commenter recommends that paragraph (a) of Appendix G be revised to delete the requirement for considering combined stresses based on both vertical and lateral components of turbulence. The commenter states that the current practice of combining root-mean-square stresses (shear, moment, and torsion) resulting from gust calculations involving only purely vertical or lateral components of turbulence is a realistic, practical method for combining stress. The commenter contends that the methods for realistically combining statistical load quantities involving both vertical and lateral components of turbulence have not been satisfactorily developed in the current state of the art. After further review the FAA agrees. Paragraph (a) of Appendix G is revised to delete the requirement for considering the combined stresses resulting from the vertical and lateral components of turbulence.

A commenter recommends that paragraph (b)(3)(i) of Appendix G be revised to require a gust intensity of U =75 fps gust velocity in the interval 0 to 20,000 ft. altitude with a linear decrease to 30 fps at 80,000 ft. altitude. This recommendation would obviate the need to do mission analysis to justify lower levels of loads than those required to meet the design envelope gust intensity factor of 85 fps for new airplanes whose characteristics are similar to previous designs which have been shown to be adequate for the lower level of gust intensity being proposed. There is no technical need for new aircraft which are similar to existing aircraft with regard to response characteristics and basic mission profiles to make extension mission analysis computations in order to establish their adequacy with regard to loads resulting from encounters with continuous turbulence if they are designed for the gust intensity shown to be adequate for the existing design. Therefore, it is acceptable to use a gust intensity value of 75 fps from 0 to 20,000 ft. altitude, and a linear reduction from 75 fps at 20,000 ft. to 30 fps at 80,000 ft., provided the new design is comparable to a similar design with extensive satisfactory service experience. These criteria, which have been under discussion between FAA and industry for over 10 years, are proposed as new rules rather than acceptable means of complying with existing rules. Paragraph (b)(3)(i) is revised accordingly. The commenter also recommends that paragraph (d)(1) be revised to require a gust intensity of U =60 fps on the interval 0 to 20,000 ft. altitude and be linearly decreased to 23 fps at 80,000 ft. altitude. The FAA disagrees. The gust intensities in paragraph (d)(1) are based on the distribution of gust intensity with altitude which were developed in the basic research for the development of continuous turbulence criteria and are, therefore, considered reasonable as a lower design envelope limit for mission analysis. A cost analysis was provided by the commenter to justify the lower gust intensities, but the FAA finds that this cost analysis was based on "design envelope analysis" alone. Paragraph (c), which is an alternative to paragraph (b), provides for a "mission analysis". Actual experience has shown that "mission analysis," which considers airplane operational characteristics, has been used in the past in lieu of the 85 fps intensities to prevent weight and cost penalties. Paragraphs (c) and (d) of Appendix G are adopted without substantive change.

A commenter recommends that paragraph (d) of Appendix G be revised to delete the reference to "fail-safe loads" since such loads are not provided in Appendix G. The FAA agrees. Paragraph (d) of Appendix G is revised accordingly.

A commenter recommends that proposed paragraph (e) of Appendix G be deleted since acceleration levels measured at the pilot station on current conventional aircraft can be established by flight demonstration much more easily and with less cost than by use of an expensive analysis considering response to continuous turbulence. Upon further review, the FAA has determined that it lacks sufficient information to specify the right combination of analysis and flight test to determine the acceleration levels at the pilot's station during continuous turbulence. Accordingly, proposed paragraph (e) of Appendix G is withdrawn. The current requirements related to operation in turbulence are adequate to determine the response at the pilot's station during continuous turbulence.

Proposal 8–62. For comments related to the proposal to add a new Appendix G to Part 25, see Proposal 8–25. Appendix G (redesignated Appendix H) to Part 25 is adopted with the changes discussed in Proposal 8–25.

Proposal 8–63. Final action on Proposal 8–63 was taken in Airworthiness Review Program, Amendment No. 7: Airframe Amendments (43 FR 50578; October 30, 1978).

Amendment to § 27.571. Because of the change to § 27.1529 adopted in this amendment, the reference to § 27.1529(a)(2) in §§ 27.571 (b), (c), (d)(1), (d)(3), and (e) is no longer appropriate. The reference is changed to "§ A27.4 of Appendix A". This discrepancy was overlooked in Notice 75–31 (40 FR 29410; July 11, 1975). Since this amendment is clarifying in nature and does not impose a burden on the public, notice and public procedure are unnecessary and good cause exists for adopting this amendment.

Proposal 8–64. For comments related to the proposal to amend § 27.1529, see Proposal 8–21.

Proposals 8–65 and 8–66. Final action on Proposals 8–65 and 8–66 was taken in Airworthiness Review Program, Amendment No. 7: Airframe Amendments (43 FR 50578; October 30, 1978).

Proposal 8–67. For comments related to the proposal to add a new Appendix A to Part 27, see Proposal 8–25. Additional comments on this proposal, and on the proposal to add a new Appendix A to Part 29, are discussed here.

A commenter suggests that the wording of Appendix A be adjusted to take into account the differences between airplanes and rotorcraft. The FAA agrees. The appendix, as proposed, is generally equally applicable to airplanes and rotorcraft. However, several minor changes have been made to the appendix to provide for rotorcraft differences, primarily to cover rotors and differing fatigue standards.

A commenter objects to Appendix A, contending that: (1) The standards in current §§ 27.1529 and 29.1529 have been adequate in service, and (2) the proposal is excessive in scope and would create an undue burden. The FAA does not agree, having found that recommended maintenance procedures made available to operators/owners in the past were frequently inadequate in scope and content, providing no sound basis for maintaining the airworthiness of the rotorcraft. Appendix A, with the revisions and deletions discussed above and under Proposal 8–25, would not create an undue burden on the type certificate applicant.

One commenter expresses concern that certain inspection provisions in current § 91.217 might be applied to rotorcraft. The appendix contains no such requirement. Current § 91.217 applies only to certain airplanes.

Amendment to § 29.571. Because of the change to § 29.1529 adopted in this amendment, the reference to "§ 29.1529(a)(2)" in §§ 29.571 (b), (c), (d)(1), (d)(3), and (e) is no longer appropriate. For consistency, the reference is changed to "§ A29.4 of Appendix A required by § 29.1529". This change was overlooked in Notice 75–31 (40 FR 29410; July 11, 1975). Since this amendment is clarifying in nature and does not impose a burden on the public, notice and public procedure are unnecessary and good cause exists for adopting this amendment.

Proposal 2–154. For a discussion directly related to proposed new § 29.783(g), see the discussion under Proposal 8–35 for § 25.783(g) (Proposal 2–59 of Notice 75–10). Section 29.783(g) is adopted without substantive change.

Proposals 8–68 through 8–76 and 2–164. Final action on Proposals 8–68, 8–69, 8–70, 8–71, 8–72, 8–73, 8–74, 8–75, 8–76, and 2–164 was taken in Airworthiness Review Program, Amendment No. 7: Airframe Amendments (43 FR 50578; October 30, 1978).

Proposal 8–77. For comments related to the proposal to amend § 29.1529, see Proposal 8–21.

Proposals 8–78 and 8–79. Final action on Proposals 8–78 and 8–79 was taken in Airworthiness Review Program, Amendment No. 7: Airframe Amendments (43 FR 50578; October 30, 1978).

Proposal 8–80. For comments related to the proposal to add a new Appendix A to Part 29, see Proposals 8–25 and 8–67.

Proposal 8–81. No unfavorable comments were received on adding a new § 31.12 Providing for standardized application of the airworthiness requirements for balloons. Accordingly, § 31.12 is adopted without substantive change.

Proposal 8–82. No unfavorable comments were received on adding a new § 31.16 requiring that balloon empty weight be determined. Accordingly, § 31.16 is adopted without substantive change.

Proposal 8–83. No unfavorable comments were received on the intent of new § 31.17 which specifies performance in terms of an initial minimum rate of climb. However, a commenter raises the question whether compliance with proposed § 31.17(a) could be shown by testing at several altitudes and ambient temperatures and then extrapolating, by appropriate analysis, to the other values in the range for which approval is sought. The FAA considers that such extrapolation by analysis is an acceptable means of complying with proposed § 31.17(a), because the climb performance of balloons is based on fundamental principles and, therefore, can be predicted with sufficient accuracy from established test points.

The FAA notes that the 300 fpm climb rate requirement in § 31.17(a) was intended as a minimum standard. To make this clear, § 31.17 as adopted is revised by inserting the words "at least" before the number "300" in the first sentence of § 31.17(a).

Proposal 8–84. A commenter, referring to new § 31.19(a) governing critical uncontrolled descent, suggests that it would be difficult and time-consuming to determine which tear is the most critical single tear in the balloon envelope between tear stoppers. The FAA does not agree. An analysis, or a combination of test and analysis, would be an acceptable means of determining the most critical single tear. It would not be necessary to test each kind of tear. No other unfavorable comments were received on the proposal to add a new § 31.19. Accordingly, § 31.19 is adopted without substantive change.

Proposal 8–85. No unfavorable comments were received on the proposal to amend § 31.27(c) to be consistent with new § 31.19, Performance: Uncontrolled descent. Accordingly, the proposal is adopted without substantive change.

Proposal 8–86. No unfavorable comments were received on the proposal to amend § 31.65 updating the position light standards and expressing them in language consistent with related standards in other airworthiness parts. However, the FAA finds that the use of a cross reference to § 23.1397 as proposed in § 31.65(e) may be inconvenient for those governed by Part 31. Accordingly, § 31.65, as adopted, sets forth the chromaticity coordinates for aviation red and aviation white as currently prescribed in § 23.1397.

Proposal 8–87. No unfavorable comments were received on the proposal to amend § 31.71. However, after further consideration, the FAA concludes that proposed § 31.71(a)(2) is unnecessarily restrictive in that it would, in all cases, require marking the equipment as to its identification, function, *and* operating limitations. Marking of the equipment as to its identification, function, *or* operating limitations, or any applicable combination of those factors is sufficient. This is also the language used in corresponding sections of other aircraft airworthiness regulations. Section 31.71, as adopted, is revised accordingly.

Proposal 8–88. No unfavorable comments were received on the proposal to amend § 31.81 to detail operating limitations and information. The FAA notes, however, that proposed § 31.81(b) is not clear as to which "operating limitations and other information necessary for safe operation" must be furnished. The FAA's intent, as stated in the explanation, is to require that the information established under § 31.81(a) be furnished. Section 31.81(b) is revised accordingly. Section 31.81(a) is adopted without substantive change.

Proposal 8–89. A commenter is concerned that proposed § 31.82 might require balloon manufacturers to prepare two overlapping maintenance documents—the maintenance manual currently supplied to operators/owners,

and the proposed Instructions for Continued Airworthiness. The FAA notes that under §§ 31.82 and 21.50(b), balloon manufacturers would be required to prepare and furnish only the Instructions for Continued Airworthiness.

The FAA notes further (as discussed under Proposal 8–21) that the Instructions for Continued Airworthiness need not be finalized until delivery of the first balloon, while § 31.82, as proposed, could be interpreted to require that they be finalized before type certification. This point is clarified in § 31.82, as adopted, consistent with the corresponding requirement in Parts 23, 25, 27, and 29.

Proposal 8–90. No unfavorable comments were received on the proposal to amend § 31.85(b)(1). However, a commenter questions whether percentage figures on the required fuel quantity gauge would be acceptable. The FAA has determined that, in the particular case of balloons (for which the fuel quantity information is to an extent less important to safety than for other classes of aircraft), calibration of the fuel quantity gauge in percent of fuel cell capacity is an acceptable means of complying with the last sentence of § 31.85(b)(1). Section 31.85(b)(1), as adopted, is revised to make this clear.

Proposal 8–91. No adverse comments were received on the proposal to add a new Appendix A to Part 31. However, comments received on the proposals to add a similar appendix to Parts 23, 25, 27, and 29 (Proposal 8–25), were equally valid with respect to this proposal. Accordingly, Appendix A to Part 31, as adopted, is revised in substance as applicable.

Regarding the proposals to require generalized repair data in the Instructions for Continued Airworthiness, it is more appropriate, as well as necessary and practicable, to include specific instructions for repair of the key elements of a balloon—the balloon envelope and its basket or trapeze. This information is incorporated in paragraph A31.3(i) as revised.

Proposal 8–92. A commenter objects to § 33.4 insofar as it would require completion of the Instructions for Continued Airworthiness before the type certificate is issued, contending that a significant portion of the data and other material called for is typically not compiled until 6 months or longer after type certification. The commenter suggests that manufacturers be allowed to prepare and make available the Instructions for Continued Airworthiness before the first aircraft equipped with the subject engine is put into service, which, it claims, is the earliest such instructions would be needed. Requiring the engine manufacturer to complete the Instructions for Continued Airworthiness before the type certificate is issued would constitute an unnecessary burden. However, the FAA considers that they must be made available, and furnished, upon delivery of the first engine on an aircraft or issuance of a standard certificate of airworthiness for the aircraft, whichever occurs later. This would be consistent with corresponding requirements proposed for other products. See Proposals 8–5 and 8–21. Section 33.4 is revised and adopted accordingly.

Proposal 8–93. A commenter observes that § 33.5 requires that the instruction manual for installing and operating the engine be "approved," whereas proposed § 33.4 requires that the Instructions for Continued Airworthiness be "acceptable to the Administrator," and recommends that the latter term be used for consistency. The FAA notes that the term "acceptable to the Administrator" is widely used in Part 43 in connection with maintenance requirements, whereas the term "approved" is more frequently used in FAR Parts containing installation and operating requirements. Considering the FAR as a whole, the FAA does not agree that such consistency is essential. Accordingly, § 33.5 is adopted as proposed.

Proposal 8–94. Several commenters object to proposed §§ 33.6 (e) and (f), and to proposed §§ 23.1521(a) and 25.1521(a) (Proposals 8–20 and 8–56, respectively) on the grounds that the use of rated takeoff power or thrust for 10 minutes with one engine inoperative should be limited to "the extent that the utilization is necessary for the airplane to avoid, without necessitating turning maneuvers, obstacles beneath the flight path intended for the airplane prior to the loss of the engine." In light of these comments and after further review, the FAA concludes that these proposals are premature and they are withdrawn.

In addition, the proposed transfer of the definitions for rated power and thrust from § 1.1 to proposed new § 33.6, Proposal 8–1, is withdrawn since the transfer may cause confusion in the administration of the aircraft certification requirements. Accordingly, Proposals 8–1, 8–20, 8–56, and 8–94 are withdrawn.

Proposal 8–95. For discussion of proposed § 33.19(b) see the discussion under Proposal 8–103. Revised § 33.19 is adopted without substantive change.

Amendment to §§ 33.55(c), 33.57(b), 33.93(b), and 33.99(b). Because of the deletion of §§ 33.5 (c), (d), and (e), and the addition of a new § 33.4, the reference to "§ 33.5" in §§ 33.55(c), 33.57(b), 33.93(b), and 33.99(b) is no longer appropriate. For consistency, the reference is "§ 33.4." This change was inadvertently overlooked and was not proposed in Notice 75–31 (40 FR 29410; July 11, 1975). This editorial change corrects that discrepancy. Since this amendment is clarifying in nature and does not impose a burden on the public, notice and public procedure are unnecessary and good cause exists for adopting this amendment.

Proposal 8–97. A commenter recommends that § A33.3(a)(6) of Appendix A to Part 33 be revised by adding the words "requiring periodic attention" so as to make it clear that scheduling information is required solely for parts that require such attention. The language in this section is adequate. For parts not needing periodic attention, the applicant has only to state that parts not scheduled need not be serviced.

A commenter infers incorrectly that proposed §§ 43.16 and 91.163(c) apply only to rotorcraft. These regulations with the revision proposed also affect other classes of aircraft, as well as engines and propellers.

Some comments received on the proposed appendices for Parts 23, 25, 27, and 29 (Proposal 8–25) were equally vaild with respect to proposed Appendix A to both Parts 33 and 35. Accordingly, the appendices to Parts 33 and 35 are revised in substance as applicable.

Proposal 8–98. For a discussion related to proposed § 35.3 see Proposal 8–93. A commenter observes that § 35.3 requires that the instruction manual for installing and operating the propeller be "approved," whereas § 35.4 requires that the Instructions for Continued Airworthiness be "acceptable to the Administrator," and recommends that the latter term be used for consistency. The FAA notes that the term "acceptable to the Administrator" is widely used in Part 43 in connection with maintenance requirements, while the term "approved" is more frequently used in FAR parts containing installation and operating requirements. Considering the FAR as a whole, the FAA does not agree that consistency is required in this instance. Accordingly, § 35.3 is adopted as proposed.

Proposal 8–99. In response to the concern of a commenter representing a number of Part 121 operators, the FAA notes that there is no requirement that any operator/owner use the Instructions for Continued Airworthiness referred to

in proposed § 35.4. The new §§ 43.13(a), 43.16, and 91.163(c) allow the use of other methods. In particular, the use of maintenance manuals and continuous airworthiness maintenance programs developed under Parts 121, 123, 127, and 135, or an inspection program approved under § 91.217(e), would be acceptable alternatives to the Airworthiness Limitations section. This commenter suggests that language be added to proposed § 35.4 to make it clear that such alternatives may be used. The FAA agrees. The language in §§ 43.16 and 91.163(c) is revised accordingly.

Consistent with the discussion on proposed § 33.4 dealing with engines (see Proposal 8–92), the FAA finds that requiring the propeller manufacturer to complete the Instructions for Continued Airworthiness before the type certificate is issued would constitute an unnecessary burden. Accordingly, § 35.4, as adopted, requires that those instructions be made available and furnished upon delivery of the first aircraft with the propeller installed, or upon issuance of a standard certificate of airworthiness for an aircraft with the propeller installed, whichever occurs later.

Proposal 8–100. No unfavorable comments were received on the proposal to amend § 35.5 to more clearly indicate the basis for operating limitations and where they are listed. Accordingly, § 35.5 is adopted without substantive change.

Proposal 8–101. No unfavorable comments were recieved on the proposal to amend § 35.23 to provide an extreme low pitch indication. Accordingly, § 35.23 is adopted without substantive change.

Proposal 8–102. A commenter does not concur with the proposal to revise § 35.37 to require fatigue evaluation of metallic hubs and blades, stating that the words "must", "all", and "reasonably foreseeable" in the second sentence imply responsibility beyond current knowledge and the state of the art. The FAA does not agree. These terms are used in the current rule and the current state of the art defines the limits of the provision.

The same commenter recommends that § 35.37 be revised to apply to consideration of "normal and reasonably foreseeable load patterns," to account for the fact that only normal operations will or should be considered. The FAA does not agree. Load patterns which are reasonably foreseeable are critical and should be investigated even if they are not normal.

The same commenter also indicates that the third sentence should be revised to eliminate the term "reduction factors," since reduction factors are identified with only one particular method of presentation. The FAA agrees and the section is revised accordingly. This commenter finally states that the explanation implies that manufacturers have not taken permissible damage and material variation into account. This implication is not intended. It is the FAA's view that the fatigue evaluation should consider the occurrence of typical service damage and variation in material properties and the rule would provide for such an evaluation.

Another commenter suggests that the section be revised by adding certain technical requirements that are related to infinite component life. It is not necessary to specify technical requirements concerning infinite component life, since they are considered a normal part of propeller fatigue testing.

Section 35.37 is adopted as revised.

Proposal 8–103. A commenter objects to the proposal to add a new § 35.42 to define durability requirements for propeller blade pitch control system components, stating that the term "bench tests" in §§ 35.42 (a) and (b) is too descriptive and restrictive. The FAA agrees that a reference to "bench tests" may be too restrictive. Other test methods may be equally acceptable in providing the necessary data. Accordingly, §§ 35.42 (a) and (b) are revised to eliminate the specific reference to "bench."

The commenter also suggests that the words "in frequency and amplitude" be eliminated from § 35.42(a) since the words "cyclic testing" are fully descriptive. The FAA believes that these words are needed to prescribe key elements in the required test.

The commenter further suggests that the proposed testing to the equivalent of 1,000 hours of propeller operation is too restrictive in the case of a propeller with an overhaul period of less than 1,000 hours. The FAA considers the specific testing to be the minimum necessary to provide an acceptable safety level in service. The rule does not, however, prevent the selection of overhaul intervals of less than 1,000 hours.

Finally, the commenter suggests that the rule should permit an alternate of acceptance based upon service experience. The FAA recognizes that service experience can provide a statistical basis for determining component reliability. Its applicability, however, may vary according to such considerations as type of operation, the nature of the article under consideration, the degree of similarity between the reference article and the certification article, and the completeness of service records. Since it is dependent on such a variety of factors, the FAA does not agree that a specific alternative based on service experience should be included.

The proposal to add a new § 35.42, therefore, is adopted with the change discussed above. No adverse comments were received on the related proposed revisions to §§ 23.905, 25.905, and 33.19 to add the reference to new § 35.42, and the revisions are adopted.

Proposal 8–104. For comments related to the proposal to add a new Appendix A to Part 35, see Proposals 8–25 and 8–97.

A commenter objects to proposed § A35.1(c) of the appendix because the propeller owner (aircraft operator) would be wastefully provided with instructions and data that the propeller owner has no authority to use. The FAA does not agree. The Instructions for Continued Airworthiness must be furnished to the aircraft owner/operator who is the person responsible for maintaining the aircraft (including the propeller). The owner/operator may not be authorized to maintain the propeller, but the owner/operator can place the instructions in the hands of persons who are authorized.

The new Appendix A to Part 35, as adopted, is revised in accordance with comments discussed in Proposal 8–97.

Proposal 8–105. The proposed revision of § 43.9(a)(4) is being deferred for consideration in a forthcoming notice of proposed rule making of the Operations Review Program.

Proposal 8–106. A commenter representing a number of scheduled air carriers is concerned that the use of maintenance manuals and continued airworthiness programs developed under current § 121.133 and Subpart L of Part 121 (generally via Maintenance Review Board procedures), or under similar provisions of Parts 127 and 135, might not be acceptable as "other methods, techniques, and practices" under the terms of proposed § 43.13(a). This commenter suggests that language be added to proposed § 43.13(a) to make this clear. The FAA does not agree. The proposed language states that the use of such manuals and continued airworthiness programs is acceptable.

Proposal 8–107. A commenter representing a number of scheduled air carriers recommends that the Airworthiness Limitations section referred to in proposed § 43.16 include life limitations only and not inspections or other maintenance items. As discussed under Proposal 8–3, the FAA does not agree.

A commenter suggests that the words "or other methods, techniques; and

practices acceptable to the Administrator" be added at the end of proposed § 43.16 to make it consistent with proposed § 43.13(a). The Airworthiness Limitations section contains specific mandatory replacement times and inspection intervals (with related procedures) that must be complied with, unless it can be shown by an operator with an approved maintenance program that these times are inappropriate for his operation. The use of alternatives not covered in the Airworthiness Limitations section would be allowed if approved by the Administrator. Section 43.16 is revised to specifically state the alternatives to compliance with the Airworthiness Limitations section.

Proposal 8–108. No unfavorable comments were received on the proposal to amend § 45.11 to qualify, with respect to manned free balloons, the requirements in § 45.11(a) that deal with the location of the identification plate. Accordingly, the proposal is adopted without substantive change.

Proposal 8–109. No unfavorable comments were received on the proposal to amend § 45.13 to correctly reference §§ 45.11 (a) and (b) with regard to identification plate requirements. Accordingly, the proposal is adopted without substantive change.

Proposal 8–110. A commenter representing a number of scheduled air carriers recommends that the words "inspection interval, or related procedure" be deleted from proposed § 45.14. The supporting rationale is the same as submitted by this commenter concerning Proposal 8–3 to amend § 21.31(c). As discussed under Proposal 8–3, the FAA disagrees.

The language in § 45.14 covers rotorcraft as well as airplanes, balloons, engines, and propellers. To make this clear, the word "Rotorcraft" is changed to "Manufacturer's."

Two commenters object to proposed § 45.14 on the grounds that it would be impracticable to mark small parts with a part and serial number. The FAA is not aware that the marking of small parts under current § 45.14 has presented a problem. In any event, the rule allows markings that are equivalent to part and serial numbers, such as symbols enabling the identification of the part as one for which a replacement time, inspection interval, or related procedure is specified in an Airworthiness Limitations section. Identification of such parts is clearly essential for safety. Accordingly, § 45.14 is adopted as revised.

Proposal 8–111. A commenter representing a number of scheduled air carriers recommends that the words "inspection interval, or related procedure" be deleted from proposed § 91.163(c). The supporting rationale is the same as that submitted by this commenter concerning Proposal 8–3 to amend § 21.31(c). As discussed under Proposal 8–3, the FAA disagrees. However, § 91.163(c) is revised to specifically identify the acceptable alternatives to compliance with the "Airworthiness Limitations" section.

The language in proposed § 91.163(c) covers rotorcraft as well as airplanes, balloons, engines, and propellers. To make this clear, the word "Rotorcraft" in § 91.163(c) has been changed to "Manufacturer's", and a statement has been added that operations specifications approved by the Administrator may be used in lieu of the Instructions for Continued Airworthiness. Section 91.163(c) is adopted as revised.

Proposal 8–112. No unfavorable comment was received on the proposal to amend § 91.165 to clarify maintenance personnel entries in maintenance records. Accordingly, the proposal is adopted without substantive change.

Proposal 8–113. Several commenters object to §§ 91.173(a)(2) (i) and (iii). A commenter states that adoption of the proposal would result in an inconsistency between § 91.173 and § 121.380, which contains the recordkeeping requirements for aircraft maintained under Part 121. The commenter also states that this inconsistency would cause great difficulty and economic hardship whenever an aircraft is sold by a Part 121 operator to a Part 91 operator and the Part 91 aircraft is maintained by a Part 121 operator under its repair station certificate. According to the commenter, the economic hardship would occur to both the Part 91 operator and the repair station. The same commenter contends that reliability information accumulated in recent years on transport category airplanes shows that there is no need for individualized total time records on equipment and components. Another commenter states that proposed requirements would result in large increases in maintenance costs for Part 91 operators and that only those components that are life-limited should have to carry total times.

The FAA concludes, however, that revision of § 91.173(a)(2)(i) would contribute significantly to safety with little burden on those affected. The currently prescribed record of total time in service for the airframe does not generally apply to the aircraft's engines or propellers, since these components are frequently overhauled (or replaced) at different times. As a practical matter, it is known that operators of such aircraft normally keep records from which the total time in service of engines and propellers can be derived. Therefore, the FAA does not agree that the requirement to keep total times on engines and propellers would be a hardship and burden upon the operators. Accordingly, § 91.173(a)(2)(i) is adopted without change.

In light of the comment on proposed § 91.173(a)(2)(iii), the FAA has given further review of the proposal and has concluded that existing requirements satisfy the objective of the proposal. Accordingly proposed § 91.173(a)(2)(iii) is withdrawn.

The reporting and recordkeeping requirements contained in § 91.173 have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

Proposal 8–114. Several commenters agree with the intent of proposed § 91.193(c)(4) but suggest changes. A commenter suggests that the proposed installation instructions for hand fire extinguishers would be more appropriately placed in the type certification rules. The FAA does not agree. New type certification rules do not apply to aircraft already in service.

A commenter suggests that the words "unless obvious" be added to clarify when the hand fire extinguisher stowage provisions must be properly identified. The FAA agrees. Proposed § 91.193(c)(4) is revised and adopted accordingly.

Proposal 8–115. One commenter objects to the proposal to revise § 91.197(a) to require passenger information signs to meet the requirements of § 25.791. The commenter states that it is unnecessary, in many small general aviation aircraft operating under Subpart D of Part 91, to have such signs just for the sake of uniformity. The commenter also states that "nonstandard" signs now in use are wholly adequate to meet the needs of the type of operation. Finally, the commenter points out that installation costs for aircraft not currently having signs would be high and the pilot could just as easily announce the information as he could activate the signs.

Based on these comments and considering the type of operation involved, the FAA finds that the benefits associated with the proposal do not warrant its adoption. The proposal to revise § 91.197(a) is withdrawn.

Proposals 8–116, 8–117, 8–118, and 8–119. Final action on Proposals 8–116, 8–117, 8–118, and 8–119 was taken in Airworthiness Review Program, Amendment No. 8: Cabin Safety and

Flight Attendant Amendments (45 FR 7750; February 4, 1980).

Proposal 8–120. In light of the need to conduct further testing of protective breathing equipment, the FAA withdraws its proposal to amend § 121.337, which will be addressed in an upcoming notice of proposed rule making.

Adoption of the Amendment

Accordingly, Parts 11, 21, 23, 25, 27, 29, 31, 33, 35, 43, 45, and 91 of the Federal Aviation Regulations are amended as follows, effective October 14, 1980.

PART 11—GENERAL RULE-MAKING PROCEDURES

1. By redesignating §§ 11.11 (k), (l), and (m) as §§ 11.11 (m), (n), and (o), respectively, and adding new §§ 11.11(k) and (l) to read as follows:

§ 11.11 Docket.

* * * * *

(k) Special conditions required, as prescribed under § 21.16 or § 21.101(b)(2),

(l) Written material received in response to published special conditions,

* * * * *

2. By adding a new § 11.28 to read as follows:

§ 11.28 Action on special conditions.

(a) *General.* Except for the publication and comment procedures provided for in this section, no public hearing, argument, or other formal proceeding is held directly on a special condition established by the Administrator.

(b) *Procedures.* This subpart and Subpart C apply to the issue, amendment, and repeal of special conditions under Part 21. In addition to the information required by § 11.29(b), each notice will include—

(1) The name and address of the applicant;

(2) The model designation and a summary description of the affected product;

(3) The applicable type design approval regulations designated in accordance with § 21.17 or § 21.101 of Part 21; and

(4) A summary description of the novel or unusual design features that make the issue or amendment of special conditions necessary.

3. By adding a new § 11.49(b)(4) to read as follows:

§ 11.49 Adoption of final rules.

* * * * *

(b) * * *

(4) Special conditions under Part 21 of this chapter to the Director of Airworthiness.

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

§ 21.16 [Amended]

3a. By deleting § 21.16(b), redesignating § 21.16(a) as § 21.16, and by replacing the phrase "paragraph (b) of this section" in the second sentence of the paragraph with "Part 11 of this chapter".

3b. By deleting the word "and" from the end of § 21.31(b), redesignating § 21.31(c) as § 21.31(d), and revising § 21.31(a) and adding a new § 21.31(c) to read as follows:

§ 21.31 Type design.

* * * * *

(a) The drawings and specifications, and a listing of those drawings and specifications, necessary to define the configuration and the design features of the product shown to comply with the requirements of that part of this subchapter applicable to the product;

* * * * *

(c) The Airworthiness Limitations section of the Instructions for Continued Airworthiness as required by Parts 23, 25, 27, 29, 31, 33, and 35 of this chapter; and

* * * * *

§ 21.35 [Amended]

4. By amending § 21.35(b) (2) by deleting the word "airplane" near the end of the sentence and inserting in its place the word "aircraft".

5. By redesignating § 21.50 as § 21.50(a), and by revising the heading of § 21.50 and adding a new § 21.50(b) to read as follows:

§ 21.50 Instructions for continued airworthiess and manufacturer's maintenance manuals having airworthiness limitations sections.

* * * * *

(b) The holder of design approval, including either the type certificate or supplemental type certificate for an aircraft, aircraft engine, or propeller for which application was made after October 14, 1981, shall furnish at least one set of complete Instructions for Continued Airworthiness, prepared in accordance with §§ 23.1529, 25.1529, 27.1529, 29.1529, 31.82, 33.4, or 35.4 of this chapter, as applicable, to the owner of each type aircraft, aircraft engine, or propeller upon its delivery, or upon issuance of the first standard certificate of airworthiness for the affected aircraft, whichever occurs later, and thereafter make available those instructions to any other person required by this chapter to comply with any of the terms of those instructions. In addition, changes to the Instructions for Continued Airworthiness shall be made available to any person required by this chapter to comply with any of those instructions.

6. By deleting from § 21.123(b) the word "and" following the semicolon, inserting at the end of § 21.123(c) a semicolon and the word "and" in place of the period, and adding a new § 21.123(d) to read as follows:

§ 21.123 Production under type certificate.

* * * * *

(d) Upon the establishment of the approved production inspection system (as required by paragraph (c) of this section) submit to the Administrator a manual that describes that system and the means for making the determinations required by § 21.125(b).

§ 21.143 [Amended]

7. By deleting from § 21.143(a) (2) the phrase "subsidiary manufacturers" and replacing it with the phrase "manufacturers' suppliers" and by deleting from § 21.143(f) the phrase "subsidiary manufacturers" and replacing it with the word "suppliers".

§ 21.182 [Amended]

8. By deleting the reference to "§ 45.11(a)" in §§ 21.182 (a) and (b)(3) and inserting "§ 45.11" in its place.

9. By revising § 21.197 by deleting the phrase "the purpose of—" from the lead in of § 21.197(a) and inserting the phrase "the following purposes:" in its place; by replacing the semicolons in §§ 21.197(a) (1) and (2) with periods; by replacing the semicolon and the word "and" at the end of § 21.197(a) (3) with a period; and by adding a new § 21.197(a) (5) to read as follows:

§ 21.197 Special flight permits.

(a)* * *

(5) Conducting customer demonstration flights in new production aircraft that have satisfactorily completed production flight tests.

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, AND ACROBATIC CATEGORY AIRPLANES

10. By revising § 23.253(b)(3) to read as follows:

§ 23.253 High-speed characteristics.

* * * * *

(b) * * *

(3) Buffeting that would impair the pilot's ability to read the instruments or to control the airplane for recovery.

11. By revising § 23.361 to read as follows:

§ 23.361 Engine torque.

(a) Each engine mount and its supporting structure must be designed for the effects of—

(1) A limit engine torque corresponding to takeoff power and propeller speed acting simultaneously with 75 percent of the limit loads from flight condition A of § 23.333(d);

(2) The limit engine torque as specified in § 23.361(c) acting simultaneously with the time loads from flight condition A of § 23.333(d); and

(3) For turbopropeller installations, in addition to the conditions specified in paragraphs (a)(1) and (a)(2) of this section, a limit engine torque corresponding to takeoff power and propeller speed, multiplied by a factor accounting for propeller control system malfunction, including quick feathering, acting simultaneously with lg level flight loads. In the absence of a rational analysis, a factor of 1.6 must be used.

(b) For turbine engine installations, the engine mounts and supporting structure must be designed to withstand each of the following:

(1) A limit engine torque load imposed by sudden engine stoppage due to malfunction or structural failure (such as compressor jamming).

(2) A limit engine torque load imposed by the maximum acceleration of the engine.

(c) The limit engine torque to be considered under paragraph (a)(2) of this section must be obtained by multiplying the mean torque for maximum continuous power by a factor of—

(1) 1.25 for turbopropeller installations;

(2) 1.33 for engines with five or more cylinders; and

(3) Two, three, or four, for engines with four, three, or two cylinders, respectively.

§ 23.371 [Amended]

12. By deleting the word "turbopropeller" in the lead-in of § 23.371 and inserting the word "turbine" in its place.

13. By revising the heading of § 23.729 and §§ 23.729 (c) and (e) to read as follows:

§ 23.729 Landing gear extension and retraction system.

* * * * *

(c) *Emergency operation.* For a landplane having retractable landing gear that cannot be extended manually, there must be means to extend the landing gear in the event of either—

(1) Any reasonably probable failure in the normal landing gear operation system; or

(2) Any reasonably probable failure in a power source that would prevent the operation of the normal landing gear operation system.

* * * * *

(e) *Position indicator.* If a retractable landing gear is used, there must be a landing gear position indicator (as well as necessary switches to actuate the indicator) or other means to inform the pilot that the gear is secured in the extended (or retracted) position. If switches are used, they must be located and coupled to the landing gear mechanical system in a manner that prevents an erroneous indication of either "down and locked" if the landing gear is not in a fully extended position, or of "up and locked" if the landing gear is not in the fully retracted position. The switches may be located where they are operated by the actual landing gear locking latch or device.

* * * * *

14. By adding new §§ 23.903 (f) and (g) to read as follows:

§ 23.903 Engines.

* * * * *

(f) *Restart capability.* An altitude and airspeed envelope must be established for the airplane for in-flight engine restarting and each installed engine must have a restart capability within that envelope.

(g) For turbine engine powered airplanes, if the minimum windmilling speed of the engines, following the in-flight shutdown of all engines, is insufficient to provide the necessary electrical power for engine ignition, a power source independent of the engine-driven electrical power generating system must be provided to permit in-flight engine ignition for restarting.

15. By adding a new § 23.905(d) to read as follows:

§ 23.905 Propellers.

* * * * *

(d) Each component of the propeller blade pitch control system must meet the requirements of § 35.42 of this chapter.

16. By revising § 23.967(e)(2) and adding a flush paragraph at the end of § 23.967(e) to read as follows:

§ 23.967 Fuel tank installations.

* * * * *

(e) * * *

(2) Under conditions likely to occur when the airplane lands on a paved runway at a normal landing speed under each of the following conditions:

(i) The airplane in a normal landing attitude and its landing gear retracted.

(ii) The most critical landing gear leg collapsed and the other landing gear legs extended.

In showing compliance with paragraph (e)(2) of this section, the tearing away of an engine mount must be considered unless all the engines are installed above the wing or on the tail or fuselage of the airplane.

17. By adding a new § 23.991(d) to read as follows:

§ 23.991 Fuel pumps.

* * * * *

(d) Operation of any fuel pump may not effect engine operation so as to create a hazard, regardless of the engine power or thrust setting or the functional status of any other fuel pump.

18. By revising § 23.1305(n) to read as follows:

§ 23.1305 Powerplant instruments.

* * * * *

(n) A blade position indicating means for each turbopropeller engine propeller to provide an indication to the flight crew when the propeller blade angle is below the flight low pitch position. The required indicator must begin indicating before the blade moves more than 8° below the flight low pitch stop. The source of indication must directly sense the blade position.

* * * * *

19. By revising § 23.1529, including its heading, to read as follows:

§ 23.1529 Instructions for Continued Airworthiness.

The applicant must prepare Instructions for Continued Airworthiness in accordance with Appendix G to this part that are acceptable to the Administrator. The instructions may be incomplete at type certification if a program exists to ensure their completion prior to delivery of the first airplane or issuance of a standard certificate of airworthiness, whichever occurs later.

20. By adding a new Appendix G to Part 23 to read as follows:

Appendix G—Instructions for Continued Airworthiness

G23.1 *General.*

(a) This appendix specifies requirements for the preparation of Instructions for Continued Airworthiness as required by § 23.1529.

(b) The Instructions for Continued Airworthiness for each airplane must include the Instructions for Continued Airworthiness for each engine and propeller (hereinafter designated 'products'), for each appliance required by this chapter, and any required information relating to the interface of those

appliances and products with the airplane. If Instructions for Continued Airworthiness are not supplied by the manufacturer of an appliance or product installed in the airplane, the Instructions for Continued Airworthiness for the airplane must include the information essential to the continued airworthiness of the airplane.

(c) The applicant must submit to the FAA a program to show how changes to the Instructions for Continued Airworthiness made by the applicant or by the manufacturers of products and appliances installed in the airplane will be distributed.

G23.2 *Format.*

(a) The Instructions for Continued Airworthiness must be in the form of a manual or manuals as appropriate for the quantity of data to be provided.

(b) The format of the manual or manuals must provide for a practical arrangement.

G23.3 *Content.*

The contents of the manual or manuals must be prepared in the English language. The Instructions for Continued Airworthiness must contain the following manuals or sections, as appropriate, and information:

(a) *Airplane maintenance manual or section.*

(1) Introduction information that includes an explanation of the airplane's features and data to the extent necessary for maintenance or preventive maintenance.

(2) A description of the airplane and its systems and installations including its engines, propellers, and appliances.

(3) Basic control and operation information describing how the airplane components and systems are controlled and how they operate, including any special procedures and limitations that apply.

(4) Servicing information that covers details regarding servicing points, capacities of tanks, reservoirs, types of fluids to be used, pressures applicable to the various systems, location of access panels for inspection and servicing, locations of lubrication points, lubricants to be used, equipment required for servicing, tow instructions and limitations, mooring, jacking, and leveling information.

(b) *Maintenance Instructions.*

(1) Scheduling information for each part of the airplane and its engine auxiliary power units, propellers, accessories, instruments, and equipment that provides the recommended periods at which they should be cleaned, inspected, adjusted, tested, and lubricated, and the degree of inspection, the appliable wear tolerances, and work recommended at these periods. However, the applicant may refer to an accessory, instrument, or equipment manufacturer as the source of this information if the applicant shows that the item has an exceptionally high degree of complexity requiring specialized maintenance techniques, test equipment, or expertise. The recommended overhaul periods and necessary cross reference to the Airworthiness Limitations section of the manual must also be included. In addition, the applicant must include an inspection program that includes the frequency and extent of the inspections necessary to provide for the continued airworthiness of the airplane.

(2) Troubleshooting information describing probable malfunctions, how to recognize those malfunctions, and the remedial action for those malfunctions.

(3) Information describing the order and method of removing and replacing products and parts with any necessary precautions to be taken.

(4) Other general procedural instructions including procedures for system testing during ground running, symmetry checks, weighing and determining the center of gravity, lifting and shoring, and storage limitations.

(c) Diagrams of structural access plates and information needed to gain access for inspections when access plates are not provided.

(d) Details for the application of special inspection techniques including radiographic and ultrasonic testing where such processes are specified.

(e) Information needed to apply protective treatments to the structure after inspection.

(f) All data relative to structural fasteners such as identification, discard recommendations, and torque values.

(g) A list of special tools needed.

G23.4 *Airworthiness Limitations section.*

The Instructions for Continued Airworthiness must contain a section titled Airworthiness Limitations that is segregated and clearly distinguishable from the rest of the document. This section must set forth each mandatory replacement time, structural inspection interval, and related structural inspection procedure required for type certification. If the Instructions for Continued Airworthiness consist of multiple documents, the section required by this paragraph must be included in the principal manual. This section must contain a legible statement in a prominent location that reads: "The Airworthiness Limitations section is FAA approved and specifies maintenance required under §§ 43.16 and 91.163 of the Federal Aviation Regulations unless an alternative program has been FAA approved."

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

21. By revising § 25.111(c)(4) to read as follows:

§ 25.111 Takeoff path.

* * * * *

(c) * * *

(4) Except for gear retraction and propeller feathering, the airplane configuration may not be changed, and no change in power or thrust that requires action by the pilot may be made, until the airplane is 400 feet above the takeoff surface.

* * * * *

22. By revising § 25.253(a)(2)(iii) to read as follows:

§ 25.253 High-speed characteristics.

(a) * * *

(2) * * *

(iii) Buffeting that would impair the pilot's ability to read the instruments or control the airplane for recovery.

* * * * *

23. By revising § 25.305(d) to read as follows:

§ 25.305 Strength and deformation.

* * * * *

(d) The dynamic response of the airplane to vertical and lateral continuous turbulence must be taken into account. The continuous gust design criteria of Appendix G of this part must be used to establish the dynamic response unless more rational criteria are shown.

24. By revising § 25.307(a) to read as follows:

§ 25.307 Proof of structure.

(a) Compliance with the strength and deformation requirements of this subpart must be shown for each critical loading condition. Structural analysis may be used only if the structure conforms to that for which experience has shown this method to be reliable. The Administrator may require ultimate load tests in cases where limit load tests may be inadequate.

* * * * *

25. By revising § 25.365(e) to read as follows:

§ 25.365 Pressurized cabin loads.

* * * * *

(e) Partitions, bulkheads, and floors in pressurized cabins must be designed to withstand the effects of a sudden release of pressure through an opening in any compartment at any approved operating altitude resulting from any of the following conditions (to be considered as ultimate conditions):

(1) The penetration of the cabin by a portion of an engine following an engine disintegration;

(2) An opening in any passenger or cargo compartment given by the equation—

$$H_o = PA_s$$

where,

H_o = maximum opening in square feet, not to exceed 20 square feet.

$$P = \frac{A_s}{6{,}240} + .024$$

A_s = maximum cross sectional area of pressurized shell normal to the longitudinal axis, in square feet; and

(3) The maximum opening caused by airplane or equipment failures not shown to be extremely improbable.

* * * * *

§ 25.571 [Amended]

26. By deleting the phrase "maintenance manual" from § 25.571(a)(3) and inserting the phrase "Airworthiness Limitations section of the Instructions for Continued Airworthiness" in its place.

27. By redesignating § 25.783(f) and the first sentence of § 25.783(g) as §§ 25.783 (g) and (h), respectively; by redesignating the second sentence of § 25.783(g) as § 25.783(i); by inserting the phrase "either during or after closure" following the phrase "single structural element" within the parenthetical expression in § 25.783(b); and by revising § 25.783(e) and new § 25.783(i) and adding new §§ 25.783 (f) and (j) to read as follows:

§ 25.783 Doors.

* * * * *

(e) There must be a provision for direct visual inspection of the locking mechanism to determine if external doors, for which the initial opening movement is not inward (including passenger, crew, service, and cargo doors), are fully closed and locked. The provision must be discernible under operational lighting conditions by appropriate crewmembers using a flashlight or equivalent lighting source. In addition, there must be a visual warning means to signal the appropriate flight crewmembers if any external door is not fully closed and locked. The means must be designed such that any failure or combination of failures that would result in an erroneous closed and locked indication is improbable for doors for which the initial opening movement is not inward.

(f) External doors must have provisions to prevent the initiation of pressurization of the airplane to an unsafe level if the door is not fully closed and locked. In addition, it must be shown by safety analysis that inadvertent opening is extemely improbable.

* * * * *

(i) If an integral stair is installed in a passenger entry door that is qualified as a passenger emergency exit, the stair must be designed so that under the following conditions the effectiveness of passenger emergency egress will not be impaired:

(1) The door, integral stair, and operating mechanism have been subjected to the inertia forces specified in § 25.561(b)(3), acting separately relative to the surrounding structure.

(2) The airplane is in the normal ground attitude and in each of the attitudes corresponding to collapse of one or more legs of the landing gear.

(j) All lavatory doors must be designed to preclude anyone from becoming trapped inside the lavatory, and if a locking mechanism is installed, it be capable of being unlocked from the outside without the aid of special tools.

28. By adding new §§ 25.851 (a)(5) and (a)(6) to read as follows:

§ 25.851 Fire extinguishers.

(a) * * *

(5) There must be at least the following number of hand fire extinguishers conveniently located in passenger compartments:

Minimum Number of Hand Fire Extinguishers

Passenger capacity:	
7 through 30	1
31 through 60	2
61 or more	3

(6) There must be at least one hand fire extinguisher conveniently located in the pilot compartment.

* * * * *

29. By adding a new § 25.858 to read as follows:

§ 25.858 Cargo compartment fire detection systems.

If certification with cargo compartment fire detection provisions is requested, the following must be met for each cargo compartment with those provisions:

(a) The detection system must provide a visual indication to the flight crew within one minute after the start of a fire.

(b) The system must be capable of detecting a fire at a temperature significantly below that at which the structural integrity of the airplane is substantially decreased.

(c) There must be means to allow the crew to check in flight, the functioning of each fire detector circuit.

(d) The effectiveness of the detection system must be shown for all approved operating configurations and conditions.

30. By adding a new § 25.905(c) to read as follows:

§ 25.905 Propellers.

* * * * *

(c) Each component of the propeller blade pitch control system must meet the requirements of § 35.42 of this chapter.

31. By revising § 25.1305(d)(1) to read as follows:

§ 25.1305 Powerplant instruments.

* * * * *

(d) * * *

(1) An indicator to indicate thrust, or a parameter that is directly related to thrust, to the pilot. The indication must be based on the direct measurement of thrust or of parameters that are directly related to thrust. The indicator must indicate a change in thrust resulting from any engine malfunction, damage, or deterioration.

* * * * *

32. By revising § 25.1307(h) to read as follows:

§ 25.1307 Miscellaneous equipment.

* * * * *

(h) Portable fire extinguishers as prescribed in §§ 25.851 (a)(5) and (a)(6).

33. By revising § 25.1529, including its heading, to read as follows:

§ 25.1529 Instructions for continued airworthiness.

The applicant must prepare Instructions for Continued Airworthiness in accordance with Appendix H to this part that are acceptable to the Administrator. The instructions may be incomplete at type certification if a program exists to ensure their completion prior to delivery of the first airplane or issuance of a standard certificate of airworthiness, whichever occurs later.

34. By adding a new Appendix G to Part 25 to read as follows:

Appendix G—Continous Gust Design Criteria

The continuous gust design criteria in this appendix must be used in establishing the dynamic response of the airplane to vertical and lateral continuous turbulence unless a more rational criteria is used. The following gust load requirements apply to mission analysis and design envelope analysis:

(a) The limit gust loads utilizing the continuous turbulence concept must be determined in accordance with the provisions of either paragraph (b) or paragraphs (c) and (d) of this appendix.

(b) *Design envelope analysis.* The limit loads must be determined in accordance with the following:

(1) All critical altitudes, weights, and weight distributions, as specified in § 25.321(b), and all critical speeds within the ranges indicated in paragraph (b)(3) of this appendix must be considered.

(2) Values of $\bar{A}$ (ratio of root-mean-square incremental load root-mean-square gust velocity) must be determined by dynamic analysis. The power spectral density of the atmospheric turbulence must be as given by the equation—

$$\phi(\Omega)=\frac{\sigma^2 L}{\pi}\,\frac{1+\frac{8}{3}(1.339\,L\Omega)^2}{[1+(1.339\,L\Omega)^2]^{11/6}}$$

where:

ϕ = power-spectral density (ft./sec.)²/rad./ft.

σ = root-mean-square gust velocity, ft./sec.

Ω = reduced frequency, radians per foot.

L = 2,500 ft.

(3) The limit loads must be obtained by multiplying the $\bar{A}$ values determined by the dynamic analysis by the following values of the gust velocity $U\sigma$:

(i) At speed V_c: $U\sigma$ = 85 fps true gust velocity in the interval 0 to 30,000 ft. altitude and is linearly decreased to 30 fps true gust velocity at 80,000 ft. altitude. Where the Administrator finds that a design is comparable to a similar design with extensive satisfactory service experience, it will be acceptable to select $U\sigma$ at V_c less than 85 fps, but not less than 75 fps, with linear decrease from that value at 20,000 feet to 30 fps at 80,000 feet. The following factors will be taken into account when assessing comparability to a similar design:

(1) The transfer function of the new design should exhibit no unusual characteristics as compared to the similar design which will significantly affect response to turbulence; e.g., coalescence of modal response in the frequency regime which can result in a significant increase of loads.

(2) The typical mission of the new airplane is substantially equivalent to that of the similar design.

(3) The similar design should demonstrate the adequacy of the $U\sigma$ selected.

(ii) At speed V_B: $U\sigma$ is equal to 1.32 times the values obtained under paragraph (b)(3)(i) of this appendix.

(iii) At speed V_D: $U\sigma$ is equal to ½ the values obtained under paragraph (b)(3)(i) of this appendix.

(iv) At speeds between V_B and V_c and between V_c and V_D: $U\sigma$ is equal to a value obtained by linear interpolation.

(4) When a stability augmentation system is included in the analysis, the effect of system nonlinearities on loads at the limit load level must be realistically or conservatively accounted for.

(c) *Mission analysis.* Limit loads must be determined in accordance with the following:

(1) The expected utilization of the airplane must be represented by one or more flight profiles in which the load distribution and the variation with time of speed, altitude, gross weight, and center of gravity position are defined. These profiles must be divided into mission segments or blocks, for analysis, and average or effective values of the pertinent parameters defined for each segment.

(2) For each of the mission segments defined under paragraph (c)(1) of this appendix, values of $\bar{A}$ and N_o must be determined by analysis. $\bar{A}$ is defined as the ratio of root-mean-square incremental load to root-mean-square gust velocity and N_o is the radius of gyration of the load power spectral density function about zero frequency. The power spectral density of the atmospheric turbulence must be given by the equation set forth in paragraph (b)(2) of this appendix.

(3) For each of the load and stress quantities selected, the frequency of exceedance must be determined as a function of load level by means of the equation—

$$N_{(y)}=\Sigma t N_o\left[P_1 \exp\left(-\frac{|y-y_{one\text{-}g}|}{b_1\bar{A}}\right)+P_2 \exp\left(-\frac{|y-y_{one\text{-}g}|}{b_2\bar{A}}\right)\right]$$

where—

t = selected time interval.

y = net value of the load or stress.

$Y_{one\text{-}g}$ = value of the load or stress in one-g level flight.

N(y) = average number of exceedances of the indicated value of the load or stress in unit time.

Σ = symbol denoting summation over all mission segments.

N_o, $\bar{A}$ = parameters determined by dynamic analysis as defined in paragraph (c)(2) of this appendix.

P_1, P_2, b_1, b_2 = parameters defining the probability distributions of root-mean-square gust velocity, to be read from Figures 1 and 2 of this appendix.

The limit gust loads must be read from the frequency of exceedance curves at a frequency of exceedance of 2×10^{-5} exceedances per hour. Both positive and negative load directions must be considered in determining the limit loads.

(4) If a stability augmentation system is utilized to reduce the gust loads, consideration must be given to the fraction of flight time that the system may be inoperative. The flight profiles of paragraph (c)(1) of this appendix must include flight with the system inoperative for this fraction of the flight time. When a stability augmentation system is included in the analysis, the effect of system nonlinearities on loads at the limit load level must be conservatively accounted for.

(d) *Supplementary design envelope analysis.* In addition to the limit loads defined by paragraph (c) of this appendix, limit loads must also be determined in accordance with paragraph (b) of this appendix, except that—

(1) In paragraph (b)(3)(i) of this appendix, the value of $U\sigma$ = 85 fps true gust velocity is replaced by $U\sigma$ = 60 fps true gust velocity on the interval 0 to 30,000 ft. altitude, and is linearly decreased to 25 fps true gust velocity at 80,000 ft. altitude; and

(2) In paragraph (b) of this appendix, the reference to paragraphs (b)(3)(i) through (b)(3)(iii) of this appendix is to be understood as referring to the paragraph as modified by paragraph (d)(1).

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Part 25 App. G.

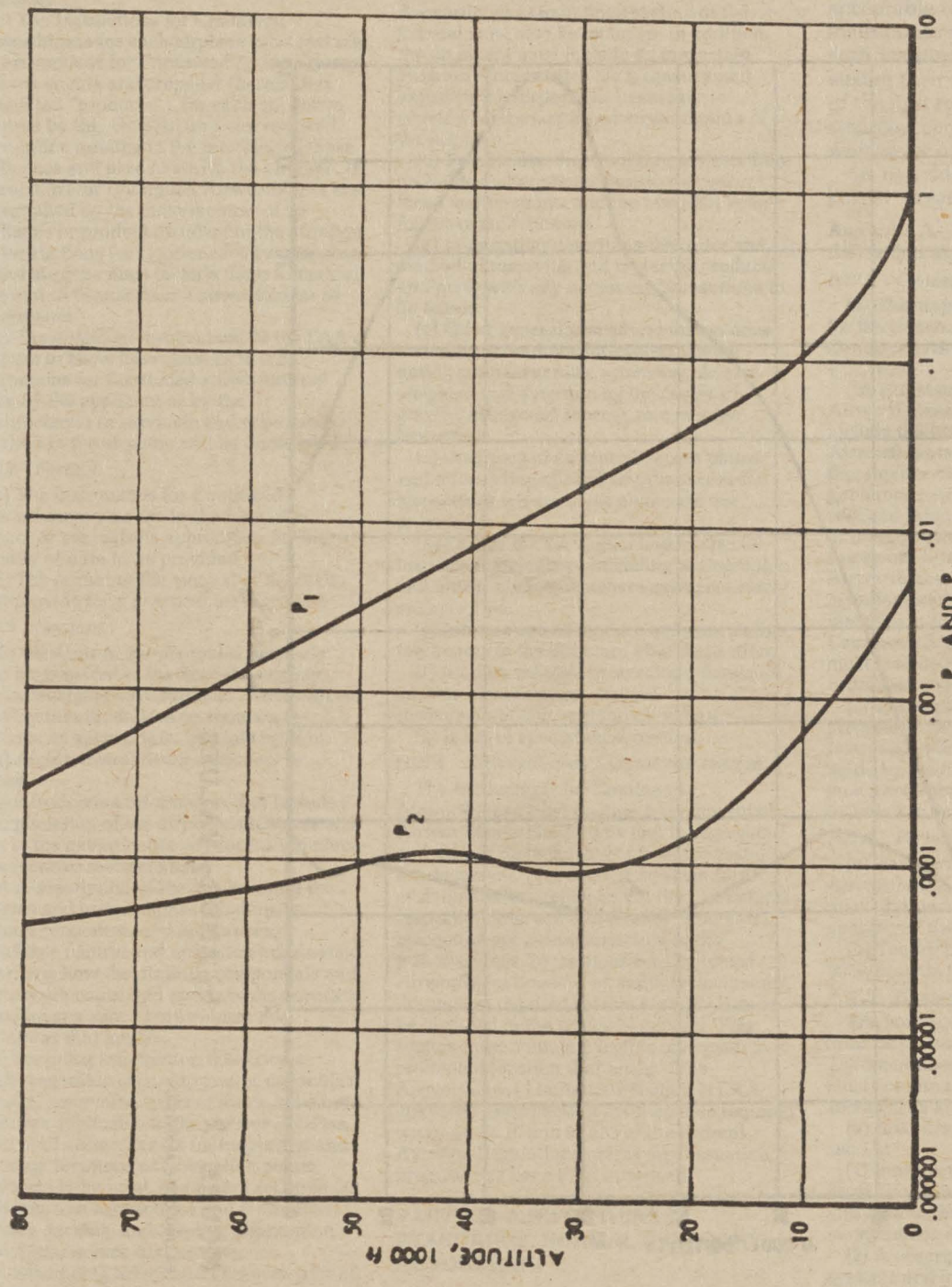

FIGURE 1 P_1 AND P_2 VALUES

Part 25 App. G.

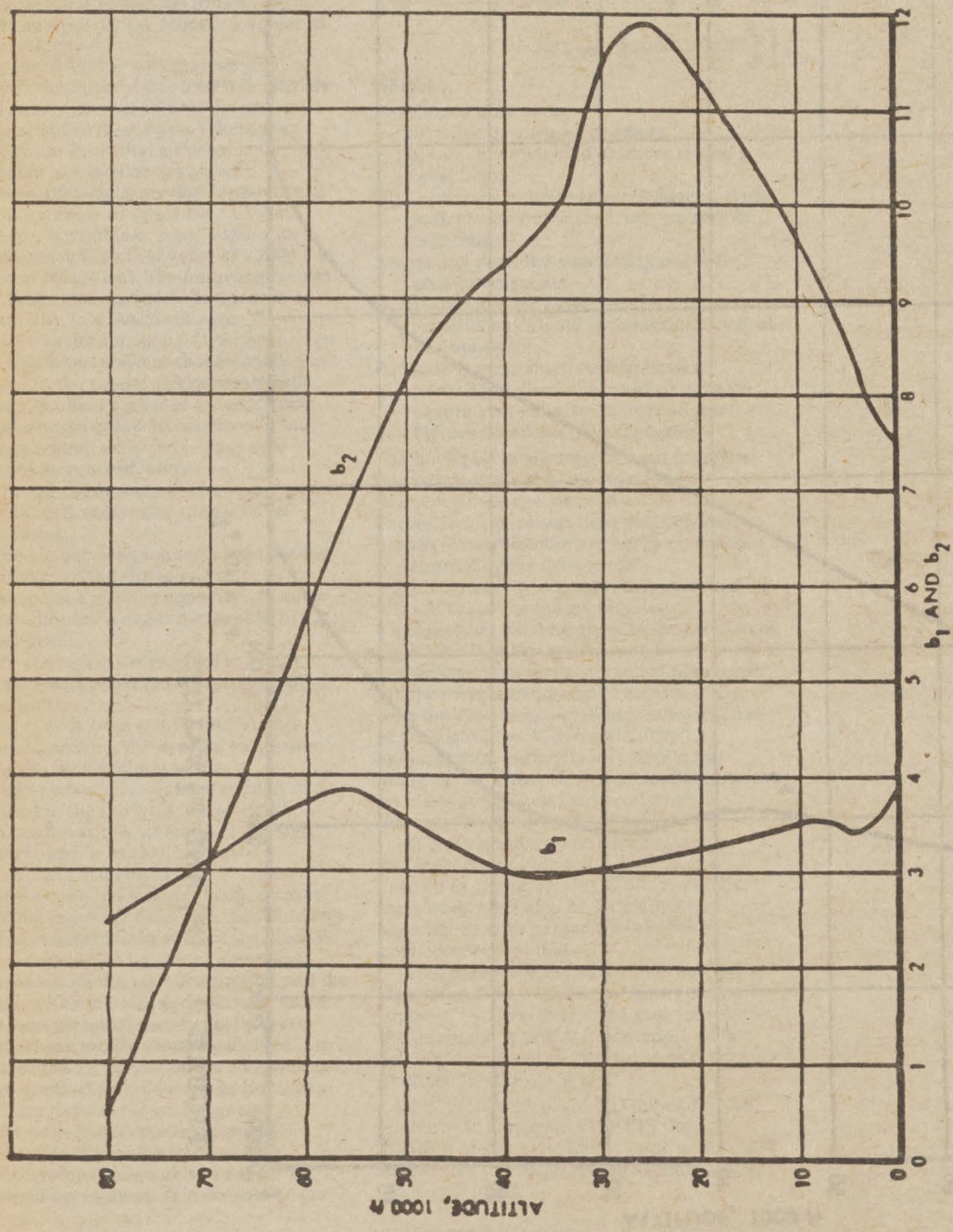

FIGURE 2 b_1 AND b_2 VALUES

BILLING CODE 4910-13-C

35. By adding a new Appendix H to Part 25 to read as follows:

Appendix H—Instructions for Continued Airworthiness

H25.1 *General.*

(a) This appendix specifies requirements for the preparation of Instructions for Continued Airworthiness as required by § 25.1529.

(b) The Instructions for Continued Airworthiness for each airplane must include the Instructions for Continued Airworthiness for each engine and propeller (hereinafter designated "products"), for each appliance required by this chapter, and any required information relating to the interface of those appliances and products with the airplane. If Instructions for Continued Airworthiness are not supplied by the manufacturer of an appliance or product installed in the airplane, the Instructions for Continued Airworthiness for the airplane must include the information essential to the continued airworthiness of the airplane.

(c) The applicant must submit to the FAA a program to show how changes to the Instructions for Continued Airworthiness made by the applicant or by the manufacturers or products and appliances installed in the airplane will be distributed.

H25.2 *Format.*

(a) The Instructions for Continued Airworthiness must be in the form of a manual or manuals as appropriate for the quantity of data to be provided.

(b) The format of the manual or manuals must provide for a practical arrangement.

H25.3 *Content.*

The contents of the manual or manuals must be prepared in the English language. The Instructions for Continued Airworthiness must contain the following manuals or sections, as appropriate, and information:

(a) *Airplane maintenance manual or section.*

(1) Introduction information that includes an explanation of the airplane's features and data to the extent necessary for maintenance or preventive maintenance.

(2) A description of the airplane and its systems and installations including its engines, propellers, and appliances.

(3) Basic control and operation information describing how the airplane components and systems are controlled and how they operate, including any special procedures and limitations that apply.

(4) Servicing information that covers details regarding servicing points, capacities of tanks, reservoirs, types of fluids to be used, pressures applicable to the various systems, location of access panels for inspection and servicing, locations of lubrication points, lubricants to be used, equipment required for servicing, tow instructions and limitations, mooring, jacking, and leveling information.

(b) *Maintenance Instructions.*

(1) Scheduling information for each part of the airplane and its engines, auxiliary power units, propellers, accessories, instruments, and equipment that provides the recommended periods at which they should be cleaned, inspected, adjusted, tested, and lubricated, and the degree of inspection, the applicable wear tolerances, and work recommended at these periods. However, the applicant may refer to an accessory, instrument, or equipment manufacturer as the source of this information if the applicant shows that the item has an exceptionally high degree of complexity requiring specialized maintenance techniques, test equipment, or expertise. The recommended overhaul periods and necessary cross references to the Airworthiness Limitations section of the manual must also be included. In addition, the applicant must include an inspection program that includes the frequency and extent of the inspections necessary to provide for the continued airworthiness of the airplane.

(2) Troubleshooting information describing probable malfunctions, how to recognize those malfunctions, and the remedial action for those malfunctions.

(3) Information describing the order and method of removing and replacing products and parts with any necessary precautions to be taken.

(4) Other general procedural instructions including procedures for system testing during ground running, symmetry checks, weighing and determining the center of gravity, lifting and shoring, and storage limitations.

(c) Diagrams of structural access plates and information needed to gain access for inspections when access plates are not provided.

(d) Details for the application of special inspection techniques including radiographic and ultrasonic testing where such processes are specified.

(e) Information needed to apply protective treatments to the structure after inspection.

(f) All data relative to structural fasteners such as identification, discard recommendations, and torque values.

(g) A list of special tools needed.

H25.4 *Airworthiness Limitations section.*

The Instructions for Continued Airworthiness must contain a section titled Airworthiness Limitations that is segregated and clearly distinguishable from the rest of the document. This section must set forth each mandatory replacement time, structural inspection interval, and related structural inspection procedure approved under § 25.571. If the Instructions for Continued Airworthiness consist of multiple documents, the section required by this paragraph must be included in the principal manual. This section must contain a legible statement in a prominent location that reads: "The Airworthiness Limitations section is FAA approved and specifies maintenance required under §§ 43.16 and 91.163 of the Federal Aviation Regulations unless an alternative program has been FAA approved."

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

§ 27.571 [Amended]

36. By deleting the reference to "§ 27.1529(a)(2)" in §§ 27.571 (b), (c), (d)(1), (d)(3), and (e) and replacing it with "§ A27.4 of Appendix A."

37. By revising § 27.1529, including its heading, to read as follows:

§ 27.1529 Instructions for continued airworthiness.

The applicant must prepare Instructions for Continued Airworthiness in accordance with Appendix A to this part that are acceptable to the Administrator. The instructions may be incomplete at type certification if a program exists to ensure their completion prior to delivery of the first rotorcraft or issuance of a standard certificate of airworthiness, whichever occurs later.

38. By adding a new Appendix A to Part 27 to read as follows:

Appendix A—Instructions for Continued Airworthiness

A27.1 *General.*

(a) This appendix specifies requirements for the preparation of Instructions for Continued Airworthiness as required by § 27.1529.

(b) The Instructions for Continued Airworthiness for each rotorcraft must include the Instructions for Continued Airworthiness for each engine and rotor (hereinafter designated 'products'), for each appliance required by this chapter, and any required information relating to the interface of those appliances and products with the rotorcraft. If Instructions for Continued Airworthiness are not supplied by the manufacturer of an appliance or product installed in the rotorcraft, the Instructions for Continued Airworthiness for the rotorcraft must include the information essential to the continued airworthiness of the rotorcraft.

(c) The applicant must submit to the FAA a program to show how changes to the Instructions for Continued Airworthiness made by the applicant or by the manufacturers of products and appliances installed in the rotorcraft will be distributed.

A27.2 *Format.*

(a) The Instructions for Continued Airworthiness must be in the form of a manual or manuals as appropriate for the quantity of data to be provided.

(b) The format of the manual or manuals must provide for a practical arrangement.

A27.3 *Content.*

The contents of the manual or manuals must be prepared in the English language. The Instructions for Continued Airworthiness must contain the following manuals or sections, as appropriate, and information:

(a) *Rotorcraft maintenance manual or section.*

(1) Introduction information that includes an explanation of the rotorcraft's features and data to the extent necessary for maintenance or preventive maintenance.

(2) A description of the rotorcraft and its systems and installations including its engines, rotors, and appliances.

(3) Basic control and operation information describing how the rotorcraft components and systems are controlled and how they operate, including any special procedures and limitations that apply.

(4) Servicing information that covers details regarding servicing points, capacities of tanks, reservoirs, types of fluids to be used, pressures applicable to the various systems, location of access panels for inspection and servicing, locations of lubrication points, the lubricants to be used, equipment required for servicing, tow instructions and limitations, mooring, jacking, and leveling information.

(B) *Maintenance instructions.*

(1) Scheduling information for each part of the rotorcraft and its engines, auxiliary power units, rotors, accessories, instruments and equipment that provides the recommended periods at which they should be cleaned, inspected, adjusted, tested, and lubricated, and the degree of inspection, the applicable wear tolerances, and work recommended at these periods. However, the applicant may refer to an accessory, instrument, or equipment manufacturer as the source of this information if the applicant shows the item has an exceptionally high degree of complexity requiring specialized maintenance techniques, test equipment, or expertise. The recommended overhaul periods and necessary cross references to the Airworthiness Limitations section of the manual must also be included. In addition, the applicant must include an inspection program that includes the frequency and extent of the inspections necessary to provide for the continued airworthiness of the rotorcraft.

(2) Troubleshooting information describing problem malfunctions, how to recognize those malfunctions, and the remedial action for those malfunctions.

(3) Information describing the order and method of removing and replacing products and parts with any necessary precautions to be taken.

(4) Other general procedural instructions including procedures for system testing during ground running, symmetry checks, weighing and determining the center of gravity, lifting and shoring, and storage limitations.

(c) Diagrams of structural access plates and information needed to gain access for inspections when access plates are not provided.

(d) Details for the application of special inspection techniques including radiographic and ultrasonic testing where such processes are specified.

(e) Information needed to apply protective treatments to the structure after inspection.

(f) All data relative to structural fasteners such as identification, discarded recommendations, and torque values.

(g) A list of special tools needed.

A27.4 *Airworthiness Limitations section.*

The Instructions for Continued Airworthiness must contain a section, titled Airworthiness Limitations that is segregated and clearly distinguishable from the rest of the document. This section must set forth each mandatory replacement time, structural inspection interval, and related structural inspection procedure approved under § 27.571. If the Instructions for Continued Airworthiness consist of multiple documents, the section required by this paragraph must be included in the principal manual. This section must contain a legible statement in a prominent location that reads: "The Airworthiness Limitations section is FAA approved and specifies inspections and other maintenance required under §§ 43.16 and 91.163 of the Federal Aviation Regulations unless an alternative program has been FAA approved."

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

§ 29.571 [Amended]

39. By deleting the reference to "§ 29.1529(a) (2)" in §§ 29.571 (b), (c), (d) (1), (d) (3), and (e) and replacing it with "§A29.4 of Appendix A".

40. By adding a new § 29.783(g) to read as follows:

§ 29.783 Doors.

* * * * *

(g) If an integral stair is installed in a passenger entry door that is qualified as a passenger emergency exit, the stair must be designed so that under the following conditions the effectiveness of passenger emergency egress will not be impaired:

(1) The door, integral stair, and operating mechanism have been subjected to the inertia forces specified in § 29.561(b)(3), acting separately relative to the surrounding structure.

(2) The rotorcraft is in the normal ground attitude and in each of the attitudes corresponding to collapse of one or more legs, or primary members, as applicable, of the landing gear.

41. By revising § 29.1529, including its heading, to read as follows:

§ 29.1529 Instructions for continued airworthiness.

The applicant must prepare Instructions for Continued Airworthiness in accordance with Appendix A to this part that are acceptable to the Administrator. The instructions may be incomplete at type certification if a program exists to ensure their completion prior to delivery of the first rotorcraft or issuance of a standard certificate of airworthiness, whichever occurs later.

42. By adding a new Appendix A to Part 29 to read as follows:

Appendix A—Instructions for Continued Airworthiness

A29.1 *General.*

(a) This appendix specifies requirements for the preparation of Instructions for Continued Airworthiness as required by § 29.1529.

(b) The Instructions for Continued Airworthiness for each rotorcraft must include the Instructions for Continued Airworthiness for each engine and rotor (hereinafter designated "products"), for each applicance required by this chapter, and any required information relating to the interface of those appliances and products with the rotorcraft. If Instructions for Continued Airworthiness are not supplied by the manufacturer of an appliance or product installed in the rotorcraft, the Instructions for Continued Airworthiness for the rotorcraft must include the information essential to the continued airworthiness of the rotorcraft.

(c) The applicant must submit to the FAA a program to show how changes to the Instructions for Continued Airworthiness made by the applicant or by the manufacturers of products and appliances installed in the rotorcraft will be distributed.

A29.2 *Format.*

(a) The Instructions for Continued Airworthiness must be in the form of a manual or manuals as appropriate for the quantity of data to be provided.

(b) The format of the manual or manuals must provide for a practical arrangement.

A29.3 *Content.*

The contents of the manual or manuals must be prepared in the English language. The Instructions for Continued Airworthiness must contain the following manuals or sections, as appropriate, and information:

(a) *Rotorcraft maintenance manual or section.* (1) Introduction information that includes an explanation of the rotorcraft's features and data to the extent necessary for maintenance or preventive maintenance.

(2) A description of the rotorcraft and its systems and installations including its engines, rotors, and applicances.

(3) Basic control and operation information describing how the rotorcraft components and systems are controlled and how they operate, including any special procedures and limitations that apply.

(4) Servicing information that covers details regarding servicing points, capacities of tanks, reservoirs, types of fluids to be used, pressures applicable to the various systems, location of access panels for inspection and servicing, locations of lubrication points, the lubricants to be used, equipment required for servicing, tow instructions and limitations, mooring, jacking, and leveling information.

(b) *Maintenance Instructions.* (1) Scheduling information for each part of the rotorcraft and its engines, auxiliary power units, rotors, accessories, instruments, and equipment that provides the recommended periods at which they should be cleaned, inspected, adjusted, tested, and lubricated, and the degree of inspection, the applicable wear tolerances, and work recommended at these periods. However, the applicant may refer to an accessory, instrument, or equipment manufacturer as the source of this information if the applicant shows that the item has an exceptionally high degree of complexity requiring specialized maintenance techniques, test equipment, or expertise. The recommended overhaul periods and necessary cross references to the Airworthiness Limitations section of the manual must also be included. In addition, the applicant must include an inspection program that includes the frequency and extent of the inspections necessary to provide for the continued airworthiness of the rotorcraft.

(2) Troubleshooting information describing probable malfunctions, how to recognize

those malfunctions, and the remedial action for those malfunctions.

(3) Information describing the order and method of removing and replacing products and parts with any necessary precautions to be taken.

(4) Other general procedural instructions including procedures for system testing during ground running, symmetry checks, weighing and determining the center of gravity, lifting and shoring, and storage limitations.

(c) Diagrams of structural access plates and information needed to gain access for inspections when access plates are not provided.

(d) Details for the application of special inspection techniques including radiographic and ultrasonic testing where such processes are specified.

(e) Information needed to apply protective treatments to the structure after inspection.

(f) All data relative to structural fasteners such as identification, discard recommendations, and torque values.

(g) A list of special tools needed.

A29.4 *Airworthiness Limitations Section.*

The Instructions for Continued Airworthiness must contain a section titled Airworthiness Limitations that is segregated and clearly distinguishable from the rest of the document. This section must set forth each mandatory replacement time, structural inspection interval, and related structural inspection procedure approved under § 29.571. If the Instructions for Continued Airworthiness consist of multiple documents, the section required by this paragraph must be included in the principal manual. This section must contain a legible statement in a prominent location that reads: "The Airworthiness Limitations section is FAA approved and specifies maintenance required under §§ 43.16 and 91.163 of the Federal Aviation Regulations unless an alternative program has been FAA approved."

PART 31—AIRWORTHINESS STANDARDS: MANNED FREE BALLOONS

43. By adding a new § 31.12 to read as follows:

§ 31.12 Proof of compliance.

(a) Each requirement of this subpart must be met at each weight within the range of loading conditions for which certification is requested. This must be shown by—

(1) Tests upon a balloon of the type for which certification is requested or by calculations based on, and equal in accuracy to, the results of testing; and

(2) Systematic investigation of each weight if compliance cannot be reasonably inferred from the weights investigated.

(b) Except as provided in § 31.17(b), allowable weight tolerances during flight testing are +5 percent and −10 percent.

44. By adding a new § 31.16 to read as follows:

§ 31.16 Empty weight.

The empty weight must be determined by weighing the balloon with installed equipment but without lifting gas or heater fuel.

45. By adding a new § 31.17 to read as follows:

§ 31.17 Performance: Climb.

(a) Each balloon must be capable of climbing at least 300 feet in the first minute after takeoff with a steady rate of climb. Compliance with the requirements of this section must be shown at each altitude and ambient temperature for which approval is sought.

(b) Compliance with the requirements of paragraph (a) of this section must be shown at the maximum weight with a weight tolerance of +5 percent.

46. By adding a new § 31.19 to read as follows:

§ 31.19 Performance: Uncontrolled descent.

(a) The following must be determined for the most critical uncontrolled descent that can result from any single failure of the heater assembly, fuel cell system, gas value system, or maneurering vent system, or from any single tear in the ballon envelope between tear stoppers:

(1) The maximum vertical velocity attained.

(2) The altitude loss from the point of failure to the point at which maximum vertical velocity is attained.

(3) The altitude required to achieve level flight after corrective action is inititated, with the balloon descending at the maximum vertical velocity determined in paragraph (a)(1) of this section.

(b) Procedures must be established for landing at the maximum vertical velocity determined in paragraph (a)(1) of this section and for arresting that descent rate in accordance with paragraph (a)(3) of this section.

§ 31.27 [Amended]

47. By amending § 31.27(c) by deleting the second sentence, by deleting the word "concrete" in the third sentence, and by deleting the last sentence and inserting the following in place thereof: "A drop test height of 36 inches, or a drop test height that produces, upon impact, a velocity equal to the maximum vertical velocity determined in accordance with § 31.19, whichever is higher, must be used."

48. By revising §§ 31.65(a), (b), and (c) and adding a new § 31.65(e) to read as follows:

§ 31.65 Position lights.

(a) If position lights are installed, there must be one steady aviation white position light and one flashing aviation red (or flashing aviation white) position light with an effective flash frequency of at least 40, but not more than 100, cycles per minute.

(b) Each light must provide 360° horizontal coverage at the intensities prescribed in this paragraph. The following light intensities must be determined with the light source operating at a steady state and with all light covers and color filters in place and at the manufacturer's rated mimimum voltage. For the flashing aviation red light, the measured values must be adjusted to correspond to a red filter temperature of at least 130° F:

(1) The intensities in the horizontal plane passing through the light unit must equal or exceed the following values:

Position light	Minimum intensity (candles)
Steady white	20
Flashing red or white	40

(2) The intensities in vertical planes must equal or exceed the following values. An intensity of one unit corresponds to the applicable horizontal plane intensity specified in paragraph (b)(1) of this section.

Angles above and below the horizontal in any vertical plane (degrees)	Minimum intensity (units)
0	1.00
0 to 5	0.90
5 to 10	0.80
10 to 15	0.70
15 to 20	0.50
20 to 30	0.30
30 to 40	0.10
40 to 60	0.05

(c) The steady white light must be located not more than 20 feet below the basket, trapeze, or other means for carrying occupants. The flashing red or white light must be located not less than 7, nor more than 10, feet below the steady white light.

* * * * *

(e) Each position light color must have the applicable International Commission on Illumination chromaticity coordinates as follows:

(1) *Aviation red*—

"y" is not greater than 0.335; and "z" is not greater than 0.002.

(2) *Aviation white*—

"x" is not less than 0.300 and not greater than 0.540;

"y" is not less than "x"−0.040" or "y_o−0.010", whichever is the smaller; and

"y" is not greater than "x+0.020" nor "0.636−0.0400 x";

Where "y_o" is the "y" coordinate of the Planckian radiator for the value of "x" considered.

49. By revising § 31.71 to read as follows:

§ 31.71 Function and installation.

(a) Each item of installed equipment must—

(1) Be of a kind and design appropriate to its intended function;

(2) Be permanently and legibly marked or, if the item is too small to mark, tagged as to its identification, function, or operating limitations, or any applicable combination of those factors;

(3) Be installed according to limitations specified for that equipment; and

(4) Function properly when installed.

(b) No item of installed equipment, when performing its function, may affect the function of any other equipment so as to create an unsafe condition.

(c) The equipment, systems, and installations must be designed to prevent hazards to the balloon in the event of a probable malfunction or failure.

50. By revising § 31.81 to read as follows:

§ 31.81 General.

(a) The following information must be established:

(1) Each operating limitation, including the maximum weight determined under § 31.14.

(2) The normal and emergency procedures.

(3) Other information necessary for safe operation, including—

(i) The empty weight determined under § 31.16;

(ii) The rate of climb determined under § 31.17, and the procedures and conditions used to determine performance;

(iii) The maximum vertical velocity, the altitude drop required to attain that velocity, and altitude drop required to recover from a descent at that velocity, determined under § 31.19, and the procedures and conditions used to determine performance; and

(iv) Pertinent information peculiar to the balloon's operating characteristics.

(b) The information established in compliance with paragraph (a) of this section must be furnished by means of—

(1) A Balloon Flight Manual; or

(2) A placard on the balloon that is clearly visible to the pilot.

51. By adding a new § 31.82 to read as follows:

§ 31.82 Instructions for Continued Airworthiness.

The applicant must prepare Instructions for Continued Airworthiness in accordance with Appendix A to this part that are acceptable to the Administrator. The instructions may be incomplete at type certification if a program exists to ensure their completion prior to delivery of the first balloon or issuance of a standard certificate of airworthiness, whichever occurs later.

52. By revising § 31.85(b)(1) to read as follows:

§ 31.85 Required basic equipment.

* * * * *

(b) * * *

(1) A fuel quantity gauge. If fuel cells are used, means must be incorporated to indicate to the crew the quantity of fuel in each cell during flight. The means must be calibrated in appropriate units or in percent of fuel cell capacity.

* * * * *

53. By adding a new Appendix A to Part 31 to read as follows:

Appendix A—Instructions for Continued Airworthiness

A31.1 *General.*

(a) This appendix specifies requirements for the preparation of Instructions for Continued Airworthiness as required by § 31.82.

(b) The Instructions for Continued Airworthiness for each balloon must include the Instructions for Continued Airworthiness for all balloon parts required by this chapter and any required information relating to the interface of those parts with the balloon. If Instructions for Continued Airworthiness are not supplied by the part manufacturer for a balloon part, the Instructions for Continued Airworthiness for the balloon must include the information essential to the continued airworthiness of the balloon.

(c) The applicant must submit to the FAA a program to show how changes to the Instructions for Continued Airworthiness made by the applicant or by the manufacturers of balloon parts will be distributed.

A31.2 *Format.*

(a) The Instructions for Continued Airworthiness must be in the form of a manual or manuals as appropriate for the quantity of data to be provided.

(b) The format of the manual or manuals must provide for a practical arrangement.

A31.3 *Content.*

The contents of the manual or manuals must be prepared in the English language. The Instructions for Continued Airworthiness must contain the following information:

(a) Introduction information that includes an explanation of the balloon's features and data to the extent necessary for maintenance or preventive maintenance.

(b) A description of the balloon and its systems and installations.

(c) Basic control and operation information for the balloon and its components and systems.

(d) Servicing information that covers details regarding servicing of balloon components, including burner nozzles, fuel tanks, and valves during operations.

(e) Maintenance information for each part of the balloon and its envelope, controls, rigging, basket structure, fuel systems, instruments, and heater assembly that provides the recommended periods at which they should be cleaned, adjusted, tested, and lubricated, the applicable wear tolerances, and the degree of work recommended at these periods. However, the applicant may refer to an accessory, instrument, or equipment manufacturer as the source of this information if the applicant shows that the item has an exceptionally high degree of complexity requiring specialized maintenance techniques, test equipment, or expertise. The recommended overhaul periods and necessary cross references to the Airworthiness Limitations section of the manual must also be included. In addition, the applicant must include an inspection program that includes the frequency and extent of the inspections necessary to provide for the continued airworthiness of the balloon.

(f) Troubleshooting information describing probable malfunctions, how to recognize those malfunctions, and the remedial action for those malfunctions.

(g) Details of what, and how, to inspect after a hard landing.

(h) Instructions for storage preparation including any storage limits.

(i) Instructions for repair on the balloon envelope and its basket or trapeze.

A31.4 *Airworthiness Limitations Section.*

The Instructions for Continued Airworthiness must contain a section titled Airworthiness Limitations that is segregated and clearly distinguishable from the rest of the document. This section must set forth each mandatory replacement time, structural inspection interval, and related structural inspection procedure, including envelope structural integrity, required for type certification. If the Instructions for Continued Airworthiness consist of multiple documents, the section required by this paragraph must be included in the principal manual. This section must contain a legible statement in a prominent location that reads: "The Airworthiness Limitations section is FAA approved and specifies maintenance required under §§ 43.16 and 91.163 of the Federal Aviation Regulations."

PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

54. By adding a new § 33.4 to read as follows:

§ 33.4 Instructions for Continued Airworthiness.

The applicant must prepare Instructions for Continued Airworthiness in accordance with Appendix A to this part that are acceptable to the Administrator. The instructions may be incomplete at type certification if a program exists to ensure their completion prior to delivery of the first aircraft with the engine installed, or upon issuance of a standard certificate of airworthiness for the aircraft with the engine installed, whichever occurs later.

55. By deleting §§ 33.5 (c), (d), and (e) and revising the lead in and heading of § 33.5 to read as follows:

§ 33.5 Instruction manual for installing and operating the engine.

Each applicant must prepare and make available to the Administrator prior to the issuance of the type certificate, and to the owner at the time of delivery of the engine, approved instructions for installing and operating the engine. The instructions must include at least the following:

* * * * *

56. By redesignating § 33.19 as § 33.19(a) and adding a new § 33.19(b) to read as follows:

§ 33.19 Durability.

* * * * *

(b) Each component of the propeller blade pitch control system which is a part of the engine type design must meet the requirements of § 35.42 of this chapter.

§ 33.55 [Amended]

57. By deleting the reference to "§ 33.5(e)" in § 33.55(c) and replacing it with "§ 33.4".

§ 33.57 [Amended]

58. By deleting the reference to "§ 33.5" in § 33.57(b) and replacing it with "§ 33.4".

§ 33.93 [Amended]

59. By deleting the reference to "§ 33.5" in § 33.93(b) and replacing it with "§ 33.4".

§ 33.99 [Amended]

60. By deleting the reference to "§ 33.5" in § 33.99(b) and replacing it with "§ 33.4".

61. By adding a new Appendix A to Part 33 to read as follows:

Appendix A—Instructions for Continued Airworthiness

A33.1 *General.*

(a) This appendix specifies requirements for the preparation of Instructions for Continued Airworthiness as required by § 33.4.

(b) The Instructions for Continued Airworthiness for each engine must include the Instructions for Continued Airworthiness for all engine parts. If Instructions for Continued Airworthiness are not supplied by the engine part manufacturer for an engine part, the Instructions for Continued Airworthiness for the engine must include the information essential to the continued airworthiness of the engine.

(c) The applicant must submit to the FAA a program to show how changes to the Instructions for Continued Airworthiness made by the applicant or by the manufacturers of engine parts will be distributed.

A33.2 *Format.*

(a) The Instructions for Continued Airworthiness must be in the form of a manual or manuals as appropriate for the quantity of data to be provided.

(b) The format of the manual or manuals must provide for a practical arrangement.

A33.3 *Content.*

The contents of the manual or manuals must be prepared in the English language. The Instructions for Continued Airworthiness must contain the following manuals or sections, as appropriate, and information:

(a) *Engine Maintenance Manual or Section.* (1) Introduction information that includes an explanation of the engine's features and data to the extent necessary for maintenance or preventive maintenance.

(2) A detailed description of the engine and its components, systems, and installations.

(3) Installation instructions, including proper procedures for uncrating, deinhibiting, acceptance checking, lifting, and attaching accessories, with any necessary checks.

(4) Basic control and operating information describing how the engine components, systems, and installations operate, and information describing the methods of starting, running, testing, and stopping the engine and its parts including any special procedures and limitations that apply.

(5) Servicing information that covers details regarding servicing points, capacities of tanks, reservoirs, types of fluids to be used, pressures applicable to the various systems, locations of lubrication points, lubricants to be used, and equipment required for servicing.

(6) Scheduling information for each part of the engine that provides the recommended periods at which it should be cleaned, inspected, adjusted, tested, and lubricated, and the degree of inspection the applicable wear tolerances, and work recommended at these periods. However, the applicant may refer to an accessory, instrument, or equipment manufacturer as the source of this information if the applicant shows that the item has an exceptionally high degree of complexity requiring specialized maintenance techniques, test equipment, or expertise. The recommended overhaul periods and necessary cross references to the Airworthiness Limitations section of the manual must also be included. In addition, the applicant must include an inspection program that includes the frequency and extent of the inspections necessary to provide for the continued airworthiness of the engine.

(7) Troubleshooting information describing probable malfunctions, how to recognize those malfunctions, and the remedial action for those malfunctions.

(8) Information describing the order and method of removing the engine and its parts and replacing parts, with any necessary precautions to be taken. Instructions for proper ground handling, crating, and shipping must also be included.

(9) A list of the tools and equipment necessary for maintenance and directions as to their method of use.

(b) *Engine Overhaul Manual or Section.* (1) Disassembly information including the order and method of disassembly for overhaul.

(2) Cleaning and inspection instructions that cover the materials and apparatus to be used and methods and precautions to be taken during overhaul. Methods of overhaul inspection must also be included.

(3) Details of all fits and clearances relevant to overhaul.

(4) Details of repair methods for worn or otherwise substandard parts and components along with the information necessary to determine when replacement is necessary.

(5) The order and method of assembly at overhaul.

(6) Instructions for testing after overhaul.

(7) Instructions for storage preparation, including any storage limits.

(8) A list of tools needed for overhaul.

A33.4 *Airworthiness Limitations Section.*

The Instructions for Continued Airworthiness must contain a section titled Airworthiness Limitations that is segregated and clearly distinguishable from the rest of the document. This section must set forth each mandatory replacement time, inspection interval, and related procedure required for type certification. If the Instructions for Continued Airworthiness consist of multiple documents, the section required by this paragraph must be included in the principal manual. This section must contain a legible statement in a prominent location that reads: "The Airworthiness Limitations section is FAA approved and specifies maintenance required under §§ 43.16 and 91.163 of the Federal Aviation Regulations unless an alternative program has been FAA approved."

PART 35—AIRWORTHINESS STANDARDS: PROPELLERS

62. By revising § 35.3, including its heading, to read as follows:

§ 35.3 Instruction manual for installing and operating the propeller.

Each applicant must prepare and make available an approved manual or manuals containing instructions for installing and operating the propeller.

63. By adding a new § 35.4 to read as follows:

§ 35.4 Instructions for continued airworthiness.

The appliant must prepare Instructions for Continued Airworthiness in accordance with Appendix A to this part that are

acceptable to the Administrator. The instructions may be incomplete at type certification if a program exists to ensure their completion prior to delivery of the first aircraft with the propeller installed, or upon issuance of a standard certificate of airworthiness for an aircraft with the propeller installed, whichever occurs later.

64. By revising § 35.5 to read as follows:

§ 35.5 Propeller operating limitations.

Propeller operating limitations are established by the Administrator, are included in the propeller type certificate data sheet specified in § 21.41 of this chapter, and include limitations based on the operating conditions demonstrated during the tests required by this part and any other information found necessary for the safe operation of the propeller.

65. By revising the heading of § 35.23 and adding a new § 35.23(c) to read as follows:

§ 35.23 Pitch control and indication.

* * * * *

(c) Each propeller approved for installation on a turbopropeller engine must incorporate a provision for an indicator to indicate when the propeller blade angle is below the flight low pitch position. The provision must directly sense the blade position and be arranged to cause an indicator to indicate that the blade angle is below the flight low pitch position before the blade moves more than 8° below the flight low pitch stop.

66. By revising § 35.37, including its heading, to read as follows:

§ 35.37 Fatigue limit tests.

A fatigue evalution must be made and the fatigue limits determined for each metallic hub and blade, and each primary load carrying metal component of nonmetallic blades. The fatigue evaluation must include consideration of all reasonably foreseeable vibration load patterns. The fatigue limits must account for the permissible service deteriortion (such as nicks, grooves, galling, bearing wear, and variations in material properties).

67. By adding a new § 35.42 to read as follows:

§ 35.42 Blade pitch control system component test.

The following durability requirements apply to propeller blade pitch control system components:

(a) Except as provided in paragraph (b) of this section, each propeller blade pitch control system component, including governors, pitch change assemblies, pitch locks, mechanical stops, and feathering system components, must be subjected in tests to cyclic loadings that simulate the frequency and amplitude those to which the component would be subjected during 1,000 hours of propeller operation.

(b) Compliance with paragraph (a) of this section may be shown by a rational analysis based on the results of tests on similar components.

68. By adding a new Appendix A to Part 35 to read as follows:

Appendix A—Instructions for Continued Airworthiness

A35.1 *General.*

(a) This appendix specifies requirements for the preparation of Instructions for Continued Airworthiness as required by § 35.4.

(b) The Instructions for Continued Airworthiness for each propeller must include the Instructions for Continued Airworthiness for all propeller parts. If Instructions for Continued Airworthiness are not supplied by the propeller part manufacturer for a propeller part, the Instructions for Continued Airworthiness for the propeller must include the information essential to the continued airworthiness of the propeller.

(c) The applicant must submit to the FAA a program to show how changes to the Instructions for Continued Airworthiness made by the applicant or by the manufacturers of propeller parts will be distributed.

A35.2 *Format.*

(a) The Instructions for Continued Airworthiness must be in the form of a manual or manuals as appropriate for the quantity of data to be provided.

(b) The format of the manual or manuals must provide for a practical arrangement.

A35.3 *Content.*

The contents of the manual must be prepared in the English language. The Instructions for Continued Airworthiness must contain the following sections and information:

(a) *Propeller Maintenance Section.* (1) Introduction information that includes an explanation of the propeller's features and data to the extent necessary for maintenance or preventive maintenance.

(2) A detailed description of the propeller and its systems and installations.

(3) Basic control and operation information describing how the propeller components and systems are controlled and how they operate, including any special procedures that apply.

(4) Instructions for uncrating, acceptance checking, lifting, and installing the propeller.

(5) Instructions for propeller operational checks.

(6) Scheduling information for each part of the propeller that provides the recommended periods at which it should be cleaned, adjusted, and tested, the applicable wear tolerances, and the degree of work recommended at these periods. However, the applicant may refer to an accessory, instrument, or equipment manufacturer as the source of this information if it shows that the item has an exceptionally high degree of complexity requiring specialized maintenance techniques, test equipment, or expertise. The recommended overhaul periods and necessary cross-references to the Airworthiness Limitations section of the manual must also be included. In addition, the applicant must include an inspection program that includes the frequency and extent of the inspections necessary to provide for the continued airworthiness of the propeller.

(7) Troubleshooting information describing probable malfunctions, how to recognize those malfunctions, and the remedial action for those malfunctions.

(8) Information describing the order and method of removing and replacing propeller parts with any necessary precautions to be taken.

(9) A list of the special tools needed for maintenance other than for overhauls.

(b) *Propeller Overhaul Section.* (1) Disassembly information including the order and method of disassembly for overhaul.

(2) Cleaning and inspection instructions that cover the materials and apparatus to be used and methods and precautions to be taken during overhaul. Methods of overhaul inspection must also be included.

(3) Details of all fits and clearances relevant to overhaul.

(4) Details of repair methods for worn or otherwise substandard parts and components along with information necessary to determine when replacement is necessary.

(5) The order and method of assembly at overhaul.

(6) Instructions for testing after overhaul.

(7) Instructions for storage preparation including any storage limits.

(8) A list of tools needed for overhaul.

A35.4 *Airworthiness Limitations Section.*

The Instructions for Continued Airworthiness must contain a section titled Airworthiness Limitations that is segregated and clearly distinguishable from the rest of the document. This section must set forth each mandatory replacement time, inspection interval, and related procedure required for type certification. This section must contain a legible statement in a prominent location that reads: "The Airworthiness Limitations section is FAA approved and specifies maintenance required under §§ 43.16 and 91.163 of the Federal Aviation Regulations unless an alternative program has been FAA approved."

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

69. By revising the first sentence of § 43.13(a) to read as follows:

§ 43.13 Performance rules (general).

(a) Each person performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use the methods, techniques, and practices

prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator, except as noted in § 43.16. * * *

* * * * *

70. By revising § 43.16, including its heading, to read as follows:

§ 43.16 Airworthiness limitations.

Each person performing an inspection or other maintenance specified in an Airworthiness Limitations section of a manufacturer's maintenance manual or Instructions for Continued Airworthiness shall perform the inspection or other maintenance in accordance with that section, or in accordance with operations specifications approved by the Administrator under Parts 121, 123, 127, or 135, or an inspection program approved under § 91.217(e).

PART 45—IDENTIFICATION AND REGISTRATION MARKING

71. By revising § 45.11(a) and adding a new § 45.11(c) to read as follows:

§ 45.11 General.

(a) *Aircraft and aircraft engines.* Aircraft covered under § 21.182 of this chapter must be identified, and each person who manufactures an aircraft engine under a type or production certificate shall identify that engine by means of a fireproof plate that has the information specified in § 43.13 marked on it by etching, stamping, engraving, or other approved method of fireproof marking. The identification plate for aircraft must be secured in such a manner that it will not likely be defaced or removed during normal service, or lost or destroyed in an accident. Except as provided in paragraph (c) of this section, the aircraft identification plate must be secured to the aircraft at an accessible location near an entrance, except that if it is legible to a person on the ground it may be located externally on the fuselage near the tail surfaces. For aircraft engines, the identification plate must be affixed to the engine at an accessible location, in such a manner that it will not likely be defaced or removed during normal service, or lost or destroyed in an accident.

* * * * *

(c) For manned free balloons, the identification plate prescribed in paragraph (a) of this section must be secured to the balloon envelope and must be located, if practicable, where it is legible to the operator when the balloon is inflated. In addition, the basket and heater assembly must be permanently and legibly marked with the manufacturer's name, part number (or equivalent) and serial number (or equivalent).

§ 45.13 [Amended]

72. By deleting the reference to "§ 45.11" in § 45.13(a) and inserting "§§ 45.11 (a) and (b)".

73. By revising § 45.14 to read as follows:

§ 45.14 Identification of critical components.

Each person who produces a part for which a replacement time, inspection interval, or related procedure is specified in the Airworthiness Limitations section of a Manufacturer's Maintenance Manual or Instructions for Continued Airworthiness shall mark that component with a part number (or equivalent) and serial number (or equivalent).

PART 91—GENERAL OPERATING AND FLIGHT RULES

74. By revising § 91.163(c) to read as follows:

§ 91.163 General.

* * * * *

(c) No person may operate an aircraft for which a manufacturer's maintenance manual or Instructions for Continued Airworthiness has been issued that contains an Airworthiness Limitations section unless the mandatory replacement times, inspection intervals, and related procedures specified in that section or alternative inspection intervals and related procedures set forth in an operations specification approved by the Administrator under Parts 121, 123, 127, or 135, or in accordance with an inspection program approved under § 91.217(e), have been complied with.

§ 91.165 [Amended]

75. By revising the last sentence of § 91.165 to read, "In addition, each owner or operator shall ensure that maintenance personnel make appropriate entries in the maintenance records indicating that the aircraft has been approved for return to service."

76. By revising § 91.173(a)(2)(i) to read as follows:

§ 91.173 Maintenance records.

(a) * * *

(2) * * *

(i) The total time in service of the airframe, each engine and each propeller.

* * * * *

77. By adding a new § 91.193(c)(4) to read as follows:

§ 91.193 Emergency equipment.

* * * * *

(c) * * *

(4) Hand fire extinguishers must be installed and secured in such a manner that they will not interfere with the safe operation of the airplane or adversely affect the safety of the crew and passengers. They must be readily accessible, and unless the locations of the fire extinguishers are obvious, their stowage provisions must be properly identified.

* * * * *

(Secs. 313(a), 601, 603, 604, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423, and 1424); sec. 6(c), 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 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 the individual and address listed in the "For Further Information Contact" paragraph.

Issued in Washington, D.C., on August 27, 1980.

Langhorne Bond,

Administrator.

[FR Doc. 80-27029 Filed 9-10-80; 8:45 am]

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September 11, 1980

Part III

Federal Communications Commission

Cable Television Syndicated Program Exclusivity Rules

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[FCC 80-443; Docket No. 20988; RM-2721; Docket No. 21284; RM-2919; RM 3324; RM-3346]

Cable Television Syndicated Program Exclusivity Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule; report and Order in Dockets 20988 and 21284.

SUMMARY: Existing FCC rules limit the number of distant television signals that cable television systems may distribute to their subscribers. The Commission has concluded that these rules do not benefit the public and should be eliminated. This document relaxes the distant signal carriage restrictions. This action will promote substantial improvements in television service to the public without causing any significant risk of loss of the existing level of services provided by local television broadcast stations.

EFFECTIVE DATE: October 14, 1980.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554

FOR FURTHER INFORMATION CONTACT: William H. Johnson, Cable Television Bureau (202) 632-6468.

SUPPLEMENTARY INFORMATION:

Report and Order

Adopted: July 22, 1980.

Released: September 11, 1980.

In the matter of Cable Television Syndicated Program Exclusivity Rules, Docket 20988, Rm-2721 and Inquiry Into the Economic Relationship Between Television Broadcasting and Cable Television, Docket 21284, Rm-2919, Rm-3324, Rm-3346.

By the Commission: Commissioners Lee, Quello and Washburn dissenting and issuing statements; Commissioners Ferris, Chairman; Fogarty and Brown issuing separate statements; Commissioner Jones concurring and issuing a statement.

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I. Summary and Introduction

Summary of Decision

1. The basic question presented in this proceeding is whether the Commission should continue in force rules that restrict the carriage of distant television broadcast signals by cable television systems. Our conclusion is that these rules do not benefit the public and should be eliminated.

2. Existing cable television signal carriage rules limit the number of distant television signals that cable television systems may distribute to their subscribers. Syndicated program exclusivity rules also require the deletion of individual programs from distant signals that are otherwise available for carriage. The rules in question are found in 47 CFR Part 76, including particularly Sections 76.59, 76.61, 76.63 and 76.151-76.161. These rules were adopted in the Commission's 1972 *Cable Television Report and Order* [1] and, although some changes in them have been made, they retain the basic form given them at that time.

3. Almost four years ago the Commission initiated a formal inquiry to review the purpose, effect, and desirability of the syndicated program exclusivity rules.[2] This was followed by a similar proceeding to review the distant signal carriage rules.[3] Detailed economic reports reviewing the functioning of these rules and their impact on the public's television service were adopted by the Commission in 1979. These *Reports* concluded that the television service received by the public would not be impaired and would in some respects be significantly improved by the elimination of these regulatory constraints.[4] Based on these findings, a *Notice of Proposed Rule Making* was issued proposing the elimination of the distant signal and syndicated program exclusivity rules.[5] The purpose of this *Notice* was to permit interested persons an opportunity to participate in the rule making process, to comment on the research and analysis presented by the Commission, and to set forth relevant information of their own relating to the rule making proposal.

4. We have now carefully reviewed the comments received. This review persuades us that the proposal was sound and should be adopted. We have also reviewed proposals submitted to us for alternative rules that would require cable television system operators to obtain individual permissions, in the form of retransmission consents, for the distant television broadcast stations carried. This proposal is we believe, essentially related to copyright considerations and is beyond the authority of the Commission to adopt. Based on the wealth of information and analysis now before us, we believe the rule changes proposed should be adopted and that this will significantly benefit the public with no undue risk of injury to the broadcast service the public now receives.

General Background

5. Commercial television broadcasting in the United States is generally recognized to be highly remunerative. It is also a field in which competition is

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[1] 36 FCC 2d 143, 37 Fed. Reg. 3252 (1972).

[2] *Notice of Inquiry in Docket 20988*, 61 FCC 2d 746, 41 Fed. Reg. 50055 (1976).

[3] *Notice of Inquiry in Docket 21284*, 65 FCC 2d 9, 42 Fed. Reg. 32825 (1977).

[4] *Report in Docket 20988*, 71 FCC 2d 951 (1979) ("Syndicated Exclusivity Report") and *Report in Docket 21284*, 71 FCC 2d 632 (1979) ("Economic Inquiry Report").

[5] *Notice of Proposed Rule Making in Dockets 20988 and 21284*, 71 FCC 2d 1004, 44 Fed. Reg. 28347 (1979).

intended to be the general rule, with each individual broadcaster left to "survive or succumb according to his ability to make his programs attractive to the public." [6].

6. Although competition is the general rule, our system of broadcasting places significant weight on the value of "localism" [7] and on the understanding that broadcast station licensees are public trustees that must serve the "public interest, convenience, and necessity" even if, in particular circumstances, that does not comport with their own immediate economic interests. [8]

7. The juxtapositon of these considerations has created a certain tension in the law as it is applied to broadcasting. Because competition is the general requirement, the Commission is not to be concerned with the effects of competition on station revenues or profits. It must be concerned, however, if there is evidence that competition is so destructive or debilitating that it results in a loss of broadcast service to the public. [9]

8. The Commission's historic concern in its regulation of the cable television industry has been that the additional viewing options made possible by the expanded channel capacity of cable systems and their ability to introduce distant signals that would not ordinarily attract viewers in the local market, introduced competition that was likely to be both inequitable and destructive. When first presented with this issue, the Commission found in the available evidence no basis for action.[10] However, in the years that followed, the potential for injury was felt to outweigh the lack of clearly defined evidence and the regulation of cable television operations was commenced.[11] Although the Commission's authority to act in this manner was not specifically set forth in the Communications Act, the Commission's general authority was found by the Supreme Court to be broad enough to authorize this regulatory activity.[12]

9. The Commission's assumption of regulatory responsibility in this area was at each step accompanied by frank admissions that the facts underlying its theoretical concerns were not fully understood. In 1965, certain regulations were applied to cable television indirectly but the Commission found it "impossible, with the data at hand, to isolate reliably the effects of CATV competition from all the other factors which operate to produce particular financial results in differing settings." [13] In 1966, the Commission adopted new rules for cable television operations, but stated, with respect to adverse impact on broadcast service, that "we cannot make that judgment on the record now before us" and that "[i]t may be that CATV, if allowed full, unfettered growth, would prove to be an excellent supplement, bringing additional service and diverse programming to millions of people in built-up areas who can afford it, without detriment to the provision of additional local broadcasting service to the entire nation. * * * It is, we think, time to get the facts * * *" [14] Again in 1972 the Commission found itself faced with conflicting evidence and again felt compelled to act in the face of inherent uncertainties and with no ability to forecast precisely how cable was likely to develop.[15] The history of our regulatory involvement with cable television is set forth in some detail in Appendix A to this document. This *Report and Order* involves a major alteration in our cable television rules and it is therefore important that the nature of the change from past policies be clearly understood so that it is evident that "prior policies and standards are being deliberately changed, not casually ignored." *Greater Boston Television Corporation v. FCC*, 444 F. 2d 841, 852 (1970). This history should also demonstrate that, because of their unique origin, the present rules may not be entitled to the benefit of the doubt sometimes accorded the *status quo*.

The Existing Rules

10. The signal carriage rules are basically of four types: Rules that mandate carriage of particular signals, rules that limit the number of distant television broadcast signals that may be carried, rules that require the deletion of particular network or syndicated programs from signals that are carried, and rules that require deletion of particular sports programs from signals that are carried.

In this proceeding we are focusing our attention only on the distant signal and syndicated program exclusivity rules. Changes in the mandatory carriage, sports blackout, and network nonduplication rules have been explicitly excluded from review in this proceeding.[16]

11. The distant signal carriage rules generally vary the number of distant signals that cable systems may carry based on the size of the television market (35 mile zone) in which the system is located.[17] Systems that are not located within a market, as that term is defined by the rules, are not subject to any limits. Those in the smaller television markets (below the 100 largest markets) may carry no distant independent or network television stations if each of the three national television networks has a local affiliate and one or more independent stations exist in the market. If there is no local independent station or one or more of the national networks do not have local affiliates, then distant station signals may be imported so that subscribers have at least one independent station signal and one station affiliated with each of the national networks.

12. Cable television systems in the 100 largest television markets are permitted to carry enough local and distant signals to provide subscribers with at least two independent television stations and one station affiliated with each of the national television networks. Moreover,

[6] *FCC v. Sanders Bros. Radio Station*, 309 U.S. 470, 475, (1940).

[7] *Sixth Report and Order in Dockets 8736 et al.*, 41 FCC 148, 172 paras. 79 and 124 (1952).

[8] Section 309, Communications Act of 1934, as amended, 47 U.S.C. § 309; *Enbanc Programming Inquiry*, 44 FCC 2303 (1960).

[9] *FCC v. Sanders Bros. Radio Station, supra; Carroll Broadcasting Co. v. FCC*, 258 F. 2d 440 (D.C. Cir. 1958).

[10] *Report and Order in Docket 12443*, 26 FCC 403, 24 Fed. Reg. 3004 (1959).

[11] First indirectly, *Carter Mountain Transmission Corp.*, 32 FCC 459 (1962), and then directly, *Second Report and Order in Docket 14895 et al.*, 2 FCC 2d 725, 31 Fed. Reg. 4540 (1966).

[12] *U.S. v. Southwestern Cable Co.*, 392 U.S. 157 (1968).

[13] *First Report and Order in Dockets 14895 and 15233*, 38 FCC 683, 30 Fed. Reg. 6038 at paragraph 68 (1965).

[14] *Second Report and Order in Dockets 14895 et al., supra*, at paragraph 155 (1966). *See also Suburban Cable TV Co., Inc.*, 11 FCC 2d 604, 606 (1968) (separate opinion of Commissioner Loevinger).

[15] *Cable Television Report and Order, supra*, at paragraph 70. The rules adopted in 1972 were based in part on an industry "Consensus Agreement" which accounts for the lack of economic analysis of certain parts of the rules. See *The Role of Analysis in Regulatory Decisionmaking: the Case of Cable Television*, Lexington Books, 1973, page 26, where it is suggested that the parties' acceptance of the compromise was made "in a virtual vacuum."

[16] *Notice of Proposed Rule Making in Dockets 20988 and 21284, supra*, para. 5 at 1006.

[17] The terms "local" and "distant" are used loosely for purposes of this discussion. Generally speaking a local signal is one that is receivable over-the-air by television viewers and a distant signal is one that cannot be so received. The dividing line is not nearly as clear as this suggests, however, and entire proceedings have been devoted to adding greater definition to these terms. See, for example, *Report and Order in Dockets 16004 and 18052*, 53 FCC 2d 855 (1975) (involving television station contour definitions). The difficulties in defining these terms precisely are in part technical and in part a confusion over the question of whether, in a prticular situation, a technical, economic, or audience survey focus is appropriate. A continuation of the confusion over the correct definition continues in some of the comments filed in response to the *Notice* in this proceeding. These comments are addressed in detail below.

under these rules, at least two distant independent signals may always be carried and, in the 50 largest markets, if there is no local independent station, three distant independent stations may be carried.

13. All cable television systems may also carry specialty stations (stations whose programming, on an all day basis and in prime time, is at least one-third foreign language, religious, and/or automated) and non-commercial educational stations in the absence of justified objection by local educational stations. Smaller systems (those with under 1,000 subscribers) are exempt from these limitations.[18]

14. The syndicated program exclusivity rules limit the carriage of individual programs on signals that are otherwise available for carriage under the distant signal carriage quotas. These rules apply only to cable television systems in the fifty largest and second fifty largest television markets. In their application to the fifty largest markets, they require cable television systems, at the request of local television stations, to delete all programs from distant signals that are under contract for television exhibition to local stations. The rules also permit the owners of television programs to require deletion of programs from distant signals for a period of one year after an individual program is first sold for television broadcast anywhere in the United States.

15. In the second fifty television markets, television stations that have programs under contract are also permitted by the rules to have these programs deleted from distant signals carried by cable television systems. The rights provided by the rules, however, expire at the end of specified time periods or on the occurance of a specified event: (1) for off-network series, exclusivity commences with the first showing and lasts until the completion of the first run of the series, but no longer than one year, (2) for first-run syndicated series, it commences with the first showing and runs for two years thereafter, (3) for feature films first-run non-series syndicated programs, it commences with the availability date of the program and extends for two years thereafter, and (4) for other types of programs, it commences with the purchase and continues until completion of the first run but, in no event, beyond one year.

16. These rules generally require that the distant signal programs involved be deleted regardless of when that particular program is scheduled for showing by the local market station. However, in the second fifty markets, if the distant syndicated program is broadcast in prime time it need not be deleted unless the market station seeking protection is also going to broadcast that program in prime time. The rules also permit cable television systems to substitute other distant signal programs, if they are available, in place of those that must be deleted under these rules.

17. Neither the distant signal nor the syndicated exclusivity rules, when they were adopted, were applied retroactively. That is, notwithstanding these regulations, cable systems carrying distant signals prior to 1972 were permitted to continue carriage of those signals. Moreover, programs on signals carried prior to 1972 were generally not subject to deletion under the syndicated program exclusivity rules. Both of these "grandfathering" provisions are of particular significance in the context of this proceeding because they make it possible to view the operations of a class of cable systems that are in many respects the equivalent of unregulated operations due to their operational status at the time our regulation was commenced. As will be discussed in greater detail below, this ability to observe the operations of unregulated systems is a significant aid to us in determing the impact of a more general deregulation of the cable television industry.

Origin of the Present Proceeding

18. These rules have increasingly been the subject of criticism in recent years.[19] In part this criticism is a reflection of the general disfavor into which regulations limiting competition have fallen. The preception that these rules were in need of re-evaluation, however, is also the consequence of: (1) the availability of more complete and detailed audience survey data reflecting television viewing patterns in the homes of cable television subscribers,[20] (2) the increasing financial strength of television broadcasters even in the face of increased cable television competition,[21] and (3) the resolution in 1976 of the status of cable television under the copyright laws by passage of the Copyright Revision.[22] In recognition of these changed circumstances and motivated by our own statutory responsibility to re-assess on a continuing basis the public interest value of our policies and regulations [23] we issued in November of 1976 our *Notice of Inquiry in Docket 20988, supra*, "commencing a detailed review of the rules that limit cable television carriage of syndicated programs on distant signals" and in June of 1977 our *Notice of Inquiry in Docket 21284, supra*, which commenced "a more general review of the economics of the relationship between television broadcasting and cable television."

19. In order to permit the fullest possible participation, the comment periods in each of those proceedings were extended. Additional studies

[18] This description of the rules, it should be recognized, is somewhat oversimplified. Other provisions of the rules, for example, provide for the carriage of additional stations late at night (*Report and Order in Docket 20028*, 46 FCC 2d 446, 39 Fed. Reg. 33528 (1974)), for the carriage of additional network news programs (*Report and Order in Docket 19859*, 57 FCC 2d 68, 41 Fed. Reg. 1063 (1976)), and for the carriage of additional UHF stations (*Report and Order in Docket 20496*, 65 FCC 2d 218, 42 Fed. Reg. 36831 (1977)). Specific provision is also made for *ad hoc* variances from the rules in situations where their general application is found to be inappropriate. 47 C.F.R. § 76.7.

[19] See, for example, Staff of House Communications Subcommittee, 94th Cong. 2d Sess., *Cable Television: Promise Versus Regulatory Performance* (Subcommittee Print 1976).

[20] The national audience rating services for many years made no separate accounting for viewing in cable homes and, even after they first commenced making separate viewing data available, the widely scattered nature of cable television across the country and the relatively small number of households involved made it difficult to obtain statistically reliable samples.

[21] Annual broadcast station financial reports to the Commission reflect that, since 1972, when the existing rules were adopted, total television station revenues have increased by 183 percent. This occurred notwithstanding the fact that the cable television subscribing population increased by approximately 150 percent. During this period and controlling for inflation the profits of the average independent station rose more than tenfold.

[22] General Revision of the Copywright Law, Pub. L. 94-553, 17 U.S.C. Sections 101 *et seq.* (1976). Cable system operators historically have made use of both local and distant television broadcast signals without any direct nexus of financial responsibility either to the originating station or the creators of the programming broadcast. Questions as to the lawfulness of this situation and the appropriate policy that should be applied were debated almost from the very start of the cable industry. *See* Smith, "The Emergence of CATV: A Look at the Evolution of a Revolution," 58 *Proceedings of the IEEE* 967 (July 1970). In the late 1950's and early 1960's cable operators were charged with unfair competition, unjust enrichment, and tortious interference with contract rights—charges which the courts ultimately rejected in *Cable Vision, Inc. v. KUTV, Inc.*, 335 F.2d 348 (9th Cir., 1964) *cert. denied sub nom. Klix Corp. v. Cable Vision, Inc.* 379 U.S. 989 (1965). In the late 1960's and early 1970's, the Supreme Court found in two separate proceedings that cable television systems were not violating the 1909 Copyright Law by carrying either local or distant television broadcast signals. *Fortnightly Corporation v. United Artists Television, Inc.*, 392 U.S. 390 (1968) and *Teleprompter Corp. v. CBS, Inc.*, 415 U.S. 394 (1974). This dispute was resolved by the Congress in 1976 with the passage of the new copyright act.

[23] It should also be noted that the Commission is obliged by the decision of the D.C. Circuit Court of Appeals in *Geller v. FCC*, 610 F. 2d 973 (D.C. Cir. 1979) to reassess those of the rules which were based on the 1971 industry "Consensus Agreement" that is described in the *Cable Television Report and Order, supra.*

undertaken by the Commission's staff were placed in the record of Docket 21284 and made available for public comment and additional outside contract research was undertaken. Voluminous comments were received in response to each of these notices. Our examination of the materials filed and our own research efforts led to our *Syndicated Exclusivity* and *Economic Inquiry Reports*. Each of these *Reports* reached the conclusion that the rules under review were having negative rather than positive consequences in terms of the television service received by the public and that the rules could be eliminated without undue risk of injury to the public.

20. Based on these *Reports*, and with their findings incorporated by reference, we issued a *Notice of Proposed Rule Making* which invited public comment on the substance of each of the *Reports* as well as on the general conclusion contained therein to the effect that the Commission could proceed to eliminate these two sets of rules without incurring any considerable risk of injury to either cable or non-cable viewing members of the public.[24]

21. To obtain a fuller appreciation of those industries whose economic incentives, as tempered by regulation, have a major influence on the video services available to our society, we provided an overview of the television broadcasting, cable television, and television program production industries. *Notice*, Paras. 8–43, *supra*, at 1006–1021. We observed that the "competitive juxtaposition of these important elements of our economy's communications sector has produced numerous demands on the Congress and this Commission for the imposition of economic regulation." Para. 44, *id.* at 1020. We strongly emphasized, however, as we have on previous occasions [25] that the Commission's underlying concern in the regulation of both broadcasting and cable television is "with the quantity and quality of video and telecommunications service that the public receives" and not, as some might erroneously perceive, "with shifting or safeguarding revenues or profits, or with the success of failure of any particular firm, industry, or technology." Para. 7, *id.* at 1006.

Criteria for Evaluation

22. In the course of analyzing these rules, both in the two *Reports* and in the *Notice*, we reviewed in considerable detail the historical rationale on which the Commission had premised these regulations, and set forth Criteria on which to judge their continuing effectiveness. The restrictions historically were rationalized on one of the four following grounds:

(1) As a means of assuring the public against a net loss of television service as a consequence of cable-created audience losses which it was theorized would undermine the economic support of television stations and in the process deprive the poor and those living in areas unserved by cable or video services;

(2) As necessary to preserve the broadcast television allocations policy with its emphasis on local service;

(3) As a means of eliminating what was perceived to be the unfair means by which cable systems competed with local broadcasters; and

(4) As necessary to assure against injury to the continued production of television programming. Para. 45, *id.* at 1021.

23. In re-evaluating the facts and policies underlying the cable television distant signal and syndicated program exclusivity rules we identified three criteria by which it seemed to us appropriate to judge the effects of various policies on the welfare of consumers of video services. These three criteria, which roughly correspond with those considered and used in earlier Commission decisions involving cable television but using somewhat more precise economic terms, relate to: (1) consumer welfare, (2) distributional equity, and (3) external or spillover effects. These terms are described in some detail in our *Economic Inquiry Report, supra*, at 636–639.[26]

24. Briefly, consumer welfare is grounded in our responsibility to assure "efficient" communications service, 47 U.S.C. Sec. 151. It is reflected in our concern with assuring that policies adopted tend toward the creation of a communications system that increases the net video service supplied to the public or otherwise maximizes the value the public receives from society's overall investment in the video distribution system.

25. Distributional equity is related to the allocation between various segments of society of the costs and benefits of a particular policy. Cable television service, in contrast with broadcast service, must be paid for directly and is generally not available to residents of very low population density areas or urban centers where demand is low and construction costs are high. Thus, even if the effect of a policy change to consumers as a whole proved beneficial, some groups might be less well off as a consequence of that policy change.

26. External or spillover effects are related to our concern with localism in broadcasting and the obligations of broadcasters to inform the public. Since the true value of local news and public affairs programming may not be reflected in the number of individuals who view it or the value they place on it but rather in the value it has to our society as a whole and especially to the functioning of our democratic institutions, it may be regarded as an "externality" that needs to be accounted for in regulations since this extra or external value may not be completely accounted for by ordinary market institutions.

27. To the extent that the rules had in the past been based on a concern with "unfair" competition, we noted that this appeared to be a consideration that was coextensive with the issue of the cable industry's copyright liability. *Notice, supra*, at 1025. Moreover, we noted the statement of the Court of Appeals in *Home Box Office, Inc. v. FCC*, 567 F. 2d 9, 42 (D.C. Cir. 1977), *cert. denied* 434 U.S. 829 (1977) that "[W]e do not perceive any public benefit to be achieved by hobbling cable television to correct the sort of unfair competition alleged by the Commission."

Basis for Rulemaking Proposal

28. Comparing the facts adduced in the two inquiry proceedings with the criteria set forth for re-evaluating the rules, we concluded that "none of the four problems which these rules ostensibly address in fact exists." (footnote omitted) Para. 63, *Notice, supra*, at 1026. We concluded that the distant signal and syndicated exclusivity rules themselves caused "significant sacrifices in consumer welfare." *Id.* We found that no significant adverse consequences would befall the ability of television broadcast stations to provide local programming if the rules were eliminated and that the

[24] In an effort to assure interested persons the fullest possible opportunity to participate in the present phase of this proceeding we extended the original time frames for the submission of comment and reply comment. *Order* adopted July 12, 1979, FCC 79–426, and provided further opportunity for comment on a new contract study undertaken at our request and deemed to be of relevance to the proceeding. The Consumer Assistance Division of the Commission's Office of Public Affairs distributed notice of the pendency of the proceeding widely to public and consumer groups with a potential interest in the outcome of the proceeding in order to promote the widest public participation in the decision process.

[25] *See, e.g., Cable Television Report and Order, Supra*, at 134 n. 32 where we stated that "We are guided by the standard of what will best serve the public interest and not by a desire to protect any industry from the impact of new technology."

[26] See also *Report in Docket 20988, supra*, at 955–956 and *Notice of Proposed Rule Making in Dockets 20988 and 21284, supra*, at 1023–1027.

likelihood of any viewers being significantly harmed from elimination of the rules was remote. *Economic Inquiry Report* at paras. 140–145, *Syndicated Exclusivity Report* at paras. 94–96. We noted that whatever effects deletion of these rules might have on program supply was derivative of the effects on television broadcasting and that the effects were found to be minimal. *Syndicated Exclusivity Report*, paras. 43, 45, 72–88 and 95. We also found no evidence to indicate that the interests of consumers of video services would be inadequately served by the "markets linking consumers with the cable, broadcasting and program production industries" if we eliminated these rules. *Notice* at para. 57. Finally, we concluded clear benefits would result from a relaxation of these rules, including "an increase in the opportunity for diversity and competition both in the economic marketplace and in the marketplace of ideas." *Economic Inquiry Report* at 143. "The benefits of our current rules are small," we said, "and . . . these benefits go mainly to broadcasters whose incomes thereby rise faster than they otherwise would. The costs of our current regulations fall on existing and potential cable subscribers, each of whom is denied some increase in freedom of choice. The costs of our present policy also fall on society as a whole, to the extent that we have inadvertently stifled some participants in the system of freedom of expression." *Id.* at para. 144. Accordingly, since we found no material benefits gained from the continuance of these rules, we issued our *Notice of Proposed Rule Making* proposing their elimination.

Alternative Rule Making Proposals

29. We also considered in our *Notice* two additional matters brought to our attention in the form of petitions for rulemaking. The first of these matters (RM–3324) was filed by the National Telecommunications and Information Administration of the United States Department of Commerce. It requested that we adopt a regulation that would compel new cable systems or cable systems expanding existing operations to obtain the consent of the originating station if they wished to distribute the non-network programs of that station. It was urged that this "retransmission consent" policy would achieve a marketplace solution to cable carriage of distant signals since such a proposal would leave distribution of this type of programming to marketplace forces instead of governmental intervention. NTIA emphasized that complete deregulation of distant signal carriage by the Commission would merely place increased emphasis on the Copyright Royalty Tribunal (a separate governmental body whose responsibilities include establishing the level of copyright fees paid by cable television systems for the carriage of distant signals).

30. We carefully examined the petition and, on balance, believed that it should be denied. We stated that to the extent that the proposal recommended that we refrain from deregulation of distant signal carriage and impose stricter syndicated exclusivity requirements on cable systems in the second fifty major television markets (also an aspect of the proposal) it involved "considerably more which appears less consistent with reliance on the marketplace." Para. 78, *id.* at 1033. Moreover, we added that to the extent the proposal favored deregulation only if accompanied by a retransmission consent policy and would continue to place distant signal carriage restrictions and syndicated program exclusivity restrictions on cable systems and their subscribers, "it is inconsistent with our conclusions, enunciated in the *Report*, clearly endorsing increased competition in the marketplace." Para. 79, *id.* at 1033–1034. As we had noted:

> a major objective of these proceedings was to determine from available economic evidence whether Commission regulation of the competition between cable and television broadcasting continued to be supportable on public interest grounds or whether a marketplace approach would produce better results for consumers of video services. The Reports adopted today indicate quite clearly that increased competition in the marketplace for video entertainment and information services would not adversely affect consumers of video service. Para. 81, *id.*

31. Further, we pointed out our "previous unsuccessful effort to implement a retransmission consent program" and that in light of this, we were "extremely reticent to forbear from proceeding on the evidence and recommendations" unless compelling evidence could be shown "that substantial injury now or in the foreseeable future would occur to the public." Para. 80, *id.* at 1034. We added that "[i]f our investigation of marketplace opportunities, deficiencies, and supplements so warrants," we were confident that we would "be able to take appropriate action at a later time." *Id.*

32. Nevertheless, we expressed our desire for "a market solution to the problems of compensating owners of programming materials" for their use by others. Para. 81, *id.* We pointed out that the retransmission consent proposal, as well as the existing compulsory license system, "prejudge the type of market institutions that can best deal with the protection of equities" and stated that our preference would be to allow the marketplace the opportunity to work and impose regulation only if it was shown that the marketplace would not work. *Id.* We therefore invited comment "on how the markets in program rights might develop, and what actions, if any, the Commission can legally take that would serve that end." *Id.* We expressed the view that "we should examine independently the retransmission consent aspect of the proposal" insofar as it was not contrary to the approach we proposed by reasons of our findings, and, accordingly, we solicited comment on it as well as "on preretransmission notification and any other way to allow the market process to work with the least amount of intervention." Para. 82, *id.* at 1035. We pointed out that our rejection of the petition on policy grounds avoided the necessity of our resolving the jurisdictional question posed by it. But to facilitate "a full discussion of what options we might have to encourage marketplace solutions in lieu of governmental regulation," we set forth some of the arguments which might lead us to believe that we do not have jurisdiction to adopt proposals such as the one embraced by the petition.

33. The other matter presented to us was a petition for rulemaking (RM–3346) from the National Association of Broadcasters which requested the Commission to commence rulemaking to consider the adoption of rules to ensure that the development of "superstations" does not result in harm to local broadcast service. We carefully examined the petition and related comments and reached the determination that no evidence existed to show that "a regulatory problem either now exists or is being fomented" which would justify a departure from our decision in *Memorandum Opinion and Order in RM–2952*, 68 FCC 2d 57 (1978), less than a year earlier, in which we declined to restrict carriage of television broadcast signals distributed to cable systems by means of satellite communication. Para. 104, 118, *id.* at 1043, 1050. We concluded that it would be inappropriate to halt the development of new video opportunities such as those created by satellite technology "unless it can be clearly shown that the detriments to the public . . . outweigh the benefits to be derived by consumers." Para. 125, *id.* at 1053.

34. In conclusion, we stated that "we have before us a wealth of information and analysis" from our *Reports* and that

we had given careful consideration to the two additional matters brought before us. Para. 126, *id.* at 1054. We reiterated our view that the distant signal carriage restrictions could be terminated "without undue risks and that the public would benefit by this action." *Id.* We noted our intention to provide interested persons "a full opportunity to subject to detailed examination all of the policy criteria, information, and economic analysis relied on." Para. 127, *id.* We pointed out that these "regulations cannot stand unless the need therefore has been documented" and, accordingly, we urged that interested persons "address themselves to supplying the evidence on which an informed decision can be made" particularly "with respect to those issues where the relevant information is uniquely in the possession of the commenting parties." *Id.*

Response to Notice of Proposed Rulemaking

35. Approximately 90 parties filed formal responses to our *Notice of Proposed Rule Making.* For purposes of responding to these comments we have divided our discussion roughly into three parts. The first relates to the question of the impact of cable television distant signal carriage on television broadcast service to the public. The second relates to the syndicated program exclusivity rules, a matter that in part relates to distant signal impact on broadcast service, in part to the impact of distant signal carriage on the supply of television broadcast programming, and in part to other concerns relating to property rights in television programming and the functioning of the copyright laws. The third involves the retransmission consent proposal, copyright concerns, and the functioning of markets for television programming. These issues are, we recognize, interwined both in the comments of various parties as well as in actual substance. This division, however, provides a useful format for discussing the extensive comments received.

Preliminary Procedural Issues

36. *Burden of Proof.* Before proceeding to discuss the substantive aspects of our proposed action and the comments received in response to it, a number of the commenting parties raise a general issue which warrants consideration. These parties urge that the Commission has in this proceeding improperly or unfairly placed or shifted the burden of proof to those persons who seek retention of distant signal carriage restrictions on cable systems. WTVC *et al.*, for example, state that we have unreasonably or unlawfully imposed a substantially higher burden of proof of persuasion on those favoring a retention of the rules which the Commission cannot cure by declaring that these interests "uniquely" possess relevant information which, if not submitted, will be taken as effective default. In a similar vein, Tribune Company says that we cannot avoid meeting the burden normally placed on a proponent of a proposed action by placing the burden on the proposal's opponent if the studies have failed to support our conclusions. KOB–TV *et al.*, express the view that since neither of the *Reports* contain an order or the equivalent of final action, any alleged attempt to treat the "injury" question as resolved or to shift the burden of proof is meaningless.

37. In *Home Box Office v. FCC, supra,* at 36, the Court stated that a "'regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem does not exist,'" quoting *City of Chicago v. FPC,* 458 F. 2d 731, 742 (D.C. 1971), *cert. denied* 405 U.S. 1074 (1972).

38. In *International Harvester Co. v. Ruckelshaus,* 478 F. 2d 615, 642–643 (D.C. Cir. 1973), the Court said:

> When certain material "lies particularly within the knowledge" of a party, he is ordinarily assigned the burden of adducing the pertinent information. This assignment of burden to a party is fully appropriate when the other party is confronted with the often-formidable task of establishing a "negative averment." *United States v. Denver & R.G.R. Co.,* 191 U.S. 84, 92 (1903).

39. In the *Economic Inquiry Report,* the *Syndicated Exclusivity Report,* and the *Notice of Proposed Rule Making* in this proceeding we have set forth in considerable detail the foundation for the rule change proposal. We recognize that the responsibility for making a reasoned decision rests with us and that our role is not to be that of a simple referee between the contesting interests. We have met our responsibility for adducing the evidence aggressively and, we believe, fairly. But it must be recognized that our resources are limited, especially in relation to the commercial parties involved in this proceeding. If publicly available information suggests certain facts and private parties contest those facts rhetorically but fail to provide data to support their argument, we believe we are justified in concluding that the absent information would not have furthered these parties' position. In our *Notice of Proposed Rule Making* we sought, with a full awareness of our responsibilities under 5 U.S.C. § 553 of the Administrative Procedure Act and applicable case law, to indicate that parties ought to assist us in meeting our burden if they expected us to reach a conclusion that would be sustainable under judicial scrutiny.

40. Recently, the level of specificity of record evidence to support agency rulemaking has been heightened through case law. The Supreme Court many years ago in *Pacific States Box & Basket Co. v. White,* 296 U.S. 176, 186 (1935) enunciated the principle that:

> Where the regulation is within the scope of authority legally delegated, presumption of the existence of facts justifying its specific exercise attaches alike to statutes, to municipal ordinances, and to orders of administrative bodies.

The Attorney General's Manual on the Administrative Procedure Act (1947) stated, in describing the rulemaking process, that:

> [F]indings of fact and conclusions of law are not necessary. Nor is there required an elaborate analysis of the rules or of the consideration upon which the rules were issued. *Id.* at 32.

41. The trend now, however, seems to be toward the requirement of a far more elaborate specification of the evidence:

> Once it was the general judicial practice to treat rules much like legislation. Once the question of the agency's statutory authority was settled, the main question was the traditional Brandeisian one: whether any set of facts could be imagined to support the rule in question. The decisions of our court for several years, as well as the Supreme Court's scrupulous review of the materials amassed by the ICC in the *Allegheny-Ludlum* rulemaking case, suggest to me that agencies are properly being held to a higher burden of justification. (footnote omitted) [27]

This is especially the case when, as here, First Amendment and national policies favoring competition coincide.[28]

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[27] Wright, "Court of Appeals Review of Federal Regulatory Agency Rulemaking," 26 Ad. Law Review 199, 207–208 (1974).

[28] *Home Box Office* v. *FCC, supra,* at n. 67. This is not to suggest that the burden of justification is unreasonably high, for as the same Court in a succeeding case of the same name stated "we may not demand complete factual support in the record for the Commission's judgment insofar as it rest[s] upon factual determinations that '[are] primarily of a judgmental or predictive nature'; for 'a forecast of the direction in which future public interest lies necessarily involves deductions based on the expert knowledge of the agency.'" (cititions omitted). *Home Box Office* v. *FCC,* 190 U.S. App. D.C. 351 (1978). As recognized by the Supreme Court, the strength of the record evidence to support an informal rulemaking action should not be confused with the statutory requirement of "burden of proof" under 5 U.S.C. § 556(d) of the Administrative Procedure Act. *American Trucking Ass'n* v. *U.S.,* 344 U.S. 298, 320 (1953); *See also U.S.* v. *Allegheny-Ludlum Steel Corp.,* 406 U.S. 742, 756–757 (1972). As to the soundness of the record evidence supporting

Footnotes continued on next page

42. Our intention in suggesting that parties wishing us to change our course and retain regulations or adopt alternative regulations provide us with evidence was simply to put them on notice that we would be unable to comply with our responsibilities under the law if we lacked evidence to support our conclusions, and that parties should assist us in obtaining that information if they were to obtain a positive response to their arguments. We do not believe that in doing this we have in any way improperly altered the burden of proof.

43. *Prejudgment.* In a somewhat related argument some parties have suggested that the outcome of this proceeding has been prejudged. They complain that the consultants used by the Commission had fixed views on the subject matter which were well known before they were hired, that Chairman Ferris in a speech indicted his predisposition, and that the very content of the *Notice* suggested prejudgment by its certitude. We reject categorically all of these arguments. The consultants we hired have well established reputations in the field, have a broad knowledge of it, and appeared to us to be virtually the only individuals with the required knowledge and with national reputations who were not already under contract to one of the interested parties and were available to us. No specific improper conduct on the part of any of them is alleged. The full text of the Chairman's speech seems to us to make it absolutely clear that his mind remained open for the objective consideration of the evidence. And the material in the Two *Reports* and the *Notice of Proposed Rule Making* seems to us entirely in keeping with their intended function of placing the public and interested parties on notice of the preliminary judgments reached in this matter so that responsive comments could be as focused and useful as possible.[29]

44. *Delay.* Another general procedural point raised in some of the comments concerns requests that further action in this matter be delayed pending the occurrence of various events. For example, the Motion Picture Association of America in its comments in the syndicated exclusivity inquiry urged the Commission to make no modification in the exclusivity rules "until the Copyright Royalty Tribunal is constituted and prepared to conduct the royal rate review that such modifications would require."[30] Others have urged that, until legislation is forthcoming, no further deregulatory action should be taken and that "the Commission should defer all action in this proceeding until such time as Congress has acted on the Broadcast/CATV provisions of the Communications Act Rewrite Bill currently pending before it."[31] Fisher Broadcasting also asks that the Commission "defer all action in this proceeding until such time as it has adopted and provided sufficient time to evaluate, *inter alia,* local origination requirements for cable television systems (RM–3430), recommendations of the UHF Comparability Task Force (Gen. Docket No. 78–391), opportunities for minorities and women to become television and radio owners and operators, etc. [sic]"[32]

45. In addition, we have been asked by Congressman Robert W. Kastenmeier, Chairman of the House of Representatives Subcommittee on Courts, Civil Liberties, and the Administration of Justice (the House Subcommittee with responsibility for copyright matters) to "delay taking any action which would disturb the delicate balance of copyright and communications policy until the Copyright Royalty Tribunal has been given an opportunity to carry out its 1980 review and Congress is in a position to respond, if necessary."[33] A number of similar requests were also received from other members of the Congress.[34]

46. Endemic to the cable television regulatory process is the problem of delay. Almost fifteen years ago it was proposed that new cable systems be prohibited from carrying distant signals for a period of five years "to allow time for UHF stations' growth and, perhaps, resolution of the copyright question."[35] When the cable television copyright issue was first before the Supreme Court, eight years before the Copyright Act was finally revised, the Solicitor General suggested to the Court that it "defer judicial resolution of the . . . case in order to allow a speedy completion of the pending legislative proceedings."[36] In 1972, the Commission was urged to delay implementing already adopted cable television rules until Congressional enactment of copyright legislation.[37]

47. This historical experience suggests to us that delay is not likely to either be as short as is initially anticipated or to improve the policy making processes in this difficult area. All of the evidence in this proceeding has been carefully accumulated and action seems to us already overdue. This is especially the case with respect to the syndicated program exclusivity rules which, when the *Inquiry* proceeding commenced, were said by the Commission to deserve "prompt and expeditious handling" with the Commission's consideration of the matter to be concluded by *January 1, 1978.*[38]

48. We are also required by the decision in *Geller* v. *FCC, supra,* to review those aspects of the rules that grew out of the 1972 "Consensus Agreement." And we have been reminded recently by the D.C. Circuit Court of Appeals in another context that "delay in the resolution of administrative proceedings can also deprive regulated entities, their competitors or the public of rights and economic opportunities without the due process the Constitution requires." (footnote omitted).[39] We believe our obligation to proceed with the resolution of this matter is clear. We would note, however, that even proceeding as expeditiously as we are able, the rule changes adopted will not become effective much before the time when the Copyright Royalty Tribunal's initial deliberations should be complete and that development of new cable

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Footnotes continued from last page
the *Notice of Proposed Rule Making* in this proceeding, we believe that its evidential foundation was more than adequately detailed in the *Economic Inquiry Report,* the *Syndicated Exclusivity Report,* and the *Notice of Proposed Rule Making* itself.

[29] It should be noted that we have already issued a partial response to some of these allegations. *In the Matter of McKenna, Wilkinson & Kittner,* FCC 79–717,——FCC 2d——(1979).

[30] Motion Picture Association of America, comments in Docket 20988, April 13, 1977 at p. 8.

[31] Fisher Broadcasting Inc., comments in Dockets 20988 and 21284, March 17, 1979 at p. 2.

[32] We were also requested to hold further oral proceedings in this Docket which would in our view also have resulted in a further long delay in the resolution of this proceeding. That request has been the subject of a separate opinion. See *Memorandum Opinion and Order in Dockets 20988 and 21284,* FCC 80–442,——FCC2d——(1980).

[33] Letter of March 13, 1980.

[34] On the other hand, Congressman Van Deerlin, Chairman of the House of Representatives Subcommittee on Communications, wrote the Commission before this proceeding was even commenced, stating "Now that the Copyright Revision Act is law, I urge you not to delay in your reconsideration of the sydicated program exclusivity rules." Letter of October 21, 1976.

[35] Statement of Commissioner Kenneth A. Cox, concurring in part, and dissenting in part to the *Second Report and Order in Dockets 14895, 15233, and 15971,* 2 FCC 2d 725, 817 (1966).

[36] *See Teleprompter Corp. v. CBS,* 415 U.S. 394, n. 16 (1974).

[37] *Reconsideration of Cable Television Report and Order,* 36 FCC 2d 326, 328 (1972).

[38] *Notice of Inquiry in Docket 20988, supra,* at para. 9.

[39] *MCI Telecommunications Corp.* v. *FCC* Case No. 79–1119, slip opinion at 43 (D.C. Cir., April 2, 1980). See also *Delay in the Regulatory Process,* Senate Document No. 95—72: "Delay in the regulatory process is not merely an irritation. It can add enormous expenses for business that are eventually reflected in higher prices and increased unemployment." (p. 176).

television systems, especially in the major television markets, will occur slowly and should leave ample time for legislative consideration of the changes we are adopting.

II. The Effect of Distant Signals on Television Service to the Public

49. There are in excess of 1000 television stations and 4000 cable television systems in operation, serving together almost 74 million television households in the United States. Every year financial and programming data is filed with the Commission and audience survey information is collected by commerical audience survey organizations. This information provides the raw data from which judgments can be made and estimates created as to the existing and potential impact of cable television distant signal carriage on the television service received by the public.

50. Our *Report in Docket 21284* and our *Report in Docket 20988* represented the culmination of years of intensive research on the effect of distant signals on television service to the public. Estimates of the future are, of course, inherently uncertain. But in our *Inquiry Reports* we used the information available to us along with certain mathematical tools and with the assistance of the commenting parties sought to reduce these uncertainties to a manageable level. Various approaches to the question were used in order to increase the degree of certainty of our findings, including consideration of gross trends (TV station revenues and profits, television's share of total advertising, growth in television homes and in UHF television homes), econometric analyses of audience data, and case studies of situations intended as proxies of a potentially unregulated cable television future. We examined the supply and demand for cable television, the amount of audience that cable television diverts from local broadcast stations, and the effect that this loss in audience has on both the viability of local stations and the public service programming that they broadcast. To completely appreciate the the care with which we approached this task, the two *Inquiry Reports* and the *Notice of Proposed Rule Making* must be read in their entirety. In brief, however, our conclusion was that the vast majority of television viewers either stand to benefit or will be unaffected if the Commission's regulations regarding distant signals are relaxed.

51. As previously indicated, our discussion will be divided into three parts relating to: impact on television service to the public, the syndicated program exclusivity rules, and the retransmission consent and associated proposals. In each section we will review the substance of the findings from our *Inquiry Reports*, the comments received addressed to these findings, our response to these comments and our general conclusion with respect to each issue.

52. We turn first to the question of the impact of cable television distant signal carriage on television service to the public. The general proposition put forth in favor of distant signal regulation is that, in the absence of regulation, cable operations carrying distant signals will continue to grow, that local audiences will be attracted to cable delivered distant signals reducing the audiences of local stations which will in turn reduce the amount that advertisers are willing to pay to local stations causing the overall revenues of stations to decline. Stations will then, it is posited, reduce the amount of public service or "merit" programming they broadcast, generally reduce the quality of the service they provide, or, in the extreme, terminate operations and go dark.

53. Our economic analysis set about to test the validity of this model of what competition would be like in the absence of regulation. We resorted first to econometric and mathematical modeling techniques. That is we attempted to construct a rigorous model of the interaction of the cable and broadcast industries and, making use of many observations from the available evidence, construct, either manually or using computers, statistical models into which various assumptions could be placed for testing. The particular value of the econometric technique is that results are developed that have degrees of certainty attached to them and which indicate the influence of particular variables among many in contributing to the overall result. While these econometric techniques can be highly sophisticated and make it possible to account for a large number of variables at the same time, they are only as good as the data and the assumptions from which they are made up. As a cross-check for the econometric projections we also reviewed in detail actual case studies of markets or stations in which cable had been permitted, for various historical reasons, to grow without the limitations that are otherwise established by our regulations. The degree of confidence placed in our conclusions in making the proposals in this proceeding stems in large part from the findings of these case studies which represent in many respects an actual market test of the policies proposed in major aspect devoid of the speculations that are otherwise part of the process of projecting into the future.

54. Our *Reports* received extensive criticism from the television broadcast and television program production industries. However, as we believe our review of the evidence will demonstrate, no evidence has been presented that shows consumers will be disserved by the additional competition from cable television. Instead, the parties have attempted to shroud our conclusions in doubt by criticizing some of the analysis that we relied on. We have reviewed carefully all of the comments in the record and believe the discussion in this section will demonstrate that the criticisms are invalid or do not bear on our ultimate conclusions.

Statistical Models

55. In considering the impact of distant signal carriage on broadcast service to the public we turn first to the econometric and statistical models relating to: (1) the supply and demand for cable television service, (2) the audience impacts of distant signal carriage, and (3) the impact of audience changes on public service programming by television stations. This parallels the discussion which is found in Sections II, III, and V of our *Economic Inquiry Report*. It is important, however, to keep this discussion in proper perspective. Many of the criticisms are minor and, even if correct, not outcome determinative. Moreover, the evidence relied on most heavily in reaching our ultimate conclusion is not at all refuted: local stations have prospered despite the presence of high degrees of cable penetration and the carriage of large numbers of distant signals by the vast majority of cable systems in those markets where cable developed prior to our regulation. The parties opposing our conclusions do not address this finding but, instead, focus their comments on evidence which has less importance for our overall conclusion. Thus, the discussion in this section is weighted toward topics which never cut to the heart of the research that is presented in the *Inquiry Report*. While this framework appears to be unavoidable, we note again that this part of our discussion should be kept in the proper perspective.

56. *Supply and Demand for Cable Television.* To judge potential cable television impact on broadcast service it is necessary to have some estimate of the amount of cable television service that is likely to develop. Moreover, the effect of limiting distant signal carriage on cable demand is of particular

importance in assessing the social costs that are imposed by our existing rules.

57. In order to obtain this information we undertook an analysis in the *Economic Inquiry Report* [40] which consisted of five major parts: (1) an historical analysis of the development of the cable television industry by size of market, (2) a summary analysis of the economics of the cable television industry, (3) a summary analysis of the demand for cable television, (4) a discussion of the necessary conditions for the viability of cable television in various kinds of markets, and (5) conclusions regarding untimate levels of cable penetration in individual markets. A brief synopsis of our findings for each of these parts is presented here.

58. Our *Report* showed that the growth of cable television has been inversely related to market size. Cable television generally serves communities with limited local television service or poor off-the-air reception. We found that two-thirds of the approximately 50 million households not now offered cable service are within the "metro" areas of the top 100 markets and 60 percent are in the metro areas of the top 50 markets alone. We concluded that for the cable television industry to match its growth of the past ten years, service must be provided to the large cities which have not yet attracted sufficient funds for construction. Whether these large cities are provided cable television service in the future will depend upon the economics of supply and demand in the cable television industry, including the effects of governmental regulation.

59. We studied the factors affecting cable system viability under various marketplace conditions because viability under various circumstances will determine the industry's future growth. The viability of cable operation is determined by its costs, such as capital costs, construction costs, and operating expenses (i.e., supply factors), and by its revenues (i.e., demand factors).

60. The demand for cable television commonly is measured by the penetration (or saturation) rate: the number of households that subscribe to cable service as a percentage of those offered service. It is important to note that the terms penetration rate, penetration level, and cable penetration often are used interchangeably. For example, we treat the penetration rate as equivalent to cable penetration, although the term, "systemwide cable penetration," actually may be the more appropriate usage. This is true because the terms penetration level and cable penetration also are used to denote the percentage of total television homes in a county or television market that subscribe to cable television (whether or not all of the television homes are offered cable service). In these cases, the more appropriate usage, to avoid confusion, may be countywide or marketwide cable penetration. Nevertheless, we believe that the appropriate meaning of these terms should be apparent from the context in which they appear.

61. A large number of factors affect cable demand—including especially the number and type of signals available over-the-air versus on cable, the reception quality of local signals, the subscription price, and the demographic characteristics of the households offered the service.[41] The extent to which these factors affect the demand for cable television has been analyzed in detail in five major econometric studies.[42] These studies find that the quantity and reception quality of the signals available over-the-air are key determinants of cable penetration. Additionally, the ultimate penetration rate for cable systems in the urban areas of the top hundred markets generally has been predicted to reach only 20 to 40 percent at the prevailing monthly rates in these areas, even with the importation of a substantial number of distant signals. These estimates are supported by current cable penetration data that show, in urban areas with good signal reception quality, systemwide cable penetration often is less than 35 percent. Or, to be conservative, these results imply that if every household in the urban areas of the top hundred markets had access to cable television, less than forty percent of all households in these areas would subscribe to the service.

62. The effect of distant signals on cable demand is particularly important in assessing the consumer welfare costs of our cable regulations. If consumer demand for distant signals is significant, our signal carriage restrictions result in large sacrifices of welfare for subscribers and potential subscribers. Most of the studies of cable demand estimate that the carriage of four distant independent signals will increase system penetration rates by at least nine percentage points on average. The effect of distant duplicating network stations on cable demand has been estimated to be similar to that of distant independents.

63. The supply of cable television also has received extensive analysis. Numerous models have been developed to determine the level of cable demand that would be required to generate enough revenues to cover system costs.[43] The conclusion from these models was that breakeven system penetration rates were in the 30 percent to 40 percent range. These estimates were for prevailing prices and for urban areas of the top hundred markets.

64. The final financial parameter for cable television operation considered here is pay cable. The advent of pay television as a service option for the cable television industry potentially can affect both the supply and demand for cable television. Currently, pay cable generally is offered as a pay channel (consisting primarily of movies) only to subscribers of the basic cable service. Only about one-third of all basic cable subscribers that have access to a pay channel subscribe to it. However, the extent to which pay cable will affect the growth of cable television cannot be precisely determined. The continued development of competing services such as multi-point distribution systems, subscription television stations, and video cassettes should have an effect on

[40] *Report in Docket 21284, supra*, at paras. 74–96.

[41] It should be noted that many commenting parties have criticized the Commission for failing to analyze more closely the demographic characteristics of cable television households. It was believed that a more thorough evaluation of the social costs of cable television deregulation should have been performed by placing greater emphasis on the criterion of distributional equity. This criticism will be addressed more specifically below. Briefly, however, we felt it unnecessary to consider the demographic issue raised in great detail because we concluded that the risk of distributional effects resulting from the rule changes proposed is negligible.

[42] W. S. Comanor and B. M. Mitchell, "Cable Television and the Impact of Regulation," 2 *Bell Journal of Econ. and Management Sci.* 154 (1971); R. E. Park, "Prospects for Cable in the 100 Largest Television Markets," 3 *Bell Journal of Econ. and Managment Sci.* 130 (1972); Noll, Peck and McGowan, *Economic Aspects of Television Regulation* (1973); Charles River Associates, Inc., "An Analysis of the Demand for Cable Television," (1973); The John Hopkins University Center for Metropolitan Planning and Research, K. Lyall, R. Duncan, and C. DeKay, *Estimation of an Urban Cable Demand Model and Its Implication for Regulation for Major Markets* (1976).

[43] W. S. Comanor and B. M. Mitchell, "Cable Television and the Impact of Regulation," 2 *Bell Journal of Econ. and Management Sci.* 154 (1971); B. Mitchell and R. Smiley "Cable, Cities and Copyrights," 5 *Bell Jour. of Econ. and Management Sci.* 264 (1974); R. Crandall and L. Fray, "A Reexamination of the Prophecy of Doom for Cable Television," *Id.*; Noll, Peck and McGowan, *Economic Aspects of Television Regulation* (1973); Mitre Corporation, *Urban Cable Systems* (1971); Rand Corp., L. Johnson, *et al., Cable Communications in the Dayton Miami Valley Area: Basic Report* (1972); The John Hopkins University Center for Metropolitan Planning and Research, *Economics of Cable Television in Urban Areas: Baltimore City* (1975); The John Hopkins University Center for Metropolitan Planning and Research, *Economic Feasibility of a Cable Systen for Cleveland* (1976); and Cable Television Information Center, *Cable Television Options for Jacksonvile* (1973).

the growth of both pay cable and the cable television industry.[44]

65. The ultimate cable penetration in an individual market will depend upon the availability of cable television service and the number of households that will subscribe when offered service. Due to the complexity of and the large variation in the factors involved, it is difficult to assess the extent to which cable television will grow to serve new areas. One factor is apparent, however: even if the demand for cable television increases to the point of surpassing the breakeven penetration rate required for new system growth, the demand for basic cable television service in the urban areas of the larger markets is generally such that not more than forty percent of the total number of households offered the service would subscribe.[45] Using this estimate, combined with the higher estimated penetration levels in other areas we concluded that the total number of cable subscribers in all markets will not be greater than about forty-eight percent of the total number of television households within the foreseeable future, even with unlimited distant signal importation.[46]

66. The Commission's analysis of the supply of and demand for cable television has not received extensive criticism. Only a handful of parties have taken exception to various parts of this section of the *Report*. We believe these comments, when properly analyzed, do not weaken our conclusions from this section that (1) the future growth of cable will be very dependent upon the ability of cable operators to offer consumers additional program choices and innovative services at attractive prices and (2) that no more than about 48 percent of the nation's television households will subscribe to cable television within the foreseeable future. In fact, the comments if anything tend to confirm our belief that the estimates arrived at were reasonable. Some of the commenting parties, in an effort to suggest that cable's impact on television broadcast service will be greater than our estimates, have suggested that we underestimated the likely growth of cable. Others, in an attempt to suggest that cable will never make a major contribution to the television service received by the public, have attempted to suggest that our estimates were too high. When the details of these comments are considered, the net result either reveals misunderstanding on the part of the commenting parties or tends to confirm the results of our earlier study.

67. For example, our prediction of an ultimate nationwide cable penetration on more than about 48 percent is criticized as being too low by Boston Broadcasters, Inc.[47] because the top 50 cable television operators currently have a 56 percent penetration. National Broadcasting Company, Inc.[48] argues similarly that cable penetration presently is 50 percent where pay cable is available and, as a result, seriously questions the reliability of the Commission's prediction. Despite our clarification of this point at n. 81 of the *Report in Docket 21284*, these criticisms demonstrate a failure to recognize the difference between systemwide cable penetration and marketwide cable penetration.[49] *Systemwide cable penetration* is defined as the number of cable subscribers to a system, as a fraction of the number of homes passed by cable by that system. *Marketwide cable penetration* is defined as the number of cable subscribers, as a fraction of the total number of television households in the entire market. The statistics furnished by the commenting parties refer to *systemwide* cable penetration. Our estimates pertain to *marketwide* cable penetration. For example, cable systems currently attract an average of about 53 percent of the homes they pass with cable.[50] But this figure *cannot* be extrapolated to the entire nation, *even if every home in the nation were passed by cable*, because two-thirds of the households currently without access to cable television are located in the "metro" areas of the top 100 television markets. The demand for cable television in these areas is significantly lower than in areas currently served by cable due to the large number of signals that is readily available without cable. Or, in other words, the aggregate systemwide cable penetration currently is as high as 53 percent only because cable television has grown to serve first the areas which have the greatest demand for its service. Therefore, if cable grows to serve the large urban areas that have not yet attracted the funds necessary for construction, the aggregate systemwide cable penetration will decrease. Thus, we find this criticism is without merit when the economic evidence is interpreted correctly.

68. The Association of Independent Television Stations, Inc., (INTV) [51] suggests that the estimate of 48 percent nationwide cable penetration must be re-evaluated in light of the cable industry's own predictions. INTV cites *Cablevision* and *Cablecast* to say that "cable industry leaders have predicated 50 percent cable penetration nationally by 1990." [52] The actual statement in *Cablevision*, however, is that "within the next three to five years, it is forecast that cable will serve 30 percent of all households in the United States and an estimated 50 percent of all homes will have cable service *available* to them." (Emphasis added).[53] The 50 percent figure refers to homes passed by cable, not subscribers to the systems. (That is, these households will have access to cable television, but will not necessarily subscribe to the service.) Similarly, not only is the citation to *Cablecast* incorrect,[54] but neither of the two issues which INTV may have been referring to can be used to validate their claim of a 50 percent nationwide penetration by 1990. The closest reference of this prediction in the two issued is that "cable operators are now beginning to realize that if they can sell additional services to, say 70 percent of their subscribers [in urban areas], and if basics are only 40 percent of homes passed, they really have 68 percent penetration. For this they will build." [55] This quotation suggests that a (basic) cable penetration of only 40 percent (of the homes passed by the system) is expected in urban areas. This suggestion corresponds with our estimate of cable demand, and contradicts INTV's claim for 50 percent nationwide cable penetration.

69. INTV also refers to the assumption by Paul Kagan Associates, Inc. that an additional 2.5 million households will subscribe to cable television every year until 1985. INTV then applies the assumption well beyond the range intended and concludes that "the

[44] Compare the comments of Tribune Company in Dockets 20988 and 21284, September 17, 1979 where reference is made to the service MATV subscribers in apartment buildings received from MDS and STV stations as placing "Another damper on demand for cable service * * *." p. 21.

[45] See our discussion in the *Report in Docket 21284* at para. 89–92.

[46] For the complete derivation of this conclusion, see the *Report in Docket 21284* at n. 105.

[47] Comments on Boston Broadcasters, Inc. Dockets 20988 and 21284, September 17, 1979.

[48] Comments of National Broadcasting Company, Inc., Docket 20988 and 21284, September 17, 1979.

[49] Boston Broadcasters, Inc. filed supplemental comments on October 11, 1979 dealing specifically with this point. However, these comments fail to correct their previous error.

[50] See the *Report in Docket 21284* at para. 78.

[51] Comments of the Association of Independent Television Stations, Inc., Dockets 20988 and 21284, September 17, 1979.

[52] *Id.* at 22.

[53] *Cablevision*, "Advertising on Cable: From Madison Ave. to Main St.," October 23, 1978 at 22.

[54] INTV cites *Cablecast*, No. 188, December 18, 1978. The December 18, 1978 issue of *Cablecast* is No. 218. The issue numbered 188 is dated September 12, 1977.

[55] *Cablecast*, Paul Kagan Associates, Inc. No. 218, December 18, 1978.

national cable penetration would exceed 55 percent in less than 15 years." [56] However, the validity of assuming a constant increase in the number of cable subscribers is highly questionable. Growth curves rarely follow this pattern over an extended time period. Instead, a logistic growth curve frequently is used to represent growth processes.[57] This reflects the fact that the most economically desirable locations for cable systems are constructed first and the fact that television viewers most desiring cable service become subscribers first.

70. Boston Broadcasters, Inc. proposes an additional argument for our 48 percent nationwide cable penetration estimate being too low in that it states, "when local stations are deprived of the best in professional sports, the more popular syndicated programming, and popular movies, more and more people will subscribe to cable in order to receive pay cable." [58] We note that the assumption guiding this argument is strikingly similar to that which the Commission relied upon in promulgating its former pay cable rules. In reviewing these rules, the Court found that "if there is any evidentiary support at all [that siphoning is real, not imagined], it is indeed scanty" [59] and as a consequence these rules were eliminated. No evidence has accumulated since the Court's statement and the elimination of the rules, nor has any such evidence been submitted in this record which suggests that such program siphoning will occur.

71. Boston Broadcasters, Inc. also claims that the estimate of 40 percent cable penetration in the metro areas of the top 100 markets is too low because recent surveys in Boston suggest that as many as 40 to 55 percent of the households offered service would subscribe. It seems to us, however, that reliance on surveys such as these should be kept to a minimum given the experience of existing cable systems. Surveys of this type often are unreliable because of the inflated expectation that people have of cable television before receiving the service, especially when pay cable television is included in the marketing package.[60] Actual experience and existing research, indeed, do suggest otherwise.[61]

72. In contrast to the above comments which suggests that cable penetration will be higher than our estimate, others say our estimate is already too high. American Broadcasting Companies, Inc. (ABC) says that "the enormous cost of wiring the nation * * * casts doubt upon achievement of even the 48 percent penetration level projected in the *Economic Inquiry Report.*" [62] It should be noted, however, that the ultimate nationwide cable penetration was estimated by the Commission to be *no more than* about 48 percent, even assuming that all households would have access to cable television. The possibility that all households would have access to cable television is extremely unlikely. Hence, the 48 percent figure represents an upper limit on nationwide cable penetration.[63] We believe this estimate provides a sufficiently conservative [64] basis from which to predict the future long-run impact of eliminating our distant signal carriage and syndicated exclusivity rules on local station audiences.

73. ABC also cites a report from the Commission's Broadcast Bureau on the information developed under the cable economic inquiry which said that "in our review of the demand for cable discussion, we find no indication that the staff performed a critical evaluation of any of the five studies." [65] Similarly, reference is made to the Broadcast Bureau's belief that the "assessment of the future of cable lacks analytical depth." [66] However, as noted in n. 80 of the *Report in Docket 21284,* a comprehensive summary and evaluation of the five studies on the demand for cable television was prepared for the Office of Telecommunications Policy (OTP), Executive Office of the President by six leading scholars in the communications field.[67] We felt this analysis was adequate, and thus determined that an additional detailed review of these studies was unnecessary.[68] Similarly, the assessment of the future growth of cable television relies heavily upon this analysis, together with the very conservative assumption that all households will be passed by cable in the future. We believe this approach provides a sufficient basis upon which to ascertain future potential levels of cable penetration for rulemaking purposes.

74. Some parties also have alleged a failure on the Commission's part to estimate the effect of pay cable on the growth of cable television. For example, Boston Broadcasters, Inc. finds that "amazingly, no consideration has been given by the Commission to the substantial effect that pay cable would clearly exert on the number of cable subscribers." [69] Similarly, INTV notes the inability of the Commission to estimate the effect of pay cable on the supply of cable television and concludes that the "estimate of 48 percent penetration in the foreseeable future appears to be nothing more than a guess." [70] To place the above criticisms into proper perspective, the Commission has found that sufficient data to determine the extent to which pay cable channels will increase the basic penetration rate are not yet available. Thus, the extent to which pay cable will affect the supply of cable television is not fully known at this time. However, no evidence concerning the effects of pay cable on the growth of cable television exists or has been presented which suggests our findings are incorrect. Pay cable, along with competitive services such as multipoint distribution systems, subscription television stations, video cassettes, low power television, and direct satellite to home broadcasting, are in the developmental stage. Any positive effect that pay cable is having on the growth of cable television in the short run is likely to be offset to some extent by competing services in the long run as these services begin to provide consumer access to services which may now be available

[56] *Supra,* n. 51 at p. 22.

[57] *See, e.g.,* Rolla Edward Park, *Potential Impact of Cable Growth on Television Broadcasting,* the Rand Corp. R-587-FF, October 1970.

[58] *Supra,* n. 47 at 9.

[59] *Home Box Office, Inc. v. FCC, supra* at 42.

[60] *See, e.g.,* Walter S. Baer, *Cable Television: A Handbook for Decision-making,* the Rand Corp., R-1133-NSF at 44, February 1973.

[61] This is not to suggest that we would find higher penetration levels undesirable for this would suggest that cable was contributing even more than anticipated to the welfare of subscribers.

[62] Comments of American Broadcasting Companies, Inc., Docket 21284, at 37, August 3, 1979. The ABC comments in this proceeding and those of Bahia De San Francisco *et al.,* are substantially duplicative. Therefore comments attributed to ABC may also generally be attributed to Bahia De San Francisco *et al.,* throughout this discussion.

[63] For further clarification of this point, see n. 86 in the *Report in Docket 21284.*

[64] By conservative we mean a figure which tends to exaggerate the effect of cable television and thus makes any resulting impact estimate an upper bound one.

[65] Broadcast Bureau, Report on Information Developed Under the Cable Economic Inquiry, April 18, 1979 at 29.

[66] *Id.* at 32.

[67] *See* S. M. Besen, B. M. Mitchell, R. G. Noll, B. M. Owen, R. E. Park and J. N. Rosse, *Economic Policy Research on Cable Television: Assessing the Costs and Benefits of Cable Deregulation* (1976).

[68] We also attempted to avoid excessive duplication of the OTP report by focusing the summary of cable demand on factors that are relevant to this proceeding. For example, while ABC seems to believe the sensitivity of demand to price is worthy of review, we do not believe this factor is critical for determining the impact of cable television on local station audiences given that cable system operators set prices to maximize profits and not subscribers.

[69] *Supra,* n. 47.

[70] Comments of Association of Independent Television Stations, September 17, 1979 at 21.

only from cable. This marketplace response also applies to other non-broadcast services offered on cable. That is, if there is a significant consumer demand for other non-broadcast services offered on cable, we expect that these services also will be offered by competing distribution technologies. Most importantly, however, we believe we have adequately dealt with the uncertainties created by these new developments by estimating the effect of pay cable on the growth of cable television using the extremely conservative assumption that cable television will grow to pass every home in the nation. This approach provides an estimate of nationwide cable penetration that has an extremely small probability of being underestimated.[71]

75. The final area of criticism of this section of the *Report in Docket 21284* concerns the effect of additional distant independent signals on the demand for cable television. We found that distant independent signals increase the demand for cable television. While the extent of this increase is unclear, most studies estimate that the carriage of four distant independent signals will increase system penetration rates by at least nine percentage points on average. It is important to note that this increase is for system penetration rates and not county or market cable penetration. If some households in a television market do not have access to cable television, the effect of distant signals on marketwide cable penetration will be less than that on system penetration rates.

76. The National Association of Broadcasters (NAB) [72] performs its own analysis of the studies on cable demand and argues that our finding of the consensus of the effect of distant independent signals on cable demand is too high. On the other hand, Boston Broadcasters, Inc. expects that "the increase would be even greater [than the Commission estimates] in areas where the quality of television reception off-the-air is reasonably good."[73] INTV seems to believe that the extent of the increase in cable demand from additional independent signals is unclear.[74]

77. The only discussion in the comments that evaluates the findings of the studies on the demand for cable television is provided by NAB. NAB addresses five studies on cable demand, including that by Wharton Econometric Forecasting Associates which was undertaken as part of their audience model developed for this proceeding. For background in evaluating NAB's discussion, it should be noted that Noll, Peck, and McGowan present two studies of cable demand in their book by collecting data for two distinct samples.[75] One sample was chosen specifically to estimate the demand for cable television in the 100 largest markets. However, the authors found that "when this is done there is very little intersystem variation in the cable viewing options relative to over-the-air options so that the impact of added viewing options cannot be reliably estimated."[76] That is to say that in their sample of systems in the larger markets, most systems carry roughly the same number of distant signals and are faced with similar competition from local over-the-air television signals. Since there is little variation in the signals available to cable and non-cable households among large markets, it is difficult to estimate systematically the effect of additional signals. As a result, Noll, Peck and McGowan report that the overall explanatory power of this study is very low, and characterize it as having "highly inconclusive results."[77] In fact, when estimating the value that consumers derive from "free" television, an extremely important measure for the conclusions reached in their book, the authors do not rely upon this study, but rather rely upon their second study of cable demand. Resultantly, we did not include the study with highly inconclusive results among the five studies of cable demand reviewed in the *Report in Docket 21284*. Instead, we relied upon the second study performed and favored by the authors in their own work.

78. With this background, we find that in NAB's discussion of the studies of cable demand, reference is made to the study by Noll, Peck and McGowan that is not included in our review. We do not believe that any reliance can be put on this study. Hence, we find any conclusions that NAB attempts to draw from it unacceptable. Similarly NAB also criticizes our reliance on the study by Park, "Prospect for Cable in the 100 Largest Markets"[78] Because "Park's results, by his own admission, were not directly applicable to major television markets because most systems existing in 1970 were located in areas where off-the-air service was poor, due to lack of stations or bad reception."[79] This criticism also is without merit. Park characterizes his sample by saying the "model is developed using a sample of 63 cable systems located where several signals can be received over-the-air with no particular reception problem."[80] Additionally, Park says that the "levels of [off-the-air] service [in the communities served by these systems] are roughly the same as those found in most of the top 100 markets."[81] Hence, NAB's review of the Park study is in error.

79. Taking the above criticisms of NAB's review of the studies on cable demand into account, we believe that our finding of the effect of additional distant independent signals on the demand for cable television remains sound. Most studies estimate that the carriage of four distant independent signals will increase system penetration rates by at least nine percentage points on average. However, NAB contends that the Wharton study submitted with NAB's comments in response to the Commission's original *Notice of Inquiry in Docket 21284* is worthy of far more confidence than previous efforts to estimate the significance of the various factors which influence demand for cable television. For example, NAB draws upon the Wharton study to conclude that in a market with three

[71] ABC in its comments has set forth some estimates of the cost of wiring the nation with two-way cable service. According to ABC "even assuming a very conservative household cost of $4,000, it would cost *$243 billion* to provide the presently unwired 60.8 million households with cable television service." Comments filed August 6, 1979 at 38. While these estimates are merely extrapolations from a study completed in 1968 and may not be very scientific, they do suggest why we believe our use of a 100 percent wiring assumption is extremely conservative.

[72] Comments of the National Association of Broadcasters, Dockets 20988 and 21284, September 17, 1979.

[73] *Supra*, n. 47 at 6.

[74] Although these parties differ on the facts, each uses its version to argue against changes in the rules. Thus, Boston Broadcasters, Inc. argues that the estimated effect of distant signals on cable penetration is too low because cable penetration is correlated positively with audience diversion. Hence, if the predicted cable penetration was higher, the predicted audience losses due to cable also would be higher. On the other hand, NAB argues that the effect of distant signals on cable demand is not substantial because it realizes that the major reason for allowing the importation of distant signals is the benefits that consumers derive from these signals. If there was little increase in cable penetration, NAB could argue more convincingly that distant signal importation is not in the public interest. We note, however, that NAB's argument is not very persuasive from a theoretical perspective. If consumers did not demand distant signals, cable systems would not import them. Furthermore, if no one were to watch distant signals, there would be no audience diversion from the local stations, so presumably NAB would not have cause for concern with importation of distant signals.

[75] Noll, Peck, and McGowan, *Economic Aspects of Television Regulation* (1973).

[76] *Id.* at 292.

[77] *Id.* at 293.

[78] Rolla Edward Park, "Prospects for Cable in the 100 Largest Television Markets," *3 Bell Jour. of Econ. and Management Sci.* 130 (1972).

[79] *Supra*, n. 72 at 79–80.

[80] *Supra*, n. 78 at 130.

[81] *Id.* at 136.

local independent stations in addition to three network affiliates, increasing the number of imported distant independents from 1 to 6 leads to an increase in cable penetration of 3.1 percent. NAB proceeds to conclude that "rarely will the projected increase of 3 or 4 precent fall at the critical margin of deciding whether or not to construct a cable system in a particular television market." [82] However, NAB has erroneously interpreted Wharton's treatment of cable penetration. Wharton defines cable penetration as the number of cable subscribers in a county as a fraction of the number of television households in that county.[83] This is not equivalent to systemwide cable penetration as NAB infers. Thus, NAB has made an error similar to that of INTV and other commenting parties in this proceeding as to the appropriate use of cable penetration. In this case, NAB mistakes countywide cable penetration for systemwide cable penetration. Since some homes will not have access to cable television, the effect of distant signals on countywide cable penetration will be less than that on systemwide cable penetration. Hence, Wharton's results are not necessarily inconsistent from those of the other studies of cable demand.

80. In summary, the criticisms leveled at the *Report in Docket 21284* have not persuaded us that our analysis of the supply and demand of cable television is incorrect. We continue to believe that the future growth of cable television will be dependent upon the ability of cable system operators to offer consumers additional program choices and innovative services at attractive prices. We also believe that no more than about 48 percent of the nation's television households will subscribe to cable television within the foreseeable future. We regard this estimate as sufficiently conservative to account for the possible effects of pay cable on system growth.

81. *The Impact of Distant Signals on Local Station Audiences.* Having developed some understanding of likely cable television growth patterns, the next step in our analysis in the *Economic Inquiry Report* was to obtain information on the audience behavior of cable television subscribers with access to distant signals. From this, estimates of the total local station audience impact likely to result from elimination of the distant signal carriage rules could be developed. In the *Inquiry* stage of this proceeding we were fortunate to have available a wealth of new information made available in large part due to new audience data from the audience rating services on the viewing habits of both cable and non-cable households in individual counties. Four major studies that made use of these new data were relied on heavily by the Commission. These studies were prepared by the National Cable Television Association (NCTA),[84] the Motion Picture Association of America (MPAA),[85] Wharton Econometric Forecasting Associates (WEFA) for the National Association of Broadcasters,[86] and Dr. Rolla Edward Park of the Rand Corporation under contract to the Commission.[87]

82. The NCTA, in a study of 109 stations operating in television markets with greater than 33 percent cable penetration, reported that the average audience diversion due to cable for the entire day is 8 percent, and is greatest in smaller markets. For instance, in one- and two-station markets cable diverts an average of 10 percent of audience, while in markets with three or more network stations, cable diverts an average of only 4 percent of potential audience. This difference is attributable to, in large part, the importation of the second and/or third network signal into the smaller markets. The diversion from UHF licensees was found to be one-third of that from VHF licensees because of the greater improvement in reception that cable television provides UHF stations. Additionally, since no market with greater than 33 percent cable penetration contains a local independent station, NCTA also analyzed the effect of cable on the audiences of mature UHF independents. Of the fifteen mature UHF independents for which the necessary viewing data are available, NCTA reported that cable augments the viewing of thirteen of these stations. Two UHF independents experienced an audience loss averaging 1.5 percent. We noted that the studies by NCTA do not adjust for the greater amount of television viewing by cable subscribers, nor do they estimate the effect of alternative signal carriage rules.

83. The MPAA study focused on individual counties rather than on an entire market and found that local stations lost more audience as the proportion of television households in a county subscribing to cable television increased. The audience diversion attributable to cable at a 12.5 percent cable penetration was reported to be 2.4 percent. At 50 percent cable penetration, audience diversion due to cable increased to about 15 percent.

84. The applicability of the results of the MPAA study are limited somewhat due to the aggregation of county data. MPAA aggregates all of the counties in its sample by the level of cable penetration and disregards the complement of local signals in the counties. However, the audience diversion for the local stations due to cable television is likely to differ substantially depending upon the number of local signals, even if the level of cable penetration is identical. For example, holding other factors constant, cable television diverts more audience where there is only one local signal because of the importation of a second and third network signal. Thus the applicability of the general results presented by MPAA is inadequate for assessing the effect of cable on local stations for any specific case.

85. While the above studies provided a "snap shot" view of the impact of cable television on local station audiences, the NAB–WEFA and Park studies, which were also relied on, attempted to estimate by econometric methods the effect of a *change* in the number of imported distant signals on local station audiences.

86. The NAB–WEFA study is an ambitious and comprehensive undertaking that compiles data for all counties for which viewing data are available for both cable and non-cable households. The model, however, employs a highly complex structure which increases the difficulty of analyzing simulations of the model. While we found certain flaws in the model which were reviewed in the *Economic Inquiry Report* and which we believed biased the finding that small independent stations suffer most from additional distant signals on cable, we were able to use it in terms of marketwide impacts by aggregating the predicted impacts to both independent stations and network affiliates, thereby providing one estimate for the entire market. For example, our summary of the NAB–WEFA results for large markets containing independent stations was that increasing the number of

[82] *Supra*, n. 72 at 84.

[83] Wharton treats each county as representative of a market. Hence, countywide cable penetration is treated as analogous to marketwide cable penetration.

[84] National Cable Television Association, comments in Docket 21284, March 15, 1978.

[85] Motion Picture Association of America, reply comments in Docket 21284, June 20, 1978.

[86] National Association of Broadcasters, comments, "The Impact of Cable TV on Local Station Audience" prepared by Wharton Econometric Forecasting Associates, Docket 21284, March 15, 1978.

[87] R. E. Park, "Audience Diversion Due to Cable Television: A Statistical Analysis of New Data," the Rand Corporation, prepared for the Federal Communications Commission, January 1979. Attached as Appendix A to the *Report in Docket 21284*.

distant independent stations from 1 to 6 would reduce local station audiences by 10 to 13 percent at a 50 percent marketwide cable penetration.

87. In small markets, where *no* adjustments to the NAB–WEFA model were made, NAB–WEFA found that increasing the number of distant signals from 1 to 6 would reduce local station audiences by 8.7 to 12.7 percent at a 52 percent marketwide cable penetration, depending upon the number of local signals. Finally, in medium-sized markets with three local stations, increasing the number of distant independent signals from 2 to 5 was predicted to decrease local station audiences only by 6.5 percent, even at the unreasonably high marketwide cable penetration of 68 percent. In neither case were the findings inconsistent with the results of the other studies in this proceeding.

88. Park, in a study done under contract to the Commission, estimated the effect of additional distant signals on local station audiences by using a simpler model based on a sample of 121 counties. He provides estimates of audience diversion due to cable under both the current signal complement permitted by the FCC rules and under relaxed signal carriage rules. The estimates for each are provided at both current and projected ultimate cable penetration levels. At current cable penetration, the incremental audience diversion from eliminating the signal carriage rules is estimated by Park to be 14 percent or less for all cases. At the projected ultimate marketwide cable penetration levels, the incremental audience diversion is estimated to be less than 20 percent in all but the smallest markets. However, we characterized Park's long-term results as being overstated, especially in small markets, because the projected ultimate cable penetrations are too high.[88] Hence, we interpreted Park's results for the long term as predicting virtually no scenario where the relaxation of the signal carriage rules will generate more than a 20 percent audience diversion. It should also be noted that we had numerous other problems with the Park model, aside from the projected levels of cable penetration, that led us to conclude that Park overestimated the effect of eliminating the signal carriage rules. These problems are important to note in assessing our conclusion of the general consensus of the impact of cable television on local station audiences. They will be discussed in detail below.

89. In conjunction with these four studies as well as the other comments received, we also analyzed the current impact of cable on local station audiences for six grandfathered markets, seven independent stations, and nineteen "worst case" broadcast stations or markets alleging harm due to cable. Audience diversion due to cable was found to be less than 10 percent in more than two-thirds of the cases analyzed. The specific findings of this study are discussed in detail below. For present purposes it is sufficient to note that the findings from the grandfathered markets contributed to our assessment of the more general statistical studies. The results of the analysis of these markets contributed heavily to our conclusions because they provide an excellent picture of the marketplace working essentially *without* signal carriage restrictions.

90. The consensus on the audience diversion due to cable television that was reached in the *Report in Docket 21284* was that:

> (a) The impact of cable television on local station audiences under current market conditions generally is less than 10 percent. This finding includes cases with extraordinarily high cable penetration and a large number of distant signals. For example, in one of the most extreme cases, Bakersfield, California, the local stations lose only between 9 and 13 percent of their potential audience due to cable, even though more than half the households in their market have access to at least seven distant signals on cable. Additionally, UHF stations, particularly UHF independents, often receive audience gains from cable television.
>
> (b) The incremental audience diversion from eliminating the signal carriage rules will be less than 10 percent at all marketwide cable penetrations that are realistic in the foreseeable future for all but a few cases.

91. Our analysis of the impact of distant signals on local station audiences has received extensive criticism from the television broadcast and television program production industries. These range from specific criticisms of the Park study to the allegation that the Commission was highly selective in its use of the available research material. Each of these criticisms will be addressed separately below. Our discussion should demonstrate that the *incremental* audience diversion from eliminating the signal carriage rules will be less than 10 percent in the foreseeable future except for a very few cases. The fact that the data tell the same story in almost all cases shows the validity and robustness of the consensus that we have drawn from them.

92. Our goal throughout this proceeding has been to insure that we would have available the most accurate evidence possible from which to make a public interest determinaton. We considered this to be of particular importance in view of the fact that the stakes to consumers from the final outcome of this proceeding are so high. Many of the commenting parties devoted a large amount of their energies toward criticizing the Park study. As a preliminary matter, we must emphasize that we did not place our sole reliance, or, indeed, any overbearing emphasis on the Park study in reaching our conclusions on the impact of cable on local stations' audiences in the *Report in Docket 21284*, since it was only one of several studies that addressed this relationship. However, to alleviate any justifiable concern that might have a reasonable bearing upon the accuracy of the Commission's determination, we contracted with Dr. Park to address the criticisms of his initial study and to make certain modifications to improve it and test the validity of certain criticisms. (See Appendix B) As it turns out, our analysis shows that the additional work performed by Park acts to strengthen our previous conclusion concerning audience diversion due to cable television. Therefore, we rely, in part, upon the additional work undertaken by Park in addressing the criticisms of the television broadcasters and program producers that are relevant to this section. It should also be noted that at an earlier juncture in this proceeding we made numerous attempts to obtain modifications of the NAB–WEFA model so that it to could be relied on with greater confidence. However, the requested information was never received.

93. *The Consensus Effect.* Parties critical of our proposal, and the *Economic Inquiry Report* generally, have argued that the consensus of the studies reported was arrived at only through a misuse or misreading of the studies relied on. Thus, for example, ABC claims that "the Commission unfairly and improperly failed to give sufficient weight to studies submitted by NAB, MPAA, INTV and ABC, each of which predicted adverse impact on television broadcasting in more significant measures than the studies upon which the Commission relied."[89] The ABC Television Affiliates Association points out that Parks' results "vary tremendously from the *Economic Inquiry Report's* conclusion

[88] In particular, Park's estimates for ultimate cable penetration are based on the assumption that every home will be passed by cable. We found this to be an unlikely possibility, especially in areas of low population density.

[89] American Broadcasting Companies, Inc., comments in Dockets 20988 and 21284, August 3, 1979 at 6.

that 'in all but the most extreme cases, the additional audience loss will be less than 10 percent in the foreseeable future' " [90] Upon reviewing the Commission's summary of the Park study, Capital City Television *et al.*, finds "the Commission's Conclusion that 'there is virtually no scenario which generates a 20 percent audience loss within the foreseeable future from relaxed signal carriage rules,' is clearly misleading." [91] The Joint Motion of the Association of Independent Television Stations *et al.*, alleges that "whereas the staff either ignored or went to great length to include material critical of NAB, MPAA, and INTV, it included virtually no criticism of either the NCTA or Park audience loss studies." [92] The National Association of Broadcasters complains of our treatment of its study, stating that we "capriciously chose to ignore ctitical findings of the Wharton study * * * " [93] INTV states that "since part of the Cooper study [commissioned by INTV] relied on data from the Wharton study, it too was discounted by the Commission without any discussion." Further, "there is no indication in any of the documents in this proceeding that the Commission even considered those portions of the Cooper study not relying on the Wharton data." [94]

94. As explained in the *Report in Docket 21284*, notable examples of audience studies submitted as comments in this proceeding that provided information which we consider very valuable in reassessing our cable policies and rules include those by NAB–WEFA, NCTA, and MPAA. Other comments, including those of ABC, we noted as submitting data that attempted to display the impact of cable television on local station audiences. The data provided by these comments, however, were not considered valuable for policy purposes because of the inadequacy of the analysis provided therein. The study by ABC, for example, focused primarily on the disparity in the share of viewing of local stations between cable and non-cable households. This analysis gives an entirely incomplete picture of the effect of cable on local stations because it fails to account for the relative sizes of the cable and non-cable populations.[95] Other studies, such as those of the Rocky Mountain Broadcasters Association, also appeared to us not to be usable in isolation for predictive purposes. Rather, to address the concerns in these comments, we analyzed, using a standard procedure, key economic factors of each station and/or market that was identified as being harmed by cable. Careful attention was given to the viability of these stations and, in cases of financial hardship, the extent to which cable was responsible for their financial distress. (See para. 174 below.) A similar procedure has been implemented for the comments in this round of the proceeding.

95. Additionally, while noting their limitations, the results of the studies of audience diversion by NCTA and MPAA were accepted by the Commission *in toto*. These studies generally are carefully done. And, despite ABC's claim, the results of the MPAA study are well within the bounds of audience diversion established as the consensus opinion by the Commission. For example, MPAA finds audience diversion from local stations attributable to cable television to be about 8 percent in counties with 30 percent cable penetration. Our conclusion in the *Report in Docket 21284* was that the impact of cable television on local station audiences at the present time generally is below 10 percent.[96]

96. On the other hand, the specific results of audience diversion for local independent stations predicted by the NAB–WEFA were rejected because of the inherent bias attributable to the model specification.[97] Where estimates were provided specifically for independent stations, we chose instead to employ the NAB–WEFA model to provide one estimate of audience diversion for the entire market.

97. The results of the NAB–WEFA model as to the incremental effect of additional distant signals on local independent stations were unacceptable because of: 1) the use of the "logit" equation specification, 2) estimation of the effect of increasing the number of distant independent signals from 1 to 6, instead of from a base of 2 signals as our rules currently permit for the markets analyzed, and 3) the use of unrealistically high marketwide cable penetrations.

98. To actually demonstrate the shortcomings of the NAB–WEFA study, we would have liked to compare its results to the detailed case study analysis that we performed for grandfathered markets (as we did with the Park study). We believe this comparison particularly would be enlightening if it could be undertaken for small UHF independent stations. Unfortunately, NAB–WEFA has not answered our requests for additional information. Furthermore, we have been unable to duplicate the reported results of the NAB–WEFA study.[98] In these circumstances we do not think it would be appropriate for us to employ the NAB–WEFA model to make predictions of audience diversion due to cable for the small independent stations that we analyzed in the case studies.

99. The main problem identified with the NAB–WEFA study was that it employed a "logit" equation specification for predicting audience shares under various signal complements. Our *Report* showed that employment of this equation specification resulted necessarily in a proportionately greater impact on local independent stations than network affiliates, regardless of what the actual data may have indicated.[99] Hence, we rejected the "finding" that small, independent stations suffer most of the audience losses from additional imported signals. Instead, as indicated previously, we summarized the results of the NAB–WEFA model by providing its prediction of the impact of cable on local station audiences for an entire television market, and not for its predictions of the impact on individual stations.

100. In its reply to the Commission's critique, WEFA finds that "the derivation of derivatives shown in footnote 116 (page 61) of the FCC document is correct," but "the

[90] ABC Television Affiliates Association, comments in Dockets 20988 and 21284, September 17, 1979 at 14.

[91] Capital City Television *et al.*, comments in Dockets 20988 and 21284, September 17, 1979 at 5.

[92] Association of Independent Television Inc.; Caucus for Producers, Writers and Directors; Metromedia, Inc.; Motion Pictures Association of America, Inc.; National Association of Broadcasters; National UHF Broadcasters Association; and Screen Actors Guild; *Joint Motion for Revision of Procedures*, Dockets 21284 and 20988, June 22, 1979. The discussion provided therein has been incorporated into the comments of this proceeding by the Motion Picture Association of America.

[93] National Association of Broadcasters, comments in Docket 20988 and 21284, September 17, 1979 at 111.

[94] Association of Independent Television Stations, comments in Dockets 20988 and 21284, September 17, 1979, at 28.

[95] See also our discussion on the appropriateness of using "share data" in the Case Study Section of the *Report in Docket 21284*.

[96] For a comparison of the results of the major studies submitted in this proceeding on audience diversion, *see* the *Report in Docket 21284*, para. 116(a). *See* also Park, Appendix A, *Report in Docket 21284* at 38–48.

[97] For a detailed analysis of the NAB–WEFA predictions, *see* the *Report in Docket 21284* at para. 107 and n. 116.

[98] For example, when we employ the NAB–WEFA model, we find that the sum of individual shares predicted for each station in a market varies greatly from 100 percent. In contrast, NAB–WEFA, without explanation, reports that the predicted shares of the individual stations in a market sum to 100 percent.

[99] *See* the *Report in Docket 21284* at para. 107 and n. 116 for a more detailed demonstration of the correctness of this statement and the nature of a "logit" equation.

mathematics in footnote 116 support a conclusion exactly opposite to that given in the text of paragraph 107(i)." [100] WEFA's reasoning in reaching this conclusion is flawed. In fact, its own analysis confirms our findings. WEFA finds that "what the FCC has shown is that the percentage change in the market share (which is like a percentage change in a percentage share) increases as the market share decreases." [101] This is precisely the reason for which we reject WEFA's findings for independent stations (i.e., those stations with small market shares). Thus, the validity of our reasoning is not rejected, but agreed upon by WEFA. Furthermore, WEFA proceeds to provide numerical examples to demonstrate the validity of our criticism of the WEFA model.[102] WEFA's error in its reply is attributable to considering the absolute change in a local station's viewing share from additional distant signals rather than the percentage change. We are interested in and the NAB–WEFA model provides predictions for the latter. We find, and WEFA agrees, that this loss must necessarily be estimated to be greater for small independent stations when the logit equation specification is employed.[103] Hence, WEFA's criticism of our analysis of the NAB–WEFA's study is flawed.

101. Our *Report* also found that providing projections of audience diversion in larger markets when the number of imported signals is increased from 1 to 6 is not very helpful for policy purposes because two signals can be imported in these markets under existing FCC policies. Without explanation, WEFA contends that "the logic of [this] argument seems to be missing." [104] We feel, however, the logic of our argument is clear. The effect of relaxing the signal carriage rules in the larger markets is not equivalent to the effect of increasing the number of imported signals from a base of one. The appropriate incremental effect should be calculated from a base of two distant independent signals because we currently permit this many signals to be imported into all of the larger markets.[105]

102. WEFA also disagrees with our categorization of the market in their study with 3 network affiliates and 1 independent as a large market and therefore claims our criticisms of this simulation are not relevant.[106] However, in their original study, WEFA says that "we have considered two different local signal offerings for the *larger* market: three local network stations and one local independent . . ." [107] (Emphasis added.) Hence, in its report, WEFA categorizes its set of results for the market with 4 local stations as a larger market. Therefore, WEFA's claim in its reply is negated by its own discussion in the original study, and our criticisms of its procedure remain.[108]

103. Additionally, because it relies on the NAB–WEFA findings for the impact of cable television on local station audiences, Roger Cooper and Associates submitted an additional analysis which attempts to justify the NAB–WEFA findings.[109] For example, since our interpretation of the NAB–WEFA model is that smaller stations must necessarily be estimated to suffer greater audience losses (in percentage terms) from additional distant signals, Roger Cooper and Associates requested NAB–WEFA to run an additional simulation for a market containing an independent station with a much smaller audience share than specified previously. In comparing the results for these two cases, Roger Cooper and Associates conclude that "cable affects the local independent station in almost exactly the same way." [110] Roger Cooper and Associates bases this conclusion on the results presented in Table III of its analysis. In this table, importation of one distant independent signal on cable is calculated by Roger Cooper and Associates from NAB–WEFA's predictions to divert 38 percent of the audience from both the smaller and larger local independent stations. However, one of these calculations is arithmetically in error. The audience diversion to the stronger independent station, from a share in cable homes of 16.8 percent to a share of 12.1 percent, is 28 percent, and not 38 percent as Roger Cooper and Associates calculate. Therefore, instead of contradicting, it appears that Roger Cooper and Associates also has supplied an example supporting our criticism of the NAB–WEFA model.

104. Due to the fact that *both* of the Cooper studies [111] submitted in INTV's comments relied *exclusively* upon the NAB–WEFA results for independent stations for their estimates of audience diversion, we also rejected this analysis.[112]

105. INTV also has submitted a new study by Roger Cooper and Associates since the issuance of our *Report* that attempts to validate the results of the NAB–WEFA model.[113] Data on the shares of viewing of local independent stations in cable and non-cable households are provided for a few selected counties within the stations' service area (abstracting from the associated levels of cable penetration in the counties). We have performed a case study analysis of each of the eleven stations for which data were presented because focusing on a few select counties can provide a distorted picture of the effect of cable television on local station audiences. We found that cable television does not pose a threat to any of these stations. [See case study discussion below at paragraphs 157 to 184.]

106. NAB–WEFA has supplied some information to Roger Cooper and

[100] *Supra*, n. 93, Exhibit H, at 1, 2.

[101] *Id.* at 4.

[102] *Id.* at 7. As documented in n. 116 of our *Report*, we believe the column entitled "ds/dx/S—logit" is the appropriate focus.

[103] It should be noted that WEFA also mistakes the Park audience model undertaken for the proceeding as a linear one, and proceeds to demonstrate that the same result holds for linear models. However, the Park model is not a linear one. For further discussion, *see* Park, Appendix A.

[104] *Supra*, n. 93, at 8.

[105] *See* 47 C.F.R., Part 76, Subpart D.

[106] This categorization is provided in the *Report in Docket 21284*, Section III, Table 2.

[107] *Supra*, n. 86 at 97.

[108] Careful analysis of WEFA's predictions for this simulation illustrates part of the problem with the model. If one distant independent signal is imported by cable, WEFA predicts that local households view the local independent signal 30 percent more often than the distant independent signal. However, if six distant independent signals are imported, WEFA predicts that local households view the local independent signal 33 percent *less* often then *each* distant independent signal.

[109] Additional comments of Association of Independent Television Stations in Dockets 20988 and 21284, filed January 10, 1980, Attachment A.

[110] *Id.* at 13.

[111] The two studies submitted by INTV in the inquiry stage of this proceeding which were undertaken by Roger Cooper and Associates are: 1) The Effect of Cable Carriage of Distant Signals on the Audience and Revenue of Local Independent Television Stations, dated May 15, 1978; and 2) Part 2 of: The Effect of Cable Carriage of Distant Signals on the Audience and Revenue of Local Independent Telvision Stations and on Their Ability to Provide Service to the Public, dated January 31, 1979.

[112] The results of the Cooper studies are premised on the audience diversion estimates provided by NAB–WEFA. The other relationship which the Cooper results depend on concerns the revenues that local stations receive. However, since Cooper's revenue diversion estimates depend on NAB–WEFA's audience diversion estimates, they are biased. Nevertheless, Cooper's research concerning the revenues received by local stations was analyzed and we believe it is consistent with our conclusion that there is roughly a one-to-one relationship between the audience and revenue of television broadcast stations. Additionally, the estimates provided by Roger Cooper and Associates for the audience/revenue relationship of independent stations over the various day-parts have been employed by Park in his response to industry comments. (See Appendix B.) We also are aware of the study of Roger Cooper and Associates on the impact of cable television on local station audiences, by program, in San Diego and Bakersfield, submitted in the comments of Storer Broadcasting Company and McGraw Hill Broadcasting in this proceeding. We note that detailed case studies for both San Diego and Bakersfield are provided in the *Report in Docket 21284*, which constitute our response to this study.

[113] Association of Independent Television Stations, comments in Dockets 21284 and 20988, September 17, 1979, Attachment.

Associaties concerning a simulation which is similar to the case of the independent station operating in Buffalo, N.Y., which we have analyzed in our grandfathered market study. For this simulation, the NAB–WEFA model is employed to estimate audience diversion due to cable from an independent (which, however, is UHF) station with a very small non-cable share (i.e., 5 percent) that competes with three local network affiliates.[114] The NAB–WEFA model predicts that the local independent station's audience share will decrease by 38 percent in cable households if one distant independent station is imported and will decrease by 80 percent in cable households with six distant independent stations. In the Buffalo ADI, we note that the independent station also attracts roughly a 5 percent share of the non-cable viewing in competition with three local network affiliates. Additionally, this station competes in cable households against four distant network affiliates, three strong distant VHF independent stations, and three Canadian signals. Our analysis shows, however, that the local independent station in Buffalo actually is *helped* by cable television in its local market. This evidence, which is drawn directly from the actual viewing patterns supplied by Arbitron and is not an econometric projection based on questionable techniques, contrasts sharply to NAB–WEFA's predictions.[115] Thus, we believe this evidence demonstrates further that the NAB–WEFA model is inappropriate for assessing the effect of distant signals on local independent station audiences.

107. As described previously, our *Report* summarized the Park study by providing the predictions derived by Park of the incremental audience diversion due to relaxed signal carriage rules at both present and projected ultimate cable penetrations. For example, in the long-term, Park predicts the incremental effect of eliminating the signal carriage rules to be as high as 41 percent for markets with one local VHF network affiliate. However, we discounted Park's long-term estimates because the projected ultimate cable penetrations employed to generate these estimates were overstated. For example, in markets with one local VHF network affiliate, Park projects an ultimate marketwide cable penetration of 84 percent by assuming every home will have access to cable television and by employing his earlier model on cable demand to predict cable penetration.[116] It should be noted, however, despite the fact that cable has grown to maturity in almost all one-station markets (i.e., few cable systems have applied for franchises in the past few years in these markets), and that many of the cable systems currently operating in the markets are carrying a large number of distant signals because of the grandfathering provisions of our rules, the average marketwide cable penetration in markets with one local VHF network affiliate currently is only 41 percent. Cable penetration is not expected to increase substantially in these markets because of the large areas of low population density contained therein. Thus, having discounted Park's values for projected ultimate marketwide cable penetration, we concluded that the predictions generated by Park's audience model suggest that there is virtually no scenario which generates a 20 percent audience loss within the foreseeable future from relaxed signal carriage rules.[117]

108. Capital City Television provides a list of thirty-one stations for which Park predicts a long-term incremental reduction in local station audience of 41 percent as a result of the elimination of the signal carriage rules and suggests that we have ignored his findings in this respect.[118] However, as noted, we have specifically rejected Park's long-term predictions, especially in one- and two-station markets, because the ultimate marketwide cable penetrations employed in these markets to measure the effect of cable are too high. Additionally, it should be noted that at the current level of 41 percent cable penetration for markets with one local VHF network affiliate, Park predicts only a 14 percent incremental audience diversion due to relaxed signal carriage rules. The cable penetration in these markets is not expected to increase substantially. Therefore, it is only the very few cases where cable penetration will exceed about 60 percent on a marketwide basis that Park predicts greater than 20 percent incremental audience diversion from relaxation of the signal carriage rules.

109. Our treatment of the long-term effect of the growth of the cable television industry is also found wanting by a number of the commenting parties. The Park study provides estimates of audience diversion due to cable under the current signal complement permitted by the FCC rules and under relaxed signal carriage rules. These estimates are provided at both current and projected ultimate cable penetration levels. In Table 4 of Section III of the *Report in Docket 21284*, we presented Park's predictions of the short run local station audience diversion due to relaxed signal carriage rules. The figures in this table represented the audience losses to local stations (in percentage terms) from additional distant signals at current levels of marketwide cable penetrations. These figures were derived by subtracting Park's estimates of local station audience in a deregulated market from Park's estimates of local station audience in a regulated market (both at current penetrations), and then, in order to determine the percentage loss, we divided these differences by the estimates of local station audience in a regulated market. In Table 5, to establish the upper boundary, we present Park's predictions of the long-term local station audience diversion due to relaxed signal carriage rules. The same procedure as before is employed here, except that all calculations of audience diversion are made at the projected ultimate cable penetrations. ABC claims that the audience diversion predictions in Table 5 do "not include audience losses from increased cable penetration."[119] This statement is simply untrue. In the first simulation in Table 5, for example, market cable penetration is predicted to increase from 28 percent to 37 percent *as a result* of the relaxation of the signal carriage rules.

110. Several parties disagree with our calculations of the long-term local station audience diversion due to relaxed signal carriage rules from the Park study. For example, the Joint Motion contends that the audience

[114] Additional comments of Association of Independent Television Stations in Dockets 20988 and 21284, January 10, 1980, Attachment A.

[115] While this comparison is not perfectly valid because the independent station in Buffalo operates on a UHF frequency and the NAB–WEFA prediction is for a VHF station, the resulting disparity also is evident for other of our case studies. For example, while the VHF independent stations in Indianapolis and Seattle have much larger audience shares than the simulated 5 percent share in the NAB–WEFA example, they also are helped by cable television in their local markets.

[116] Park, *supra*.

[117] It should be noted that the conclusion of there being virtually no scenario which generates a 20 percent audience loss from relaxed signal carriage rules represents a summary interpretation of the Park audience model. That is, it accepts the estimates of audience derived from Park's estimation of an "attractiveness index" for various types of television stations as correct. However, as documented throughout the *Reports in Docket 21284 and 20988*, and explained again below, we believe that Park's audience estimation technique results in an overstatement of the true impact of cable on local station audiences.

[118] We have analyzed each of these stations in our case study analysis, *infra*. ABC makes a similar point but includes a different list of stations. ABC lists, for example, WUHQ, Battle Creek, Michigan as in a single station below top 100 market. The licensee of WUHQ in its comments, however, refers to the station as being in the 37th market.

[119] *Supra*, n. 89, at 19–20.

diversion estimates "should be based on both the increase in penetration *over time* and the impact of carrying the specified additional signals (including three distant network affiliates)." [120] (Emphasis shifted.) This is equivalent to the difference (in percentage terms) between local station audiences at current cable penetration levels with cable systems operating under the current signal carriage restrictions and local station audiences at projected ultimate cable penetration levels without signal carriage restrictions, holding all other factors constant.[121] Such an estimate includes audience diversion attributable to the growth of cable television that will occur irrespective of the elimination of the Commission's cable rules, because even if we were to retain our distant signal carriage rules, marketwide cable penetration would increase over the long run. However, audience diversion attributable to normal cable growth should not be added to that resulting from the elimination of our signal carriage restrictions in assessing the effect of the elimination of the Commission's rules. Or, in other words, the estimates for the long-term audience diversion *due to* relaxed signal carriage rules should *not* include audience diversion attributable to increases in cable penetration *not due to* relaxation of the signal carriage rules. Instead, the appropriate focus for policy purposes is the effect that a *change* in Commission *rules* will have on local station audiences. These estimates derived from the Park model are provided for the near term in Table 4 and for the long-term (i.e., in the future) in Table 5. The alternative method presented in the comments for displaying this data can also be used but is, we believe, a less appropriate focus. And, as we have indicated elsewhere, it clearly is not appropriate to hold all other factors constant when we can reasonably expect that there will be offsetting factors.

111. In summarizing the work undertaken on audience diversion due to cable television in this proceeding, we concluded that in all but the most extreme cases, the additional audience loss to local stations from the elimination of the signal carriage rules will be less than 10 percent in the foreseeable future. A number of parties, however, question the validity of this conclusion. We believe these comments reflect a misunderstanding of our conclusion. When properly interpreted, our conclusion is acknowledged to be an inference that is drawn from *all* work on audience diversion due to cable in this proceeding—NCTA, MPAA, NAB–WEFA, Park and the case studies—*after* the necessary adjustments are made to the studies.

112. Thus, for example, we summarized the Park model as predicting an incremental diversion of no more than 20 percent from relaxing the signal carriage rules. However, we provided numerous reasons and examples, aside from the chosen levels of ultimate marketwide cable penetration, that demonstrate that Park's estimates of audience diversion are overstated. Notable among these are: (1) the assumption that local stations obtain 100 percent of the non-cable local audience; (2) the assumption that the "attractiveness index" for each station does not vary with the number of signal choices. This assumption results in the estimated effect of a sixth imported independent station to be a substantial fraction of the estimated effect of the first; and (3) the failure to control for the fact that many cable systems carry more than the standard complement of distant signals permitted because of the "grandfathering" and "significantly viewed" provisions of our rules. These shortcomings of the Park model are not inconsequential. For example, Park predicts an overall audience loss due to cable of 42 to 46 percent in Palm Springs, California, under current marketplace conditions. We find the actual audience diversion in Palm Springs to be between 10 and 20 percent, depending on whether or not the increased television viewing in cable households is attributable to cable television service. Additionally, in summary form, the Park model predicts audience diversion from relaxing the signal carriage rules to be roughly 30 percent for markets comparable to Palm Springs (see Simulation 9, Table 5, *Report in Docket 21284).* Yet, most cable systems in one- and two-station markets already carry many distant signals because of the grandfathering provisions of our rules. For these reasons, in addition to the use of unreasonably high ultimate marketwide cable penetrations, it is clear that Park's estimates of the incremental audience diversion due to the elimination of the signal carriage rules are overstated.

113. Finally, the comment is made that we either ignored the NAB, MPAA, and INTV studies or went to great lengths to include material critical of them and included virtually no criticism of either the NCTA or Park audience loss studies. However, contrary to this allegation, the studies by NCTA and Park received substantial criticism in the *Report in Docket 21284* at paras. 101, 112 and 113, and notes 110, 121, and 126. Additional criticisms of the Park study are provided in the *Report in Docket 20988.* Thus, we believe, and our *Reports* give every indication, that each study and comment in this proceeding has received serious and extensive consideration. Where the results of one study are criticized, for example, the predicted effect of cable on independent stations in the NAB–WEFA study, we fully documented our reasons. Furthermore, ample opportunity has been provided to enable parties to comment not only upon our summary and analysis of the work submitted, but also on the case studies that were undertaken to scrutinize more carefully the allegations raised by the television broadcast industry. We also provided ample time for a second round of comments on the Park study, after minor adjustments were made by Park in response to industry comments. We believe our procedures in this proceeding extend well beyond the guidelines established by administrative procedural law.

114. But, what is most important to be aware of in assessing our determination of the incremental audience diversion from the elimination of our signal carriage rules is the fact that we have actual marketplace experience with local television stations operating in markets with extraordinarily high cable penetration and a large number of distant signals. In most of these cases, *total* audience diversion due to cable (including that from the large number of distant signals) is less than 10 percent. Furthermore, it is extremely rare to have the *total* audience diversion due to cable being greater than 20 percent, even in cases with extraordinarily high marketwide cable penetration and a large number of distant signals. Therefore, in conclusion, we are confident that the *incremental* audience diversion from eliminating the rules will be less than 10 percent in the foreseeable future for all but a very few cases.

[120] *Supra*, n. 92, at 21. The Joint Motion correctly identifies an error in the characterization of simulation 3 of the Park study as markets containing 1 rather than 2 UHF independents. This error has no bearing upon our conclusions reached from the Park study, however, because the estimated effect of cable on local UHF independent station audiences is unchanged by the correction.

[121] The contention of the Joint Motion implies that the calculation should be made assuming partial equilibrium conditions. That is, all of the other things that affect local station audience, except for cable, should be held constant. We have already pointed out, however, that other factors, such as population growth, almost always act to more than offset any audience losses attributable to cable television over time. *See* Section IV of the *Report in Docket 21284.*

115. *The Park Study.* As we pointed out earlier, the Park study done under contract to the Commission was one of several studies that we relied upon in arriving at the consensus effect of cable television on local station audiences. Since numerous criticisms of the Park study are provided in the comments, we contracted with Park to permit him an opportunity to respond to these criticisms. We have reviewed the comments on the Park study, his response to them, and the response of the parties to his response, and will discuss them as indicated below.

a. *Definition of local and distant signals.*

116. The Joint Motion questions the findings of the Commission by saying that "basic to the Economic Inquiry Report was acceptance of Dr. Rolla Park's definition of 'local' and 'distant' signals" and "that the use of [ADI] assignments in individual counties provides a distorted, skewed definition of 'local' and 'distant' stations."[122] Before addressing the merit of Park's definition, we would like to clarify, once again, that Park's study was not relied upon exclusively for our conclusion regarding audience impact. In fact, Park himself suggests that the studies be regarded as "complements rather than competitors." (*Economic Inquiry Report*, p. 755). As noted previously, we made use of four studies provided by outside parties in addition to our own staff analysis. We believe that the similarity of the results of these studies, when they are interpreted correctly, despite the use of different data and methodologies, lends credence to our reliance upon the general consensus derived from them.

117. As to the merit of Park's definition of local and distant signals, we find it acceptable. Despite the claim in the Joint Motion that "the Park methodology fails to distinguish between signals which are truly 'local' in a particular county and those which are accessible only to cable system subscribers," they fail to come up with a superior definition. In fact, an audience study submitted in this proceeding by one of the petitioners of the Joint Motion (MPAA) employed a definition of local signals which is strikingly similar to Park's.[123]

118. In an attempt to discredit Park's definition of local signals, the Joint Motion identifies several local commercial stations in Park's sample that have audience shares of zero in non-cable homes. The Joint Motion contends that a signal cannot be considered local to an area if it receives no off-the-air viewing. We, however, agree with Park in that "it is a fact of life that some stations get little or no audience in some parts of their own markets. One of the benefits of cable is that it improves reception so that these stations can attract some audience in previously dead areas."[124] Therefore, we do not believe that Park's assignments provide a distorted, skewed definition of local and distant stations. Nevertheless, we respect the contention that "although the precise impact of such errors cannot be determined [by ourselves] they are clearly significant in establishing the need for careful, objective review of the Park study in view of the Commission's reliance on the findings of this study."[125] To address this concern, Park excludes, in his revised analysis, all local stations in his sample that receive a zero share of non-cable viewing in their own market. Park's finding, after also making adjustments for other minor problems with the sample, is that "excluding these stations makes very little difference to the projections, and what difference there is, is usually in the direction of *less* diversion."[126] Thus, we believe that Park adequately has addressed the problem raised by the Joint Motion with respect to his definition of local and distant signals. Local stations with zero shares in non-cable households should remain in the sample when providing the preferred audience diversion estimates. Several parties, however, remain unsatisfied with Park's definition of local signals. MPAA, for example, advances several new problems with the definition. It identifies 13 additional counties in which a local station has a non-cable share ranging from 1 to 5 percent.[127] MPAA questions the reasonableness of these data, and, presumably, would prefer that these stations also be excluded from the analysis. We do not find this position surprising. MPAA questions the use of these data because it is precisely these stations which are helped by cable television. But, since a real effect that cable television has on some local stations is to increase the audience they receive in portions of their local markets, it would be invalid to attempt to eliminate this effect from the analysis. While there certainly can be different definitions of the term "local," and indeed there does not appear to be one definition for all purposes, we believe Park's definition to be a reasonable one which does not distort or skew his analysis and which is statistically acceptable.

b. *Day-parts.*

119. Of the five major audience studies in this proceeding, only two, NAB–WEFA and MPAA, provide detailed estimates of audience diversion from cable for all all day-parts (i.e., day, early fringe, prime time, late night). These two studies show that audience losses due to cable are greatest in the early fringe time period *(i.e.,* 4:30–7:30 p.m., Eastern Time, Monday–Friday). On the other hand, the studies by NCTA and Park, and the case studies undertaken by the Commission staff, focus primarily on the effect of cable on local station audiences over the entire day without any explicit adjustment or allowances for differences in viewer behavior in the four day-parts.

120. The broadcast industry's response to this treatment of audience diversion is that "the Commission's failure to consider Fringe Time audience losses in its major study of audience loss is a significant and prejudicial omission."[128] In an attempt to substantiate this claim, NAB submitted a modification of the previous work submitted by Charles River Associates concerning the audience/revenue relationship of television broadcast stations.[129] The results of this study suggest that the value of viewing households to local broadcast stations differs depending upon the day-part in which the viewing occurs. For example, CRA estimates that a viewing household

[122] *Supra*, n. 92, at 12–13. The Petitioners also note our reliance upon the Park study in the *Report in Docket 20988*. On page 34 of that Report we said "we are relying upon Park's estimates (as opposed to other work on cable impact) because the total audience impact of cable for various complements of local and distant signals is readily available in his work and because we found in the *Report in Docket 21284* that his results are broadly consistent with other studies of audience impact." This statement was included simply to point out that other studies could have been used, but the results would have been similar.

[123] In its study, MPAA states that "We define 'local stations' as those stations in an ADI which collectively achieve a minimum share of 75 percent of non-cable household viewing, on a Total Day Basis." (Emphasis omitted.) Motion Picture Association of America, Reply Comments, Docket 21284, June 20, 1978 at 4. In comparison, Park required that local stations attract at least 70 percent of the total off-the-air audience in the sample counties selected from their ADI.

[124] R. E. Park, "Audience Diversion Due to Cable Television: Response to Industry Comments," the Rand Corporation, Santa Monica, California, a Rand note prepared for the Federal Communications Commission, November 1979 at 16. Attached as Appendix B.

[125] *Supra*, n. 92, at 15.

[126] Appendix C, at 17.

[127] Motion Picture Association of America, Further Comments in Dockets 20988 and 21284, January 10, 1980. MPAA also questions the shift in local market assignments for some stations in the sample resulting from Park's revision to take network non-duplication into account. We address this criticism separately below.

[128] Joint Motion, *supra*, n. 92, at 19.

[129] National Association of Broadcasters, Reply Comments in Dockets 20988 and 21284, October 17, 1979.

is worth approximately 45 percent more revenue to a network affiliate during early fringe than prime time. In comments submitted by INTV, Roger Cooper and Associates also demonstrate a skewed audience/revenue relationship for the different day-parts of independent stations.[130] In light of this belief that "impact in terms of Fringe Time is critical,"[131] we requested Park to determine whether estimates of audience diversion from cable for the entire day would differ if "worked-up" using audience survey data provided by Arbitron for each day-part. We also hoped to answer the question of whether the skewed audience/revenue relationship of television broadcast stations, in conjunction with the larger impact of cable television on local station audiences during early fringe, would cause a significant difference between the audience effect and the revenue effect of cable television on local broadcast stations over the entire day.

121. The results of Park's analysis confirmed that the impact of cable television on local stations' audiences and revenues would not change significantly if the estimates were developed from audience and revenue data for each day-part. In fact, Park finds that "audience projections are not affected by taking into account differences in diversion among different periods of the day."[132] Park also finds that "any differences between [the] revenue projections and the audience projections . . . are no larger than one percentage point. The exception is projections for independents using Charles River weights."[133] However, Park finds that the "revenue projections using Roger Cooper weights are almost the same as the audience projections."[134] In comparing these two results, it should be noted that the difference between the audience effect and the revenue effect of cable on UHF independents over the entire day when using the CRA audience/revenue estimates is due, in large part, to the perverse results generated by the CRA model. The CRA model estimates that an independent station *loses* revenue for every household watching the station during late fringe and earns approximately *fifteen times more* revenue for each viewing household during early fringe than during prime time.[135] These findings defy both logic and our general understanding of the broadcast industry. Although we previously rejected the audience diversion projections of Roger Cooper and Associates because they were derived from the NAB–WEFA model, we are inclined to rely more heavily upon the estimates of the audience/revenue relationship supplied by Roger Cooper and Associates in assessing the revenue diversion from local independent stations because these estimates were derived independently from the NAB–WEFA model and do not contain the same flaws.[136] If the results of the Cooper study of the audience/revenue relationship for independent stations are relied upon, then the impact of cable television on the audiences and revenue of local broadcast stations that is estimated from data for the individual day-parts usually is equal to, and is never more than three percentage points greater than, the impact of cable television on local station audiences that is estimated from data for the entire day. This omission seems to us to be neither significant nor prejudicial. In summary, use of audience data for the entire day is adequate for estimating the impact of cable television on local station audiences. The effect of cable on station audiences calculated from data for the entire day will be equivalent roughly to the actual effect on station revenues, just as we have previously assumed.

c. *Non-duplication protection.*

122. The Commission's rules specify that cable systems must provide "local" network affiliated stations protection, upon request, from lower priority distant stations that are simultaneously broadcasting the identical network programs.[137] In estimating the effect of cable on local station audiences, Park did not distinguish whether the distant network signals imported by the cable systems in his sample were being blacked out in accordance with our non-duplication rules. In Dr. Franklin Fisher's analysis of the Park study, submitted in the Joint Motion in this proceeding, he concludes that "one cannot tell the extent to which the reported results depend on this. Both the total audience equation and the audience share equation may be affected in any or all of their coefficients to greater or lesser extent by this problem."[138] The Park model as revised, however, explicitly takes into account non-duplication afforded to local stations. After making the necessary adjustment for stations that get protection and for stations that are blacked out to provide protection, Park finds this adjustment "does not change the audience diversion projections very much from those in my earlier report."[139] Hence, the question raised concerning the extent to which the results previously reported by Park depend on the protection afforded by our non-duplication rules has been answered. There is no significant change.

123. Nevertheless, NAB contends that the Park revision fails to provide any "indication of the effect of carriage of multiple non-simultaneous duplicate network programs."[140] Similarly, we also are aware of the contention of some parties that our non-duplication rules would be rendered ineffective if network affiliated stations were permitted to be imported from other time zones. It should be noted, however, that not one party has presented any evidence concerning the effect of non-simultaneous duplicate network programs. Nevertheless, we are fortunate to already have considerable marketplace experience with non-simultaneous or pre-released network programming.[141] Analysis of these situations leads us to believe that the public will be served best without additional restrictions on viewer choices emanating from an expansion of our

[130] *See* n. 94, *supra.*

[131] Joint Motion, *supra.* n. 92, at 18.

[132] Attachment B, at 27.

[133] *Id.* at 22.

[134] *Id.* at 27.

[135] The finding of lost revenue during late fringe is not significantly different from zero, but the fact of an "unbiased" negative estimate remains.

[136] It should be noted that in NAB's reply to the Park revision, dated January 10, 1980, Dr. Fisher seems to argue that the CRA estimates are preferable because they are derived from an econometric study. Here, however, Roger Cooper and Associates have collected data *directly* from twelve independent stations. These stations provided the percentage distribution of their revenues over the various day-parts. With these data, there is no need for econometric modeling.

[137] For further clarification of these rules, *see* 47 CFR, Part 76, Subpart F.

[138] *Supra,* n. 92, Attachment at 15.

[139] *Supra,* n. 124, at 34. Park notes further that "if one further assumes that distant primary network signals are just as attractive as local affiliates, the projected diversion due to cable in one- and two-station markets is increased, but the projected incremental diversion due to relaxing present rules is decreased." For policy purposes, we are interested in the incremental effect of relaxing the rules. Thus, to be conservative, we prefer the estimation procedure which will overstate the incremental effect. The estimates using this procedure (See Appendix B, Tables 3 and 4) are relied upon when we assess the Park model. To this extent, Fisher's criticism of Park's further assumption is rendered moot.

[140] National Association of Broadcasters, Comments in Docket 20988 and 21284, January 10, 1980, at 15.

[141] In addition to our case study analyses in this proceeding of local television stations that are operating in competition with pre-released programming on cable television systems, see the *Second Report and Order in Docket 19995, 54 FCC 2d 229 (1975). See* also our *Report in Docket 20649, FCC 79–780 (1979).*

non-duplication rules. Finally, we must point out that these contentions address the question of the appropriate scope of our network non-duplication rules, and not our signal carriage rules. We have specifically and consistently stated that an analysis of the network non-duplication rules is beyond the scope of this proceeding.[142] We note that to the extent that parties wish to address the merits of the network non-duplication rules, a channel is available to them through petition for rulemaking.

124. Some parties also had difficulties with Park's methodology for adjusting non-duplication protection. For example, INTV asserts that "Dr. Park does not explain how he determined which stations receive non-duplication protection." [143] We note, however, that this explanation is provided by Park on page 52. [See Appendix C]. Additionally, MPAA finds "*many* instances where the blackout notations inserted by Park defy reason." [144] For example, MPAA questions "on what basis is KXII entitled to non-duplication protection [in county #17 (Bryan, Oklahoma)] while KTEN is not?" [145] This question reveals a lack of understanding of our non-duplication rules. Ardmore-Ada is a hyphenated market. The cable system in Bryan, Oklahoma is farther than 55 miles from station KTEN, Ada, but is within the 55 mile zone of protection of KXII, Ardmore. Thus KXII is entitled to protection and KTEN is not.[146]

125. MPAA also states that *"if we were asked to single out one case to illustrate the inaccuracy, unreasonableness, and prejudicial nature of the Park Study, we would rest our case on county #30* [Jackson, Alabama]." [147] (Emphasis in original.) We believe this statement demonstrates the lack of understanding with which MPAA has attacked the Park study. Therefore, we believe it useful to provide some extended discussion of the data for Jackson County. Park's designation of stations being either local or distant in his original study in this proceeding was determined by Area of Dominant Influence or ADI. Stations assigned by the Arbitron audience rating service to an ADI were considered local in all areas of that ADI. However, to avoid including counties near the fringes of an ADI, Park excluded counties from his sample in which the local stations received less that 70 percent of the non-cable viewing. Although MPAA did not provide an alternative method for defining local signals, and in its major study of audience diversion in this proceeding it employed a definition of local signals which is very similar to Park's,[148] MPAA found Park's definition to be unacceptable. Presumably, MPAA would prefer Park to have restricted the local area of a station to those areas which are even closer to the community of license. Interestingly, Park's revision of his definition of a local signal to account for non-duplication protection *did* have this effect in some cases. One such case is county #30 (Jackson, Alabama). Originally, Park considered the stations operating in Chattanooga, Tennessee to be local in Jackson County, Alabama because of the county's assignment to the Chattanooga ADI. However, since the cable system in Jackson County is within the 35 mile zone of the station in Huntsville, Alabama and these stations receive non-duplication protection against the Chattanooga stations, Park has reclassified the Huntsville stations as the local signals for this county. But, as it turns out, cable television increases substantially the audience of the Huntsville stations in Jackson County. Therefore, for this case, MPAA argues explicitly that the stations farther away from Jackson County should be designated the local stations for this county. While it demonstrates the difficulty of finding perfect definitions of local and distant signals, we find MPAA's conclusion with respect to the definitions used to be not only unreasonable, but inconsistent with their previous criticisms of the Park study.[149] In summary, we reject the commenting parties' criticisms of both Park's definition of local signals and his procedure for dealing with non-duplication protection.

126. Additionally, in its comments on the Park revision, INTV argues that the revisions altered the results significantly.[150] This argument also is without merit. Park summarizes his revision by saying "although the new estimates differ from the earlier ones in a number of ways, the resulting audience diversion projections are changed very little." [151] The appropriate comparisons are Tables 7 and 8 in the original report and Tables 3 and 4 in the revision, respectively. The difference is no greater than three percentage points for any of the simulations.

d. *Total Audience Model.*

127. The Park study estimates a total audience model and an audience share model to generate audience diversion projections. The total audience model is formulated to test the hypothesis that the increased viewing in cable versus non-cable homes is attributable to the tendency of heavier viewers to subscribe to cable television (*i.e.*, the self-selection hypothesis. If the hypothesis is true, the greater amount of viewing observed in cable versus non-cable homes is not attributable to cable television, and therefore cable has the potential to divert more audience from local stations. After testing this hypothesis, however, Park concludes that he has "not succeeded in settling the question of whether or not cable should get the credit for higher viewing in cable homes." [152] Faced with this limitation, Park proceeds to provide a range of estimates of audience diversion from cable television by making the alternative assumptions that cable gets all of and none of the credit for the higher viewing in cable homes.[153] However, Park finds that "the question of which assumption is correct (or where, in between, the truth lies), although interesting, turns out not to be too important" because "the range of values calculated by using the extreme assumptions is quite narrow, usually only two of three percentage points wide." [154]

128. Upon reviewing the Park study, Dr. Fisher finds "Park's total audience equations * * * to be very unreliable." [155] Fisher also finds that "the obviously unsatisfactory audience equation can make a substantial difference [in projections of audience diversion]." [156] As it turns out, however, the example that Fisher uses in attempting to demonstrate this substantial difference is arithmetically in error.[157] Thus, we find Fisher's criticism to be without merit.

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[142] *See, Notice of Proposed Rulemaking in Dockets 21284 and 20988*, para. 5.

[143] Additional comments of the Association of Independent Television Stations, Inc., filed in Dockets 20988 and 21284, January 10, 1980 at 4.

[144] Further comments of Motion Picture Association of America, Inc., filed in Dockets 20988 and 21284, January 10, 1980 at 9.

[145] *Id.* at 9.

[146] *See* 47 CFR, Part 76, Subpart F, Appendix C to the *First Report and Order in Docket 19995*, 52 FCC 2d 519 (1957) contains an explanation of the rules in this type of situation in diagram form.

[147] *Id.* at 10.

[148] See note 123 *supra*.

[149] Previously, for example, MPAA argued in the Joint Motion (*supra*, at n. 92) that Park disregarded the distance between the local stations and the cable systems in the sample. It was noted that the Grade B contour of KXON is at least 100 miles short of Brown County (which Park considered local to KXON).

[150] *Supra*, at n. 143, at 6–7.

[151] Park, Appendix A, *Report in Docket 21284* at 3.

[152] Park, Appendix A, *Report in Docket 21284* at 23.

[153] This procedure also was employed in our detailed case study analysis in the *Report in Docket 21284*.

[154] *Supra*, n. 124, at 23.

[155] *Supra*, n. 92 at 2.

[156] *Id.* at 11.

[157] *See* Park, *supra*, n. 124, at 28.

129. To summarize our position on this question, we continue to believe that "we can do no better than provide upper and lower bounds on the magnitude of audience diversion which has resulted from the presence of cable." [158] Hence, we rely upon both share and rating data (in a procedure identical to Park's) to reach our conclusions. For example, in our grandfathered market analysis, we found that the broadcast stations in the San Deigo television market lose approximately 1 to 4 percent of their potential audience because of cable television.[159] That is, they lose one percent if the greater amount of viewing in cable homes is attributable to cable television; four percent, if not.

e. *Signal Reception.*

130. New data on the television viewing of cable and non-cable households are available for individual counties. These data provide a substantial improvement over previously available marketwide viewing data because signal reception differences between households within each unit of observation (i.e., the county as opposed to the entire market) are reduced significantly. Even so, Dr. Fisher argues that "some stations cannot be seen in all of the county from which the data come" which "will directly affect the audience diversion estimates." [160] Fisher contends that "the results can be substantially affected." [161] We believe Park's decision on the point to be entirely reasonable. For our purposes, however, it is sufficient to note that while the Park and NAB studies choose different methods for dealing with reception differences across counties, they come out with similar results, suggesting that adjusting for receivability does *not* affect the results substantially. This conclusion is given further support by comparison of the results of the previous studies that employed marketwide viewing data, the current studies that employ county wide viewing data without adjusting for reception quality, and the study by Video Probe Index [162] which restricts the areas from which viewing data are drawn to particular communities. Clearly, the reception quality of the signals viewed off-the-air differs significantly between the households comprising each unit of observation (i.e., market, county, community) in these studies. Yet, here again, the fact that the result of these studies are broadly consistent leads us to conclude that adjusting for receivability in a study of audience behavior is not very important to the "bottom line" estimates. Hence, we find Fisher's criticism to be overstated and, as a result, we do not believe it is necessary for Park to account for receivability in his study.

131. INTV attempts to take the signal reception argument one step further by contending that "any proper measurement of audience impact due to importation of distant signals must assume equality of reception in cable and non-cable homes in order to eliminate improvement in reception as a variable." [163] We believe this contention is unreasonable. An important effect that cable television has on local stations is an improvement in their signal reception and an expansion in their coverage area. For example, in our analysis of independent stations that operate in markets with high cable penetration,[164] we found that the UHF independent stations analyzed receive audience gains from cable television within their own ADI, despite the carriage of at least 5 distant signals. Therefore, to eliminate improvement in reception is to eliminate an important effect of cable television on local station audiences from the analysis. Hence, we reject INTV's contention.

f. *The Sample.*

132. The sample for Park's study of audience behavior between cable and non-cable households was selected by the Commission staff. The primary criterion is selecting the sample was that each unit of observation (*i.e.*, each county) have consistent viewing options on cable. In this manner, the relationship between the availability of distant signals and viewer behavior could be monitored carefully. To insure this consistency of viewing options on cable, the Commission staff limited the samples to all those counties that contain only one cable system. Additionally, it was required that viewing data be available for both cable and non-cable households in each county. Finally, the sample was restricted further by excluding those cable systems (*i.e.*, counties) that provide syndicated exclusivity protection to local broadcast stations.[165] Upon receiving a sample of 166 counties from the Commission, Park excluded an additional forty-five counties located near the fringe of their markets. Local stations were required to attract at least 70 percent and actually received an average of 92 percent of the total off-the-air audience sample counties.

133. Several parties have questioned the adequacy and representativeness of the Park sample. For example, Fisher concludes that "the gain in 'cleanliness' [from restricting the sample to counties with only a single cable system] does not seem worth the sacrifice of large amounts of information and of the representativeness of the sample of counties." [166] We do not believe that the choice between selecting a sample for its cleanliness or its representativeness was an unreasonable one. In reviewing the signal carriage of cable systems for our case study analysis in the *Report in Docket 21284,* we found frequent and significant differences in the signal carriage of cable systems located within the same county. Therefore, one also may argue that the other audience studies in this proceeding suffer because of a lack in cleanliness in their samples. Indeed, if Park had chosen to expand his sample at the cost of cleanliness, the commenting parties just as easily could have criticized his judgment. It is apparent to us that there is no perfect solution to the problem. This is typical of all econometric work. Of primary importance, however, is the fact that studies employing different selection criteria for their samples come out with generally consistent results. This provides us reason to believe that the selection criteria for choosing a sample (if not purposely biased) will not influence significantly the magnitude or direction of the estimates. From our perspective of viewing all of the studies on audience diversion in the record, the cleanliness of the data for the Park study is worth its costs.

134. The Park sample also has been criticized for not having enough local independents. Park does not deny this criticism, nor the criticism that his estimation procedure will fail to properly estimate diversion from local independents. He states that "the question of whether or not independents lose a larger share of their audience than do affiliates is probably unanswerable by statistical methods until we have accumulated more experience with cable systems carrying

[158] *Report in Docket 21284* at n. 136.

[159] *See* the *Report in Docket 21284* at Table 2–3 of Section IV.

[160] *Supra,* at n. 92, at 15, 17.

[161] *Supra,* at n. 92, at 19.

[162] See National Cable Television Association, Comments in Docket 21284, March 15, 1978, Exhibit D.

[163] *Supura,* n. 113, at 18.

[164] *Reports in Docket 21284,* Section IV.

[165] While this degree of control was not interjected explicitly into the other studies of audience diversion in this proceeding, all of the studies are roughly indicative of a marketplace functioning without syndicated exclusivity protection. (*See* the *Report in Docket 20988* at para. 56.) Thus, to the extent that distant signals do not affect adversely the television service provided by local broadcast stations, this implies that the syndicated exclusivity rules are not necessary to stem adverse consequences to consumers emanating from additional competition to local broadcast stations.

[166] *Supra,* n. 92, at 19.

distant signals into large markets." [167] As it turns out then, both the NAB–WEFA and Park models suffer from data limitations and methodological problems in assessing the incremental effect of additional distant independent signals on local independent station audiences. Hence, our summary of the results of these studies for markets containing independent stations is restricted to the provision of only one estimate of impact for the entire market. Additionally, it should be noted that for policy purposes, we can rely more confidently on the results of our case study analysis, which reflects actual marketplace experience, in assessing the effect of cable television on independent stations than on the NAB–WEFA and Park studies.

135. Finally, in its response to the Park revision, MPAA alleges that numerous problems exist with the data for the Park study. For example, MPAA states that "in our opinion, the Park study—as initially presented and as modified—is a classic example of the failure to recognize that the conclusions arrived at from an analysis of insignificant, unreliable data are also insignificant and unreliable. The underlying problem, we believe, is the very small number of valid diaries in the Arbitron samples for the vast majority of the counties used by Park for this analysis." [168] We believe this statement reveals a lack of appreciation and understanding of statistical analysis. At first blush, we note that the number of diaries in Park's sample exceeds substantially the number of diaries that A. C. Nielsen collects for its weekly survey of total nationwide viewing patterns. Thus, without elaborate explanation, it should be obvious that "smallness" of sample size for statistical estimation does not imply inadequacy of sample size.[169] MPAA also argues that the size of the sample can affect Park's findings. However, here again, MPAA fails to consider a basic tenet of statistical analysis. That is, there always is some variation introduced by taking a sample of an entire population. But sample size affects only the statistical significance of the estimates, and not the expected value of the estimates.[170] Indeed, we note that despite the alleged scarcity of in-tab diaries, Park's estimate coefficients are estimated quite precisely in a statistical sense. Finally, we note that for sample size to affect Park's results significantly, there must be a systematic bias in measurement by Arbitron at varying sample sizes. We are not aware of any such bias.

136. MPAA also questions the accuracy of the data provided by Arbitron. For example, MPAA contends that the "inconsistencies between 'shares' and 'Net Weekly Circulation' data are so substantial and so numerous, we believe that *all* NWC figures should be eliminated from the econometric manipulation which are basic to the Park study." [171] We note, however, that Park does not employ NWC data for any of his estimates. Furthermore, given the intensive scrutiny that the data used by Park has received, we believe that the cleanliness of this data far exceeds that of most econometric analyses. Therefore, we find frivolous MPAA's "conviction that the Park study is science fiction." [172] We note, once again, that we believe our "consensus effect" is a sound conclusion derived from *all* of the available evidence *and* from the careful analysis and interpretation of that evidence.

137. *Additional Miscellaneous Comments.* A number of additional comments relating in part to the econometric studies and in part more generally to our *Economic Inquiry Report* were also received. For example, ABC criticizes us and the Park study for "assum[ing] the same availability of program product in the future, despite evidence that the siphoning of major sports and other highly attractive program product from television broadcasting to CATV is highly realistic and would greatly affect projected audience diversion and resultant revenue losses." [173] We are not aware of any persuasive "evidence" of this shift in program product taking place. And it should be noted that even if this phenomenon were to occur, it is unlikely that Park's audience diversion estimates would be affected substantially, for if it were to occur, it would not affect materially the relative attractiveness of local broadcast stations vis-a-vis distant broadcast stations because all broadcast stations presumably would be subject to the same programming shifts. The relative attractiveness of distant versus local stations is the relevant focus of the Park study. In addition, since no evidence has been presented to us which suggests that siphoning will occur, we do not believe it is appropriate for us to factor any alleged adverse effect of siphoning into our analysis of station profitability.[174] Others suggest that loosening of restrictions on broadcast signal carriage will result in decreased carriage of nonbroadcast programming and an overall decrease in diversity of program content. We find no evidence to support this view.

138. In our *Notice of Proposed Rulemaking in Dockets 21284 and 20988,* we addressed a petition from the National Association of Broadcasters requesting the Commission to commence rulemaking leading toward the adoption of rules designed to insure that local television broadcast service is not harmed by the development of superstations. We denied that petition because of the lack of any evidence that a regulatory problem exists or is being fomented. Nevertheless, INTV, in its latest comments in this proceeding, claims that "satellite distribution of signals has created unforeseen inequities that mandate retention of the rules." [175] INTV claims that "independent stations, and particularly UHF independents, are disproportionately sensitive to audience loss." [176] INTV also maintains that "satellite carriage often impacts to the superstation's detriment as well." [177] However, as in NAB's petition, the facts supporting these arguments are either missing or incorrect. For example, one of the most significant findings of the *Report in Docket 21284* was that UHF independents frequently are *helped* by cable in their local markets, even in instances where many distant signals are carried by cable. Thus if satellite carriage increases the demand for cable television it may help UHF stations. Additionally, our conclusion for audience diversion due to cable applies to the importation of television signals currently distributed by satellite as well as by other means. It is the number and

[167] *Supra,* n. 124, at 38.

[168] Further comments of Motion Picture Association of America, January 10, 1980, Attachment at 1.

[169] MPAA notes that Park's sample includes 79 counties for which there are less than 50 in-tab diaries. In an attempt to discredit the Park study, it compares Park's sample composition which is based on Arbitron's sampling procedures for countywide viewing to the procedure employed by A. C. Nielsen for its marketwide viewing surveys. It should be noted that these Nielsen surveys are not equivalent to the Nielsen nationwide survey mentioned above. The appropriate sampling procedure for a survey will differ depending upon the population that one is trying to estimate. Indeed, MPAA's comparison of Nielsen's procedure for estimating marketwide viewing to Arbitron's procedure for estimating countywide viewing is invalid. For example, Nielsen does not report audience data for any market if the number of in-tab diaries is below 50 because such a response signifies that a relatively small proportion of the households in the survey have responded. However, this is not necessarily, nor even likely to be, the case if less than 50 diaries are returned for a county.

[170] *See, e.g.,* Mood, Graybill and Boes, *Introduction to the Theory of Statistics* (1974).

[171] *Supra,* n. 168, Attachment at 6.

[172] *Id.* at 5.

[173] *Supra,* n. 89, at 22.

[174] See *Home Box Office, Inc. v. FCC, supra,* at 42.

[175] *Supra,* n. 113, at 54.

[176] *Id.* at 54–55.

[177] *Id. at 56.*

type of distant signals that affect local station audiences and not the means by which they are imported. Furthermore, in the *Report in Docket 20988*, we concluded that it is likely that superstations will receive some measure of compensation for the audiences they attract in distant communities. Thus, satellite carriage may be beneficial, rather than detrimental, to superstations. Nevertheless, it is the public interest that is paramount here, and not financial well-being of any one particular kind of station.[178] Here again, no facts have been presented which suggest the public will be disserved by the satellite carriage of programming.

139. NAB criticizes the Commission for "its failure to consider numerous and related factors which may compound the adverse impact on broadcast service—namely, audience fragmentation due to pay television, reallocation of advertising expenditures from broadcast to cable television, and audience and advertising reduction which may result from such services as satellite to home broadcasting."[179] This proceeding addresses the effect of the distant signal carriage and syndicated exclusivity rules on television service to the public. Our methodological approach has been to ascertain the amount of audience diversion that will occur in the absence of the rules and to determine whether these losses, if any, will affect the service from television broadcast outlets. With this in mind, pay cable and other services emerging in the market are relevant to this proceeding only to the extent that they will affect television broadcast profitability. At this point we are lacking any evidence that they do.[180]

140. In addition, cable systems do not compete significantly in advertising markets. For example, even though almost one out of five households in the nation subscribed to cable television, advertising revenues for the cable television industry were less than one tenth of one percent of those of the television broadcast industry in 1978. Thus, we do not envision that the growth of cable television will compound any adverse impact that cable may have on television stations' profits by siphoning advertising revenues from broadcast stations for cable systems.

141. NAB also alleges that "the Commission has made no attempt to consider how * * * carriage of specialty stations carrying substantial amounts of syndicated programming will increase the degree of program duplication dramatically."[181] However, as noted in para. 63 of the *Report in Docket 21284*, we previously had determined that the cable carriage of specialty stations would contribute to the welfare of consumers, while not adversely affecting the ability of commerical broadcasters to provide a satisfactory level of service to the public. Moreover, our conclusion in this proceeding is that the unregulated cable carriage of syndicated programming also will act to promote the public interest. Nothing has been presented here to suggest that our decision in 1977 to permit unlimited cable carriage of specialty stations was incorrect.[182]

142. Capital City Television *et al.* finds it "curious that the Commission has so far shown little regard for these smaller market broadcasters, and instead has focused in its conclusions almost exclusively on impact on big city television stations." However, to the contrary, the work on audience diversion due to cable in this proceeding has focused in large measure on small market stations. For example, Dr. Fisher and MPAA categorize the Park sample as being geared mostly to smaller markets. NCTA analyzed all markets with greater than 33 percent cable penetration. The majority of these markets rank below one hundred. NAB–WEFA and MPAA, by analyzing most if not all counties with greater than 10 percent cable penetration, also incorporate a substantial amount of information on audience diversion due to cable in smaller television markets in their studies. Lastly, we focused on smaller television markets throughout our case study analysis. Our conclusions are directed appropriately to both big city and small market television stations.

143. One commenting party, WBOC–TV, went so far as to request "a replication study of the statistical analysis contained in the 'Economic Inquiry,' using data for the years in question supplied by Arbitron's competitor, A. C. Nielsen, Inc."[183] Replication of the statistical analysis undertaken to date in this proceeding easily could add more than another year to the termination date of this proceeding. The gain in accuracy that *might* occur certainly is not required at this point. After almost three years of study, we have been presented with no good reason to believe that Arbitron data is less reliable than Nielson data, since the estimates supplied therein are in statistical tolerance of each other. Thus, we do not find it desirable to further delay the conclusion of this proceeding in order that a very small degree of confidence might be added to its conclusions.

144. *Summary.* Our *Report in Docket 21284* concluded that the incremental audience losses to local broadcast stations from eliminating the signal carriage rules will be less than 10 percent in the foreseeable future except for the most extreme cases. This conclusion was drawn from all of the substantive work on audience diversion that was undertaken for this proceeding—NCTA, MPAA, NAB–WEFA, Park and the case studies—after necessary adjustments were made to the studies. It is important to note that no new study has been submitted which suggests this conclusion is incorrect. In fact, the majority of comments on the *Report in Docket 21284* consist of criticisms of only one of the five audience studies—the Park study. However, in the *Report*, we characterized the Park Study as overstating the effect of cable television on local station audiences and we provided numerous reasons and examples demonstrating the validity of this characterization. Our analysis essentially has been ignored. Instead, the commenting parties have submitted a large number of criticisms of the Park study attempting to establish that it understates audience diversion due to cable. These criticisms address what we have shown in this *Report and Order* to be minor problems that do not significantly affect Park's results. Our belief remains that Park overestimates the effect of cable television on local television station audiences.

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[178] We are aware, for example, that INTV requests the retention of the rule because of "unforeseen inequities." More specifically, competition from cable is said to be more keen for independent stations than for network affiliates. However, we are aware of no statutory mandate that requires us to consider the equities involved in shifting profits among firms. In fact, the U.S. Court of Appeals, District of Columbia Circuit in *Carroll Broadcasting Co. v. FCC*, 258 F. 2d 440 (D.C. Cir. 1958) concludes that "the question whether a station makes $5,000, or $10,000 or $50,000 is a matter in which the public has no interest so long as service is not adversely affected." It is clear that our mandate is to best judge that which is in the public interest. The criteria we employ to make this judgment are described in the first section of this *Report and Order*.

[179] *Supra*, n. 93, at 111.

[180] We are aware that some parties have submitted partial summaries of the data in the "Nielsen Pay Cable Report." We are unable to ascertain the effect of pay cable television on local station audiences from the data submitted. However, other studies suggest that pay cable will not affect significantly the audiences of local television stations. *See* the survey by Video Probe Index, *supra*, n. 162. *See* also *Stations KMIR-TV and KPLM-TV*, 66 FCC 2d 576 at 582–3 (1977).

[181] *Supra*, n. 93, at 143.

[182] *See* the *First Report and Order in Docket 20553*, 58 FCC 2d 442 (1976).

[183] WBOC–TV, Comments in Dockets 20988 and 21284, September 17, 1979 at 4.

145. Additionally, several parties have attempted to obfuscate our criticisms and adjustments to the NAB–WEFA model. However, the issue here is clear and simple. WEFA's employment of a "logit" specification for its structural equations causes an inherent bias in their results because small independent stations must be predicted by the model to suffer greater percentage losses in audience from distant signals than larger stations, regardless of what the data actually may indicate. The responses to our criticisms of the NAB–WEFA model have acted to confirm, rather than contradict, this conclusion. We also have provided numerous reasons and examples demonstrating that the NAB–WEFA predictions of audiences losses to independent stations from cable television are overstated.

146. Finally, and most importantly, our detailed analysis of "grandfathered" markets and "worst case" broadcast stations has received criticism relating only to the procedure employed to determine audience diversion. However, not only did the commenting parties fail to show how our results would be changed with different methodology, but also we have found that these criticisms are invalid. (See discussion below.)

147. In summary, we believe our analysis demonstrates convincingly that (1) the data relied upon describe accurately the cable television and television broadcast industries; (2) the methodology employed is valid and has been applied properly; and (3) the conclusions are derived correctly from the available information.

148. *The Impact of Distant Signals on Public Service Programming by Local Stations.* The Commission has long been concerned about the effect the presence of cable television might have on the ability of local stations to fulfill their obligations to serve the public by providing local programming options to their viewers. Our concern has been that if cable succeeds in diverting viewers from watching the signals of local stations to those of distant ones, the resulting decline in revenues of the local stations might force these stations to reduce the public service programming that they provide.

149. Traditionally, we have attached particular importance to local public service programming because of the effect it may have in shaping the attitudes and values of citizens, in making the electorate more informed and responsible, and in contributing to greater understanding and respect among different racial and ethnic groups. Since the social benefits of this programming exceed the private benefits of the actual viewers, we have sought to assure that the public will capture these benefits and, thus, for example, the Commission has recognized the necessity for licensees to "devote a reasonable percentage of their broadcast time to the presentation of news and programs devoted to the consideration and discussion of public issues of interest to the community served by the particular station." *Fairness Report,* 48 FCC 2d 1, 2 (1974) quoting *Report on Editoralizing,* 13 FCC 1246, 1249 (1949).

150. In this proceeding, we are interested in determining what effect the carriage of distant signals has on the ability and propensity of local broadcast stations to provide local public service programming. To measure this effect precisely would require an elaborate set of information. Unfortunately, however, a fully descriptive or accurate set of the information necessary for this determination is unavailable. Most importantly, the expense data collected from television licensees by the Commission suffer from a lack of uniformity in accounting policies.[184] Thus, the reported results for station expenses and profits cannot be relied upon in a cross-sectional econometric analysis that is undertaken for policy purposes.[185]

151. Faced with these data limitations, studies have attempted to estimate statistically the relationship between station revenue and the amount of local programming broadcast by television stations. In our *Report,* we relied most heavily on a study performed by the Commission's Broadcast Bureau which utilizes the most recent data.[186] The Broadcast Bureau finds—after accounting for such factors as the presence or absence of network affiliation, whether a station is VHF or UFH, and the number of stations competing in the market—that each additional $1 million in station revenue is associated, on average, with about 14 minutes of additional local programming per week. This finding also is supported by the studies of Drs. Crandall and Park appearing in the literature.[187] It is important to note, however, that the Broadcast Bureau has taken care to emphasize that utilizing such a model to predict the effect of changes in revenue on the quantity of local programming may not produce very reliable estimates. Since the result is derived from comparisons across stations, it is not purely applicable to the effect of a change in an individual station's revenue. Accordingly, our use of the model has been limited to providing only a rough indication of the magnitude of the relationship between revenue and public service programming. Nevertheless, the results of the model suggest that changes in revenue have small effect on the amount of public service programming that television stations broadcast.

152. To provide a rough estimate of the effect of cable television on the amount of public service programming broadcast by local stations, we applied the results of the Broadcast Bureau model to our findings in the "Grandfathered Market Analysis" of the *Report in Docket 21284.* The largest effect from cable television that we estimated for an individual station in the six grandfathered markets was a reduction in local programming of 5 minutes per week. Again, we must emphasize that this estimate should be considered only a rough approximation. Nevertheless, we believe our conclusion is correct that the effect of cable television on the amount of public service programming broadcast by television stations generally is minimal. This result is strongly supported by our other findings in the case study analysis that 1) the profits generally earned by television broadcasters enable them more than adequately to provide public service programming and 2) cable television plays a very small part in determining station profits.

153. Our analysis of the effect of cable television on the public service programming provided by local broadcast stations has not received substantial criticism. In fact, there virtually is no debate in the record concerning our finding of the effect of cable on the *amount* of public service programming by local stations. The only

[184] *See, e.g.,* R. E. Park, *et al.* "Projecting the Growth of Television Broadcasting: Implications for Spectrum Use," prepared for the Federal Communications Commission, 1976, p. 119. The authors suggest that the substantial differentials in the reported financial results for similarly situated stations, in addition to varying accounting methods, might also be attributable to different goals and performance by station management.

[185] The reference to cross-sectional analysis is mentioned here to signify that the problem exists most severely when comparing the results of different stations. It should be noted that we rely upon the reported operating income of television stations in our case study analysis. In this analysis, however, we are comparing the results of the same station over time. This approach minimizes variations attributable to a lack of uniformity in accounting policies or management performance.

[186] FCC Broadcast Bureau, "Television Public Service Programming and Audience Diversion: An Economic Analysis" in *Report on Information Developed under the Cable Economic Inquiry,* Docket 21284, April 18, 1979.

[187] *See* Rolla Edward Park, "Television Station Performance Revenues," *Educational Broadcasting Review,* June 1971; and Robert W. Crandall, "Regulation of Television Broadcast: How Costly is the Public Interest?", *Regulation,* Jan./Feb. 1978.

criticism of our finding is that the language in the *Notice of Proposed Rulemaking in Dockets 21284 and 20988* that "substantial increases in broadcast licensee revenues produced little increase in local and merit programming, and coversely, substantial decreases in licensee revenues produce little decrease in such programming"[188] is too strong in light of our statement in the *Report in Docket 21284* that the "results should be regarded as no more than rough approximations."[189] We do not believe, however, that these two statements are inconsistent. For example, we would project that a $500,000 reduction in annual station revenue would reduce local programming 7 minutes per week. Thus a substantial decrease in station revenue would have a minimal effect on local programming. But more importantly, while we only can conclude the 7 minute estimate is a rough approximation, we can conclude with much more confidence that the effect is less than 15 minutes per week.[190] Thus, we believe our statement in the *Notice* that additional competition from cable television would not cause the supply of local and merit programming to diminish materially is valid.

154. The most serious criticisms of our analysis of the effect of cable television on the public service programming provided by local stations are the allegations of what it failed to consider. For example, NAB says, it "cannot concur that the Commission should look only to local or 'merit' programming. The service a station provides encompasses a wide variety of program types."[191] Hence, NAB contends that "a station able to allocate more money to programming can purchase better programming as well as produce better programming."[192] Similarly, because program expenditures are correlated positively to revenues, NBC argues that revenues are correlated significantly to program quality and diversity. For the same reason, ABC apparently would like us to consider the findings of the Broadcast Bureau study that local programming expenditures are related strongly to station revenues. NAB synthesizes this line of reasoning by arguing that the "importation of additional distant signals will have a negative effect on the quantity and quality of broadcast service available to the entire viewing public."[193] Before proceeding, we note that neither the NAB, nor any other party, has offered any reason for rejecting our estimate of the effect of cable television on the *quantity* of local programming provided by television broadcast stations. Additionally, we believe that NAB's argument, along with those of the other commentators addressing the effect of cable television on the quality of television programming, demonstrates a misunderstanding of the economic theory and evidence adduced in this proceeding. For example, economic theory suggests that broadcasters may actually increase expenditures for programming in response to increased competition from cable television (because it may be more profitable to do so rather than to reduce expenditures). Thus there is no reason for us to expect that the quality of television programming will decline necessarily because of additional competition. In fact, when the evidence is interpreted correctly,[194] the opposite result appears to be true in some circumstances. For example, the empirical estimates of the Broadcast Bureau study provide some evidence that the entry of an independent station into a market will cause an increase in program expenditures for the network affiliates.[195] Therefore, we find the industry's contention that additional distant signals will necessarily reduce the quality of local programming to be without merit. In any event, no evidence has been presented or uncovered in this proceeding that shows that cable television reduces or will reduce the quality of television programming broadcast by local television stations.

155. Finally, ABC has cited the Broadcast Bureau study for saying that the use of minutes of local programming may suffer from the fact that this data represents minutes of both remunerative and nonremunerative programming. However, this data limitation is of no consequence to our results because we conclude that cable television has no material adverse effect on the total amount of local programming broadcast by local stations. If cable forces a shift from nonremunerative local programming to remunerative local programming, we do not envision this effect redounding to the detriment of consumers.

156. In summary, we find that cable television does not affect materially the quantity of local programming broadcast by local television stations. Additionally, we find any claims of adverse impact from cable on the quality of television programming to be unsupported both by economic theory and by socioeconomic evidence.

157. In many respects the most important findings from our *Economic Inquiry* came from our case studies of actual markets facing cable competition. Our *Report in Docket 21284* focused upon cases for which it was perceived that cable television would have the greatest potential to affect the viability of broadcast stations: (1) grandfathered markets which are characterized by high cable penetration and a large number of distant signals; (2) independent television stations in markets with significant cable penetration and where cable systems carry a large number of distant signals and (3) "worst case" stations or markets which have alleged they are harmed by cable television.[196] Comments were filed with the Commission on behalf of 78 broadcast stations and markets—including many independent stations, UHF stations, one-station markets and two-station markets. We considered these to represent the "worst" cases since they were the stations/markets which the industry chose to call to our attention. These case study analyses formed the backbone of our finding of the effect of distant signals on the performance of local broadcasters because most of the stations analyzed were operating in an essentially unregulated marketplace.

[188] *Supra*, at para. 60.

[189] *Supra*, at para. 138.

[190] It should be noted that the effect of revenues on local program minutes is measured very precisely in a statistical sense by the Broadcast Bureau study to be 14 minutes per week for each additional million dollars in revenues. The F statistic (a measure of variance) for the coefficient of revenue is 32.96. The standard error is about 2 minutes per week. Thus, for the example above, we can attach a 99 percent level of confidence to the statement that the effect would be no larger than 15 minutes per week, assuming the model is specified properly.

[191] *Supra*, n. 93, at 121.

[192] *1 Id.*

[193] *Id.* at 118.

[194] The evidence presented by NAB demonstrating that the revenue and expenses of broadcast stations are positively correlated by market size cannot be employed to derive any conclusions concerning the effect of additional competition on the magnitude or direction of the values of these variables. The suggestion that revenues and expenditures both will necessarily decrease in response to additional competition ignores the simultaneous interrelationship between audience, revenue, and program expenditures in determining the profit maximizing selection of programming. Revenues and program expenditures actually may increase in response to additional competition due to a new program selection mix. Additionally, NAB ignores the fact that broadcasters operating in smaller markets pay less for the *same* programs that are purchased in the larger markets. Hence, comparison of program expenditures across markets is not necessarily a good method for comparing program quality.

[195] It should be noted, however, that we cannot place much reliance on this estimate because of the inadequacy of the data. Nevertheless, this finding is supported both theoretically and empirically by the analysis of Park, *et. al., supra*, n. 184 at Appendix F.

[196] *Report in Docket 21284, supra*, at Section IV and Appendix B.

We found no evidence of debilitating economic competition due to cable television. It was our intent to supplement the more theoretical findings of earlier scholarly studies and our own econometric work with actual evidence from case studies.

158. Six broadcast markets were selected for detailed analysis based upon their high levels of cable penetration and the availability of a large number of distant signals due to the grandfathering provisions of our rules.[197] These markets provide an excellent indication of the effect of cable television on local station audiences and finances in the absence of distance signal restrictions on cable television. The markets ranged in size from the eighteenth largest (Seattle, Washington) to one of the nation's smallest (Parkersburg, West Virginia—market 199). With the high levels of cable penetration present and the large number of distant signals being imported into these markets, we expected to find some evidence of audience diversion. Our primary concern, however, was the degree of audience loss and the extent to which this loss affected the economic viability of the local stations.

159. Of the six markets analyzed, only the Palm Springs and Bakersfield stations experienced appreciable audience diversion. Cable had no major effect on the audience levels in the other four markets. San Diego experienced a very slight diversion of audience; Parkersburg realized an audience gain; and Harrisonburg/York and Seattle experienced little, if any, audience effect from cable (the impact revealed was either a modest gain or loss depending upon whether a "rating based" or "share based" analysis was used.)[198] Although Palm Springs and Bakersfield experienced diversion from cable, their overall audience levels (9 AM–midnight) did not decline during the past five years.[199] More importantly, in all of the grandfathered markets, the revenue and operating income of the local stations had increased substantially from 1972 to 1977. Ordinary growth in revenues more than offset any adverse effects from cable. Thus, whatever adverse effect that cable may have had on stations in these markets, it was not large enough to offset the effects of other factors contributing to their well-being. We stated that we expected these trends to continue.

160. Because of the concern that independent television stations, as opposed to network affiliates, might be affected most by the carriage of distant signals on cable, we analyze the effect of cable on the audiences and financial operating results of seven independent stations in five markets. These stations were selected by identifying all independent stations located in markets having 15 percent or greater cable penetration and a large number of distant signals on cable. For several reasons, these selection criteria yielded only a small sample suitable for analysis. For example, significant cable penetration must exist in a market in order to examine the effect of cable on individual local station audiences. Yet, all but two of the independent stations in the nation operate in the top 100 markets and nearly 75 percent of these stations are in the top 25 markets. Cable penetration in these large markets is generally very low. Another factor which narrowed the sample is that the cable systems within a market must carry relatively consistent distant signal complements in order for the analysis to be instructive. Also, a large number of distant signals must be imported by the cable systems to indicate the effect of cable in an unregulated market. Finally, the choice of markets was constrained by the data limitation that separate audience figures for cable homes are not always provided for many of the market counties where cable exists. With these selection criteria, only seven independent stations were found to be suitable for analysis[200]—primarily due to the fact that most independent stations are located in large markets with very low cable penetration.

161. Of the four independent VHF stations analyzed, two revealed a negative audience impact from cable and two experienced a positive effect. Of the three UHF independent stations analyzed, all revealed positive audience effects from cable, despite the carriage of at least five distant signals on cable systems in their markets. The two VHF independent stations which experienced a negative audience effect from cable were XETV, San Diego and KTVU, Oakland. Station XETV operates from Mexico and thus financial information for this station is not available to the Commission. The other station, KTVU, had substantial revenue and operating income gains over the past five years despite the presence and growth of cable. Furthermore, we found that independent VHF stations generally are very profitable. For example, the three VHF stations in our analysis, for which we had financial data, had a combined net income in 1977 of over $15 million. Thus, our study of independent stations revealed that cable is not a major negative force on the financial viability of these stations and that independent UHF stations are often helped by cable despite cable carriage of many distant signals. Although some VHF stations experienced audience diversion due to cable in these essentially unregulated markets, the substantial amounts and growth of revenue and operating income of these VHF independent stations reveals a minimal impact of cable on their overall profitability. The results of this analysis were considered indicative of the potential effect of cable on independent stations in general. For example, because all but two of the independent VHF stations in the nation operate in the top 50 markets, one would expect these stations to be financially sound. In fact, further analysis revealed this to be true. We concluded that the revenues and operating incomes of independent stations will continue to increase due to both population growth in metropolitan areas and increases in the demand for television viewer exposures.

162. We also analyzed the audience trends and operating results of 78 broadcast stations and markets which, in the *Economic Inquiry*, alleged current and/or potential adverse impact from cable television.[201] Of these, only nineteen "worst cases" were identified as warranting further, more detailed, analysis to determine the effect of cable television upon station viability. Four

[197] Non-commercial stations were excluded from the analysis because the financial results of their operations are not reported to the Commission. Instead we performed a separate analysis of the effect of cable on non-commercial stations in Appendix C of the *Report in Docket 21284*. Comments on that analysis are examined in Appendix C of this *Report and Order*. We conclude in that study that cable television is no more likely to impact adversely on non-commercial television service to the public than it is on commercial service.

[198] For a further discussion of this distinction, see paras. 123 and 124 of the *Report in Docket 21284*.

[199] This point deserves further clarification. Loss of audience is often discussed in two different contexts. When a lower percentage of cable homes vis-a-vis non-cable homes are viewing local stations, this appropriately is considered audience diversion in the sense that the local station's total audience is less than it would otherwise be if cable were not present in the market. However, it does not necessarily follow that the station experiences an actual decline in its audience when this diversion occurs. In fact, our studies found that station audiences normally increased over the period analyzed. Thus, it is apparent that factors other than cable (e.g. population growth, programming adjustment, increased power, and improved television receivers) often act to offset the effect of cable. Conversely, there are other cases in which a station's audience was shown to be stagnant or declining, and yet cable diversion of potential audience was either not present or was not a primary factor in the decline.

[200] *See* Table 3 and Appendix B of the *Report in Docket 21284*.

[201] *See* Table 5 and Appendix B of *Report in Docket 21284*.

selection criteria were employed to identify these cases. The primary criterion was to select for further analysis all stations or markets which experienced losses or no gain in audience during the past five year period and stations which had experienced a decline in "real" revenues (price deflated based upon the 41 percent inflation rate during the 1972–1977 period).[202] These two criteria yielded a total of sixteen cases (fourteen stations and two markets) for further analysis. Two additional stations were included because of high cable penetration in their markets and because of their previous involvement with the Commission in the form of requests for special relief. Finally, a station was included because of its claim of hardship despite relatively low cable penetration in its market.

163. The effect of cable television for these nineteen "worst cases" was estimated using the same procedure employed for the grandfathered market cases. The analysis included a thorough survey of cable versus non-cable viewing patterns within each county of the ADI market. Through a weighting of the audience diversion (or gain) due to cable on a county by county basis, we were able to develop a quantitative estimate of the marketwide audience effect of cable on the local stations. The results were presented in Table 6 of the *Report* and are summarized below.

164. In four of the nineteen cases analyzed in detail, cable television acted to increase the overall viewing of local stations. There also were two cases in which cable appeared to have no effect on the audience of the local station.[203] In the remaining thirteen cases in which audience diversion from cable was present, only two instances were found in which the losses were accompanied by a decline in both "real" revenues and operating income. In each of these cases, however, the rate of growth of the stations' actual revenues was only slightly less than the rate of inflation. Moreover it is important to note that cable penetration and the number of distant signals carried by the cable systems in these markets remained relatively constant during the period, indicating some factor(s) other than cable was responsible for the decline in operating income. For example, one of these stations operates in the Idaho Falls market wherein a new network affiliate began broadcast operations in 1974. This is likely to be a very significant factor in explaining the audience and operating income decline of station KID–TV between 1973 and 1977. Therefore, we found that even in the worst cases, cable does not appear to be a major negative force on the financial situation of TV broadcasters. For example, although station KOSA, Odessa, Texas experienced an audience diversion of between 7 percent to 10 percent, this diversion of cable subscribers did not result in a decline in the station's average total audience. During the 1972–1977 period, cable penetration in the market increased from 36 percent to 50 percent; the station's 9 am to midnight audience remained constant; yet station revenues and operating income both increased by approximately 85 percent. We concluded that factors such as population growth and increased demand for television advertising make this apparent anomaly possible, and we stated that we expect these trends to continue in the foreseeable future.

165. Careful attention was given to the performance of each of the stations in our analyses. For example, a five year comparison (1972–1977) of all the relevant economic data for these stations was performed. We compared changes in cable penetration, average 9 am to midnight audience, revenues, and operating income for each station or market between 1972 and 1977. Actual audience measures of cable and non-cable viewing patterns were utilized to determine the diversion of local audiences due to the availability of cable television in the market. Additionally, we performed a detailed financial analysis of the stations/markets, including analysis of many other factors which influence performance, e.g. year operations began, local competition, and authorized power and antenna height. Finally, we carefully monitored the number of local program minutes broadcast by stations in the grandfathered markets.

166. In summary, we found in our studies of grandfathered markets, independent stations and "worst case" stations that cable television generally does not cause any appreciable diversion of local station audiences and that UHF stations, particularly those in intermixed markets, often are helped by cable television. More importantly, we found that overall audiences, "real" revenues, (i.e. revenues adjusted for inflation), and real operating incomes of local broadcast stations increased in most cases, despite the presence of cable. Our conclusion was that cable does not appear to be a major negative force on the financial situations of television broadcasters, and that the adverse effect of cable, if any, is not great enough to offset the ordinary secular growth in real incomes that the broadcast stations realize. The risk that consumers of broadcast television will be harmed by unrestricted cable carriage of broadcast signals was considered to be negligible and the existing levels of service to the public seemed secure. These case studies provided an excellent test of the effect of increased signal carriage, and they show conclusively that expanded viewing options on cable television do not work to the detriment of any group of viewers.

167. Because these studies spoke directly to the financial performance and market facts of individual stations or markets, we would have expected any errors in our analysis to be reported to us. None of the commenting parties, however, disputed the major findings of these studies—that even in the essentially unregulated markets, stations prospered. Moreover, if there were specific case studies missing that told a different story we would have expected these to be reported to us. None were. Rather, the cross-examination of this analysis fell generally into three categories: (1) apparent data inconsistencies or criticisms of methodology including the discovery of some typographical errors, (2) questions as to why certain markets or stations were chosen for analysis, and (3) perceptions that certain types of stations and markets (UHF stations, independent stations, and smaller markets) were either ignored or insufficiently addressed. Several parties questioned the use of 1976 figures for marketwide "cable TV homes" in Appendix B of the *Report* whereas 1977 figures were cited in Table 2 of the body of the *Report*. This, they stated, indicated a lack of precision in the analysis. However, as was noted in Table 2–1 of the *Report*, the impact formula used in Appendix B consists of several factors which are, of necessity, obtained from different Arbitron source books. For the formula to be useful, each factor has to be taken from the same time period or from as close a period as possible. The most current figures available for the county rating and share factors in the formula were averages from three surveys taken in May 1976, November 1976 and February 1977. The survey of "cable TV homes" which fell closest to this time period range was taken in October of 1976, and, thus, this was the figure which had to be used in

[202] No stations or markets experienced a decline in actual revenues.

[203] This is based upon the expectation that the true audience effect of cable probably lies somewhere between the impact based upon a "share" analysis and a "rating" analysis as discussed in paras. 122 and 124 of the *Report*.

the impact formula in Appendix B of the *Report*, even though more recent data (September 1977) were available for the number of cable TV homes in each market. In other sections of the *Report* (Table 2) we used the more recent 1977 data to display cable growth since 1972. In short, we explained the distinction in the *Report* and, in any event, it makes no significant difference in the estimated impact whether 1976 or 1977 figures are used.

168. INTV also states that the impact formula should have used ADI (area of dominant influence) audience figures in both the numerator and denominator of the formula. We have, they feel, underestimated the impact by using the loss of cable homes in the ADI in the numerator while using the station's total audience in the TSA (total survey area) as the denominator. However, Arbitron's standard measure of a station's audience is provided on the basis of TSA surveys, and it is this total audience of the station on which the Commission seeks to measure impact. To measure impact only on the ADI portion of a station's overall audience (although this portion may represent 95 percent of the total audience) would slightly overstate the estimated impact. Ideally, to measure the impact of cable television within a station's entire survey area, one would determine the diversion or gain due to cable in each county of the station's survey area. However, due to the often large number of counties within a station's TSA, overlapping TSA counties among stations, and a lack of cable viewing data for each county within a station's TSA, this would be a formidable, if not impossible, task. The closest we can come to this ideal is to measure the diversion or gain within the Area of Dominant Influence (ADI) counties as a percentage of the station's total audience. It should be noted, however, that were we able to conduct the analysis for the entire TSA, the audience diversion would likely be lower than that estimated in the *Report*, since cable normally improves the reception of a station's signal outside of its ADI.

169. INTV also criticizes the *Report* for failing to control for equality of reception in cable and non-cable homes by measuring overall impact throughout the market. That is, in distant counties of the ADI, cable may improve an ADI station's reception (and thus its viewing share in cable homes vis-a-vis non-cable homes); whereas in the closer ADI counties more diversion due to cable will occur. INTV feels that if the diversion in the closest counties were measured alone, the impact estimates would more accurately reflect potential harm. We are of the opposite opinion. It is the overall impact on a station which is important. One of the conclusions of the *Report* was that the improved reception characteristics of cable in some areas of a market can act to offset the negative effect of cable in other areas of the market. Even when a county may lie many miles distant from a station, if it is assigned to that station's ADI market (due to the viewing patterns of county residents) then the county is considered part of that market for TV advertising purposes.

170. NAB questions our use of a "sign-on to sign-off" audience figure to represent a station's total audience in the impact formula of Appendix B of the *Report*, whereas 9 AM to Midnight audience figures are used in other tables of the *Report*. As mentioned previously, all factors in the formula should be for the same period in order to be most useful. The share and rating figures in the Arbitron County Coverage books are provided in terms of the sign-on to sign-off period. Therefore, the average audience figure in the denominator of the formula also had to be expressed in these terms. In other sections of the *Report* we simply listed the more-often quoted measure of a station's average total audience—the average 9 AM to Midnight audience. Actually, it would not have made much difference whether the station's 9 AM to midnight audience or its sign on to sign off audience was used in the impact formula since there is normally little difference between the two figures. Both are used as generally representative of a station's average all-day audience. Only minor differences would have resulted by using a 9 AM to Midnight audience figure in the denominator of the formula—and the effect would have been to estimate a lower impact from cable than we predicted in the *Report*.

171. NAB also states that there are mathematical errors in the case studies which significantly affect the results. However, only one was specifically identified by NAB and, when corrected, we find an increase in the predicted cable impact by less than three-tenths of 1 percent. This error is insignificant, and on further review, we are unable to identify any mathematical errors which had any substantive effect on the results of our studies.

172. Another point raised by NAB and INTV is that the *Report* measures average audience diversion over the entire broadcast day rather than during segments of the day when impact may be more severe—such as early fringe. We recognize that there are certain day parts during which audience diversion will be more than average, and others during which diversion will be less than average. Nevertheless, for purposes of this analysis, the full day estimates provide an adequate and reasonable basis for judging the effect of cable on a station's overall audience and financial viability. The econometric analysis which attempts to provide quantitative projections of the effect of changes in signal importation deals with this issue in greater detail. See Section II.

173. INTV also seeks information as to why the six markets in the "grandfathered market" section of the *Report* were chosen for analysis. It states that there are other markets which meet our criteria of high cable penetration and a large number of imported signals; in particular the San Francisco market. We did not feel there was a need to examine every highly cabled and grandfathered market in the nation.[204] Rather, we selected a sample of six such markets which, it was felt, would provide a good cross-section for determining the impact of cable in various type markets. For example, several large markets with network and independent stations were chosen, one smaller market having all three network affiliates was selected and two of the smallest markets in the nation were chosen, each having extremely high levels of cable pentration, one being a one-station market and the other a two-station market. There was no intention to exclude any particular market from consideration. Indeed, we specifically encouraged, in the economic inquiry, all parties to submit instances and evidence of cable television's impact. In regard to not choosing the San Francisco market for analysis, we had already selected three of our six cases from the top 50 markets, and three of the six cases also were markets within the state of California. Therefore, we did not feel that including the San Francisco market would add materially to our results. It should be noted, however, that in the study of independent stations, three San Francisco stations were analyzed, two of which realized audience gains from cable in the market and all of which had experienced substantial revenue and operating income increases over the past five years. Furthermore, San Francisco market stations have, since 1973, had a 20 percent overall increase in average audience, increases in revenues of nearly 100 percent (from $62

[204] Also, the cable systems within each market had to carry the same number and complement of imported signals for the analysis to be instructive. This lowered the number of markets to choose from.

million to $123 million) and increases in operating income of 140 percent (from $19 million to $46 million). During this period, cable homes have grown from 20 percent of the market to 30 percent of the market. These facts regarding the San Francisco market serve to strengthen our original conclusion that cable does not appear to have a significant impact upon broadcast station viability—even in highly cabled and grandfathered markets.

174. The Rocky Mountain Broadcasters' Association commented that the significance of two studies submitted in Docket 21284 had not been properly weighed by the Commission. One of the studies presented was by Dr. William Duhamel, President and General Manager of Duhamel Broadcasting Enterprises. The study described a methodology for computing cable audience diversion for eleven markets in the Rocky Mountain Time Zone. The methodology used is in many ways quite similar to that later used by the Commission in its *Report in Docket 21284* and, not surprisingly, yields similar impact results. Each of the eleven markets in the Duhamel study was examined in the case study section of the Commission's *Report*. The two markets which had not experienced audience gains during the past five years (all had experienced healthy revenue gains) were further analyzed to determine audience diversion due to cable television. In Cheyenne, Wyoming, the sign-on to sign-off audience diversion was estimated to be 14.5 percent and in Miles City/Glendive, Montana the diversion was estimated to be 26.1 percent. The Duhamel study produced very similar diversion estimates for these two markets. The slight difference in the two sets of estimates may result from the fact that Dr. Duhamel's analysis measures cable audience diversion as a percentage of a station's ADI audience and thus results in a somewhat higher estimate than the Commission's analysis which measures cable audience diversion as a percentage of a station's total audience from the TSA as measured by Arbitron. In short, there is no major disagreement with the Duhamel analysis, but rather with the conclusions reached. Our conclusion remains that we find no evidence that the audience diversion in these markets has resulted in a serious impact upon the revenues and financial viability of local stations and upon their ability to provide news and public interest programming. Of the eleven markets surveyed, all but two showed audience increases since 1972; all revealed increased revenues, and all had a positive operating income. The impact of cable in these highly cabled markets with many grandfathered systems has not resulted in any apparent decline in local broadcast service to non-cable households. It should be noted that the comparatively large audience impact figures which are revealed in the Rocky Mountain area should not be confused with estimates of audience impact which might result from the rule changes ordered herein. The Rocky Mountain estimates are for impact which has already occurred and been absorbed. More importantly, the magnitude of the impact is primarily the result of households in one or two station markets being offered (on cable) what the Commission has already authorized and encouraged as a minimum—access to three network stations and an independent station. Thus, any diversionary effect from additional signals would be spread among all stations being offered on the cable systems and the incremental impact upon a local network affiliate would be minimal.

175. The other study submitted by the Rocky Mountain Broadcasters Association was prepared by Mr. Joseph Sample, a past president of the Association. Mr. Sample argues that, rather than an audience loss formula, a more appropriate measure of cable television's impact in a television market is revealed by a study of gross rating points (GRP's)—as determined by advertising agencies through the use of A. C. Neilsen audience surveys. For example, an agency seeking an advertising weight of 100 gross rating points (an audience measure) in each market within the Rocky Mountain Area would first purchase time in the major markets—Denver and Salt Lake City. Then, by utilizing the Neilsen studies which reveal audience spill-in and spill-out effects among markets, the advertiser can see that some GRP's in the smaller Rocky Mountain markets will be obtained. By not having to purchase a full 100 GRP's in these smaller markets, advertisers might negotiate lower prices or even drop a market from consideration—depending upon its coverage by larger markets. Mr. Sample's description of the methods used for purchasing station time in the Rocky Mountain Time Zone may well be accurate. However, either there are other advertisers who fill the void or some other means must be used by stations to offset the effect; because we can find no evidence to suggest any decline in the revenues or operating incomes of these small market stations.

176. Finally, there were several comments which expressed the opinion that certain types of stations and markets (UHF stations, independent stations, one-station markets and two-station markets) would be most affected by the proposed rulemaking, and that this had been either ignored or insufficiently addressed in the *Report*. This is not the case. We focused considerable attention upon these types of stations.

177. In the *Economic Inquiry Report* we analyzed 98 different stations and markets. Based on the comments received in response to our *Notice of Proposed Rule Making* we have now again studied and analyzed over 100 stations and markets and find our initial conclusion again confirmed. (See Appendix D.) Eliminating the overlap in the stations and markets studied both in the *Economic Inquiry Report* and for this document, the total number of separate stations and markets analyzed is approximately one-hundred and sixty. The financial results of every station and market brought to our attention were surveyed. Our analyses included nearly every one and two-station market in the nation as well as a large number of UHF and independent stations. Five year trends of cable penetration, viewing audience, revenues and operating income were studied. Of all the "worst case" and grandfathered markets and other stations analyzed in this proceeding, we were able to identify only one instance [205] in which an actual revenue decline had occurred over the past five years—in spite of both high cable penetration and the large number of distant signals available in many of the cases surveyed. [206]

[205] KVOS–TV, Bellingham, Washington experienced a revenue decline during the 1973–1976 period. However, this decline was primarily the result of the Canadian Tax Act of 1976 which stated, in part, that Canadian businesses could no longer write off as business expenses their advertising expenditures on American television. As KVOS–TV stated in an August 9, 1977 Letter to the Commission, "restrictive and discriminatory legislation in Canada has caused a critical erosion of our economic base. It has been necessary for us to cut our advertising rates by about 50% in order to remain in a competitive selling posture." The trend of revenue decline was reversed in 1978 when KVOS–TV experienced a revenue and operating income gain over the previous year. The station continues to remain profitable and is an economically viable business entity in spite of the effects of cable television and the recent Canadian Tax Act.

[206] There is an instance in which the presence of cable television is alleged to have brought about the change of a commerical to a non-commercial station. KTVR–TV was a network satellite station operating in La Grande, Oregon. It was sold to the State of Oregon in 1976 and now operates as an educational station. The Northeastern corner of Oregon is a very sparsely populated area of the nation which has never been able to support its own

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178. Several parties in this proceeding commented that the impact of the proposed rule changes would fall most heavily upon UHF stations, which have traditionally been the least profitable segment of the broadcasting industry. Thus, it is stated, the proposals are in conflict with previous Commission decisions to foster UHF development.

179. This concern was given considerable attention in preparing the *Report in Docket 21284,* and we found no evidence to suggest that cable television would seriously affect UHF stations. Of the several studies [207] which separately consider cable television's impact upon both UHF and VHF broadcast stations, all reveal that UHF stations experience less audience diversion from cable television than do VHF stations. In fact, in many instances, it is found that cable television generally has a positive effect on UHF station audiences. NCTA's study of mature independent UHF stations and our own study of UHF stations tend to confirm this effect. Of fifteen UHF stations analyzed by NCTA, the audiences of thirteen (87 percent) were augmented by cable television. In the *Report in Docket 21284* and in the response to comments received since the *Report,* the Commission examined the performance, over the past five years, of thirty-four UHF stations. Over 75 percent of these stations had audience increases during the period, and all experienced revenue increases. We further analyzed the cable versus non-cable viewing shares of thirteen UHF stations and found that cable augmented the viewing of ten (77 percent) of these stations using a rating-based analysis and eight stations using a share-based analysis. These results are not surprising since cable television has the effect of equalizing UHF and VHF reception thoughout the market, thus eliminating the primary aspect of the "UHF handicap." The improved viewability of the UHF station in its market offsets in varying degrees the diversionary effect of distant signals.

180. With regard to cable television's impact upon future growth in the number of UHF stations, the aforementioned findings also would indicate that the impact would be minimal. New UHF stations have in fact continued to come on the air in areas of the country, such as for example in Pennsylvania, where there is already extensive cable penetration. Additionally, a Rand Corporation paper [208] prepared by R. E. Park and Barry Fishman, *The Viability of Television Stations: Comments and Extensions,* lends evidence to this conclusion. Their econometric model predicts that the number of commercial UHF stations in the top 100 markets will approximately double by 1990. The model also provides weak evidence that cable television generally has a positive effect on UHF stations, although in each case the overall result depends upon whether the positive effect of improved reception or the negative effect of competing signals predominates.

181. Another way of looking at the facts gathered in these studies of grandfathered markets, independent stations, and "worst cases" is to examine all the markets and stations in areas where cable penetration has increased over the last five years. Of the one hundred and thirty-one cases in which cable penetration increased, only twenty-one stations experienced any audience decline, and only one (KVOS-TV, Bellingham, Washington—see note 205) had a decline in revenue and operating income. All others experienced gains in revenues and/or operating income, most of which were substantial. It is thus apparent that other factors (e.g. rate increases stimulated by the demand and supply of television advertising) almost always act to offset the effect of audience decline in those relatively few instances where it is shown to occur. This was one of the most revealing aspects of the case study analysis.

182. We noted in the *Report* that the revenues and profits of stations are likely to increase in the future and that the effects of cable competition are likely to be offset at least in part by increases in population and demand for television viewer exposures. Although some parties suggest that population will not increase, or that future revenues will not offset the effects of cable audience diversion, or that other factors will reduce revenue growth, we believe these case study analyses present a fairly clear picture of both the actual trend and the functioning of the market in the presence of high cable penetration. Population has increased during the period analyzed, station audiences have increased, and revenues and profits have grown markedly. With respect to population, we expect this trend to continue.[209] Moreover, it seems clear to us that advertiser demand is strongly correlated with overall economic activity and that it too will be increasing both because of increased population and because of rising economic activity. The increased demand for viewer exposures over the long term will translate into higher advertising rates and increased revenues.[210]

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commercial television station. When the satellite station was established in 1963, the area was heavily served by cable and also had five translator stations providing all three network signals from Spokane, Washington. The parent station of KTVR-TV (KTVB, Boise, Idaho) now operates a translator station in the La Grande area. We cannot conclude that there has been a detrimental effect on the public in this region following the assignment of KTVR-TV's license to the State of Oregon. Network signals from Spokane, Portland, or Boise are available via translator stations and in addition, a new educational station providing local/regional originations has begun operation in La Grande.

[207] Park, Rolla Edward, *Audience Diversion Due to Cable Television: A Statistical Analysis of New Data,* The Rand Corporation, R-2403-FCC, April 1979; *Audience Diversion Due to Cable Television: Data for Response to Industry Comments,* The Rand Corporation, N-1334/1—FCC, November 1979; Roger G. Noll, Merton J. Peck, and John J. McGowen, *Economic Aspects of Television Regulation,* The Brookings Institution, Washington, D.C., 1973; National Cable Television Association, *Comments,* Docket 21284, March 15, 1978; Schink and Thanawala, *The Impact of Cable TV on Local Station Audience,* Wharton EFA, Inc., Philadelphia, Pa., March 1978.

[208] This paper estimates UHF station viability, and updates the authors' previous work: *Projecting the Growth of Television Broadcasting: Implications for Spectrum Use,* Rand Corp. R-1841-FCC, 1976—a study used by the Federal Communications Commission's UHF Task Force in estimating future spectrum demand. *See also,* "An Evaluation of the Rand UHF Viable Stations Model," FCC, March 1979. A useful summary of the conclusions of this Rand study as they relate to cable television can be found in testimony of Dr. Leland L. Johnson to the Communications Subcommittee of the House of Representatives. *Cable Television Regulation Oversight: Hearings Before the Subcommittee on Communications of the Committee on Interstate and Foreign Commerce,* 94th Cong., 2d Sess. (1976) Serial No. 94-137 pp. 42-44.

[209] *See* Bureau of Census, Current Population Report; Series P-25, No. 704 (Projections of the population of the United States 1977-2050; 1977) Series II Projections. During the 1960's, the population in the United States grew by approximately 13 percent or 24 million persons. In the 1970's, the growth rate slowed to 9 percent (18 million persons). During the 1980's expectations are that the growth rate will remain at 9 percent (22 million persons). As can be seen (although the growth rate has remained stable), in absolute numbers, population will grow by more during the 1980's than it did during the 1970's. More importantly, the 26-36 year old population group (children of the 1954-64 "baby boom") is expected to increase by nearly 20 percent during the 1980's. This is a primary buying group for the durable goods advertised on television such as furniture, automobiles and appliances. Additionally, TV households are expected to grow at a faster rate than population, due to an increase in the number of single-person households. We have used the mid-range Census Bureau projections here (Series II) because they appear to be the most reasonable (see Bureau of Census, Current Population Reports, *Id.* at n. 6). However, even using the lowest growth projection (Series III), as is done by some commenting parties, significant population growth will occur during the next decade.

[210] The comment is sometimes made that secular growth in television station revenues will not overcome the audience fractionalization effects of cable because expenses as well as revenues increase over time. See, for example, John A. Dimling, Jr., "A View from the National Association of Broadcasters," in *The Role of Analysis in Regulatory Decisionmaking,* Park, Ed., Lexington Books, 1973 at 25. The short answer to this is that

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183. These conclusions appear to be widely shared not only by industry analysts and advertising agencies, but also by broadcast industry executives as reflected in their public statements.

Individuals in each of these areas have recently stated that decreased audience shares will not translate into declining revenues. For example, the President of NBC has been quoted as stating that commercial television's share of the viewing audience through 1988 will remain high—close to 90 percent—and that the impact of alternative program sources would not decrease audiences, but rather would increase the number of hours each household spent watching television. He further predicted (citing an NBC study) that the growth in TV homes and multiset homes would compensate for other forms of audience diversion and that television would receive an increasing share of advertising expenditures.[211] The Vice-President and Chief Economist of CBS television has said that moderate changes in television audience shares will not change revenues until advertisers have an alternative and they will not have such an alternative during the coming decade.[212] The President of the Television Bureau of Advertising has predicted that television advertising revenues will surpass newspaper advertising revenues by the end of the decade.[213] The U.S. Department of Commerce has recently predicted that broadcasting will receive an increased share of advertising expenditures despite the increased rates charged. Advertising expenditures for radio and television are predicted to expand at a compounded annual growth rate of 14 percent for the next five years.[214]

184. In conclusion, it should be emphasized that the approximately 160 markets and stations analyzed in Docket 21284 were not randomly selected. Rather, most were brought to our attention as representing the worst instances of cable impact. They included most one and two station markets, many markets with high levels of cable penetration and a larger complement of imported signals (due to "grandfathering") than otherwise authorized, and a great many UHF and independent stations. Following the additional analyses conducted in response to the comments in Docket 21284, our basic conclusions as stated in the *Report* and in *The Notice of Proposed Rulemaking* have not changed. We feel that it is unlikely that any broadcast station will be significantly harmed by a relaxation of our carriage rules and extremely unlikely that any viewer will be significantly harmed. By contrast, the benefits of a relaxation of our distant signal restrictions are obvious: an increase in the opportunity for diversity and competition both in the economic marketplace and in the marketplace of ideas. We believe that existing levels of service to the public are secure.

Conclusions

185. Traditionally, we have been concerned that cable television, by threatening the viability of local stations, could cause a significant reduction in television broadcast service—especially for the poor and rural consumers who would not be able to purchase cable service. We were also concerned that cable television might cause a reduction in the external benefits flowing to our entire society because we felt that the additional competition from cable television could result in a decrease in the supply of local public service programming broadcast by television stations. Thus, we have acted cautiously in promulgating our cable television policies in the face of considerable uncertainty concerning the effect of cable television on local television broadcast service.

186. The information adduced in this proceeding, however, has allayed the fears we have harbored concerning the risk of loss of service to non-cable households. That risk has been found to be very small. After almost three years of intensive study, we have not found it to be the case that competition from cable television has redounded to the detriment of non-cable households. This finding is not attributable to our turning a deaf ear to the most egregious cases. To the contrary, we have analyzed approximately 160 cases, many of which have been brought to our attention as instances where the local stations suffer harm due to cable television. In the cases that we have identified as having audience declines during the 1972–1977 period, or revenue increases less than the rate of inflation, we performed further detailed analysis to determine the extent to which cable television appears to be a negative force on their financial situations and, more importantly, whether cable television threatens the local television broadcast service to non-cable households. We found that cable television is not a major negative force on the financial situation of these stations and poses little or no threat to their continued operation.

187. We also analyzed carefully six "grandfathered" markets and seven independent stations that face substantial competition from cable television because of high marketwide cable penetration and a large number of distant signals. These cases are representative of a marketplace functioning essentially without any signal carriage restrictions. We have found that competition from cable television does not appear to threaten the continued operation of the local stations in any of the cases analyzed.

188. We also inquired into the effect of cable television on the public service programming provided by local broadcast stations. Here, we were able to establish only a very weak relationship between the two. In the cases where we thought competition from cable television was most severe, we estimated only a very small reduction in the amount of local programming provided by the broadcast stations. Furthermore, we were unable to establish theoretically or empirically that cable television reduces the quality of local programming. Competition from

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revenues do rise faster than expenses. The compound annual growth rate of total broadcast revenues from 1973 to 1978 was 14.8 percent and that of expenses 13.4 percent (net income rose at a 20.3 percent compound annual rate). No reason why this trend should not continue is evident.

[211] "Television and the New Technologies," remarks by Fred Silverman to the California Broadcaster's Association, August 24, 1979.

[212] Presentation by Dr. David Blank to the Broadcast Financial Management Association's 19th Annual Conference. *Broadcasting*, September 24, 1979, p. 32. This statement attributed to Dr. Blank parallels a comment filed with the Commission by CBS some fifteen years ago which experience shows to have been quite accurate. As CBS stated: "* * * continously offsetting the effects of the rise in CATV penetration, with its depressing effect on station revenues, is the persistent rise in advertising demand for television time." "In other words, it will be only in rare cases that the rise of CATV will, in fact, be rapid enough and large enough in magnitude to cause an absolute decline in station revenues. And this is precisely why it is so hard to find actual cases of stations in which CATV growth can be related to absolute declines in station revenues." Comments of Columbia Broadcasting System, Inc., in Docket 15971, July 23, 1965 at 27, 29.

[213] *Broadcasting*, May 5, 1979, p. 114.

[214] *U.S. Industrial Outlook 1980*, U.S. Department of Commerce, Industry and Trade Administration. See also, for example, "Walking on the Sunny Side of Wall Street," (an interview with Mr. Bill Suter of Merill, Lynch, Pierce, Fenner and Smith), *Broadcasting*, January 28, 1980, p. 72; "Forecasters See A Mixed Outlook for Broadcasting in the Eighties," *Broadcasting*, September 24, 1979, p. 32; Remarks by Gene Jankowski, President of CBS/Broadcasting Group, before the Academy of Television Arts and Sciences, November 29, 1979; "Financial Impact of New Technologies: End of Golden Age?" *Television/Radio Age*, January 14, 1980, p. 66; "We'll Do Quite Well, Thank You," Rosenfield, *Broadcasting*, November 19, 1979, p. 68; "TV Ad Picture Bright," *Washington Star*, April 2, 1980, p. F–1; "Double Digit Optimism For Broadcasting Economy," *Broadcasting*, January 1, 1979, p. 40.

distant signals may actually, in some circumstances, increase the quality of programming broadcast by local stations.

189. Intuitively, the above findings may seem somewhat surprising. Certainly, the evidence demonstrates that local broadcast stations will earn less revenues and profits if distant signals are authorized than they otherwise would have if additional distant signals were not permitted to be imported. However, television broadcast stations, including UHF independent stations which traditionally have been presented to us as the industry's weakest element, often earn substantially more than a normal return on their investments. Additionally, UHF stations in intermixed markets, which traditionally have been our greatest concern, often are helped by cable television. But, perhaps more importantly, the impact of additional distant signals on local stations will occur in a context of offsetting factors. Increases in population and the demand for advertising act to increase substantially the revenues and profits of local broadcast stations. Moreover, even if cable penetration levels were much higher than they are today, the audience losses attributable to cable television are small in relation to the yearly growth in revenues and profits that we observe for television stations. Thus, we find that the risk of loss of service to non-cable households appears to be small. It seems unlikely that poor or rural consumers will be denied television service because of additional competition from cable television. The existing levels of local public service programming provided by broadcast stations also seem secure and actually are expected to increase because of the entry of new stations into the marketplace. Therefore, the costs to non-cable households from deregulating cable television appear to be insignificant.

190. On the other hand, the benefits to existing and potential cable households from permitting the carriage of additional signals are substantial. Millions of households may be afforded not only increased viewing options, but also access to a diversity of services from cable television that presently is unavailable in their communities.

191. In summary, we believe that relaxation of our distant signal carriage restrictions will promote substantial improvements in television service to the public without causing any significant risk of loss of the existing levels of service provided by local television broadcast stations. We have found in our analysis of the evidence in this proceeding that competition from cable television has improved television service to the public and will continue to do so in the future. More specifically, in terms of the criteria for evaluation of these rules set forth, we do not believe the elimination of the rules will have undesirable distribution or external effects and we believe their elimination will promote the welfare of consumers generally.

III. The Effect of the Syndicated Exclusivity Rules on Television Service to the Public

192. Existing rules, in addition to establishing quotas on the number of distant signals that may be carried, require the deletion of particular syndicate programs from those signals that are carried, upon the request of local television stations and in some instances at the request of program producers or distributors.[215]

193. Because of their historical origin, the intended function of these rules is not as clear as it might otherwise be. This history is set forth in some detail in the *Syndicated Exclusivity Report*, (pp. 956–964) as well as more recently in *Geller v. FCC*, 610 F. 2d 973 (D.C. Cir. 1979). Compressing a somewhat complex situation down to its fundamentals, this history reveals that in 1971 the Commission was prepared to adopt a set of cable television distant signal carriage rules that contained no limitations of the type now found in the exclusivity rules. As the result of a "Consensus Agreement" between major elements of the cable television, broadcast television, and television program production industries, which the Commission adopted in order to facilitate the passage of copyright legislation, the syndicated exclusivity provisions were included in the rules. Because of the process whereby they were adopted, there was virtually no economic analysis of their functioning either by the Commission or, apparently, by the industry groups involved.[216] For this reason also there is no extended "legislative history" or other articulation of the rationale underlying the rules. In part, it appears that they were intended as a response to the fact that cable television systems operated outside of traditional program supply markets as a result of the operation of the Copyright Act of 1909,[217] creating what was viewed as unfair competition between cable television systems and television broadcast stations. In our *Syndicated Exclusivity Report* and in our *Notice of Proposed Rule Making* in this proceeding we concluded that this consideration was coextensive with the issue of copyright liability and not a reason for retaining the rules.[218] In particular, we noted the statement in *Home Box Office v. FCC*, to the effect that the Supreme Court's decision in *U.S. v. Southwestern Cable Co.*, 392 U.S. 157 (1977) "certainly does not establish that 'unfair competition' requires the general protection of broadcast television," [219] and the same Court's conclusion in *CBS Television Network Affilates Ass'n v. FCC*, that our concern over "unfair competition" was essentially based on the possibility that distant signal importation by cable systems might threaten the viability of local stations from the standpoint of allowing "debilitating economic competition" and not "so much with the 'pirating' of signals per se." [220] Nothing in the comments received provides us with any reason to alter our conclusion in this regard.

194. A more explicit rationale for the rules was set forth in the 1972 *Cable Television Report and Order* where it was said that the rules were intended "to protect local broadcasters and insure the continued supply of television programming." [221] In view of this statement, when we commenced our review of these rules in our *Notice of Inquiry in Docket 20988*, we sought information on the following questions:

—If there were no cable television syndicated program exclusivity protection for television broadcast stations, how would this effect their ability to serve the public in those areas they are licensed to serve?, and

—What effect do the syndicated exclusivity rules have on the production

[215] Generally speaking, for purposes of these rules, a syndicated program is any television broadcast program other then a network program, including series programs, feature films, and all other non-network programs. See 47 C.F.R. § 76.5 (p). The provisions of the syndicate exclusivity rules are more generally described in paragraphs 14–16 above.

[216] In view of this it is somewhat disconcerting to find parties arguing that the economic analysis which led to the adoption of the rules are as valid today as in 1972. See, for example, Motion Picture Association of America, comments in Docket 20988, March 1, 1977 at 7.

[217] 35 Stat. 1075, as amended.

[218] *Syndicated Exclusivity Report, supra*, at paras. 17, 35, 51–52. *Notice of Proposed Rule Making in Dockets 20988 and 21284, supra*, at para. 61.

[219] 567 F. 2d at 41.

[220] 555 F. 2d at 990.

[221] 36 FCC 2d at 169 (1972). More generally, it might be said that the rules were adopted to facilitate the passage of copyright legislation applicable to the cable television industry. This rationale has been the subject of litigation and, as a consequence of this litigation and the passage of copyright legislation in 1976, the Commission is now obligated to consider the continuing validity of these rules pursuant to the Court's order in *Geller v. FCC, supra*.

and availability of syndicated programming?

195. In our *Syndicated Exclusivity Report*, we responded in terms of these two concerns separately, noting, however, that the form of the rules suggests that they were principally intended as protections for program suppliers.[222] That this is so is suggested by the fact that the most extensive protections are accorded the larger market stations which presumably are less in need of protection from competition and from which program suppliers obtain the bulk of their revenues and by the provision of the rules that permits the substitution of additional (and conceivably more attractive) programs in place of those deleted.[223] That this view is correct is confirmed by some industry comments. In our *Notice of Inquiry in Docket 20988* we noted the statement of the National Association of Broadcasters that, "[i]n terms of ameliorating impact on local television stations the rules are largely meaningless." [224] Comments from ABC, state that "The important point is not fractionalization impact at all. Having decided upon the number of permissible distant independent signals, the Commission has established a permissible degree of fractionalization." [225]

196. However, because whatever impact there is on program supply from changes in these rules is derivative of the impact they have on television broadcast stations, we discussed each separately in the *Syndicated Exclusivity Report* and will do so here as well.

197. In our *Report in Docket 20988* we analyzed the effect of the syndicated exclusivity rules on television service to the public. We examined the effect of the rules on the subscribers and potential subscribers of cable television, on local television stations, and on the supply of television programming. We concluded that the public interest would be better served in the absence of the syndicated exclusivity rules for cable television systems.

198. Television broadcast and program production interests have voiced numerous objections to the findings of our *Report*. Many of the criticisms leveled at our analysis in the *Report in Docket 21284* are repeated for the analysis in the *Report in Docket 20988*. These criticisms are addressed in Section II, *infra*, and that discussion is not duplicated here. Several other criticisms are directed to the analysis which appears only in the *Report in Docket 20988*. The discussion in this section should, we believe, demonstrate that these criticisms also are without merit. Moreover, no new evidence has been submitted which contradicts our previous findings.[226] Thus we remain confident that the public will be better served without the syndicated exclusivity rules.

199. At the outset we must emphasize that the syndicated exclusivity rules impose substantial welfare costs upon the subscribers and potential subscribers of cable television service. The television programs that are blacked-out pursuant to the syndicated exclusivity rules are readily avilable at cable head-ends and can be delivered to cable subscribers at no cost. The fact that cable subscribers are denied programs when the marginal cost of receiving them is zero violates a basic efficiency criterion of modern welfare economics.[227] The resulting welfare loss to cable subscribers is substantial. Our *Report in Docket 21284* found that the demand for and the availability of cable television service by and to consumers is affected significantly by distant signals. Thus the syndicated exclusivity rules impose substantial costs upon the subscribers and potential subscribers of cable systems by restricting many of the programming alternatives on distant signals for which consumers are willing to pay.[228]

200. Several parties disagree with our conclusion that the syndicated exclusivity rules impose costs on the subscribers and potential subscribers of cable television. For example, some parties argue that the elimination of the syndicated exclusivity rules will not foster diversity because only duplicative programming will be made available to cable subscribers. Several parties also criticize our reference to an earlier proceeding before the Commission concerning television re-runs [229] where the television networks and other broadcasters presented evidence intended to demonstrate the value to the public of having alternative viewing times for the same program. NBC argues "in that proceeding, the issue was the value of repeat broadcasts for the entire viewing public not the 'very small percentage' of cable subscribers on systems presently required to comply with the rules." [230] NBC has not demonstrated, however, why repeat broadcasts are of less value to this segment of the viewing public nor why a "very small percentage" would create significant injury. Indeed, evidence suggests that consumers are willing to pay for such broadcasts.[231]

201. Fisher Broadcasting, Inc., by providing share data for the top ten primetime programs in the Seattle-Tacoma market, makes a more specific attack on our reference to the material filed in the re-run proceeding (Docket 20203). In that proceeding a number of individuals and organizations involved in the production of television programming were urging the Commission to restrict the amount of repeat or re-run programming shown on the major television networks. The

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[222] *Supra*, at p. 976–977.

[223] In addition, some of the rights created by these rules flow directly to program suppliers.

[224] *Supra*, at p. 953.

[225] American Broadcasting Companies, Inc., comments in Docket 20988, March 1, 1977 at p. 34. See also, for example, comments of Westinghouse Broadcasting Co. in Dockets 20988 and 21284, September 17, 1979: "Nor was the primary intended purpose of the rules to prevent station audience fractionalization or diversion." (p. 7). Others have made the point more bluntly. Barbara Ringer, the Register of Copyrights wrote in 1972 that the rules were "probably the most elaborate and intricate copyright provisions ever promulgated anywhere." Barbara Ringer, "Recent Cable Television Developments in the United States Involving Copyright," 3 *Performing Arts Review* No. 4, p. 581 (1972).

[226] Several comments from parties with both cable and broadcast interests, including Storer Broadcasting and the parties filing jointly with Cox Broadcasting, urge the elimination of the distant signal carriage rules but retention and simplication of the syndicated exclusivity rules. Storer Broadcasting, comments in Dockets 20988 and 21284, September 17, 1979; Cox Broadcasting Co. *et. al.* comments in Docket 20988 and 21284, September 17, 1979. No study or evidence is offered in support, however, Cox *et. al.* for example, finding it "unnecessary" and "presumptuous" to add further specific data.

[227] *See, e.g.*, Jora R. Minasian, "Television Pricing and the Theory of Public Goods," *Journal of Law and Economics*, Vol. 7 (October 1964). *See also* Noll, Peck, and McGowan, *Economic Aspects of Television Regulation* (1973).

[228] For estimates of the amount of programming on distant signals that can be blacked out pursuant to the syndicated exclusivity rules, see the *Report in Docket 20988*, at para. 59. It should be noted that we have been unable to estimate precisely the effect of the syndicated exclusivity rules on the growth of cable television. There are many factors which influence the decision whether to provide cable television service to an area. Nevertheless, the syndicated exclusivity rules reduce entrepreneurs' willingness to risk their capital to provide cable service because they reduce the expected returns from providing that service.

[229] *Report and Order in Docket 20203*, 61 FCC 2d 946 (1976).

[230] *Supra*, at n. 48 at p. 21. It should be noted that by concurring in our derivation that only 4.4 percent of all households presently can be affected by the syndicated exclusivity rules, should broadcasters fully exercise their rights, NBC lends credence to our belief that the effect of eliminating the rules on local broadcasters and program producers will be small.

[231] *See* para. 93 and n. 32 in the *Report in Docket 20988*. It should be noted that in our *Syndicated Exclusivity Report* we did not dwell at length on the costs these rules impose because we found little reason to retain them in terms of their own justification and wished to avoid, insofar as possible, any suggestion that the rules should be eliminated to "promote" cable television. What we are concerned with is the overall service the public receives.

networks and various television station parties were defending the re-run practice. By way of illustrating why the syndicated exclusivity rules decrease significantly the welfare of cable subscribers even though the programming lost under these rules will generally be available at some time from a local television station, we made reference, in footnote 83 of our *Syndicated Exclusivity Report,* to the contention of broadcasters in the re-run proceeding that "with respect to prime-time network programs only 14 percent of the potential viewing audience actually watches a program when it is first broadcast."

202. Although Fisher Broadcasting has attacked the 14 percent figure, when carefully considered, these comments actually appear to reinforce the point made: namely, that during a single broadcast of any particular program a considerable portion of the potential audience for that program is either watching another channel or not watching television at all, and would, for that reason, find alternative viewing times for programs to be highly desirable.[232] Fisher's comments show that during January 1979 the ten most popular prime time programs in the Seattle-Tacoma market were viewed, on average, by about 32 percent of the potential audience.[233] Clearly, the average audience reached by all prime time network programs will be far below the figure for the ten most popular, the average audience for all network programs will be lower than the prime time average, and the typical syndicated program will, in any particular showing, reach even a smaller part of the whole potential audience. Thus, Fisher's comments tend to reinforce the point that a considerable portion of television households do not view a program when it is first broadcast. "Duplicative" programming can therefore offer many households true diversity. Thus, we believe that the syndicated exclusivity rules reduce both program diversity to some cable subscribers and "time diversity" to others.[234] We believe these reductions diminish significantly the welfare that subscribers and potential subscribers derive from cable television.

The Impact of Eliminating the Syndicated Exclusivity Rules on Local Stations

203. As indicated, the syndicated exclusivity rules were adopted, in part, "to protect local broadcasters."[235] Our *Report in Docket 21284* analyzed the effect of distant signals, in the absence of blackouts resulting from the application of the syndicated exclusivity rules, on television service to the public.[236] We found that protection of local stations against competition from distant signals imported by cable systems served no public interest purpose. This finding largely moots any concern that the syndicated exclusivity rules are necessary to promote the public interest by protecting the operation of local stations because the effect of the syndicated exclusivity rules on local broadcast service is a subset of the larger, encompassing effect of unregulated distant signal carriage. Nevertheless, since the effect of the syndicated exclusivity rules on program supply is derivative of the effect of the rules on local station audiences, we provided estimates of the amount of audience that is subject to shelter by the rules in order to gauge the effect of the rules on program supply.

204. To determine the effect of the syndicated exclusivity rules on local station audiences we would have liked to compare the distribution of cable viewing to distant signals for instances in which the rules were and were not in effect. By taking the difference between these two distributions we would have been able to determine directly the amount of audience that is protected by the rules. Unfortunately, the requisite data for such an exercise were unavailable. Even today it appears that syndicated exclusivity protection is not requested or provided on a wide-scale basis.

205. Our *Report,* however, established that the audience subject to shelter by the syndicated exclusivity rules is equal to a percentage of the total audience loss attributable to te absence of exclusivity protection.[237] We assumed this percentage to be equal to the percentage of all distant programming that potentially could be blacked out pursuant to the rules. Thus, if cable television diverts 10 percent of the audience of a local television station in an unregulated market (i.e., there are no distant signal carriage or syndicated exclusivity restrictions) and 40 percent of the distant programming carried by the cable systems could be blacked out pursuant to the syndicated exclusivity rules, we assumed that 4 percent of the local station's audience could be protected by the syndicated exclusivity rules. Or, stated differently, the potential impact of eliminating the rules on the local station's audience in this case is estimated to be 4 percent.

206. We employed the study by Dr. R. E. Park of the Rand Corporation to estimate the percentage of time that distant signals on cable could be blacked out pursuant to the syndicated exclusivity rules under various local market conditions.[238] Park's work is the only published article on the subject of which we are aware and his estimates are broadly consistent with those provided by various parties in this proceeding.[239] We applied Park's "black out" percentages to his estimates of audience diversion due to cable in an unregulated market [240] to determine the protection which potentially could be afforded to local stations by the syndicated exclusivity rules. Park's audience estimates were employed because the results are presented in a form which facilitates ready application of the "black out" percentages appearing in his earlier study. We took care to emphasize, however, that we believed Park's estimates of audience diversion due to cable were overstated.

207. Approaching the issue of audience diversion from the elimination of the syndicated exclusivity rules conservatively, we explored the potential impact at both current cable

[232] The value of alternative viewing times to the public is illustrated by the home video recorder business in which consumers are making substantial investments for the principal purpose of making possible alternative television viewing times. See, for example, D. Agostino, R. Johnson, and H. Terry, "Home Video: a Report on the Status, Projected Development and Consumer Use of Videocassette Recorders and Videodisc Players," Feb. 1980: "It is clear that the principal use of the VCR to date is for time-shift viewing." p. 61. The loss of programming by virtue of these rules is a major source of complaints to the Commission from cable subscribers.

[233] *See* Fisher Broadcasting, Inc., comments in Dockets 20988 and 21284, September 17, 1979. *See also* the *Report and Order in Docket 20203,* 61 FCC 2d 946 at n. 5 of Appendix A (1976).

[234] *See also* 47 C.F.R. Part 76.151(a) which requires cable systems in the top fifty television markets to black-out for a period of one year, upon request from the copyright holder, first-run syndicated programming imported from distant markets, even if the programming is not broadcast in the local market.

[235] *Cable Television Report and Order,* 36 FCC 2d at 169 (1972).

[236] It should be noted that most of the studies of audience impact due to cable television in this proceeding measure the results of a marketplace functioning without syndicated exclusivity restrictions. *See* para. 56 of the *Report in Docket 20988.*

[237] To simplify the analysis and be conservative in terms of audience impact we assumed that no program substitutions would be made.

[238] R. E. Park, "The Exclusivity Provisions of the Federal Communications Commission's Cable Television Regulations," The Rand Corporation, June 1972.

[239] *See, e.g.,* the Comments of the National Cable Television Association in Docket 20988, March 1, 1979.

[240] R. E. Park, "Audience Diversion Due to Cable Television: A Statistical Analyses of New Data," the Rand Corporation, Prepared for the Federal Communications Commission, January 1979, attached as Appendix A to the *Report in Docket 21284.*

penetration levels and anticipated future penetration levels. Under present conditions we found that the syndicated exclusivity rules, should broadcasters *fully* exercise their rights, would protect no more than one percent of the audience for any local station.[241] In the long-term we estimated that the maximum possible audience protection from the rules for some local stations may approach nine percent. We noted, however, that this estimate was overstated because of the use of the Park audience model. The estimates for the long term also were dependent on the assumption that the grandfathering provisions of our rules would no longer be applicable. Thus we concluded that the exclusivity rules would protect much less than nine percent of the potential audience for any broadcast station in the foreseeable future.

208. This conclusion was corroborated by our findings in the **REPORT IN DOCKET 21284.** For example, in our grandfathered market analysis the largest audience loss due to cable for stations that would be able to exercise their rights to protection but for the grandfathering provisions of our rules was between 4 and 7 percent for the VHF independent station operating in San Francisco, California. The syndicated exclusivity rules could protect no more than between 2 and 4 percent of this station's potential audience if the grandfathering provisions were eliminated.[242] Similarly, if syndicated exclusivity protection were afforded to the stations in our grandfathered market analysis suffering the largest audience losses due to cable (i.e., those stations licensed to Palm Springs, California which are not entitled to protection because they operate outside the top hundred markets), the audience protected for these stations would be no more than about 1 to 2 percent.[243] It is important to note that the grandfathered markets analyzed in the *Report in Docket 21284* are extreme cases because of the high levels of marketwide cable penetration and the large number of distant signals that are imported by the cable systems. Thus, it is clear that even in the long term the syndicated exclusivity rules can afford local broadcast stations very little audience protection.

209. We concluded that the maintenance of the syndicated exclusivity rules would provide no improvement in the television service provided by local stations. We found that the level of profits for the television industry is expected to continue to increase even without any protection against distant signal importation by cable television systems and that cable television has little effect on the local public service programming provided by broadcast stations.

210. Several parties have voiced the same general criticisms of our analysis of audience diversion due to cable in the *Report in Docket 21284* to our analysis of audience diversion due to the elimination of the syndicated exclusivity rules in the *Report in Docket 20988.* For example, NAB contends that the "Commission's treatment of audience losses resulting from importation of duplicative syndicated programming is inadequate, primarily because of the Park study on which it relies is flawed and inadequate."[244] In its section on syndicated program exclusivity, INTV states that "of particular concern to INTV is the failure of the Cable Bureau to analyze impact in terms of 'fringe time'—the time period before and after prime time."[245] Capital City *et al.* argue that the long-term incremental effect of eliminating the syndicated exclusivity rules should include audience diversion due to the normal growth of cable television that is not attributable to the elimination of the rules. However, we have already shown in detail the invalidity of these general criticisms in the previous section of this *Report and Order,* and, accordingly, we do not believe it would be fruitful to reiterate that discussion here.

211. A few parties also have directed criticisms to the analysis appearing only in the *Report in Docket 20988.* For example, the Joint Motion contends that "it appears that the presentation of the basic findings of the Park Study in the Economic Inquiry Report [sic] is replete with numerous errors, which raise very serious questions as to the Commissioners' reliance on the staff summaries rather than the Park Study itself. Thus, for example, on Tables 2 and 3 in the Report (presented on pages 35 and 37), the 'percent Audience Loss' figures cited are *fractions* of the actual Park data."[246] (Emphasis in original.) We believe this criticism may have been voiced because of petitioners' inadvertently regarding the tables referred to as part of the *Economic Inquiry Report* when they are in fact found in the *Syndicated Exclusivity Report.* In any event, the parties obviously did not understand that the estimates in Tables 2 and 3 *were* meant to be fractions of the actual Park data. These tables provide estimates of the effect on local station audiences of eliminating the syndicated exclusivity rules. The Park study provides estimates of the overall audience diversion due to cable in the absence of distant signal restrictions *and* syndicated exclusivity protection. Since not all of the programming on distant signals could be blacked out pursuant to the syndicated exclusivity rules, only a fraction of the total audience diversion due to cable in an unregulated market could be protected by the rules. Thus the "serious questions" raised by the Joint Motion of the "staff summaries" represent a misunderstanding on the petitioners' part.

212. Capital City *et al.* contend that the Commission's procedure for estimating the potential effect of eliminating the syndicated exclusivity rules on local station audiences "seriously understates the actual likely impact in markets [with eight local signals] since Park has calculated the extent to which a typical distant signal is blacked out by the syndicated exclusivity rules only in markets with six or fewer local stations."[247] For example, in the *Report in Docket 21284* we reported that Park estimates that 63 percent of distant programming could be blacked out pursuant to the syndicated exclusivity rules in markets with six local stations. Since Park did not estimate the percentage of distant programming that could be blacked out in markets with eight local stations, and in the absence of other estimates for these markets, we assumed that 63 percent of the distant programming could also be blacked out in markets with eight local stations. We do not believe this assumption leads to a "serious" understatement of audience diversion. For example, even if 80 percent of the distant programming carried by cable systems in markets with eight local stations could be blacked out pursuant to the syndicated

[241] We also showed that very little protection would be afforded to broadcast stations in the smaller markets if the rules were applicable there because of the small amount of syndicated programming purchased in these markets.

[242] This calculation is based on the estimate that 63 percent of the distant programming could be blacked out. See the *Report in Docket 20988* at para. 59.

[243] In this case we estimate that only 10 percent of the distant programming could be blacked out pursuant to the syndicated exclusivity rules. See *id.* at n. 48.

[244] *Supra,* n. 93 at p. 143.

[245] *Supra,* n. 94 at p. 34. Several parties also suggest that impact should be analyzed in terms of syndicated programming because audience diversion during syndicated programming is greater than average and the revenue/audience ratio for this programming also is greater than average. We view this suggestion as functionally equivalent to that of analyzing impact in terms of early fringe. It makes very little difference to the "bottom line" estimates of audience diversion in either case. See Section II above.

[246] *Supra, n. 92, at 24.*

[247] *Supra, n. 91, at 15.*

exclusivity rules, our estimates in Table 2 for the near-term would increase by only one percentage point and our estimates in Table 3 for the long-term would increase at most by only two percentage points.

213. INTV alleges that "the Comments and Reply Comments filed by INTV in Docket 20988 demonstrated the need for the syndicated program exclusivity rules. The Cable Bureau did not contradict (or even respond to) INTV's arguments." [248] The theme of INTV's most substantive argument in the referenced comments was that "the syndicated program exclusivity rules are still of continued importance for the future viability of the independent television industry." [249] To substantiate its argument, INTV had presented audience data for cable and non-cable housholds in Seattle and San Francisco. INTV had contended that "these examples clearly indicate the fractionalization of audience which takes place as a result of importation of distant signals when there is no exclusivity protection. The Seattle-Tacoma and San Francisco-Oakland-San Jose markets are not atypical, and what is happening there provides an insight into what will be happening in other markets in the future as cable continues to develop." [250] We agreed with the latter statement. It is precisely the reason for which we analyzed the effect of cable television on the local independent stations in these markets. [251] This analysis constituted our response to INTV's comments. We found that cable television augments the audience of the independent station in Seattle by 3 to 5 percent and increases the audience of the two UHF independents in San Francisco by an even greater amount. [252] On the other hand, the VHF independent in San Francisco loses between 4 and 7 percent of its audience due to cable television and only a percentage of this diversion would be attributable to the absence of syndicated exclusivity protection. However, we found this station has realized tremendous growth in revenues and profits during the period for 1972 to 1977. Thus we rejected INTV's contention that the syndicated exclusivity rules were essential to the viability of independent television stations.

214. In its latest comments in this proceeding dated September 17, 1979, INTV refers to the study performed by Roger Cooper and Associates, submitted as comments by McGraw-Hill Broadcasting Company, Inc. and Storer Broadcasting Company for additional support for the proposition that some independent stations would not be able to remain viable without the ability to protect at least the portions of their schedules being duplicated by distant signals. The Cooper study allegedly demonstrates a reduction in the audiences of the Bakersfield stations of more than 69 percent. We analyzed the effect of cable television on the stations in Bakersfield in our grandfathered market analysis in the *Report in Docket 21284.* We found that while these stations may lose as much as 13 percent of their potential audience due to cable, their revenues had increased by almost $3 million from 1972 to 1977, an increase of over 100 percent. Thus we believe the contention that some stations will not remain viable without syndicated exclusivity protection is simply invalid.

215. Several parties also have advanced some unsupported theories concerning the syndicated exclusivity rules in their comments to our *Notice of Proposed Rulemaking in Dockets 21284 and 20988.* For example, NAB claims that "the lack of syndicated exclusivity protection may result in total withdrawal of syndicated programming from local broadcast exhibition." [253] This claim is without merit. Program syndicators attempt to sell their product in virtually every market regardless of the potential audience size, provided they can cover their distribution costs. Thus we find it extremely unlikely that these syndicators will not sell their products to the stations in a market because they attract at most a few percent less audience due to the absence of syndicated exclusivity protection. In fact, the stations in our grandfathered market analysis do purchase programs that are imported by cable television systems from distant markets. Additionally, syndicators often sell the same programs to stations situated in adjacent markets such as Washington, D.C. and Baltimore, Maryland, where the programs from both markets can be received readily by a large proportion of the households in these markets. Moverover, there are many sources of program supply. If one syndicator refuses to sell its products in a market, its competitors eagerly will fill the void. Thus we cannot accept the argument that syndicated exclusivity protection is essential for local stations to be able to compete in the marketplace.

216. Nor can we accept the argument advanced by several parties in this proceeding that the financial base of television is such that the industry could not survive in the absence of program exclusivity. Local stations are aware of the competition that they face and negotiate over the price of syndicated television programming accordingly. The syndicated exclusivity rules restrict competition and thereby protect the high profits that television broadcasters capture in the absence of competition. In contrast to the allegations raised in the comments, we believe that increased competition from cable television will not decimate the television broadcast industry, but rather will act to improve the performance of television broadcasters.

217. In summary there has been little criticism directed specifically to our analysis of the potential effect of eliminating the syndicated exclusivity rules on local television stations. Moreover, we found these criticisms to be without merit. Several parties also have reiterated their general criticisms of our findings of the overall effect of distant signals on local stations. These criticisms have been shown to be invalid in Section II, *infra.* It should also be noted that no new evidence has been submitted since our issuance of the *Notice of Proposed Rule Making* in this proceeding that shows our conclusion concerning audience diversion is incorrect. Therefore, we remain confident that the potential effect of eliminating the syndicated exclusivity rules on local station audiences will be minor. In the near term the loss to any local station would be no greater than about 1 percent. In the long run the

[248] *Supra,* n. 94, at p. 36.

[249] Association of Independent Television Stations, Inc., comments in Docket 20988, March 1, 1977. INTV also claimed that: 1) syndicated program exclusivity protection was a basic tenet of the "Consensus Agreement"; and 2) the syndicated program exclusivity rules do not cause cable viewers to lose any programming, but rather, foster diversity of programming to the public. At para. 48 of the *Report in Docket 20988,* we said that we did not regard the Consensus Agreement as a reason to refrain from rules changes and INTV has made no new argument not considered at that time. In this regard, see also *Geller v. FCC,* 610 F. 2d 973 (D.C. Cir. 1979) requiring that these rules be reviewed. At paras. 69 and 91–3 the *Syndicated Exclusivity Report* we concluded that the rules adversely affect the subscribers and potential subscribers of cable systems.

[250] *Id.,* at p. 19.

[251] *See* the *Report in Docket 21284* at paras. 127–129.

[252] It is perhaps worth noting that Kaiser Broadcasting, then the licensee of KBHK–TV, one of the two UHF stations in San Francisco, in its March 7, 1977 filing in Docket 20988 (pp. 16–17) relied on the INTV filing in complaining of the adverse audience effects of cable operations without noting that the INTV data showed KBHK–TV's cable audience share to be almost triple that which it received off-the-air. In addition, the data supplied by INTV, which purported to reflect the entire San Francisco ADI, actually did not include San Francisco, Alameda County west, or Napa County north. More complete data is shown for KBHK–TV at p. 811 of the *Economic Inquiry Report.*

[253] *Supra,* n. 93, at p. 19.

effect will be greater, but in all likelihood will be considerably less, for all stations, than our theoretical worst-case projection for some stations of 9 percent. For example, our case studies suggest that the potential impact of eliminating the syndicated exclusivity rules will rarely be as large as 4 percent for any station in the foreseeable future. We have relied upon the evidence in the *Report in Docket 21284* and the analysis of Section II of this *Report and Order* to conclude that audience deversion of this magnitude will not hinder the television service provided by local broadcast stations.

The Impact of Eliminating the Syndicated Exclusivity Rules on Program Supply

218. The syndicated exclusivity rules were, as indicated above, rationalized when they were adopted not only as protections for local television broadcasters but as necessary "to insure the continued supply of television programming." [254] In the proceeding section we determined the protection that the rules afford local broadcast stations will not lead to any significant benefits for consumers in the foreseeable future. Thus, we are left in this section with the determination of the effect of the rules on program supply. It should be emphasized, however, that the effect of the rules on program supply is derivative of the effect of the rules on local broadcasters.

219. Traditionally, we have been concerned that without syndicated exclusivity protection the production of television programming would diminish.[255] We thought that if local stations would pay less for programming because of the decreased audience they would attract in competition with less proximate broadcasters and if producers were not indemnified by cable television systems for the use of their product, the economic incentive to produce original works would diminish, resulting in a reduction in the supply of programming. Thus, the syndicated exclusivity rules were adopted, in part, as a copyright remedy for the retransmission of broadcast signals by cable systems.

220. Our *Report in Docket 20988* analyzed the effect of the syndicated exclusivity rules on program supply even though we doubted the authority of this Commission to assign copyright liability for the retransmission of broadcast signals by cable television systems in the absence of debilitating economic competition to local broadcast stations. Our analysis, however, was predicated upon the applicability of the compulsory licensing system established by Congress. Thus we investigated the effect of the syndicated exclusivity rules on program supply under the auspices of compulsory licensing. A summary of those findings is presented here.

221. Our *Report in Docket 20988* found, unsurprisingly, that the price of television programming is determined by the interaction of supply and demand in the marketplace. The prices paid by television broadcast stations for programming were shown to be correlated strongly with advertisers' demand for commercial time, thus corroborating the expectation that the revenue a broadcaster anticipates for exhibiting a particular program will affect significently the price paid for the program. We determined, therefore, that the effect of the syndicated exclusivity rules on the price paid for television programming by local stations depends largely on the amount of audience that the rules protect. We had found, however, that the elimination of the rules would reduce local station audiences by no more than about 1 percent at the present time, even if all of the stations that were entitled to protection were receiving it. Thus we concluded that the elimination of the syndicated exclusivity rules would have a minimal effect on the prices paid for programming and therefore would have no perceivable effect on the supply of television programming over the near term. Or, stated differently, we concluded that the rules do not confer any present benefits on the public in the form of an expanded supply of programming.

222. Over the long term we had found that the audience protection afforded by the syndicated exclusivity rules would increase, theoretically approaching nine percent for some stations, although the likely figure would be much less. Thus we analyzed more carefully the potential effect of the rules on the supply of programming in the long run. We were unable to establish any definitive effect. For example, while local broadcasters may pay less for programming because of the reduced audience resulting from the unrestricted cable importation of distant signals, we noted that it is likely that these distant stations will pay program producers more because of their increased audience circulation. We found that total payments to producers from broadcast stations may remain unchanged or may even increase as a result of the elimination of the syndicated exclusivity rules. However, even if the elimination of the rules were to affect adversely the total payment to producers, we could not determine whether this would cause any perceivable reduction in the supply of programming in comparison to what it otherwise would have been. For one thing, the importation of distant signals by cable television plays only a very small part in determining the overall payments to producers. Our *Report* found that both the overall payments to producers and the supply of television programming will continue to increase over the long term even with the complete deregulation of cable television. Second, we were unable to establish that reduced payments to producers would affect significantly the supply of programming. We noted the divergence of scholarly thought on this matter appearing in the literature. Essentially, there is general disagreement about the extent to which lower payments to producers merely result in lower rents being paid to performers and other factor inputs. For example, some authors argue that reduced payments show up largely as reductions in rents paid to performers without adversely affecting the supply of programming to any significant degree. We were unable to test this theory empirically, however, because of the general unavailability of data on the program production industry.

223. Finally, we noted that even if the above chain of events would unravel in a manner that resulted in the supply of programming being less than what it otherwise would have been with the protection afforded by the syndicated exclusivity rules, the Copyright Revision Act of 1976 provides a mechanism to prevent any adverse reallocation of resources from the program production industry to the cable television industry from occurring.[256] Thus we were unable

[254] *Cable Television Report and Order, supra*, p. 169.

[255] It should be noted that our authority to adopt remedial regulations in response to concerns of this nature is far from clear. In another proceeding (the TV re-run proceeding referred to above) the Commission raised questions "as to whether this subject—the welfare and viability of the program production industry and employment in it—affords a basis for Commission regulation in the public interest." *Report and Order in Docket 20203*, 61 FCC 2d 946, 950 (1976). The situation presented was found to afford no basis for action and the Commission went on to say:

> We are persuaded that it is not this Commission's province to engage in regulatory action (by rule or otherwise) with the purpose, or largely for the purpose of furthering employment or economic conditions in a particular industry or a particular part of the country. While the Communications Act terms "public interest, convenience and necessity" encompass many concepts, and their scope has grown wider with time, there is no reason to believe it extends this far. (footnote omitted). *Id.* at 950.

[256] 17 U.S.C. § 801(b)(2)(C). More generally, we noted that Congress has implemented this copyright

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to ascertain that the supply of programming would be less than what it otherwise would have been in the long term because of the elimination of the syndicated exclusivity rules.

224. Our *Report* concluded that the near-term effect of eliminating the syndicated exclusivity rules on program supply is inconsequential. We found the effect in the long term to be less determinate, but we were able to conclude confidently that the program production industry will continue to prosper and the overall supply of television programming will continue to expand.

225. The criticisms of our analysis of the effect of the elimination of the syndicated exclusivity rules on the supply of programming include no attempts to refute its results empirically. No new evidence has been submitted to contradict our findings that (1) the program production industry will continue to prosper, (2) the supply of programming will continue to expand, and (3) the elimination of the syndicated exclusivity rules will not threaten the continued supply of programming. In the previous section we demonstrated that all of the available information leads conclusively to the result that the syndicated exclusivity rules will provide very little audience protection to local broadcast stations into the foreseeable future. This evidence—alone—would seem to foreclose the possibility of any adverse effects on program supply resulting from the elimination of the syndicated exclusivity rules. Nevertheless we feel obliged to respond to some additional contentions from the comments received in some detail.

226. *Ancient Data.* Our *Report in Docket 20988* stated that the price paid for television programming by local broadcast stations is determined by the interaction of supply and demand in the marketplace. We theorized that prices are greater where advertisers; demand for commercial time is greater (i.e., in the larger markets) and provided some evidence to support this theory. The evidence consisted of the average price per broadcast episode paid by stations for syndicated services in 1968. Our conclusion from this analysis was that the revenue a broadcaster anticipates from a program strongly influences the price paid for that program. The Joint Motion's response to this analysis is that "the reliability and probative value of such ancient data merits serious exploration." [257] The Joint Motion, however, does not proffer any alternative hypotheses that the new data could be used to test. We find no dispute in the record that the revenue a broadcaster expects from exhibiting a particular program will affect significantly the price paid for that program. Thus we find the Joint Motion's contention to be without merit.

227. *Elimination of the Rules Would Be Detrimental to the Production of Syndicated Programs.* Our *Report in Docket 20988* estimated the effect of eliminating the syndicated exclusivity rules on local station audiences over the entire day. For example, we found that elimination of the rules would result in no more than about a 1 percent loss in audience for any broadcast station at the present time. Capital City *et al.*, argue that estimation of the "total average audience [loss] if the syndicated exclusivity rules are terminated is irrelevant to the question of how much particular syndicated programs will be worth to the television station and its advertisers, since specific syndicated programs broadcast by local stations will lose considerably more of their audience." Based upon this belief, Capital City *et al.*, conclude that "the Commission has drastically underestimated the potential impact to the syndicated programming industry." [258] Similarly Metromedia, Inc., argues that the elimination of the syndicated exclusivity rules would "drastically disadvantage non-network programs vis-a-vis network programs." [259] We disagree with these assessments. We believe the syndicated exclusivity rules protect the audiences of both network and non-network programming of local network-affiliated stations. For example, application of the rules often results in a substantial number of blackouts on distant signals during prime time when network-affiliated stations are broadcasting network programs. [260] This reduction in viewing options translates into increased viewing of prime time network programming. Additionally, our *Report* showed that independent stations, which broadcast mostly syndicated programs, often receive less protection from the syndicated exclusivity rules than network-affiliated stations operating in the same market. Thus, while audience data are not available to estimate the effect of the syndicated exclusivity rules on syndicated programming versus local or network programming, we do not believe the differences are large enough to alter our conclusion. [261] We are not persuaded that the elimination of the syndicated exclusivity rules will disadvantage any one particular segment of the program production industry. But, more importantly, we believe that the elimination of the rules, because of its very small effect on local station audiences and thus program producers, will benefit the subscribers and potential subscribers of cable television without subjecting non-cable households to any significant risk of loss of service.

228. *Compulsory License Fees Are Too Low.* Several parties have alleged that the compulsory licensing fees are too low and/or that the present copyright legislation is inadequate. These parties also contend that elimination of the syndicated exclusivity rules will compound this problem. Finally the parties claim there is no data to justify our belief that the compulsory licensing fees may be adjusted to enable program producers to recoup fully any losses that may occur to them as a result of the elimination of the syndicated exclusivity rules.

229. At the outset, we must establish that this Commission has no authority to invalidate the copyright solution for cable television imposed by Congress or to adjust compulsory licensing fees. [262] Any revision of the fees in light of new evidence of this nature can be made only by Congress or by the Copyright Royalty Tribunal. Moreover, it would be difficult for us to determine the appropriate level of fees. For example, Congress' goal in establishing the fees appears to have been to offset "the damage to the copyright owner" from the distribution of a program "in an area

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remedy for cable television, because of the market failure resulting from the unreasonably high level of transaction costs that cable operators would face in bargaining for programming.

[257] *Supra*, n. 92 at p. 32.

[258] *Supra*, n. 91 at 17–18.

[259] Comments of Metromedia, Dockets 20988 and 21284, September 17, 1979 at ii.

[260] *See, e.g.*, the Comments of the National Cable Television Association, Inc., Docket 20988, March 1, 1977. In the past cable systems generally have not substituted programming during blackouts because the marginal cost of program substitution exceeded the marginal revenue. *See, e.g.*, B. M. Mitchell and R. H. Smiley, "Cable, Cities, and Copyrights," 5 *Bell Journal of Econ. and Management Sci.* 264 (1974). This may change somewhat with the increased availability of broadcast signals via satellite. However, without distant signal restrictions, application of the syndicated exclusivity rules will result in blacked out channels, including during prime time.

[261] For example, in the previous section we found to be without merit the industry's claim that accounting for the difference in impact from cable television during early fringe (i.e., the period in which mostly syndicated programming is broadcast) would significantly affect our results. Moreover, the effect of the syndicated exclusivity rules on local station audiences is much less than that of unfettered distant signal carriage. Thus accounting for differences between program types in this case is even less likely to affect our results.

[262] For further discussion, *see* Section IV.

beyond which it has been licensed."[263] Congress exempted cable systems from paying for the right to carry programs purchased by the local stations and by the national networks because such carriage "does not injure the copyright owner."[264] Congress said the copyright owner contracts for these programs on the basis of receiving viewership in cable households and "is compensated accordingly."[265] However, we believe this rationale may also apply to all distant programming carried by cable systems, especially that of superstations. For example, there is no disagreement in the record that superstations presently are paying programmers for their increased circulation.[266] We cannot determine, however, whether this is a stable equilibrium because we do not know whether these stations will receive additional revenue for distant cable viewing. Thus we cannot determine whether the fees are too high or too low given our perception of Congress' goal in setting them. If distant audiences are compensated for, the fees will be too high. Nevertheless all of these factors were considered by Congress in its determination of the appropriate fee level. Thus we believe the complaints and allegations raised in the comments concerning the adequacy of the present copyright legislation for cable television have been directed to an inappropriate forum.

230. Furthermore, Congress has mandated the Copyright Royalty Tribunal to make determinations concerning the adjustment of reasonable copyright royalty fees if the syndicated exclusivity rules are changed. Any adjustments must be reasonable and the Copyright Royalty Tribunal shall consider, among other things, the economic impact of the rule change on copyright owners and users in determining the reasonableness of the fees. Thus we cannot accept the assertion that the elimination of the syndicated exclusivity rules will adversely affect copyright owners because of the inadequacy of the present fee schedule. We also do not believe any data are necessary to support our belief that owners of copyrights will not go unindemnified should a change in the syndicated exclusivity rules do "damage to the copyright owner."[267] Moreover, we do not have jurisdiction to protect program producers *per se*. Thus we find the contentions raised by the commenting parties to be without merit.

231. *Distant Cable Viewers Are Worthless.* Our *Report in Docket 20988* stated that to the extent that television stations are able to receive compensation for the audiences they attract in distant markets we expect their demand for television programming will increase, resulting in greater payments to producers. We concluded that there has been insufficient opportunity to date for the relevant markets to adjust because we are in a transitional period in the growth of superstations. NBC contends, however, that "distant viewing is of no value to local advertisers on the 'superstations' and is not considered economically significant to warrant any substantial increase in the price at which the 'superstation' sells its time."[268] Similarly, MPAA cites the *Report and Order in Docket 20487*, 57 FCC 2d 625 (1976), where the Commission said "distant cable carriage, at this time, does not generally appear to be of significant value to television stations." The reasons specified by the Commission for this conclusion were: (1) the existence of the syndicated exclusivity rules, (2) the lack of information concerning viewing in distant cable communities, (3) the likelihood that distant audiences are worthless to local advertisers, and (4) the possibility that distant signal carriage might not be adequate to reach the advertiser's target audience in the distant market.

232. Several events have occurred since 1976 which suggest a change in reasoning. For example, much better information is becoming available on the viewing of superstations in distant markets.[269] Additionally, there is some indicaton that national advertisers value highly the audience on cable systems located throughout the nation. For example, Madison Square Garden Sports Network receives a comparable, if not higher, price per viewer for commercial time than broadcast stations receive for commercial time during prime time.[270] Thus marketplace forces may dictate that national advertisers will replace local advertisers to a great extent on superstations and will pay for the added circulation in the distant markets. Whether national advertisers value audience more highly than local advertisers is an empirical question that cannot be answered yet because we are in a transitional period where both novelty and uncertainty over regulatory intervention, among other factors, have hindered the requisite adjustments in the informational and advertising markets that have occurred to date. Nevertheless, we believe it is likely that distant audiences will add revenues to television stations if our regulations permit unfettered distant signal carriage.

233. *The Requisite Data To Estimate Elasticities of Supply Has Been Collected by the Network Inquiry Staff.* Our *Report* found that even under worst-case conditions for the program production industry (*i.e.*, payments to producers actually decrease as a result of the elimination of the syndicated exclusivity rules), we could not determine the effect on program supply due to insufficient information to estimate elasticities of supply. We further noted that even with the requisite data any judgment of the effect of a change in the supply of television programming on the welfare of television viewers could be no more than conjectural. In contrast, Tribune Company assserts that the requisite data to estimate the elasticity of supply of television programming has been submitted in the Network Inquiry.[271] Tribune Company has not, however, pointed to any information provided in

[263] Report of the House Committee on the Judiciary, Copyright Law Revision, H.R. Rep. No. 94-1476, 94th Cong., 2d Sess. 90 (1976).

[264] *Id.*

[265] *Id.*

[266] *See, e.g.*, Superstation, comments in Docket 21284, September 14, 1979. *See also* Tribune Company, comments in Dockets 20988 and 21284, September 17, 1979.

[267] The Copyright Royalty Tribunal is empowered to adjust the ratio if the Commission's rules are changed any time after April 15, 1976. It should be noted that a number of such changes have already been made (see, for example, *First Report and Order in Docket 20553*, 58 FCC 2d 442 (1976) (specialty stations) and *Report and Order in Docket 20496*, 65 FCC 2d 218 (1977) (expanded UHF carriage)), but insofar as we are aware no request for a revision of the fee structure has even been filed with the Royalty Tribunal.

[268] *Supra*, n. 48 at 15. These comments may be contrasted with those of McGraw-Hill Broadcasting (a TV station licensee) in Docket 20988, March 1, 1977, p. 20, that "It is already McGraw-Hill's experience that national and regional advertisers are beginning to view the purchase of time on the Los Angeles stations as a more efficient way to cover this large region than separate time purchases on a number of local stations." AMST would appear to agree with McGraw-Hill by suggesting that, under the retransmission consent proposals, cable systems would likely obtain consents at no cost or be paid to carry distant signals. See comments in Dockets 20988 and 21284, September 17, 1979, at 13. See also "WOR-TV's aims to improve its Image," *New York Times*, March 10, 1980, p. C17, quoting the president of RKO Television as stating that WOR-TV business was "better than it had been in years" in part because "WOR-TV is carried by satellite to cable-television systems around the country." *See also* comments of Rocky Mountain Broadcasters Association, para. 175, *supra*.

[269] *See* Nielson Station Index, *Coping with the Complexity of Cable in the 80's (1979)*.

[270] *See* "Measuring Cable Audience: Systems Differ on Need for It," *Television/Radio Age* at 82, August 13, 1979, where it is reported that "MSG's average sports event reaches roughly 100,000 viewers, for which MSG's ad rate is $650 per minute. *See also id.* at 44.

[271] Tribune Company, comments in Dockets 20988 and 21284, September 17, 1979, n. 14 at 31.

that proceeding which would dictate a change in our findings. Moreover, we are not persuaded that this information can be used to estimate elasticities of supply for policy making purposes. For one thing, information concerning first-run syndicated programming, which historically has been our major concern with respect to the syndicated exclusivity rules, is in a form suitable for analysis for only two programs. But more importantly, the elasticity of supply cannot be measured because there is no adequate method available to compare and measure the differences in quality among programs. We are aware of no information and have been cited to none that has been submitted in the Network Inquiry proceeding which contradicts our conclusion that the program production industry will continue to prosper and the supply of programming will continue to expand even with the deregulation of cable television.

234. *Dire Predictions for Program Supply Ignored.* Our *Report* concluded that the supply of television programming will continue to increase even with the elimination of the syndicated exclusivity rules. Several parties disagree with this conclusion and refer for support to a scholarly journal article on copyright liability for cable television by Besen, Manning and Mitchell which was submitted as a comment in this proceeding.[272] Specific reference is made to the belief of the authors that:

> The continuation of the FCC's exclusivity provisions will significantly diminish the potential adverse impact on program suppliers of the compulsory licensing provisions of the general revision.

MPAA claims that the Commission's "refusal to examine and weigh th[is] evidence is highly arbitrary and capricious, and raises serious questions as to the objectivity of the Commission's staff."[273]

235. Several points are noteworthy with respect to this criticism. First, the article by Besen, Mitchell and Manning was examined and weighed. The *Report in Docket 20988* describes the divergence of opinion appearing in the scholarly literature concerning the effect of reduced payments to program producers on program supply (i.e, the worst-case effect of eliminating the syndicated exclusivity rules), including specific reference to the article by Besen *et al.* Second, the conclusion of the authors of this article is based in part on the belief that "about half of the local independent's audience will be lost if two additional independent stations are imported."[274] In contrast, our analysis in the *Report in Docket 21284* has shown that UHF independent stations often are benefited and VHF independent stations sometimes are benefited by cable television within their local ADI market, even when a large number of distant signals are imported. Third, Besen *et al. make no attempt to explicate the effect of the syndicated exclusivity rules on local station audiences. Finally, the scope of the analysis by Besen et al.* is different from that of ours. A major theme in that article is that copyright holders should be able to extract the maximum economic value that cable subscribers derive from television programming and if that value is not great enough to benefit the copyright owner, the copyright owner should be able to exclude cable subscribers from the benefits of its programming. In contrast, our concern in analyzing the syndicated exclusivity rules is that the importation of programming by cable systems does not reduce the overall payments derived by program producers from television stations to the detriment of consumers, given the compulsory licensing scheme enacted by Congress. As noted above, new audience data suggests that very little or no harm will occur to local broadcast stations and therefore to program producers in the foreseeable future if the syndicated exclusivity rules are eliminated. Moreover, since the syndicated exclusivity rules act to restrict the growth of cable television and thus reduce the number of outlets to which program producers can sell their products, the rules may have the adverse effect of reducing the revenues of the program production industry.

236. Additionally, the Joint Motion interprets incorrectly the conclusion of Besen *et al.* to be necessarily in conflict with ours. Besen *et al.* conclude that the elimination of the syndicated exclusivity rules will diminish the supply of programming. The proper interpretation of this conclusion for our purposes, however, is that the authors believe, based on certain stated assumptions, that the elimination of the rules will diminish the supply of programming compared to what it otherwise would have been in the future. Our *Report in Docket 20988* showed that the supply of television programming has increased significantly from 1971 to 1977, even though syndicated exclusivity protection has been received in only a small number of cases. Furthermore, we concluded that the supply of programming will continue to increase into the foreseeable future, even with the deregulation of cable television. On the other hand, Besen *et al.* make no inferences for the *overall* supply of television programming in the future. Thus their conclusion is not necessarily inconsistent with our conclusion that if there is any impact on program supply from the elimination of the syndicated exclusivity rules, it will be manifested in a reduction in the rate of growth of program supply rather than an absolute decrease in the supply of programming.

237. *Grandfathering* Our *Notice of Proposed Rulemaking in Dockets 21284 and 20988* invited comment on the proposal that each program exhibition license in effect on April 25, 1979 be grandfathered under the existing syndicated exclusivity rules for a period of three years or until expiration of the contract, whichever occurs sooner. Our reasoning, in the *Report in Docket 20988*, was that broadcasters may receive compensation different from that anticipated at the time of negotiation of the contract. We believed that since this dislocation would be partly regulatory in nature, it may be desirable to provide a transition period by grandfathering existing program supply contracts.

238. Several parties have responded to this proposal. Broadcast interests contend that the granfathering period should be extended because contracts often run for longer than three years. In general these comments represent "votes" in favor of the proposal or an extended version of it rather than data or, in some cases, even arguments as to why it should be adopted. No comment has shown any *public* benefit in providing any grandfathering protection for existing license contracts.

239. Cable television interests, on the other hand, argue that the granfathering of existing contracts is neither necessary nor in the public interest. They cite the conclusion of the *Report in Docket 20988* that no more than about 1 percent of local station audiences will be lost due to the elimination of the syndicated exclusivity rules. A–R Telecommunications Division of Adams-Russell Company, Inc. *et al.*, argue that "this impact, which the Commission found clearly did not warrant continuation of the exclusivity rules when balanced against the benefits to the public to be gained by immediate repeal of the rules, dictates that the Commission should not institute an interim grandfathering period."

240. While we concluded that the public would be served best without the

[272] *See* S. M. Besen, W. G. Manning, and B. M. Mitchell, "Copyright Liability for Cable Television: Compulsory Licensing and the Coase Theorem," 21 *Journal of Law and Economics* 67 (1978).

[273] Motion Picture Association of America, comments in Dockets 20988 and 21284, Sept. 17, 1979.

[274] *Supra*, at n. 272 at p. 31.

blackouts on distant signals resulting from the syndicated exclusivity rules, we felt that some transitional dislocations may result without grandfathering provisions because the contracts were written in contemplation of the existing rules. Upon reconsideration, however, we believe that the absence of any evidence suggesting that these transitional dislocations will redound to the detriment of the public forecloses us from extending the grandfathering provisions to cover existing contracts.[275] Given the absence of public benefits, the relatively small amount of audience impleicated in this issue, and the complexity and difficulty associated with the administration of these rules both for the recipients of benefits under it and for the Commission and these subject to it, we are not persuaded that the grandfathering proposal can be justified.

Conclusions

241. Our analysis of the effect of the syndicated exclusivity rules on television service to the public is similar in many respects to that of the effect of distant signals. The principal difference is that the syndicated exclusivity rules were adopted not only to protect local broadcasters but also to protect the continued supply of television programming. In both cases, however, we rely upon three well-established criteria for ascertaining the public interest: consumer welfare, distributional equity, and external effects.

242. In Section II we have shown in great detail that the protection afforded to local broadcast stations from restricting distant signal carriage on cable television systems disserves the public interest. We found the effect of distant signal carriage on the financial health of television broadcasters is small in relation to the normal growth in the industry's financial prosperity. Additionally, audience losses due to cable television were found to have little effect on the local programming of television stations. We concluded that distant signal carriage improves television service to cable subscribers without subjecting non-cable households to any significant risk of harm. Since these results were derived for the carriage of distant signals that are not subject to blackouts from application of the syndicated exclusivity rules, the results also apply to the elimination of the syndicated exclusivity rules, but with even greater force. Moreover, in view of these findings and in light of the system created in the 1976 Copyright Act for indemnifying copyright owners, we are unable to conclude that elimination of these rules will have adverse consequences for the supply of television programming the public receives. These rules serve no valid communications policy purpose.

243. On the other hand, we believe that the syndicated exclusivity rules impose significant costs upon the subscribers and potential subscribers of cable television. Therefore, by weighing both the expected costs and benefits of the rules to consumers, we conclude that the public will be served better without the syndicated exclusivity rules for cable television systems.

IV. Retransmission Consent

Background

244. As previously described briefly, cable television systems have no *direct* financial or contractual nexus or responsibility either to the television broadcasters whose signals they carry or to the creators or owners of the programs that are broadcast on these stations.

245. With passage of the Copyright Revision Act of 1976, Congress established the copyright obligations that were to govern the relationship among these parties. Under this statute cable television systems pay a percent of their gross revenues to the Register of Copyrights for the right to carry distant signals and for each distant signal or "distant signal equivalent." The fees payable are to some extent variable according to system size but the schedule for the larger systems provides roughly that 0.675 of 1 per centum of the system's gross revenues must be paid for the first distant signal, 0.425 of 1 per centum for the second, third, and fourth signals, and 0.2 of 1 per centum for the fifth and each additional signal. Each independent station is one distant signal equivalent. Each distant network or non-commercial educational station is one quarter of a distant signal equivalent. The money received by the Register of Copyrights is then distributed to the copyright owners whose works were carried by cable television systems by a separate Copyright Royalty Tribunal. In addition to disbursing the copyright fees paid by cable television systems, it is also the function of the Copyright Royalty Tribunal to alter the rate structure specified in the law, both to assure that the real constant dollar value of the royalty fee per subscriber is maintained and to assure that the fee structure remains appropriate if the rules of the Federal Communications Commission are amended to permit the carriage of additional distant television broadcast signals or to change the syndicated program exclusivity requirements.

246. With the enactment of this legislation, Congress spoke for the first time on an issue that was first raised with respect to cable television in the late 1940's, which was before the Supreme Court on two separate occasions, which engaged the attention of the Congress itself for almost twenty years, and was considered one of the most important and controversial of the issues involved in the revision of the copyright act.

247. During the period leading up to the enactment of this new law, the Courts, the Congress, and the Commission were each prevailed upon to remedy what was regarded as the problem created by the failure of cable television systems to make copyright payments or participate in the markets then existing for the sale and distribution of television programming. Action was thought necessary to promote economic efficiency in television program distribution markets, to prevent unfair competition between cable television systems and television broadcasters, to eliminate adverse impacts on the supply of television programming, and to protect property rights in creative works.

248. Although Congress has now amended the copyright law in response to these concerns, the mechanism chosen is still regarded by some as inadquate. Government, it is said, is still interfering in this process by setting copyright fees and participating in their distribution and this situation should be replaced by rules that establish a market mechanism for setting rates and for regulating the flow of distant signals.

249. That we undertake such an effort was forcefully urged on us by the National Telecommunications and Information Administration of the Department of Commerce in a rulemaking petition considered in connection with our *Notice of Proposed Rule Making* in this proceeding. Put in its starkest terms what is urged is that new cable television systems or those expanding or adding signals be permitted to do so only upon receipt of permission from the originating station and that we should adopt this proposal regardless of whether it has adverse consequences for local television broadcast service or whether it results simply in retransmission consent denials

[275] See *FCC v. National Citizens Committee for Broadcasting*, 435 U.S. 912, n. 24 (1978). Moreover, that there will even be private injury is not something that can be assumed given the ability of cable television operators under the provision of the rules to substitute alternative programs for those deleted.

and the cessation of cable television distant signal carriage.[276]

250. In reviewing this proposal in our *Notice of Proposed Rule Making* we noted that it had some "considerable theoretical attractiveness" para. 83, *supra* and "that a market solution to the problems of compensating owners of programming materials for their commercial use is desirable." Para. 81, *id.* We noted that:

> The existing compulsory license system substitutes regulatory judgment about the proper treatment of program rights for the normal market process that rewards holders of copyright. So, too, does the retransmission consent proposal prejudge the type of market institutions that can best deal with the protection of equities. It is argued that if broadcasters succeed in raising advertising rates to reflect distant audiences, imported stations will want to have their signals retransmitted even if no retransmission fee is paid. *Id.*

251. "The Commission's preference," we said, "would be to give markets the opportunity to work and to impose regulatory judgments on how transactions should take place only on demonstration that a private market will not work." *Id.* We also noted that the retransmission consent proposal appeared to be the functional equivalent of full copyright liability and that, in view of the recent explicit Congressional rejection of full copyright liability in its 1976 Copyright Revision Act, there were questions as to our legal authority to adopt the proposal. In order to aid us in reviewing this matter, we sought comments "on how the markets in program rights might develop, and what actions, if any, the Commission can legally take that would serve that end." *Id.*

252. The comments received in response to this invitation add very little to the store of economic information available relating to this subject. Morever, although the legal issues are briefed in considerable detail, there is little to dispel our initial doubt concerning our authority to engage in the type of regulation urged for the purposes that are urged. In fact, the continuation of this legal debate persuades us that even were there evidence of a real and immediate problem calling out for resolution, that this, among all of the regulatory tools that might be available to us, is the one most difficult to sustain because of its recent and distinct rejection by Congress. In order to demonstrate as clearly as possible that this view is correct, and not merely a retreat from responsibility in the guise of an overly narrow reading of our authority, some fairly detailed review of the arguments and history of this issue is required. For the sake of completeness, this discussion to some extent repeats that set forth in the *Notice of Proposed Rule Making*. The arguments that we ultimately find to be persuasive are twofold: (1) that this is an issue, whether labeled a matter of copyright or communications policy, that Congress considered almost *in haec verba* and chose a different path to follow, and (2) that the objectives sought by this rule—protection of program suppliers from economic injury and the preservation of existing market structures for the sale of television programming—are remote to the responsibilities assigned to this agency.

Comments

253. The principal proponent of the retransmission consent proposal continues to be the National Telecommunications and Information Administration. In fact some of the other principal commenting parties in this proceeding such as the Motion Picture Association of America and the Association of Independent Television Stations largely or entirely defer to NTIA to carry this issue. NTIA perceives the central issue before the Commission to be "how cable will develop in the major markets, rather than how it will develop in the small towns or markets" (NTIA comments, p. 7), and the critical consideration in this major-market development to be the system's importation of non-network programming. NTIA perceives the necessity for the imposition of a retransmission consent requirement in the fact that although broadcasting and cable are the two principal means for distributing non-network programming, broadcasters must negotiate directly with program producers and pay a negotiated price for program product while cable enjoys a compulsory license to carry its programming, and thus need not enter into direct negotiations or pay for it. NTIA sees this as a "skew" of the marketplace in favor of cable, which eliminating the present rules will not resolve. Indeed, NTIA argues that if the distant signal and syndicated exclusivity rules were deleted without imposing a retransmission consent requirement a number of serious "anomalies" involving exclusivity arrangements could occur.[277] To reconcile this "incompatibility" between broadcasting and cable, NTIA recommends the imposition of a retransmission consent requirement on new or expanding major-market cable systems, to "force" them to "enter the program marketplace and compete with local broadcasters for the right to distribute programs in the area served by cable." (NTIA comments, pp. 8–10). NTIA states that its retransmission consent proposal would exhibit a "rational symmetry" with other policies and processes, including the distribution system for pay cable programming, the requirement that translators, which are similar to cable, obtain rebroadcast consent from originating stations under Section 325(a) of the Communications Act, and the promotion of first-run syndicated programming. *A fortiori,* the Copyright Royalty Tribunal, "as only another government agency adjusting a government-ordained schedule," is an unsatisfactory alternative to marketplace control by retransmission consent. Although NTIA admits that it would be preferable for Congress rather than the Commission to adopt its retransmission consent proposal, NTIA notes that legislative action is not assured and therefore Commission action is appropriate.

254. With respect to the workability of its retransmission consent proposal, NTIA states that the advent of satellites, and the concomitant increase in demand for new program sources and in the number of broadcasters, nonbroadcast programming entrepreneurs, and middlemen seeking to produce them, will make retransmission consent a success now despite its failure a decade ago. Even if its prognostication were proven wrong, however, NTIA states that the marketplace answer will simply be that major-market cable will have to succeed with a service offering of enhanced reception of local signals, pay cable, and interactive services such as "Qube." On the more precise question of how its retransmission consent proposal would work in practice, NTIA suggests

[276] As set forth in the NTIA comments in this proceeding the proposal is actually somewhat more complicated. As described therein the retransmission consent fee would be a "reasonable" one (p. 9), the Commission would supervise the operation of these rules "to police abusive practices, such as 'warehousing' " (p. 10), if necessary "either by rule or on an *ad hoc* basis" the Commission could exempt smaller, rural systems or those outside the top 100 markets (p. 7), the Commission would give "*ad hoc* consideration of station claims of substantial injury" (p. 17) and "on its own investigate serious injury claims by small market stations." (p. 21).

[277] For example, a local UHF station could obtain exclusive rights for non-network programming as against other stations in its market but not against cable systems in the market carrying the same programs on distant signals; sports entrepreneurs can similarly obtain exclusivity for league games as against local commercial and STV stations but not as against cable; and if "superstations" who are refused sales by copyright owners in attempts to control the distribution of their programs, television viewers in the superstations' home markets, as well as cable viewers, may not get the programs that are withheld.

that perhaps the distant stations would be in a position to pay program suppliers more in light of their enlarged cable audience, and recoup these expenses from advertisers, or perhaps they may charge systems a fee for securing retransmission consent for them; on the other hand, systems could establish funds from subscriber revenues for programming or the whole process could be managed by brokers. In any event, "the government does not have, and should not have a blueprint here." (NTIA comments, p. 9.)

255. NTIA would grandfather existing, non-expanding major market systems. Noting that such systems "were built upon the basis of either no copyright payment, a right twice judicially-confirmed, or of compulsory licensing under the Copyright Revision Act of 1976," NTIA states that "it would be inequitable now to change the rules for them." (NTIA comments, p. 17.) NTIA would, however, continue to enforce the syndicated exclusivity rules (with the exception of the off-network program pre-clearance requirement) against such systems in the fifty largest markets and extend them to the second fifty largest markets. If its suggested program of retransmission consent with grandfathering is not adopted, then NTIA proposes that the Commission retain the syndicated exclusivity rules for the top fifty markets and extend them fully to the second fifty as well. In so doing, NTIA emphasizes that its proposal is not premised on potential impact, but rather on accommodating the public interest and in deference to longstanding territorial exclusivity practices.

256. NTIA finds the passage of the Copyright Revision Act no bar to the adoption of its retransmission consent proposal because:

> The cable copyright provisions are a compromise, taking the situation as given at that time—small town cable. NTIA's retransmission consent proposal does not disturb that resolution. Congress did not address the future of cable in large metropolitan areas, and did not foreclose the Commission from addressing this new situation under communications policy. Requiring retransmission consent for cable's independent signals in the cities, together with the grandfathering of the existing small town cable, will provide a sound communications policy framework for cable's development in new directions as well as respect the copyright compromise Congress made in 1976 for cable as it had then evolved.

NTIA comments, p. 50. More specifically, NTIA argues that under its retransmission consent proposal it would be the broadcaster, rather than the cable operator, that would be required to secure from the copyright owner the right to distribute programs to its service area as enlarged by cable. This, NTIA asserts, is entirely consistent with the Copyright Act as well as posing no practical problems for the broadcaster. Should the broadcaster charge cable systems for expenses incurred in granting retransmission consent, NTIA views the charge as "a matter for marketplace forces" and one which the Copyright Royalty Tribunal could take account of indirectly by adjusting the compulsory license fee.

257. Nevertheless, conceding the possibility that direct negotiations and payments between cable operators and copyright owners could occur, NTIA argues that the Copyright Revision Act would still not preclude Commission adoption of a retransmission consent scheme. In support of this contention, NTIA cites the provisions of Sections 801(b)(2)(B) and (C) of the Copyright Revision Act, which provide for the adjustment of the compulsory license fee at such time as the Commission amends its distant signal, syndicated and sports program exclusivity rules,[278] and the legislative history of the Act, which indicates that this authority was granted the Copyright Royalty Tribunal because the distant signal and exclusivity rules protect the copyright owner.[279] Thus, NTIA argues that the Copyright Act specifically allows the Commission to change its rules based on communications policies even though these changes might affect the copyright royalty fees payable. NTIA further states that the legislative history of the Copyright Revision Act, and indeed the entire history of attempts to resolve the cable-copyright dilemma prior to the passage of the Copyright Revision Act, reflected the fact that the Judiciary Committees of the respective Houses of Congress conscientiously avoided any interference with the jurisdiction of the Commission over matters of communications policy in their consideration of copyright legislation.[280] Thus, NTIA concludes, the thrust of the copyright scheme is that the Copyright Royalty Tribunal defers to FCC changes in communications policy rather than that the FCC defer to the cable copyright provisions in exercising its authority over communications policy under the Communications Act. NTIA also takes direct issue with the proposition that Commission adoption of its retransmission consent proposal would require the cable system operator to negotiate directly with the copyright owner, thereby countervening the express legislative intent in adopting the compulsory license scheme in that it would be "impractical and unduly burdensome to require every cable system to negotiate with every copyright holder whose work was retransmitted by a cable system."[281] NTIA concedes that the legislative intent was clearly not to have the system operator negotiate directly with the copyright owner; however, it re-emphasizes that its proposal would only require the system to negotiate with the originating broadcaster; the originating broadcaster would negotiate directly with the copyright owner. Finally, NTIA disputes the contention in the *Notice* that retransmission consent was expressly rejected by the Congress. NTIA notes that the Commerce Committee's rejection of the Commission's 1966 legislative proposal to extend Section 325(a) of the Act to cable television does not establish any lack of Commission jurisdication to adopt its proposal, citing the Supreme Court's subsequent opinion in *United States v. Southwestern Cable Co.*, 392 U.S. 157, 170–171 (1968). Indeed, it cites the fact that the recent consideration of a retransmission consent proposal by the House Communications Subcommittee in a bill to revise the Communications Act as evidence that retransmission consent is a matter of communications, rather than copyright, policy.[282]

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[278] Section 801(b)(2)(B) provides in pertinent part:

> In the event that the rules and regulations of the Federal Communications Commission are amended at any time after April 15, 1976, to permit carriage by cable systems of additional television broadcast signals beyond the local service area of the primary transmitters of such signals, the royalty rates established by Section 111(d)(2)(B) may be adjusted to insure that the rates for the distant signal equivalents resulting from such carriage are reasonable in light of the changes effected by the amendment to such rules and regulations.

Section 801(b)(2)(C) provides in pertinent part:

> In the event of any change in the rules and regulations of the Federal Communications Commission with respect to syndicated and sports program exclusivity after April 15, 1976, the rates established by Section 111(d)(2)(B) may be adjusted to assure that such rates are reasonable in light of the changes to such rules and regulations, but any such adjustment shall apply only to the affected television broadcast signals carried on those systems affected by the change.

[279] H.R. Rep. No. 94–1476, 94th Cong., 2d Sess. 176–177.

[280] The Report of the House Judiciary Committee stated that, while it was aware of the "interplay" between the communications and copyright elements of the legislation, the Committee has carefully avoided including in the bill any provisions which might interfere with the FCC's rules or which might be characterized as affecting "communications policy." *Id.* at 89.

[281] *Id.*

[282] H.R. 3333, 96th Cong. 1st Sess. (1976). Section 453 of the bill would have precluded carriage of any signal, local or distant, without the consent of the station or the person who "controls the exclusive rights to the program involved." In the same session rewrite bills were also introduced in the Senate. Neither of these bills, S. 611 or S. 622, contained a retransmission consent proposal.

258. NTIA finds that the Commission's jurisdiction to adopt its retransmission consent proposal as a matter of communications policy emanates from Sections 325(a), 303(g), (h), and (s) and 307(b) of the Communications Act. NTIA cites the legislative history behind Section 325(a) for the proposition that it was meant to confer on broadcasters the right to control commercial exploitation of a radio communication and that this prohibition was intended to extend to cable as well as to broadcasters.[283] NTIA also states that rebroadcast consent and copyright are two distinct legal requirements, with liabilities arising under separate statutes if one or the other is violated, and that Section 73.1207 of the Commission's rules, which implements Section 325(a), reflects communications policies such as fostering widespread communications in times of emergency and protection of privacy, and includes privately-owned non-broadcast stations and point-to-point government stations, which, like cable television, do not fall within the express language of Section 325(a) but for which consent for rebroadcast must nevertheless be secured from the Commission.

259. NTIA finds the requisite jurisdiction to apply Section 325(a) to cable television in *United States v. Southern Cable Co., supra,* and sucessor cases. Although noting that Section 325(a) was not explicitly treated in *Southwestern,* the Court generally recognized the expansive powers of the Commission to regulate interstate communications by wire and radio in holding that cable television may be regulated to the extent "reasonably ancillary to the regulation of television broadcasting," *Id.* at 178. NTIA also cites *United States v. Midwest Video Corp.,* 406 U.S. 649 (1972), for the proposition that "ancillary to broadcast" jurisdiction enunciated in *Southwestern* is not limited to preventing adverse competitive impact "but extends also to requiring CATV affirmatively to further statutory policies." 406 U.S. at 664. NTIA sees no limitation for its jurisdictional purposes in the recent decision in *FCC v. Midwest Video Corp.,* 59 L. Ed 2d 692 (1979), which vacated the Commission's access and channel capacity rules; rather NTIA finds support in its holding that the substantive provisions of the Act which delimit the obligations that can be imposed on broadcasters do not have "peculiar applicability to television broadcasting. [Their] force is not diminished by the variant technology involved in cable transmissions." 69 L. Ed. 2d at 706–7. Thus, NTIA holds that retransmission consent is reasonably ancillary not only to Section 325(a) but also to Section 303(h), which authorizes the Commission to establish areas or zones to be served by stations, Section 307(b), authorizing effective local television outlets, and Section 303(s), authorizing the promotion of UHF outlets, and Section 303(g), which empowers the Commission generally to secure "the larger and more effective use of radio." NTIA points out that satellite transmission capability and the compulsory copyright license policy present a threat to program diversity by forcing program producers to restrict the availability of their products in order to assure the continued observance of traditional territorial exclusivity. As a result, NTIA predicts that the public in some cases will be deprived of programming entirely; in others, that it will be "syphoned" to pay services; that localism and UHF development will be under-cut, and that the result would be "a skewing of the marketplace to the detriment of all." In sum, NTIA submits that its proposal is a matter of communications policy that is within the Commission's authority to adopt under the Communications Act. Indeed, NTIA contends that under the *Melody Music* doctrine [284] the Commission would be required to explain its disparate treatment of metropolitan cable systems and independent television stations should we decline to adopt NTIA's retransmission consent proposal.

260. The three television networks as well as a number of individual television licensees and licensee groups endorse the retransmission consent consept. Some of these, like WTVC *et al.* and ABC, favor retransmission consent because it will require cable to compete in the marketplace for programming. Many of the commercial broadcast commenters, including 220 Television *et al.,* Bahia de San Francisco, KTVB, Inc., and Bibb Television Inc. *et al.,* stress the fact that under the compulsory license system cable television receives a massive federal subsidy and thus competes unfairly with broadcasters.[285] 220 Television *et al.* argue that under the present compulsory license system distant signals are effectively "free goods;" they do not reflect the cost or value to the local station, the distant station, or the program supplier. ABC and others argue that this marketplace distortion is aggravated by the advent of superstations. The Association of Maximum Service Telecasters, Inc., contends that the repeal of the rules without the imposition of a retransmission consent requirement would immunize superstations as well as cable systems from competing with local broadcasters in the marketplace, thus rendering the existing program marketplace "meaningless." KOB–TV *et al.* argue that the sale of programming to superstations could destroy its sales value in individual markets thereafter, and states that since the essence of our deregulation proposal is to achieve for the public that which the unfettered marketplace can provide, repeal of the present rules without adoption of retransmission consent to create such a marketplace would be self-defeating.

261. A number of the commercial broadcasters, including KOB–TV *et al.,* Association of Maximum Service Telecasters, the National Association of Broadcasters, and Bahia de San Francisco, addressed themselves specifically to the issue of the Commission's jurisdiction subsequent to the passage of the Copyright Revision Act in 1976. All found the requisite jurisdiction, generally employing the same analysis as NTIA. KOB–TV, *et al.* and the Association of Maximum Service Telecasters argue that the Commission's authority under the Communications Act to determine that marketplace regulation of cable would be appropriate and also includes the authority to create by regulation the conditions necessary for the free market to function.

KOB–TV *et al.* and AMST also contend that Section 301(d) of the Copyright Revision Act specifically reserves the Commission's jurisdiction to adopt a retransmission consent requirement in the course of a communications policy judgment that the free market should substitute for

[283] *Inter alia,* NTIA cites the statement by Senator Dill on Section 28 of the Radio Act of 1927, the predecessor to present Section 325(a), that

> As to Section 28, providing that no person, firm or corporation shall rebroadcast the material broadcast by a station without that station's consent, it is I think, a very necessary provision. Otherwise, we would have a broadcasting station spending a large amount of money to prepare and present a program as a program from that station, and then under modern methods of rebroadcasting, it could be picked up and broadcast from other stations, and particularly over the wired wireless, and money charged for listening to it. . . 68 Cong. Rec 2860.

[284] *Melody Music, Inc. v. FCC,* 345 F. 2d 730 (1965).

[285] For example, the Smaller Market UHF Stations note that the entire cable industry spent $13,000,000 in compulsory license payments last year whereas the ABC network alone spent $570,000,000 for programming over the same period. 220 Television, Inc. *et al.* state that cable's royalty payment is roughly proportional to the fees television stations pay for music licenses—about 1 percent of operating revenues.

extrinsic regulation.[286] It is argued in this respect that the Copyright Revision Act was intended to act as a "floor," that the Commission could not relieve cable systems of their obligation to make compulsory copyright payments when they do not directly or indirectly bargain for program rights. KOB–TV *et al.* maintain that it does not, however, establish a "ceiling" on what the Commission may do to achieve the purposes of the Act. They further argue that "repeal by implication," e.g., implied repeal of Section 325(a) by the subsequent passage of the Copyright Revision Act, is disfavored as a matter of law, and that the Copyright Revision Act and Section 325(a) are not repugnant as manifest by the fact that Congress carefully distinguished between matters of communications and copyright policy in enacting the 1976 Act. The Association of Maximum Service Telecasters argues that the validity of a retransmission consent requirement turns on whether it is adopted for legitimate communications policy reasons, not on whether it is incidentally similar to, overlaps, or is more onerous than the requirements of the Copyright Revision Act. Finally, KOB–TV *et al.* argue that the Commission's doubts as to its jurisdiction to adopt retransmission consent are inconsistent with its action in adopting equal employment opportunity rules for its licensees despite passage of Title VII of the Civil Rights Act. It is contended that, just as the Commission's EEO rules have been sustained despite the fact that Title VII represents a comprehensive congressional scheme for dealing with equal employment, the Commission similarly has jurisdiction under the Communications Act to restrict the benefits that would otherwise be available under the Copyright Revision Act.

262. Finally, several of the commenters directly confront the issue of the workability of a retransmission consent requirement. The Association of Maximum Service Telecasters argues that the so-called "failure" of the Commission's very limited, experimental retransmission consent program in 1968 is not relevant to the implementation of a nationwide system in 1980, given the advent of superstations, satellites and resale carriers and strong incentives to assure its effective and economical implementation. If the proposal were adopted, it is said to be "very likely that in most cases, cable will end up paying nothing for consent, or may end up being paid to carry distant programs just as television broadcasters are paid by some of their program suppliers, most notably the major networks." The National Association of Broadcasters believes retransmission consent would work because, except where there are already exclusive contracts, program suppliers would sell rights to the highest bidder, whether it be a cable system or a broadcaster. The Association of Maximum Service Telecasters agrees, stating that cable is now so profitable program suppliers could hardly ignore it, and Metromedia, Inc. states that it is aware of two entrepreneurs prepared to act as brokers if retransmission consent were adopted. KOB–TV *et al.* cite pay cable's development as a prototype, and the Association of Maximum Service Telecasters agrees with KOB–TV *et al.* that pay cable and other nonbroadcast programming will provide a "cushion" in situations where obtaining retransmission consent proves difficult. The Post Corporation, while strongly supporting the concept of retransmission consent, states that more than simple consent should be involved. It argues that ownership of programming is the key, and to the extent that Section 325(a) fails to take the element of program ownership into account, a perplexing multitude of rules has resulted, and NTIA's retransmission consent proposal, to the extent it ignores ownership, suffers from the same defect. On the other hand, Post argues, if consent had to be sought from the program owner, marketplace forces would truly govern, and that would be the optimal approach. Finally, KOB–TV *et al.* note their preference for a regulatory rather than statutory retransmission consent scheme because of its greater flexibility.

263. Nine noncommercial television broadcast station licensees, commenting jointly also recommend the adoption of a retransmission consent requirement for all programs of public television stations if the rules on carriage of distant noncommercial stations are deleted. The licensees argue that at least in this manner they would have the opportunity to contract for exclusive rights to particular programs. They state that a retransmission consent requirement would allow a distant noncommercial station to withhold consent where it appeared that carriage of its programming would injure a local noncommercial station, and recognize that cable systems could be required to pay for use of a noncommercial station's programming. These licensees believe they are currently required to subsidize cable television operations, and assert that the Commission has jurisdiction to adopt a retransmission consent requirement.

264. The program producers that addressed the retransmission consent proposal were generally in favor of it. The Motion Picture Association of America incorporates NTIA's comments by reference. Tandem Productions, Inc. and T.A.T. Communications favor adoption of retransmission consent without grandfathering existing systems if the syndicated exclusivity rules are deleted. Tandem and T.A.T. argue that retransmission consent would afford recognition of the rights of program producers and provide them with adequate revenues to assure the continued availability and quality of program product.

265. Among the program distributors, the sports interests were particularly strong in urging the adoption of retransmission consent, arguing vigorously that it is necessary, legal, and workable. The Commissioner of Baseball and the National Football League state that the Commission failed to adequately consider the effects that elimination of the distant signal limitations would have on the supply of sports programming. It is argued that sports programming differs from other types of programming; therefore, the conclusions drawn in the *Economic Inquiry Report* are not valid as to sports programming. Baseball argues that, although the elimination of the distant signal rules and the advent of superstations will make programming generally available to more viewers, ultimately, they will deprive the American public of the amount of sports programming previously enjoyed. Importation of games into a home team's territory will threaten the latter's three sources of revenue: live gate, broadcast revenues, and "hometown fan loyalty." With unfettered importation of distant signals, Baseball fears that its weaker teams will be particularly hard hit. This would in turn result in a change in telecasting patterns, with local and regional telecasts decreasing. Baseball claims that to date technological and regulatory pressures have kept cable from saturating home teams' territories. Removal of the distant signal rules would, however, remove the "final safeguard" against the loss of large amounts of sports programming from conventional television. The National Basketball Association agrees with the thrust of these comments, but particularizes that it has two sources of revenue, its network broadcast revenues

[286] Section 301(d) of the Copyright Revision Act provides that, "Nothing in this title annuls or limits any rights or remedies under any other Federal statute."

(the crucial source) and local telecasts, both of which would be jeopardized by the elimination of the distant signal rules without the imposition of retransmission consent. NBA notes that its network ratings have decreased and that the value of its programming to local stations will also decrease. NBA stresses that the potential impact on its games as network television attractions is, however, the biggest threat. The National Collegiate Athletic Association also favors retransmission consent as a means of safeguarding its college teams' live gate attendance, and it, like Baseball, NFL and NBA, argues that distant signal carriage of competing games will force colleges to forego broadcasts to avoid cable retransmission and thus decrease, rather than increase, the availability of college sports to the public. Baseball emphasizes that copyright compensation does not solve the sports interests' problems with unregulated distant signal importation of competing games because the crucial issue for sports is control, not compensation. Madison Square Garden Communications Network suggests simply that retransmission consent be given consideration as a possible alternative to the present distant signal and syndicated exclusivity rules.

266. The sports interests also contend that the Commission has the requisite jurisdiction to adopt a retransmission consent proposal, at least with respect to sports, and that retransmission consent would be workable. Baseball and the NBA argue that the Copyright Revision Act does not bar Commission recognized retransmission consent as a communications rather than a copyright policy matter and, as did NTIA, also maintain that the legislative history of the Copyright Revision Act makes it clear that Congress did not intend to intrude on the Commission's prerogative to make communications policy. Baseball construes this prerogative to include the removal of any category of signals from the general compulsory licensing provisions. In any event, Baseball argues particularly that the legislative history of a predecessor bill to the Copyright Revision Act demonstrates that Congress specifically perceived cable carriage of sports programming to be a communications policy issue,[287] and that the sole reason Congress did not adopt legislation on the subject was that it thought the Commission would deal with the problem in the context of a pending rulemaking procedure.[288] Baseball also maintains that arguments that retransmission consent will not work are untenable. Baseball terms claim that broadcasters will not deal with cable systems "speculative," and argues that program suppliers, especially sports interests, will deal with cable.[289] Baseball argues that the 1968 retransmission consent experiment did not completely fail, and, given its circumscribed operation, could hardly have been expected to succeed. Although Baseball concedes that existing exclusivity contracts between broadcasters and program suppliers could inhibit cable operators' ability to secure retransmission consent, Baseball argues that this is a reason to phase in retransmission consent rather than reject it out of hand.

267. The United States Department of Justice and the United States Copyright Office have joined a number of individual cable television systems, cable television associations, common carriers, and WTBS-TV, Atlanta, in opposing Commission adoption of retransmission consent.

268. In contrast to the arguments of the proponents of retransmission consent, whose contentions stressed principally the necessity for its adoption, most of the opponents of retransmission consent urge as their principal argument the Commission's lack of jurisdiction to adopt a retransmission consent proposal subsequent to the adoption of the Copyright Revision Act. The foremost proponent of this view is the Department of Justice. The Department notes that Congress enjoys the prerogative of enacting patent and copyright legislation pursuant to Article I Sec. 8, Cl. 8 of the Constitution.[290] The Department states that Congress exercised that prerogative in 1976 in enacting the Copyright Revision Act, and in doing so it was fully aware of virtually all the arguments advanced by the proponents of retransmission consent. The Department argues that the legislative history of the Copyright Revision Act makes it clear that Congress intended the cable television industry to have a compulsory license to retransmit whatever broadcast signals the Commission's rules would allow, and that there is no credible evidence to suggest that Congress intended to allow the Commission to adopt the kind of retransmission consent proposal that the Congress itself had considered and rejected. The Department states that arguments of the proponents, that the royalties provided under the Act are inadequate and the system created too "regulatory," are properly addressed to, respectively, the Copyright Royalty Tribunal and the Congress, because the Commission's authority under the Communications Act does not extend to rewriting an Act of Congress. The comments of the Copyright Office also conclude that Congress established the compulsory license as the exclusive method for compensation of copyright owners and the Copyright Royalty Tribunal as the exclusive means whereby the rates may be adjusted.

269. A Congressional Research Service study on the Commission's jurisdiction to adopt retransmission consent rules also came to the same conclusion.[291]

270. Southern Satellite Systems, Superstation, Inc. (WTBS–TV, Atlanta), the Community Antenna Television Association, the Florida Cable Television Association, and A–R Telecommunications are among the other opponents of retransmission consent addressing the jurisdictional issue. They argue that Congress specifically declined to adopt a retransmission consent requirement, terming it "unduly burdensome," and that the legislative history of the Copyright Revision Act indicates that in adopting the compulsory language Congress struck a conscious balance between the copyright owners' right to payment with the viewer's right to receive diverse sources of programming. The opponents argue that the structure of Section 111 of the Act, viewed as a whole, outlines a comprehensive congressional scheme assigning either full copyright liability, compulsory licensing, or outright exemption in differing circumstances, and specifying the procedures to be followed in

[287] Baseball cites the following language from the Senate Judiciary Committee Report on S. 22:

Without prejudice to the arguments advanced [in behalf of proposals to exclude in some circumstances the carriage of organized professional sporting events from the compulsory license] . . . these issues should be left to the rulemaking process of the Federal Communications Commission, or if a statutory resolution is deemed appropriate to legislation originating in the Committee on Commerce.

S. Rep. No. 94–473, 94th Cong., 1st Sess. 80 (1975).

[288] E.g., *Notice of Proposed Rulemaking in Docket 19417*, 36 FCC 2d 641 (1972).

[289] In support of this proposition, Baseball notes that it has already negotiated a game-of-the-week package with UA-Columbia Cablevision for presentation on pay cable. It also notes that many clubs, exemplified by the New York Yankees and Mets and the Philadelphia Phillies, have contracted with cable systems or programming packagers to cablecast a number of their non-televised games.

[290] This clause grants power to Congress "[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." *U.S. Const.*, Art I, sec. 8, cl. 8.

[291] Congressional Research Service, *FCC Jurisdiction to Require Retransmission Consent*, November 26, 1979.

obtaining a compulsory license, and therefore would allow no discretion to the Commission to effectively amend this complete statutory scheme by imposing a retransmission consent requirement in derogation of the compulsory license. Specifically, the commenters point to the legislative history of Section 801(b)(2)(B) of the Act for the proposition that Congress gave the Copyright Royalty Tribunal the authority to change the royalty fee only with respect to added signals, thereby underscoring the Congress' intent that Congress specifically recognized that the Commission could and indeed might change its distant signal rules but that the compulsory license *per se* could not be affected by amendment of the Commission's rules.[292] Florida Cable Television Association also notes that NTIA's "two-tiered" proposal of exempting certain systems from the retransmission consent requirement and allowing only these exempted systems to be governed by the compulsory license runs directly contrary to Section 111(C)(1) of the Act.[293] These parties contend that the Commission and the Congress have both consistently recognized that retransmission consent is primarily a copyright substitute rather than a matter of communications policy, and, as the proper body to act on an essentially copyright-related matter, Congress has consistently rejected it since 1960. The most recent evidence of this Congressional perception of retransmission consent as a copyright substitute was manifest in its rejection by the House and Senate Communications Subcommittees in recent Communications Act rewrite legislation.[294] As Southern Satellite Systems, Inc. argues, the Commission in 1968 recognized the copyright nature of retransmission consent in deferring to Congressional action on the cable copyright question before adopting it.[295] Therefore, there can be no legal justification at all for imposing a retransmission consent requirement after Congress has adopted a revised copyright act that deals comprehensively with cable. Superstation, Inc. quoted testimony by Messrs. Valenti and Geller for the proposition that the instant retransmission consent proposal is simply a means of reopening the battle against cable's compulsory license before another inappropriate forum. Florida Cable Television Association and Southern Satellite Systems are among the parties who argue that retransmission consent could not come within the ambit of the Commission's "ancillary to broadcasting" jurisdiction over cable because it is designed primarily to protect the interests of the copyright owner rather than the broadcaster, and the Commission has no direct jurisdiction over program producers, how much they are paid and by whom. Moreover, to the extent retransmission consent is premised on protecting broadcasters, CATA notes that the *Economic Inquiry Report* has shown that broadcasters would not be harmed by deletion of the distant signal rules, and therefore imposition of retransmission consent would be an attempt to cure a problem that does not exist. Finally, several of the commenters note that the Commission indicated in the past that the element of "unfair competition," which its rules have been designed in varying degrees to remedy, would be remedied by Congressional adoption of a cable copyright scheme. In this regard they maintain that the compulsory copyright license adopted by Congress is not unfair in itself and concur with the Department of Justice that any claimed inadequacies were appropriately addressed to either the Congress or the Copyright Royalty Tribunal.

271. Superstation, Inc., directly addresses NTIA's arguments in support of the necessity of adopting a retransmission consent requirement. Superstation contends that NTIA's philosophical justification for its retransmission consent proposal, that cable and broadcasting are simply alternative ways of distributing television programming, is completely in error. Cable television and broadcast television are based on different economic principles, have different revenue sources, and operate in different marketplaces. Cable is a consumer product, sold at relatively low prices, and susceptible of being cancelled if it does not serve the interests of the customer. It draws its revenue directly from its subscribers. Broadcast television, on the other hand, is not "sold" at all, and derives its revenues from advertisers, many of whom would find no equally attractive alternative as an advertising outlet. Therefore, the marketplace bidding process that works for broadcast television will not work for cable television, and NTIA's "marketplace" solution is not viable. Because NTIA's "marketplace" is one which elevates the interests of copyright owners over consumers, Superstation argues that it is not responsive to consumer demands. Superstation notes that the public interest can sometimes only be served by a governmentally-induced balancing of the rights and equities of all involved, so that even if retransmission consent did obviate the need for extrinsic regulation, this fact standing alone does not prove that the public interest will be served thereby. Superstation also faults NTIA's tacit assumption that under a retransmission consent scheme copyright owners would exercise their marketplace control in a manner consistent with the public interest; Superstation terms this assumption "catastrophically unrealistic." Retransmission consent, Superstation maintains, involves not the right to fair competition, but the right to withhold program product to maximize profits. The NTIA proposal also ignores the key fact that the principal beneficiary of copyright is intended to be the public, not artists as a class, a philosophy the compulsory license embodies. Superstation sees as the "truly sinister" aspect of NTIA's retransmission consent proposal the fact that it would have the government bow out of regulating after deciding what television services the consumer should have, which is

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[292] The cited language states that

* * * the purpose of this provision is to give the Tribunal broad discretion to reconsider the royalty rates applicable to (but only to) the carriage of any additional distant signals permitted under the rules and regulations of the FCC after April 15, 1976. The present FCC rules limiting the number of distant signals that may be carried by cable systems have the effect of protecting copyright owners by restricting the amount of television broadcast programming retransmitted into distant markets. If these rules are changed in the future to allow additional carriage of television programs it is the Committee's judgment that the royalty rates paid by cable systems should be adjusted to reflect such changes.

H.R. Rep. No. 94-1476, 94th Cong., 2d Sess. 176 (1976).

[293] Section 111(c)(1) of the Copyright Revision Act provides that cable carriage of secondary transmissions "shall be subject to compulsory licensing" upon compliance with certain terms and conditions set out in that Section.

[294] See n. 282, *supra*.

[295] In its *Notice of Proposed Rulemaking and Inquiry in Docket 18397*, the Commission stated:

While we believe that we must proceed to take appropriate steps to end the unfair competition aspect * * * we are also cognizant of other important developments which we should take into account. We refer specifically to important Congressional developments in the copyright field that bear directly on the issue of unfair competition * * *

* * * As stated, we must take the above consideration into account. For, our retransmission consent proposal, while stemming from our responsibilities under the Communications Act * * * necessarily also embodies considerations like copyright in its practical applications * * *. Since Congress is considering the Copyright matter, we should afford the opportunity for Congressional resolution of the unfair competition aspect, as discussed. Such resolution would constitute the Congressional guidance sought in this important area.

15 FCC 417 at 432-33.

infinitely worse than continuing government regulation.

272. Other parties also treat aspects of the necessity for retransmission consent. The Arizona Cable Television Association maintains that a marketplace solution will result absent retransmission consent if the rules are abolished because, as in the case of programming supplied for network distribution, program suppliers will demand and get more revenue from superstations. Superstation concurs, stating that the present operation of WTBS–TV is evidence that retransmission consent is unnecessary. No program supplier is forced to sell to WTBS–TV; and when one does, the prices for programming reflect the station's reception in distant cable homes. The Arizona Association also argues that even if either local stations or superstations are refused program product by some producers, the door would then be open for other programming by other producers. Finally, a number of the commenters, chief among them being the Copyright Office, note that it would be premature to judge that retransmission consent is necessary to remedy presumed inadequacies under the compulsory license system and the existing fee schedule. The compulsory license has been in existence for less than two years; nevertheless, the Copyright Royalty Tribunal's current royalty pool of $13,000,000 is almost 50 percent more than the amount Congress presumed the compulsory fee would garner. CATA further states that any comparison between the payment cable makes for programming under the compulsory license and the payment broadcasters make is simplistic, because cable television and broadcast television are two different businesses with two different sets of costs. Moreover, the Tribunal has not yet begun to disburse the fees, so it is impossible to judge whether the payments to producers will or will not prove adequate. Finally, it is argued that the Act provides a satisfactory mechanism for adjusting the fee, and its adequacy ought to be ascertained before a new payment scheme is superimposed.

273. Several of the commenters also spoke to the issue of the workability of a retransmission consent program. The Copyright Office states that the history of the growth of the cable industry, broadcasters' and copyright owners' response to it, and the impact of Commission regulation in the last ten years indicate that substituting retransmission consent for the compulsory license would result in "massive retransmission denials rather than consents." The Office cites the 1968 failed retransmission consent experiment and the unanimous opinion of cable, broadcast and program production interests in 1971 that retransmission consent simply would not work. The Office maintains that changes in the industry since 1968 have not been such as to make a difference. Most broadcasters would have no inducement to grant consents for retransmission of their own programming, and agreements between broadcasters and copyright owners are equally and in some cases even more restrictive on the ability of broadcasters to authorize retransmission than they were in 1968. Because "quitclaim" consents will not be sufficient, retransmission consent would unavoidably require cable systems to negotiate copyright licenses from individual copyright owners. Superstation notes that copyright owners would probably withhold consent because by doing so they could force major-market cable to effectively become all pay-cable, and pay cable would constitute a big second source of income, permitting them to maximize profits.

274. Superstation, Inc. states that retransmission consent is unworkable because an independent station in a major market can bid higher for program product than its counterpart cable system. Cable cannot increase its subscription rates the way broadcasters can increase their rate cards to cover increased costs. Superstation cites the tremendous costs for off-network series [296] and the increased profitability of major-market UHF stations. Even if cable systems combined to purchase programming they could not out-bid major-market independent stations, with the result that the only programming cable might procure would be the less desirable programming that no broadcaster bid on. Superstation maintains that no cable company, even the largest multiple system operator, could spend the sums necessary to procure a single program series, because to do so systems would price themselves out of existence. It charges that NTIA has failed to explain how the emergence of satellites would be the factor that would make retransmission consent succeed. Satellites have not changed the structure of the cable industry in relation to the broadcast industry so as to make retransmission consent viable. Even WTBS–TV, which is received in 5,000,000 homes, could not compete with independent stations in major markets that reach many more homes.

275. Superstation maintains that the ultimate result of retransmission consent will be that cable in major markets will be pay cable, and this result would come from the dictates of the program suppliers rather than from cable consumers. Superstation further states that retransmission consent will not increase program supply, but instead will virtually guarantee that the networks and the major program suppliers will control the market and operate so as to maximize profits by limiting production. Superstation also notes that program suppliers would buy up cable systems that go out of business, and thereby obtain control over both product and distribution facilities.

276. Southern Satellite Systems contends that retransmission consent would terminate its resale carrier business and destroy satellite delivery of superstations. In this respect Southern Satellite notes that the satellite's advent will not make retransmission consent successful; on the contrary, the blacking out of portions of WTBS–TV's broadcast day as a result of retransmission consent would make satellite transmission impossible. This result would be particularly unfortunate in view of the fact that satellite transmission, by making available programming suited to a multitude of interests, will allow the consumer to escape the domination of the three networks, thus serving Communications Act purposes. Similarly, United Video, Inc. and the miscellaneous common carriers argue that retransmission consent would destroy their service because of the inability of cable systems to get consent for all of a station's programs. This would, of course, represent a serious loss of program diversity to cable subscribers generally, but the burden would fall most heavily on small, independent cable systems that could not afford program-by-program negotiations. [297] Moreover, even if cable operators had some success, there would be no way technologically for the microwave common carriers to carry programs individually to systems obtaining checkerboard consents. The result, these commenters state, would be "an immediate end" to the microwave transmission of distant signals which has been an essential source of

[296] For example, Superstation cites the fact that in 1978 alone local television stations paid approximately $200,000,000 for syndicated programming.

[297] One author has suggested that "it would cost each CATV owner at least $33,000 a year in administrative expenses to properly clear copyrighted materials." Martin H. Seiden, *Cable Television U.S.A.*, Praeger Publisher, 1972, p. 111.

programming to the industry and the public for many years.

Discussion

277. Prior to passage of the Copyright Law Revision of 1976, cable retransmission of broadcast programs did not violate the copyright law, irrespective of whether the owner of the copyright, the originating broadcaster, or any other interested person in the distribution chain had granted its consent. See *Teleprompter Corp. v. Columbia Broadcasting System, Inc.*, 415 U.S. 394 (1974); *Fortnightly Corp. v. United Artist Television, Inc.*, 392 U.S. 390 (1968). The cable retransmission was not a "performance" and therefore did not constitute an infringement of the copyright. *Id.* The 1976 Act changed that. But in making the change, Congress enacted a regulatory scheme that is fundamentally inconsistent with NTIA's retransmission consent proposal.

278. Under Section 106 [298] of the 1976 Copyright Act and the definitions in Section 101, it is clear that the owner of a program copyright has the exclusive right to authorize the transmission of that program to television audiences.[299] Section 106 also states, however, that the copyright owner's exclusive right is "[s]ubject to Sections 107 through 118." Section 501(a) establishes that anyone who violates "the exclusive rights of the copyright owner as provided by Sections 106 through 118 * * * is an infringer of the copyright." Thus, infringement can lie only where the exclusive rights are violated; and those rights are defined not only by Section 106 but also by other provisions such as Section 111.

279. Section 111(c) provides an explicit limitation on the program copyright owner's Section 106 exclusive rights and on his right to claim infringement under Section 501(a). Section 111(c)(1) says:

> Subject to the provisions of clauses (2), (3), and (4) of this subsection, secondary transmission to the public by a cable system of a primary transmission made by a broadcast station licensed by the Federal Communications Commission * * * and embodying a performance or display of a work *shall be subject to compulsory licensing* upon compliance with the requirements of subsection (d) where the carriage of the signals comprising the secondary transmission is permissible under the rules, regulations, or authorizations of the Federal Communications Commission. [Emphasis added.]

Section 111(d) explains that to qualify for compulsory licensing, the cable system must provide a notice and any other requested information to the Copyright Office and deposit with the Register of Copyrights a statement of account and royalty fees calculated under a statutory formula (as adjusted from time to time by the Copyright Royalty Tribunal pursuant to Section 801(b)(2)).

280. Section 111(c)(2) makes it clear that the right to a compulsory license is unavailable (and an infringement action may be brought) if the cable system's willful or repeated carriage of the particular signal "is not permissible under the rules, regulations, or authorizations of the Federal Communications Commission" or the system failed to file the notice, statement of account, or royalty fee required by Section 111(d). Section 111(c)(3) adds that the right to a compulsory license (and the accompanying immunity from an infringement suit) is forfeited if the cable system willfully alters the commercial advertising or station announcements that accompany the broadcast of the copyrighted work.[300] Section 501(c) provides that the copyright-licensed local broadcaster, in addition to the copyright owner, has standing to sue the cable system for infringement where the cable system has failed to file the notice, statement of account, or royalty fee required by Section 111(d). If the cable system alters the primary transmission in a way forbidden by Section 111(c)(3), such as by deleting commercials, both the originating broadcaster and any local broadcaster in the area into which the cable system carries the signal, have standing to sue for infringement.

281. The foregoing regulatory scheme is inconsistent with the retransmission consent proposal in several respects. Section 111(c)(1) establishes that the cable system's retransmission of the copyrighted work "shall be subject to compulsory licensing upon compliance with" certain enumerated requirements. The copyright owner is expressly deprived of one of the usual incidents of copyright protection, i.e., the right to prevent copying or to condition copying on the payment of a royalty determined by the copyright owner. Instead, the permission to copy is "compulsory" and the "royalty" is established by Congress, subject to Copyright Royalty Tribunal adjustment. Under NTIA's proposal, the copyright owner could withhold from the originating broadcaster full authority to consent to the retransmission and, thus, reserve to the copyright owner the right to grant or deny consent. The copyright owner could not (except perhaps in what NTIA describes as "warehousing" situations) be compelled to grant retransmission permission. In reality, the cable system would no longer have the "compulsory licens[e]," which Congress granted. They copyright owner and/or the broadcaster could extract a fee or fees in excess of the royalty set by statute, thus circumventing the plain language of Section 111(d). The distribution of such fees among claimants could vary dramatically from the division of royalties which the Tribunal would make. The consensual arrangements between copyright owner, broadcaster, and cable system would be governed by state contract law and not the substantially different Federal scheme in Sections 501–510 which was carefully designed to govern copyright infringement suits and remedies.

282. There is nothing in the Committee reports accompanying the Copyright Revision Act that in any way suggests that the compulsory license was not intended to cover all cable systems or that the Copyright Royalty Tribunal was not meant to be the exclusive entity for adjusting cable copyright royalties. The House Judiciary Committee report states that "the Committee has determined to maintain the basic principle of the Senate bill [S. 22] to establish a compulsory copyright license for the retransmission of those over-the-air broadcast signals that a cable system is authorized to carry pursuant to the rules and regulations of the FCC." [301] The House Conference Committee report stated that "The Senate bill * * * created a compulsory license for any cable retranmission authorized by the Federal Communications Commission," and that the House bill retained the basic compulsory license scheme envisaged in the Senate bill.[302] With respect to the authority of the Copyright Royalty Tribunal to adjust copyright royalties, the House Judiciary Committee report clearly states that "Chapter 8 establishes a Copyright Royalty Commission for the purpose of periodically reviewing and adjusting statutory royalty rates for use of copyrighted materials pursuant to compulsory license provided in Section

[298] The references to "section" at this point and hereafter are to Title 17 of the United States Code.

[299] Section 106 gives the copyright owner the exclusive right "to perform the copyrighted work publicly." Section 101 defines "perform * * * publicly" to include transmission and "transmit" to include broadcast and cable carriage of television programs. See also Section 111(f)'s definitions of "primary transmission" and "secondary transmission."

[300] Section 111(c)(4) imposes certain limits on the compulsory license which Section 111(c)(1) grants as to Canadian or Mexican broadcasts retransmitted by cable systems in the United States.

[301] H. Rept. No. 94–1476, 94th Cong., 2d Sess., 89.

[302] H. Rept. No. 94–1733, 94th Cong., 2d Sess., 75.

111 (secondary transmissions by cable systems) * * *" and further that "cable and copyright owners agreed to a set of standards for the adjustment or rates which the Committee in large measure has accepted." [303]

283. We have given careful consideration to the comments relating to the retransmission consent proposal in light of this statutory scheme, with particular attention to the polarization of views between NTIA and the Department of Justice, the Copyright Office, and the Congressional Research Service. Based on our analysis of the law and the facts, we find that retransmission consent is a surrogate for full copyright liability and that, because full copyright liability was considered in detail and rejected by Congress in favor of the compulsory license system, adoption of retransmission consent rules is beyond the authority of the Commission.

284. In view of our findings relating to the effects of cable television distant signal carriage on television broadcast service to the public, no appropriate evidential base and no sound policy predicate exists for the Commission to exercise its authority to adopt the retransmission consent proposal as a means of eliminating potentially destructive economic competition. In fact, neither NTIA nor the other supporters of the retransmission consent proposal generally urge it as a policy calculated to protect local television broadcast stations from the potential adverse consequences of cable television distant signal audience diversion. In *U.S. v. Southwestern Cable Co.*, 392 U.S. 157 (1968), the Supreme Court affirmed the Commission's regulatory authority over cable television, noting that "the Commission feared that CATV might, by dividing the available audiences and revenues, significantly magnify the characteristically serious financial difficulties of UHF and educational television broadcasters." (footnote omitted) It concluded, in light of this, that "there is substantial evidence that the Commission cannot 'discharge its overall responsibilities without authority over this important aspect of television service' " (citations omitted). The function of the retransmission consent proposal, at least as it is articulated by NTIA, relates not at all to these considerations that were before the Supreme Court when it affirmed our regulatory authority in the cable television field. Thus, since specific authority to adopt the proposal is not found in the Communications Act and existing precedents are inapplicable, a new theoretical justification would be required if Commission jurisdiction to adopt rules of this type were to be found.

285. We find no such justification here. NTIA cites Sections 325(a), 303(g), (h), and (s) and 307(b) of the Communications Act as authority for the adoption of the rules it proposes.[304] Section 325 is inapplicable to cable television signal carriage directly for, as the Supreme Court has stated, "CATV systems do not in fact broadcast or rebroadcast." [305] Nor do we find such authority within the other cited sections or within some authority ancillary to our regulatory responsibilities under the cited sections. The retransmission consent proposal, while it would, according to its proponents, more efficiently and equitably order the markets in which cable television system operators obtain television broadcast signals, would not and is not intended to create zones to be served by particular stations or serve to allocate stations or service equitably among the several states and communities.

286. More specifically, we find no "ancillary" authority broad enough to impose retransmission consent rules on cable television systems. As developed by the courts, Section 2(a) of the Communications Act; 47 U.S.C. 152(a), "confer[s] on the Commission a circumscribed range of power to regulate cable television * * *." *FCC v. Midwest Video Corp. (Midwest II)*, 440 U.S. 689, 696, (1979). One formulation the courts have used to describe the outer bounds of that regulatory power is the statement that the cable regulations must be "reasonably ancillary to the effective performance of the Commission's various responsibilities for the regulation of television broadcasting." *Id.* at 691, quoting *United States v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968). Those "responsibilities," of course, are set out in various provisions of the Communications Act and have been amplified in court and Commission decisions.

287. In *Southwestern Cable, supra*, the Supreme Court held "the Commission has reasonably concluded that regulatory authority over CATV is imperative if it is to perform with appropriate effectiveness" its responsibilities under Sections 303(f) and (h) and 307(b) to create "an appropriate system of local broadcasting." 392 U.S. at 174. The Court noted the Commission's Congressionally-endorsed finding that this statutory objective had "two subsidiary goals," wider use of UHF channels and encouragement of educational broadcasting. *Id.* at 174–75. The Court said "[t]he Commission has reasonably found that the achievement of each of these purposes is 'placed in jeopardy by the unregulated explosive growth of CATV' " *Id.* at 175. The Court stressed both Congressional and Commission findings that, given the then-current state of evidence, uncontrolled distant signal importation, by "dividing the available audiences and revenues," might eliminate local broadcasting service or, at least, discourage UHF and educational television development. *Id.* at 176. *Southwestern Cable*, therefore, stands for the proposition that cable's *adverse* impact on the achievement of broadcast goals may support Commission ancillary jurisdiction over cable.

288. In *United States v. Midwest Video Corp.* (*Midwest I*), 406 U.S. 649 (1972), the Supreme Court explored another aspect of the Commission's regulatory authority over cable. In upholding the requirement that cable companies originate some programming, a 4-member plurality of the Court said that the reasonably ancillary doctrine also encompassed affirmative efforts to further statutory policies, not just negative avoidance of adverse effects as exemplified in *Southwestern Cable*. 406 U.S. at 664. The plurality said that the Commission had "authority to regulate

[303] H. Rept. No. 94–1476, 94th Cong., 2d Sess., 173.

[304] Section 325(a) states in relevant part:

* * * nor shall any broadcasting station rebroadcast the program or any part thereof of another broadcasting station without the express authority of the originating station.

Section 303(g) provides the Commission authority to:

Study new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest;

Section 303(h) provides that the Commission shall:

Have authority to establish areas or zones to be served by any station;

Section 303(s) provides that the Commission shall:

Have authority to require that apparatus designed to receive television pictures broadcast simultaneously with sound be capable of adeqately receiving all frequencies allocated by the Commission to television broadcasting when such apparatus is shipped in interstate commerce, or is imported from any foreign country into the United States, for sale or resale to the public.

Section 307(b) provides that:

In considering applications for licensees, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair efficient, and equitable distribution of radio service to each of the same.

[305] *Fortnightly Corporation v. United Artists Television*, 392 U.S. 390 (1968). *See also, Report and Order on CATV and TV Repeater Services*, 26 FCC 403, 429–430 (1959).

CATV with a view not merely to protect but to promote the objectives for which the Commission had been assigned jurisdiction over broadcasting." *Id.* at 667. The particular statutory objectives involved in *Midwest I* were the goals of outlet and program diversity which the plurality traced to Sections 303(g) and 307(b) of the Act. *Id.* at 667–68.

289. The crucial concurrence in the *Midwest I* result by the Chief Justice, however, did not give any broad endorsement to the plurality's expansion of the ancillary jurisdiction doctrine. He cautioned that the program origination rule "strains the outer limits" of the Commission's jurisdiction. *Id.* at 676. He urged Congress to comprehensively reexamine the statute as it relates to cable television. *Id.* at 676. The Chief Justice did observe that "when they [i.e., cable operators] interrupt the signal and put it to their own use for profit, they take on burdens, one of which is regulation by the Commission." *Id.* at 676. He did not, however, explain how far his signal interruption rationale could be extended to give the Commission jurisdiction to affirmatively achieve traditional broadcast-related regulatory goals.

290. *Midwest II, supra,* did not resolve how far a majority of the Supreme Court would be willing to extend the *Midwest I* plurality's view of the reasonably ancillary doctrine. The Court in *Midwest II* invalidated the Commission's cable access and capacity rules, despite their affirmative promotion of the established broadcast regulatory goals of maximizing outlets for local expression and programming diversification. The Court held that the Commission's cable television jurisdiction necessarily must be limited by "reference to the provisions of the Act directly governing broadcasting * * *." 440 U.S. at 706. Since Sections 3(h) and 326 evidenced a Congressional reluctance to impose a non-discriminatory access requirement on broadcasters, the Court implied a similar limitation as to cable television operators. While it may not have been necessary to the result, the 6-member majority in *Midwest II* did appear to accept as a general proposition what it characterized as "[o]ur holding in *Midwest [I]* sustain[ing] the Commission's authority to regulate cable television with a purpose affirmatively to promote goals pursued in the regulation of television broadcasting * * *." 440 U.S. at 700.

291. Those parties urging the Commission to promulgate retransmission consent regulations identify Sections 303(g), (h), and (s), 307(b), and 325(a) as setting forth statutory policies that such regulations would affirmatively promote. They claim that under *Southwestern Cable,* as extended in *Midwest I* and *II,* the Commission has ancillary jurisdiction to regulate cable to promote those objectives.

292. As indicated in greater detail below, we believe that the transplantation of the requirements of Section 325(a) of the Communications Act into the field of cable television under a concept of regulation "reasonably ancillary" to our regulation of broadcasting would be fundamentally inconsistent with the recently adopted 1976 Copyright Act. There is no need to protect the functioning of Section 325 by creating a Commission rule paralleling the statutory requirement for television broadcasters because the Congress has protected those interests deemed to warrant protection by the adoption of the Copyright Act. We note, as discussed below, that Congress has specifically refused to adopt amendments to the Communications Act necessary to extend Section 325 to cable television. Its stated reason for rejecting these proposed amendments was that, in so doing, it would be determining questions as to the property rights in broadcast programs and that this determination was appropriately left for resolution in connection with changes in the copyright law.

293. Nor do we find authority under the "reasonably ancillary" doctrine in Section 303(h). That Section grants the Commission "authority to establish areas or zones to be served by any station." The most obvious purpose of this provision is, in conjunction with Sections 303(c)–(f), to guard against service-impairing electronic interference between stations. In addition, Section 303(h) works in conjunction with Section 307(b) to ensure the fair allocation of local broadcast service among communites. See *Southwestern Cable,* 392 U.S. at 174. That case establishes that the Commission, under the "reasonably ancillary" doctrine may regulate to prevent deleterious impact to local broadcast service. Such regulation entails use of the negative, impact-avoidance arm of the ancillary jurisdiction doctrine; and it requires substantial record support before such regulation of cable can be justified. It is difficult to comprehend, however, how Section 303(h) can provide an *affirmative* purpose of the *Midwest I* genre to justify retransmission consent regulations. Section 303(h) empowers *the Commission* to establish areas or zones of service. NTIA's retransmission consent proposal would empower *the broadcaster* to expand or retain the area or zone of service reached by programming.[306]

294. Section 303(a) empowers the Commission to "generally encourage the larger and more effective use of radio." Section 303(s) authorizes the Commission to promote UHF development. Section 307(b) requires "fair, efficient, and equitable distribution of radio service" among the states and communities. These provisions all demonstrate the importance of creating and preserving viable local service. Insofar as a retransmission consent requirement is necessary in that endeavor, the foregoing provisions provide the requisite statutory objectives for invocation of the "reasonably ancillary" doctrine. But in order to justify regulation under the "reasonably ancillary" doctrine, it is necessary to invoke more than a relevant statutory purpose. It is necessary to demonstrate a real factual nexus between the proposed regulation and that relevant statutory purpose. As this *Report and Order* demonstrates, the factual predicate or nexus is lacking. The unrestricted importation of distant non-network programming does not substantially threaten the viability of local broadcast service. This absence of likely harm, therefore, is fatal to any contention that the Commission has ancillary jurisdiction to impose a retransmission consent requirement.

295. In *Southwestern Cable,* 392 U.S. at 176–77, the Supreme Court noted that, on the then-existing state of knowledge, the deleterious consequences to local broadcast service could only be estimated. The Court was satisfied that there was "substantial evidence" of the need for regulation. *Id.* at 177. Plainly, the Court was impressed with Congressional committee and staff reports reflecting the urgency of the problem. The word "imperative" appears several times in the Court's opinion. *Id.* at 177. See also *Midwest II,* 440 U.S. at 706. On the current rulemaking record, however, after years of actual experience with cable and extensive economic anaylsis of that

[306] The supporters of retransmission consent also seem to rely on Section 308(a). Section 308(a) says the Commission may grant permits and licenses "only upon written application therefore received by it." This provision serves the obvious purpose of guaranteeing, along with Section 308(b) and Section 309, that the licensing process is open and public. The quoted words of Section 308(a) hardly reflect a Congressional purpose of ensuring that a broadcaster's signal is kept within limited geographical confines unless and until he consents to distant carriage by cable. The provision, therefore, is not a basis for imposing retransmission consent regulations under the "reasonably ancillary" doctrine.

experience, the urgency and necessity for regulation are lacking. What was "imperative" in 1968 is no longer demonstrably so.

296. *Home Box Office, Inc. v. FCC*, 567 F. 2d 9 (D.C. Cir.), cert. denied, 434 U.S. 829 (1977), sharply illustrates that mere intuition or speculation or inadequately established factual predicates will not suffice to support an attempted exercise of "reasonably ancillary" jurisdiction over cable television. There the U.S. Court of Appeals for the District of Columbia Circuit overturned the Commission's pay cable anti-siphoning rules. The effect of those rules was "to restrict sharply the ability of cablecasters to present feature film and sports programs" as part of the cablecasters' pay service (as distinct from basic retransmission service). 567 F. 2d at 19. The Commission there did not attempt to justify its rules on the *Southwestern Cable* theory that pay cable programming would fragment audiences and undercut the financial viability of conventional local broadcast service. 567 F. 2d at 29. The Commission did contend, however, that the rules were within the Commission's jurisdiction to ensure nationwide broadcast service under Section 1, 47 U.S.C. 151. The theory was that cable itself would not be a nationwide service in the near future, but would outbid broadcasters for programming in markets where cable/broadcast competition for program supply did exist, and that this "could result in loss of broadcast television service to regions not served by cable." *Id.* at 33. The Court found this theory "unsupported in the record" and held that "the postulated loss of regional service is too speculative to support jurisdiction." *Id.* at 33.[307] In other words, the Commission's attempt to ground ancillary jurisdiction on a perceived need to protect the supply of programming to broadcasters was rejected by the Court because "the Commission has not established its jurisdiction on the record evidence before it." *Id.* at 34.

297. The *Home Box Office* court went on to explain why the anti-siphoning rules could not be affirmed under the Administrative Procedure Act, irrespective of the jurisdictional issue. The court set out as a basic ground rule that "regulational perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem does not exist." 567 F. 2d at 36. After examining the rulemaking record, the court concluded that the Commission did not have sufficient evidence that a problem did exist. The Commission had "failed to crystallize what is in fact harmful about 'siphoning.' " Moreover, the Commission was unable to identify "any comments in a voluminous record which would support its statement" that "siphoning is 'real, not imagined.' " *Id.* at 37. Indeed, the Commission had admitted it lacked a "clear picture as to the effects of subscription [including pay cable] television upon conventional broadcasting." *Id.* at 37. The court said that "if there is any evidentiary support at all, it is indeed scanty." *Id.* at 37. Nine months before the Commission promulgated its first anti-siphoning rules, the Commission justified declining to issue such rules because it lacked adequate information and needed further experience. *Id.* at 22, 37 n. 60. The court said the "Commission has not called our attention to any data which would fill the gaps in its experience identified" at the earlier time. *Id.* at 37 n. 60. The court criticized the Commission's "choice to regulate rather than allow a period of unregulated experimentation in which data could be generated that could form a predicate for informed agency action." *Id.* [308] The court added:

> In this state of affairs, where there is no evidence of any urgent need for preventive action and where approval of the Commission's position would foreclose the possibility that data could be generated in the future that could allow fully informed decisionmaking, we are disinclined to give the Commission the "benefit of the doubt" which it argues it should have. [*Id.*]

The court went on to explain that the factual record to support the regulations as pro-competitive was incomplete and that the "Commission has not documented its case" regarding the need for the rules to prevent loss of television service to the poor and to rural areas. *Id.* at 39.

298. In the present case, the rulemaking record refutes the conjecture that cable importation of distant syndicated programs will undercut any of the Commission's broadcasting regulatory goals. [309]

299. More important, however, than our inability to find authority for the Commission to adopt this proposal under established precedents, is our inability to distinguish its policy thrust from purely copyright matters with respect to which Congress has chosen a different course. A review of both the historical record and the present debate, make clear the virtual identity of the two issues, both of which relate to the allocation of property rights in television programming and the legal position of the cable television industry in the broadcast television programming supply market.

300. As we indicated in our *Notice of Proposed Rule Making*, para. 89, the initial consideration of this proposal focused on whether Section 325(a) [310] should be amended to apply to cable television systems. Section 325(a) of the Communications Act requires broadcasters that rebroadcast the signals of other stations to obtain the permission of those stations. Its function is "to protect the rights of those having property rights in programs." [311] When the issue of whether Section 325(a) should be applied to cable television operations came before the Commission, we stated:

> It may well be that Congress would desire to protect the property right of a broadcaster

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[307] The Court also rejected as unsupported two other jurisdictional bases urged by the Commission, preservation of "the overall level of public enjoyment of television entertainment" and promotion of diversity. 567 F. 2d at 162, 167.

[308] *Accord, Home Box Office, Inc. v. FCC*, 567 F. 2d 1248, 1256 (D.C. 1978) (affirming Commission decision not to regulate program exclusivity agreements between suppliers and broadcasters).

[309] The proponents of retransmission consent say that the Commission is obliged under *Melody Music Inc. v. FCC*, 345 F. 2d 730, 733 (D.C. Cir. 1965) to explain why broadcasters seeking to rebroadcast programming must obtain the originating broadcaster's prior consent, whereas cable operators do not have to seek such consent for cable retransmissions of broadcast programming. *Melody Music* has no application to the jurisdictional question here and can not be used to salvage a jurisdictional argument that is otherwise unavailing. *Melody Music* requires equal treatment, or a reasoned explanation of differential treatment of similarly situated *broadcasters*. In any event, the simple explanation for the differential treatment here is that Congress imposed Section 325(a) on broadcasters and did not impose a comparable obligation on cable operators, nor did Congress give the Commission sufficient implied (i.e., ancillary) jurisdiction to impose such an obligation. *Melody Music* obviously does not control the actions of Congress. In any case the Supreme Court stated in *Fortnightly Corporation v. United Artists Television*, 392 U.S. 390, 400–401 (1968) and reiterated in *Teleprompter Corp. v. CBS, Inc.*, 415 U.S. 394 (1974) that:

> The function of CATV systems has little in common with the function of broadcasters. CATV systems do not in fact broadcast or rebroadcast. Broadcasters select the programs to be viewed; CATV systems simply carry, without editing, whatever programs they receive. Broadcasters procure programs and propagate them to the public; CATV systems receive programs that have been released to the public and carry them by private channels to additional viewers. We hold that CATV operators, like viewers and unlike broadcasters, do not perform the programs that they receive and carry. (footnotes omitted)

While it might be argued that these are distinctions of relevance only under the copyright law, these decisions (and the 1976 Copyright Revision Act) are the explanation for the different positions of the cable and broadcast television industries in the program supply markets for which NTIA seems to be seeking an explanation.

[310] *Supra*, n. 304.

[311] *Report on Amendment of Rebroadcasting Rules*, 1 R.R. (Pt. 3) 91:1131, at 91:1134, May 15, 1952.

as against CATV retransmission as well as against rebroadcasting. For this reason, as well as because of the competitive impact involved here, we intend to recommend to Congress that an appropriate amendment to Section 325(a) be enacted * * *

"* * * By other broadcasters * * * we are asked to recognize the existence of a propriety right, and to affirm it by rules; then, it is said, we would be in a position to issue 'cease and desist orders' against any CATV system rebroadcasting a signal without permission. This course of action we do not believe appropriate. This is not the forum in which the existence or nonexistence of a private property right can be adjudicated * * *" [312]

301. This legislative proposal was made to the Congress and was rejected by both the Senate and House Committees with responsibility for its consideration. The report of the House Committee stated:

The Committee has considered the question raised by the Commission on its legislative recommendation of whether Section 325 of the Communications Act should be amended so as to prohibit transmission by CATV systems of any broadcast signals except with the express authority of the broadcast stations. In view of the pendency of copyright legislation, it is the view of the Committee that the recognition and protection of any property rights in programs broadcast by radio and television stations should more appropriately be determined within the framework of copyright legislation rather than within the framework of communications legislation. Therefore, the Committee decides against amending Section 325 * * * [313]

302. We considered the subject of retransmission consent again in the *First Report and Order in Dockets 14895 and 15233*, 38 FCC 683 (1965). There, we were requested to "construe the microwave carriage and distribution of signals by or for the benefit of CATV's as a single transaction which, in effect, constitutes 'rebroadcasting' under the existing provision of Sec. 325." *Id.* at 706 n. 37. We stated, however, that "the proposed construction is a strained one, which we are not at liberty to adopt." *Id.* In that *Report*, we recognized that cable television "stands outside of the program distribution process" and that, therefore, "the usual competitive situation" is not present. Nevertheless, we reiterated that cable television had not been found subject to the requirements of Section 325 and that Congress had not seen fit to adopt our recommendation that "restrictions on rebroadcasting embodied in Section 325 of the Communications Act should be extended to the distribution of broadcast signals by CATV's." *Id.*

303. The *Second Report and Order in Docket 14895, 15233, and 15971*, 2 FCC 2d 725 (1966) also addressed the question of retransmission consent. We stated:

As a general approach encompassing all stations, we are proposing to the Congress that it consider the question of extending the rebroadcast concept of Section 325(a) to CATV. It may be that regulation of this nature would prove a preferable and more effective means of achieving fair recognition of the exclusivity contracts of the program marketplace.

Id. at 748. We also pointed out the "anomalies which result" from the situation in which broadcasters must negotiate for programming whereas cable systems do not and expressed our concern over how this could affect the economic base of a television station serving as an outlet for local expression for all the people in its service area. *Id.* at 778–781. We concluded, as we had earlier in Docket 12433, that we should urge Congress to consider whether a provision similar to Section 325(a) should be made applicable to cable television including whether, to what extent, and under what circumstances cable systems should be required to obtain the consent of the originating broadcast station. In suggesting this approach, we observed:

We are not in a position to state whether a Section 325(a) approach would be effective and fully consistent with the public interest. We think that this is a matter warranting Congressional (and Commission) consideration, including such aspects as how a 'retransmission consent' requirement would function as a practical matter, whether systems in small communities should be dealt with specially, and whether grandfathering is appropriate and the nature of any such grandfathering.

Id. at 788.

304. The Commission again considered the matter in connection with its *Notice of Proposed Rule Making and Notice of Inquiry in Docket 18397*, 15 FCC 2d 417 (1968), in which the Commission itself proposed to apply such a requirement to the carriage of distant commercial stations on cable television systems in the 100 largest television markets and to those signals carried by cable systems in the smaller markets that were necessary to provide subscribers with signals beyond the three national television networks and one independent station. *Id.* at para. 39.

305. In making this proposal the Commission indicated that it would forbear acting until the Congress had an opportunity to act on pending copyright legislation which it was hoped would resolve the unfair competition aspect of the retransmission consent proposal and provide "the legislative guideline which the Commission has long sought. . . ." *Id.* at para. 39. As the Commission noted, the retransmission proposal "necessarily also embodies considerations like copyright in its practical applications." *Id.* at para. 40.

306. After considering the various comments filed relating to this proposal and having undertaken some limited experimentation with operation under it, the Commission rejected it stating "experience has indicated that it will simply not achieve our basic objectives." [314]

307. In putting forth its retransmission consent proposal in 1968 the Commission stated that cable competed "unfairly" with broadcasters "because CATV presently stands outside the competitive program distribution market," [315] and that retransmission consent was designed to eliminate this element of unfair competition "through direct application of market forces now operative as to analogous services." [316] During the course of Senate oversight hearings several months after issuance of the retransmission consent proposal, the Commission elaborated further on the copyright nature of retransmission consent. At one point in the hearings, Subcommittee Chairman MacDonald asked then-Commission Chairman Hyde whether retransmission consent is not "in essence copyright." Chairman Hyde responded that, "In operation it could have many of the characteristics of copyright, that is true." [317] Chairman MacDonald pressed further on the exact nature of retransmission consent:

Chairman MacDonald. Would it not be fair to say that retransmission consent has to be obtained from the copyright owner?

Chairman Hyde. I am certain that once this approach went into operation that the copyright owners would see to it in the arrangements they make with stations or networks that they reserved the rights to make separate arrangements with CATV, and it would bring CATV into the program market in a copyright sense, yes it would * * * what we have proposed is essentially a plan under which CATV systems would get access to programs in the same manner as

[312] *Report and Order in Docket 12433*, 26 FCC 2d 403, 430 (1959).

[313] *Report of the House Committee on Interstate and Foreign Commerce on H.R. 13286*, H.R. Rep. No. 89–1635, 89th Cong., 2d Sess. at 11 (1966).

[314] *Cable Television Report and Order*, 36 FCC 2d 143, 165 (1972).

[315] *Notice of Proposed Rulemaking and Inquiry in Docket 18397, supra*, at 430. It should be noted that the Commission's 1968 proposal was the same as NTIA's in that it nominally would have required the cable operator to secure consent from the broadcaster rather than the copyright owner.

[316] *Id.* at 432.

[317] Hearings on FCC oversight before the House Subcommittee on Communications and Power, 91st Cong., 2d Sess., Serial No. 91–1, 59–60 (1969).

conventional television for exhibition in the top 100 markets * * * [318]

308. A contemporary expert participant in the ongoing cable/copyright controversy in the Congress, then-Deputy Register of Copyrights George D. Cary, remarked:

When the Commission requires the CATV system to get the permission of the imported stations before it can bring these distant signals into a major market, it seems to me that this is a device for indirectly dealing with the copyright question, because as most everybody knows, radio stations do not generally own the proprietary right in the majority of the material which they broadcast, so in effect, this means that the CATV owner must deal directly with the copyright proprietor. This conclusion is made crystal clear in the clarification of this order which the Commission issued on the 24th day of January 1969, in which it said that a quit claim type of waiver from stations was not sufficient. The CATV system is going to have to get permission from the station on a program-by-program basis to import these distant signals, which obviously means they have got to get a clearance on the usage of the copyrighted material. [319]

309. In recent hearings on copyright revision before the House Judiciary Subcommittee, the Register of Copyrights gave her assessment of the nature of retransmission consent. Noting that after legislative and judicial failure to control the copyright problem in 1967 and 1968,

The FCC approached the problem directly through a regulatory device that was, in reality, the exact equivalent of a copyright. Immediately after the Supreme Court decision in *Fortnightly* the FCC imposed upon CATV the requirement of 'retransmission consent * * *' [O]nly a few 'retransmission consents' (i.e., copyright licenses) were granted * * * [320]

With specific reference to the NTIA retransmission consent proposal, the Register of Copyrights has testified that

It isn't just consent from the broadcasters, the broadcaster can't give consent unless it has authority to do so from the copyright owners. It has to have a contractual right to give that consent. So in effect you are creating a copyright. If you do, however you call it, whoever does it, it is still a copyright * * * [321]

310. Perhaps the most conclusive statements on the nature of retransmission consent, however, come from NTIA's Assistant Secretary for Communications and Information, Mr. Henry Geller. In testimony before the House Communications Subcommittee, Mr. Geller adverted to the NTIA retransmission consent proposal and stated that "* * * it was always the copyright owner that was the key. The only way the station could give consent is if it bargained and obtained that from the copyright owner. Even if you go to the station and ask for retransmission consent, the only way he can give it is to go back to the copyright owner * * *"[322] In further testimony before the Senate Communications Subcommittee Mr. Geller expressed the same thought[323] and in response Chairman Hollings, ranking minority member Senator Goldwater, and Senator Cannon, identified retransmission consent as a copyright matter rather than a matter of communications policy.[324] The retransmission consent provision in H.R. 3333 was deleted. During the 1979 Copyright Hearings Subcommittee Chairman Kastenmeier made reference to H.R. 3333's retransmission consent provision:

Earlier this year our sister House Subcommittee * * * considered legislation which would have deregulated the cable industry but at the same time imposed the equivalent of full copyright liability—retransmission consent—on cable television systems.[325]

In propounding the NTIA retransmission consent proposal to the Subcommittee, Mr. Geller testified that, "We think that the sound policy for cable's future growth, not for its past but its future, is either retransmission consent as part of Communications Act policy, or full copyright liability; if it is a matter to be considered by this Committee."[326] Chairman Kastenmeier asked a clarifying question:

Chairman. Your main recommendation appears to be that we should subject all future growth of cable to full copyright liability or the equivalent thereof while grandfathering existing service?
Mr. Geller. Yes, sir * * *[327]

311. Not only were the two issues commonly perceived to differ in name only but the legislative history of the cable copyright controversy generally, and particularly the legislative history of the Copyright Revision Act, demonstrate that Congress specifically considered the full copyright liability (retransmission consent) proposal and decided to avoid imposing on cable any copyright scheme that would require negotiations for programming on a program-by-program basis. The difficulties associated with full copyright liability were noted as early as 1965.[328]

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[318] *Id.* at 60–61.

[319] *CATV—The Fortnightly Postlude*, 16 Bull. Copyright Soc. 157, 162 (February 1969). Cary also notes that the retransmission proposal provoked a letter from Senate Judiciary Subcommittee Chairman McClellan to Chairman Hyde stating that "* * * there is a serious question concerning the jurisdiction of the Commission to impose what amounts to a requirement of copyright clearance * * *," requesting the Commission's clarification of what its future regulation of cable would be "if legislation is enacted providing for the payment of reasonable copyright fees by CATV systems, * * *" and cautioning that if a response were not forthcoming, "* * * the subcommittee would have no other alternative than to schedule a public hearing to review those aspects of the Commission's action which involve matters coming within the jurisdiction of this Subcommittee." *Id.* at 165.

[320] Hearings on Copyright Revision Before the Subcommittee on Courts, Civil Liberties, and Administration of Justice, of the House Committee on the Judiciary, 96th Cong., 1st Sess., tr. 18 (November 15, 1979) (hereinafter, "1979 Copyright Hearings").

[321] 1979 Copyright Hearings, *id.*, tr. 41.

[322] Hearings on H.R. 3333 Before the Subcommittee on Communcations of the House Interstate and Foreign Commerce Committee, tr. 38, 40. This would appear to have brought Mr. Geller into agreement with Ms. Ringer who, in her formal statement, termed retransmission consent "the exact equivalent of a copyright." *Id.* at 33.

[323] Mr. Geller stated that program consent and retransmission consent were one in the same: "* * * in order to give retransmission consent, the station has to obtain that consent from the copyright owner. So whether you call it program consent or retransmission [consent], either one, the key is the copyright owner." Hearings on S. 611 and S. 622 before the Subcommittee on Communications of the Senate Committee on Commerce, Science, and Transportation, 96th Cong., 1st Sess., Serial No. 96–45, at 2112.

[324] Chairman Hollings stated, with respect to retransmission consent, that " * * * what's fundamentally involved * * * is whether we have a communications problem or whether we have an industry economic matter and I think that's really what copyright is." Senator Cannon stated "* * * this is an economic problem, and not a communications problem. The whole issue here seems to be how you are going to divide up that pie. And it really isn't a communications problem at all." Chairman Hollings further stated:

* * * with respect to the retransmission consent matter, the FCC made a study of cable and found no harm was caused by unrestricted cable signal importation. Of course, that is communications policy. On the other hand, the Copyright Act said that every cable operator should have a compulsory license and pay a fee. Now, that is copyright policy.

Id. at 2869.

[325] 1979 Copyright Hearings, *supra*, n. 314, tr. 4. emphasis added.

[326] *Id.* at 9.

[327] *Id., And see* Mr. Geller's statement, *id.* at 9–10. "* * * we are saying that when you do deal with non-network programming, which is not sold on a simultaneously basis , it is sold to particular markets, and on an exclusive basis. If the broadcaster obtains that exclusivity in the marketplace, it is there we would go to the full copyright liability or retransmission consent. They are equivalent."

[328] See Hearings on H.R. 4347, 5680, 6831 and 6835, 1st. Sess., 1965, before Subcommittee No. 3 of the House Judiciary Committee, Serial No. 8, 89th Cong. This legislation, which was the first to treat the cable copyright issue, would have imposed full copyright liability on cable systems. The then-Register of Copyright Abraham Kamenstein noted that a supplementary report prepared by the Copyright Office on cable copyright liability concluded that although the copyright owner should be compensated for use of his works by cable systems, the practical difficulties of advance clearances had to be recognized. *Id.* at 1862. The following year the House considered a second cable

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In 1969, House Subcommittee Chairman Kastenmeier noted that the process of copyright revision would continue to involve the accommodations of the legitimate interests of those who sought compensation for use of their product with the equally legitimate interests of others who need to use that product without "undue complication or cost." [329] As the Register of Copyrights subsequently stated, the fundamental principle of the Copyright Revision Act, and indeed of all copyright legislation from 1974 on, was that cable's retransmission activity should be subject to compulsory licensing with statutorily-prescribed royalties.[330]

312. The legislative history of the Copyright Revision Act plainly demonstrates that full copyright liability was specifically explored and specifically rejected by the Congress. In hearings before the House Subcommittee on H.R. 2233, testimony on the problems of full copyright liability and the preferability of compulsory licensing were expressed by both government and industry witnesses.[331] This testimony led Chairman Kastenmeier to remark at one point that the business of getting clearances and knowing what levels of rights are really being accorded may get extraordinarily difficult, particularly for users.[332] In another exchange, Committee member Herman Badillo asked Rex Bradley, then-president of the National Cable Television Association, why the Congress should establish a compulsory licensee fee for cable, instead of "[leaving] it to normal market forces to say what the payment should be?" Bradley responded by stating that, "We would like to avoid the possibility of having an unknown amount established without real control by us * * *," and noted that there is no "moderating effect of the marketplace" or "competitive forces that would keep rates reasonable."[333] Congressman Badillo further pressed his question with witnesses urging greater copyright liability, exemplified in this exchange with MPAA President Jack Valenti:

> Mr. Badillo. Yesterday, when the cable television people were here they said that it is impossible to leave the question of the fee to the normal function of the marketplace because the nature of the transmission business is such that the cable people would really be in an impossible bargaining situation. What is your reaction to that claim? Would it be possible for us merely to say that it is a copyright and then leave the question of the amount to be paid to be settled in the marketplace?
>
> Mr. Valenti. I would have to tell you that I think there would be administrative difficulties in the free play of the marketplace. That is what the compulsory license was created to avoid, such an administrative difficulty; a compulsory license covering all signals, lessening the paperwork, lessening everything.[334]

313. The Committee report accompanying the Copyright Revision Act leaves no doubt that the Congress considered the very matters that are now being argued to the Commission and that it adopted the compulsory license instead of full copyright liability:

> * * * The Committee recognizes that it would be impractical and unduly burdensome to require every cable system to negotiate with every copyright owner whose work was retransmitted by a cable system. Accordingly, the Committee has determined * * * to establish a compulsory license for the retransmission of those over-the-air broadcast signals that a cable system is authorized to carry pursuant to the rules and regulations of the FCC.[335]

314. In this compromise—between the two extremes of no copyright protection (as existed prior to 1976) and full copyright protection—Congress struck what is found to be a fair balance between the rights of copyright owners and copyright users in order to advance the paramount rights of the viewing public. Viewed in this perspective, NTIA's retransmission consent proposal, with its admitted aim of making the rights of the copyright owner paramount, is not only a copyright surrogate that is beyond our jurisdiction to adopt but also is patently inconsistent with the Congressional intent because it would "skew" the balance of interests carefully and explicitly struck by the Congress.[336]

315. Notwithstanding this compelling evidence that Congress explicitly rejected full copyright liability in favor of a compulsory licensing and government-set royalties, the supporters of NTIA's retransmission consent proposal argue that Congress in 1976 specifically reserved to the Commission full authority to make "communications policy" and that this reservation includes the impact on "copyright policy." They cite the House Judiciary Committee's statement that "the Committee has carefully avoided including in the bill any provisions which would interfere with the FCC's rules or which might be characterized as affecting 'communications policy' * * *."[337] As is apparent from the remainder of the Committee report, the Judiciary Committee wanted to avoid a time-consuming referral of the bill to the Commerce Committee, which has jurisdiction over "communications" legislation.[338] The characterization of the copyright legislation as not even "affecting" communications policy presupposes an absence of overlap between communications and copyright policy which is unrealistic and cannot have been the literal understanding and intent of the Congress. Indeed, the very same sentence that says the Committee has avoided "affecting 'communications policy'" speaks candidly of "the

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copyright scheme which would have allocated copyright liability depending on the market served; it also had "trigger" provisions whereby systems, on performance of certain acts, would incur full copyright liability. The committee report explained this differential treatment: "neither the full liability sought by the copyright interests nor the complete exemption sought by the community antenna interests would be appropriate or fair." H. Rept. No. 2237, 89th Cong. 2d Sess., 80 (1966).

[329] Kastenmeier, "Copyright Revision Revisited." *Bull. Copyright Soc.* 16 (June 1969), 269.

[330] Senate Communications Act rewrite hearings, *supra*, n. 317, at 3335.

[331] Among the government witnesses testifying were the Register of Copyrights and Mr. Keller, General Counsel of the Office of Telecommunications Policy. Both endorsed the compulsory license, with Mr. Keller emphasizing that it would afford fair compensation to the program producers while allowing cable to "grow and develop in response to the needs and demands of the public," and providing "stability and certainty where previously there had been none." 1974 Copyright revision hearings, at 109–116; 448–457 (1974).

[332] *Id.* at 115.

[333] *Id.* at 497.

[334] *Id.* at n. 2, 758.

[335] H. Rept. No. 74–1476, 94th Cong., 2d Sess., 8–9. *See also* the analysis of the rationale underlying the adoption of compulsory copyright licensing for cable television presented in the additional concurring views of Congressman Danielson, *id.* at 359–62. *And see* 2 Nimmer, Copyright, § 8.18[E], citing the Committee Report and stating that, "The compromise solution was to adopt in section III a compulsory license system whereby the cable operators are not required to obtain the consent of the copyright owners, nor to negotiate license fees, but copyright owners are entitled to be paid prescribed royalties for the secondary transmission of their works by cable television."

[336] It is worth noting that the Congress heard considerable testimony on compulsory licensing *per se* and applied it not only to cable television but also in other situations involving, for example, jukeboxes and phonorecords. Subcommittee Chairman Kastenmeier described the compulsory license mechanism as used when an industry goes from no liability to full liability, "a compromise between economic forces * * * a useful device to accommodate diverse interests in copyright, particularly when a change of liability is contemplated by the statute." 1979 Copyright Hearings *supra*, n. 314 at 109–110. The Register of Copyrights has observed that:

> We have reached the point where any new rights under the copyright law cannot be made exclusive rights. If a new technological development makes new forms of exploitation possible, compulsory licensing seems to offer the only solution. This is happening in the United States and it is happening just as much internationally. Compulsory licensing systems represent key provisions in the 1971 revisions of both the Berne and Universal Copyright Conventions, and in recent copyright laws in other countries.

Ringer, "copyright in the 1980's," 23 *Bull.* Copyright Soc. 229, 304–7 (1976).

[337] H.R. Rep. No. 94–1476, *supra*, at 89.

[338] *Id.*

copyright *and communications elements* of the legislation."[339] The key to the Committee's and the Congress' intent regarding the preemption of Commission regulatory authority to impose retransmission consent is in the emphasized language of the next sentence in the report:

> We would, therefore, caution the Federal Communications Commission, and others who make determinations concerning communications policy, not to rely upon any actions of this Committee as a basis for any significant changes in the delicate balance of regulation *in areas where Congress has not resolved the issue.* [Emphasis added.]

The next sentence identifies "pay cable regulation" and "increased use of imported distance signals" as examples of areas where Congress has not resolved the issue but left the matters to Commission regulation. But retransmission consent is not what the Committee meant by "increased use of distant signals." The Committee had in mind Section 801(b)(2)(B) which, by clear implication, leaves the Commission free "to permit the carriage by cable systems of additional television broadcast signals." But plainly the grant of a compulsory license, not subject to withdrawal by the broadcaster or the copyright owner, was an "area" where Congress *has* "resolved the issue." The same is true as to the mechanism for setting royalties. Had the Committee intended to allow the Commission freedom to undo what the legislation had created specifically and in excruciating detail, it surely would have said so.[340]

316. Nor can we find that either major market cable systems or satellite transmission of distant signals were not within the purview of Congress in adopting the Copyright Revision Act, thereby making the application of retransmission consent to major market systems or to satellite-relayed signals a matter of communications policy within the jurisdiction of this Commission to consider. Here again it is plain that both these developments were clearly foreseen—indeed had been clearly foreseen for over a decade—at the time the Copyright Revision Act was adopted. The Commission was aware of the development of major markets cable systems as long ago as 1966,[341] and of course the Commission's 1968 retransmission consent proposal was specifically premised on cable's penetration of the major markets.[342] The Supreme Court referenced cable penetration of the major markets in its 1968 decision in *U.S.* v. *Southwestern Cable Co.*[343] Congress was also aware of major market cable penetration as early as 1965[344] in the course of committee hearings on the Copyright Revision Act. During these hearings representatives of cable corporations serving major market communities, including the cable corporation that operates a cable television system in New York City, appeared to testify.[345] Finally, the Committee considered econometric studies projecting the results of various royalty fee levels specifically on major market systems. Similar evidence also definitively lays to rest any suspicion that the Congress did not intend to include satellite-relayed signals within the universe of "distant signals" for which a compulsory fee is available. As in the case of major-market cable, satellite transmission was envisioned as long ago as 1965,[346] and the fact that satellite-relayed distant signals were intended by Congress to be subject to compulsory licensing is evident from the additional concurring views of Congressman Danielson:

> Today cable is able to do more, and often does more, than merely to intercept a signal and deliver it to the subscribers' receiving set located within the local market area of the primary transmitter. With advances in the state of the art, cable systems are now able to transmit signals by cable, microwave, and satellite, almost without limit as to distance * * *. Cable now can, and does, transmit signals far beyond the local market area. In the bill we refer to these as "distant signals." Admittedly they serve the public interest.[347]

In sum, the Congress appears to have been well aware of the trends toward cable growth in the major markets making use of satellite delivered programming.

317. The sports interests filing comments in this proceeding have complained of the lack of attention given their interests and have sought to make out a case that they deserve some separate special treatment. We consider these comments here because one of the principal requests of these parties (the National Football League, the Commissioner of Baseball, the National Basketball Association, and the National Collegiate Athletic Association) is that the retransmission consent proposal be adopted.

318. We recognized in the *Notice of Proposed Rule Making* in this proceeding (para. 43) that sports provide one of the major sources of television programming. It is also obvious that there are many differences between sports and other types of television programming and between the various types of sport events that are broadcast. There are also differences between the other types of television programming of equal magnitude—between feature films and made for television product and between off-network and first-run syndicated programs. These differences,

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[339] *Id.* (emphasis added).

[340] Section 801(b)(2)(C), by implication, leaves the Commission free to change its "syndicated and sports program exclusivity" regulations. Had Congress meant to broaden that implicit authority so as to permit the imposition of retransmission consent, presumably it would have used this Section or the legislative history accompanying it to make that intent clear. Congress did nothing of the sort. Nor is there anything in the legislative history of the savings clause in Section 301(d). The relevant reports simply quote or paraphrase that clause. See, e.g., H.P. Rep. No. 94-1476, *supra*, at 133; H.R. Conf. Rep., No. 94-1733, 94th Cong., 2d Sess. at 78-9 (1976). The conference report does make clear, however, that the legislation was intended to "establish [ ] a *single* Federal system of copyright." H.R. Conf. Rep., No. 94-1733, *supra*, at 78 (emphasis added). Congress did not contemplate that the FCC could establish a second system providing copyright-equivalent protection inconsistent with the system set forth in the 1976 law.

[341] See generally *Second Report and Order in Dockets 14895, 15233, and 15971*, 2 FCC 2d 728 (1966).

[342] See generally *Notice of Proposed Rule Making and Notice of Inquiry in Docket 18397, supra.* See also *Notice of Proposed Rule Making in Docket 18894*, 23 FCC 2d 38, (1970) which lists in Appendix B the data on existing and proposed cable systems in the 50 largest television markets and *Second Report and Order in Dockets 14895, 15971, and 15233*, 2 FCC 2d 723, para. (1968) where the Commission states "Our intention has been called to the asserted intent of CATV interests to wire up 'almost all American cities—small and large' and 85 percent of all television sets—40 million homes." (footnote omitted).

[343] 392 U.S. at 159-166.

[344] In 1965 Mr. Ernest Jennes on behalf of the Association of Maximum Service Telecasters testified in the context of copyright hearings about "CATV unlimited": that is, "multichannel systems, importing distant stations [from metropolitan centers across many hundreds of miles and several states] * * * trying to mushroom into cities and towns of all sizes where reception of local and area broadcasting stations is excellent." Hearings before Subcommittee No. 3 of the House Judiciary Committee on H.R. 4347, 5680, 6381, and 6835, Serial No. 8, *supra*, n. 332 at n. 64 (pt. 2) 1225. See also *id.*, (pt. 3), 1823. The General Counsel of the National Association of Broadcasters noted pendency of cable franchises for New York, Philadelphia, Cleveland, and other large cities); and see H. Rept. No. 2237, 89th Cong. 2d Sess., (1966), 78.

[345] E.g., William J. Bresnan, President of Cable Division of Teleprompter Corp. And see statements of Rex Bradley, President of the National Cable Television Association, *id.* at 660.

[346] *See*, e.g., Hearings of H.R. 4347, 6831, 6835, *supra*, n. 322 at n. 64, (pt. 2), 1369 (Kastenmeier statement); H. Rept. 1635, 89th Cong., 2d Sess., 18 (1966) (minority views); *Final Report of the President's Task Force on Communications Policy*, chapter 5 (1968); *Notice of Proposed Rulemaking and Notice of Inquiry in Docket 18397, supra*, n. 295, at 420.

[347] Additional concurring views of Representative Danielson, H. Rept. No. 94-1476, 94th Cong., 2d Sess., 359. *And see* statement of Register of Copyrights Barbara Ringer, "[T]he legal relationship between cable television and space satellite systems was well-known and much discussed in the mid-1970's * * *." Hearings on H.R. 3333 before Subcomm. on Communications of House Comm. on Interstate and Foreign Commerce, 96th Cong., 1st Sess. at 700 (1979).

however, we do not find to be determinative for purposes of this proceeding. Thus, for example, while sports events are disadvantaged in some respects by the absence of repeat performance possibilities, they are in an advantageous position in other respects in that they are not entirely dependent for their financial success on television revenues, making the bulk of their revenues from attendance at the events themselves.

319. The argument pressed here, that sports is different and requires greater regulatory concern, is not a new one. In an earlier proceeding in which the Commission considered separate limitations on the cable carriage of sports programming, the Commission stated, summarizing the contentions of the sports interests, that:

> The argument is now put forth that sports programming is different than all other television programming and should be treated differently by the Commission's cable rules. It is argued that because sports programming is highly perishable, and because the sports industry depends heavily upon broadcast revenues for its sustenance, the public interest requires strict regulations to maintain the present pattern of distributing sports programs.[348]

The Commission found, however, that while the adoption of specific rules to cover the situation in which home games were blacked-out was appropriate,[349] there was no other basis for the separate treatment requested. Thus, we said,

> We can find no public interest rationale in terms of our national communications policies for affording sports programming additional protection against audience fragmentation. Sports is but one form of television programming, and must compete for audience with other programs provided by local television stations and cable systems. Absent convincing evidence that distant signal sports importations threaten to undermine local conventional television service, we are not prepared at this time to issue new rules to sustain the audience levels of established television broadcast stations at the expense of existing and potential cable television viewers.[44]

[44] The comments contain no evidence that local sports telecasts have been curtailed because of audience fragmentation resulting from cable sports importations, or that this is likely to occur. In fact, the audience of some television stations carried as distant signals by cable systems is significantly increased by such carriage, thereby creating a potential for increased advertiser support of the programs which they broadcast.[350]

320. The situation today remains essentially the same. Aside from anecdotal instances of alleged harm from distant signal carriage [351], the sports interests have made no credible showing that the general amount of televised sports events has been or will be seriously diminished. Available data actually suggests the contrary. Using professional baseball as an example, we find that baseball's radio and television revenues generally tended to remain relatively static between 1972 and 1975, but after 1975, most teams' revenues increased markedly.[352] Moreover, professional baseball's 1979 network contracts of $200,000,000 are twice its former contracts. In 1976 total baseball attendance was 31,300,000, whereas in 1978 it had increased to 40,600,000. Even if attendance figures for the two new clubs added during that period were excluded, total attendance would be up 5.5 million. At the same time, television audiences increased 15 percent.[353] The National Basketball Association itself performed a study of cable's effect on its teams' live gates in 1975, and concluded that, "There is no direct evidence that cable or pay television carriage of competing games have adversely affected paid attendance.[354] The Commission's most recent annual report to the Congress on the effect of the anti-blackout law concluded, with respect to professional football, that live gate attendance generally appeared to be more affected by such external factors as weather conditions, caliber of the opposing team, and the home team's season record than by televising of competing games.[355] Moreover, the television audience preferred to watch home team games over other teams' games by a 5–1 margin. [356] We find no evidence indicating that the same conclusions should not apply to collegiate sports.

321. Although sports interests cite statements in the legislative history of the 1976 Copyright Act which they argue "clearly demonstrate that the Commission has the authority to exclude sports programming from the compulsory licensing provision of the Copyright Act" [357] we do not read this language as suggesting anything other than that the Commission should act within the scope of its authority if necessary for legitimate Communications Act purposes. In rejecting a proposed separate treatment of sports in the Copyright Act, the Senate Report simply stated that:

> Without prejudice to the arguments advanced in behalf of these proposals * * * these issues should be left to the rulemaking processes of the Federal Communications Commission, or if a statutory resolution is deemed appropriate to legislation originating in the Committee on Commerce.[358]

322. In sum, we do not find anything in the comments received to change the judgment arrived at in Docket 19417, *supra*, that, except for the provisions of Section 76.67, sports programming should stand on the same footing as all other programming.

323. We also find that the savings clause in Section 301(d) of the Copyright Revision Act does not eliminate the fundamental irreconcilability between the Copyright Revision and a Commission-imposed retransmission consent requirement. Normally when two statutes deal explicitly with the same subject, Congress makes clear by a repealing clause that the later statute supersedes the earlier one. On the other hand, "repeals by implication are not favored." *United States* v. *Borden Co.*, 308 U.S. 198 (1929). In the absence of an express repealer, "[w]hen there are two acts upon the same subject, the rule is to give effect to both *if possible.*" *Id.* (emphasis added). For an implied repeal, there must be "a positive repugnancy" between the two statutes. *Id.* at 199. One common formulation of this principle is that an implied repeal will be found only to the minimum extent necessary to

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[348] *Report and Order in Docket 19417*, 54 FCC 2d 265, para. 41 (1975).

[349] 47 CFR 76.67.

[350] *Supra*, n. 348 at para. 42.

[351] Compare comments of Commissioner of Baseball, pp. 24–26, concerning certain difficulties faced by the Pittsburgh Pirates with Evan Pottack, "The Pirates: Where is Everybody," *Pittsburgh, March 1979*, p. 30 (appended as exhibit B to the October 17, 1979 comments of the NCTA); also the NBC comments of September 17, 1979 stating "WGN was told that it could not be licensed to carry the games [certain NCAA basketball games] because it was a superstation and the license could infringe on other exclusive rights" with the statement of the President of the NCAA to the House Communication Subcommittee on May 14, 1979, "The bid of WGN was $8,000; clearly not a competitive bid despite its superstation status." Examples of games allegedly not broadcast due to cable carriage are also provided in the NCAA *reply* comments. While the information provided there, some of which relates to isolated games played in 1974 and 1975, is not sufficiently detailed to reveal the precise reasons for these games not being broadcast, in the past the Association's own rules have in some circumstances counted cable carried games against the broadcast quotas permitted individual schools. Thus, the NCAA examples may be to some extent of their own creation.

[352] The Final Report of the Select Committee on Professional Sports, H. Rept. 1786, 94th Cong., 2d Sess., App. III A–2 (1977).

[353] Testimony of Gerald A. Simon, managing director, Cambridge Research Institute, 1979 Copyright hearings, *supra*, n. 314 at 149.

[354] Senate Communications Act rewrite hearings, *supra*, n. 309 at 2450.

[355] Fifth Annual Report of the Federal Communications Commission on the Effects of Public Law 93–107, 95th Cong., 2d Sess., 1978 (committee print), 21–43.

[356] *Id.* at 5, 19.

[357] Comments of Commissioner of Baseball in Dockets 20988 and 21284, September 17, 1979 at 54.

[358] S. Rep. No. 94–473, 94th Cong., 1st Sess. 80 (1975).

enable the later statute to "work." *E.g., Gordon* v. *New York Stock Exchange, Inc.*, 422 U.S. 659, 683, 691 (1975). Another somewhat overlapping formulation is that Congress will be found to have intended the repeal of the earlier statute if the later statute creates a comprehensive and pervasive regulatory scheme over the subject matter. *E.g., United States* v. *National Association of Securities Dealers, Inc.*, 422 U.S. 694, 734–35 (1975).

324. In the present instance, the Copyright Law Revision establishes just such a comprehensive and pervasive regulatory scheme over cable retransmissions of copyrighted programs. For that scheme to "work," any contrary regulatory authority must give way. More specifically, for the cable operator to be assured of retaining his statutory right to transmit the copyrighted programs, there cannot be a contrary FCC regulation which directly empowers a broadcaster (and indirectly empowers the copyright owner) to prevent such transmission by withholding consent. To preserve the statutory ceiling on fees, there cannot be a contrary FCC regulation which empowers the broadcaster (and, indirectly, the copyright owner) to extract greater fees.

325. The savings clause in Section 301(d), referred to above, does not alter our view that the 1976 law preempts the Commission's authority to impose a retransmission consent requirement. Any generalized savings clause must be interpreted in the context of the entire statute. Its general language cannot be intended to render those other, more specific regulatory provisions "nugatory." *Texas & Pacific R. Co.* v. *Abilene Cotton Oil Co.* 204, U.S. 426, 437, 446 (1907). Where there is "an irreconcilable conflict between the statutory scheme [of the later statute] and the persistence of . . . [rights or] remedies" under earlier enacted law, the savings clause will not prevent an implied repeal of the earlier law. *Nader* v. *Allegheny Airlines, Inc.*, 426 U.S. 290, 298–99 (1976). See, e.g., *Hughes Tool Co.* v. *Trans World Airlines, Inc.*, 409 U.S. 363, 388–89 (majority opinion), 410 (dissent) (1973); *Pan American World Airways, Inc.* v. *United States*, 371 U.S. 296, 310 (majority opinion), 321 (dissent) (1963); *Texas & Pacific R. Co.* v. *Abilene Cotton Oil Co., supra*, 204 U.S. at 446. In each of these cases the savings clause stated:

> Nothing contained in this chapter shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies.

This language, insofar as it applies to preexisting Federal statutes, is indistinguishable from Section 301(d) of the 1976 copyright law. The quoted language did not prevent a finding of implied repeal of the 1890 Sherman Act and the 1914 Clayton Act by the 1958 Federal Aviation Act in *Hughes Tool* and *Pan American, supra.* Consequently, the language of 301(d) does not bar a finding that the 1976 copyright law deprived the FCC of any preexisting retransmission consent authority under the Communications Act of 1934, where such authority would be irreconcilably in conflict with the 1976 law.[359]

326. We believe that the above demonstrates that the policy grounds urged to us in favor of this proposal, on careful examination, are fundamentally related to the operation of the copyright laws and that the Congress considered these issues with a full awareness not only of the developing course of the cable television industry but with a full awareness of the various public interest tradeoffs involved in the compulsory copyright licensing system. Finally, it seems clear that what we are being asked to do here is to overrule the judgment of the Congress because "the present copyright scheme is patently inadequate" and "provides only token compensation to copyright holders" (comments of ABC) or not to do so would result in "anomalies," "skew the market," or not "end Government intrusion" (comments of NTIA). Since this agency is itself a creature of Congress we do not see how we can take it upon ourselves to correct the judgments it has made and, accordingly, believe this proposal to be beyond our authority.

327. We also sought comments in our rulemaking *Notice* on other ways to facilitate the operation of these markets including means of facilitating the development of the types of information that are required for television stations to receive value for the distant cable television audiences they receive. Virtually no comments were received in response to this invitation and while we continue to hold ourselves open to suggestions of this type in the future, it appears that all that is required at this point is a certain regularity of cable carriage and the amassing collectively of sufficient audiences to make the commercial collection of information feasible. It appears that this process is now beginning to occur on its own. Accordingly, we are not proposing to take any additional action at this time.

V. Conclusion

328. The focus of our attention throughout this proceeding has been the effect of distant signal carriage on television service to the public. We have relied upon three criteria, consumer welfare, external effects, and distributional equity, to ascertain whether our rules regarding distant signal carriage are beneficial or detrimental to the public interest. These criteria, which have been developed in the field of modern welfare economics and which couch our traditional basis of regulation in more precise terms, provide a framework to test whether the benefits to consumers from our rules exceed the costs.

329. The criterion of consumer welfare reflects our responsibility to assure "efficient" communication service by seeking the industry and regulatory structure that results in the service that consumers value most highly. In addition to the benefits that accrue only to the consumers of a service, the criterion of external effects factors into the analysis the benefits from a service that flow to society as a whole. For example, public service programming by television stations may provide an important contribution to the functioning of our democratic institutions. Finally, distributional equity focuses upon whether the benefits or costs of our rules are received disproportionately by a particular group of consumers. For example, it is possible for a rule that confers greater benefits than costs upon consumers to be socially undesirable because of an adverse distributional effect upon poor or rural residents.[360]

330. We have analyzed with great care the benefits and costs to consumers of our cable television regulations. We have found that the benefits to consumers from eliminating the distant signal carriage and syndicated exclusivity rules are substantial. Or, in other words, the costs imposed upon consumers by the rules are great. The rules artificially restrict competition and thereby deny consumers services that they are willing to pay for. The rules also have the effect of restricting diversity in television programming by delaying or impeding the provision of new cable television service in many

[359] Retransmission consent's proponents note that passage of comprehensive equal employment legislation administered by the EEOC did not deprive the FCC of concurrent jurisdiction over EEO matters. That situation is obviously distinguishable. FCC enforcement of EEO requirements *complements* and does not conflict with the EEOC's jurisdiction.

[360] For a more complete description of the criteria, *see* the *Report in Docket 21284 supra* at paras. 8–14, the *Report in Docket 20988 supra* at paras. 11–14 and the *Notice of Proposed Rulemaking in Dockets 21284 and 20988 supra* at paras. 50–53.

communities. Thus we conclude confidently that elimination of the distant signal carriage and syndicated exclusivity rules will enhance consumer welfare by promoting competition in both the economic marketplace and the marketplace of ideas.

331. Were there offsetting costs to consumers from eliminating the distant signal carriage and syndicated exclusivity rules, we would be obliged to quantify and compare both the costs and benefits, including any effects upon particular segments of our populace, and reach a judgment as to the degree of protection for local television broadcasters that is required to promote the best attainable distribution of video services. However, the evidence amassed in this proceeding demonstrates clearly that increased competition from less proximate broadcasters will not affect adversely the performance of local television broadcasters. Additionally, there is no evidence that shows that maintenance of the rules expands the supply of television programming or that elimination of the rules will threaten the continued supply of programming. Therefore we conclude that the distant signal carriage and syndicated exclusivity rules should be eliminated.

332. The factual basis of our findings is considerable. Our *Inquiry Reports* carefully examined the effect of distant signals both on the performance of local broadcasters and on the supply of television programming. In the *Report in Docket 21284* we analyzed many cases where broadcasters are operating essentially in deregulated markets because of the grandfathering provisions of our rules. We also studied every case where broadcasters claimed harm due to cable television. We monitored the financial trends of each of these stations over the most recent five year period for which we had financial data. Additionally, for the grandfathered markets and for the most extreme cases of the broadcasters claiming harm due to cable, we estimated the effect of cable television on the stations' audience and revenues to determine whether cable threatened the economic viability of the stations. Finally, we estimated the effect of cable television on the amount of local programming provided by local broadcasters. Our conclusion from this detailed analysis was that that "the effect of audience diversion on revenues, both in theory and in practice (based on the experience of those markets with extraordinarily high penetration today), simply is not sufficient to offset the general growth in demand for TV advertising except in rare cases." [361] Additionally in the *Report in Docket 20988*, having analyzed the impact of the syndicated exclusivity rules on program supply, we concluded that "the long-term financial outlook for television program production is good, with continued increases in revenues and profits expected for the industry, even with the complete deregulation of cable television." [362]

333. Despite the voluminous amount of comments we have received opposing our proposal to delete the distant signal carriage and syndicated exclusivity rules, there is no evidence in the record that shows our estimates of audience diversion due to cable television in the case studies analysis are incorrect; there is no evidence in the record disputing our finding that broadcasting revenues and profits have increased substantially; there is no debate in the record concerning our estimate of the effect of cable television on the amount of public service programming broadcast by local stations; there is no evidence contradicting our finding that the supply of programming will continue to expand even with the complete deregulation of cable television. However, in the latest round of comments, some additional stations have alleged harm due to cable television. We have carefully examined the financial results for each of these stations. We have found that cable television does not pose a threat to the economic viability of any of these stations. Therefore we affirm our conclusions that "it seems extremely unlikely that any non-cable viewers will be disadvantaged due to increased competition for television stations from cable television" [363] and that "non-cable viewers will not be disadvantaged due to the elimination of the syndicated exclusivity rules." [364] Given these findings our obligation to rescind the rules is clear.[365]

Authority for the rule amendments adopted herein is contained in the Communications Act of 1934, as amended, including Sections 2, 3, 4(i) and (j), 301, 303, 307, 308, and 309.

Accordingly, it is ordered, That effective October 14, 1980 Part 76 of the Commission's Rules and Regulations is amended as set forth in the attached Appendix E.

It is further ordered, That the proceedings in Dockets 20988 and 21284 are terminated.

[361] *Report in Docket 21284* at para. 141.

[362] *Report in Docket 20988* at para. 95.

[363] *Report in Docket 21284* at para. 141.

[364] *Report in Docket 20988* at para. 96.

[365] *HBO v. FCC* 567 F. 2d 9, 42 (D.C. Cir. 1977).

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

History of Signal Carriage Regulation

Frontier Broadcasting

1. The Commission was initially asked to exercise jurisdiction over cable television systems in 1956. At that time thirteen television broadcasters concerned with the impact of cable carriage of broadcast signals on local television stations asked the Commission to exercise authority over cable television under the common carrier provisions of the Communications Act.[1] This was the first serious invitation we received to restrict cable competition with television broadcasting. We pointed out that, while a cable system "would, in adhering to good business practice, be governed largely by the preferences expressed by the majority of its subscribers, the ultimate final choice of signals is the sole responsibility and prerogative of the CATV operator." 26 FCC 254. Accordingly, the Commission determined that cable systems as they then operated did not fit into the statutory scheme of the Communications Act applicable to common carriers. *Id.* at 255.

Report and Order in Docket 12443

2. A similar invitation to impose common carrier regulation on cable systems was declined in our *Report and Order in Docket 12443*, 26 FCC 403, 424 (1959). We reiterated the rationale expressed in *Frontier Broadcasting* and also considered the evidence of economic impact on local television service as a basis for regulation but found such evidence to be insufficient to restrict cable television operations. *Id.* at 430.[2] On the subject of competition from cable system signal carriage as well as other auxiliary services, the *Report* stated that it "is basically the public which must determine the question, as in all broadcasting and free enterprise businesses." 26 FCC 436, para. 86. In sum, the *Report* concluded "that we do not now know of circumstances which would justify

[1] *Frontier Broadcasting Company v. Collier*, 24 FCC 251 (1958), *recons. denied in conjunction with, Report and Order in Docket 12443*, 26 FCC 403 (1959).

[2] The Commission stated:

We have expressed above our inability to determine where the impact takes effect, although we recognize that it may well exist. Accordingly, we would find it impossible, from anything presented to us so far, to make the necessary finding, either in a particular situation or generally.

Id.

limiting or prohibiting the operation of satellites or translators, or of CATV systems" and that "we do not now envision where we could find that the public interest would be disserved by affording an opportunity for choice of service and the benefits of competition and diversity of expression" from authorization of auxiliary services. Paras. 86–87, *id.* at 436–437.[3]

Carter Mountain

3. In *Carter Mountain Transmission Corp.*,[4] the Commission was presented with the question of whether economic impact to a local television station constituted a sufficient basis to deny an authorization for a common carrier microwave facility that would be used to deliver television broadcast signals to a cable systems in the station's service area. The *Report and Order in Docket 12433* had previously considered the question of whether the Commission, under sections 307(a) and 309(a) of the Communications Act, was required to consider impact on television broadcasters in granting radio facilities to common carriers for use in providing signals to a cable system. We concluded that "it is neither proper, pertinent, nor necessary for us to consider the specific lawful use which the common carrier subscriber may make of the facilities of the carrier." 26 FCC at 431–433.[5] As a consequence, cable operators sought to meet the increased consumer demand for additional and technically improved signals by requesting microwave services from communications common carriers.

4. The Commission recognized the importance of distinguishing between economic injury to a television licensee and an injury to the general public, as we had in our *Report and Order in Docket 12443*,[6] but we were concerned that the proposed microwave service to the cable systems might destroy the only local television station in the area and deprive a substantial population in the outlying rural areas of the only local outlet and of access to any other video services. We said, "[w]e will not shut our eyes to the impact upon the public service which is our ultimate concern, when it appears that the grant may serve to deprive a substantially large number of the public of a service * * *." 32 FCC at 462. While the proposed common carrier service might improve service to cable systems in the area, it did not warrant the substantial risk of loss of television service to that area. Accordingly, we believed compelling reasons justified departure from our previous position taken in 1959. *Id.* at 465. Our interest in safeguarding the welfare of off-the-air viewers in the only local broadcast service in the area did not extend, however, to denying, the subscribers of cable services the benefits of increased diversity from the availability of distant signals unnecessarily. We therefore permitted refiling of the application if it could be shown that the cable system would carry the signal of the local station without duplication of its programs by distant signals. *Id.* at 365. Thus, our concerns did not extend to the local station itself but rather to the welfare of television viewers as a whole.

Dockets 14985 and 15233

5. The Commission imposed restrictions of general application on microwave-fed cable systems' signal carriage in the *First Report and Order in Dockets 14895 and 15233*, 38 FCC 683 (1965). While we indicated that "the development of CATV and other auxiliary means for distributing the signals of assigned stations to the public (something not envisioned at the time of the sixth report and order) now makes possible the realization of some of the most important goals [of] our allocations planning," we became increasingly concerned that cable systems, "which technically, cannot be made available to many others," develop "on a fair and orderly basis" which would not prove disruptive to our television allocations policy and which would not adversely affect the distribution of video services to different segments of society. *Id.* at 698–699. While we found "it impossible, with the data at hand, to isolate reliably the effects of CATV" on television broadcast service, *Id.* at 710, we believed that our statutory responsibilities made it incumbent upon us to initiate regulatory efforts to mediate the competition between these two communications technologies to insure that there would be a healthy co-existence between cable television and television broadcasting which would prove to be beneficial, not detrimental, to the interests of the television viewing public. We believed it imperative to plan "in advance of foreseeable events, instead of waiting to react to them." *Id.* at 701. Accordingly, as minimum regulatory measures toward this end, the Commission adopted rules which required microwave-served cable systems to carry, upon request, the signals of all local television stations and to refrain from duplicating the programs of local commercial stations either simultaneously or within 15 days before or after local broadcast.[7]

6. Our reasons for imposing these requirements stemmed from the different conditions which are found in ordinary competition among broadcasters. We considered cable's duplication of programs of a local broadcast station by carrying competing distant signals, often without carrying the local station's signal, to consitute unfair or unequal competition inconsistent with what we then conceived as cable's supplementary role

[3] Also addressed was the question whether Section 325(a) of the Communications Act was applicable to retransmissions of broadcast signals by cable systems. We recognize that "[i]t may well be that Congress would desire to protect the property right of a broadcaster" but stated that we cannot conclude "that section 325(a) in its present form includes the requirement that CATV's get the consent of the stations whose signals they carry." 26 FCC 430. The Commission was also asked "to recognize the existence of a property right, and to affirm it by rule" but in response stated that "[t]his is not the forum in which the existence or nonexistence of a private property right can be adjudicated." *Id.* We stated, however, that it would be desirable "to clarify the situation with respect to property rights" and "to place CATV under the same conditions as the broadcaster with respect to access to programs originated by other stations" and, accordingly, stated our intent to "request Congress to enact legislation requiring [cable systems to obtain the consent of the originating stations]." *Id.* at 430, 438–439.

[4] 32 FCC 459 (1962), *aff'd Carter Mountain Transmission Corp. v. FCC*, 321 F.2d 359 (D.C. Cir. 1962), *cert. denied* 375 U.S. 951 (1963).

[5] We were also asked in the same proceeding to require that microwave common carriers show that they or the cable systems they serve have the consent of the originating station whose signals they transmit. The broadcasters requesting such a requirement indicated that while a direct requirement of cable consent might be beyond the Commission's power, such a requirement could be imposed on the Commission's licensees on the basis that relaying or transmitting signals without consent constituted "piracy" and therefore reflects upon the character qualifications of the licensee. They argued that the Commission should not license facilities whose sole purpose was to engage in such activities. We rejected the contention as "without merit" and pointed out that "the matter of whether a property right exists has not been adjudicated" and that this requirement could not be imposed upon a carrier for the same reasons which we held applied to cable broadcast signal carriage. 26 FCC at 433–434.

[6] In *Report and Order in Docket 12443*, 26 FCC at 423, we pointed out "good service is shown on this record to be on occasion a result of *competition*—the competition provided by the auxiliary services." While we admitted our inability to determine from the data before us "in what situations this impact becomes serious enough to threaten a station's continued existence or serious degradation of the quality of its service," we stated that "in considering economic injury, broadcasting is a dynamic business. If one station goes under, another station, or here another form of service fulfilling many or all of the same functions, may well soon replace it." *Id.*

[7] On the same day rules for microwave-served cable systems were adopted, the Commission commenced an inquiry and rulemaking looking toward extending regulation to all cable systems. *Notice of Inquiry and Notice of Proposed Rulemaking in Docket 15971*, 1 FCC 2d 453 (1965).

to broadcasting.[8] Accordingly, the Commission adopted regulations mandating cable system carriage of local television stations in order to eliminate a "kind of barrier to competitive access" which would otherwise exist if cable systems were permitted to exclude the local station's signal from carriage. *Id.* at 703. An additional concern which prompted the adoption of this requirement was that consumers of video services not be deprived of access to a local station's signals merely because they became subscribers to a cable system. *Id.* at 703.

7. The Commission also attempted to equalize competition between cable operators and broadcasters through the adoption of program exclusivity requirements. We pointed out that "the cable system does not enter the market for programming, as would a competing broadcaster." *Id.* at 703. We noted, however, that Section 325 of the Communications Act, which forbids the rebroadcasting of any station's signal without the consent of the originating station and which in large measure allows broadcasters to obtain exclusivity against one another, had not been found applicable to cable systems. Because cable "presently stands outside of the program distribution process," we considered this situation not to be the usual competitive situation. *Id.* at 704. While we emphasized that "[w]e do not regard the patterns of exclusivity created in the existing system for the distribution of television programs as sacrosanct," we believed that cable, as a supplementary service to television broadcasting, "should at a minimum give some measure of recognition to the fundamental distribution practices that have developed in the parent industry's competitive program market." *Id.* at 705–706. While we pointed out that Section 325 was not applicable to cable retransmissions and that Congress "has not seen fit to adopt [our] recommendation" of amending Section 325 to apply to cable, we stated that "reasonable nonduplication requirements will serve, in part, to achieve the equalization of competitive conditions at which the 'rebroadcasting consent' proposal is, in large part, aimed." *Id.* at 706 n. 37.[9] Thus, we clearly did not regard prevailing exclusivity practices as immutable in declining to recognize exclusivity agreements to the extent they provided protection beyond what we considered to be reasonable at the time.

8. In adopting mandatory signal carriage and program exclusivity rules, we readily acknowledged that "the rules we adopt will not solve all problems" and that "[i]f the rules should ultimately prove unnecessary or need modification in light of the passage of time, Congressional action or other factors, they can be modified or rescinded." *Id.* at 715. Our intent was to "build up a body of experience with the practical operation of both new rules and the conditions prescribed as interim procedures by our notices in these proceedings, before considering the extension of the rules to the CATV industry as a whole." *Id.* at 687.

Dockets 14895, 15233, and 15971

9. The Commission asserted jurisdiction over all cable systems the following year in the *Second Report and Order in Dockets 14895, 15233 and 15971*, 2 FCC 2d 725 (1966). We stated that "We cannot ignore the increasing risk of adverse impact on the 'public interest in the larger and more effective use of radio' (sec. 303(g))" which accompanies the development and growth of cable television, *id.* at 728, and that "our statutory powers * * * include authority to promulgate necessary and reasonable regulations to carry out the provisions of sections 1, 307(b), and 303(s) of the act and to prevent frustration of the regulatory scheme by CATV operations, whether or not microwave facilities are used." *Id.* at 734.

10. The mandatory signal carriage and program exclusivity requirements were extended to non-microwave systems. However, the period of program exclusivity available to a broadcast licensee was reduced to same-day protection in recognition of "the valuable contribution of CATV in providing wider access to nationwide programming and a wider selection of programs on any particular day." *Id.* at 747.[10]

11. The Commission recognized, however, that program exclusivity in its previous as well as its present form provided only limited protection for syndicated programming and independent stations which were heavily dependent upon such programming. "Stated differently, the adoption of a uniform 'same day' rule will not, in our judgment, significantly affect the protection afforded as to nonnetwork or independent programming" because "[s]uch programming is not presented on a nationwide simultaneous or even nearly simultaneous basis." *Id.* at 748. The Commission concluded that "we must look elsewhere if we are to achieve effective relief" for syndicated programs and independent stations. *Id.*

12. We proposed to do so by recommending to Congress that it consider the question of extending the rebroadcasting concept of Section 325(a) to cable as a general approach encompassing all stations, and by initiating a new set of rules the principle feature of which would be a restriction that cable systems operating in the top 100 television markets could import signals only following an evidentiary hearing establishing that "such operation would be consistent with the public interest and particularly the establishment and healthy maintenance of UHF television broadcast service." *Id.* at 782.

13. We were especially concerned about the impact cable carriage of distant signals might have on UHF broadcasting and pointed out that both cable and UHF broadcasting "are entering the larger markets, most often in an effort to bring programming that is not now available in these markets" and that "the most critical question posed is how these two trends mesh in the ensuing years." *Id.* at 772. We conceded that the "plain fact is that on the record before us, it is not possible to give a definitive answer to the future growth of CATV * * * and, correspondingly, to what its impact will be upon UHF developments in these markets." *Id.* at 773. We believed that cable carriage of "big city" VHF independents carrying "expensive, attractive nonnetwork programming" might severely damage emerging independent UHF stations especially in view of our recognition that "the nonduplication provision would afford virtually no relief" to these stations. *Id.* at 775. We stated that we had a statutory obligation to insure that the development of cable would not have unacceptable distributional effects on the public and, accordingly, we proposed to "thoroughly examine the question of CATV entry upon a hearing record giving reasonable assurance that the consequences of such entry will not thwart the achievement of the congressional goals." *Id.* at 776. The major market, distant signal policy and procedure was intended to ameliorate cable's impact on television broadcast service to the public and, in some measure, redress the disparate

[8] 38 FCC at 705.

[9] We also acknowledged the pendency of copyright suits in which program suppliers were attempting to establish their right to control the use by cable systems of signals carrying their programs but we declined to express any view as to the merit of these suits since we said they concerned matters beyond our jurisdication. 38 FCC at 704, n. 32.

[10] Our action constituted further acknowledgment that we did not consider prevailing exclusivity practices or our program exclusivity rules to be immutable.

competitive conditions existing between cable systems and broadcasters which stemmed from cable's operation "outside of the above program distribution process." *Id.* at 778. We believed that the case-by-case distant signal policy accompanied by the requirements carried over in modified form from the 1965 rules to be "the minimum measures * * * essential to insure that CATV continues to perform its valuably supplementary role without unduly damaging or impeding the growth of television broadcast service." *Id.* at 746.

14. While we recognized that "substantial problems affecting the public interest" could result from cable importation of distant signals into areas outside the top 100 markets, we noted that in these areas "the independent UHF (or VHF) station is much less likely to develop" and that "stations in such markets are apt to be three or less in number and network affiliated" which means that "nonduplication is effective." *Id.* at 783. We declined therefore to apply distant signal importation restrictions to these areas because we were aware "that there may be underserved areas where CATV can make its most valuable and traditional contribution." *Id.*

15. Thus, while we acknowledged the "important contribution to the public interest" which cable television performed by increasing viewing opportunities, in meeting the public's demand for good reception of multiple program choices, and in various other ways, *id.* at 781, we stated that we must "take hold of the future—to insure a situation where we or the Congress, if it chooses, can make fundamental decisions in the public interest upon the basis of adequate knowledge." *Id.* at 785. We stressed, however, "that we are not committed to the status quo—to protecting existing investment against new technological advances." *Id.* at 788. Rather, we emphasized the importance of getting the facts, *id.* at 789, and that, as we gained knowledge and experience, of revising or of terminating our procedures. *Id.* at 786.

Docket 18397

16. Experience under the new hearing approach quickly proved unsatisfactory. It was concluded that "these lengthy, complex evidentiary hearings on the economic impact issue * * * have imposed a considerable burden upon the Commission and the participating parties," and, accordingly, the decision was made to close down the burdensome major market hearings to the extent they were concerned with "impact upon the local broadcasting stations." *Id.* at 433–434.

17. Instead, the Commission proposed "to substitute a definitive policy for the evidentiary hearing procedure" by requiring cable systems within a 35-mile zone of a television station in the top 100 markets to obtain prior written permission—retransmission consent—of the originating station if they wished to import the station's signal into the market. *Notice of Proposed Rulemaking and Notice of Inquiry in Docket 18397*, 15 FCC 2d 417, 429 (1968). On balance, we found that the evidentiary hearing procedure did not serve the consuming public, its intended beneficiary. However, experience with this process indicated that cable penetration in the major markets could be significant and, accordingly, "the unfair competition of CATV" could be "a significant factor in the development or healthy maintenance of television broadcast service." *Id.* at 431. We concluded that it would be inconsistent with our responsibilities for the regulation of television broadcasting "to permit the growth of substantial CATV operations carrying distant signals in major markets until the aspect of unfair competition is eliminated." *Id.* at 434.

18. We viewed the retransmission consent proposal as a "simpler device" "permitting market forces to eliminate the unfair competition" than the "alternative of adopting detailed nonduplication requirements" for nonnetwork programs. *Id.* at 432. We also acknowledged at the time that this approach may "not be fully effective or may have drawbacks not now foreseen." *Id.* We emphasized that the "purpose of this proceeding is to obtain all such relevant information as to what regulation would best serve the public interest." *Id.*

19. While we were particularly concerned with cable carriage of distant signals in the major markets, we also expressed some concern over distant signal importation within the 35-mile zone of local stations in other markets. Although we believed that "the nonduplication requirement is effective as to network programming," we noted that "roughly 45 percent of a network affiliate's time is devoted to nonnetwork material" and that "it is this segment which is particularly vulnerable to continued fractionalization by a plethora of distant signals." *Id.* at 440. Accordingly, we also considered the possibility of limiting cable carriage to the signals of each of the network-affiliated stations and one independent for cable systems located within the 35-mile zone of a smaller market station. *Id.* For carriage of additional distant signals, retransmission consent would have to be obtained. *Id.* In all other respects, however, the program nonduplication rules were left essentially intact. We believed that our proposed rules for the smaller markets would take into account that there might well be a need for supplementary services in these areas, *id.* at 437 n. 18, but, more importantly, might "substantially alleviate potential problems in such markets and thus cut down greatly upon the need for any evidentiary hearings in this respect." *Id.* at 439.

20. Our retransmission consent proposal, without question, represented a radical and novel departure from the Commission's previously-held positions, espoused in earlier reports, that cable systems could not be made subject to the same type of requirement imposed on broadcasters under Section 325(a) of the Communications Act. While we believed it imperative to proceed toward elimination of the unfair competition element, we implicity recognized the uniqueness of the new approach by noting that there are "other important developments which we should take into account." *Id.* at 437. "We refer specifically to important Congressional developments in the copyright field that bear *directly* on this issue of unfair competition." (emphasis added) *Id.* We pointed out that "there are substantial indications * * * there will be enactment of a copyright law providing for a fair and reasonable revision as to CATV" and that "[s]uch a revision may well reflect not just copyright but also communications and antitrust policies" and "thus constitute, to a significant degree, the legislative guideline which the Commission has long sought." *Id.* at 432–433.[11] We stated that we must take these developments into account especially in view of our recognition that our retransmission consent proposal "necessarily also embodies considerations like copyright in its practical applications." *Id.* at 433. "Since Congress is considering the copyright matter, we should afford the opportunity for Congressional resolution of the unfair competition aspect, particularly since, as discussed, such resolution would constitute the Congressional guidance sought in this important area."

[11] In the course of our discussion, we alluded to the Supreme Court's decision in *Fortnightly Corp. v. United Artists Television, Inc.*, 392 U.S. 390 (1968), which held that cable systems were not liable for copyright payment for the programs they received on broadcast signals. The rationale of that decision was extended to apply to programs on distant as well as local signals in *Teleprompter Corp. v. CBS, Inc.*, 415 U.S. 394 (1974).

Id. Accordingly, we stated our intent to refrain from taking action on our proposal "until an appropriate period is afforded to determine whether there will be congressional resolution of this crucial issue of unfair competition, with indeed congressional guidance in this whole area." *Id.*[12]

21. The retransmission consent approach did not, however, appear to be a workable alternative. In the absence both of the hoped-for Congressional guidance and of any sign that the retransmission consent proposal was succeeding, we considered a different approach in the *Second Further Notice of Proposed Rulemaking in Docket 18397–A*, 24 FCC 2d 580 (1970), under which cable systems in the top 100 markets would be permitted to carry four independent signals, in addition to local signals, but would be required to delete commercials on the distant signals and replace them with commercials provided by local stations. We indicated that the very nature of the proposal, involving commercial substitution on distant signals, required that it dovetail with copyright legislation. In so stating, we emphasized, however, that the "issue of fairness to copyright owners" is "not a matter which can be resolved by this Commission." *Id.* at 585. We expressed concern over the question whether our proposal would enable the copyright owner to be treated fairly, but stated that "[o]nly the Congress can impose what it believes to be fair compensation in the circumstances" and that "the arena for definitive resolution of the issue remains the Congress, not this agency." *Id.* We did, however, prepare an analysis demonstrating how a compulsory payment mechanism might be developed. *Id.* at Appendix A. We also pointed out that under this proposal, the "carriage and same day nonduplication requirements would continue." *Id.* at 586. We further suggested that there might be other alternatives warranting consideration such as "whether it would be useful to employ an effective nonduplication requirement for nonnetwork programming." *Id.* at 588.

[12] In our *Memorandum Opinion and Order in Docket 18397*, 22 FCC 2d 589 (1969), the Commission indicated that it would grant "very few requests for experimental operations" under the retransmission consent proposal and that the rules adopted in 1966, as amended by subsequent orders, governed during the pendency of the proposed rulemaking in this docket. The Commission's actions in Docket 18397 led some leading observers to refer to this interim period as a "freeze" on cable growth, particularly in the major markets. However, other commentators have suggested that the freeze actually commenced with the hearing requirement under the 1966 rules. See MacAvoy, "Memorandum on Regulatory Reform in Broadcasting," (April 2, 1976).

22. Our interest in arriving at a suitable solution that would allow cable to deliver new video services to consumers without endangering the availability of video services to off-the-air television viewers led to our consideration of new proposals and the abandonment of our earlier approaches as means to resolving this regulatory dilemma. Accordingly, by letter of August 5, 1971, the Commission advised Congressional committees considering cable-related legislation of a new regulatory plan for cable television which, "with appropriate review by Congress," could break the regulatory impasse which had continued for almost six years and which could "provide necessary background for Congressional resolution of the copyright issue" relating to cable carriage of copyrighted materials on television broadcast signals. *Cable Television Proposals*, 31 FCC 2d 115 (1971). We stated that "our objective throughout has been to find a way of opening up cable's potential to serve the public without at the same time undermining the foundation of the existing over-the-air broadcast structure." *Id.* We determined that our retransmission consent and commercial substitution proposals "simply will not wash." *Id.* at 117. Our intention was "to break new ground, largely unexplored" which necessitated that we "proceed with caution." *Id.* at 115. We added that "further delay, in our view, would disserve the public and deny the nation tangible benefits." *Id.* While we recognized that "the continued economic health of those who create program material is crucial to both broadcasting and cable," we concluded "that copyright policy is most appropriately left to the Congress and the courts." *Id.* at 115–116. We therefore made plain that we would not continue to deprive consumers in the hope that the copyright complications engendered by a new technology might be resolved.

23. We noted that program exclusivity "is a matter that has both copyright and regulatory implications" and stated our intention "to study whether present or future considerations call for altering our existing CATV program exclusivity rules (Section 74.1103), which in effect protects only the network programming of network affiliates." *Id.* And we advised Congress that we would observe cable television's impact on local broadcast service very carefully under our proposed new regulatory plan and would take "prompt action" wherever necessary including affording adversely affected stations "effective nonnetwork nonduplication protection." *Id.* at 122. Accordingly, we did not envision any syndicated programming rules of general applicability as part of the proposed regulatory program we transmitted for Congressional review.

The 1972 Cable Television Report and Order

24. The cable television regulatory plan outlined in the Commission's transmittal letter to Congress of August 5, 1971, was subsequently adopted by the Commission in the *Cable Television Report and Order, supra*, but not without several changes. The major fundamental difference was the inclusion of rules providing exclusivity for syndicated programming which, together with the other changes, stemmed from the achievement of a "Consensus Agreement" which itself was the product of negotiations by interested parties concerning our August 5, 1971, proposal.[13] We concluded that incorporation of the new elements into our cable television program would "not disturb the basic structure of our August 5 plan" and would serve the public interest and, for these reasons, we adopted them as part of our *Cable Report and Order*. 36 FCC 2d 165–168.[14]

25. We pointed out that "the carriage of distant television broadcast signals by cable television systems has been center stage in the continuing controversy before the Commission, the Congress, and the Courts" and that in resolving the issues in this area, "our basic objective" has been "to get cable moving so that the public may receive its benefits, and to do so without jeopardizing the basic structure of over-the-air television." *Id.* at 164. We believed that this could best be accomplished by restricting the number of distant signals that a cable system may carry based on the size of the market in which it is located and the estimated ability of the market to absorb additional competition. By offering consumers of cable services an additional, but limited, number of signals, we expressed optimism that cable systems would be given the necessary impetus "to develop in the larger markets without creating an unacceptable risk of adverse impact on local television broadcast service" and, at the same time, our limitations would provide an incentive for the development of nonbroadcast services. *Id.* at 165.

26. We indicated that these signal carriage rules and policies represented

[13] See Consensus Agreement, Appendix D of the *Cable Television Report and Order, supra.*

[14] We also concluded that to entertain further comment in this area would serve very little purpose in terms of securing the public interest. 36 FCC 2d at 168.

our judgment at the time "as to: (a) the amount of distant signal competition that can be introduced into particular types of markets without having adverse impact on local television service and (b) the effect of distant signal carriage on the supply of television programming." *Id.* at 168. We acknowledged that in making these judgments, "[t]he answers rest in the complex economics of, and interrelationships between, the three industries involved as well as on expectations of future developments in the industries and in the economy generally." *Id.* As we had on previous occasions, we admitted our uncertainty and our inability to forecast how cable would evolve. We decided on a "conservative, pragmatic" approach which would permit us to add to our existing program in a significant way and "evaluat[e] our experience." *Id.* at 169. In so deciding, we authorized "not four distant signals", as proposed, but a more limited number (particularly in the smaller markets), and provided the added protection of non-network program exclusivity (particularly in the larger markets where independent stations generally operate). *Id.* We also considered it "wholly wrong to halt cable development on the basis of conjecture, for example, as to its impact on UHF stations" especially in view of our determination that our approach would not have impact adverse to the public interest. *Id.* Accordingly, we established through our 1972 signal carriage rules standards of television service that vary with market size in accordance with the estimated ability of these television markets to withstand additional distant signal competition.

27. Our justification for the "additional program exclusivity rules" was that they would "protect local broadcasters" and "insure the continued supply of television programming," the latter of which, we pointed out, "is fundamental to the continued functioning of broadcast and cable television alike." *Id.* at 169.[15] We provided "the most extensive protection" "in the top 50 markets from which the bulk of program supplier revenue is derived and where these restrictions are consequently most needed to insure the continued health of the television programming industry." *Id.* [16] We added that this "protection will also assist independent stations (including many UHFs) that are very largely concentrated in these markets." *Id.* We further stated that in the second 50 television markets, syndicated exclusivity protection would afford "additional, although limited, protection to local broadcasters." *Id.*

28. The Commission declined to extend protection in markets below 100 because in these markets "the number of distant signals is very strictly limited under the rules" and because, "network programming protection is, we believe, adequate to preserve local service." *Id.*[17] Moreover, we stated that to impose syndicated exclusivity protection in these markets "would make these markets even less desirable for new cable construction" and that, in any event, such protection "is of only marginal benefit to copyright holders who derive the substantial bulk of their revenues from the top markets." *Reconsideration of the Cable Television Report and Order*, 36 FCC 2d 326, 341 (1972).

29. Our *Cable Television Report and Order, supra*, represented a comprehensive regulatory plan governing cable carriage of broadcast signals which permitted an increase in television programming available to consumers of cable services and a modicum of additional competition in the area of home video entertainment and information services. Despite an element of uncertainty, the Commission expressed a willingness to experiment with additional competition in the video services and, accordingly, the 1972 signal carriage rules constituted an important first step toward increased reliance on competition to serve consumers' interests and needs. In adopting this major cable regulatory program, including the incorporation of the syndicated exclusivity portion of the "Consensus Agreement", we emphasized that the Commission "retains full freedom, and indeed, responsibility to act as future developments warrant" and that, "as we gain experience and insight, we retain the flexibility to act accordingly—to make revisions, major or minor—and to keep pace with the future of this dynamic area of communications technology." *Id.* at 167.

Revisions in the Signal Carriage Rules Since 1972

30. As our understanding of the competitive relationship between cable television and broadcasting has increased through experience and insight, we have since 1972 cautiously but steadily eliminated restrictions on cable carriage of broadcast signals wherever it has been shown that such revisions would lead to expanding the supply of programs available to cable subscribers without simultaneously creating risks of serious harm to the welfare of off-the-air television viewers. This has led to increases in the supply of network news,[18] foreign language,[19] religious,[20] and late-night [21] programming to cable consumers and to our exempting cable systems with fewer than 1,000 subscribers from the signal importation and syndicated exclusivity restrictions.[22] By far the most significant change in our signal carriage rules was the elimination of the "leapfrogging rules" in *Report and Order in Docket 20487*, 57 FCC 2d 625 (1976), where we in essence concluded that the marketplace would secure the public interest more surely than administrative rules. This change in favor of additional diversity and in the direction of freedom of choice for consumers of video services subsequently proved to be a valuable impetus to the development of satellite distribution of broadcast programming to cable systems, a notable example of cost-reducing technology serving to increase the diversity of offerings available to consumers of video services.

The 1976 Copyright Law Revision

31. Our earlier concerns that cable systems were not subject to copyright

[15] *But cf. Cable Television Proposals, supra*, at 115–116, where we stated that while "the continued health of those who create program material is crucial to both broadcasting and cable," "that copyright policy is most appropriately left to the Congress and the courts."

[16] *Teleprompter Corp.* v. *CBS, Inc., supra*, held, however, that the Copyright Act of 1909 did not afford copyright holders the right either to preclude or to charge royalties for the simultaneous transmission into distant markets by cable systems of a copyrighted work exhibited on a broadcast station. To the extent that the intent of the syndicated exclusivity rules was "to permit copyright holders to distribute programming in particular markets either by broadcast alone or, if they wish, by both broadcast and through distant signal carriage," as stated in our *Reconsideration, supra*, at 342, we ascribed a property right to copyright owners—the right to license a television broadcast exhibition of a copyrighted work and simultaneously to preclude its presentation in other markets through the mechanism of cable television—at a time when the existence of the right as a matter of copyright law was very much in doubt and which the Supreme Court later held did not exist under copyright law.

[17] *Cable Television Report and Order, supra* at 181.

[18] *Carriage of Network News Programs—CATV, Notice of Proposed Rulemaking in Docket 19859*, 43 FCC 2d 813 (1978); *Report and Order*, 57 FCC 2d 68 (1976).

[19] *Specialty Stations—CATV, Notice of Proposed Rulemaking in Docket 20553*, 54 FCC 2d 425 (1975); *First Report and Order*, 58 FCC 2d 442 (1976); *recons. denied*, 60 FCC 2d 661 (1976).

[20] *Id.*

[21] *Cable Late-Night Television Programming, Notice of Proposed Rulemaking in Docket 20028*, 46 FCC 2d 446 (1974); *Report and Order*, 48 FCC 2d 699 (1974); *Memorandum Opinion and Order*, 54 FCC 2d 1182 (1975).

[22] *First Report and Order in Docket 20561*, 63 FCC 2d 956 (1977); *Second Report and Order*, 68 FCC 2d 18 (1978).

liability for the retransmission of copyrighted materials on broadcast signals were ultimately addressed by Congress on October 19, 1976, when it enacted the General Revision of the Copyright Law, Pub. L. 94–553, 17 U.S.C. 101 *et seq.* (1976) (effective January 1, 1978), which redefined the rights of, and limitations upon, copyright owners in the use of their works. Among other things, the Copyright Law Revision of 1976 provided a complusory licensing procedure applicable to the retransmission of broadcast signals. Specifically, Congress provided in Section 111(c)(1) of the new Act that:

> secondary transmissions to the public by a cable system of a primary transmission made by a broadcast station licensed by the Federal Communications Commission or by an appropriate governmental authority of Canada or Mexico and embodying a performance or display of a work shall be subject to compulsory licensing upon compliance with the requirements of subsection (d) where the carriage of the signals comprising the secondary transmission is permissible under the rules, regulations, or authorizations of the Federal Communications Commission.

32. Indeed, the new law reflected a Congressional judgment that it would be impractical for cable operators to negotiate copyright clearances for non-network programs on distant broadcast signals as well as a Congressional awareness that the compulsory licensing procedure in this area constituted a major departure from traditional copyright practices.[23] Thus, Congress struck a new balance between consumers and copyright owners. The copyright owner would be compensated for the adverse effects distant signal carriage of non-network programming might have on the value of copyrighted works by means of royalty payments based upon cable systems' gross revenues. On the other hand, cable subscribers would have reasonable access to copyrighted programs on distant signals carried pursuant to Commission rules, regulations, and authorizations. Accordingly, while the compulsory licensing process limits the copyright owner in setting the terms and conditions for the use of copyrighted materials presented on television broadcast signals, particularly the flexibility to market programs on a geographically-restricted basis under the new copyright law, it allows the public to benefit by the wider dissemination of works carried on television broadcast signals.

[23] See *Report of the House Committee on the Judiciary, Copyright Law Revision, supra,* at 89:

> In general, the Committee believes that cable systems are commercial enterprises whose basic retransmission operations are based on the carriage of copyrighted program material and that copyright royalties should be paid by cable operators to the creators of such programs. The Committee recognizes, however, that it would be impractical and unduly burdensome to require every cable system to negotiate with every copyright owner whose work was retransmitted by a cable system. Accordingly, the Committee has determined to maintain the basic principle of the Senate bill to establish a compulsory copyright license for the retransmission of those over-the-air broadcast signals that a cable system is authorized to carry pursuant to the rules and regulations of the FCC.
>
> Congress provided for a compulsory licensing mechanism in Sections 115 (mechanical royalties) and 116 (jukebox) as well as in Secton 111 concerning secondary transmissions by cable systems.

Appendix B

N–1334–FCC, November 1979

Audience Diversion Due to Cable Television: Response to Industry Comments

Rolla Edward Park

A Rand Note

prepared for the

FEDERAL COMMUNICATIONS COMMISSION

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Preface

This Note is a contribution to the Federal Communications Commission's *Inquiry into the Economic Relationship between Television Broadcasting and Cable Television*, Docket 21284. It discusses comments by representatives of the broadcasting and motion picture industries on an earlier Rand study, *Audience Diversion Due to Cable Television: A Statistical Analysis of New Data*, R–2403–FCC, April 1979. The work was performed pursuant to contract 0298 with the Federal Communications Commission.

Abstract

Analysis of broadcasting and motion picture industry criticisms of an earlier Rand report leaves unchanged the earlier report's conclusion that "* * * TV broadcasting will continue to prosper, despite increasing competition from cable." Some of the criticisms are accepted and used to produce revised projections of audience diversion due to cable. The effect of others is investigated using sensitivity analysis. Other criticisms are matters of judgment; on these, there is no reason to prefer the industry's approach to Rand's.

Acknowledgments

I appreciate helpful comments on an earlier draft by my Rand colleagues Willard Manning and Bridger Mitchell. Steven Zecola of the Federal Communications Commission also made useful comments and in addition worked hard to obtain all of the data on nonduplication protection status that I used in this study. David Nicoll of the FCC took care of administrative matters cheerfully and competently. Ethel Lang of Rand typed two versions of this Note with admirable precision, dispatch, and good humor.

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I. Introduction and Summary

A recent Rand report prepared for the Federal Communications Commission concludes that "* * * TV broadcasting will continue to prosper, despite increasing competition from cable."[1] The conclusion is based on a statistical analysis of data on cable and off-the-air television audiences.

The conclusion, and the analysis upon which it is based, have elicited critical comments from the broadcasting and motion picture industries.[2] This Note is my reply to the industry criticisms. I accept some of the criticisms and check the effect that some of the others would have on my results. None of them alters the conclusion stated in my earlier report.

Summary

In Section II, I estimate new audience share equations and apply them to simulate the effect of cable on broadcast stations' audience size. The revised estimates differ from those in my earlier report for a number of reasons, most importantly because I now distinguish between distant network signals that are blacked out on the cable to provide nonduplication protection[3] to local affiliates, and those that are not. The effect of this and the other changes is small; the revised audience diversion projections (shown in Tables 3 and 4 below) are not much changed from those in my earlier report.[4]

In Section III, I discuss six major industry criticisms of my earlier report:

- Data problems.
- Different effects in different time periods.
- Treatment of total audience.
- Distinction between stations and programs.
- Differences in off-the-air reception.
- Different effect on independents.

My new estimates in Section II avoid some of the problems. Others turn out not to be problems at all. I am able to check the sensitivity of my results to adopting the industry position on the first four criticisms and find that my results are affected very little by any of them. There is no simple way to do a sensitivity analysis of the other two criticisms, but neither is there any reason to prefer the industry-suggested approach to mine.

II. Revised Estimates of Audience Share Equations and Audience Diversion

Motivated in part by the industry comments on my earlier report (1979a), I have estimated new audience share equations and applied them to make new projections of audience diversion due to cable television. Although the new estimates differ from the earlier ones in a number of ways, the resulting audience diversion projections are changed very little.

How the Estimates Differ From the Earlier Ones

These are the ways in which the new estimates differ from the earlier ones:

- A few keypunch errors in the data have been corrected.
- Separate equations have been estimated for each portion of the television viewing day (daytime, early fringe, prime time, late fringe,[5] as well as the full broadcast day).
- I have taken account of the fact that some distant network signals are (sometimes) blacked out on the cable to protect local network stations

[1] Park (1979a).

[2] *Joint Motion* (1979). Fisher (1979). Schink (1979). Association of Independent Television Stations (1979). Charles River Associates (1979).

[3] Defined below (p. 3).

[4] Park (1979a, Tables 7 and 8, pp. 35–36).

[5] See Appendix B for definitions.

("nonduplication protection").[6]

• The definition of local stations has been revised.

Here I discuss only these *changes* in the way the audience share equations were estimated. For a comprehensive description of the new application of the estimation method, see Park (forthcoming). For the old application, see Park (1979a).

Correction of Keypunch Errors

While getting the data ready for the new estimates, the FCC staff and I discovered and corrected a few errors:

• Three station call signs were mispunched with the result that one station looked like two different stations, one received off the air and one on the cable. Example: The cable observation for WLOX in county 10 was punched as WLDX.

• Six parent and satellite pairs were not combined in the data. Example: In county 7, data for KARD and its satellite KCKT are combined in the new data, but not in the old.

• Three affiliation codes were incorrectly punched with the result that an independent station was counted as a network affiliate. Example: KTVT in county 21, an independent station, had affiliation code 200 in the old data, indicating affiliation with CBS.

The substantive corrections have very little effect on the resulting estimates. In addition, a few other (non-substantive) errors that have no effect at all on the estimates were corrected. The corrected data are reproduced in full in a companion note (Park, 1979b).

Separate Equations for Different Parts of the Day

In (1979a), I estimated final (second-stage) equations for the full-day and prime-time time periods only. The equations for the other time periods may well be substantially different. We know, for example, that independent stations typically attract larger audience shares during the early fringe time period than they do during the rest of the day. Consequently, I now estimate final equations for all five time periods.

Nonduplication Protection

In my earlier work I made no distinction between distant network stations whose programs are blacked out on the cable when they duplicate those of a local station, and those that are never blacked out.

In fact, of course, one expects their audience shares to be quite different. Those that are blacked out should have small shares, if only because they are carried only part of the time. Those that are not blacked out should have larger shares. They compete with local stations throughout the day and may in some cases supply popular network programming that is not even carried by local stations (for example, in a two-station market).

Consequently, I distinguish between distant network stations that are blacked out and those that are not in my new estimates and estimate "attractiveness indices" (defined below) for the following station types:

NVL: local network VHF.
NUL: local network UHF.
IVL: local independent VHF.
IUL: local independent UHF.
NVD: distant network VHF blacked out.
NUD: distant network UHF blacked out.
NVDB: distant network VHF not blacked out.
NUDB: distant network UHF not blacked out.
IVD: distant independent VHF.
IUD: distant independent UHF.

Definition of Local Stations

As before, the audience share equations are estimated using observations on local stations only—all such stations in 121 counties.[7] The set of stations considered to be local is slightly different, however. Before, local stations were all those assigned to the ADI[8] market of which the county is a part, and distant stations were stations from other markets. The new definition is the same with two exceptions. Stations are counted as local if they receive nonduplication protection against some other station, and they are counted as distant if they are blacked out to provide nonduplication protection to some other station, regardless of whether the county is in their ADI or not.

Table 1 shows the number of stations (VHF and UHF combined) in the various categories. Of the 334 stations (105+216+13) that would have been counted as local network stations under the old definition, 13 are now excluded because they are sometimes blacked out. On the other hand, 14 stations previously counted as distant are now defined as local, since they receive nonduplication protection.

[6] Nonduplication protection is available on request to stations located within 35 miles of a cable system (or within 55 miles for stations in below-100 markets). If asked to do so, the cable system must delete programs broadcast by any lower priority station, when those programs duplicate those of the requesting station. See *Cable Television Regulations*, Subpart E for details.

[7] An "observation" consists of the local station's audience share together with information on the competition (both local and distant) that it faces.

[8] Area of dominant influence, defined by ARB to be all those counties in which a market's stations attract a plurality of viewing hours.

Table 1

COUNTS OF STATIONS OF DIFFERENT TYPES

	Network			
	Receives Nonduplication Protection	Neither Protected Nor Blacked Out	Blacked Out	Independent
Off-the-Air Viewing				
Same ADI	105 NL	216	11 NDB	23 IL
Distant ADI	14	101 ND	95	11 ID
Cable Viewing				
Same ADI	105 NL	216	13 NDB	23 IL
Distant ADI	14	211 ND	173	93 ID

NOTES: Station categories are as follows:

NL: Local network
ND: Distant network not blacked out
NDB: Distant network blacked out
IL: Local independent
ID: Distant independent

Many more distant stations are received on the cable than off the air—nearly twice as many network stations and over eight times as many independents. The distant network stations are fairly evenly divided between those that are sometimes blacked out and those that are not.

Revised Audience Share Equations

As in (1979a), I hypothesize that each station type can be assigned an attractiveness index a_i such that the audience tends to divide among available signals in proportion to $a_i/\Sigma a_j$, where the summation is over all of the available signals. I allow the attractiveness indices to differ off the air and on the cable. In particular, I expect them to be higher on the cable for local UHF stations and for all distant stations, because of improved reception on the cable. Thus the model is

$$SHR_{io} = \Sigma a_{jo} D_{ij} / \Sigma a_{jo} M_{jo} + u_{io}$$

and (1)

$$SHR_{ic} = \Sigma a_{jc} D_{ij} / \Sigma a_{jc} M_{jc} + u_{ic},$$

where the summations are over the 10 station types, D_{ij} is a dummy variable equal to 1 if the i^{th} station is of type j and O otherwise, and M_{jo} and M_{jc} are the numbers of available signals of type j off the air and on the cable, respectively.

I estimate the audience share equations by a two-stage procedure; see Park (forthcoming) for details. First-stage nonlinear regressions (Appendix Table A.1) provide estimates of the parameters of the co-variance matrix. These are then used in a nonlinear, nondiagonally weighted regression to obtain second-stage generalized least squares estimates of the attractiveness indices (Appendix Table A.2).

The precision of the estimates can be increased by constraining the model. As before, I assume that cable increases the attractiveness of local UHF stations, both network and independent, by the same multiple, K. That is, if the off-the-air indices are a_{NUL} and a_{IUL}, the cable indices are $K(a_{NUL})$ and $K(a_{IUL})$.

In addition, I assume that being blacked out part of the time on the cable reduces the attractiveness of distant network stations, both VHF and UHF, by the same multiple, BLK. That is, if the cable indices for stations that are not blacked out are a_{NVD} and a_{NUD}, then for those that are blacked out $a_{NVDB} = BLK\ (a_{NVD})$ and $a_{NUDB} = BLK\ (a_{NUD})$.

The constrained estimates are shown in Table 2. Both the K constraint and the BLK constraint are acceptable hypotheses (using an F test at the .05 level) in all time periods.

Local UHF stations have higher indices on the cable than they do off the air, undoubtedly because reception is improved by cable. The improvement factor K is quite precisely estimated; it differs somewhat from one time period to another, ranging up to 1.45 in prime time.

Stations blacked out to provide nonduplication protection have lower indices on the cable than do stations that are not blacked out. The blackout factor BLK ranges from .40 in prime time

when there is a lot of duplication to .90 in early fringe when there is very little.

The estimated attractiveness indices are for the most part in accord with prior expectations. Local stations handicapped by lack of network affiliation or by UHF transmission have lower indices than do network VHF stations; independent UHF stations, which suffer from both handicaps and which, in addition, often broadcast weaker programs than do VHF independents, have the lowest indices of all local stations.

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Table 2

SECOND STAGE CONSTRAINED AUDIENCE SHARE EQUATIONS

	Network[a]			Independent[a]							
	L	D	DB	L	D	BLK	K	$\hat{\sigma}$	$\hat{\rho}$	R_1^2	R_2^2
Full Day											
Off-the-air viewing											
VHF	1.00	.07	.10	.57	-.25			.999	.672	.671	.440
	(b)	(1.8)	(2.8)	(3.3)	(2.4)						
UHF	.47	.14	.19	.23	-.03						
	(10.1)	(.6)	(.9)	(4.0)	(.1)						
Cable viewing											
VHF	1.00	.38	.19	.56	.40	.50	1.37	.460			
	(b)	(9.1)	(d)	(3.4)	(6.0)	(4.9)	(12.7)				
UHF	.64	.16	.08	.32	.25						
	(c)	(1.4)	(d)	(c)	(3.4)						
Daytime											
Off-the-air viewing											
VHF	1.00	.06	.10	.52	-.11			1.214	.629	.582	.353
	(b)	(1.2)	(2.4)	(2.5)	(.7)						
UHF	.33	-.05	.32	.25	-.18						
	(6.8)	(.2)	(1.3)	(.5)							
Cable viewing											
VHF	1.00	.30	.13	.54	.39	.44	1.41	.669			
	(b)	(6.0)	(d)	(2.4)	(4.1)	(2.9)	(8.2)				
UHF	.46	.04	.02	.35	.26						
	(c)	(.3)	(d)	(c)	(2.5)						
Early Fringe											
Off-the-air viewing											
VHF	1.00	.07	.10	.93	-.18			1.353	.724	.528	.336
	(b)	(1.4)	(2.1)	(3.1)	(1.3)						
UHF	.43	-.00	.29	.47	-.09						
	(7.4)	(.0)	(1.1)	(4.4)	(.2)						
Cable viewing											
VHF	1.00	.34	.31	1.17	.76	.90	1.22	.656			
	(b)	(5.8)	(d)	(3.5)	(5.9)	(3.8)	(9.5)				
UHF	.33	.07	.06	.57	.54						
	(c)	(.5)	(d)	(c)	(4.0)						
Prime Time											
Off-the-air viewing											
VHF	1.00	.06	.13	.53	-.33			.876	.512	.717	.466
	(b)	(1.6)	(3.3)	(3.7)	(3.1)						
UHF	.58	.27	.20	.11	.16						
	(12.3)	(1.0)	(.8)	(2.6)	(.5)						
Cable viewing											
VHF	1.00	.42	.17	.41	.30	.40	1.45	.401			
	(b)	(10.3)	(d)	(3.1)	(4.9)	(5.1)	(13.1)				
UHF	.84	.29	.12	.15	.14						
	(c)	(2.2)	(d)	(c)	(2.1)						
Late Fringe											
Off-the-air viewing											
VHF	1.00	.02	.12	.23	-.26			1.156	.597	.584	.322
	(b)	(.4)	(2.7)	(1.3)	(2.0)						
UHF	.41	.39	.18	.20	-.12						
	(8.0)	(1.3)	(.7)	(2.9)	(.4)						
Cable viewing											
VHF	1.00	.33	.19	.25	.30	.57	1.38	.751			
	(b)	(5.3)	(d)	(1.1)	(2.8)	(3.0)	(8.1)				
UHF	.57	.09	.05	.28	.18						
	(c)	(.5)	(d)	(c)	(1.5)						

NOTES: The dependent variable is the station share of total audience during each time period. Estimated coefficients are "attractiveness indices" in equation (1). Asymptotic t-statistics are in parentheses. See Park (1979c) for a description of the nonlinear generalized least squares estimation method used, and a description of $\hat{\sigma}$, $\hat{\rho}$, R_1^2, and R_2^2

[a] L indicates local stations. D indicates distant stations not blacked out. DB indicates distant network stations blacked out to provide non-duplication protection to local stations.

[b] This coefficient is normalized to one as a reference value—not estimated.

[c] This coefficient is constrained to equal K times the corresponding off-the-air coefficient. K is an estimated multiplier.

[d] This coefficient is constrained to equal BLK times the corresponding cable coefficient for distant network stations that are not blacked out. BLK is an estimated multiplier.

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The indices for distant stations off the air do not convey much information, because they are highly reception-dependent. They depend mostly on how close out-of-market stations happen to be to our sample counties. The estimated negative indices for some such stations are anomalies, but not very important ones. I do not use these values in the application of the model. Furthermore, when I reestimated the equations with all indices constrained to be non-negative, the other coefficients changed very little (Appendix Table A.3).

Distant stations on the cable generally have smaller indices than do comparable local stations. The index for distant network VHF stations not blacked out is quite precisely estimated to be between 30 and 42 percent of that local VHF network stations in the different time periods. The index for distant independents (both VHF and UHF) tends to be about 75 percent of the index for their local counterparts. Indices for distant UHF stations on the cable are always smaller than those for comparable VHF stations, presumably reflecting less attractive programming on the UHF stations, and also perhaps residual picture quality differences even on the cable.

Revised Audience Diversion Projections

Tables 3 and 4 use the new audience share equations for the full day time period to simulate the effect of cable on local station audience in 10 hypothetical markets, clustered to represent top-50, second-50, and below-100 market conditions. For each hypothetical market, I show the effect of three different distant signal packages:

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Table 3

NEAR-TERM EFFECT OF CABLE ON LOCAL STATION AUDIENCE IN REPRESENTATIVE MARKETS UNDER PRESENT AND POTENTIAL RELAXED CABLE REGULATION

Network		Independent		Distant Stations			Cable Penetration[a]	Index of Local Station Audience[b] If Cable Exists				
				Prim.	Dupl.			Network		Independent		
VHF	UHF	VHF	UHF	Net.	Net.	Ind.		VHF	UHF	VHF	UHF	Total
Top-50 Markets												
3	0	3	2	0	0	2	11	98- 99		98- 99	102-103	98- 99
				0	0	6	11	96- 97		96- 97	99-100	96- 97
				0	3	6	11	96- 96		95- 96	98- 99	96- 97
3	0	1	1	0	0	2	16	97- 98		97- 98	102-104	97- 98
				0	0	6	16	93- 95		93- 94	97- 99	93- 95
				0	3	6	16	92- 94		92- 94	96- 97	93- 94
3	0	0	2	0	0	2	8	98- 99			101-102	98- 99
				0	0	6	8	96- 97			98- 99	96- 97
				0	3	6	8	95- 96			97- 98	96- 96
3	0	0	0	0	0	3	20	94- 95				94- 95
				0	0	6	20	90- 92				90- 92
				0	3	6	20	89- 91				89- 91
Second-50 Markets												
3	0	0	0	0	0	2	17	96- 98				96- 98
				0	0	5	17	93- 94				93- 94
				0	3	5	17	92- 93				92- 93
2	1	0	0	0	0	2	18	94- 96	100-101			95- 97
				0	0	5	18	90- 92	94- 96			91- 93
				0	3	5	18	89- 91	93- 94			90- 91
2	0	0	0	1	0	2	24	90- 92				90- 92
				1	0	5	24	86- 88				86- 88
				1	3	5	24	85- 87				85- 87
Below-100 Markets												
3	0	0	0	0	0	1	29	96- 99				96- 99
				0	0	4	29	89- 92				89- 92
				0	3	4	29	87- 89				87- 89
1	1	0	0	1	0	1	31	87- 89	94- 97			89- 92
				1	0	4	31	80- 82	85- 87			81- 84
				1	3	4	31	78- 80	82- 85			79- 82
1	0	0	0	2	0	1	41	77- 80				77- 80
				2	0	4	41	70- 72				70- 72
				2	3	4	41	68- 70				68- 70

[a] Average present penetration in markets of each type. Data supplied by FCC Cable Bureau.

[b] Average audience over the full broadcast day. The base (100 percent) is the audience if cable does not exist; it assumes that all the audience watches local stations in the absence of cable (that is, there are no overlapping signals from adjacent markets).

Table 4

LONG-TERM EFFECT OF CABLE ON LOCAL STATION AUDIENCE IN REPRESENTATIVE MARKETS UNDER PRESENT AND POTENTIAL RELAXED CABLE REGULATION

Network		Independent		Distant Stations			Cable Penetration[a]	Index of Local Station Audience[b] If Cable Exists				
				Prim.	Dupl.			Network		Independent		
VHF	UHF	VHF	UHF	Net.	Net.	Ind.		VHF	UHF	VHF	UHF	Total
Top-50 Markets												
3	0	3	2	0	0	2	25	96- 98		95- 98	105-107	96- 99
				0	0	6	27	90- 92		90- 92	98-100	91- 93
				0	3	6	37	85- 88		85- 88	95- 98	86- 89
3	0	1	1	0	0	2	26	95- 97		94- 96	104-106	95- 97
				0	0	6	30	87- 90		87- 89	95- 98	88- 90
				0	3	6	37	82- 85		82- 85	91- 94	83- 85
3	0	0	2	0	0	2	27	93- 96			103-105	95- 97
				0	0	6	30	86- 89			94- 96	87- 90
				0	3	6	38	80- 83			89- 92	82- 84
3	0	0	0	0	0	3	30	91- 93				91- 93
				0	0	6	32	84- 87				84- 87
				0	3	6	43	78- 81				78- 81
Second-50 Markets												
3	0	0	0	0	0	2	29	94- 96				94- 96
				0	0	5	31	86- 89				86- 89
				0	3	5	41	80- 83				80- 83
2	1	0	0	0	0	2	32	90- 93	99-102			92- 95
				0	0	5	36	82- 85	90- 92			84- 86
				0	3	5	45	75- 78	83- 86			76- 79
2	0	0	0	1	0	2	48	81- 85				81- 85
				1	0	5	51	71- 74				71- 74
				1	3	5	62	62- 65				62- 65
Below-100 Markets												
3	0	0	0	0	0	1	26	97- 99				97- 99
				0	0	4	31	89- 91				89- 91
				0	3	4	39	82- 85				82- 85
1	1	0	0	1	0	1	52	78- 82	90- 95			82- 86
				1	0	4	57	64- 68	73- 77			67- 71
				1	3	4	67	55- 59	64- 68			58- 62
1	0	0	0	2	0	1	74	59- 63				59- 63
				2	0	4	76	45- 48				45- 48
				2	3	4	83	37- 39				37- 39

[a] Eventual equilibrium penetration when the whole market is wired, calculated using equation (*) in Park (1971, p. 27).

[b] Average audience over the full broadcast day. The base (100 percent) is the audience if cable does not exist; it assumes that all the audience watches local stations in the absence of cable (that is, there are no overlapping signals from adjacent markets).

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• Those allowed by existing rules. This varies depending on market rank and the number of stations in the market. Neglecting specialty and noncommercial stations, the maximum numbers are three independents in top-50 markets with no independents of their own, and two networks in markets with only one local network station. The actual numbers for each hypothetical market are the first of the three distant signal lineups shown in the tables.

• A larger number of stations that might be carried if the present rules regarding independent signal carriage were relaxed. In actuality, this number will depend on the system operators' perceptions of how many new subscribers an additional distant station would attract, compared with the cost of importing the additional station. I simply assume that the number is six in top-50 markets,[9] five in the second-50 markets, and four in below-100 markets.

• All of the above plus additional stations that might be carried if rules regarding carriage of network signals were also relaxed. My assumption here is that a full complement of three duplicate distant networks would be carried in all markets in addition to those allowed by current rules.

I use attractiveness indices estimated for distant VHF stations on the cable for all distant signals.[10] To the extent that less attractive UHF stations are actually carried, my projections may tend to overstate the actual diversion due to cable.

Near-term projections for each of the resulting 30 cases are shown in Table 3, and Table 4 shows long-term projections. The near-term projections are based on present cable penetration levels in markets of each type. The long-term projections are based on (usually much higher) ultimate equilibrium penetration levels estimated in Park (1971).[11] These are in all likelihood conservative estimates of cable penetration for the market as a whole; that is, they probably overstate the penetration actually to be expected, and hence overstate the potential audience diversion due to cable. The reason is that the equation is a system penetration equation, not a market penetration equation. It explains the fraction of homes passed by cable that subscribe, not the fraction of all homes in the market. Hence to the extent that some portions of the market remain unwired, I would expect average penetration in the market as a whole to fall short of the values shown.

The projections show the audience if there is cable in the market, as a percentage of the audience if there is no cable. In all cases, I show a range of values. The lower end of the range is calculated assuming that cable does not lead to increased TV viewing—households that subscribe to cable if it exists would watch as much TV if cable did not exist. The upper end of the range assumes that cable does result in increased viewing, which partially offsets the diversion of audience to distant signals.

In the larger (three-network) markets, projected audience diversion in the near term is minimal—6 percent or less under present regulations, and 13 percent or less under the most relaxed regulations. In smaller markets (fewer than three networks), projected diversion ranges form 8 to 23 percent currently. The maximum projected diversion is 32 percent for a single station market under relaxed regulations. In all cases, UHF stations are not hurt as much by cable as are VHF stations; in some instances, they may actually be helped.

Long-term diversion patterns are similar to the short-term patterns, but the magnitudes are larger. Projected diversion ranges up to 24 percent in markets with three network stations under the most relaxed cable regulations, and much higher than that in markets with only one or two stations.

There is reason to believe that my projections substantially overstate the amount of diversion in small markets. The reasons is that the projections assume that everyone would watch local stations if there were no cable. This is a fairly good approximation in most large markets, but not in many smaller markets where stations from adjacent markets attract substantial audiences off the air. Indeed, a study by the National Cable Television Association (1978) shows that audience diversion off the air is almost as large as it is on the cable in many of the markets that it studied. On this ground, the effect of cable may be much smaller than shown in Tables 3 and 4 for many small markets.

III. Discussion of Industry Criticisms

I find the following major criticisms in the industry comments on my earlier work.

1. There are problems with the data "* * * primarily related to the 'local' versus 'distant' definition." (*Joint Motion*, pp. 12–15; also Association of Independent Television Stations, pp. 17–20).

2. Failure to consider differences in diversion during different times of the day (*Joint Motion*, pp. 17–19; Fisher, pp. 1–3; Charles River Associates, passim).

3. The total audience equation is unreliable, and the overall results are quite sensitive to how total audience is treated (Fisher, pp. 3–14).

4. Failure to distinguish between additional network *stations* and additional network *programs* (Fisher, pp. 14–15).

5. Failure to account for differences in reception quality in different parts of a county (Fisher, pp. 15–17).

6. Failure to account for differential effect of additional distant independent signals on local independents (Fisher, p. 17; also Schink, passim).

I shall discuss each of these criticisms in turn in the light of the revised estimates presented in the preceding section of this Note.

Data Problems

The *Joint Motion* (p. 14) refers to "* * * serious problems with the data for 35 of the 121 counties * * *" and then goes on to specify the "problems" in 14 of the 35. In one county, the problem is a key punch error that has been corrected in the data used for the revised estimates in this Note. In two others, the "problem" is that all reportable stations are local; the *Joint Motion* incorrectly claims that such counties contribute nothing to the analysis. In fact, they contribute to the estimates of the error covariance matrix, which plays a central role in my generalized least squares analysis.

In the 11 other listed counties, the "problem" is that one local station (or in one case, two local stations) has no off-the-air audience.[12] In the revised data, there are 15 local commercial stations (out of 358 total) in 13 counties with off-the-air NWC [13] equal to zero.[14]

[9] This corresponds to the assumption in schink and Thanawala (1978).

[10] Specifically, I use .38 for primary network signals (which are not blacked out), .19 for duplicate network signals (which are), and .40 for independents.

[11] I assume price of cable service equals $90 per year, median family income equals $16,000 per year, and UHF set penetration equals 100 percent, all approximating current values. Color set penetration is set equal to .5, approximately the mean value in the sample used to estimate the equation, since the coefficient on the color set variable was completely insignificant in the estimated equation. For each market situation, I calculate penetration at the center of the market and penetration halfway out to the B-contour, and average the two figures to obtain the estimates shown in the table for the market as a whole.

[12] In two of these counties, the offending station is no longer considered to be local by the definition used for the revised data; see Section II above.

[13] NWC is net weekly circulation, the percent of TV households that watches the station at least once a week.

[14] The 15 stations include three VHF and six UHF network affiliates, and six UHF independents.

The *Joint Motion* seems to maintain that zero off-the-air audience is by itself reason to exclude a station from the sample. That contention is false. It is a fact of life that some stations get little or no audience in some parts of their own markets. One of the benefits of cable is that it improves reception so that these stations can attract some audience in previously dead areas.[15]

However, zero off-the-air audience *may* serve as a warning that some of these stations are not representative of the relatively close-in areas that we want to draw inferences for. To check this, I measured the approximate distance from the station's assigned city to the principal city of the county, for each of the stations with zero NWC. The results are shown in Table 5.

[15] Thus the contention of Independent Television Stations (1979, p. 18) that the effect of cable should be measured so as to *exclude* the effect of improved reception is difficult to understand. To exclude improved reception would be to exclude an important real effect.

The *Joint Motion* singled out for special discussion KXON in county 18, 125 miles distant. There is certainly a strong case for considering this not to be typical of relatively close-in portions of a market. In contrast are the two San Francisco UHF independents which have zero reported NWC *in their home county*. There is no question but that these are local stations, and there is no reason to exclude them from the sample just because they have no off-the-air audience. In between, the question of which stations ought to be included and which excluded is a matter of judgment. The advantage of including stations (at least up through WZTV at 65 miles) is that it bolsters a sample that is in any case somewhat thin in independent stations. The advantage of excluding stations (down through WHAE at 40 miles) is that it reduces the extent to which the observations are atypical of the 35-mile zone which we are particularly interested in.

Table 5

APPROXIMATE DISTANCE FROM SAMPLE COUNTIES TO STATIONS WITH OFF-THE-AIR NWC EQUAL TO ZERO

County	Station	Type	Distance
5	KGSC	IU	0
5	KDTV	IU	0
29	WHTV	NU	30
90	KLAA	NU	30
41	WHAE	IU	40
157	KXTX	IU	45
47	WYEA	NU	50
4	KLAA	NU	55
47	WHAE	IU	65
147	WZTV	IU	65
60	KMEG	NU	70
87	WTVK	NU	70
142	KXON	NV	70
140	KXON	NV	95
18	KXON	NV	125

Anyhow, I checked the effect of excluding *all* of the stations with off-the-air NWC equal to zero, and found it to be small. In the reduced sample, there are no observations for these stations, nor are they counted among the competing stations received off-the-air.[16]

[16] All of them are carried and attract positive audience on the cable, so they count among competing stations on the cable.

The second-stage constrained share equation for the full-day time period is in Appendix Table A.4. Audience diversion projections based on these estimates are shown in Tables 6 and 7. Excluding these stations makes very little difference to the projections, and what difference there is, is usually in the direction of *less* diversion.

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Table 6

NEAR-TERM EFFECT OF CABLE ON LOCAL STATION AUDIENCE IN REPRESENTATIVE MARKETS UNDER PRESENT AND POTENTIAL RELAXED CABLE REGULATION
Using Attractiveness Indices Estimated with Sample That Excludes Local Stations with Off-the-Air NWC Equal to Zero

Network		Independent		Distant Stations			Cable Penetration[a]	Index of Local Station Audience[b] If Cable Exists				
				Prim.	Dupl.			Network		Independent		
VHF	UHF	VHF	UHF	Net.	Net.	Ind.		VHF	UHF	VHF	UHF	Total
Top-50 Markets												
3	0	3	2	0	0	2	11	98- 99		98- 99	101-102	99-100
				0	0	6	11	96- 97		96- 97	99-100	97- 98
				0	3	6	11	96- 97		96- 97	98- 99	96- 97
3	0	1	1	0	0	2	16	97- 99		97- 98	101-103	97- 99
				0	0	6	16	94- 95		93- 95	97- 98	94- 95
				0	3	6	16	93- 94		93- 94	96- 97	93- 94
3	0	0	2	0	0	2	8	98- 99			100-101	98- 99
				0	0	6	8	96- 97			98- 99	96- 97
				0	3	6	8	96- 96			97- 98	96- 97
3	0	0	0	0	0	3	20	94- 96				94- 96
				0	0	6	20	91- 92				91- 92
				0	3	6	20	89- 91				89- 91
Second-50 Markets												
3	0	0	0	0	0	2	17	96- 98				96- 98
				0	0	5	17	93- 95				93- 95
				0	3	5	17	92- 93				92- 93
2	1	0	0	0	0	2	18	95- 96	99-101			96- 97
				0	0	5	18	91- 93	94- 96			92- 93
				0	3	5	18	90- 91	93- 94			90- 92
2	0	0	0	1	0	2	24	91- 93				91- 93
				1	0	5	24	87- 88				87- 88
				1	3	5	24	85- 87				85- 87
Below-100 Markets												
3	0	0	0	0	0	1	29	97- 99				97- 99
				0	0	4	29	90- 92				90- 92
				0	3	4	29	88- 90				88- 90
1	1	0	0	1	0	1	31	87- 90	94- 96			89- 92
				1	0	4	31	81- 83	85- 88			82- 85
				1	3	4	31	79- 81	83- 85			80- 82
1	0	0	0	2	0	1	41	77- 80				77- 80
				2	0	4	41	70- 73				70- 73
				2	3	4	41	68- 71				68- 71

[a] Average present penetration in markets of each type. Data supplied by FCC Cable Bureau.

[b] Average audience over the full broadcast day. The base (100 percent) is the audience if cable does not exist; it assumes that all the audience watches local stations in the absence of cable (that is, there are no overlapping signals from adjacent markets).

Table 7

LONG-TERM EFFECT OF CABLE ON LOCAL STATION AUDIENCE IN REPRESENTATIVE MARKETS UNDER PRESENT AND POTENTIAL RELAXED CABLE REGULATION
Using Attractiveness Indices Estimated with Sample That Excludes Local Stations with Off-the-Air NWC Equal to Zero

Network		Independent		Distant Stations			Cable Penetration[a]	Index of Local Station Audience[b] If Cable Exists				
				Prim.	Dupl.			Network		Independent		
VHF	UHF	VHF	UHF	Net.	Net.	Ind.		VHF	UHF	VHF	UHF	Total
Top-50 Markets												
3	0	3	2	0	0	2	25	96- 99		96- 98	103-106	97- 99
				0	0	6	27	91- 93		90- 93	97-100	92- 94
				0	3	6	37	87- 90		86- 89	94- 97	87- 90
3	0	1	1	0	0	2	26	95- 98		94- 97	102-105	96- 98
				0	0	6	30	88- 91		88- 90	94- 97	89- 91
				0	3	6	37	83- 86		83- 85	90- 93	84- 87
3	0	0	2	0	0	2	27	94- 96			101-104	95- 98
				0	0	6	30	87- 90			93- 96	88- 91
				0	3	6	38	82- 85			88- 91	83- 86
3	0	0	0	0	0	3	30	92- 94				92- 94
				0	0	6	32	85- 88				85- 88
				0	3	6	43	79- 82				79- 82
Second-50 Markets												
3	0	0	0	0	0	2	29	94- 97				94- 97
				0	0	5	31	87- 90				87- 90
				0	3	5	41	81- 84				81- 84
2	1	0	0	0	0	2	32	91- 94	99-101			93- 95
				0	0	5	36	83- 86	90- 93			85- 87
				0	3	5	45	76- 79	83- 87			78- 81
2	0	0	0	1	0	2	48	82- 86				82- 86
				1	0	5	51	72- 75				72- 75
				1	3	5	62	63- 67				63- 67
Below-100 Markets												
3	0	0	0	0	0	1	26	97- 99				97- 99
				0	0	4	31	89- 92				89- 92
				0	3	4	39	83- 86				83- 86
1	1	0	0	1	0	1	52	79- 83	89- 94			83- 87
				1	0	4	57	66- 69	74- 77			69- 72
				1	3	4	67	57- 60	65- 68			60- 63
1	0	0	0	2	0	1	74	60- 64				60- 64
				2	0	4	76	46- 49				46- 49
				2	3	4	83	38- 40				38- 40

[a] Eventual equilibrium penetration when the whole market is wired, calculated using equation (*) in Park (1971, p. 27).

[b] Average audience over the full broadcast day. The base (100 percent) is the audience if cable does not exist; it assumes that all the audience watches local stations in the absence of cable (that is, there are no overlapping signals from adjacent markets).

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I cannot discuss the "problems" in the other 24 counties, since the *Joint Motion* failed to identify them.

Conclusion

Some of the data problems identified in the industry comments are not problems at all. Others are, and have been corrected. Still others may or may not be, but they make very little difference to the audience diversion projections.

Different Effects of Audience Diversion in Different Time Periods

The audience share equations in Table 2 strongly support the industry contention that shares differ significantly by day part. In particular, attractiveness indices for independent stations on the cable—VHF and UHF, local and distant—are substantially larger during the early fringe time period than they are at other times of the day. This raises two questions about my audience diversion projections in Tables 3 and 4, which are based on the full-day equation only.

1. Would the projections differ if they were based on audience diversion calculated separately for the individual day parts?

2. An excellent brief econometric study by Charles River Associates (1979) shows quite convincingly that audience during different time periods has different effects on stations' revenue. Another study using an accounting approach (Roger Cooper and Associates, undated) reaches the same conclusion.[17] If these differences were taken into account, would the effect of cable on local station *revenue* differ from its effect on local station audience?

The answer to the first question is no; composite audience diversion projections built up from the four individual time period equations[18] differ only slightly from those based directly on the full-day equation. These composite projections are in Appendix Tables A.5 and A.6.[19]

The off-the-air (0) and cable (C) shares are calculated using the equations in Table 2. Cable penetration is assumed to be .41; this corresponds to a somewhat larger fraction of audience because the fraction of homes using TV is higher in cable households than it is in off-the-air households. Hours (0) that off-the-air households watch the local station is calculated as the product of hours per week in the time period and off-the-air (0) values for share, fraction of TVH, and homes using TV. Hours (C) that cable households watch the local station is similarly calculated using corresponding cable (C) values. C_o is hours that cable households would watch the local station if they did not have cable. It is calculated in the same way as cable hours (C) except using off-the-air (0) shares. The total hours that the local station is watched if there is no cable is the sum of hours (0) and hours

[17] The two studies differ markedly as to the relative value of the different time periods to independent stations, however. Charles River Associates concludes that audience during prime time and late fringe is of no value at all to independents; whereas Roger Cooper and Associates (who study only independents) find that these two time periods are *more* valuable than the others are.

[18] The four time periods (daytime, early fringe, prime time, and late fringe) exclude 33 weekend hours that are included in the 140 weekly hours for the full-day time period—see Appendix B. Thus, strictly speaking, the two sets of projections are not quite comparable. However, the effect of this discrepancy is certainly very small.

[19] As an example of how the calculations are done, consider the effect of cable on audience share for the station shown on the very last line of Table A.5. (The effect on share is the same as the effect on audience assuming that the self-selection hypothesis is true.) The calculations are summarized in the following table:

Period	Hours Per Week	Share 0	Share C	Fraction of TVH 0	Fraction of TVH C	Homes Using TV 0	Homes Using TV C	Hours 0	Hours C_o	Hours C	Total Hours Without Cable	Total Hours With Cable
F	140.0	1.	.255	.59	.41	.287	.313	23.71	17.97	4.58	41.68	28.29
D	47.5	1.	.282	.59	.41	.210	.339	5.89	4.65	1.31	10.54	7.20
E	15.0	1.	.177	.59	.41	.414	.426	3.66	2.62	.46	6.28	4.12
P	24.5	1.	.282	.59	.41	.596	.628	8.62	6.31	1.78	14.93	10.40
L	20.0	1.	.292	.59	.41	.153	.178	1.81	1.46	.43	3.27	2.24
Composite	107.0										35.02	23.96

(C_o); total hours if there is cable is the sum of hours (0) and hours (C). These sum to 35.02 and 23.96, respectively, for the four time periods. Thus the effect of cable is to reduce local station viewing hours to 68 percent of what they would have been without cable. This is the smaller of the two composite estimates shown in Table A.5; it is just the same as the corresponding estimate based on the full-day equation in Table 3.

The answer to the second question, surprisingly, is also no; using the revenue weights estimated by Charles River Associates or Roger Cooper and Associates [20] similarly has little effect on the projections. The revenue projections based on separate time period audience diversion projections and separate values of audience in the different time periods are shown in Tables 8 and 9 (Charles River weights) and Tables 10 and 11 (Roger Cooper weights for independents, Charles River weights for affiliates).[21] For the most part, any differences between these revenue projections and the audience projections in Tables 3 and 4 are no larger than one percentage point. The exception is projections for UHF independents using Charles River weights. With audience as the metric, these stations were helped by cable, or at worst, hurt less than VHF stations. Their projected revenues, however, are reduced by about the same amount as are those of VHF stations. This result is, however, dependent on the choice of Charles River weights. Revenue projections using Roger Cooper weights are almost the same as the audience projections in Tables 3 and 4.

[20] Specifically, the weights from the second equation in the table following p. 5 for network affiliates, and from the second equation in the table following p. 6 for independents, Charles River Associates (1979); and the weights for all 12 stations, Roger Cooper and Associates (undated, p. 2):

In estimating the equations, Charles River Associates added weekend hours not counted by ARB in any of the four individual time periods (see footnote above, p. 22) to the daytime time period. Again, this discrepancy in treatment certainly has only a negligible effect on my results.

[21] The calculations are a straightforward extension of those for Appendix Tables A.5 and A.6 described in the footnote above. Pursuing the example of the station on the very last line of Table A.5 (and Table 8), the calculations start where those previously described leave off:

Multiplying total hours by the Charles River Associates revenue weights gives total revenue with and without cable in existence. Summing revenue over time periods, we find that the effect of cable is to reduce local station revenue to 68 percent of what it otherwise would have been-just the same as its effect on aggregate audience.

Time Period	Charles River Associates		Roger Cooper and Associates	
	Affiliates	Independents	Affiliates	Independents
Daytime	-27.87	153.88	--	50
Early Fringe	287.70	401.51	--	121
Prime Time	198.06	27.46	--	147
Late Fringe	517.40	-174.76	--	173

Time Period	Total Hours		Revenue Weights	Total Revenue	
	Without Cable	With Cable		Without Cable	With Cable
F	41.68	28.29	128.14	5341	3625
D	10.54	7.20	-27.87	-294	-201
E	6.28	4.12	287.70	1807	1185
P	14.93	10.40	198.06	2957	2060
L	3.27	2.24	517.40	1692	1159
Composite	35.02	23.96		6162	4203

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Table 8

NEAR-TERM EFFECT OF CABLE ON LOCAL STATION REVENUE IN REPRESENTATIVE MARKETS UNDER PRESENT AND POTENTIAL RELAXED CABLE REGULATION
Composite Estimates Based on Audience Share Equations for Four Time Periods and Using Charles River Associates Revenue Weights

Network		Independent		Distant Stations			Cable Penetration[a]	Index of Local Station Audience[b] If Cable Exists				
								Network		Independent		
VHF	UHF	VHF	UHF	Prim. Net.	Dupl. Net.	Ind.		VHF	UHF	VHF	UHF	Total
Top-50 Markets												
3	0	3	2	0	0	2	11	98- 99		99- 99	100-100	99- 99
				0	0	6	11	96- 97		96- 97	97- 98	96- 97
				0	3	6	11	96- 97		96- 96	97- 97	96- 97
3	0	1	1	0	0	2	16	97- 98		98- 98	99- 99	97- 98
				0	0	6	16	94- 95		93- 94	94- 95	94- 95
				0	3	6	16	93- 94		92- 93	93- 94	93- 94
3	0	0	2	0	0	2	8	98- 99			99-100	98- 99
				0	0	6	8	96- 97			96- 97	96- 97
				0	3	6	8	96- 96			96- 96	96- 96
3	0	0	0	0	0	3	20	94- 95				94- 95
				0	0	6	20	90- 92				90- 92
				0	3	6	20	89- 90				89- 90
Second-50 Markets												
3	0	0	0	0	0	2	17	96- 97				96- 97
				0	0	5	17	93- 94				93- 94
				0	3	5	17	92- 93				92- 93
2	1	0	0	0	0	2	18	94- 95	100-101			95- 97
				0	0	5	18	91- 92	95- 96			92- 93
				0	3	5	18	89- 91	93- 95			90- 91
2	0	0	0	1	0	2	24	91- 92				91- 92
				1	0	5	24	86- 88				86- 88
				1	3	5	24	85- 86				85- 86
Below-100 Markets												
3	0	0	0	0	0	1	29	96- 98				96- 98
				0	0	4	29	89- 91				89- 91
				0	3	4	29	87- 89				87- 89
1	1	0	0	1	0	1	31	87- 89	95- 97			89- 91
				1	0	4	31	80- 82	86- 88			82- 84
				1	3	4	31	78- 80	83- 85			80- 82
1	0	0	0	2	0	1	41	77- 79				77- 79
				2	0	4	41	70- 72				70- 72
				2	3	4	41	68- 70				68- 70

[a] Average present penetration in markets of each type. Data supplied by FCC Cable Bureau.

[b] The base (100 percent) is the revenue if cable does not exist; it assumes that all the audience watches local stations in the absence of cable (that is, there are no overlapping signals from adjacent markets).

Table 9

LONG-TERM EFFECT OF CABLE ON LOCAL STATION REVENUE IN REPRESENTATIVE MARKETS UNDER PRESENT AND POTENTIAL RELAXED CABLE REGULATION
Composite Estimates Based on Audience Share Equations for Four Time Periods and Using Charles River Associates Revenue Weights

Network		Independent		Distant Stations			Cable Penetration[a]	Index of Local Station Audience[b] If Cable Exists				
				Prim.	Dupl.			Network		Independent		
VHF	UHF	VHF	UHF	Net.	Net.	Ind.		VHF	UHF	VHF	UHF	Total
Top-50 Markets												
3	0	3	2	0	0	2	25	96- 98		97- 98	99-100	97- 98
				0	0	6	27	91- 93		91- 92	92- 94	91- 93
				0	3	6	37	86- 88		86- 88	88- 90	86- 88
3	0	1	1	0	0	2	26	95- 97		96- 97	98- 99	95- 97
				0	0	6	30	88- 90		87- 89	89- 90	88- 90
				0	3	6	37	83- 85		82- 84	84- 86	83- 85
3	0	0	2	0	0	2	27	94- 96			97- 99	94- 96
				0	0	6	30	87- 89			88- 89	87- 89
				0	3	6	38	81- 83			82- 84	81- 83
3	0	0	0	0	0	3	30	91- 93				91- 93
				0	0	6	32	85- 87				85- 87
				0	3	6	43	78- 80				78- 80
Second-50 Markets												
3	0	0	0	0	0	2	29	94- 95				94- 95
				0	0	5	31	87- 89				87- 89
				0	3	5	41	80- 83				80- 83
2	1	0	0	0	0	2	32	90- 92	100-102			92- 94
				0	0	5	36	83- 85	91- 93			84- 86
				0	3	5	45	75- 77	84- 87			77- 79
2	0	0	0	1	0	2	48	81- 84				81- 84
				1	0	5	51	71- 74				71- 74
				1	3	5	62	62- 65				62- 65
Below-100 Markets												
3	0	0	0	0	0	1	26	97- 98				97- 98
				0	0	4	31	89- 91				89- 91
				0	3	4	39	82- 85				82- 85
1	1	0	0	1	0	1	52	78- 81	91- 94			82- 86
				1	0	4	57	65- 67	75- 78			68- 71
				1	3	4	67	55- 58	66- 69			59- 62
1	0	0	0	2	0	1	74	59- 63				59- 63
				2	0	4	76	45- 48				45- 48
				2	3	4	83	37- 39				37- 39

[a] Eventual equilibrium penetration when the whole market is wired, calculated using equation (*) in Park (1971, p. 27).

[b] The base (100 percent) is the revenue if cable does not exist; it assumes that all the audience watches local stations in the absence of cable (that is, there are no overlapping signals from adjacent markets).

Table 10

NEAR-TERM EFFECT OF CABLE ON LOCAL STATION REVENUE IN REPRESENTATIVE MARKETS UNDER PRESENT AND POTENTIAL RELAXED CABLE REGULATION
Composite Estimates Based on Audience Share Equations for Four Time Periods and Using Roger Cooper and Associates Revenue Weights

Network		Independent		Distant Stations			Cable Penetration[a]	Index of Local Station Audience[b] If Cable Exists				
				Prim.	Dupl.			Network		Independent		
VHF	UHF	VHF	UHF	Net.	Net.	Ind.		VHF	UHF	VHF	UHF	Total
Top-50 Markets												
3	0	3	2	0	0	2	11	98- 99		98- 98	101-102	98- 99
				0	0	6	11	96- 97		96- 96	99- 99	96- 97
				0	3	6	11	96- 97		95- 96	98- 99	96- 97
3	0	1	1	0	0	2	16	97- 98		96- 97	101-102	97- 98
				0	0	6	16	94- 95		93- 94	96- 97	94- 95
				0	3	6	16	93- 94		92- 93	95- 96	93- 94
3	0	0	2	0	0	2	8	98- 99			100-101	98- 99
				0	0	6	8	96- 97			98- 98	96- 97
				0	3	6	8	96- 96			97- 98	96- 96
3	0	0	0	0	0	3	20	94- 95				94- 95
				0	0	6	20	90- 92				90- 92
				0	3	6	20	89- 90				89- 90
Second-50 Markets												
3	0	0	0	0	0	2	17	96- 97				96- 97
				0	0	5	17	93- 94				93- 94
				0	3	5	17	92- 93				92- 93
2	1	0	0	0	0	2	18	94- 95	100-101			95- 97
				0	0	5	18	91- 92	95- 96			92- 93
				0	3	5	18	89- 91	93- 95			90- 91
2	0	0	0	1	0	2	24	91- 92				91- 92
				1	0	5	24	86- 88				86- 88
				1	3	5	24	85- 86				85- 86
Below-100 Markets												
3	0	0	0	0	0	1	29	96- 98				96- 98
				0	0	4	29	89- 91				89- 91
				0	3	4	29	87- 89				87- 89
1	1	0	0	1	0	1	31	87- 89	95- 97			89- 91
				1	0	4	31	80- 82	86- 88			82- 84
				1	3	4	31	78- 80	83- 85			80- 82
1	0	0	0	2	0	1	41	77- 79				77- 79
				2	0	4	41	70- 72				70- 72
				2	3	4	41	68- 70				68- 70

[a] Eventual equilibrium penetration when the whole market is wired, calculated using equation (*) in Park (1971, p. 27).

[b] The base (100 percent) is the revenue if cable does not exist; it assumes that all the audience watches local stations in the absence of cable (that is, there are no overlapping signals from adjacent markets.

Table 11

LONG-TERM EFFECT OF CABLE ON LOCAL STATION REVENUE IN REPRESENTATIVE MARKETS UNDER PRESENT AND POTENTIAL RELAXED CABLE REGULATION
Composite Estimates Based on Audience Share Equations for Four Time Periods and Using Roger Cooper and Associates Revenue Weights

Network		Independent		Distant Stations			Cable Penetration[a]	Index of Local Station Audience[b] If Cable Exists				
				Prim.	Dupl.			Network		Independent		
VHF	UHF	VHF	UHF	Net.	Net.	Ind.		VHF	UHF	VHF	UHF	Total
Top-50 Markets												
3	0	3	2	0	0	2	25	96- 98		95- 96	103-105	96- 98
				0	0	6	27	91- 93		89- 91	96- 98	91- 93
				0	3	6	37	86- 88		84- 86	93- 96	86- 88
3	0	1	1	0	0	2	26	95- 97		93- 95	101-104	95- 97
				0	0	6	30	88- 90		87- 88	93- 95	88- 90
				0	3	6	37	83- 85		81- 83	89- 91	83- 85
3	0	0	2	0	0	2	27	94- 96			101-103	94- 96
				0	0	6	30	87- 89			92- 94	87- 89
				0	3	6	38	81- 83			87- 89	82- 84
3	0	0	0	0	0	3	30	91- 93				91- 93
				0	0	6	32	85- 87				85- 87
				0	3	6	43	78- 80				78- 80
Second-50 Markets												
3	0	0	0	0	0	2	29	94- 95				94- 95
				0	0	5	31	87- 89				87- 89
				0	3	5	41	80- 83				80- 83
2	1	0	0	0	0	2	32	90- 92	100-102			92- 94
				0	0	5	36	83- 85	91- 93			84- 86
				0	3	5	45	75- 77	84- 87			77- 79
2	0	0	0	1	0	2	48	81- 84				81- 84
				1	0	5	51	71- 74				71- 74
				1	3	5	62	62- 65				62- 65
Below-100 Markets												
3	0	0	0	0	0	1	26	97- 98				97- 98
				0	0	4	31	89- 91				89- 91
				0	3	4	39	82- 85				82- 85
1	1	0	0	1	0	1	52	78- 81	91- 94			82- 86
				1	0	4	57	65- 67	75- 78			68- 71
				1	3	4	67	55- 58	66- 69			59- 62
1	0	0	0	2	0	1	74	59- 63				59- 63
				2	0	4	76	45- 48				45- 48
				2	3	4	83	37- 39				37- 39

[a] Eventual equilibrium penetration when the whole market is wired, calculated using equation (*) in Park (1971, p. 27).

[b] The base (100 percent) is the revenue if cable does not exist; it assumes that all the audience watches local stations in the absence of cable (that is, there are no overlapping signals from adjacent markets.

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Conclusion

Audience projections are not affected by taking into account differences in diversion among different periods of the day. Revenue projections, which in addition take into account different values of audience during different time periods, are about the same as the audience projections, except possibly for UHF independent stations. For UHF independents, the results depend on which set of estimated revenue weights one uses. Using one set, projected revenues are reduced by cable by more than is projected audience; using the other set, projected revenue is much the same as projected audience for all types of stations.

Senstivity to Treatment of Total Audience

Most of Fisher's critique (11 out of 19 pages) is devoted to criticism of the total audience equation.[22] He concludes that the equation has so many problems that one might just as well use weighted averages for off-the-air and cable total audience instead of audience predicted by the equation. I reached the same conclusion in my earlier report, but used a different kind of average in my projections. To calculate average audience, I substituted into the total audience equation mean values for all variables except the dummy variable that distinguishes off-the-air and cable audience.

Fisher incorrectly claims (pp. 10–11) that using his averages rather than my averages can make a large difference in some markets. His "demonstration" that this is true for a two-UHF and one-UHF network station market is incorrect—*arithmetically in error.*[23] In fact, it makes almost no difference at all which averages are used. Projections based on Fisher's weighted averages and my revised audience share equation for the full day[24] are shown in Tables 12 and 13. They differ from the projections using my averages (Tables 3 and 4) by at most one percentage point.

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[22] Park (1979a, pp. 11–23).

[23] Fisher's example is cable carrying five distant independents into the second-50 market with two VHF and one UHF affiliates (1979a, Table 8, p. 36). The correct calculation for one of the VHF network affiliates, following the same format as the example in Park (1979a, pp. 31–33), is:

If there is cable: The fraction of noncable households using television is .280, and the fraction for cable households is .299 (Fisher's weighted averages). Cable penetration is .36. Therefore, total audience in noncable households is $.280\times.64T$, and total audience in cable households is $.299\times.36T$. A network VHF station's share of this audience is calculated using the attractiveness indices estimated in (1979a, Table 6). Its share in noncable households is $1/(2+.45)=.408$; its share in cable homes is $1/(2+.61+5\times.32)=.238$. Thus its total audience is $.408\times.280\times.64T+.238\times.299\times.36T=.0987T$.

If there is no cable and cable does not lead to increased viewing: Of those households that would not subscribe to cable if it were offered, the fraction using television is .280. The corresponding fraction of households that would subscribe if they could is .299; these are more avid viewers, even in the absence of cable. The station attracts a .408 share of both portions of the audience, for a total of $.408\times.280\times.64T+.408\times.299\times.36T=.1170T$.

If there is no cable and cable does lead to increased TV viewing: Of those households that would not subscribe to cable if it were available, the fraction .280 is using television. The fraction for households that would subscribe is the same. They would watch more if they did subscribe, but without cable they are indistinguishable from the others. The station gets a .408 share of both portions. Its total audience is $.408\times.280\times.64T+.408\times.280\times.36T=.1142T$.

These three audience calculations are the basis for the audience diversion projection. The network VHF station's audience with cable (.0987T) is 84 percent of its audience without cable if the self-selection hypothesis is true (.1170T), and 86 percent of its audience without cable if the self-selection hypothesis is false (.1142T). Thus the correct range is from 84–86 percent using Fisher's weighted averages, compared with 84–87 percent calculated in (1979a) using my averages and 79–80 in Fisher's erroneous calculation. Similar calculations for the UHF affiliate yield a range of 92–94, compared with 92–95 in (1979a) and 84–86 in Fisher.

[24] This Note, Table 2.

Table 12

NEAR-TERM EFFECT OF CABLE ON LOCAL STATION AUDIENCE IN REPRESENTATIVE MARKETS UNDER PRESENT AND POTENTIAL RELAXED CABLE REGULATION
Estimates Using Fisher's Weighted Average Total Audience Figures

Network		Independent		Distant Stations			Cable Penetration[a]	Index of Local Station Audience[b] If Cable Exists				
				Prim.	Dupl.			Network		Independent		
VHF	UHF	VHF	UHF	Net.	Net.	Ind.		VHF	UHF	VHF	UHF	Total
Top-50 Markets												
3	0	3	2	0	0	2	11	98- 99		98- 99	102-103	98- 99
				0	0	6	11	96- 97		96- 97	99-100	96- 97
				0	3	6	11	96- 96		95- 96	98- 99	96- 97
3	0	1	1	0	0	2	16	97- 98		97- 98	102-103	97- 98
				0	0	6	16	93- 94		93- 94	97- 98	94- 95
				0	3	6	16	92- 93		92- 93	96- 97	93- 94
3	0	0	2	0	0	2	8	98- 98			101-101	98- 99
				0	0	6	8	96- 97			98- 99	96- 97
				0	3	6	8	95- 96			97- 98	96- 96
3	0	0	0	0	0	3	20	94- 95				94- 95
				0	0	6	20	90- 91				90- 91
				0	3	6	20	89- 90				89- 90
Second-50 Markets												
3	0	0	0	0	0	2	17	96- 97				96- 97
				0	0	5	17	93- 94				93- 94
				0	3	5	17	92- 93				92- 93
2	1	0	0	0	0	2	18	94- 96	100-101			95- 97
				0	0	5	18	91- 92	94- 96			91- 93
				0	3	5	18	89- 91	93- 94			90- 91
2	0	0	0	1	0	2	24	91- 92				91- 92
				1	0	5	24	86- 88				86- 88
				1	3	5	24	85- 86				85- 86
Below-100 Markets												
3	0	0	0	0	0	1	29	96- 98				96- 98
				0	0	4	29	89- 91				89- 91
				0	3	4	29	87- 89				87- 89
1	1	0	0	1	0	1	31	87- 89	94- 96			89- 91
				1	0	4	31	80- 82	85- 87			82- 83
				1	3	4	31	78- 80	83- 84			80- 81
1	0	0	0	2	0	1	41	77- 79				77- 79
				2	0	4	41	70- 72				70- 72
				2	3	4	41	68- 70				68- 70

[a] Average present penetration in markets of each type. Data supplied by FCC Cable Bureau.

[b] Average audience over the full broadcast day. The base (100 percent) is the audience if cable does not exist; it assumes that all the audience watches local stations in the absence of cable (that is, there are no overlapping signals from adjacent markets).

Table 13

LONG-TERM EFFECT OF CABLE ON LOCAL STATION AUDIENCE IN REPRESENTATIVE MARKETS UNDER PRESENT AND POTENTIAL RELAXED CABLE REGULATION
Estimates Using Fisher's Weighted Average Total Audience Figures

Network		Independent		Distant Stations			Cable Penetration[a]	Index of Local Station Audience[b] If Cable Exists				
				Prim.	Dupl.			Network		Independent		
VHF	UHF	VHF	UHF	Net.	Net.	Ind.		VHF	UHF	VHF	UHF	Total
Top-50 Markets												
3	0	3	2	0	0	2	25	96- 97		95- 97	105-107	96- 98
				0	0	6	27	90- 92		90- 92	98-100	91- 93
				0	3	6	37	85- 88		85- 87	95- 97	86- 88
3	0	1	1	0	0	2	26	95- 96		94- 96	104-106	95- 97
				0	0	6	30	88- 89		87- 89	95- 97	88- 90
				0	3	6	37	82- 85		82- 84	91- 93	83- 85
3	0	0	2	0	0	2	27	94- 95			102-104	95- 97
				0	0	6	30	87- 88			94- 96	88- 89
				0	3	6	38	81- 83			89- 91	82- 84
3	0	0	0	0	0	3	30	91- 93				91- 93
				0	0	6	32	85- 87				85- 87
				0	3	6	43	78- 80				78- 80
Second-50 Markets												
3	0	0	0	0	0	2	29	94- 95				94- 95
				0	0	5	31	87- 89				87- 89
				0	3	5	41	80- 83				80- 83
2	1	0	0	0	0	2	32	90- 92	99-101			92- 94
				0	0	5	36	82- 84	90- 92			84- 86
				0	3	5	45	75- 77	83- 86			77- 79
2	0	0	0	1	0	2	48	82- 84				82- 84
				1	0	5	51	71- 73				71- 73
				1	3	5	62	62- 65				62- 65
Below-100 Markets												
3	0	0	0	0	0	1	26	97- 98				97- 98
				0	0	4	31	89- 91				89- 91
				0	3	4	39	83- 85				83- 85
1	1	0	0	1	0	1	52	79- 81	91- 94			82- 85
				1	0	4	57	65- 67	73- 76			67- 70
				1	3	4	67	56- 58	64- 67			58- 61
1	0	0	0	2	0	1	74	60- 63				60- 63
				2	0	4	76	45- 47				45- 47
				2	3	4	83	37- 39				37- 39

[a] Eventual equilibrium penetration when the whole market is wired, calculated using equation (*) in Park (1971, p. 27).

[b] Average audience over the full broadcast day. The base (100 percent) is the audience if cable does not exist; it assumes that all the audience watches local stations in the absence of cable (that is, there are no overlapping signals from adjacent markets).

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Conclusion

Fisher's criticism of my total audience equation is irrelevant to my projections. I use the equation only to calculate a sort of average total audience. The audience diversion projections are insensitive to whether I use my averages or Fisher's averages.

Distinction Between Network Stations and Network Programs

In my earlier study, I distinguished among distant network signals only on the basis of whether they are VHF or UHF stations. As pointed out in (1979a, p. 9), and reemphasized by Fisher (1979, pp. 14–15), this treatment may mask significant differences in the attractiveness of distant stations. I have gone part way toward correcting this problem in this Note by further distinguishing between stations that are sometimes blacked out on the cable to provide nonduplication protection to local network affiliates, and those that are not. One expects, and the results confirm, that the former are less attractive than the latter.

Some important differences may nevertheless remain unaccounted for in the new results. For example, consider a market with two local network stations. If the cable system carries only one distant station affiliated with the missing network, we would expect that station to be just about as attractive as the local stations. In contrast, if it carries three distant stations affiliated with one of the networks already represented in the market, we would expect their attractiveness indices to be much smaller, even if they were never blacked out. Even my new estimates fail to distinguish between the two situations.

Rather than complicate the model to take such differences into account (a strategy that, in my judgment, is unlikely to be productive), I ran the simulations shown in Tables 14 and 15 to see what difference this additional complication might make. For these simulations, I assume that distant primary network stations have attractiveness indices equal to one.[25] The resulting diversion projections differ from those in Tables 3 and 4 only for one- or two-station markets. In such markets, the Table 14 and 15 projections show quite a lot more diversion due to cable operating under present rules (2 to 7 percentage points more in the near term, 5 to 12 percentage points more in the long term) and somewhat more for cable operating under relaxed rules (1 to 4 near term, 3 to 6 long term). For policy purposes, however, one is perhaps most interested in the *incremental* effect of relaxing the rules, and this is projected to be *smaller* in Tables 14 and 15 than in Tables 3 and 4.

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[25] Rather than .38, which was estimated by lumping together all distant VHF affiliates not blacked out on the cable. I continue to use .19 as the index for duplicate networks on the cable, assuming that these stations are blacked out part of the time.

Table 14

NEAR-TERM EFFECT OF CABLE ON LOCAL STATION AUDIENCE IN REPRESENTATIVE MARKETS UNDER PRESENT AND POTENTIAL RELAXED CABLE REGULATION
Assuming Attractiveness Index of Distant Primary Network Signals = 1.00

Network		Independent		Distant Stations			Cable Penetration[a]	Index of Local Station Audience[b] If Cable Exists				
				Prim.	Dupl.			Network		Independent		
VHF	UHF	VHF	UHF	Net.	Net.	Ind.		VHF	UHF	VHF	UHF	Total
Top-50 Markets												
3	0	3	2	0	0	2	11	98- 99		98- 99	102-103	98- 99
				0	0	6	11	96- 97		96- 97	99-100	96- 97
				0	3	6	11	96- 96		95- 96	98- 99	96- 97
3	0	1	1	0	0	2	16	97- 98		97- 98	102-104	97- 98
				0	0	6	16	93- 95		93- 94	97- 99	93- 95
				0	3	6	16	92- 94		92- 94	96- 97	93- 94
3	0	0	2	0	0	2	8	98- 99			101-102	98- 99
				0	0	6	8	96- 97			98- 99	96- 97
				0	3	6	8	95- 96			97- 98	96- 96
3	0	0	0	0	0	3	20	94- 95				94- 95
				0	0	6	20	90- 92				90- 92
				0	3	6	20	89- 91				89- 91
Second-50 Markets												
3	0	0	0	0	0	2	17	96- 98				96- 98
				0	0	5	17	93- 94				93- 94
				0	3	5	17	92- 93				92- 93
2	1	0	0	0	0	2	18	94- 96	100-101			95- 97
				0	0	5	18	90- 92	94- 96			91- 93
				0	3	5	18	89- 91	93- 94			90- 91
2	0	0	0	1	0	2	24	88- 90				88- 90
				1	0	5	24	85- 86				85- 86
				1	3	5	24	84- 85				84- 85
Below-100 Markets												
3	0	0	0	0	0	1	29	96- 99				96- 99
				0	0	4	29	89- 92				89- 92
				0	3	4	29	87- 89				87- 89
1	1	0	0	1	0	1	31	82- 85	88- 91			84- 87
				1	0	4	31	78- 80	82- 84			79- 81
				1	3	4	31	76- 79	80- 83			78- 80
1	0	0	0	2	0	1	41	70- 72				70- 72
				2	0	4	41	66- 69				66- 69
				2	3	4	41	65- 68				65- 68

[a] Average present penetration in markets of each type. Data supplied by FCC Cable Bureau.

[b] Average audience over the full broadcast day. The base (100 percent) is the audience if cable does not exist; it assumes that all the audience watches local stations in the absence of cable (that is, there are no overlapping signals from adjacent markets).

Table 15

LONG-TERM EFFECT OF CABLE ON LOCAL STATION AUDIENCE IN REPRESENTATIVE MARKETS UNDER PRESENT AND POTENTIAL RELAXED CABLE REGULATION
Assuming Attractiveness Index of Distant Primary Network Signals = 1.00

Network		Independent		Distant Stations			Cable Penetration[a]	Index of Local Station Audience[b] If Cable Exists				
				Prim.	Dupl.			Network		Independent		
VHF	UHF	VHF	UHF	Net.	Net.	Ind.		VHF	UHF	VHF	UHF	Total
Top-50 Markets												
3	0	3	2	0	0	2	25	96- 98		95- 98	105-107	96- 99
				0	0	6	27	90- 92		90- 92	98-100	91- 93
				0	3	6	37	85- 88		85- 88	95- 98	86- 89
3	0	1	1	0	0	2	26	95- 97		94- 96	104-106	95- 97
				0	0	6	30	87- 90		87- 89	95- 98	88- 90
				0	3	6	37	82- 85		82- 85	91- 94	83- 85
3	0	0	2	0	0	2	27	93- 96			103-105	95- 97
				0	0	6	30	86- 89			94- 96	87- 90
				0	3	6	38	80- 83			89- 92	82- 84
3	0	0	0	0	0	3	30	91- 93				91- 93
				0	0	6	32	84- 87				84- 87
				0	3	6	43	78- 81				78- 81
Second-50 Markets												
3	0	0	0	0	0	2	29	94- 96				94- 96
				0	0	5	31	86- 89				86- 89
				0	3	5	41	80- 83				80- 83
2	1	0	0	0	0	2	32	90- 93	99-102			92- 95
				0	0	5	36	82- 85	90- 92			84- 86
				0	3	5	45	75- 78	83- 86			76- 79
2	0	0	0	1	0	2	48	76- 80				76- 80
				1	0	5	51	68- 71				68- 71
				1	3	5	62	59- 62				59- 62
Below-100 Markets												
3	0	0	0	0	0	1	26	97- 99				97- 99
				0	0	4	31	89- 91				89- 91
				0	3	4	39	82- 85				82- 85
1	1	0	0	1	0	1	52	72- 75	81- 85			75- 78
				1	0	4	57	61- 64	68- 72			63- 66
				1	3	4	67	52- 55	60- 63			55- 58
1	0	0	0	2	0	1	74	47- 50				47- 50
				2	0	4	76	39- 41				39- 41
				2	3	4	83	31- 34				31- 34

[a] Eventual equilibrium penetration when the whole market is wired, calculated using equation (*) in Park (1971, p. 27).

[b] Average audience over the full broadcast day. The base (100 percent) is the audience if cable does not exist; it assumes that all the audience watches local stations in the absence of cable (that is, there are no overlapping signals from adjacent markets).

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Conclusion

My results in this Note distinguish between stations that are blacked out to provide nonduplication protection and those that are not. This distinction does not change the audience diversion projections very much from those in my earlier report. If one further assumes that distant primary network stations are just as attractive as local affiliates, the projected diversion due to cable in one- and two-station markets is increased, but the projected incremental diversion due to relaxing present rules is decreased.

Differences in Off-the-Air Reception

Fisher (1979, pp. 15–17) criticizes my assumption concerning off-the-air reception.[26] In (1979a) (and in this Note as well), I assume that a station that attracts any audience at all off the air in a particular county can be received anywhere in that county.[27] Fisher (1979, pp. 15–17) apparently advocates using a different, somewhat more complex, assumption, one which he previously employed in an early cable TV study (1966). He assumed that each station's NWC [28] measures the fraction of households in the county that can receive it.[29]

The histograms plotted in Fig. 1 strongly suggest that neither Fisher's assumption nor mine is perfectly correct. The histograms show the number of stations received in my sample counties, by off-the-air and cable households respectively, that have NWC falling in each 10 percent interval from 0 to 100.[30]

[26] There is no difference between Fisher and me over cable reception. All subscribers to a particular cable system can receive all of the stations carried by that system. (Fisher mentions blackouts to provide nonduplication protection in the context of cable reception. I agree with him that it is important to distinguish between stations that are blacked out and those that are not, and I do so in this Note.)

[27] In addition, for all of my results except those in Tables 6 and 7, I further assume that 15 local stations with no off-the-air audience in the county can also be received there.

[28] Net weekly circulation, the percent of all TV households that watch the station at least once a week.

[29] Fisher further assumed that any household's ability to receive any one station is independent of its ability to receive any others. The result is that all television households in the county are divided into groups of different sizes, each of which can receive one of the possible combinations of signals. In a simple example, say there are two stations received in the county. Station A's NWC is .7, and station B's is .4. Then Fisher's assumptions imply that 28 percent of the television households can receive both A and B, 42 percent receive A but not B, 12 percent receive B but not A, and 18 percent receive neither. (These percentages are calculated as follows: $.7 \times .4 = .28$; $.7 \times (1 - .4) = .42$; $(1 - .7) \times .4 = .12$; $(1 - .7) \times (1 - .4) = .18$.)

In a formal sense, this second (independence) assumption is perfectly compatible with my treatment of reception patterns: If all TV households can (by my assumption) receive each of the stations, then all of them can receive all of the stations. (The calculation is just $1 \times 1 = 1$.)

[30] All have positive NWC except for the 15 local stations that are assumed to be receivable even though their off-the-air NWC equals zero.

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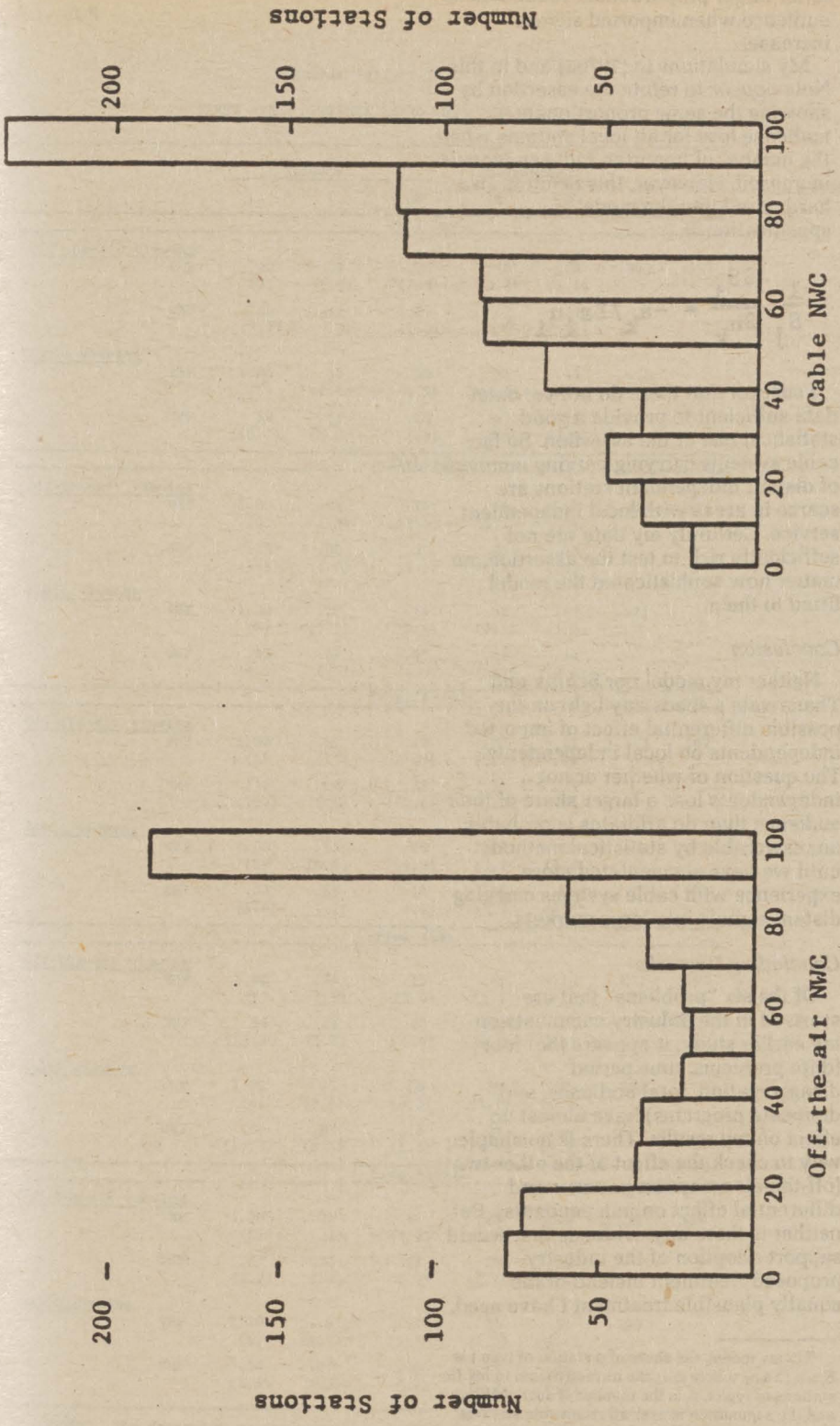

Fig. 1--Frequency count of all stations received in 121 counties by their net weekly circulation off the air and on the cable

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Fisher's assumption equates NWC and receivability. If the assumption were correct, all stations carried on the cable should have NWC equal to 100 percent in cable households, since there is no question but that they are received on the cable. They do not; there are many stations with NWC substantially smaller than 100 percent in cable households.

On the other hand, if my assumption were correct, the cable and off-the-air histograms should have the same appearance. If all stations received by anyone can be received by everyone, then only programming differences remain to account for different NWC. There is no reason to expect that the distribution of programming differs much between stations on the cable and stations received off the air, so the NWC distributions should be similar as well. They are not, implying that there are in fact off-the-air reception differences within counties.

Conclusion

I can see no reason to substitute Fisher's more complex (and necessarily unrealistic) assumption about off-the-air reception patterns within counties for my simpler (and necessarily unrealistic) assumption.

Differential Effects of Distant Signals on Independent Stations

It has been asserted that allowing cable systems to carry additional independent stations will take more audience from local independents than it will from local network affiliates. (See, for example, Schink (1979).) This may or may not be true; I know of no statistical evidence that either supports or refutes the assertion.[31]

The simulations in Schink and Thanawala (1978) *appear* to support it by showing a larger proportionate audience loss for independents than for affiliates when the number of imported independents is increased. However, as pointed out by the FCC (1979) and confirmed by Schink (1979), this is simply a result of the assumed specification of the model. The logistic transformation of the dependent variable together with the linear form of the right-hand side of the equation assure that stations with smaller initial audience shares (like independents) will suffer larger proportionate reductions in audience when imported signals increase.

My simulations in (1979a) and in this Note *appear* to refute the assertion by showing the same proportionate audience loss for all local stations when the number of imported independents is increased. However, this result is also hard wired into the model specification.[32]

$$\frac{1}{S_j}\frac{\partial S_j}{\partial n_k} = -a_k/\Sigma a_i n_i ,$$

I suspect that there do not yet exist data sufficient to provide a good statistical test of the assertion. So far, cable systems carrying varying numbers of distant independent stations are scarce in areas with local independent service. Certainly my data are not sufficiently rich to test the assertion, no matter how sophisticated the model fitted to them.

Conclusion

Neither my model nor Schink and Thanawala's sheds any light on the possible differential effect of imported independents on local independents. The question of whether or not independents lose a larger share of their audience than do affiliates is probably unanswerable by statistical methods until we have accumulated more experience with cable systems carrying distant signals into large markets.

Concluding Remarks

Of the six "problems" that are stressed in the industry comments on my earlier study, it appears that four (data problems, time period disaggregation, total audience, and duplicate programs) have almost no effect on my results. There is no simple way to check the effect of the other two (off-the-air reception patterns and differential effect on independents). But neither is there any evidence that would support adoption of the industry-proposed treatment instead of the equally plausible treatment I have used.

[31] There is some *case study* evidence against the assertion to be found in the grandfathered market analysis by the FCC (1979). The effect of cable on the audience of the seven independent stations studied there (pp. 84–88) is much the same as its effect on all local stations in the six grandfathered markets that were also studied (pp. 74–84).

[32] In my model, the share of a station of type j is $S_j = a_j/\Sigma a_i n_i$, where a_i is the attractiveness index for stations of type i, n_i is the number of such stations, and the summation is over all receivable stations. The proportionate effect of increasing the number of stations of type k on station j's share is

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Appendix Tables
A.1—A.6

Appendix Table A.1

FIRST STAGE AUDIENCE SHARE EQUATIONS

	Network[a]			Independent[a]			
	L	D	DB	L	D	$\hat{\sigma}$	$\hat{\rho}$
Full Day							
Off-the-air viewing							
VHF	1.00	.02	.13	.50	-.16	.992	.657
	(b)	(.5)	(2.9)	(2.8)	(1.0)		
UHF	.40	.12	.29	.23	.27		
	(8.7)	(.5)	(1.0)	(3.4)	(.6)		
Cable viewing							
VHF	1.00	.36	.20	.51	.44	.458	
	(b)	(7.6)	(5.9)	(3.0)	(4.8)		
UHF	.59	.15	.18	.23	.29		
	(10.7)	(1.0)	(.9)	(2.8)	(2.9)		
Daytime							
Off-the-air viewing							
VHF	1.00	.01	.11	.44	-.13	1.210	.621
	(b)	(.3)	(2.3)	(2.1)	(.7)		
UHF	.28	.00	.31	.25	.30		
	(5.8)	(.0)	(1.1)	(3.1)	(.5)		
Cable viewing							
VHF	1.00	.29	.14	.48	.41	.621	
	(b)	(5.1)	(3.4)	(2.1)	(3.3)		
UHF	.43	.07	-.05	.25	.34		
	(6.5)	(.4)	(.3)	(2.2)	(2.4)		
Early Fringe							
Off-the-air viewing							
VHF	1.00	.01	.10	.82	-.11	1.343	.707
	(b)	(.1)	(1.8)	(2.7)	(.6)		
UHF	.34	.02	.35	.36	.25		
	(5.9)	(.1)	(1.0)	(3.4)	(.4)		
Cable viewing							
VHF	1.00	.31	.29	1.13	.87	.652	
	(b)	(4.6)	(4.8)	(3.2)	(4.6)		
UHF	.40	.05	.14	.50	.64		
	(5.4)	(.2)	(.4)	(3.2)	(3.2)		
Prime Time							
Off-the-air viewing							
VHF	1.00	.04	.15	.49	-.19	.871	.499
	(b)	(.9)	(3.4)	(3.3)	(1.3)		
UHF	.55	.29	.27	.15	.17		
	(11.5)	(1.0)	(.9)	(2.8)	(.4)		
Cable viewing							
VHF	1.00	.43	.18	.39	.31	.400	
	(b)	(9.5)	(6.3)	(2.9)	(4.4)		
UHF	.83	.29	.23	.09	.16		
	(14.8)	(1.8)	(1.3)	(1.4)	(2.1)		
Late Fringe							
Off-the-air viewing							
VHF	1.00	-.01	.14	.23	-.18	1.151	.586
	(b)	(.2)	(2.7)	(1.3)	(1.0)		
UHF	.37	.20	.27	.19	.26		
	(7.2)	(.6)	(.9)	(2.6)	(.5)		
Cable viewing							
VHF	1.00	.34	.21	.25	.32	.750	
	(b)	(4.7)	(3.9)	(1.0)	(2.4)		
UHF	.54	.07	.06	.18	.24		
	(6.4)	(.3)	(.2)	(1.5)	(1.6)		

NOTES: The dependent variable is the station share of total audience during each time period. Estimated coefficients are "attractiveness indices" in equation (1). Asymptotic t-statistics are in parentheses. See Park (1979c) for a description of the nonlinear generalized least squares estimation method used and a description of $\hat{\sigma}$ and $\hat{\rho}$.

[a] L indicates local stations. D indicates distant stations not blacked out. DB indicates distant network stations blacked out to provide non-duplication protection to local stations.

[b] This coefficient is normalized to one as a reference value--not estimated.

Appendix Table A.2

SECOND STAGE UNCONSTRAINED AUDIENCE SHARE EQUATIONS

	Network[a]			Independent[a]	
	L	D	DB	L	D
Full Day					
Off-the-air viewing					
VHF	1.00	.07	.11	.57	-.25
	(b)	(1.8)	(2.8)	(3.2)	(2.4)
UHF	.45	.12	.23	.28	-.03
	(9.7)	(.5)	(1.0)	(4.0)	(.1)
Cable viewing					
VHF	1.00	.38	.19	.56	.40
	(b)	(9.1)	(6.7)	(3.4)	(6.0)
UHF	.65	.15	.15	.28	.25
	(12.0)	(1.1)	(1.0)	(3.5)	(3.3)
Daytime					
Off-the-air viewing					
VHF	1.00	.06	.10	.52	-.11
	(b)	(1.2)	(2.4)	(2.4)	(.7)
UHF	.31	-.02	.28	.28	-.18
	(6.4)	(.1)	(1.1)	(3.4)	(.5)
Cable viewing					
VHF	1.00	.30	.14	.53	.38
	(b)	(5.9)	(3.9)	(2.4)	(4.0)
UHF	.47	.06	-.04	.29	.27
	(2.2)	(.4)	(.2)	(2.6)	(2.5)
Early Fringe					
Off-the-air viewing					
VHF	1.00	.07	.10	.92	-.18
	(b)	(1.4)	(2.1)	(3.1)	(1.3)
UHF	.44	-.05	.36	.45	-.09
	(7.3)	(.2)	(1.1)	(4.1)	(.3)
Cable viewing					
VHF	1.00	.33	.31	1.17	.76
	(b)	(5.8)	(5.9)	(3.5)	(5.9)
UHF	.53	.02	.18	.61	.54
	(7.0)	(.1)	(.7)	(3.9)	(3.9)
Prime Time					
Off-the-air viewing					
VHF	1.00	.06	.13	.51	-.33
	(b)	(1.6)	(3.3)	(3.4)	(3.1)
UHF	.57	.24	.24	.17	.15
	(a)	(1.0)	(1.0)	(3.0)	(.5)
Cable viewing					
VHF	1.00	.42	.17	.41	.29
	(b)	(10.2)	(6.7)	(3.1)	(4.9)
UHF	.85	.27	.21	.11	.14
	(15.5)	(1.8)	(1.3)	(1.8)	(2.1)
Late Fringe					
Off-the-air viewing					
VHF	1.00	.02	.12	.22	-.27
	(b)	(.4)	(2.7)	(1.3)	(2.1)
UHF	.41	.40	.17	.21	-.12
	(7.8)	(1.2)	(.6)	(3.0)	(.4)
Cable viewing					
VHF	1.00	.33	.19	.25	.29
	(b)	(5.3)	(4.3)	(1.1)	(2.8)
UHF	.57	.09	.03	.23	.19
	(7.0)	(.5)	(.2)	(1.9)	(1.5)

NOTES: The dependent variable is the station share of total audience during each time period. Estimated coefficients are "attractiveness indices" in equation (1). Asymptotic t-statistics are in parentheses. See Park (1979c) for a description of the nonlinear generalized least squares estimation method used.

[a] L indicates local stations. D indicates distant stations not blacked out. DB indicates distant network stations blacked out to provide nonduplication protection to local stations.

[b] This coefficient is normalized to one as a reference value--not estimated.

Appendix Table A.3

SECOND STAGE AUDIENCE SHARE EQUATIONS
WITH ATTRACTIVENESS INDICES
CONSTRAINED TO BE NON-NEGATIVE

		Network[a]			Independent[a]			
		L	D	DB	L	D	BLK	K
Full Day								
Off-the-air viewing	VHF	1.00	.08	.07	.57	.00		
		(b)	(2.1)	(2.0)	(3.4)	(e)		
	UHF	.47	.16	.21	.23	.00		
		(10.2)	(.7)	(1.0)	(4.0)	(e)		
Cable viewing	VHF	1.00	.38	.18	.56	.44	.46	1.37
		(b)	(9.1)	(d)	(3.4)	(6.3)	(4.8)	(12.8)
	UHF	.65	.16	.08	.32	.27		
		(c)	(1.3)	(d)	(c)	(3.5)		
Daytime								
Off-the-air viewing	VHF	1.00	.06	.09	.52	.00		
		(b)	(1.2)	(2.2)	(2.5)	(e)		
	UHF	.33	.00	.32	.25	.00		
		(6.8)	(e)	(1.3)	(3.3)	(e)		
Cable viewing	VHF	1.00	.30	.13	.54	.41	.43	1.41
		(b)	(5.9)	(d)	(2.3)	(4.2)	(2.9)	(8.2)
	UHF	.46	.05	.02	.35	.27		
		(c)	(.3)	(d)	(c)	(2.6)		
Early Fringe								
Off-the-air viewing	VHF	1.00	.08	.08	.93	.00		
		(b)	(1.5)	(1.7)	(3.1)	(e)		
	UHF	.44	.00	.30	.47	.00		
		(7.5)	(e)	(1.1)	(4.4)	(e)		
Cable viewing	VHF	1.00	.34	.30	1.17	.80	.86	1.22
		(b)	(5.8)	(d)	(3.5)	(6.1)	(3.7)	(9.6)
	UHF	.53	.06	.06	.57	.57		
		(c)	(.4)	(d)	(c)	(4.1)		
Prime Time								
Off-the-air viewing	VHF	1.00	.08	.09	.53	.00		
		(b)	(2.0)	(2.4)	(3.6)	(e)		
	UHF	.39	.30	.22	.11	.00		
		(12.4)	(1.2)	(.9)	(2.6)	(e)		
Cable viewing	VHF	1.00	.43	.16	.41	.32	.37	1.44
		(b)	(10.3)	(d)	(3.1)	(5.2)	(4.9)	(13.2)
	UHF	.85	.29	.11	.15	.15		
		(c)	(2.1)	(d)	(c)	(2.2)		
Late Fringe								
Off-the-air viewing	VHF	1.00	.02	.09	.23	.00		
		(b)	(.6)	(2.2)	(1.3)	(e)		
	UHF	.42	.41	.21	.20	.00		
		(8.1)	(1.3)	(.8)	(2.9)	(e)		
Cable viewing	VHF	1.00	.34	.18	.25	.34	.34	1.37
		(b)	(5.3)	(d)	(1.1)	(3.1)	(2.9)	(8.2)
	UHF	.57	.08	.04	.27	.21		
		(c)	(.5)	(d)	(c)	(1.7)		

NOTES: The dependent variable is the station share of total audience during each time period. Estimated coefficients are "attractiveness indices" in equation (1). Asymptotic t-statistics are in parentheses. See Park (1979c) for a description of the nonlinear generalized least squares estimation method used.

[a] L indicates local stations. D indicates distant stations not blacked out. DB indicates distant network stations blacked out to provide non-duplication protection to local stations.

[b] This coefficient is normalized to one as a reference value—not estimated.

[c] This coefficient is constrained to equal K times the corresponding off-the-air coefficient. K is an estimated multiplier.

[d] This coefficient is constrained to equal BLK times the corresponding cable coefficient for distant network stations that are not blacked out. BLK is an estimated multiplier.

[e] The non-negativity constraint is binding for this coefficient.

Appendix Table A.4

SECOND STAGE CONSTRAINTED AUDIENCE SHARE EQUATION
ESTIMATED WITH SAMPLE THAT EXCLUDES LOCAL STATIONS
WITH OFF-THE-AIR NWC EQUAL TO ZERO

	Network[a]			Independent[a]			
	L	D	DB	L	D	BLK	K
	Full Day						
Off-the-air viewing							
VHF	1.00	.10	.11	.61	-.26		
	(b)	(2.6)	(2.8)	(3.9)	(2.5)		
UHF	.52	(.08)	.18	.27	-.04		
	(10.4)	(.4)	(.9)	(3.8)	(.2)		
Cable viewing							
VHF	1.00	.39	.18	.59	.36	.47	1.30
	(b)	(9.3)	(d)	(3.5)	(5.3)	(4.8)	(12.6)
UHF	.67	.12	.06	.35	.27		
	(c)	(1.0)	(d)	(c)	(3.5)		

NOTES: The dependent variable is the station share of total audience during the full-day time period. Estimated coefficients are "attractiveness indices" in equation (1). Asymptotic t-statistics are in parentheses. See Park (1979c) for a description of the nonlinear generalized least squares estimation method used.

[a] L indicates local stations. D indicates distant stations not blacked out. DB indicates distant network stations blacked out to provide nonduplication protection to local stations.

[b] This coefficient is normalized to one as a reference value--not estimated.

[c] This coefficient is constrained to equal K times the correspondong off-the-air coefficient. K is an estimated multiplier.

[d] This coefficient is constrained to equal BLK times the corresponding cable coefficient for distant network stations that are not blacked out. BLK is an estimated multiplier.

Appendix Table A.5

NEAR-TERM EFFECT OF CABLE ON LOCAL STATION AUDIENCE IN REPRESENTATIVE MARKETS UNDER PRESENT AND POTENTIAL RELAXED CABLE REGULATION: Composite Estimates Based on Equations for Four Time Periods (Daytime, Early Fringe, Prime Time, Late Fringe)

Network		Independent		Distant Stations			Cable Penetration[a]	Index of Local Stations Audience[b] If Cable Exists				
				Prim.	Dupl.			Network		Independent		
VHF	UHF	VHF	UHF	Net.	Net.	Ind.		VHF	UHF	VHF	UHF	Total
Top-50 Markets												
3	0	3	2	0	0	2	11	98- 99		98- 99	101-102	98- 99
				0	0	6	11	96- 97		96- 97	99- 99	96- 97
				0	3	6	11	96- 97		95- 96	98- 99	96- 97
3	0	1	1	0	0	2	16	97- 98		96- 98	101-102	97- 98
				0	0	6	16	94- 95		93- 94	96- 98	94- 95
				0	3	6	16	93- 94		92- 93	95- 96	93- 94
3	0	0	2	0	0	2	8	98- 99			100-101	98- 99
				0	0	6	8	96- 97			98- 98	96- 97
				0	3	6	8	96- 96			97- 98	96- 96
3	0	0	0	0	0	3	20	94- 95				94- 95
				0	0	6	20	90- 92				90- 92
				0	3	6	20	89- 91				89- 91
Second-50 Markets												
3	0	0	0	0	0	2	17	96- 98				96- 98
				0	0	5	17	93- 94				93- 94
				0	3	5	17	92- 93				92- 93
2	1	0	0	0	0	2	18	94- 96	100-102			95- 97
				0	0	5	18	91- 92	95- 97			91- 93
				0	3	5	18	89- 91	94- 95			90- 92
2	0	0	0	1	0	2	24	91- 93				91- 93
				1	0	5	24	86- 88				86- 88
				1	3	5	24	85- 87				85- 87
Below-100 Markets												
3	0	0	0	0	0	1	29	96- 99				96- 99
				0	0	4	29	90- 92				90- 92
				0	3	4	29	87- 90				87- 90
1	1	0	0	1	0	1	31	87- 89	95- 97			89- 92
				1	0	4	31	80- 82	86- 88			82- 84
				1	3	4	31	78- 80	83- 86			80- 82
1	0	0	0	2	0	1	41	77- 80				77- 80
				2	0	4	41	70- 73				70- 73
				2	3	4	41	68- 71				68- 71

[a] Average present penetration in markets of each type. Data supplied by FCC Cable Bureau.

[b] Average audience over the full broadcast day. The base (100 percent) is the audience if cable does not exist; it assumes that all the audience watches local stations in the absence of cable (that is, there are no overlapping signals from adjacent markets).

Appendix Table A.6

LONG-TERM EFFECT OF CABLE ON LOCAL STATION AUDIENCE IN REPRESENTATIVE MARKETS UNDER PRESENT AND POTENTIAL RELAXED CABLE REGULATION: Composite Estimates Based on Equations for Four Time Periods (Daytime, Early Fringe, Prime Time, Late Fringe)

Network		Independent		Distant Stations			Cable Penetration[a]	Index of Local Stations Audience[b] If Cable Exists				
				Prim.	Dupl.			Network		Independent		
VHF	UHF	VHF	UHF	Net.	Net.	Ind.		VHF	UHF	VHF	UHF	Total
Top-50 Markets												
3	0	3	2	0	0	2	25	96- 98		95- 97	103-105	96- 99
				0	0	6	27	91- 93		90- 92	96- 99	91- 93
				0	3	6	37	86- 89		85- 87	93- 96	86- 89
3	0	1	1	0	0	2	26	95- 97		94- 96	102-104	95- 97
				0	0	6	30	88- 90		87- 89	93- 95	88- 90
				0	3	6	37	83- 86		82- 84	89- 92	83- 86
3	0	0	2	0	0	2	27	94- 96			101-103	95- 97
				0	0	6	30	87- 89			92- 94	88- 90
				0	3	6	38	81- 84			87- 90	82- 85
3	0	0	0	0	0	3	30	91- 93				91- 93
				0	0	6	32	85- 87				85- 87
				0	3	6	43	78- 81				78- 81
Second-50 Markets												
3	0	0	0	0	0	2	29	94- 96				94- 96
				0	0	5	31	87- 89				87- 89
				0	3	5	41	81- 83				81- 83
2	1	0	0	0	0	2	32	90- 93	100-103			92- 94
				0	0	5	36	82- 85	91- 94			84- 87
				0	3	5	45	75- 78	85- 88			77- 80
2	0	0	0	1	0	2	48	82- 85				82- 85
				1	0	5	51	71- 74				71- 74
				1	3	5	62	63- 66				63- 66
Below-100 Markets												
3	0	0	0	0	0	1	26	97- 99				97- 99
				0	0	4	31	89- 91				89- 91
				0	3	4	39	83- 86				83- 86
1	1	0	0	1	0	1	52	78- 82	92- 95			83- 86
				1	0	4	57	64- 68	75- 78			68- 71
				1	3	4	67	56- 59	66- 70			59- 62
1	0	0	0	2	0	1	74	60- 64				60- 64
				2	0	4	76	46- 49				46- 49
				2	3	4	83	37- 40				37- 40

[a] Eventual equilibrium penetration when the whole market is wired, calculated using equation (*) in Park (1971, p. 27).

[b] Average audience over the full broadcast day. The base (100 percent) is the audience if cable does not exist; it assumes that all the audience watches local stations in the absence of cable (that is, there are no overlapping signals from adjacent markets).

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Appendix B

DATA DESCRIPTION

Data Description

All of the data used in this study are reproduced in Park (1979b). Unless otherwise stated, the data are from the ARB (American Research Bureau) Arbitron Television 1977 County Coverage, CATV-Controlled Counties. The items included are as follows:

County

County number is arbitrarily assigned. County name and state are also shown.

Market

The number shown for the market is its rank according to ARB area of dominant influence (ADI) [33] television households (TVH). The ranking is for 1977–1978.[34] A list that translates market ranks to market names precedes the data tables. A "1" or "2" following the decimal point is arbitrarily assigned to distinguish between markets that tied in the ARB rankings.

[33] A market's ADI includes (with a few exceptions) all those counties within which a market's stations attract more viewers than any other market.

[34] Television Markets and Rankings Guide, 1977–78, Arbitron Television, New York.

Time Zone

The code for the time zone in which the county is located is:

1 Eastern
2 Central
3 Mountain
4 Pacific

Income

Median family income in 1969 for the county is from *County and City Data Book, 1972, A Statistical Abstract Supplement*, U.S. Department of Commerce.

COTVH

COTVH is the number of television households (in hundreds) in the county as estimated by ARB for 1977–1978.[35] Numbers are shown separately for non-cable households (0 for off the air) and for cable households (C). Cable penetration in the county (COPEN) is calculated from COTVH as C/(O+C).

SYSTVH

The number of households (in hundreds) passed by the cable television system's installed trunk and feeder cable are from FCC records. The numbers come from reports that cable systems are required to make to the FCC annually on Form 325. C indicates the number of subscribing households; 0 is the number of households passed by the cable that do not subscribe. The latter number is calculated by subtracting reported subscribers from reported homes passed. In some cases, due to definitional or reporting problems, the result is a negative number. If so, nonsubscribing households passed is set equal to zero. System penetration (SYSPEN) is calculated using SYSTVH as C/(O+C).

[35] As of January 1, 1978.

INTAB

INTAB households (the units here are single households, not hundreds) are those included in ARB's survey sample, reported separately for off-the-air and cable households.

LCLSHR

Local share is the share of full-day (or total) audience captured by local stations, shown separately for off-the-air and cable viewers. Counties with an off-the-air local share less than 70 are excluded from the analysis in this report.

HUT

Homes using television is (roughly) the fraction of television households that are watching telvision at any given time. It is reported separately for five different time periods or "day parts," some of which are defined differently in different time zones, as follows:

	Eastern and Pacific	Central and Mountain
TOTAL (or FULL DAY)	6:00 am–2:00 am Monday–Sunday	6:00 am–2:00 am Monday–Sunday
DAYTIME	6:00 am–4:30 pm Monday–Friday	6:00 am–3:30 pm Monday–Friday
EARLY FRINGE	4:30 pm–7:30 pm Monday–Friday	3:30 pm–6:30 pm Monday–Friday
PRIME TIME	7:30 pm–11:00 pm Monday–Sunday	6:30 pm–10:00 pm Monday–Sunday
LATE FRINGE	11:00 pm–2:00 am Monday–Friday	10:00 pm–2:00 am Monday–Friday

The fraction of homes using television is calculated from ARB reports of total hours watched as in the following example. ARB estimates that non-cable households in our County 1 watched a total of 718,800 hours per week during the TOTAL or FULL-DAY period. There are 18,100 such households; if they all had watched TV all the time, they would have watched a total of 2,534,000 hours (18,000 households times 20 possible hours per day times 7 days per week). Thus on average over the FULL-DAY period, .284 is the fraction watching TV at any given time.

Station

Call sign and channel assignment (from the Television Markets and Rankings Guide, 1977–78) are shown for each station reported to be watched in the county. In a few cases, data for parent and satellite stations are combined. Then the first letter of the call sign is replaced by an asterisk. In such cases SHAREs are combined by adding parent and satellite SHAREs, and NWCs (net weekly circulations) are combined by taking the maximum of parent and satellite NWC.

AFFIL

Affiliation codes are as follows:

1 ABC
2 CBS
3 NBC
4 Independent commerical

5 Noncommercial

The first number in the three-digit sequence is primary affiliation; the second, if nonzero, is secondary affiliation; and the third is tertiary affiliation all of which comes from the Television Markets and Rankings Guide, 1977–78.

P

Nonduplication protection codes for network affiliates are as follows:

0 Station is blacked out to provide nonduplication protection to some other station.

1 Station is neither blacked out nor protected.

2 Station receives nonduplication protection against one or more other stations.

Nonduplication protection status was determined by the FCC staff based on an application of Subpart F of the *Cable Television Regulations*, telephone interview with cable system operators, and a review of ARB nonduplication editing proecdures. The procedure was as follows:

1. Set P = theoretical protection status per Subpart F.

2. If P is compatible with observed audience shares, stop.

3. Set P = actual protection status in 1977 as determined by talking to the system operator on the telephone.

4. If P is compatible with observed audience shares, stop.

5. Check ARB records to see if ARB was in 1977 editing their audience data as though the station had some protection status not equal to P. If so, set P = editing protection status.

MKT

MKT is the rank of the ADI market to which the station is assigned, according to the list that precedes the data tables. With a few exceptions, if the station's market is the same as the county's market, the station is counted as a local station; otherwise, it is classified as a distant station. The exceptions are:

- All stations with nonduplication protection code equal to 2 are counted as local stations, regardless of what market the county is in.
- All stations with nonduplication protection code equal to 0 are counted as distant stations, regardless of what market the county is in.

Share

Station share is the number of households watching a particular station, expressed as a percentage of households watching any station. SHARE is reported separately for each of five time periods, and separately for off-the-air and cable viewers. Shares may not add to 100 because of rounding or because some stations that are watched are not included in the ARB report (notably foreign stations and stations that individually receive very low viewing in the ARB sample).

NWC

Net weekly circulation is the percentage of households (off the air and cable separately) that watch the station at least once a week.

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Appendix C

A Case Study Analysis of Non-Commercial Television Stations in Grandfathered Markets

1. A separate analysis for non-commercial television stations was performed in the *Report in Docket 21284* because the financial results for these stations were not as readily available to the Commission, as they were for commercial stations and their sources of revenues are different from those of commercial stations. Ideally, we would like to (1) assess the economic viability of non-commercial stations by monitoring their revenues and profits over a number of years and (2) determine the impact of cable television on their economic viability. Unfortunately, we were frustrated partially in attempting to achieve either of these objectives, in part, because non-commercial stations do not routinely report their financial results to the Commission. Furthermore, not one non-commercial television station has offered us any financial data in this proceeding concerning its economic viability. Finally, we also suffer from a lack of a sound theoretical and/or empirical basis from which to determine or assess factors influencing the amount of money or the value of goods that viewers contribute to non-commercial television stations. This is true because a reduction in the number of viewing hours of non-commercial stations does not imply necessarily a reduction in viewer contributions or revenues for these stations, as it does for commercial stations. Faced with these limitations, we restricted our study of non-commercial stations to an analysis of station audience, including that of net weekly circulation audience. Overall audience trends for non-commercial

stations over the past five years were monitored. Additionally, the impact of cable television on the audiences of these stations was estimated. While we were aware that viewer contributions are only one of several sources of revenue for non-commercial stations, we felt that for cable television to threaten the economic viability of these stations, it must *at least* divert a significant amount of audience from these stations.[1]

2. Before proceeding, we note that we were able to uncover only three scholarly studies of the effect of cable television on non-commercial stations. The Carnegie Commission on the Future of Public Broadcasting reports that "by enhancing reception of television signals, and through the importation of out-of-town signals, CATV can assist in extending public broadcasting service to the public." [2] The second study by Avery, Long, and Traudt concludes that "cable subscribers are as likely, if not more so, as non-cable viewers to make voluntary contributions to their local public television stations."[3] [4] It should be noted that not one comment in this proceeding has produced any definitive findings of the effect of cable television on non-commercial television stations. Although Donald E. Agostino, in a study funded by the Corporation of Public Broadcasting, found that cable television caused "only very slight fractionization of the audience," he concludes that the impact of cable television merits further investigations.[5]

3. Our study examined seventeen non-commercial television stations in fourteen markets. Three of these markets were studied in the "Grandfathered Market Analysis" of commercial stations in the *Report in Docket 21284*. The other eleven markets, containing fourteen non-commercial station, were chosen because they also are characterized by high cable penetration, at least 30 percent in 1972, and a large number of imported signals. Our conclusion from studying these cases was that whatever adverse effect cable may have had on these stations' audiences, it generally has not been large enough to offset other factors contributing to their audience growth. Of particular significance, we found that cable television often provides audience gains to both VHF and UHF non-commercial stations within their local service area because of improvement in signal reception. It is important to note that these gains are realized by stations facing substantial competition from cable television because of extraordinarily high marketwide cable penetration and the large number of distant signals imported by the cable systems.

4. The Commission's analysis of the effect of distant signals on non-commercial television stations has been found to be unacceptable by several parties. For example, the National Association of Educational Broadcasters (NAEB) claims that there is not "the slightest indication that the Commission has more than minimally examined the effect of the deletion of its distant signal carriage and syndicated exclusivity restrictions upon public broadcasters."[6] Additionally, the Joint Motion contends that "the effect of the FCC's proposed action with respect to distant signals on non-commercial (ETV) stations is virtually ignored."[7] We disagree with these assessments. In addition to searching the literature for scholarly research and carefully examining the comments in this and in other proceedings before the Commission [8], we prepared a detailed report on the effect of distant signals on non-commercial stations which included 85 pages of economic data and analysis.[9] We believe that terms such as "virtually ignored" or "minimally examined" certainly cannot be used to describe accurately our procedure for analyzing the effect of distant signals on non-commercial stations.

5. We have directed our analysis specifically to assess the possible effect of changes in our existing rules.[10] For example, the sample for our study of non-commercial stations was chosen to include local non-commercial stations operating in markets with high cable penetration and a large number of distant commercial signals.[11] However, this is not to say, as the Joint Comments allege, that "the study fails to examine the audience impact of importation of distant non-commercial stations on the local public broadcast service." [12] Five stations in our sample also faced additional competition from the importation of distant non-commercial signals. Any negative effect of cable on these stations' audiences was found to be minimal. Therefore, while several parties found the results for these stations to be inconclusive, we disagree with these assessments. For example, the NAEB finds "the data gathered in the remaining six [sic] markets [into which distant non-commercial stations were imported] yield no positive conclusions concerning the effect of distant signal importation. Two of the markets studied showed apparent gains in "rating" and "share," two markets showed a loss in "rating" and "share," while data were unavailable in the other two markets." [13] However, the facts in our *Report* demonstrate that all five stations which face additional competition from distant non-commercial stations received gains in their NWC audience from cable television.[14] [15] Furthermore, to produce meaningful conclusions, the study is not required to show only audience gains or losses to non-commercial stations from cable television, but to identify the effect, if any, of cable television on these stations' ability to serve the

[1] In fact, only about 15 percent of the support for public stations comes directly from television viewers as individuals.

[2] The Carnegie Commission on the Future of Public Broadcasting, *A Public Trust*, 366–367 (1979).

[3] R.K. Avery, J.F. Long, and P.J. Traudt of the Department of Communications, University of Utah, "The Effect of CATV on Awareness and Local Financial Support of a Public Television Station," March 1978, prepared for the Corporation for Public Broadcasting.

[4] We note that one party in this proceeding, Joint Comments of Nine Non-commerical Television Broadcast Stations, criticize the results of the study by Avery, Long and Traudt. This party claims that cable subscribers, having greater disposable income, tend to be the very viewers on whom public television depends most heavily for relatively large voluntary contributions. Having no data on this point, we will not attempt to estimate the validity of the criticism, nor the potential effect of this criticism, if it is valid, on the outcome of the study.

[5] *See* Donald E. Agostino, "The Cable Subscribers Viewing of Public Television: A Comparison of Public Television Use Between Broadcast Viewers and Cable Subscribers Within Selected Markets," February 1978. *See also* Agostino, Comments on Studies of the Impact of Cable Television on Audience Shares, Docket 21284, February 8, 1978.

[6] The National Association of Educational Broadcasters, Comments, Docket 21284, September 17, 1979.

[7] Association of Independent Television Stations, Inc., *et al.*, Joint Motion for Revision of Procedures, Docket 21284, June 22, 1979 at 26.

[8] We have processed numerous petitions for special relief from the cable carriage of distant non-commercial stations. *See, e.g., Cablevision Systems* 70 FCC 2d 1931 (1979).

[9] *See* Appendix C, *Report in Docket 21284*.

[10] Our rules specify that cable systems may carry any non-commercial station, in the absence of objection filed pursuant to Section 76.7 (i.e. provision for special relief) by any local non-commercial educational station or state or local educational television authority.

[11] We do not isolate specifically the effect of our syndicated exclusivity rules in the analysis of non-commercial stations because the vast majority of stations in our sample do not operate in markets receiving this protection to any significant degree. Moreover, non-commercial stations themselves exercise no rights under these rules.

[12] Joint Comments, *supra*, at n. 9, at 4.

[13] *Supra* at n. 5, at 9.

[14] For a discussion of why net weekly circulation is a more appropriate measure of the impact of cable television on non-commercial stations than "ratings" or "share," *see, e.g.*, the Comments of the Public Broadcasting Service in this proceeding, dated March 15, 1978.

[15] We have been assuming, in the special relief context, that the percentage NWC of the local non-commercial station would be reduced by 50 percent in cable households by the importation of one distant non-commercial station. *See, e.g. Norman Cable* 67 FCC 2d 1084 (1978). The evidence uncovered in this proceeding demonstrates clearly that this assumption was invalid.

public. The overall increases in audiences that these stations generally receive, irrespective of the impact of cable television, suggests strongly that their ability to serve the public is not threatened by cable television. For instance, the largest audience loss attributable to cable for *any* station in our sample of non-commercial stations (whether or not they compete against distant non-commercial stations) is between 11 and 15 percent (depending on whether share or rating data are employed). Yet, this station has realized a 20 percent overall gain in its average 9 AM–Midnight audience over the past five years and a 110 percent increase in NWC audience over the same period. Therefore, we find that there is no indication that the service provided by local non-commercial stations is affected adversely by cable television, even in cases where distant non-commercial stations are imported.

6. NAEB also finds that "the study of non-commercial licensees measures only audience impact and not economic viability, which the Commission acknowledges is the fundamental concern of a licensee." [16] Additionally, the Joint Comments claim that "increased cable penetration is likely to decrease the absolute amounts of voluntary contributions from viewers * * * which will likely be in greater than linear relationships to increases in cable subscribership." [17] Viewer contributions are only one of several sources of revenue for non-commercial stations. In this respect public television stations are somewhat protected from whatever impacts might result from changes in contribution patterns resulting from the growth of cable television operations. For example, membership contributions and auctions accounted for only 15% of the revenues derived by public television licensees in 1976.[18] We are aware that governmental contributions under the Public Broadcasting Financing Act of 1975 and in some other situations are tied to viewer contributions. We find, however, no reason or evidence to suggest that viewer contributions to local non-commercial stations will decrease because of the importation of distant signals. Thus our analysis of audience suggests that the economic viability of non-commercial stations is not threatened by cable television. In any case, governmental funding formulas are not irrevocable and are subject to change over time. We see no reasons why governmental funding of public television would decrease because the programming from these stations is made more widely available through cable television carriage. In fact, the federal contribution to public television has increased markedly over the past decade.

7. The Joint Comments also contend that "since the value of the study depends on its data being typical, the failure to specify how the markets were selected is a serious problem that calls into question the validity of any generalization based solely on these markets." [19] We must emphasize that not only is our sample not chosen to be typical, but its value is enhanced exceedingly by the fact that it is atypical. The markets selected represent cases where there are extraordinarily high levels of cable penetration and a large number of distant signals. The sample includes the three markets of the "Grandfathered Market Analysis" which contain non-commercial stations, and all other markets with at least 30 percent cable penetration in 1972 that contain a local non-commercial station. If distant signals are to affect adversely the service provided by local non-commercial stations, it is in these markets where the effect will be seen. If there is no adverse effect in these markets, it is extremely unlikely that there will be an adverse effect from distant signals in other markets. The markets selected provide an excellent indication of the effect of cable in an unregulated market.

8. There also are several specific criticisms raised in the comments concerning our analysis of non-commercial stations. For example, the Joint Motion specifies three instances of typographical errors and also questions the use of audience figures of less than one percent. It contends that "errors of this type indicate a lack of precision that may prejudice the significance of all data reported in this Appendix, as well as the conclusions reached by the staff." [20] This contention is unfounded. For example, the computation of audience ratings below 1 percent for individual counties (rather than rounding to zero) increases the precision of the results by making use of all available viewing data for non-commercial stations. The Joint Motion interprets mistakenly our calculations for station ratings in individual counties (which turn out to be less than one percent) to be " 'symbol[s]' used by the rating services to indicate an audience level 'below minimum standards' ".[21] However, these figures are not "symbols" provided by the rating services but rather are actual viewing statistics for individual stations that are derived from our multiplication of county rating (i.e., the average percentage of homes using television in a county) by each individual station's share of total viewing in that county. Arbitron does not provide individual station ratings by county. Hence, our calculations increase the precision of the reported audience estimates. Additionally, while there are some typographical errors in the study, there is no confusion possible concerning the correct identification of the stations to which the errors apply. The correct classification of all three stations in question is highlighted both in the keynote summary table (Table I, Appendix C) and at the start of the analysis for each specific case (Item 1.A). Hence, these typographical errors are of no consequence to the conclusions reached in the *Report*.

9. The Joint Comments claims "that [a] close look [at the Yakima market] shows the study to be totally unreliable." [22] The major criticism here is that the impact from cable is analyzed and averaged over the entire ADI, rather than analyzed only for those counties which are close to the principal city of the licensee. Additionally, the parties note that the study includes no data for Yakima county, which is part of the ADI. Before addressing these comments, it should be noted that Arbitron Television does not provide viewing data for cable and non-cable households in counties where less than 10 percent of the television households subscribe to cable television. Where data are not available for a county, we extrapolate the average viewer behavior of cable subscribers in the entire market for whom data are available to the cable subscribers that are not otherwise represented in the impact measurements. In the Yakima market, extrapolation is required for only 5 percent of the total number of cable subscribers. We estimate the effect of cable on local station audiences over the entire ADI because this is the area in which the local television stations receive a preponderance of viewing. The study is designed to provide a reliable and accurate indication of the impact of cable television on local non-commercial station audiences in an essentially unregulated market. Thus, we view the criticisms raised by the Joint Comments to be without validity.

[16] *Supra* at n. 5 at 9.

[17] *Supra* at n. 9 at 4.

[18] The Public Broadcasting Service, Comments, Docket 21284, March 15, 1978, Appendix A, Table 4.

[19] *Supra* at n. 9 at 7.

[20] *Supra* at n. 6, at 29.

[21] *Id.* at 29.

[22] *Supra* at n. 9 at 5.

10. The Joint Comments also question which systems were considered "major" and what proportion of the cable homes within a market had to receive the distant signals over cable before those signals were counted as available on cable in that market. The answer is that we selected all cable systems that served principal cities in the television markets. In this way, we are certain that at least a majority of the cable subscribers in a market have access to the signals that are listed as available on cable in that market.

11. Finally, the Joint Comments claim that other factors such as increases in UHF receiver penetration and increases in radiated power and antenna height cannot act to offset the adverse impact of cable indefinitely. The belief is that "with lower if not truly zero population growth, particularly in certain areas of the country, secular growth in the number of homes served by particular public stations will stop if not actually decline at some point." [23] It should be noted, however, that only three of the seventeen stations analyzed operate at maximum radiated power. Other factors which can also serve to increase both station audience and viewer contributions include marketing techniques such as revised program schedules. Finally, the Census Bureau predicts that population will continue to increase throughout this decade. Thus, we believe that factors leading to the overall audience growth of non-commercial stations generally will continue to offset any losses attributable to cable television into the foreseeable future.

12. In conclusion, we find that the criticisms of our analysis do not disprove our conclusion that the effect of distant signals on local non-commercial audience is minimal. Cable television usually increases the net weekly circulation of local non-commercial stations even in markets with extraordinarily high cable penetration and a large number of distant signals. In cases where there is some diversion of audience due to cable, these losses usually are more than offset by other factors which act to increase station audiences and audience size is not the sole determinant of revenues for non-commercial stations.

13. Existing rules do not limit the number of distant non-commercial educational television stations that a cable system may carry except when there is objection to such carriage by local educational stations. In those instances where there is an objection, the Commission attempts to determine, on the basis of the facts presented, whether the viewing public in the area would in fact be injured by the signal carriage proposed. [24] This relatively unrestricted carriage was authorized because, in the Commission's view, in the absence of objection, "the widest possible dissemination of educational and public television programming is clearly of public benefit and should not be restricted." [25]

14. Although there are many differences between the commercial and public stations relating to possible impacts resulting from cable distant signal carriage, we do not believe these weigh in favor of more restrictive regulation with respect to carriage of public stations. Rather, we believe that the policy of encouraging the widest possible dissemination of public television station programming should be further encouraged by a liberalization of our rules which act to restrict carriage of non-commercial stations in markets where objections are filed.

15. Because these stations are so heavily dependent on tax revenues, it seems to us that we should be especially cautious in denying citizens as much access to their output as possible. Although perhaps ultimately justifiable if necessary for the preservation of the public television system itself, it is anomalous for government, and particularly the federal government, to contribute toward the creation of a system of public television as an alternative source of diverse programming to that supplied by the commercial stations while at the same time restricting the public's access to additional sources of the programming created by the system. In recent years the public resources made available to public broadcasting have been greatly expanded [26] and while strong arguments can be made that even greater funding is necessary, [27] it seems to us that the free flow of information from this system is fundamentally desirable and that it is unlikely that cable television operations will sharply impact on public contributions to local stations, and highly unlikely that overall revenues will be significantly affected.

[23] *Id.* at 10.

[24] For a discussion of the application of the existing rules see *Public Cable Co.* 64 FCC 2d 701 (1977), *aff'd sub nom. Colby-Bates-Bowdoin Educational Telecasting Corp. v. FCC*, 574 F. 2d 639 (1st Cir. 1978).

[25] *Cable Television Report and Order, supra*, at paragraph 95.

[26] The federal contribution, for example, increased 293% from 1970 to 1977.

[27] See *A Public Trust, the Report of the Carnegie Commission on the Future of Public Broadcasting* (1979).

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APPENDIX D

STATIONS AND MARKETS WHERE POTENTIAL HARM IS ALLEGED IN COMMENTS RESPONSIVE TO THE NOTICE IN DOCKETS 20988 AND 21284

Station * /market	mkt #	local** sigs.	1973% catv pen.	1978% catv pen.	1973 9-mid aud. (000s)	1978 9-mid. aud. (000s)	% chg	1973 revs (000's)	1978 revs (000's)	% chg	1973 op. income (000's)	1978 op. income (000's)	% chg
WBZ (N,V) Boston, MA	6	3N,3I,4E	7	10	179	185	3			49			41
WCVB (A,V) Boston, MA	6	3N,3I,4E	7	10	145	175	21			91			268
WNAC (C,V) Boston, MA	6	3N,3I,4E	7	10	158	146	(8)			41			35
WXNE (I,U) Boston, MA	6	3N,3I,4E	7	10		9							
WSBK (I, U) Boston, Ma	6	3N,3I,4E	7	10	50	56	12			186			297
WLVI (I,U) Boston, MA	6	3N,3I,4E	7	10	39	52	33			158			(-)to(+)
BOSTON MKT. Boston, MA	6	3N,3I,4E	7	10	581	623	7	58,167	104,048	79	19,492	39,531	103
KTCM (N/A,V) Helena, MT	210	1N	41	42	1	2	100			199			50
KCRG(A,V) Cedar Rapid, IA	70	4N, 2E	7	9	22	32	45			120			85
WREX (A,V) Rockford, IL	100	3N	14	37	23	22	(4)			68			123
KODE (A,V) Joplin, MO	113	3N	20	26	18	21	17			55			109
WEHT(C,U) Evansville, IN	87	3N, 2E	7	17	21	20	(5)			139			(-)to(+)
KHQ (N,V) Spokane, WA	75	3N, 3E	20	23	31	36	16			121			724
WBTV (C,V) Charlotte, NC	34	3N,2I,4E	8	8	81	82	1			89			70
WWBT (N,V) Richmond, VA	56	4N, 3E	11	9	32	32	0			80			100
KTVE (A,V) Eldorado, AR	106	3N, 1E	16	21	12	14	17			77			33

Confidential Financial Data Deleted

STATIONS AND MARKETS WHERE POTENTIAL HARM IS ALLEGED IN COMMENTS RESPONSIVE TO THE NOTICE IN DOCKETS 20988 AND 21284

Station * /market	mkt #	local** sigs.	1973% catv pen.	1978% catv pen.	1973 9-mid aud. (000s)	1978 9-mid. aud. (000s)	% chg	1973 revs (000's)	1978 revs (000's)	% chg	1973 op. income (000's)	1978 op. income (000's)	% chg
WALB (N/A,V) Albany, GA	150	1N	20	30	29	31	7			80			116
WJHG(A,V)Panama City, FL	178	2N	25	26	9	14	56			33			(9)
KLTV (A/N,V) Tyler, TX	158	1N	42	47	14	19	36			88			139
WBTW(C/A,V) Florence SC	158	1N, 1E	23	28	26	28	8			94			123
KCMT(N/A,V)Alexandria, MN	152	1N, 1E	28	25	25	29	16			110			343
WWNY (C/A,V) Watertown, NY	164	1N, 2E	38	40	16	15	(6)			43			44
WDAM(N,V) Laurel, MS Hattiesburg MS	167	1N	21	21	17	18	6			108			170
KALB(N/A,V), Alex., LA	171	1N	28	37	21	19	(10)			61			37
KAIT(A,V)Jonesboro, AR	172	1N, 2E	22	29	11	17	55			128			215
KPLC (N,V) Lake Charles, LA	173	1N	12	30	11	17	55			117			160
KYCU (C/A/N/V) Cheyenne, WY	176	1N	35	47	14	13	(7)			101			89
WLUC (C/A/N,V) Marquette, MI	178	IN, 1E	48	52	16	17	6			80			157
KECC (C,V) El Centro, CA	184	2N	76	61	2	2	0			50			(-)to(-)
WLOX (A,V) Biloxi-Gulf Port, MS	183	1N, 1E	35	65	10	18	80			148			207

Confidential Financial Data Deleted

STATIONS AND MARKETS WHERE POTENTIAL HARM IS ALLEGED IN COMMENTS RESPONSIVE TO THE NOTICE IN DOCKETS 20988 AND 21284

Station * /market	mkt #	local** sigs.	1973% catv pen.	1978% catv pen.	1973 9-mid aud. (000s)	1978 9-mid. aud. (000s)	% chg	1973 revs (000's)	1978 revs (000's)	% chg	1973 op. income (000's)	1978 op. income (000's)	% chg
KQTV(A,V)St. Joseph, MO	181	1N	28	46	14	12	(14)		105				204
KMVT (N/A/C, V) Twin Falls, ID	195	1N	57	39	7	6	(14)		93				133
KEYC (C,V) Mankato, MN	186	1N	46	35	13	11	(15)		116				275
WABG (A,V) Greenwood Greenville, MS	192	1N, 1E	35	40	11	15	36		74				(3)
WBBJ (A,V) Jackson, TN	190	1N, 1E	29	33	10	15	50		111				75
KREX (C/A/N,V) Grand Junction CO	188	1N	36	41	5	7	40		98				124
WHSV(A,V)Harrisburg, VA	199	1N	21	31	10	11	10		65				394
KVOS(C,V)Bellingham, WA	197	1N	38	48	8	4	(50)		(25)				(77)
WBKO (A,V) Bowling Green, KY	198	1N, 1E		7	6	12	50		81				140
KTVO(A,V)Ottumwa, IA	202	1N	19	26	14	14	0		84				191
WAGM (C/A/N,V) Presque Isle, ME	201	IN, 1E	39	37	6	7	17		84				212
WSLA(C,V) Selma, AL	208	IN		38	3/	4			1829				(-)to(+)
KIVA (N,V) Farmington, NM	205	1N	46	48	1	3	200		92				(-)to(+)

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STATIONS AND MARKETS WHERE POTENTIAL HARM IS ALLEGED IN COMMENTS RESPONSIVE TO THE NOTICE IN DOCKETS 20988 AND 21284

Station * /market	mkt #	local** sigs.	1973% catv. pen.	1978% catv pen.	1973 9-mid aud. (000s)	1978 9-mid. aud. (000s)	% chg	1973 revs (000's)	1978 revs (000's)	% chg	1973 op. income (000's)	1978 op. income (000's)	% chg
KOAI (N,V) Flagstaff, AZ	207	1N	73	55	4	4	0			57			(11)
KNOP (N,V) North Platte, NE	209	1N, 1E	21	26	4	5	25			105			184
WBKB (C,V) Alpena, MI	211	1N, 1E		53	1/	3							
KYUS (N,V) Miles City, MT	212	2N	55	59	NA	NA	NA			76			11
WIBW (C/A,V) Topeka, KS	131	2N, 1E	23	28	28	25	(11)			78			124
KTSB (N,U) Topeka, KS	131	2N, 1E	23	28	8	10	25			154			(-)to(+)
WMAZ (C/A,V) Macon, GA	147	2N, 1E	33	40	29	28	(3)			98			150
WCWB (N, U) Macon, GA	147	2N, 1E	33	40	4	8	100			131			4829
WKTV (N,V) Utica, NY	151	2N	49	48	19	18	(5)			57			30
WUTR (N,U) Utica, NY	151	2N	49	48	5	8	60			136			(-)to(-)
WCTV (C,V) Tallahassee, FL	140	2N, 2E	27	30	28	31	11			66			60
WECA (A, U) Tallahassee, FL	140	2N, 2E	27	30	1/	6							
WTVY (C,V) Dothan AL	157	2N	21	20	24	22	(8)			114			171

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STATIONS AND MARKETS WHERE POTENTIAL HARM IS ALLEGED IN COMMENTS RESPONSIVE TO THE NOTICE IN DOCKETS 20988 AND 21284

Station * /market	mkt #	local** sigs.	1973% catv pen.	1978% catv pen.	1973 9-mid aud. (000s)	1978 9-mid. aud. (000s)	% chg	1973 revs (000's)	1978 revs (000's)	% chg	1973 op. income (000's)	1978 op. income (000's)	% chg
WDHN (A,U) Dothan, AL	157	2N	21	20	3	3	0			72			18
WTOK (C/A, V) Meridian, MS	169	2N, 2E	21	26	18	20	11			76			135
WHTV (N/A,V) Meridian, MS	169	2N, 2E	21	26	3/	2	NA			2206			(-)to(+)
WFTV (A.V) Orlando, FL	40	3N, 1E	21	26	37	62	68			164			541
WBOC (C/A/N, U) Salisbury, MD	168	1N, 1E	46	58	12	14	17			78			74
WBNS (C,V) Columbus, OH	32	3N, 1E	9	25	79	77	(3)			91			139
WTHR (A,V) Indianapolis, IN	20	3N,2I,3E	11	16	61	71	16			98			195
KBHK (I,U) San Fran. CA	5	3N,8I,3E	20	30	35	45	29			247			(-)to(+)
WFLD (I,U) Chicago, IL	3	3N,5I,2E	2	3	55	120	118			130			(-)to(+)
WKBD (I,U) Detroit, MI	7	3N,3I,1E,1C	1	2	66	90	36			114			271
WKBS (I,U) Philadelphia PA	4	4N,9I,4E	15	17	62	61	(2)			167			2250
WCFT (C,U) Tuscaloosa, AL	189	1N	31	40	3	5	67			127			228
KYFL (N,V) Yuma, AZ	184	2N	76	61	3	5	67			162			(+)to(-)

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STATIONS AND MARKETS WHERE POTENTIAL HARM IS ALLEGED IN COMMENTS RESPONSIVE TO THE NOTICE IN DOCKETS 20988 AND 21284

Station * /market	mkt #	local** sigs.	1973% catv pen.	1978% catv pen.	1973 9-mid aud. (000s)	1978 9-mid. aud. (000s)	% chg	1973 revs (000's)	1978 revs (000's)	% chg	1973 op. income (000's)	1978 op. income (000's)	% chg
WTVC(A,V)Chattanooga, TN	73	3N,1I,2E	7	11	30	36	20			128			227
WTVM (A,V) Columbus, GA	121	3N, 3E	18	30	28	30	7			61			79
WTVW (A,V) Evansville, IN	87	3N, 2E	7	17	28	31	11			89			153
KCBJ (A,U) Columbia, MO	139	3N	19	23	4	8	100			173			92
Billings, Mont, Market	161	2N	34	35	17	18	6			124			203
Casper/Riverton, WY	178	2N	42	55	12	11	(8)			136			235
Cheyenne, Wyoming	176	1N, (2S)	35	47	14	13	(7)			101			89
Grand Junction, Colorado	188	1N, (2S)	36	41	7	11	57			98			124
Great Falls, Montana	175	2N	30	35	16	17	6			69			155
Helena, Montana	210	1N	41	42	1	2	100			199			50
Idaho Falls, Idaho	163	3N, 1E	27	28	20	26	30	1,506	3,294	119	291	478	64
Miles City/Glendive, MT	212	2N	55	59	1	1	0			110			196
Missoula/Butte, MT	153	2N, (3S)	39	39	23	25	9			105			193
Rapid City, SD	166	2N,3E,(4S)	31	33	18	24	33			116			160
Twin Falls, Idaho	195	1N	57	39	7	6	(14)			93			133

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STATIONS AND MARKETS WHERE POTENTIAL HARM IS ALLEGED IN COMMENTS RESPONSIVE TO THE NOTICE IN DOCKETS 20988 AND 21284

Station * /market	mkt #	local** sigs.	1973% catv pen.	1978% catv pen.	1973 9-mid aud. (000s)	1978 9-mid. aud. (000s)	% chg	1973 revs (000's)	1978 revs (000's)	% chg	1973 op. income (000's)	1978 op. income (000's)	% chg
KRGV (A,V) McAllen-Brownsville, TX	138	2N	30	21	13	16	23			330			242
KOMO (A,V) Seattle, WA	18	3N,1I,3E	20	23	93	103	11			123			184
KATU (A,V) Portland, OR	22	4N,1I,3E	12	14	51	72	41			138			297
WUHQ (A,U) Battle Creek, MI	39	4N, 1E	8	21	10	40	300			291			(-)to(+)
WTTV (I,V) Bloomington IN	20	3N,2I,3E	11	16	50	45	(10)			106			95
KTVB (N,V) Boise, ID	141	3N, 1E	6	7	16	17	6			118			332
WHIZ (N/A/C, U) Zanesville, OH	203	1N	54	53	5	7	40			54			80
WTOG (I,U) Tampa-St. Pete, FL	17	4N,1I,2E	10	16	24	44	83			344			699
WSIL (A,V) Harrisburg, IL	76	3N,2E,(1S)	10	18	12	19	58			92			114
KPOB (Satellite) Poplar Bluff, MO	76	3N,2E,(1S)	10	18		Included In WSIL							

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STATIONS AND MARKETS WHERE POTENTIAL HARM IS ALLEGED IN COMMENTS RESPONSIVE TO THE NOTICE IN DOCKETS 20988 AND 21284

Station * /market	mkt #	local** sigs.	1973% catv pen.	1978% catv pen.	1973 9-mid aud. (000s)	1978 9-mid. aud. (000s)	% chg	1973 revs (000's)	1978 revs (000's)	% chg	1973 op. income (000's)	1978 op. income (000's)	% chg
KTVR (Terminated operations in 1975, facility converted to noncommercial station) Le Grande, OR													
WOR (I,V) New York, NY	1	3N,6I,6E	5	10	105	237	126		45			69	
WNEW (I,V) New York, NY	1	3N,6I,6E	5	10	273	412	51		69			102	
WPIX (I,V) New York, NY	1	3N,6I,6E	5	10	168	289	72		173			1342	
XETV (I,V) San Diego, CA	28	3N,1I,1E	27	37	18	21	17	4/					
KZAZ (I,V) Tucson, AZ	91	3N,1I,1E	10	12	4	5	25		90			(+)to(-)	
KTVU(I,V) San Fran. CA	5	3N,8I,3E,	20	30	66	94	424		136			382	
KMPH(I,U) Fresno-Tulare,CA	69	3N, 1I	8	8	7	15	114		337			2538	
WFFT(I,U) Ft. Wayne, IN	98	3N, 1I	3	11	1/	14							
WHME(I,U)South Bend, IN	78	3N,1I,1E,	4	17	1/	3							

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STATIONS AND MARKETS WHERE POTENTIAL HARM IS ALLEGED IN COMMENTS RESPONSIVE TO THE NOTICE IN DOCKETS 20988 AND 21284

Station * /market	mkt #	local** sigs.	1973% catv pen.	1978% catv pen.	1973 9-mid aud. (000s)	1978 9-mid. aud. (000s)	% chg	1973 revs (000's)	1978 revs (000's)	% chg	1973 op. income (000's)	1978 op. income (000's)	% chg
KSTW(I,V)Seattle-Tacoma,WA	18	3N,1I,3E,	20	23	22	44	100			383			(-)to(+)
SAN FRANCISCO, CA	5	3N,8I,3E	20	30	511	613	20	62,337	123,238	98	19,072	48,875	141
WXOW(N,U)LACROSS, WI	126	3N, 1E	30	36	4	6	50			204			217
WBNW(N,V)CHARLOTTE AMALIE, VI										38			120

1/ STATION NOT IN OPERATION IN 1973

2/ SATELLITE STATION INCLUDED

3/ STATION WAS SATELLITE IN 1973; AUDIENCE NOT LISTED

4/ STATION LICENSED IN MEXICO; FINANCIAL DATA NOT AVAIABLE

*CODE	**CODE
N=NBC	N=NETWORK STATION
A=ABC	I=INDEPENDENT
C=CBS	E=EDUCATIONAL
I=INDEP.	C=CANADIAN
V=VHF	S=SATELLITE
U=UHF	

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BILLING CODE 6712-01-C

Appendix E

Part 76 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

§ 76.5 [Amended]

1. In § 76.5, paragraphs (p), (q), (r), (s), (t), (ii), (jj), and (kk) are deleted.

2. In § 76.7, paragraph (h) is revised to read as follows:

§ 76.7 Special relief.

* * * * *

(h) On a finding that the public interest so requires, the Commission may determine that a system community unit operating or proposing to operate in a community located outside the 48 contiguous states shall comply with the provisions of Subparts D, F, and G of this part in addition to the provisions thereof otherwise applicable.

* * * * *

§ 76.57 [Amended]

3. In § 76.57, paragraphs (c) and (d) are deleted.

4. In § 76.59, paragraphs (d) and (e) are deleted, and paragraphs (b) and (c) are revised to read as follows:

§ 76.59 Provisions for smaller television markets.

* * * * *

(b) In addition to the television broadcast signals carried pursuant to paragraph (a) of this section, any such community unit may carry any additional television signals.

(c) Where the community is located wholly or partially within one of the major television markets listed in § 76.51(a) and also wholly or partially within a smaller television market, the carriage provisions for the major markets shall apply.

5. In § 76.61, paragraphs (c), (d), (e), and (f) are deleted, and the caption, introductory language, and paragraph (b) are revised to read as follows:

§ 76.61 Provisions for the major television markets.

Where a system serves a community that is located in whole or in part within a major television market, that community unit shall carry television broadcast signals only in accordance with the following provisions:

* * * * *

(b) In addition to the television broadcast signals carried pursuant to paragraph (a) of this Section, any such community unit may carry any additional television signals.

* * * * *

§ 76.63 [Removed]

6. Section 76.63 is deleted.

7. In § 76.65, paragraphs (a) and (b) are deleted, the caption is amended, and paragraph (c) is redesignated paragraph (a) and is amended to read as follows:

§ 76.65 Determination of signal contours.

(a) When, for purposes of ascertaining broadcast station rights to cable carriage, reference is made to Grade B contours §§ 76.57(a), 76.59(a), and 76.61(a), such contours shall be the field intensity contours defined in § 73.683(a) of this chapter: *Provided, however,* That such rights as to signals carried or authorized for carriage on or before August 26, 1977, shall be determined by reference to the contour prediction rules adopted in the *Sixth Report and Order in Dockets 8736, 8975, 8976 and 9175,* 41 FCC 148 (1952) as amended by *Report and Order in Docket 17253,* FCC 70-345, 22 FCC 2d 354 (1970).

§§ 76.151-76.161 [Removed]

8. Sections 76.151 through 76.161 are deleted.

§ 76.305 [Amended]

9. In § 76.305, paragraph (a)(5) is deleted.

July 22, 1980.

Separate Statement of Charles D. Ferris, Chairman

Re: *Elimination of Cable Distant Signal and Syndicated Exclusivity Rules.*

By today's action, the FCC has removed the regulatory debris of a previous decade; we have thus expanded the choices that consumers will have in the future.

Both restrictions we have struck down today were conceived during a time when regulatory policy was guided by hunch as often as by facts. Unfortunately, our rules have too often served the interests of one industry at the expense of another in the well-intended but mistaken belief that they would therefore serve the communications consumers. In fact, the syndicated exclusivity rules were openly the result of a Commission-ratified compromise struck by various commercial interests without benefit of public scrutiny or comment.

Yet, as we have not confirmed, these rules, when subjected to thorough analysis, lack the slightest hint of justification in terms of the overall interest of television viewers. Cable has not and will not destroy broadcasting, as was once feared. Broadcasting profits have continued to grow at a fast pace, depite cable's rapid expansions. In fact, our staff has found that cable has in many cases improved the profitability of broadcast stations by improving the reception of an otherwise weak UHF signal.

It is also clear that removing the "protection" of exclusivity arrangements will not "destroy" the supply of program materials. This regulatory protection is in fact rarely requested by local broadcasters and would, in any event, provide a small scope of security to a relatively limited number of programs even if they were applied.

The program supply market can now develop undistorted by this artifical regulatory scheme. It will adjust to a new reality where advertising rates will reflect both the distant as well as the local viewer and the value of syndicated rights will account for viewers who can watch programs at times that are more convenient to them.

Today's action results from two changes in the FCC's regulatory approach. First, we are now commited to submitting outdated rules and innovative proposals to rigorous analysis, and to do so with the benefit of expanded public input. We have replaced regulatory intuition with regulatory analysis.

Second, we have rediscovered that the best protection of consumers is gained, not by protecting particular industries, but by increasing consumer choice. Today's action allows cable systems to provide the signals and programs for which their subscribers are willing to pay. By broadening the range of options available to television viewers, we insure that the future development of video services is responsive to their needs and not the dictates of a regulatory body.

We have also rejected a proposal forwarded by the National Telecommunications and Information Administration to substitute for our syndicated exclusivity rules a system of retransmission consent. This proposal has some theoretical appeal, although its practical application would be burdensome and could well prove to frustrate consumer choice more than even our current rules.

Whatever its appeal, however, we are without jurisdiction to implement this proposal. It is clear from the legislative history of the 1976 Copyright Revision Act that Congress considered and rejected such a plan and decided instead to adopt a system of compulsory licensing for cable. In the face of that choice, we cannot adopt a conflicting scheme.

Congress itself provides the proper forum for parties to seek to change the compensation arrangements set forth in the 1976 Act and subsequent actions of the Copyright Royalty Tribunal.

Dissenting Statement of Commissioner Robert E. Lee in re Cable Television Signal Carriage

Free Lunch

I dissent to authorizing unlimited distant signals for CATV systems without including a syndicated exclusivity provision in the rules or at least a time for adjustment before a change in the exclusivity rules would become effective.

The majority has rationalized this decision by calling it pro-competitive. I disagree. How can this situation be competition? The broadcaster and the program supplier negotiate in the marketplace and establish a market price for the product which includes exclusivity. The CATV system takes the programming without participating in the marketplace and without any regard for the contractual rights of those who have participated. It uses this programming for its own profit.

I recognize that copyright legislation is supposed to be the solution for this problem. With syndicated exclusivity protection in our rules, it may be. As one who lived through the "Consensus Agreement," the development of our 1972 rules, and the Copyright Act, I can assure my colleagues that maintaining syndicated exclusivity was the understanding of all of the participants. It was one of the premises of the copyright legislation.

The majority say that payment for the product one uses to make a profit is not our concern, but it is. A long line of cases starting with *Southwestern Cable* clearly hold that authorizing signal carriage and establishing the ground rules for that carriage from the public interest viewpoint is the essence of the Commission's responsibility regarding CATV.[1] One aspect of our public interest concern, according to several of my colleagues, is fair play in the marketplace.[2] "Diversity" as an end in itself does not justify the Commission's disregard for a fairly functioning marketplace, particularly when that diversity is simply a matter of timing; no programming will be excluded.

I do recognize that times change and that the participants in the marketplace must adjust to change. I simply do not think that, on a warm day in July, the Commission should instantaneously change all of the ground rules governing the functioning of this marketplace and leave the participants without any time to adjust. Instead, I would have preferred to see the Commission authorize distant signals and phase out the syndicated exclusivity protection. The wiser and fairer decision in this proceeding would have been to provide a date certain in the future for the end of syndicated exclusivity protection. With knowledge of what our rules will be and of the period of time for adjustment, the parties could then renegotiate their contracts, settle the copyright issue, and establish a new marketplace environment that includes all of the participants. By allowing this period of adjustment, the Commission could extricate itself from its concerns about distant signal carriage without leaving chaos in the wake of its decision.

Because the Commission has chosen to upset the marketplace without providing for any reasonable period of adjustment, I dissent.

Dissenting Statement of FCC Commissioner James H. Quello in re Report and Order in Docket 20988 (Syndicated Exclusivity) and Docket 21284 (Distant Signal Carriage)

Over the past years in office I have more than supported cable deregulation—I have advocated it. I actively supported: the removal of the leapfrogging rules and the feature film restrictions, the waiver for the ARTEC cable system in Arlington, the deregulation of earth stations, the exemptions for smaller systems, stabilization of franchise fees and a host of other measures that I believed—and continue to believe—advanced the development of cable.

However, I strongly believe that elimination of syndicated exclusivity is inequitable, not needed, not wanted by a significant number of cable TV owners and operators, and is counter to long-term public interest.

I have dissented to the Report and Order in its entirety in order to honor specific requests from the Chairman of the Committee which deals with copyright, the upcoming Chairman of the Commerce Committee, and a number of other interested Congressmen and Senators, all of whom have urged that this Commission, before undertaking any significant revision of the distant signal restrictions or syndicated exclusivity rules, should first coordinate such steps with appropriate committees in the Congress.

Congressional leaders most involved with communications and copyright specifically requested that the FCC defer action until after the Copyright Royalty Tribunal review in September 1980. Among those writing were Congressman Robert W. Kastenmeier, Chairman of the subcommittee with copyright responsibility and oversight, and Congressman John Dingell, upcoming Chairman of the House Interstate and Foreign Commerce Committee. Four key members of the Judiciary Committee, Congressmen Moorhead, Railsback, Swift and Sawyer in a jointly signed letter stated:

> We know that Congressman Kastenmeier, Chairman of the Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice, stated in his March 13 letter to you on this subject, a willingness for his subcommittee to review the need for legislation in this area in the next Congress. He also stressed the importance of allowing the Tribunal the opportunity to complete its first full years of duties without changing the environment within which the affected industries must function. We would like to join in urging that the Commission postpone any significant revision of the syndicated exclusivity and distant signal rules until Congress has had the opportunity to revisit this issue with the benefit of the results of the Tribunal's first recommendations.

Other Congressional leaders who wrote letters urging deferring action were Senators Birch Bayh and Don Riegle and Congressmen Danielson and Mazzoli. I agree with their expressed concern that precipitate action could upset the delicate balance of the copyright and communications policies under the 1976 Copyright Act. The action of the majority in adopting the Report and Order flaunts the requests of these concerned congressional interests.

Aside from congressional warnings, I would have urged the retention of the syndicated exclusivity rule but would have been willing to eliminate those rules limiting distant signal importation by cable systems. As to the matter of retransmission consent, I would prefer to reserve judgment as to the legality of such requirement as well as the advisability in light of the 1976 Copyright Act.

However, I am uncomfortable with the concept of expropriating a valuable property—a television program—with neither consent from nor compensation to the owner of that property. Although the Copyright Act of 1976 purported to deal with this problem, it is widely conceded that it has utterly failed to do so in any meaningful way. My second concern is the total disregard by the majority of the contract rights of both syndicators and broadcasters and the consequences of that disregard. Where the majority tends to view the importation of syndicated programs as

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[1] The *HBO* and *NARUC II* cases referenced by the majority deal with Commission restraints on the nonbroadcast services of CATV and, thus, have no bearing on this situation. The courts objected to FCC restrictions on CATV activities which really were competitive.

[2] Carriage of signals without any accommodation of the exclusivity rights of the broadcasters and program suppliers reminds me of the current problem pay programmers are having with the theft of their signals. My colleagues have been outraged by that situation. I don't see how this is different.

some kind of free lunch for viewers, experience has taught me that there is no free lunch. Producers of programs must have incentives and the virtual total loss of control of their productions after the initial sale to a broadcaster goes a long way toward eliminating the necessary incentives and creating a condition of program anarchy.

Companies in both cable and broadcasting with a larger future stake in cable rather than broadcasting urge the retention of syndicated exclusivity (Storer, Cox, GE, etc.).

The Commission's Economic Report relied upon by the majority has received widespread criticism on methodology and objectivity. Statements in the Storer filing in response to the Notice of Proposed Rulemaking are particularly significant.

The Report's chief defect is that the outside economists retained to prepare them had previously and publicly prejudged the questions they were retained to study. In consequence their conclusions were merely expectable and can be described, at best, as seriously flawed and negligently so. This assessment is harsh but plainly correct: the Reports pick and choose among the record materials, favoring those which support the "desired" conclusions while discounting, distorting, or even ignoring those which do not. An NCTA submission on impact was accepted uncritically while a NAB submission (the Wharton Study) was not. Two Cooper studies on behalf of INTV were not even discussed in the Report; nor was the study by Professor Fisher of MIT or ABC's smaller market study.

Even the Broadcast Bureau's telling critique of the economic analyses was largely ignored. Significantly, the Bureau had pointed out that they lacked analytical depth, failed to use current data, and should have employed a "more balanced appraisal."

Not content with elevating selective analysis to an art form, the economists also ignored completely the question of impact during fringe time—the period of cable's greatest impact and independent television's greatest vulnerability. Moreover, they dealt with "average audience losses" in a way which recalls the six-footer drowning in a lake with an "average" depth of only three feet. The *Park* study had projected audience losses of 41% and 30% in single-station and two-station markets below the top 100, respectively, but the Economic Inquiry Report concludes that "in all but the most extreme cases the additional audience loss will be less than 10 percent in the foreseeable future." (Par. 117). The "averaging" process, of course, shrouds the true and devastating impact on at least 50 single-station markets subject to Park's predicted 41% audience diversion.

In short, the economic "analyses" are objective only in the same sense that PLO might objectively analyze the Egyptian-Israeli peace treaty. And this would be apparent to a reviewing court which, although not permitted to substitute its policy judgment for that of the agency, can and does require that the agency base its rulings on a coherent record.

If a study or any evidence indicated that they syndicated exclusivity rule imposed a significant burden hampering the growth and development of cable television, I would carefully weight that factor. To the contrary, the current pace of cable growth is exploding! Broadcasters are in an almost desperate rush to get into the business.

Also, if it could be shown that the public stood to gain more than it will lose through abandonment of the rule, my choice would be clear; the public must be served. Arguments extolling the virtues of "time diversity" notwithstanding, we are abandoning an incentive for true diversity of programming—the production and distribution of programming not now available. We are simply providing more conduits for recirculation of the same material over and over again. I believe we can do better in promoting the public interest than assuring the presentation of "Bonanza" at all hours of the day and night.

During the Commission's deliberation of this issue, I considered a possible moratorium on abandonment of the rule. This course seemed attractive at first glance because it would protect existing syndication contracts for a period of time. However, I could not reconcile my fundamental concern about the inequity of unbridled use of a product by some entity which neither produced it nor purchased its use.

The Congress has recognized that the existing Copyright Law is flawed. As mentioned before, leading members of Congress who are most responsible for eliminating these flaws have asked the Commission to postpone action on both syndicated exclusivity protection and unlimited signal carriage until the Congress and the Copyright Tribunal have more opportunity to deal with the problems. I fail to understand why—despite those reasonable entreaties—the majority felt constrained to move with such unseemly haste.

Finally, I note that the television industry today is generally prospering quite admirably, and cable television continues to expand by leaps and bounds. Cable with all types of program and pay products available is now viable for major markets. It is a very desirable additional service to those consumers who can afford to pay a monthly fee. It is not a boon to the poor in the ghettos who must rely on a TV service free of additional financial requirements. I believe there is a vital public interest in both preserving a free TV service to the consumer and yet encouraging a diversified pay service to those who can afford a monthly fee. The viewing public today has the present advantage of program diversity in various forms with more options assured for the future. It seems to me that this Commission in its efforts to readjust public interest benefits must not take out of one and put into the other until the scales are completely unbalanced. In my opinion, the long-term public interest considerations in retaining syndicated exclusivity requirements are more persuasive than those elusive benefits proclaimed by the majority in the Report and Order.

I dissent to adoption of the Report and Order.

Dissenting Statement of Commissioner Abbott Washburn re Distant Signal and Syndicated Program Exclusivity Rules

Instead of acting in today's premature fashion to eliminate, posthaste, the distant signal and syndicated exclusivity rules, a more judicious approach on the part of the Commission would have been to conduct an oral argument before making final determination. The record of these proceedings is voluminous and the report itself, with accompanying appendices, exceeds 500 pages. Still, even after reviewing the record, questions persist which it would have been useful to have heard addressed by the parties before the Commission. An oral argument with give-and-take from the bench would also have given us helpful new insights into the issues.

Now, in my view, is *not* the time for the Commission to be changing the ground rules under which the 1976 Copyright Act was drafted. Congressman Kastenmeier, Chairman of the Judiciary Subcommittee, has written us, saying:

The 1976 Copyright Act was written against the backdrop of existing communications law and regulations. * * * It is impossible to completely separate copyright law and communications policy as the Copyright Act of 1976 is now written. Therefore, I would urge the Commission to delay taking any action which would disturb the delicate balance of copyright and communications policy until the Copyright Royalty Tribunal has been given an opportunity to carry out its 1980 review and Congress is in a position to respond, if necessary.

It's all very well to say, as the item does, that this is not our business—that we're not responsible, Congress is. But meanwhile there are basic inequities here, inequities which some cable industry spokesmen themselves recognize. Cable is going through the

revolving door on the other fellow's push. We at the FCC, in my judgment, cannot just blind our eyes to these inequities—for they have a bearing on how the communications facilities are used "in the public interest," and that's our business under the 1934 Act.

In May, at the National Cable Television Association convention, Congressman Van Deerlin, Chairman of the Subcommittee on Communications, stated that the Copyright Tribunal is not working, and predicted that "sooner rather than later, Congress will have to revise copyright policy for the cable television industry."

So Congress is doing some re-thinking. The Royalty Tribunal has not had adequate opportunity to function, and to complete its first five-year review required by the Copyright Act. Chairman Kastenmeier, Senator Riegel, Congressman Dingle and other Members of the House and Senate have urgently requested us not to act precipitously. Is this a good time, therefore, to change the ground rules? No, it is a *bad* time; and I can see no real reason for our racing to such action. As Chairman Kastenmeier in his March 13 letter to Chairman Ferris on the proposal to deregulate cable said: "We did not contemplate such a sweeping change in the regulatory structure when we drafted Pub. L. 94–533."

Contrary to the language of the Opinion and Order, the studies upon which today's action relies are *not* conclusive. For example, the item goes to great lengths to minimize the probable impact on TV stations of the elimination of syndicated exclusivity. But there is little evidence to support this contention in situations where cable penetration is 40 to 50% of TV households in a community. This cannot but have a serious diluting effect on the viewership of the local station. Many eyeballs will shift to the other signals. How many? No one knows. Yet the cable industry is predicting future market penetrations on this order of magnitude.

Finally, I am very concerned by the action of the majority in deleting the exclusivity rules without providing a transition period for those who entered into contracts in good faith reliance on our rules. These parties will now be prejudiced through no fault of their own, a result which is unjust and unfair. Instead, I would have preferred to have provided for a reasonable period of time in which existing contracts, entered into in reliance on our rules, would have remained in effect. To this end, I offered an unsuccessful motion to include language in the Order that would have provided a grace period of up to three years for the orderly phasing out of existing contracts. This would also have given the Congress needed time in which to make necessary adjustments to the Copyright Act.

In summary, I must dissent to this unnecessary and ill-timed deletion of the rules, an action which unfairly and immediately voids legal contracts made in good faith on the basis of our rules.

Separate Statement of Commissioner Joseph R. Fogarty in re Report and Order in Docket 20988 and 21284—Cable Television Syndicated Exclusivity and Signal Carriage Rules

At the commencement of this rule making proceeding,[1] I stated that the Commission's existing cable television rules and policies "assumed harm to the public interest before it materialized and placed a heavy burden of proof on new technology and additional services to show that they would not injure the status quo," and that "this regulatory approach and policy has been misguided from the standpoint of economic reality, consumer welfare, and the larger public interest." I further stated that "something more than mere conjecture or intuitive assumptions should be required before we impose regulatory constraints and burdens on one industry or technology in favor of another," and that "In an era of explosive technological innovation, the public interest is better served by regulatory deference to the marketplace and competitive forces until experience, rather than speculation, demonstrates the existence of problems or inadequacies."

The extensive record amassed in this proceeding only serves to confirm these fundamental observations. The deletion of these unnecessary and counterproductive rules is firmly premised in the public interest and this action has my complete approval and support.

Separate Statement of Commissioner Tyrone Brown re Report and Order in the Matter of Cable Television Syndicated Program Exclusivity Rules (Docket 20988)

When we issued our *Notice of Proposed Rulemaking* in this proceeding I voted enthusiastically for our proposals because I saw no basis in communications policy for continuing the syndicated exclusivity rules. The record in this proceeding has more than borne out my initial tentative conclusion.

I also voted to include in our *NPRM* a proposal providing for a transition period to ameliorate any dislocations resulting from the deletion of our rules. Given the evidence in the record, I have concluded that such a transition period is unnecessary.

The record indicates that of those cable systems subject to our rules, only 27 percent have been required to provide syndicated exclusivity protection. Other evidence demonstrates that even if all stations now entitled to program protection requested it, a maximum of 4.4 percent of all television households in the nation would be affected. This figure would rise to only 9 percent under any reasonable projection of future cable development.

In light of the minuscule impact that a change in our rules will cause, I see no need to provide for a transition period. These rules have restricted consumer choices long enough without counterveiling public interest benefit.

Separate Statement of Commissioner Anne P. Jones re Report and Order in Docket 20988 and 21284—Cable Television Syndicated Exclusivity and Signal Carriage Rules

I concur in the decision to eliminate these rules because I agree that the extensive record developed in these proceedings fails to show that they serve any valid public policy purpose. As well described in the Report and Order, the rules owe their existence to what now, with the benefit of hindsight, seems rather clearly to have been an exaggerated fear of the threat posed by cable television to television broadcasters and their ability to serve the public. The burden was therefore on those who would retain the rules to demonstrate the need or desirability for their retention in the public interest, and in my judgment this burden was not met.

The reason my vote is a concurrence is that I do not fully agree with the heavy implication in the Report and Order that for some years into the future the threat of harm to broadcast television by cable is negligible. Whether this is true depends in large measure on whether cable remains what it has been: primarily a retransmission mechanism. To the extent, however, that cable begins to realize its great potential as a mechanism for providing diverse programming, as well as myriad other services, it may be that our estimates of a maximum 48% market penetration and 10% audience diversion nationwide will prove too modest. I do not intend by this caveat to imply that if cable begins to pose a more substantial and immediate threat than the record shows it does now the Commission should respond.

[1] Separate Statement of Commissioner Joseph R. Fogarty, 71 FCC 2d 949–50 (1979). *See also Vanhu, Inc.*, Separate Statement of Commissioner Joseph R. Fogarty, 65 FCC 2d 991, 992 (1977).

either at all or in any particular way. I merely say that I believe cable's threat to television broadcasting is more problematical than the language of the Report and Order seems to imply, although I fully agree that on the present record any such perceptible threat does not justify retention of these rules.

On the matter of retransmission consent, I wish to express my agreement with the conclusion in the Report and Order as to the effect of the 1976 amendments to the Copyright Act. I have carefully considered the arguments of NTIA and others and I continue to be troubled by the argument that the compensation required under the present statutory scheme by cablecasters to program owners is unreasonably low. I have concluded, however, that, Commission authority in this area has been preempted by the statutory compulsory licensing scheme and arguments concerning the adequacy of the compensation to program owners under that scheme should be directed to the Copyright Tribunal or to Congress—and not to this agency.

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September 11, 1980

Part IV

Department of Transportation

Urban Mass Transportation Administration

Project Management Procedures for Grantees

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 658

[Docket No. 80-G]

Project Management Procedures for Grantees

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Urban Mass Transportation Administration (UMTA) is proposing guidelines for its grant in aid recipients in the management of their projects. The purpose of these guidelines is to promote effective project management and thereby ensure the prudent use of Federal and local funds in mass transit projects.

DATE: Comments must be received on or before December 8, 1980.

ADDRESS: Comments must be submitted to UMTA Docket No. 80-G, 400 7th Street, S.W., Washington, D.C. 25090. All comments and suggestions received will be available for examination in room 9320 at the above address between 8:30 a.m. and 5:00 p.m., Monday through Friday. Receipt of comments will be acknowledged by UMTA if a self-addressed stamped postcard is included with each comment.

FOR FURTHER INFORMATION CONTACT: Timothy Wolgast, (202) 426-4011.

SUPPLEMENTARY INFORMATION: All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. Comments received after the expiration of the comment period will be considered to the extent feasible.

The administration has determined that this regulation is not a significant regulation under the criteria in the DOT Order for Improving Government Regulations (44 FR 11042, February 26, 1979).

Under the DOT Order, a full evaluation is not warranted because the expected economic impact of the proposed regulation is minimal. The Circular is a compilation of existing policies, procedures, and interpretations and does not introduce any new material dealing with project management.

The provisions of OMB Circular A-95 apply to this Notice of Proposed Rulemaking. It covers the following programs as listed in the Catalog of Federal Domestic Assistance (CFDA):

20.205 Highway Research, Planning, and Construction
20.500 Urban Mass Transportation Capital Grants
20.501 U.M.T. Capital Improvement Loans
20.503 U.M.T. Managerial Training Grants
20.504 Mass Transportation Technology (R. & D. Program)
20.505 U.M.T. Technical Studies Grants
20.506 U.M.T. Demonstration Grants
20.507 U.M.T. Capital and Operating Assistance Formula Grants
20.510 U.M.T. Planning Methods Research and Development (U.T.P.S.)

Discussion of proposal: These proposed guidelines provide external project management guidance for recipients pursuant to sections 3, 5, 6, 8, and 10 of the Urban Mass Transportation Act of 1964, as amended, and Title 23, sections 103(c)(4) and 142. The guidelines replace "Guidelines for Project Administration," *External Operating Manual*, Chapter III, UMTA 1000.2, Chg. 2, dated March 11, 1974. They also supersede UMTA C 2300.2, "Letter of Credit Procedures for Recipient Organizations Under the Treasury Regional Disbursing Office System," dated March 21, 1978.

The contents of the proposed document include recipient responsibilities for project supervision, project reporting requirements, amendments and budget revisions, property management, record retention, closeout procedures, suspension and termination, financial management, cost allocation plans, audits, payment procedures, and special requirements.

Recipients will be responsible for maintaining adequate internal controls in order to adequately safeguard grant funds and resources. Recipients will also be held responsible for administration of the project and compliance with terms and conditions of the grant agreement and requirements stated in these guidelines and other applicable regulations and circulars.

Those items in the proposed circular which are mandatory are indicated by the words "shall," "required," and "must." Those items which are included as suggested formats or procedures are indicated by such words as "may," "should," or "would."

In consideration of the foregoing, it is proposed that Title 49 of the Code of Federal Regulations be amended by adding a new Part 658 to read as follows:

PART 658—PROJECT MANAGEMENT GUIDELINES FOR GRANTEES

Sec.
658.1 Purpose.
658.3 Applicability.
658.5 Project management procedures for grantees.
Appendix—UMTA Circular 5010.1—UMTA Project Management Guidelines for Grantees.

Authority: 49 U.S.C. § 1601 (the Urban Mass Transportation Act of 1964, as amended); 23 U.S.C. § 103 and § 142; 42 U.S.C. § 7506; 49 CFR 1.51; OMB Circular No. A-102, (42 FR 45828); Treasury Circular 1075 (31 CFR Part 205); DOT Order 4600.1B.

§ 658.1 Purpose.

(a) This part prescribes UMTA procedures and requirements for the management of projects by recipients of Federal financial assistance under sections 3, 5, 6, 8, and 10 of the Urban Mass Transportation Act of 1964, as amended, and provisions of other laws administered by the Urban Mass Transportation Administrator.

(b) This part implements the project and financial management provisions of OMB Circular A-102, with the exception of Attachment O, Procurement, and Attachment B, Bonding and Insurance, which are implemented by Part 666 of this Chapter. This part also implements the applicable provisions of Department of Transportation Order 4600.9B, "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments."

§ 658.3 Applicability.

(a) This part applies to all recipients of Federal financial assistance under sections 3, 5, 6, 8, and 10 of the Urban Mass Transportation Act of 1964, as amended, sections 103(e)(4) and 142 of Title 23 U.S.C., and section 175 of the Clean Air Act Amendments of 1977.

§ 658.5 Project management procedures for grantees.

In accepting Federal assistance, each recipient to which this part applies agrees to adhere to the procedures and requirements of UMTA Circular 5010.1, "Project Management Procedures for Grantees," which is set out in Appendix A.

Appendix—UMTA Project Management Guidelines for Grantees (UMTA C 5010.1)

1. *Purpose.* This circular provides project management guidance for grant recipients pursuant to Sections 3, 5, 6, 8, and 10 of the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. § 1601 *et seq.*; Sections 103(e)(4) and 142 of Title 23 U.S.C., and § 175 of the Clean Air Act Amendments of 1977, 42 U.S.C. § 7505.

2. *Cancellation.* a. "Guidelines for Project Administration," External Operating Manual (EOM), Chapter III, UMTA 1000.2, Chg. 2, dated 3-11-74.

b. UMTA C 2300.2, "Letter of Credit Procedures for Recipient Organizations Under the Treasury Regional Disbursing

Office System," dated 3–21–78 (previously issued as UMTA C 5200.1).

3. *References.* a. Office of Management and Budget (OMB) Circular A–102, "Uniform Administrative Requirements for Grants-In-Aid to State and Local Governments," dated 9–12–77.

b. Office of Management and Budget (OMB) Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations," dated 7–30–76.

c. Sections 3, 5, 6, 8, 10 and 19 of the Urban Mass Transportation Act of 1964, as amended. 49 U.S.C. § 1601 *et seq.*

d. Title 23, United States Code. Highways.

e. Title 42, United States Code. The Public Health and Welfare.

f. "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970," 42 U.S.C. § 4601 *et seq.*

g. Office of Management and Budget (OMB) Circular A–21, Revised, "Cost Principles for Educational Institutions," dated 2–26–79.

h. Federal Management Circular (FMC) 74–4, "Cost Principles Applicable to Grants and Contracts with State and Local Governments," dated 7–18–74.

i. OMB Circular A–73, "Audit of Federal Operations and Programs," dated 3–15–78.

j. Department of the Treasury Circular 1075, 4th Revision, December, 1977.

k. Part 205, Chapter II, Title 31 CFR.

l. Chapter 2000, Part 6, Treasury Fiscal Requirements Manual.

m. UMTA C 1155.1, "UMTA Interim Equal Employment Opportunity Policy and Requirements for Grant Recipients," dated 12–30–77.

n. UMTA C 1160.1, "UMTA Guidelines for Title VI Information Specific to UMTA Programs," dated 12–30–77.

o. UMTA C 1165.1, "UMTA Interim Minority Business Enterprise Policy and Grant Requirements for Grant Recipients," dated 12–30–77.

p. UMTA C 4220.1, "Third-Part Contracting Guidelines," in final drafting.

q. UMTA C 4530.1, "Land Acquisition and Relocation Assistance Under the Urban Mass Transportation Act of 1964, as amended," 3–21–78.

r. OMB Circular A–122, "Cost Principles for Non-Profit Organizations," dated 6–27–80.

s. Department of Health and Human Services (HHS) Publication No. OASC–10, "A Guide for Local Government Agencies—Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government." (Guides are also available for universities and non-profit organizations. They may be obtained from HEW Regional Offices or the Government Printing Office Washington, D.C.)

4. *Background.* This circular provides general guidance relating to project management procedures for grantees under Sections 3, 5, 6, 8, and 10 of the Urban Mass Transportation Act of 1964, as amended, Sections 103(e)(4) of 142 of Title 23 of the United States Code (U.S.C.), and Section 175 of the Clean Air Act Admendments of 1977, 42 U.S.C. § 7505. These procedures are intended to assist grantees in administering UMTA-funded projects and meeting the various grant responsibilities and reporting requirements. For additional guidance on specific areas such as civil rights, relocation, cost principles, and third party contracting, refer to materials listed above in paragraph 3, References. Recipients should also be aware of the applicable environmental, elderly and handicapped, and other regulatory requirements.

Theodore C. Lutz,

Administrator.

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CHAPTER I—PROJECT ADMINISTRATION

I. Project Administration and Management

1. *Introduction.* This circular is intended to provide grantees with procedures and guidelines to be applied in administering UMTA grants, cooperative agreements, and/or loans, (hereafter collectively referred to as "grants") and addresses projects under Sections 3, 5, 6, 8, and 10 of the Urban Mass Transportation Act of 1964 as amended, Title 23 U.S.C. Sections 103(c)(4) and (142), and Section 175 of the Clean Air Act Amendments of 1977, 42 U.S.C. § 7505.

Chapter I of this circular deals with Project Administration and Management, Chapter II with Financial Management, and Chapter III with Payment Procedures. The terms grantee and recipient as used hereafter apply to all assistance recipients. The term "project" refers to the grant or cooperative agreement project described in the agreement signed by UMTA and the recipient.

2. *Notice of Project Approval.* When a project has been approved, the recipient is notified of that approval by a letter from UMTA. This letter also sets forth any special conditions under which the project is approved and transmits copies of the grant agreement and the approved project budget. Effective on the date of the approval letter, the recipient may begin to incur costs on the project. However, requisistions for Federal grant or loan funds will not be honored until the grant or loan agreement has been executed by both UMTA and the grantee. In addition, for Section 3 and Section 5 projects, a proper authorizing resolution must be received by UMTA before requisitions will be paid.

a. *Project Authority.* In general, the UMTA regional offices are the responsible UMTA authorities in project management for all projects except those under Sections 6, 10, and 11, responsibility for which remains with UMTA headquarters offices in Washington, D.C. Regional offices should be kept informed of the status of those projects for which headquarters offices are responsible.

b. *Execution of Grant Agreement.* The cognizant UMTA office will send *four* copies of the grant agreement to the recipient after project approval. The recipient should execute and date the copies in accordance with the instructions provided and return *two* of them to the appropriate UMTA office. UMTA must be advised *promptly* if the grant document cannot be executed by the recipient within 60 days.

3. *Grantee Responsibilities for Project Administration and Management.* The recipient is responsible for administration and management of the project and compliance with terms and conditions of the grant agreement and the requirements stated in this circular and other applicable circulars and regulations. It is the responsibility of the recipient to: a. Provide continuous administrative and management direction of project operations;

b. Provide, directly or by contract, adequate technical inspection and supervision by qualified professionals of all work in progress,

c. Assure conformity to grant agreements, applicable statutes, codes, ordinances, and safety standards.

d. Maintain the project work schedule developed during the first quarter of the project and constantly monitor the performance to *assure that schedules are met* and other performance goals are being achieved.

e. Keep expenditures within the latest approved project budget;

f. Assure compliance with UMTA requirements on the part of agencies, consultants, contractors, and subcontractors working under approved third party contracts or interagency agreements; and

g. Request and withdraw Federal cash only in amounts and at times as needed to make payments that are immediately due and payable.

4. *Project Reporting Requirements.* UMTA requires several types of reports in order to adequately monitor project progress. The procedures are designed to place responsibility on recipients for management of day-to-day operations of UMTA grant-supported projects.

a. *Quarterly Progress Reports.* UMTA requires quarterly progress performance reports on all projects, except Section 5 Operating. Recipients of Section 5 Operating Assistance grants need only submit a quarterly Statement of Revenues and Expenses instead of a quarterly progress report (Figure I–1 is a sample of a Statement of Revenues and Expenses). UMTA may also require other special reports or quarterly project management meetings due to the magnitude and complexity of major projects. Final project reports are required before grant closeout and are briefly discussed in paragraph I–13.

As a minimum, each quarterly performance report shall address the following, relating the narrative to individual budget line items: (1) A comparison of actual accomplishments to the objectives established for the period. Accomplishments should include items such as specifications written, bids solicited, bid protests, contracts awarded, equipment received, and equipment disposed of. For planning projects, accomplishments should include items such as major work tasks started, completed, or in progress for each budget line item; also, the percent of work completed and the percent of the budget expanded by budget line items should be included. Where possible, accomplishments (represented by quantitative data such as hours worked, units, tasks, or sections completed, etc.) should be related to expenditures for the same period. Recipients must submit an activity schedule (bar chart, critical path exhibit) by the time the first quarterly report is submitted;

(2) Reasons why objectives were not met, identifying problem areas and the planned approach to resolution of the problems;

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high cost units;

(4) Significant events affecting the project, both positively and negatively;

(5) Projected activities for the next quarter and steps anticipated in carrying them out;

(6) Changes in scope, budget, and activities since last quarter;

(7) Anticipated changes in upcoming activities whether or nor prior approval or amendments are needed; and

(8) Estimated completion dates, percent complete, and funds required for completion (not required for Section 8 projects).

Photographs, though not required, are helpful in evaluating progress on capital projects.

b. *Financial Reports.* Financial reports may either be in the form of a Financial Status Report or a Report of Federal Cash Transactions. These reports are discussed separately in Chapter II of this circular and should accompany the

quarterly progress reports when submitted to UMTA.

c. *Minority Business Enterprise (MBE) Reports.* UMTA C 1165.1 contains requirements for quarterly MBE reports. Grantees may submit such reports together with the other quarterly reports described herein. See UMTA C 1165.1 for details on the MBE reports, including applicable threshold limits.

d. *Significant Events.* Between required quarterly progress reporting dates, events may occur which significantly impact the project.

Reporting shall include events which will either delay completion of the project or will otherwise impact the attainment of the project objectives or schedule. In such cases, the recipient shall inform the cognizant UMTA office as soon as possible (normally within a week) after such conditions develop. Conditions in this category include: (1) Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure should convey the action taken or contemplated, and any Federal assistance needed to resolve the situation.

(2) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

e. *Report Due Dates.* Quarterly reports are to be submitted to the cognizant program office within 30 days after the end of the calendar quarter. At year-end, grantees may submit reports within 90 days of the end of the period. The original and one copy of each report should be submitted to the appropriate office. (For Section 175 grants, one copy of the report should also be sent to EPA.) Note that *payments may be withheld for failure to submit these reports on time.*

5. *Budget Revisions and Project Amendments.*—a. *General.* A grant obligates the recipient to undertake and complete the project as described in the grant agreement. The grant budget, as used in this circular, means the approved financial plan for both UMTA and recipient shares to carry out the purpose of the grant. This plan is the financial expression of the approved project. During the course of the project it may become necessary to *revise* the budget or *amend* the grant agreement.

b. *Budget Revisions.* A budget revision is defined as a transfer of funds between direct or indirect cost line items which does not affect the scope, design, or total dollar amount of the project. The approved project budget is enclosed with the project approval letter. The recipient is responsible for controlling and monitoring all project undertakings to ensure they are in accordance with the approved budget. Recipients must obtain UMTA concurrence for budget revisions if the proposed revisions meet the criteria contained in paragraph 5c below. All requests for budget revisions should be sent to the appropriate UMTA regional or headquarters office. Recipients should notify the appropriate UMTA office of all budget revisions even if no prior UMTA approval is required.

c. *Approval Requirements for Budget Revisions.* The recipient must request *prior approval* from UMTA for certain proposed budget revisions. Approval requests should be sent to the appropriate UMTA office. Requests must be made whenever: (1) The Federal share exceeds $100,000 and the cumulative amount of transfers in the proposed revision among direct cost categories exceeds or is expected to exceed ten percent of the total grant budget. No transfer is permitted which would cause UMTA funds to be used for purposes other than those specified in the grant agreement;

(2) The revision involves the transfer of amounts between indirect and direct costs;

(3) The revisions pertain to the addition, or deletion of items requiring approval in accordance with the provisions of Federal Management Circular 74–4, "Cost Principles Applicable to Grants and Contracts With State and Local Governments" or Office of Management and Budget Circular A–21, Revised, "Cost Principles for Educational Institutions." This includes equipment items; or

(4) The revision would transfer funds between construction and nonconstruction work.

d. *Budget Format.* If a revised budget is required, it should include the same overall information as the current approved project budget. It is recommended the revised budget follow a three column format: Column A, the current approved budget, Column B, the change in each line item, and Column C, the revised budget line items (Column A plus Column B). In accordance with the above, the original and two copies of a proposed revision, dated, numbered consecutively, together with an explanation of each change, should be submitted to UMTA for approval. This explanation should identify and fully explain those events which have made a budget revision necessary and their impact on the project. In cases where the recipient makes a change in the project budget which does not require prior UMTA approval under paragraph 5c above, a copy of the revised budget and an explanation should be submitted to UMTA as part of the next quarterly progress report, for information purposes only.

e. *Project Amendments.* Project amendments are required when the recipient desires to:

(1) Change the scope of the project;

(2) Alter the design of the project;

(3) Increase the amount of Federal funds; or

(4) Change administrative procedures.

These activities may be undertaken prior to the issuance of an amendment, *if approved in writing,* in advance, by UMTA.

f. *Required Documents—Amendments.* Any request to amend the grant must be submitted by letter to the appropriate UMTA regional or headquarters office. Grant amendment requests should contain an original and one copy of:

(1) A letter of request;

(2) Specific identification, explanation, and justification of the change in scope of project, design, or funding;

(3) A revised Standard Form (SF) 424 if there is a change in the grant amount or the project period;

(4) A proposed revised budget and budget form 80–RO–186, and

(5) If required, evidence of the availability of appropriate local matching funds.

Note that amendments to transfer a grantee to the letter of credit payment method do not require these documents.

g. *Other Requirements—Amendments.* Upon submission by the recipient of a proposed change, and depending on the extent of the change in scope, design, and funding being proposed, UMTA will determine whether it is necessary to hold new public hearings, prepare a new environmental impact statement, revise the annual element of the Transportation Improvement Plan (TIP), require possible local action by the planning organization, and/or submit additional documentation. Additionally, a new 13(c) certification by the U.S. Department of Labor may be required for Section 3 and Section 5 projects.

h. *Amendment Approval.* Approval of an increase in funding for a Federal grant or loan, or a change in project scope will depend upon the adequacy of the justification presented by the recipient and the availability of funds.

6. *Use and Disposition of Project Property.*—a. *Definitions.* The following definitions apply for UMTA property management standards: (1) *Real property.* Real property means land,

including land improvements, structures, and appurtenances affixed thereto, excluding movable machinery and equipment.

(2) *Personal property.* Personal property of any kind except real property. It may be tangible-having physical existence, or intangible-having no physical existence, such as patents, inventions, and copyrights.

(3) *Nonexpendable personal property.* Nonexpendable personal property means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit. Recipients subject to Accounting Standards Board regulations may use the CASB standard of $500 or more per item and a useful life of two or more years.

(4) *Expendable personal property.* Expendable personal property refers to all tangible personal property other than nonexpendable property.

b. *Real Property Standards.* The following requirements concern the use and disposition of real property funded partly or wholly by UMTA: (1) Title to real property shall be vested in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the original grant as long as needed.

(2) The recipient shall obtain approval by UMTA for the use of the real property in other projects when the grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs, or programs that have purposes consistent with those authorized for support by the grantor.

(3) When the real property is no longer needed as provided in (1) and (2) above, the recipient shall request disposition instructions from UMTA. The recipient will receive one of the following disposition instructions from UMTA: (a) The recipient may be permitted to retain title after it compensates UMTA in an amount computed by applying the Federal percentage of participation in the cost of the original project to the fair market value of the property.

(b) The recipient may be directed to sell the property and pay UMTA an amount computed by applying the Federal percentage of participation in the cost of the original project to the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(c) The recipient may be directed to transfer title to the property to UMTA provided that in such cases the recipient shall be entitled to compensation computed by applying the recipient's percentage of participation in the cost of the program or project to the current fair market value of the property.

c. *Federally Owned Nonexpendable Personal Property.* Title to federally owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally owned property in their custody to the Federal agency. Upon completion of the agreement, or when the property is no longer needed, the grantee shall report the property to UMTA for further agency utilization. UMTA will issue appropriate disposition instructions to the recipient after completion of the agency's review.

d. *Property Management Standards for Other Nonexpendable Property.* Nonexpendable personal property acquired entirely with local funds is the property of the recipient. Recipients are free to use and dispose of this property as they see fit unless the property is included as revenue financing for a subsequent grant. When other nonexpendable tangible property is acquired by a recipient with project funds, title shall not be taken by UMTA but shall vest in the grantee subject to the following conditions: (1) *Right to transfer title.* For items of nonexpendable personal property having a unit acquisition cost of $1,000 or more, UMTA may reserve the right to require the grantee to transfer the title to the Federal Government or to a third party named by UMTA when such third party is otherwise eligible under existing statutes. Under such conditions the property shall be appropriately identified in the grant or otherwise made known to the grantee in writing. UMTA will issue disposition insturctions within 120 calendar days after the end of the Federal support of the project for which it was acquired.

(2) If UMTA does not reserve the right to transfer title, the grantee shall use the property in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original project or program, the recipient shall use the property in connection with its other federally sponsored activities, in the following order of priority: (a) Activities sponsored by UMTA.

(b) Activities sponsored by other Federal agencies.

(3) *Shared Use.* During the time that nonexpendable personal property is used on the project or program for which it was acquired, the grantee shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the property was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by UMTA; second preference shall be given to projects or programs sponsored by other Federal agencies. If the property is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by UMTA. User charges should be considered if appropriate.

(4) *Insurance.* For captial grants the grantees must maintain insurance/self-insurance adequate to cover facilities and/or equipment during the useful life. When the insured property is damaged or destroyed, UMTA must be reimbursed for its share of the insured claim.

e. *Disposition Standards for Other Nonexpendable Property.* When the *recipient no longer needs the property* for which it maintained title, nor uses the property in connection with its other sponsored activities, the property shall be disposed of in accordance with the following standards:

(1) For nonexpendable property with a unit acquisition cost of *less than $1,000:* The recipient may use the property for other activities without reimbursement to UMTA or sell the property and retain the proceeds.

(2) For nonexpendable personal property with a unit acquisition cost of *$1,000 or more* the recipient must request disposition instructions from UMTA. The request for instructions should include the following information: a list of the equipment to be disposed, individual dates of purchase; unit acquisition cost, current fair market value, current condition of the equipment, and proposed disposition. The UMTA project manager will issue instructions to the recipient within 120 days with regard to the following procedures: (a) If the grantee is instructed to ship the property elsewhere, the grantee will be reimbursed by the benefiting Federal agency with an amount computed by applying the percentage of the grantee's participation in the grant program to the current fair-market value of the property, plus any shipping or interim storage costs incurred.

(b) If the grantee is instructed to otherwise dispose of the property, it will

be reimbursed by UMTA for such costs incurred in its disposition.

(c) If disposition instructions are not issued within 120 calendar days after reporting, the grantee must sell the property and reimburse UMTA an amount computed by applying the percentage of Federal participation in the cost of the original project or program. The grantee will be permitted to retain $100 or 10 percent of the proceeds, whichever is greater, for the grantee's selling and handling expenses.

(d) The project to be credited in a disposition action is the project under which the property was purchased.

f. *Disposition Standards for Expendable Personal Property.* When the *total inventory value* of expendable personal property for which the grantee has title *exceeds $1,000* at the end or termination of the Federal grant, the recipient may retain the property for its own use or sell the property. In either case, the recipient must compensate UMTA for the Federal share in the cost. The amount of compensation is computed by applying the percentage of Federal participation in the grant to the current fair-market value of the property.

g. *Property Management Controls and Record Keeping Procedures for Nonexpendable Personal Property.* The recipient must maintain adequate control over its nonexpendable personal property. At a minimum, the recipient shall meet the following requirements:
(1) Property records must be maintained accurately and provide for a description of the property, manufacturer's serial number or other identification number, acquisition date and cost, source of the property, percentage of Federal funds used in the purchase of property, location, use, and condition of the property, and ultimate disposition data including sales price or the method used to determine current fair market value if the grantee reimburses UMTA for its share;

(2) A physical inventory of property must be taken and the results reconciled with the property records at least once every two years to verify the existence, current utilization, and continued need for the property;

(3) A control system must be in effect to insure adequate safeguards to prevent loss, damage, or theft to the property. Any loss, damage, or theft of nonexpendable property must be investigated, fully documented, and if UMTA-owned, reported to UMTA. UMTA must be reimbursed for the Federal share of the fair market value of this property.

(4) Adequate maintenance procedures must be implemented to keep the property in good condition; and

(5) Proper sales procedures must be established for unneeded property to assure competition and the highest possible returns.

h. *Certification of Use of Project Equipment.* At the start of *each* calendar year, UMTA recipients must submit to the appropriate UMTA regional office a Certification of Use of Project Equipment. The certification is only for the useful life of project facilities/equipment, beginning with the date of purchase/installation of such items, and is dependent on the maintenance of an adequate property management record system. This certification should state by individual items under each grant that: (1) Equipment and facilities acquired under the grant continue to be used for the purpose for which the grant was approved;

(2) Equipment and facilities do not exceed the needs of the transit operations;

(3) None of the equipment or facilities have been sold, damaged, lost, or otherwise taken out of transit service;

(4) A physical inventory and verification has been taken at least once during the preceding two year period; and

(5) Exceptions to the above reporting items must be fully explained (e.g., the date the item was sold, buyer's name, and price paid.)

In addition, UMTA may request to examine the property or require a copy of the physical inventory of nonexpendable property be forwarded to UMTA is it is determined to be necessary or if the grantee is not submitting the annual certification.

7. *Third Party Contracting.* Third party contracts are those entered into by the recipient for the procurement of supplies, equipment, construction, and other services required to execute a grant project. Recipients must follow certain procedures to insure that these materials and services are obtained in free and open competition, prices are fair and reasonable, and are in compliance with the provisions of applicable Federal, State, and local laws. this includes affording procurement opportunities to minority business enterprises. For information on specific third party contracting standards, see OMB Circular A–102, Attachment O (UMTA is currently drafting guidelines to implement OMB Circular A–102 Procurement Standards which will shortly be released to UMTA grantees).

8. *Retention of Project Records.*—a. *Length of Retention.* Financial records, supporting documentation, statistical records, and all other records pertinent to a grant must be retained by recipients and made readily available to authorized representatives of the U.S. Department of Transportation and/or the Comptroller General of the United States for a period of three years after completion of the project, with the following qualifications: (1) If any litigation, claim, or audit is started before expiration of the three-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved.

(2) Records for nonexpendable property acquired with Federal funds must be retained for three years after final disposition.

(3) When records are transferred to, or maintained by UMTA, the three-year retention requirement does not apply.

b. *Retention Period.* The retention period starts on the date of submission of the final expenditure report, or on the date of submission of the annual Financial Status Report for grants that are renewed annually. Recipients desiring to substitute microfilm copies for original records should obtain prior approval from the appropriate UMTA program office.

c. *Transferring Records.* UMTA may request recipients to transfer certain records to UMTA's custody when it is determined that such records have long-term retention value. To avoid duplicate recordkeeping, UMTA may request that recipients retain records continuously needed for joint use.

9. *Special Requirements.*—a. *Hatch Act Requirements.* Chapter 15 of Title 5 of the United States Code (Hatch Act) provides that all State or local agency employees who are engaged in an activity financed by Federal Government grants or loans may not be candidates for elective office or use their positions to influence public elections. Furthermore, those State and local agencies receiving Federal assistance are prohibited from coercing their employees into making political contributions. Exceptions to the general Hatch Act prohibition do exist, such as that for persons holding elective office. State and local agencies should contact the appropriate UMTA Regional Counsel or the Office of Chief Counsel if they have any questions about the specific applicability of these provisions to their situation.

b. *Relocation Program Administration.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et. seq.*) authorizes grants for relocation

payments to carry out an approved program for the relocation of families, individuals, businesss concerns, and non-profit organizations. When a project involves relocation or land acquisition, the grantee must submit a certification of compliance with that Act as part of the grant application.

The certification of compliance is acquired by the recipient at the local and/or State level. The grantee should refer to UMTA Circular 4530.1, "Land Acquisition and Relocation Assistance Under The Urban Mass Transportation Act of 1964, as amended" for further instructions.

c. *Housing Replacement Requirements.* No person can be displaced from his/her residence because of a project until the grantee has made decent, safe, and sanitary replacement housing available to them. Such replacement housing must be located in areas generally not less desirable with respect to public utilities and public and commercial facilities, reasonably accessible to their places of employment, at rents or prices within their financial means, and must be fair housing (i.e., open to all persons regardless of race, color, religion, sex, or national origin). No grant agreement which involves displacement will be awarded without UMTA's prior approval of a relocation plan. UMTA will not give such concurrence until it has determined that adequate replacement housing has been made available to all persons to be displaced. When relocation is involved in the project, grantees must follow instructions contained in UMTA C 4530.1. UMTA may waive these requirements at its discretion. Where State or local law conflicts with Federal law, the grantee must comply with Federal law in order to be reimbursed. Costs incurred to comply with State laws which are not expressly authorized by Federal law are not eligible project costs.

d. *Agreements—Relocation and/or Rearrangement of Utilities and Facilities.* The construction of transit systems may require the relocation and/or rearrangement of privately and publicly owned facilities. These facilities include, but are not limited to: (1) systems and physical plant for producing, transmitting or distributing communications, electricity, gas, oil, crude products, water, steam, waste, storm water, or other like substances; (2) publicly owned fire and police signal systems; and (3) railroads and streets, which directly or indirectly serve the public or any part thereof. Relocating and/or rearranging utilities and facilities necessary to accommodate an UMTA funded transit system may be considered an UMTA project activity and thereby legally eligible for funding from the UMTA share of project funds (UMTA funding). Exception to this includes those situations where State or local law expressly prohibits the financing of such by the public entity. Additional information is contained in UMTA C 4530.1.

(1) *Eligibility For UMTA Funding.* In order to qualify for UMTA funding, the recipient must execute an agreement for relocating or rearranging facilities with the entity responsible for the facilities prescribing the procedures for the relocation and/or rearrangement of the facilities for the purpose of accommodating the construction of the UMTA funded project. These agreements are distinguishable from third party contracts in that: (a) Only actual allowable, allocable, and reasonable costs are reimbursable, and no profit is allowed; and

(b) Reimbursement is limited to the amount necessary to relocate and/or rearrange the facilities to effect a condition equal to the existing utility facilities. Generally, reimbursement would not provide for greater capacity, capability, durability, efficiency or function, or other betterments. Agreements with governmental entities are further distinguishable in that "overhead" type cost are not eligibile for reimbursement from UMTA funds.

e. *Leasing Agreements—Project Equipment and Facilities.* The recipient may enter into a contract for the leasing of its project equipment and facilities with a private operator. Under this arrangement the recipient should include the following provisions in the proposed lease agreement: (1) Unless otherwise agreed to by UMTA, project equipment shall be operated by the lessee to serve the best interest and welfare of the project sponsor and the public.

(2) Lessee shall maintain project equipment at a high level of cleanliness, safety, and mechanical soundness under maintenance procedures outlined by the project sponsor. The project sponsor and/or UMTA shall have the right to conduct periodic maintenance inspections for the purpose of confirming the existence, condition, and the proper maintenance of the project equipment.

(3) Title to the project equipment shall at all times remain with the recipient. Upon termination of the lease agreement or if the lessee goes out of business, the project equipment shall be returned to the project sponsor in the same condition as when it was received by the lessee, reasonable wear and tear resulting from use thereof alone excepted.

(4) Lessee shall carry proper insurance covering losses that may be incurred as a result of the operation and maintenance of project equipment, and the project sponsor shall be a named-insured upon any such insurance policies maintained by lessee. Lessee shall provide project sponsor with certificates indicating that such insurance is in effect.

f. *Advance Land Acquisition Loans.* The Urban Mass Transportation Act of 1964, as amended, authorizes UMTA to make loans to States, local public bodies, and agencies thereof to finance the acquisition of real property and interests in real property for use as right-of-ways, station sites, and related purposes. Projects funded as loans are managed similarly to grant projects with the following minor exceptions: (1) Actual construction of mass transportation facilities must begin within 10 years from the date of the loan;

(2) Loans are to be repaid at the end of the ten-year period in cash, in one lump sum of both principal and interest; and,

(3) Within the ten-year period, a loan can be converted to a capital grant.

For further information the grantee should contact the cognizant UMTA regional office.

g. *Copyrights and Rights in Data.* All "subject data" first produced in the performance of an UMTA grant is the sole property of UMTA. The recipient agrees not to assert any rights or equity and not to establish any claims to statutory copyright in such data. Except for its own internal use, the recipient may not publish or reproduce such data or authorize others to do so without the written consent of UMTA until such time as UMTA may have released such data to the public. This requirement is waived for Section 6 grants to educational institutions.

h. *Patent Rights.* All recipients must notify the appropriate UMTA office of any inventions, improvements, or discoveries conceived or actually reduced to practice by the recipient or its employees in the course of or under the terms of this contract. UMTA determines whether or not and where a patent application will be filed, as well as the disposition of all rights in such inventions, improvements and/or discoveries, including title to and rights under any patent application or patent that may be issued. The determination of UMTA on all these matters will be accepted as final, and the recipient

agrees that it will be execute all documents to effect the determination.

i. *Published Reports.* The following statement must appear on the cover or title page of any published report concerning UMTA projects: "The preparation of this report has been financed in part through a grant from the U.S. Department of Transportation, Urban Mass Transportation Administration, under the Urban Mass Transportation Act of 1964, as amended."

10. *On-site Inspections.* UMTA may conduct periodic on-site inspections of projects to evaluate the effectiveness of the recipient's arrangement for supervision and inspection and to evaluate the work done on the project and adherance to the grant agreement. In addition, site visits may be made when information received from a recipient indicates an event with significant impact on the project. On-site inspections may also be made to determine whether civil rights laws, regulations, and agreements are adequately carried out. Inspection of and concurence by UMTA in project work does not relieve the recipient of its responsibilites and liabilities.

a. *UMTA Project Team.* UMTA may assign a project team from within its office to monitor projects under its authority. This team will work directly with the recipient in project monitoring, planning, development, and implementation.

b. *Quarterly Project Management Meetings.* Quarterly project management meetings may also be instituted with selected recipients. The quarterly meetings, to be held by the respective UMTA regions, in cooperation with the appropriate headquarters offices, provide construction management briefings, status/progress reports on the project, discussion of all accomplishments and problems, and site inspection if appropriate. These meetings do not replace quarterly written reports unless a specific exemption is granted by UMTA.

11. *Suspension of the Project.* If UMTA determines that the recipient has failed to comply with the terms and conditions of the grant agreement, including the civil rights requirements, UMTA will notify the recipient in writing of its intent to suspend the grant. UMTA may withhold further payments and/or prohibit the recipient from incurring additional obligations pending corrective action by the recipient or a decision to terminate the project for cause. This includes work being performed by third party contractors or consultants. Suspension will not invalidate obligations properly incurred by the grantee and concurred in by UMTA *prior* to the date of suspension and/or termination, to the extent that they are noncancellable. The recipient may appeal. The appeal is made to the appropriate UMTA regional or headquarters office. Upon receipt of the appeal, UMTA will make a decision.

12. *Termination of the Project.* A project may be terminated either for convenience or cause. a. *Termination For Cause.* UMTA may terminate the grant, in whole or in part, at any time before project completion, whenever it determines that the grantee has failed to comply with the conditions of the grant including civil rights compliance or failure to make reasonable progress. UMTA will promptly notify the recipient in writing of its intent to terminate and the reasons thereof and the effective date. The recipient may appeal. Upon receipt and evaluation of the appeal, UMTA will render its final decision on the termination of the project including the effectve date. Payments made to the recipient or recoveries by UMTA will be in accordance with the terms of the grant agreement and the legal rights and liabilities of both parties as defined in the agreement.

b. *Termination For Convenience.* UMTA or the recipient may terminate a grant in whole or in part, when both parties agree that the continuation of the project would not produce results commensurate with the further expenditure of funds. Both parties must agree upon the termination conditions, including the effective date and, in case of partial terminations, the portions to be terminated. The recipient may not incur new obligations for the terminated portion after the effective date and must cancel as many outstanding obligations as possible. UMTA will evaluate each noncancellable obligation to determine its eligibility for inclusion in project costs. Settlement will be made in accordance with the terms and conditions of the grant agreement. UMTA allows full credit to the recipient for the Federal share of the noncancellable obligations properly incurred by the recipient prior to termination.

13. *Project Closeout Procedures.* Closeout is the process by which UMTA determines that all responsibilites and work by the recipient have been completed. Grant projects should be closed out within 90 days after completion of the activity for which the project was funded. Closeout marks the last stage in the life cycle of an UMTA project. Final closeout activity will begin immediately after all costs are incurred on the project and all work activities under the project are completed and accepted by UMTA. For EPA Section 175 grants, closeout must be concurred in by EPA.

Property records must be maintained as long as the property is used by the grantee, even if the grant has been closed. Such property must be included in the certification of property.

a. *Final Financial Settlement.* Recipients must immediately notify UMTA when all project activities have been completed and all costs for these activities have been incurred. UMTA will then initiate final financial settlement of the project. Project settlement will include: (1) On-site inspection of the project by an UMTA representative, where appropriate;

(2) Preparation and submission to UMTA of the recipient's certification of project completion within 90 days of such completion. The following information is required for *all* projects and should be submitted to the appropriate program office;

(a) A final Request for Advance or Reimbursement (SF 270), if the requisition method of receiving funds is utilized, or a final Request for Payment on Letter of Credit (SF 183) if paid by Letter of Credit—*marked last requisition/request before close-out,* or a check payable to the Urban Mass Transportation Administration for the full amount of any Federal grant funds received by the grantee but unexpended (necessary adjustments to the Federal share of costs will be made during the final audit review);

(b) A list of equipment purchased for the project, identified individually by serial number or other distinguishing designation and a description of disposition, if any. The grantee must follow the procedures in Chapter I–6 for disposing of nonexpendable personal property. If applicable, an invention statement should also be submitted;

(c) A final Financial Status Report, (SF 269). Section 8 projects require a Financial Status Report only at project closeout. See Figure I–2 for an example of a completed Section 8 Financial Status Report.

(d) A Report of Federal Cash Transactions, (SF 272) if applicable;

(e) Final project budget, if different from the latest approved budget;

(f) For Section 5 Operating Assistance Grants only—a copy of a final audit report; and

(g) Other reports, such as a final progress report, if required as a condition of the grant.

b. *Adjustments to Federal Share of Costs.* Necessary adjustments to the Federal share of cost will be made after

receipt and analysis of the required close-out information by the appropriate UMTA office. Final project audits will be initiated by UMTA upon receipt of the project closeout information listed in paragraph 13a(2).

c. *Final Financial Audit.* A final financial audit of the books and accounts will be arranged by the appropriate UMTA office and any audit findings settled. UMTA retains the right to recover any costs disallowed as a result of final audit. The project will be considered closed when UMTA notifies the recipient and forwards final grant payments, or when an appropriate refund of Federal grant funds has been received from the grantee and acknowledged by UMTA. This occurs after resolution of all audit findings.

Additional information on Final Audits is located in Chapter II, paragraph 6h(3).

BILLING CODE 4910-57-M

(SAMPLE)

STATEMENT OF REVENUES AND EXPENSES
Tonawanda Regional Transit Authority
January 1, 1977 through June 30, 1977

Expenses:			$404,400
Transportation	$150,200		
Maintenance & Equipment	95,000		
Traffic and Advertising	5,000		
Administrative & General	41,300		
Insurance and Safety	15,000		
Taxes and Rents	12,900		
Depreciation & Amortization	83,000	- (Ineligible)	
Interest	2,000	- (Contra Expense)	
Revenues:			$121,800
Passenger Farebox	$101,200	- (Revenue)	
Tokens & Transfers	2,000	- (Revenue)	
Charter Bus	14,000	- (Non-Transportation)	
Advertising	3,100	- (Local Share)	
CETA	1,300	- (Revenue)	
Interest	200	- (Contra Expense)	
Subsidies:			$155,200
City of Tonawanda	$125,000		
Revenue Sharing	10,000		
State Elderly Fares	15,200		
Contributed Services	5,000	- (Contributed Services Operating Expense & Local Share)	

Figure 1-1
Page 1 of 1

A Section 8 Project's Final Financial Status Report

FINANCIAL STATUS REPORT

(Follow instructions on the back)

1. FEDERAL AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH REPORT IS SUBMITTED	UMTA
2. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER	PA 08-9999
OMB Approved No. 80-R0180	
PAGE OF PAGES	1 of 1
3. RECIPIENT ORGANIZATION (Name and complete address, including ZIP code)	MPO Anytown, PA 19999
4. EMPLOYER IDENTIFICATION NUMBER	
5. RECIPIENT ACCOUNT NUMBER OR IDENTIFYING NUMBER	
6. FINAL REPORT	[X] YES [ ] NO
7. BASIS	[ ] CASH [X] ACCRUAL
8. PROJECT/GRANT PERIOD (See instructions) FROM (Month, day, year)	7-1-79
8. PROJECT/GRANT PERIOD (See instructions) TO (Month, day, year)	6-30-80
9. PERIOD COVERED BY THIS REPORT FROM (Month, day, year)	7-1-79
9. PERIOD COVERED BY THIS REPORT TO (Month, day, year)	6-30-80

10. STATUS OF FUNDS

PROGRAMS/FUNCTIONS/ACTIVITIES ▶	(a)	(b)	(c)	(d)	(e)	(f)	TOTAL (g)
a. Net outlays previously reported	$	$	$	$	$	$	$ 0
b. Total outlays this report period							1,448,600 *
c. *Less:* Program income credits							
d. Net outlays this report period (*Line b minus line c*)							
e. Net outlays to date (*Line a plus line d*)							
f. *Less:* Non-Federal share of outlays							
g. Total Federal share of outlays (*Line e minus line f*)							
h. Total unliquidated obligations							
i. *Less:* Non-Federal share of unliquidated obligations shown on line h							
j. Federal share of unliquidated obligations							
k. Total Federal share of outlays and unliquidated obligations							
l. Total cumulative amount of Federal funds authorized							
m. Unobligated balance of Federal funds							

11. INDIRECT EXPENSE

a. TYPE OF RATE (*Place "X" in appropriate box*) [ ] PROVISIONAL [ ] PREDETERMINED [ ] FINAL [X] FIXED

b. RATE	c. BASE	d. TOTAL AMOUNT	e. FEDERAL SHARE

12. REMARKS: *Attach any explanations deemed necessary or information required by Federal sponsoring agency in compliance with governing legislation.*

* See attached "Final Project Budget"

13. CERTIFICATION

I certify to the best of my knowledge and belief that this report is correct and complete and that all outlays and unliquidated obligations are for the purposes set forth in the award documents.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL: William Penn

TYPED OR PRINTED NAME AND TITLE: William Penn

DATE REPORT SUBMITTED: 8-14-80

TELEPHONE (*Area code, number and extension*)

269-101

STANDARD FORM 269 (7-76)
Prescribed by Office of Management and Budget
Cir. No. A-110

SECTION 8

PROJECT BUDGET *

PROJECT BUDGET LINE ITEM / DESCRIPTION	PROJECT COST	FINAL BUDGET	FINAL COST
ADMINISTRATION			
1.1 MPO Secretariat	41,600	41,600	43,000
1.2 Program Monitoring and Management	87,400	87,400	85,000
1.3 Project and Program Review	9,600	9,600	9,000
SUBTOTAL	138,600	138,600	137,000
COMPREHENSIVE TRANSPORTATION PLANNING PROGRAM			
2.1. Surveillance			
1. Urban Transportation Data Requirements	8,000	10,000	11,000
2. Traffic Volume			
3. Highway Accident			
4. Transit Service	60,000	60,000	56,000
5. Transportation Attitudinal Survey	6,400	6,000	6,000
6. Environmental Impact	18,600	17,000	16,000
7. Land-Use and Socio Economic (See Element 2.2.2)			
2.2. Long-Range Element			
1. Long-Range Plan Review	64,400	64,400	65,000
2. Land-Use & Socio Economic Data Maintenance & Forecasting	33,200	33,200	33,000
3. Travel Demand Forecasting	15,400	15,400	16,000
2.3. Transportation System Management Element			
1. Traffic Sign Inventory Management System	20,000	Ø	Ø
2. Bikeway Planning Program	12,000	12,000	14,000
3. Transit Management			
1. Transit Scheduling Management Studies	36,000	46,000	47,000
2. Elderly and Handicapped Needs Studies	84,000	89,000	90,000
3. Para-Transit Program Development	37,000	42,000	43,000
2.4 Transportation Improvement Program	20,000	20,000	21,500
2.5 Prospectus, Annual Report, UPWP, Service Description Manual	46,400	46,400	45,000
2.6. Public Involvement and Information			
1. Public Involvement Effort	28,800	28,800	28,600
2. Public Information Program	19,200	19,200	19,500
SUBTOTAL	509,400	509,400	511,000
SPECIAL AND SUPPORT ACTIVITIES			
3.1. Local Activities			
1. Aviation Master Plan Development Program			
2. Station Area Design and Development Studies	N/A		
3. Technical Assistance and Information Dissemination			
4. Specialized Trip Generation Studies			
5. Energy Conservation Planning Program	16,000	30,000	32,000
3.2. Regional Activities			
1. Transit Impact Study	750,000	736,000	730,000
2. Regional Transportation Communication and Liaison	12,000	12,000	12,600
3. Coordination and Review	16,000	16,000	18,400
4. Policy Development	8,000	8,000	7,000
3.3. Statewide Activities			
1. Waterports Systems			
2. Rail Plan			
SUBTOTAL	802,000	802,000	800,000
TOTAL PROJECT COST	1,450,000	1,450,000	1,448,600

*As Reported on Attached SF 269

BILLING CODE 4910-57-C

Chapter II—Financial Management

II. Financial Management

1. Internal Controls

a. *General.* Recipients are responsible for establishing and maintaining an adequate system of internal controls. These controls should adequately safeguard grant funds and resources, check the accuracy and reliability of the grant accounting and financial data, promote operational efficiency, and encourage adherence to prescribed managerial policies.

b. *Accounting Survey.* Department of Transportation auditors or their designated representatives may visit the recipient shortly after project approval to inspect the recipient's system of internal controls and accounting procedures. Auditors will check for the types of internal and financial control standards located in paragraphs 1c and 1d below (additional information on audits is contained in paragraph 6). Ordinarily, these field visits will be limited to new recipients administering large, complex projects or recipients who have encountered difficulties in administering previous UMTA projects. Soon after completing an inspection, the Office of Inspector General (OIG) issues to the appropriate UMTA program office a report on the results of the field review. The cognizant UMTA office will provide copies of the report to the recipient and will initiate actions necessary to correct reported deficiencies.

c. *Internal Control Standards.* The internal controls comprise a well-documented, organized operating system (policies, structure, division of staff functions, procedures, staff qualifications, etc.) designed to provide the recipient with effective financial and operational control over all aspects of its grant projects. The following are elements of an adequate system of internal control:

(1) The recipient's operating policies should be clearly stated, systematically communicated throughout the organization, conform with applicable laws and external regulations and policies, and promote execution of authorized activities effectively, efficiently, and economically.

(2) An organizational structure should define and assign responsibility for performance of all duties necessary to carry out project functions.

(3) Responsibility for assigned duties and functions of the recipient should be classified according to authorization, performance, recordkeeping, custody of resources, and review, to provide proper internal checks on performance and to prevent unauthorized, fraudulent, or irregular acts.

(4) The performance of all duties and functions of recipient personnel should be properly supervised. All performance should be subject to adequate review under an effective internal audit and management review program: to determine whether performance is effective and efficient; to assure that economical management policies are adhered to, that applicable laws, regulations, and grant conditions are obeyed; that unauthorized, fraudulent, or irregular transactions or activities are prevented, and to determine the fiscal integrity of financial transactions and reports.

(5) Qualifications of officials and other personnel as to education, training, experience, competence, and integrity should be appropriate for the responsibilities, duties, and functions assigned to them.

(6) All grantee personnel should be fully aware of assigned responsibilities and understand the nature and consequence of performance. Each person should be held fully accountable for the honest and efficient discharge of duties and functions including, where applicable, the custody and administration of funds, property, and compliance with grant regulations and legal requirements.

(7) A system of forward planning embracing all phases of the recipient's operation should be developed to determine and justify financial, property, and personnel requirements, and to carry out project operations effectively, efficiently, and economically.

(8) Recipients using Letter of Credit or receiving advances by Treasury check should determine their disbursing patterns and mail time so that cash withdrawals can be timed as closely as possible to actual cash disbursements. Recipients should also ensure that requirements for maintaining minimum cash balances are met (see Chapter III).

(9) An adequate system of authorization, recordkeeping, and transaction coding procedures should be designed by the recipient to insure compliance with applicable laws, regulations, and internal management policies. This system should prevent illegal or unauthorized transactions and provide proper accounting records for the expenditure of grant funds.

(10) An adequate and efficient operating information system should provide prompt, essential, and reliable operating and financial data to those officials responsible for making decisions or reviewing performance.

(11) Effective procedures should be implemented to ensure that needed goods and services are acquired at the lowest possible cost; goods and services paid for are actually received; quality, quantity, and prices are in accordance with applicable contracts or other authorization by grantee officials; and such authorizations are consistent with applicable statutes, regulations, policies, and grant conditions.

(12) All funds, property, and other resources for which grantees are responsible shall be appropriately safeguarded and periodically inventoried to prevent misuse, unwarranted waste, deterioration, destruction, or misappropriation.

d. *Financial Management System.* The recipient should establish and maintain an adequate financial management system. This system should:

(1) Supply accurate, current, and complete disclosures of financial results of each project in accordance with UMTA reporting requirements (see Chapter I, paragraph 4);

(2) Contain records which adequately identify the source and application of funds. These records should include information pertaining to contract awards and authorizations (grant, procurement, and loan), obligations, unobligated balances, assets, liabilities, outlays, costs, and income;

(3) Provide effective control and accountability of all funds, property, and other assets. Recipients should adequately safeguard these assets and assure that they are used solely for authorized project purposes;

(4) Be capable of providing comparisons of actual and budgeted amounts for each project activity; i.e., budget line item; provide financial data necessary for efficient and economic planning, control, measurement, and evaluation of all project activities; and permit preparation of summaries and reports using line items included in the approved budget;

(5) Provide for procedures to determine whether costs are reasonable, allowable, and allocable in accordance with provisions of Federal Management Circular (FMC) 74–4, OMB Circular A–21, Revised, or OMB Circular A–122, as appropriate; and

(6) Maintain accounting records supported by source documentation for each entry.

2. Cost Allocation Plan/Indirect Cost Proposal

a. *Definitions.* Under federally funded grant programs, recipients may incur costs of both a direct and indirect nature. Direct costs are those that can

be identified specifically with a particular project.

These costs may be charged directly to a grant project. Indirect costs are those:

(1) Incurred for a common or joint purpose benefiting more than one cost objective, and

(2) Not readily assignable to the cost objectives specifically benefits, without effort disproportionate to the results achieved.

The term "indirect costs" applies to costs incurred by other offices within the recipient organization in supplying goods, services, and facilities to the recipient. Examples of indirect costs are operation and maintenance of buildings and expenses of department heads and their immediate staff. Principles and standards for determining costs applicable to grants and contracts with State and local governments (instrumentalities thereof and public bodies) are presented in FMC 74–4, OMB Circular A–21, Revised, or OMB Circular A–122, and the appropriate Department of Health and Human Services publications. Appendix 1 of this circular consists of questions and answers regarding cost allocation plans. These questions are excerpted from HHS brochure OASC–10. This brochure also contains sample formats for cost allocation plans.

b. *Types of Plans.* There are two types of cost allocation plans. The first plan covers distribution of costs of support services provided to local government agencies and is referred to as a consolidated local government-wide cost allocation plan. The second plan covers distribution of costs within an individual recipient or contractor agency, including costs of services allocated to it under the *consolidated local government-wide cost allocation plan,* for all work performed by that agency. This second type of plan is commonly referred to as an *indirect cost proposal.* Sample plans are described in Appendix 2.

c. *Preparation of Plan.* A cost allocation plan must be developed annually by local government agencies that intend to seek UMTA reimbursement for indirect costs. The plan is subject to audit by the Federal Government to determine that:

(1) All activities of local government departments have been considered;

(2) Distribution of indirect costs is based on a method(s) reasonably indicative of the amount of services provided,

(3) Services provided are necessary for successful conduct of Federal programs;

(4) Level of costs incurred are reasonable,

(5) Costs for central local government services are charged in conformance with local government-wide cost allocation plan, and

(6) Costs claimed are allowable in accordance with FMC 74–4, OMB Circular A–21, Revised, or OMB Circular A–122;

Plans supporting the distribtion of joint costs incurred by recipient must be retained by them and made available for audit review. Four steps are basic in preparing a cost allocation plan:

(1) Identifying costs of each type of service to be claimed;

(2) Determining the method for allocating each type of service cost of users;

(3) Mathematically allocating these costs to users, and

(4) Summarizing amounts allocating if using a single, formal, comprehensive local government-wide plan.

d. *General Requirements.* Cost allocation plans must be submitted to the "cognizant" or "lead" Federal agency for review and approval. Cognizance is generally assigned to the Federal agency having the greatest dollar involvement with a grantee orgnaization within a given State or locality. If UMTA is the cognizant agency, cost allocation plans should be sent to the appropriate UMTA regional office. Plans will be forwarded by the regional office to the Office of Inspector General for review and comment. A cost allocation plan is required to support the distribution of administrative costs related to the grant program. Such costs could be either direct or indirect. All costs in the plan must be supported by formal accounting records to substantiate the propriety of eventual charges. The allocation plan of the recipient should cover all applicable costs. It should also cover costs allocated under plans of other agencies or organizational units which are to be included in the costs of other Federally sponsored programs. To the extent feasible, cost allocation plans of all agencies rendering services to the recipient should be presented in a single document. Whether or nor UMTA is the cognizant agency, an approved cost allocation must accompany the grant application if the recipient intends to charge indirect costs to the project. The cost allocation plan should contain but need not be limited to the following:

(1) The nature and extent of services provided and their relevance to Federally sponsored programs;

(2) Items of expense to be included;

(3) Methods to be used in distributing cost; and

(4) Appropriate civil rights data. (Format for MBE programs is described in UMTA C 1165.1, Attachment C. A similar format should be used for EEO cost allocation plans.)

Costs covered by the plan may be charged to the project upon approval of the plan. A revised cost allocation plan must be submitted to the lead agency when the estimated cost is expected to exceed the previously approved plan by more than 10 percent.

e. *Specific Requirements.* The cost allocation plan should contain, but not necessarily be limited to, the following:

(1) Individual position or group classifications for direct staff services,

(2) The annual salary rate or salary range for each position classification with estimated average salary charged to the project for each rate;

(3) The estimated period services as provided by each position classification, estimated percentage of time each position will devote to the project, and the estimated cost of each;

(4) The nature and extent of services provided by each position classification;

(5) Details of other direct charges including the nature of charges and estimated costs; and

(6) All categories of indirect costs, proposed methods, and the basis for allocating them to the project, total indirect costs, and the estimated amount to be charged to the project.

It is important to note that although personnel services should be estimated on a percentage-of-time basis for planning purposes, only *actual time charged* to the project as supported by adequate time sheets will be eligible for reimbursement.

f. *Review of a Plan.* UMTA, when the cognizant Federal agency, will be responsible for review and acceptance of plans required under this circular. Recipients' allocation plans must be approved by UMTA before costs covered by the plan can be requisitioned under the project.

Once a review has been conducted by UMTA, it is expected that Federal auditors will be able to reach an agreement with the local government agency on any findings. If a local government disagrees with the auditor's findings, it is then the responsibility of UMTA to act as the negotiating agency for the Federal Government, and to resolve differences in coordination with other Federal agencies.

Whenever UMTA or any lead agency gives prior approval to a government-wide cost allocation plan or indirect cost proposal, such approval is formalized, distributed to all interested Federal agencies, and applicable to all

Federal grants in accordance with FMC 74–4.

3. Cost Standards

a. *General.* Recipients must follow the guidelines contained in FMC 74–4 "Cost Principles Applicable to Grants and Contracts with State and Local Governments", OMB Circular A–21, Revised "Cost Principles for Educational Institutions", or A–122, "Cost Principles for Nonprofit Organizations" in determining whether project costs are allowable or unallowable. Project costs should specifically relate to the purpose of the grant agreement and the latest approved project budget. Care should be exercised when incurring costs to ensure that all expenditures meet the criteria of eligible costs. Failure to exercise proper discretion may result in expenditures for which use of project funds cannot be authorized.

b. *Allowable Costs.* The following section briefly outlines the criteria which enables project costs to be classified as allowable. More specific guidelines can be found in FMC 74–4, A–21, or A–122, as needed. To be allowable under a grant program, costs must meet the following general criteria:

(1) Be necessary and reasonable for proper and efficient administration of the grant program, be allocable under these principles, and, except as specifically provided in this circular, not be a general expense required to carry out the overall responsibilities of State or local governments;

(2) Be authorized or not prohibited under State or local laws or regulations;

(3) Conform to any limitation or exclusions set forth in these principles, Federal laws, or other governing limitations as to types or amounts of cost items;

(4) Be consistent with policies, regulations, and procedures that apply uniformly to both federally assisted and other activities of the unit of government of which recipient is a part;

(5) Be treated consistently through application of generally accepted accounting principles appropriate to the circumstances;

(6) Not be allocable to or included as a cost of any other Federally financed program in either current or prior periods; and

(7) Be net of all applicable credits.

For information on specific cost standards, see Appendix 3 of this circular.

4. Program Income

a. *General.* Program income is the gross income earned by the recipient from project activities. These earnings *exclude interest* earned on advances (see paragraph III–1) and may include income from service fees, sale of commodities, usage or rental fees, and royalties on patents and copyrights. All project income earned during the grant period may be retained by the recipient, and, according to the grant agreement, is generally deducted from the total project costs for the purpose of determining the net costs on which the Federal share of costs will be based.

b. *Supporting Documentation.* Recipients must maintain records to permit full accounting of all program income. This includes a record of the source, purpose, and amount of all program income as well as a duplicate validated deposit slip for each receipt and currently posted accounting records.

5. Financial Reporting Requirements

a. *General.* Except for Sections 8 and 175 grants, UMTA utilizes two standard financial reporting forms, the Financial Status Report (SF 269) and the Report of Federal Cash Transactions (SF 272), to monitor project funds. This is required by the Office of Management and Budget and is specified in Attachment H, OMB Circulars A–102 and A–110. Note that *payment can be withheld for failure to submit either financial or narrative reports in a timely manner.*

b. *Disclosure Criteria.* The following criteria are basic to full disclosure in financial reports by recipients:

(1) All essential financial facts relating to the scope and purpose of each financial report and applicable reporting period should be completely and clearly displayed in the reports.

(2) Reported financial data should be accurate and timely. The requirement for accuracy does not rule out inclusion of reasonable estimates when precise measurement is impractical, uneconomical, unnecessary, or conducive to delay.

(3) Financial reports should be based on the required supporting documentation maintained under an adequate accounting system that produces information which objectively discloses financial aspects of events or transactions.

(4) Financial data reported should be derived from accounts that are maintained on a consistent, periodic basis, material changes in accounting policies or methods and their effect must be clearly explained.

(5) Reporting terminology used in financial reports to UMTA should be consistent with receipt and expense classifications included in the latest approved project budget.

c. *Financial Status Report (SF 269).*

(1) For all but Section 8 and Section 175 grants, recipients must submit an original and one copy of the SF 269 to report the status of funds on all nonconstruction and construction projects when the recipient receives payment through the Letter of Credit or by reimbursement. Financial Status Report forms can be obtained from the cognizant UMTA regional office. The SF 269 should be prepared on an accrual basis.

(2) A Financial Status Report bearing an original signature should be submitted quarterly, no later than 30 days after the end of each calendar quarter, 90 days after the end of each year, to the appropriate UMTA office. Reports are required every quarter until the project has been completed. A narrative progress report should accompany the SF 269 so that project expenditures and programs can be analyzed concurrently. A completed sample copy of the SF 269 is included as Figure II–1. The report should be prepared by budget line item code, except for Section 5 operating projects, which should be reported by budget line item since not all line items have codes. Instructions for completing the form are provided on the reverse side of the form.

d. *Report of Federal Cash Transactions (SF 272).*

(1) Recipients must complete and submit this report if they receive funds in advance by direct Treasury check. *Grantees that are paid by UMTA Letters of Credit do not use this form.* Instructions for completing the SF 272 are found on the reverse side of the form. Note that recipients should estimate in the "remarks" block, the amount of *Federal* funds that will be required during each month of the ensuing quarter for each project involved. This information is needed to plan Federal cash outlays. Copies of the SF 272 can be obtained from the cognizant UMTA regional office.

(2) The recipient submits the SF 272 (one copy with original signature) to the appropriate UMTA regional or headquarters office 15 working days following the end of each quarter. Recipients requesting advances under $10,000 per month may be waived from this requirement by the UMTA program office if the program manager determines that the information provided on the SF 269 is sufficient to monitor the project. Recipients receiving over $1 million per year may be required to submit this report monthly. The UMTA program manager determines whether this report will be submitted. A sample copy of the SF 272 is included as Figure II–2.

6. *Audit.*

a. *Introduction.* OMB Circular A–102, Attachment P establishes audit

requirements for State and local governments that receive Federal Assistance. It provides for independent audits of financial operations. UMTA grant recipients will be audited on an organization-wide basis rather than on a grant-by-grant basis. The overall purpose of the audits is to determine whether:

(1) Financial operations are conducted properly,

(2) The financial statements are presented fairly;

(3) The organization has complied with laws and regulations affecting the expenditure of federal funds;

(4) Internal procedures have been established to meet the objectives of federally assisted programs; and

(5) Financial reports to the Federal Government contain accurate and reliable information.

b. *Audit Contents.* Organization-wide audits will include, as a minimum, an examination of the system of internal control (see paragraph II–1 above), the systems established to ensure compliance with laws and regulations affecting the expenditure of Federal funds, financial transactions and accounts, and the financial statements and reports of recipient organizations. The audit will be used to determine whether:

(1) There is effective control over and proper accounting for revenues, expenditures, assets, and liabilities;

(2) The financial statements are presented fairly in accordance with generally accepted accounting principles;

(3) The Federal financial reports (including Financial Status Reports, Cash Reports, and claims for advances and reimbursements) contain accurate and reliable financial data, and are presented in accordance with the terms of applicable agreements and Attachment H of OMB Circulars A–102 or A–110;

(4) Federal funds are being expended in accordance with the terms of applicable agreements and those provisions of Federal law or regulations that could have a material effect on the financial statements or on the awards tested.

c. *Audit Frequency.* Audits will usually be performed annually, but not less frequently than every two years. While Attachment P does not limit UMTA's authority to audit recipients, if independent audits arranged by recipients meet Attachment P requirements, UMTA will rely on them. Any additional audit work will then build on the audit work already done.

d. *Audit Standards.* Audits shall be made in accordance with the GAO "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions," the "Guidelines for Financial and Compliance Audits of Federally Assisted Programs," any OMB-approved compliance supplements, and generally accepted auditing standards established by the American Institute of Certified Public Accountants.

e. *Testing Cost Eligibility.* A representative sample of costs shall be tested to determine whether they:

(1) Are necessary and reasonable for the proper administration of the program;

(2) Conform to any limitations or exclusions in the award;

(3) Were given consistent accounting treatment and applied uniformly to both federally assisted and other activities of the recipient;

(4) Were net of applicable credits;

(5) Did not include costs properly chargeable to other federally assisted programs;

(6) Were properly recorded (i.e., correct amount, date) and supported by source documentation;

(7) Were approved in advance, if subject to prior approval in accordance with FMC 74–4, A–21, or A–122;

(8) Were incurred in accordance with competitive purchasing procedures, if covered by Attachment O of OMB Circular A–102; and

(9) Were allocated equitably to benefiting activities, including non-Federal activities.

f. *Irregularities.* If auditors become aware of irregularities in the recipient organization, the auditor must immediately notify both UMTA and recipient management officials. Irregularities include falsification of records, misappropriation of funds, and conflicts of interest.

g. *Audit Report Contents.* Audit reports shall include:

(1) Financial statements, including footnotes, of the recipient organization.

(2) The auditors' comments on the financial statements, which should:

(a) Identify the statements examined, and the period covered.

(b) Identify the various programs under which the organization received Federal funds, and the amount of the awards received.

(c) State that the audit was done in accordance with the standards in paragraph d; and

(d) Express an opinion as to whether the financial statements are fairly presented in accordance with generally accepted accounting prinicples. If an unqualified opinion cannot be expressed, state the nature of the qualification.

(3) The auditors' comments on compliance and internal control, which should:

(a) Include comments on weaknesses in and noncompliance with the systems of internal control, separately identifying material weaknesses,

(b) Identify the nature and impact of any noted instances of noncompliance with the terms of agreements and those provisions of Federal law or regulations that could have a material effect on the financial statements and reports, and

(c) Contain an expression of positive assurance with respect to compliance with requirements for tested items, and negative assurance for untested items.

(4) Comments on the accuracy and completeness of financial reports and claims for advances or reimbursement of Federal Agencies.

(5) Comments on corrective action taken or planned by the recipient.

h. *Retention of Work Papers and Reports.* Work papers and reports shall be retained for a minimum of three years from the date of the audit report unless the auditor is notified in writing by the cognizant agency of the need to extend the retention period. The audit work papers shall be made available upon request to UMTA and the General Accounting Office or its designees.

i. *UMTA Responsibilities.* UMTA is responsible to:

(1) Obtain or make quality assessment reviews of the work of non-Federal audit organizations and provide the results to other interested audit agencies. (If a non-Federal audit organization is responsible for audits of recipients that have different cognizant audit agencies, a single quality assessment review should be arranged.)

(2) Assure that all audit reports of recipients that affect federally assisted programs are received, reviewed, and distributed to appropriate Federal audit officials. These officials will be responsible for distributing audit reports to their program officials.

(3) Whenever significant inadequacies in an audit are disclosed, the recipient organization will be advised and the auditor will be called upon to take corrective action. If corrective action is not taken, UMTA shall notify the recipient organization and other Federal awarding agencies of the facts and its recommendations. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies.

(4) Assure that satisfactory audit coverage is provided in a timely manner and in accordance with the provisions of OMB Circular A–102, Attachment P.

(5) Provide technical advice and act as a liaison between Federal agencies, independent auditors, and recipient organizations.

(6) Maintain a follow-up system on audit findings and investigative matters to assure that audit findings are received.

(7) Inform other affected audit agencies of irregularities uncovered. The audit agencies, in turn, shall inform all appropriate officials in their agencies. State or local government law enforcement and prosecuting authorities shall also be informed of irregularities within their jurisdiction.

j. *Third Party Contract Audits.*

(1) *Responsibility for Audit.* In monitoring third party contracts to ensure that the project is carried out in a sound, economical, and efficient manner, certain specific financial reviews should be made by professionals either within the recipient organization but independent of the actual project office or by outside auditors. The need for and nature of these reviews depends on the type and amount of third party contract(s) involved.

(2) *Procedures for Audit.*

(a) *Outside Audit Services.* Many UMTA recipients assign proposal evaluation and contract monitoring duties to their own auditors or financial management personnel. However, some recipients do not employ individuals qualified to make these required reviews internally and therefore, must obtain these services elsewhere. Two ready sources for audit services are qualified independent accounting firms and contract auditors from agencies and departments of the Federal Government. For example, the Defense Contract Audit Agency (DCAA) maintains a continuing audit function at certain contractor locations which receive Department of Defense contracts. DCAA also accommodates casual audit requests from non-Defense agencies for audits at other locations where the overall Government interest and effectiveness so dictate.

(b) *Costs.* costs of third party audit surveillance and proposal evaluation are eligible for reimbursement by UMTA so long as they are included in the project budget. UMTA recommends that recipients seek guidance from the cognizant Federal auditor in regard to audit contract agreements.

(c) *Use of Outside Audit Services.* Recipient requests to obtain outside audit sources to review and monitor third party contracts should be forwarded to the cognizant Federal auditor along with a copy of the proposed contract-agreement and a detailed description of the work to be performed. The Federal auditor reviews requests for outside assistance in light of the type of contract proposed and amount of project funds involved. Furthermore, the Federal auditor determines whether a Federal contract audit organization could be used instead of an independent public accountant (IPA).

(d) *Use of Independent Accountants.* When an independent accountant is used, recipients apply standard procedures for third party contracts. A complete package must be submitted to appropriate UMTA regional offices showing proposed audit coverage, billing rates by labor classification, and the proposed form of contract between the recipient and the IPA.

(3) *Payment for Outside Audit Services.*

(a) *General.* If another Federal agency is to be used, UMTA makes the necessary arrangements for conducting reviews. UMTA pays the total cost of the audit for recipients and records this payment in its project accounting records by assigning a unique requisition number and reducing the undisbursed grant balance by the total audit cost.

(b) *Reimbursement Procedures.* UMTA sends an "Audit Payment Notification and Certification" letter to inform recipients of the amount of cost for audit services. Because UMTA pays the total cost of this audit, *under the requisition method,* the letter instructs recipients to include the total amount of audit costs on the next requisition for payment as a cost incurred and as a Federal disbursement.

A copy of the letter signed by the recipient certifying that total audit costs have been recorded as a Federal disbursement in the recipient's records must accompany the next requisition submitted to UMTA. *Under the Letter of Credit method,* recipients must certify that total audit costs have been recorded both as a Federal disbursement and as a project cost for which the recipient did not make a disbursement. Recipients must then disburse their own funds to bring their portion of project support to the level set forth in the grant contract. Recipients must not include the amount in a request for Letter of Credit payment (SF 183) since UMTA is paying for the audit. The amount is shown as a disbursement (Federal share only) and advance received (100%) on the SF 183.

BILLING CODE 4910-57-M

FINANCIAL STATUS REPORT

(Follow instructions on the back)

1. FEDERAL AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH REPORT IS SUBMITTED	2. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER	OMB Approved No. 80-R0180	PAGE	OF	PAGES
UMTA	NY-03-0315		1	1	

3. RECIPIENT ORGANIZATION (Name and complete address, including ZIP code)	4. EMPLOYER IDENTIFICATION NUMBER	5. RECIPIENT ACCOUNT NUMBER OR IDENTIFYING NUMBER	6. FINAL REPORT	7. BASIS
Tonawanda Transit Authority 367 Tremont Street Tonawanda, New York 14120			☐ YES ☒ NO	☐ CASH ☒ ACCRUAL

8. PROJECT/GRANT PERIOD (See instructions)		9. PERIOD COVERED BY THIS REPORT	
FROM (Month, day, year)	TO (Month, day, year)	FROM (Month, day, year)	TO (Month, day, year)
1-1-78	9-30-80	10-1-78	12-31-78

10. STATUS OF FUNDS

PROGRAMS/FUNCTIONS/ACTIVITIES ▶	(a) 10.10.10	(b) 10.10.15	(c) 10.23.16	(d) 10.26.17	(e) 10.28.15	(f)	TOTAL (g)
a. Net outlays previously reported	$ 5,000	$ 6,000	$ 14,000	$ 3,000	$ 8,000	$	$ 36,000
b. Total outlays this report period	1,000	2,000	2,000	2,000	2,000		9,000
c. *Less:* Program income credits	N/A	N/A	N/A	N/A	N/A		-0-
d. Net outlays this report period *(Line b minus line c)*	1,000	2,000	2,000	2,000	2,000		9,000
e. Net outlays to date *(Line a plus line d)*	6,000	8,000	16,000	5,000	10,000		45,000
f. *Less:* Non-Federal share of outlays	1,000	1,000	2,000	1,000	2,000		7,000
g. Total Federal share of outlays *(Line e minus line f)*	5,000	7,000	14,000	4,000	8,000		38,000
h. Total unliquidated obligations	5,000	7,000	10,000	6,000	3,000		31,000
i. *Less:* Non-Federal share of unliquidated obligations shown on line h	1,000	2,000	2,000	1,000	500		6,500
j. Federal share of unliquidated obligations	4,000	5,000	8,000	5,000	2,500		24,500
k. Total Federal share of outlays and unliquidated obligations	9,000	12,000	22,000	9,000	10,500		62,500
l. Total cumulative amount of Federal funds authorized	12,000	20,000	24,000	11,000	13,000		80,000
m. Unobligated balance of Federal funds	3,000	8,000	2,000	2,000	2,500		17,500

11. INDIRECT EXPENSE	a. TYPE OF RATE *(Place "X" in appropriate box)* ☐ PROVISIONAL ☐ PREDETERMINED ☐ FINAL ☐ FIXED			
	b. RATE	c. BASE	d. TOTAL AMOUNT	e. FEDERAL SHARE

12. REMARKS: *Attach any explanations deemed necessary or information required by Federal sponsoring agency in compliance with governing legislation.*

13. CERTIFICATION

I certify to the best of my knowledge and belief that this report is correct and complete and that all outlays and unliquidated obligations are for the purposes set forth in the award documents.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	DATE REPORT SUBMITTED
[signature]	1-5-79
TYPED OR PRINTED NAME AND TITLE	TELEPHONE *(Area code, number and extension)*
James W. Bradle Assist. Gen. Manager	(703) 472-5800

205 101

SAMPLE

STANDARD FORM 269 (7-76)
Prescribed by Office of Management and Budget
Cir. No. A-110

INSTRUCTIONS

Please type or print legibly. Items 1, 2, 3, 6, 7, 9, 10d, 10e, 10g, 10i, 10l, 11a, and 12 are self-explanatory, specific instructions for other items are as follows:

Item	Entry
4	Enter the employer identification number assigned by the U.S. Internal Revenue Service or FICE (institution) code, if required by the Federal sponsoring agency.
5	This space is reserved for an account number or other identifying numbers that may be assigned by the recipient.
8	Enter the month, day, and year of the beginning and ending of this project period. For formula grants that are not awarded on a project basis, show the grant period.
10	The purpose of vertical columns (a) through (f) is to provide financial data for each program, function, and activity in the budget as approved by the Federal sponsoring agency. If additional columns are needed, use as many additional forms as needed and indicate page number in space provided in upper right; however, the totals of all programs, functions or activities should be shown in column (g) of the first page. For agreements pertaining to several Catalog of Federal Domestic Assistance programs that do not require a further functional or activity classification breakdown, enter under columns (a) through (f) the title of the program. For grants or other assistance agreements containing multiple programs where one or more programs require a further breakdown by function or activity, use a separate form for each program showing the applicable functions or activities in the separate columns. For grants or other assistance agreements containing several functions or activities which are funded from several programs, prepare a separate form for each activity or function when requested by the Federal sponsoring agency.
10a	Enter the net outlay. This amount should be the same as the amount reported in Line 10e of the last report. If there has been an adjustment to the amount shown previously, please attach explanation. Show zero if this is the initial report.
10b	Enter the total gross program outlays (less rebates, refunds, and other discounts) for this report period, excluding disbursements of cash realized as program income. For reports that are prepared on a cash basis, outlays are the sum of actual cash disbursements for goods and services, the amount of indirect expense charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an *accrued* expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received and for services performed by employees, contractors, subgrantees, and other payees.
10c	Enter the amount of all program income realized in this period that is required by the terms and conditions of the Federal award to be deducted from total project costs. For reports prepared on a cash basis, enter the amount of cash income received during the reporting period. For reports prepared on an accrual basis, enter the amount of income earned since the beginning of the reporting period. When the terms or conditions allow program income to be added to the total award, explain in remarks, the source, amount and disposition of the income.
10f	Enter amount pertaining to the non-Federal share of program outlays included in the amount on line e.
10h	Enter total amount of unliquidated obligations for this project or program, including unliquidated obligations to subgrantees and contractors. Unliquidated obligations are: Cash basis—obligations incurred but not paid; Accrued expenditure basis—obligations incurred but for which an outlay has not been recorded. Do not include any amounts that have been included on lines a through g. On the final report, line h should have a zero balance.
10j	Enter the Federal share of unliquidated obligations shown on line h. The amount shown on this line should be the difference between the amounts on lines h and i.
10k	Enter the sum of the amounts shown on lines g and j. If the report is final the report should not contain any unliquidated obligations.
10m	Enter the unobligated balance of Federal funds. This amount should be the difference between lines k and l.
11b	Enter rate in effect during the reporting period.
11c	Enter amount of the base to which the rate was applied.
11d	Enter total amount of indirect cost charged during the report period.
11e	Enter amount of the Federal share charged during the report period. If more than one rate was applied during the project period, include a separate schedule showing bases against which the indirect cost rates were applied, the respective indirect rates the month, day, and year the indirect rates were in effect, amounts of indirect expense charged to the project, and the Federal share of indirect expense charged to the project to date.

FEDERAL CASH TRANSACTIONS REPORT

(See instructions on the back. If report is for more than one grant or assistance agreement, attach completed Standard Form 272-A.)

Approved by Office of Management and Budget, No. 80-R0182

1. Federal sponsoring agency and organizational element to which this report is submitted: UMTA

2. RECIPIENT ORGANIZATION

Name: Tonawanda Transit Authority

Number and Street: 367 Tremont Street

City, State and ZIP Code: Tonawanda, New York 14120

SAMPLE

3. FEDERAL EMPLOYER IDENTIFICATION NO.

4. Federal grant or other identification number: NY-03-0315

5. Recipient's account number or identifying number:

6. Letter of credit number: N/A

7. Last payment voucher number:

Give total number for this period

8. Payment Vouchers credited to your account:

9. Treasury checks received (whether or not deposited): 4

10. PERIOD COVERED BY THIS REPORT

FROM (month, day, year): 10-1-78

TO (month, day year): 12-31-78

11. STATUS OF FEDERAL CASH *(See specific instructions on the back)*

a. Cash on hand beginning of reporting period	$ 1,155
b. Letter of credit withdrawals	N/A
c. Treasury check payments	40,160
d. Total receipts (*Sum of lines b and c*)	40,160
e. Total cash available (*Sum of lines a and d*)	41,315
f. Gross disbursements	40,852
g. Federal share of program income	642
h. Net disbursements (*Line f minus line g*)	40,210
i. Adjustments of prior periods	-0-
j. Cash on hand end of period	$ 1,105

12. THE AMOUNT SHOWN ON LINE 11J, ABOVE, REPRESENTS CASH REQUIREMENTS FOR THE ENSUING _____ *Days*

13. OTHER INFORMATION

a. Interest income	$ -0-
b. Advances to subgrantees or subcontractors	$ -0-

14. REMARKS (*Attach additional sheets of plain paper, if more space is required*)

15. CERTIFICATION

I certify to the best of my knowledge and belief that this report is true in all respects and that all disbursements have been made for the purpose and conditions of the grant or agreement

AUTHORIZED CERTIFYING OFFICIAL

SIGNATURE: John L. Wins

DATE REPORT SUBMITTED: 1-5-79

TYPED OR PRINTED NAME AND TITLE: John L. Wins Assistant General Manager

TELEPHONE (Area Code) 703 (Number) 472-1345 (Extension) 5800

THIS SPACE FOR AGENCY USE

272-101

STANDARD FORM 272 (7-76)
Prescribed by Office of Management and Budget
Cir. No. A-110

INSTRUCTIONS

Please type or print legibly. Items 1, 2, 8, 9, 10, 11d, 11e, 11h, and 15 are self explanatory, specific instructions for other items are as follows:

Item	*Entry*
3	Enter employer identification number assigned by the U.S. Internal Revenue Service or the FICE (institution) code. If this report covers more than one grant or other agreement, leave items 4 and 5 blank and provide the information on Standard Form 272–A, Report of Federal Cash Transactions—Continued; otherwise;
4	Enter Federal grant number, agreement number, or other identifying numbers if requested by sponsoring agency.
5	This space reserved for an account number or other identifying number that may be assigned by the recipient.
6	Enter the letter of credit number that applies to this report. If all advances were made by Treasury check, enter "NA" for not applicable and leave items 7 and 8 blank.
7	Enter the voucher number of the last letter-of-credit payment voucher (Form TUS 5401) that was credited to your account.
11a	Enter the total amount of Federal cash on hand at the beginning of the reporting period including all of the Federal funds on deposit, imprest funds, and undeposited Treasury checks.
11b	Enter total amount of Federal funds received through payment vouchers (Form TUS 5401) that were credited to your account during the reporting period.
11c	Enter the total amount of all Federal funds received during the reporting period through Treasury checks, whether or not deposited.
11f	Enter the total Federal cash disbursements, made during the reporting period, including cash received as program income. Disbursements as used here also include the amount of advances and payments less refunds to subgrantees or contractors, the gross amount of direct salaries and wages, including the employee's share of benefits if treated as a direct cost, interdepartmental charges for supplies and services, and the amount to which the recipient is entitled for indirect costs.
11g	Enter the Federal share of program income that was required to be used on the project or program by the terms of the grant or agreement.
11i	Enter the amount of all adjustments pertaining to prior periods affecting the ending balance that have not been included in any lines above. Identify each grant or agreement for which adjustment was made, and enter an explanation for each adjustment under "Remarks." Use plain sheets of paper if additional space is required.
11j	Enter the total amount of Federal cash on hand at the end of the reporting period. This amount should include all funds on deposit, imprest funds, and undeposited funds (line e, less line h, plus or minus line i).
12	Enter the estimated number of days until the cash on hand, shown on line 11j, will be expended. If more than three days cash reqirements are on hand, provide an explanation under "Remarks" as to why the drawdown was made prematurely, or other reasons for the excess cash. The requirement for the explanation does not apply to prescheduled or automatic advances.
13a	Enter the amount of interest earned on advances of Federal funds but not remitted to the Federal agency. If this includes any amount earned and not remitted to the Federal sponsoring agency for over 60 days, explain under "Remarks." Do not report interest earned on advances to States.
13b	Enter amount of advance to secondary recipients included in item 11h.
14	In addition to providing explanations as required above, give additional explanation deemed necessary by the recipient and for information required by the Federal sponsoring agency in compliance with governing legislation. Use plain sheets of paper if additional space is required.

FEDERAL CASH TRANSACTIONS REPORT
CONTINUATION

(This form is completed and attached to Standard Form 272 only when reporting more than one grant or assistance agreement.)

Approved by Office of Management and Budget No. 80-R0182

1. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED

2. RECIPIENT ORGANIZATION *(Give name only as shown in item 2, SF 272)*

3. PERIOD COVERED BY THIS REPORT *(As shown on SF 272)*

FROM *(month, day, year)* TO *(Month, day, year)*

4. List information below for each grant or other agreement covered by this report. Use additional forms if more space is required.

FEDERAL GRANT OR OTHER IDENTIFICATION NUMBER *(Show a subdivision by other identifying numbers if required by the Federal Sponsoring Agency)*	RECIPIENT ACCOUNT NUMBER OR OTHER IDENTIFYING NUMBER	FEDERAL SHARE OF NET DISBURSEMENTS	
		NET DISBURSEMENTS *(Gross disbursements less program income received)* FOR REPORTING PERIOD	CUMULATIVE NET DISBURSEMENTS
(a)	(b)	(c)	(d)
		$	$
5. TOTALS *(Should correspond with amounts shown on SF 272 as follows: column (c) the same as line 11h; column (d) the sum of lines 11h and 11i of this SF 272 and cumulative disbursements shown on last report. Attach explanation of any differences.)*		$	$

272-201

STANDARD FORM 272-A (9-76)
Prescribed by Office of Management and Budget
CIR. NO. A-110

BILLING CODE 4910-57-C

Chapter III—Payment Procedures

III. Payment Procedures

1. General

a. *Payment Methods.* UMTA uses three methods in making cash payments to grantees:

(1) Letter of Credit (LOC).

(2) Advance by Treasury check.

(3) Reimbursement by Treasury check.

Under the first two methods, UMTA provides cash advances to grantees before cach outlays are actually made. Under the third method, UMTA reimburses grantees for work already performed and financed with their own working capital.

The Department of the Treasury prescribes regulations governing advances (payments) to recipients for financing operations under Federal grant and other programs. These regulations require that cash advances to a recipient must be limited to the minimum amounts needed and must be timed so as to be in accord only with the actual, immediate cash requirements of the recipient in carrying out the approved project. The timing and amount of cash advances must be as close as administratively feasible to the actual disbursements by the recipient for direct project costs and the proportionate share of allowable indirect costs.

b. *Restrictions.* No UMTA grant program may:

(1) Require physical segregation of cash depositories for Federal grant funds which are provided to a recipient; or

(2) Establish any eligibility requirements for cash depositories in which Federal grant funds are deposited by recipients, with the exception of the following cases:

(a) Any monies advanced to a recipient which are subject to the control or regulation of the United States or any of its officers, agents, or employees (public funds as defined in Treasury Circular No. 176, as amended) must be deposited in a bank with Federal Deposit Insurance Corporation (FDIC) insurance coverage and the balance exceeding the FDIC must be collaterally secured.

(b) Consistent with the national goal of expanding the opportunities for minority business enterprises, recipients and subgrantees shall be encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Office of Minority Business Enterprise, Department of Commerce, Washington, D.C. 20230.

c. *Interest Income.* Under the Department of Treasury regulations, recipients are not permitted to retain Federal cash in large amounts for long periods of time. UMTA requires recipients to remit all income earned on advances of Federal funds, except interest earned on advances to States or instrumentalities of a State as provided by the Intergovernmental Cooperation Act of 1968 (Pub. L. 90–577).

2. Letter of Credit Payment Method (LOC).

a. *Objectives.*

(1) To provide funds to a recipient organization (grantee) promptly in an amount to meet the immediate cash disbursement need; and

(2) To preclude the withdrawal of funds from the U.S. Treasury any sooner than absolutely necessary to meet the disbursements of the grantee or the subgrantees/third party contractors.

b. *Policy.*

(1) A recipient organization is required to limit and time withdrawals under the LOC to minimum amounts needed to meet the actual, *immediate* cash disbursement requirements in carrying out the approved grant. The timing and amount of withdrawls must be as close as is administratively feasible to the actual disbursements made by the recipient organization for the Federal share of direct and allowable indirect grant costs. The recipient organization is authorized to make a withdrawal only on a *"cash basis"*, which is the amount being paid out for bills and invoices that have been received and are due for payment, and not on an "accrued expenditure" basis—the receipt of goods or services for which payment may not yet be due.

(2) Cash payments made by the recipient to secondary recipients must conform to the same standards of timing and amount as apply to payments by UMTA to recipients, including the furnishing of reports of cash disbursements and balances.

(3) Primary recipient organizations must develop procedures whereby secondary recipient organizations can obtain funds from the primary recipient organization as needed for disbursement.

(4) Recipients must use LOC funding method on all projects when the following three conditions exist:

(a) There is or will be a continuing relationship between a recipient and UMTA for at least a 12-month period and the total amount of advances to be received within that period from UMTA is at least $120,000.

(b) The recipient has established or demonstrated to UMTA the willingness and ability to establish procedures that will minimize the time elapsing between the transfer of funds and their disbursement by the recipient, *and*

(c) The grantee's financial management system meets the standards for fund control and accountability prescribed in Chapter II of this circular.

c. *Procedures to Apply for Letter of Credit.* Following is a brief outline of the LOC procedures under the U.S. Treasury Regional Disbursing Office (RDO) System. Additional information is available in Treasury Circular No. 1075.

(1) The cognizant headquarters or regional office, in concert with the Office of Inspector General, makes a determination that a recipient organization should be funded through the LOC technique and sends the recipient organization Standard Form 1194, Authorized Signature Card for Payment Voucher on Letter of Credit (see Figures III–1 and III–2).

(2) The recipient organization completes and returns three original SFs 1194, including a Signatory Authorization and Certification, and the Designation of Depository, if desired, to the appropriate regional office.

(3) UMTA reviews the completed SF 1194 and, when approved, forwards the original to the appropriate RDO.

(4) UMTA prepares SF 1193A, Letter or Credit, in duplicate. The original is transmitted to the appropriate RDO and the duplicate is forwarded to the recipient organization.

(5) Upon approval of the LOC, UMTA forwards a letter to the grantee specifying drawdowns allowed by project number.

(6) UMTA furnishes the recipient organization a supply of SF 183s, Request for Payment on Letter of Credit and Status of Funds Report (Contact the appropriate regional or headquarters program office).

(7) Following the effective date of the LOC, the recipient organization executes and submits SF 183 to the appropriate RDO in order to receive grant funds to meet immediate cash disbursement needs and forwards a copy to the appropriate UMTA office.

(8) The RDO mails a Treasury check directly to the recipient organization or to the depository designated by the recipient organization for credit to its account.

(9) The Request for Payment on LOC ordinarily must be drawn:

(a) not more frequently than once daily; and

(b) in an amount no less than $5,000 but no more than $5,000,000, unless so stated on the LOC.

(10) In the event a recipient organization receiving funds by a LOC demonstrates an unwillingness or inability to establish procedures to minimize the time elapsing between the withdrawal of funds under the LOC and the disbursement of such funds, UMTA may cancel the LOC to the extent of the undisbursed balance not obligated in good faith in execution of the Federal project as authorized, and require the recipient organization to finance its operations with its own working capital.

(11) While UMTA encourages the issuance of consolidated LOCs by grantee rather than by individual grant, this may not always be administratively feasible. This may occur when a recipient has grants administered by both regional and headquarters offices. The decision as to the number of LOCs issued will be made by the UMTA program offices involved.

d. *Recipient Organization Requirements.*

(1) *Authorized Signature Cards.* SF 1194, Authorized Signature Card for Payment Vouchers on Letter of Credit, must contain the signature of the individuals authorized by the recipient organization to sign SF 183's. The number of individuals so authorized should be between two and six. The recipient organization must submit three original Standard Forms 1194 to the appropriate UMTA office. An illustration and instructions for completing SF 1194 are shown in Figure III–1.

The RDO accepts only the signatures of persons named on the current signature card on file. A recipient organization must, therefore, immediately submit to the appropriate regional office new signature cards whenever there is an addition or deletion in the persons authorized to sign SF 183s. A superseding signature card is not required for any change in the title or position of a person so authorized if the person's authority to sign Standard Form 183 remains unchanged.

(2) *Designation of Depositor.* U.S. Treasury checks may be mailed directly to a depository designated and authorized by the recipient for credit to the recipient's bank account. In order to adopt this provision, the recipient must complete Section I and forward the Designation of Depository for Direct Deposit of Grant Funds to the depository for completion of Section II of the form. After the form is fully completed, the recipient must forward the original and one copy to the appropriate regional office. An illustration and instructions for completing this format are shown in Figure III–2.

The recipient organization must execute a power of attorney only when the depository requires such an authorization in order to receive checks directly from the U.S. Treasury Department for credit to the recipient's bank account. The recipient must execute a new designation whenever changes in the account number or depository are made.

(3) *Request for Payment on Letter of Credit (SF 183).* The recipient organization must execute an SF 183, Request for Payment on Letter of Credit and Status of Funds Report, each time funds are needed to meet current cash disbursement needs. An illustration and instructions for completing this form are shown in Figure III–3.

Note.—UMTA grantees may not use TFS form 5401 to request payment under letter of credit. This form is only used when a grantee is paid by a Federal Reserve Bank. UMTA grantees are paid by Teasury Regional Disbursing Offices, which require the SF 183.

(4) *Distribution of SF 183.* The recipient organization must distribute the executed SF 183 as follows:

(a) *Original, Duplicate, and Quintuplicate:* Mail *directly* to the Treasury Regional Disbursing Office shown on the recipient's copy of SF 1193A. (The RDO prepares and mails the Treasury check to the recipient organization or the recipient organization's depository).

(b) *Triplicate.* At the same time, mail *directly* to the appropriate UMTA regional or headquarters program office, *not* to the UMTA address on the SF 183.

(c) *Quadruplicate.* Retained by the recipient organization for its files.

It is recommended that recipients use *original* sets of SF 183's. These can be obtained from all UMTA regional offices. Some Treasury RDO's *may* accept copies; however the SF 183 instructions call for an *original* to be sent to the RDO.

(5) *Planning Letter of Credit Withdrawals.* The recipient organization must exercise sound financial judgment and planning to insure that the requirements for maintaining minimum cash balances are met. In preparing the SF 183, careful consideration of the timing of payments to contractors is required in order to determine when funds are needed. Consideration of mail time required for transmission of SF 183 to the RDO and for transmission of the Treasury check to the recipient organization or its depository, also is necessary.

For example, if $20,000 is needed on the fifteenth of the month in order to provide funds to a contractor to meet the terms of the contract, and normal mail time from the date the SF 183 is submitted to the date the Treasury check is received by the depository or the recipient organization is seven days, then on approximately the eighth of the month the recipient organization should mail the SF 183 to the RDO.

Once the LOC system has been in operation a short time, the recipient organization should have determined its disbursing pattern and calculated mail time so that withdrawals can be timed as close as possible to actual cash disbursements. Cash controls must be maintained by the recipient on a current basis so that cash balances do not exceed the *immediate* needs for the recipient organization's disbursements. Recipients may *not* draw down cash which will not be used for two or more weeks after receipt. Cash *must* be dispersed within three days.

An illustration and instructions for completing a suggested Federal Cash Control Register are shown in Figure III–4. If properly maintained, the cash control register provides the information necessary for completing Section II of an SF 183. Please note that the Federal Cash Control Register is maintained on a "fiscal year-to-date" basis, and not an "inception-to-date" basis.

e. *Deficient or Rejected SF 183.*

(1) *Deficient SF 183.* If a deficiency on the SF 183 is detected, a deficiency notice will be issued. A deficient SF 183 is not ordinarily rejected. However, repeated deficiencies of a similar nature by the same recipient organization may be cause for rejection with UMTA's concurrence. The following are reasons for the issuance of deficiency notices:

(a) There is a difference between the name and address information of the drawer on the SF 183 and the name and address of the drawer on the related SF 1193A;

(b) The address of the payee on the SF 183 is different from the address of the payee on the related SF 1193A;

(c) The Federal program agency approved payment, but other information on the SF 183 was incomplete or inaccurate;

(d) The cents are left off the amounts in Section I, II, and/or III;

(e) The Amount Requested in Section I is less than $5,000 and is not the final drawdown on the available balance; and

(f) The signature(s) of the official(s) authorized to certify request for payment differs slightly (example: using first two initials and last name instead of the full signature) from the signature(s) on the SF 1194 but otherwise compares favorably, and the Treasury disbursing office approves payment.

(2) *Rejection of SF–183.* The SF 183 will also be examined for errors, deficiencies, or omissions of a more severe nature which may necessitate the rejection of the request. There are definitive reasons for the rejection of an SF 183 and the Treasury disbursing office will contact UMTA prior to any rejection. The reasons for rejection are:

(a) An unauthorized or invalid signature, (erasures, painting over with correction fluid, or tape overs are unacceptable.)

(b) The amount requested in Section I is greater than the available balance;

(c) The name of the payee to whom the check is to be issued is not identical to the name of the payee shown in the "Treasury Checks To Be Made Payable To:" block of the related SF 1193A;

(d) The "Amount Requested" block in Section I is left blank, erased, painted over with correction fluid, or taped over;

(e) Discrepancies exist elsewhere on the SF 183 and the Treasury disbursing office cannot obtain correction information from the Federal program agency and/or its own file;

(f) The amount requested is more than $5,000,000 and UMTA has not provided an amendment to the related LOC authorizing drawdowns of more than $5,000,000;

(g) There are excessive funds in the hands of the recipient organization as determined by Treasury and/or UMTA; and

(h) A written request has been received from UMTA to withhold payment for a reason other than those listed above. The Director, Office of Accounting, must provide signed written confirmation of this request.

f. *Excessive or Premature Withdrawals.* When excessive cash is being held by recipients, UMTA must request a refund of the excessive cash and, if the recipient is not a State government or an instrumentality of the State, the interest earned on those funds. The only exceptions to the requirement for prompt refunding are when the funds involved:

(1) Will be disbursed by the recipient organization within *seven* calendar days, or

(2) Are less than $10,000 and will be disbursed within 30 calendar days.

Excess cash for a project under the LOC may *not* be used for another project, even if it is under the LOC. The excess cash *must be returned* as stated above.

These exceptions to the requirement for prompt refunding should *not* be construed as approval for a recipient organization to maintain excessive funds. They are applicable *only* to excessive amounts of funds which are erroneously drawn.

The return of funds is accomplished as follows:

(1) UMTA requests the recipient to remit the excessive cash and any interest to UMTA by a check made payable to the Urban Mass Transportation Administration. If a single check is used to remit both the premature withdrawal and the interest, the amount attributable to each must be separately identified.

The check(s) must be mailed to the Office of Accounting, UAD–20, and must be accompanied by a memorandum explaining the purpose of the check(s) and identifying the project number. A copy of the check and the memorandum should be sent to the appropriate regional or program office.

(2) The recipient must record that portion of the remittance representing the amount prematurely withdrawn (excluding interest) as a disbursement on line 5 ("Less: Actual Disbursements, Fiscal Year to Date") on subsequent requests for payment.

(3) UMTA will authorize an increase in the recipient's LOC in the amount of the premature withdrawal only.

g. *Revocation of LOC.* A LOC will be revoked when it has been determined that the recipient organization has demonstrated an unwillingness or inability to establish procedures to withdraw only those amounts necessary to meet current disbursement needs and to time withdrawals as closely as possible to the actual cash disbursements. The amount authorized under the LOC credit will be decreased to the amount withdrawn plus the amount already obligated in good faith in executing the Federal project as authorized. Once this remaining balance has been withdrawn, the LOC will be revoked.

3. Advance by Treasury Check

a. Recipients that do not qualify for LOC's may still receive advances by Treasury check if certain conditions are met. Recipients may recieve cash payments upon request to UMTA before cash outlays are made, or according to a predetermined payment schedule before payments are made by the recipient. This advance funding method will be used when the following conditions exist:

(1) Annual advances to a recipient aggregate to less than $120,000, or there will not be a continuing relationship for at least one year between UMTA and the grantee.

(2) The recipient has established or demonstrated to UMTA a willingness and ability to establish procedures minimizing the time elapsing between a transfer of funds and their disbursement by the recipient.

(3) The recipient's financial management system meets the standards for fund control and accountability prescribed in Chapter II of this circular.

b. Cash advances will be limited to the minimum amount needed, and timed to meet the *actual, immediate cash requirements* of grantees in carrying out the purposes of approved programs or projects. The timing and amount of cash advances should be as close as is administratively feasible to actual disbursements by recipients for direct program costs and for proportionate shares of allowable indirect costs. For example, if disbursements are made by a recipient on a monthly, biweekly, or any other regular cycle, and the amounts involved would so warrant, issuance of advance Treasury checks should be timed accordingly.

c. Funds are requested by preparing the Request For Advance or Reimbursement, SF 270 (See paragraph 5 below for details).

4. Reimbursement by Treasury Check

When a recipient receiving cash advances has demonstrated to UMTA an unwillingness or inability to establish procedures to minimize the time lag between cash advances and disbursement thereof, UMTA, unless prohibited by the statutes governing the program(s) in question, will terminate advance financing and require the recipient to finance it with its own working capital. Payments to the recipient are then made by Treasury check to reimbuse the recipient for cash actually disbursed. A Request for Advance or Reimbursement is submitted to UMTA for this purpose (see paragraph 5 below).

5. Request for Advance or Reimbursement (SF 270)

a. *General.* Recipients submit this form to receive payment for all projects when LOC is not used. Copies of the SF 270 can be acquired from the appropriate regional office. No other documentation need accompany this form. An original and two copies should be sent to the cognizant UMTA office.

b. *Instructions.* Instructions for completing an SF 270 are printed on its reverse side. In addition, the following instructions should assist recipients in completing this form (see Figure III–5).

(1) Only the total columns on this form should be completed. In addition, all figures may be rounded to the nearest dollar, i.e., amounts of $.50 or over should be rounded to the higher dollar

and amounts under $.50 should be rounded to the lower dollar. For example: if the non-Federal share is computed to be $2,572.70, the amount reported should be $2,573.

(2) *Block #5*—All requisitions should be numbered consecutively beginning with #1 as the first requisition.

(3) *Block #8*—The first requisition covers the date of the grant approval letter through the end of the period for which reimbursement is requested. When a requisition requests reimbursement only, this "ending" date will be the same date which outlays are reported on line 11a of this form. If reimbursement and/or an advance is being requested, the "ending" date should reflect the period through which the advance funds are needed.

All requisition report periods should run consecutively. For example, if a requisition is submitted for the period 1/1/80 to 3/31/80, the next requisition will begin from 4/1/80.

(4) *Block #9*—The name of the recipient organization should be exactly as indicated on the grant contract.

(5) *Block #11*—Line A—The "as of" date should be the date for which the recipient has actual costs recorded. This date should be the same as the "to" date in Block #8 unless the recipient is requesting an advance.

Line B—Represents investment income, proceeds from the sale of equipment, or rental income.

Line D—Represents the estimated expenditures for the advance period, both UMTA share and local share.

Line F—⅓ or 20% of line E, depending on the funding ratio for a particular project. If anything other than these percentages, the reasons should be specified.

Line G—⅔ or 80% of line E, depending on the funding ratio for a particular project.

Line H—Total of previous requisiton(s) *submitted*. This line should not represent actual checks received because the recipient may have submitted a requisition which is in the process of being paid. Requisition #1 on this line should be zero.

Note that recipients should only complete the "total" column of Block #11, unless the grant award letter or grant agreement specified that there is more than one funding source supporting the project. In such cases, separate columns should be utilized for each funding source.

c. *Review of the SF 270.* Each SF 270 for funds will be reviewed in light of the periodic progress reports and financial reports required for that project. Changes requiring grant amendments or prior approval of a budget revision must be approved before funds for these changes are requisitioned (see Chapter I, paragraph 5).

6. Excessive Payments (Overpayments) to Grantees

a. UMTA project managers will be alert to any information which may evidence a potential overpayment or other amounts due UMTA. The following are possible reasons for payments becoming due UMTA:

(1) insufficient non-Federal funds to match Federal payments,

(2) the sale of project equipment, or

(3) excessive Federal funds in the project account.

Such payments must be made promptly to UMTA. The grantee is instructed to:

(1) Make checks payable to "Urban Mass Transportation Administration";

(2) Mail checks to: Office of Accounting, UAD–20, Urban Mass Transportation Administration, 400 7th Street, S.W., Washington, D.C. 20590.

(3) Specify applicable project number(s) on the check,

(4) Provide written explanation as to purpose of payment, and

(5) Send copy of the check and the explanatory letter to the appropriate program office.

BILLING CODE 4910-57-M

URBAN MASS TRANSPORTATION ADMINISTRATION
LETTER OF CREDIT - TREASURY RDO SYSTEM
DESIGNATION OF DEPOSITORY FOR DIRECT DEPOSIT OF GRANT FUNDS

Section I (To be completed by recipient organization)

Name of Project: _____(1)_____

The _____(2)_____

has been designated as the depository for all funds to be received directly from grant (project) number(s) _____(3)_____ executed with the Urban Mass Transportation Administration for deposit to

_____(4)_____
(Account Name and Number)

_____(5)_____
(Name)

_____(6)_____
(Address and Zip Code)

_____(7)_____
(Title of Executive Officer)

_____(8)_____
(Signature of Executive Officer)

_____(9)_____
(Date)

Section II (To be completed by the depository)

The account identified in Section I has been established with the bank. All necessary documentation, including a power of attorney when necesary, which legally enables this depository to receive U.S. Government checks directly from the U.S. Treasury Department for deposit to

_____(10)_____ without the payee's
(Account Name and Number)

endorsement have been received and are in the depository's custody.

_____(11)_____
(Name of Bank)

_____(12)_____
(Address and Zip Code where checks should be mailed)

(13) The Depository is a minority-owned bank participating in the Federal Minority Bank Deposit Program? Yes___ No___

The Depository hereby agrees to immediately notify the Recipient Organization when a deposit is made in the above account.

_____(14)_____
(Title of Authorized Bank Officer)

_____(15)_____
(Signature of Authorized Bank Officer)

_____(16)_____
(Date)

URBAN MASS TRANSPORTATION ADMINISTRATION
LETTER OF CREDIT - TREASURY RDO SYSTEM
INSTRUCTIONS FOR DESIGNATION OF DEPOSITORY FORMAT

NOTE: This form is not necessary if the recipient organization chooses to receive the check directly from Treasury. This form is not supplied. Each recipient organization must type an original and two copies as illustrated.

Block Number

1. Enter as provided by the UMTA program officer.

2. Enter name, address and ZIP code of depository designated to receive Treasury checks.

3. Enter project number(s) -- use supplemental sheet if necessary.

4. Enter name of recipient organization's bank account and number.

5. Enter name of recipient organization.

6. Enter complete address of recipient organization.

7. Enter title of Executive Officer for recipient organization.

8. Signature of Executive Officer for recipient organization (person who signed grant agreement).

9. Enter date form signed by Executive Officer for recipient organization.

10. Enter name and account number of recipient organization's bank account.

11. Enter name of recipient organization's bank.

12. Enter complete address of recipient organization's bank where Treasury checks are to be mailed.

13. Enter title of authorized bank officer for recipient organization's bank.

14. Enter signature of authorized bank officer for recipient organization's bank.

15. Enter date form signed by authorized bank or Treasury Officer for recipient organization's bank.

SAMPLE OF STANDARD FORM 1194

Standard Form 1194 6 Treasury FRM 1000 Fiscal Service Bureau of Accounts	**AUTHORIZED SIGNATURE CARD FOR PAYMENT VOUCHERS ON LETTER OF CREDIT**	Letter of Credit Number Federal Reserve Bank

Letter of Credit Issued in Favor of *(Recipient)*	Issued by *(Federal Agency)*

SIGNATURES OF INDIVIDUALS AUTHORIZED TO DRAW ON THE CITED LETTER OF CREDIT	☐ ONLY ONE SIGNATURE REQUIRED ON PAYMENT VOUCHERS or ☐ ANY TWO SIGNATURES REQUIRED TO SIGN OR COUNTERSIGN
Typed Name and Signature	Typed Name and Signature
Typed Name and Signature	Typed Name and Signature
I CERTIFY THAT THE SIGNATURES ABOVE ARE OF THE INDIVIDUALS AUTHORIZED TO DRAW PAYMENT VOUCHERS FOR THE CITED LETTER OF CREDIT. DATE AND SIGNATURE OF AUTHORIZING OFFICIAL *(Recipient)*	APPROVED: DATE AND SIGNATURE OF AGENCY CERTIFYING OFFICER

1194-101

PREPARATION OF SF 1194

NOTE: 1. In preparing the SF 1194, Authorized Signature Card For Payment Vouchers on Letter of Credit if a mistake is made or a change is necessary, a new SF 1194 must be prepared because erasures or corrections of any kind are not acceptable.

2. When a new SF 1194 is being submitted to reflect a name change or addition of any individual authorized to withdraw on a LOC, allow at least 10 days for processing the SF 1194 before submitting a Request for Payment on Letter of Credit and Status of Funds Report, SF 183.

Block Number	Explanation
1.	Leave blank--to be completed by UMTA.
2.	Line through the words "Federal Reserve Bank" and enter the name of the Treasury Regional Disbursing Office servicing and recipient organization.
3.	Enter the name and address of the recipient organization. If additional space is required, use the reverse side of the form.
4	Enter "Urban Mass Transportation Administration" plus the address an eight-digit accounting station symbol. UMTA's eight-digit accounting station symbol is 69-08-8701. The address is: UMTA, Office of Accounting, UAD-20, 400 7th Street, S.W., Washington, D.C. 20590.
5.	Leave blank.
6.	Enter an "X". (All SF 183 for withdrawals against a letter of credit must be countersigned).

Preparation of Standard Form 1194: (cont'd)

Block Number	Explanation
7.	Enter the typed names and the signatures of officials of the recipient organization authorized to execute SF 183, Request for Payment on Letter of Credit and Status of Funds Report. Cross out any of these blocks that are not used.
8.	Enter the date, typed name, title and the signature of the recipient organization's official who is authorized to certify the authenticity of the signature of individuals authorized to execute SF 183.
9.	Leave Blank -- to be completed by UMTA.

REQUEST FOR PAYMENT ON LETTER OF CREDIT AND STATUS OF FUNDS REPORT

SECTION I—REQUEST FOR PAYMENT

AGENCY STATION SYMBOL	LETTER-OF-CREDIT NUMBER	DOCUMENT NUMBER	AMOUNT REQUESTED $
NAME AND ADDRESS OF U.S. AGENCY	NAME AND ADDRESS OF DRAWER		PAID BY *(Treasury Use Only)*
NAME AND ADDRESS OF TREASURY DISBURSING OFFICE	MAKE TREASURY CHECK PAYABLE TO:		VOUCHER APPROVED *(Treasury Use Only)*
			CHECK NUMBER *(Treasury Use Only)*

SECTION II—STATUS OF FEDERAL FUNDS *(Must Be Completed By Drawer)*

ITEMS	ESTIMATED NO. OF DAYS SUPPLY	AMOUNT
1. FEDERAL FUNDS ON HAND *(Beginning of Federal Fiscal Year)*		$
2. ADD: ADVANCES RECEIVED, FISCAL YEAR TO DATE		
3. ADD: COLLECTIONS, REFUNDS, AND/OR MISCELLANEOUS RECEIPTS		
4. Subtotal		
5. LESS: ACTUAL DISBURSEMENTS, FISCAL YEAR TO DATE		
6. FEDERAL FUNDS ON HAND AT TIME OF THIS REQUEST		
7. ADD: AMOUNT OF THIS REQUEST FOR PAYMENT		
8. ADD: UNPAID REQUESTS FOR PAYMENT PREVIOUSLY SUBMITTED		
9. TOTAL →		$
10. OUTSTANDING ADVANCES TO SUB-GRANTEES—NUMBER TOTAL $		*Treasury Use Only*

SECTION IIA—REMARKS *(Drawers Use)*

SECTION III—CLASSIFICATION OF THE AMOUNT OF THIS REQUEST *(Must Be Completed By Drawer)*

PROGRAM, GRANT NO. OR OTHER IDENTIFYING NO.	AMOUNT	PROGRAM, GRANT NO. OR OTHER IDENTIFYING NO.	AMOUNT
	$		$

TOTAL *(Must Agree with Amount of this Request for Payment)* $

SECTION IV—CERTIFICATION *(Must Be Completed By Drawer)*

I certify that this Request for Payment has been drawn in accordance with the terms and conditions of the Letter of Credit cited and that the amount for which drawn is proper for payment to the drawer or for credit to the account of the drawer at the drawer's bank. I also certify that the data reported above is correct and that the amount of the Request for Payment is not in excess of current needs.

DATE	SIGNATURE	TITLE
DATE	COUNTERSIGNATURE	TITLE

Standard Form 183
December 1975
Prescribed By Dept. of Treasury
I T FRM 6-2000

ORIGINAL—Drawer will forward this copy to Treasury Disbursing Office.

183-102

INSTRUCTIONS FOR PREPARING AND DISTRIBUTING AN SF 183 REQUEST FOR PAYMENT ON LOC AND STATUS OF FUNDS REPORT

NOTICE TO DRAWER

SF 183 is shown on Page 1 of Figure III-3. Extreme care must be exercised to prepare an SF 183 correctly and completely in order for the appropriate Treasury Regional Disbursing Office to process the request for payment without delay. If a recipient repeatedly fails to prepare the SF 183 correctly and completely, the Treasury Regional Disbursing Office may reject future requests for payment.

Withdrawals on the LOC must be made only in amounts necessary to meet current disbursement needs. Such withdrawals ordinarily must be made not more frequently than once daily, in amounts no less than $5,000 but no more than $5,000,000 unless so stated on the LOC.

All Dollar Amounts Which Are Entered On the SF 183 Must Be Shown To Two Places Past The Decimal. Example $25,000.00

SECTION 1 - REQUEST FOR PAYMENT

Block Number

1. Agency Station Symbol. Enter the eight digit agency station symbol, 69-08-8701, (also appears on the SF 1193A Letter of Credit).

2. Letter-of-Credit Number. Enter the eight digit Letter-of-Credit number which appears on your related LOC.

Block
Number

3. Document Number. Enter the appropriate document number. For each LOC, the document number of the first SF 183 must begin with "001", and each SF 183 prepared thereafter for each letter of credit must progress in consecutive ascending order. Alphabetical designations must not be used as part of the document number. Amendments to the LOC must not interrupt the progression of the number assigned to the Requests for Payment by the drawer.

4. Amount Requested. Enter the total amount of this request for payment which must be the same as the amount requested on line 7 of Section II and the total in Section III.

5. Name and Address of U.S. Agency. Enter the name and address of the Federal "Issuing Agency" which apears on your related LOC.

6. Name and Address of Drawer. Enter the name and address of the recipient organization (drawer). This information must be identical to that entered in the "In Favor Of" block on your related LOC.

7. Name and Address of Treasury Disbursing Office. Enter the name and address of the Treasury disbursing center or Treasury regional office which appears on your related LOC.

8. Make Treasury Check Payable To. Enter the information exactly as it appears in the "Treasury Checks to be Made Payable To:" block on your related LOC.

SECTION II - STATUS OF FEDERAL FUNDS

Block Number

1. Federal Funds on Hand. Enter the total amount of undisbursed Federal funds received under this LOC which were in the hands of the recipient organization (drawer) on the first day of the current Federal fiscal year. This amount includes all Federal funds on deposit with a commercial bank or maintained as imprest funds and received but undeposited Treasury checks.

2. Advances Received, Fiscal Year to Date. Enter the total amount of all Federal funds received under this letter of credit during the current Federal fiscal year to date.

3. Collections, Refunds, and/or Miscellaneous Receipts. Enter the total amount of all collections, refunds, and/or miscellaneous receipts of funds received during the current Federal fiscal year to date. Examples of items to be included in this amount are:

   a. Cumulative Federal funds advanced to a secondary recipient organization and, subsequently, determined to be in excess of immediate disbursement needs, which have been returned to the primary recipient during the current Federal fiscal year.

   b. Cumulative Federal share of proceeds from the sale of real property, personal property, and/or services received during the current Federal fiscal year which are available to the primary recipient to pay the cost of any approved program activity.

c. Cumulative interest earned during the current Federal fiscal year on Federal funds withdrawn from this LOC prior to actual disbursement needs of the recipient organization. In Section II A - Remarks, indicate the amount of such interest and whether that amount has been remitted to UMTA.

4. Subtotal. Enter the sum of the amounts reported on lines 1, 2, and 3 of Section II.

5. Actual Disbursements, Fiscal Year to Date. Enter the total amount of actual cash disbursements of Federal Project funds during the current Federal fiscal year to date. Any interest earned on funds prematurely withdrawn from this LOC and returned to UMTA must be included in the amount shown on this line.

6a. Federal Funds on Hand at Time of This Request. Enter the amount reported on Line 4 minus the amount reported on Line 5.

6b. Estimated Number of Days Supply. Enter the estimated number of workdays until the amount reported on Line 6a will be disbursed. The estimate includes the day on which the funds will be disbursed. For example, if the request for payment is prepared on a Tuesday and the recipient organization expects to disburse the Federal funds on hand on the same day it is preparing the request for payment, this represents a zero day supply of Federal funds.

7a. Amount of This Request for Payment. Enter the total amount of this request for payment, which must be the same as the amount requested in Section I and the total in Section III.

7b. Estimated Number of Days Supply. Enter the estimated number of workdays from the estimated day of receipt until the amount reported on Line 7a will be disbursed. This estimate includes the expected day of receipt but does not include the day of disbursement. For

example, if the recipient expects to receive the Federal funds requested on a Friday and disburse these funds on Monday of the following week, this represents a one day supply of Federal funds assuming Saturday and Sunday are not work days.

8. Unpaid Requests for Payment Previously Submitted. Enter the total amount of the request(s) for payment which have been submitted to the RDO but for which the recipient organization has not yet received payment. Do not include the amounts of rejected Requests for Payment.

9. Total. Enter the sum of the amounts reported on Lines 6, 7 and 8.

10a. Outstanding Advances to Sub-Recipients - Total $. Enter the difference between the total amount of Federal funds advanced to secondary recipient(s) and the total amount of Federal funds disbursed by secondary recipient(s).

10b. Outstanding Advances to Sub-Recipients - Number. Enter the number of recipients maintaining the outstanding balances reported on Line 10a of this request for payment as "Outstanding Advances to Sub-Recipients". If there are no secondary recipients involved, "N.A." must be entered for non-applicable.

SECTION II A - REMARKS

The recipient organization (drawer) should enter any additional explanation, related to Section II - Status of Federal Funds, deemed appropriate. This includes the date through which funds are requested, the purpose of the request and if a final payment for a particular project.

SECTION III - CLASSIFICATION OF THE AMOUNT OF THIS REQUEST

Since a request for payment may include funds for more than one grant or project, it is extremely important that Section III be properly completed to show the amount of the request for payment applicable to each grant or project. Therefore, for each grant or project for which funds are being requested, enter the appropriate project number, fund code, and the amount of funds requested for each project.

The total of this section must be the same as the "Amount Requested" under Section I and the "Amount of This Request for Payment" under Section II.

SECTION IV - CERTIFICATION

Block Number

1. Date. Enter the date(s) this SF 183 is certified.

2. Signature and Countersignature. Two of the designated officials of the recipient organization authorized to certify requests for payment on the SF 1194, Authorized Signature Card for Payment Vouchers on Letter of Credit, on file with the Treasury disbursing center or Treasury regional office servicing the related LOC shall affix their signatures. These signatures must be identical to those on the current SF 1194.

3. Title. Enter the titles of the designated officials of the recipient organization certifying this SF 183.

11. Distribution of the Form.

NOTE: FORWARDING POINTS ARE PRINTED ON THE BOTTOM OF EACH COPY.

1. Original, Duplicate and Quintuplicate. Forward to the Treasury disbursing center or Treasury regional office servicing the related LOC.

2. Triplicate. At the same time the recipient organization mails the designated copies in 1. above to the appropriate Treasury RDO, the triplicate copy must be sent to the UMTA regional or headquarters office (Do not send the triplicate copy to the Office of Accounting which is shown in the "Issuing Agency" block on your Letter of Credit, SF 1193A.)

3. Quadruplicate. Retained by the recipient organization (drawer).

FEDERAL CASH CONTROL REGISTER

REQUEST FOR PAYMENT SUBMITTED				U.S. TREASURY CHECKS RECEIVED			COLLECTIONS, REFUNDS, AND/OR MISCELLANEOUS RECEIPTS			DISBURSEMENTS			BALANCE OF FEDERAL CASH ON HAND	
DOCUMENT NUMBER SF 183	DATE OF REQUEST	AMOUNT REQUESTED	AMOUNT FY TO DATE	DATE DEPOSITED	CHECK AMOUNT	AMOUNT FY TO DATE	DATE DEPOSITED	CHECK AMOUNT	AMOUNT FY TO DATE	DATE DIS-BURSED	AMOUNT	AMOUNT FY TO DATE	DATE	AMOUNT
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
						POST CUMU-LATIVE AMOUNT ON LINE 2 OF SF 183			POST CUMU-LATIVE AMOUNT ON LINE 3 OF SF 183			POST CUMU-LATIVE AMOUNT ON LINE 5 OF SF 183		

PREPARATION OF FEDERAL CASH CONTROL REGISTER

Column Number	Instructions
1.	Enter the document number from SF 183.
2.	Enter date of request from SF 183.
3.	Enter amount requested as shown on line 7 of SF 183.
4.	Self-explanatory.
5.	Enter date Treasury check deposited as shown on notification received from bank.
6.	Enter amount of Treasury check from notification received from bank.
7.	Self-explanatory.
8.	Enter date of deposit.
9.	Enter amount of deposit.
10.	Self-explanatory.
11.	Enter date funds disbursed to payee by recipient organization.
12.	Enter amount disbursed to payee by recipient organization.
13.	Self-explanatory.
14.	Enter the date of the last entry in either column (5), (8) or (11) which causes a change in the balance in column (15).
15.	Enter amount obtained by subtracting cumulative total in column (13) from the cumulative total in column (7) plus column (10).

REQUEST FOR ADVANCE OR REIMBURSEMENT

(See instructions on back)

Approved by Office of Management and Budget, No. 80-R0183

PAGE 1 OF 2 PAGES

1. TYPE OF PAYMENT REQUESTED: a. "X" one, or both boxes: [X] ADVANCE [X] REIMBURSEMENT; b. "X" the applicable box: [ ] FINAL [X] PARTIAL

2. BASIS OF REQUEST: [X] CASH [X] ACCRUAL

3. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED: UMTA

4. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY: NY-09-0123

5. PARTIAL PAYMENT REQUEST NUMBER FOR THIS REQUEST: 2

6. EMPLOYER IDENTIFICATION NUMBER:

7. RECIPIENT'S ACCOUNT NUMBER OR IDENTIFYING NUMBER:

8. PERIOD COVERED BY THIS REQUEST: FROM (month, day, year): 3-1-78; TO (month, day, year): 4-30-78

9. RECIPIENT ORGANIZATION

Name: Tonawanda Transit Authority

Number and Street: 367 Tremont Street

City, State and ZIP Code: Tonawanda, NY 14120

10. PAYEE (Where check is to be sent to different than item 9)

Name:

Number and Street:

City, State and ZIP Code:

11. COMPUTATION OF AMOUNT OF REIMBURSEMENTS/ADVANCES REQUESTED

PROGRAMS/FUNCTIONS/ACTIVITIES ▶	(a) N/A	(b) N/A	(c) N/A	TOTAL
a. Total program outlays to date (As of date) 3-31-78	$	$	$	$ 90,157
b. Less: Cumulative program income				1,215
c. Net program outlays (Line a minus line b)				88,942
d. Estimated net cash outlays for advance period				11,836
e. Total (Sum of lines c & d)				100,778
f. Non-Federal share of amount on line e				26,628
g. Federal share of amount on line e				74,150
h. Federal payments previously requested				5,725
i. Federal share now requested (Line g minus line h)				68,425
j. Advances required by month, when requested by Federal grantor agency for use in making prescheduled advances — 1st month				N/A
2nd month				N/A
3rd month				N/A

12. ALTERNATE COMPUTATION FOR ADVANCES ONLY

a. Estimated Federal cash outlays that will be made during period covered by the advance	$
b. Less: Estimated balance of Federal cash on hand as of beginning of advance period	
c. Amount requested (Line a minus line b)	$

13. CERTIFICATION

I certify that to the best of my knowledge and belief the data above are correct and that all outlays were made in accordance with the grant conditions or other agreement and that payment is due and has not been previously requested.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL: Sylvester Snodgrass III

DATE REQUEST SUBMITTED: 4/5/78

TYPED OR PRINTED NAME AND TITLE: Sylvester Snodgrass III, General Manager

TELEPHONE (AREA CODE, NUMBER, EXTENSION): (319)123-345

This space for agency use

SAMPLE SECTION 9 REQUEST FOR ADVANCE OR REIMBURSEMENT

Figure III-5a

INSTRUCTIONS

Please type or print legibly. Items 1, 3, 5, 9, 10, 11c, 11e, 11f, 11g, 11i, 12 and 13 are self-explanatory; specific instructions for other items are as follows:

Item	Entry
2	Indicate whether request is prepared on cash or accrued expenditure basis. All requests for advances shall be prepared on a cash basis.
4	Enter the Federal grant number, or other identifying number assigned by the Federal sponsoring agency. If the advance or reimbursement is for more than one grant or other agreement, insert N/A; then, show the aggregate amounts. On a separate sheet, list each grant or agreement number and the Federal share of outlays made against the grant or agreement.
6	Enter the employer identification number assigned by the U.S. Internal Revenue Service, or the FICE (institution) code if requested by the Federal agency.
7	This space is reserved for an account number or other identifying number that may be assigned by the recipient.
8	Enter the month, day, and year for the beginning and ending of the period covered in this request. If the request is for an advance or for both an advance and reimbursement, show the period that the advance will cover. If the request is for reimbursement, show the period for which the reimbursement is requested.
Note:	The Federal sponsoring agencies have the option of requiring recipients to complete items 11 or 12, but not both. Item 12 should be used when only a minimum amount of information is needed to make an advance and outlay information contained in item 11 can be obtained in a timely manner from other reports.
11	The purpose of the vertical columns (a), (b), and (c), is to provide space for separate cost breakdowns when a project has been planned and budgeted by program, function, or activity. If additional columns are needed, use as many additional forms as needed and indicate page number in space provided in upper right; however, the summary totals of all programs, functions, or activities should be shown in the "total" column on the first page.
11a	Enter in "as of date", the month, day, and year of the ending of the accounting period to which this amount applies. Enter program outlays to date (net of refunds, rebates, and discounts), in the appropriate columns. For requests prepared on a cash basis, outlays are the sum of actual cash disbursements for goods and services, the amount of indirect expenses charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to subcontractors and subrecipients. For requests prepared on an accrued expenditure basis, outlays are the sum of the actual cash disbursements, the amount of indirect expenses incurred, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received and for services performed by employees, contracts, subgrantees and other payees.
11b	Enter the cumulative cash income received to date, if requests are prepared on a cash basis. For requests prepared on an accrued expenditure basis, enter the cumulative income earned to date. Under either basis, enter only the amount applicable to program income that was required to be used for the project or program by the terms of the grant or other agreement.
11d	Only when making requests for advance payments, enter the total estimated amount of cash outlays that will be made during the period covered by the advance.
13	Complete the certification before submitting this request.

GPO: 1977—041-030/0200

REQUEST FOR ADVANCE OR REIMBURSEMENT

(See instructions on back)

Approved by Office of Management and Budget. No. 80-R0183

PAGE 1 OF 2 PAGES

1. TYPE OF PAYMENT REQUESTED
a. "X" one, or both boxes: [X] ADVANCE [X] REIMBURSEMENT
b. "X" the applicable box: [ ] FINAL [X] PARTIAL

2. BASIS OF REQUEST: [X] CASH [ ] ACCRUAL

3. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED

4. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY: NY-05-4099

5. PARTIAL PAYMENT REQUEST NUMBER FOR THIS REQUEST: 002

6. EMPLOYER IDENTIFICATION NUMBER

7. RECIPIENT'S ACCOUNT NUMBER OR IDENTIFYING NUMBER

8. PERIOD COVERED BY THIS REQUEST
FROM (month, day, year): 1-1-77
TO (month, day, year): 9-30-77 (should include advance period)

9. RECIPIENT ORGANIZATION
Name: Tonawanda Trans. Authority
Number and Street: 367 Tremont Street
City, State and ZIP Code: Tonawanda, NY 14120

10. PAYEE (Where check is to be sent if different than item 9)
Name:
Number and Street:
City, State and ZIP Code:

11. COMPUTATION OF AMOUNT OF REIMBURSEMENTS/ADVANCES REQUESTED

PROGRAMS/FUNCTIONS/ACTIVITIES ▶		(a)	(b)	(c)	TOTAL
a. Total program outlays to date (As of date) 6-30-77		$	$	$	$ 312,600
b. *Less:* Cumulative program income					104,500
c. Net program outlays (*Line a minus line b*)					208,100
d. Estimated net cash outlays for advance period					103,400
e. Total (*Sum of lines c & d*)					311,500
f. Non-Federal share of amount on line e					240,800
g. Federal share of amount on line e					70,700
h. Federal payments previously requested					40,700
i. Federal share now requested (*Line g minus line h*)					30,000
j. Advances required by month, when requested by Federal grantor agency for use in making prescheduled advances	1st month	July			10,000
	2nd month	August			15,000
	3rd month	September			5,000

12. ALTERNATE COMPUTATION FOR ADVANCES ONLY

a. Estimated Federal cash outlays that will be made during period covered by the advance	$
b. *Less:* Estimated balance of Federal cash on hand as of beginning of advance period	
c. Amount requested (*Line a minus line b*)	$

13. CERTIFICATION

I certify that to the best of my knowledge and belief the data above are correct and that all outlays were made in accordance with the grant conditions or other agreement and that payment is due and has not been previously requested.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL: Aaron Zzyyton

DATE REQUEST SUBMITTED: 8-1-77

TYPED OR PRINTED NAME AND TITLE: Aaron Zzyyton, General Manager

TELEPHONE (AREA CODE, NUMBER, EXTENSION): (312)555-333

This space for agency use

Federal Share broken down as follows:

$ 9,099 - for actual period 1-1-77 - 6-30-77
6,967 - for July
6,967 - for August
6,967 - for September
$30,000 - this requisition

SAMPLE SECTION 5
REQUEST FOR ADVANCE OR REIMBURSEMENT
Figure III-5b

270-102

STANDARD FORM 270 (7-76)
Prescribed by Office of Management and Budget
Cir. No. A-110

INSTRUCTIONS

Please type or print legibly. Items 1, 3, 5, 9, 10, 11c, 11e, 11f, 11g, 11i, 12 and 13 are self-explanatory; specific instructions for other items are as follows:

Item	Entry
2	Indicate whether request is prepared on cash or accrued expenditure basis. All requests for advances shall be prepared on a cash basis.
4	Enter the Federal grant number, or other identifying number assigned by the Federal sponsoring agency. If the advance or reimbursement is for more than one grant or other agreement, insert N/A; then, show the aggregate amounts. On a separate sheet, list each grant or agreement number and the Federal share of outlays made against the grant or agreement.
6	Enter the employer identification number assigned by the U.S. Internal Revenue Service, or the FICE (institution) code if requested by the Federal agency.
7	This space is reserved for an account number or other identifying number that may be assigned by the recipient.
8	Enter the month, day, and year for the beginning and ending of the period covered in this request. If the request is for an advance or for both an advance and reimbursement, show the period that the advance will cover. If the request is for reimbursement, show the period for which the reimbursement is requested.
Note:	The Federal sponsoring agencies have the option of requiring recipients to complete items 11 or 12, but not both. Item 12 should be used when only a minimum amount of information is needed to make an advance and outlay information contained in item 11 can be obtained in a timely manner from other reports.
11	The purpose of the vertical columns (a), (b), and (c), is to provide space for separate cost breakdowns when a project has been planned and budgeted by program, function, or activity. If additional columns are needed, use as many additional forms as needed and indicate page number in space provided in upper right; however, the summary totals of all programs, functions, or activities should be shown in the "total" column on the first page.
11a	Enter in "as of date", the month, day, and year of the ending of the accounting period to which this amount applies. Enter program outlays to date (net of refunds, rebates, and discounts), in the appropriate columns. For requests prepared on a cash basis, outlays are the sum of actual cash disbursements for goods and services, the amount of indirect expenses charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to subcontractors and subrecipients. For requests prepared on an accrued expenditure basis, outlays are the sum of the actual cash disbursements, the amount of indirect expenses incurred, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received and for services performed by employees, contracts, subgrantees and other payees.
11b	Enter the cumulative cash income received to date, if requests are prepared on a cash basis. For requests prepared on an accrued expenditure basis, enter the cumulative income earned to date. Under either basis, enter only the amount applicable to program income that was required to be used for the project or program by the terms of the grant or other agreement.
11d	Only when making requests for advance payments, enter the total estimated amount of cash outlays that will be made during the period covered by the advance.
13	Complete the certification before submitting this request.

Appendix I—Questions and Answers on Cost Allocation Plans

Questions and Answers on Cost Allocation Plans

A. Application of Principles

Q. Is Federal Management Circular 74–4 Mandatory for use by both States and local governments?

A. Yes. Paragraph A–3 of Attachment A to the Circular states that the principles will be applied by all Federal agnecies in determining costs incurred by State and local governments under Federal grants and cost reimbursement type contracts (including subgrants and subcontracts) except those with (a) publicly financed educational institutions subject to FMC 73–8, and (b) publicly owned hospitals and other providers of medical care subject to requirements promulgated by the sponsoring Federal agencies.

Q. Federal Management Circular 74–4 states that it does not apply to grants and contracts with (a) publicly financed educational institutions subject to Federal Management Circular 73–8 and (b) publicly owned hospitals and other providers of medical care subject to requirements promulgated by the sponsoring Federal agencies. What is the intent of this statement and how does it affect the reimbursement of costs?

A. Federal cost principles are designed to be compatible with the organizational structure, accounting systems and programs conducted by specific types of organizations which perform Federal grants and contracts. FMC 74–4 was designed to be compatible with the type of operations conducted by State and local government. The organization and operations of colleges and universities and hospitals differ markedly from that of State and local governments and hence, there are special cost principles for them (FMC 73–8 for colleges and universities and the Medicare/Medicaid/HEW research cost principles for hospitals). These principles recognize State and local central service costs and departmental indirect costs allocable under the procedures of FMC 74–4.

Q. Will the indirect costs arrived at by the application of the indirect cost rate percentage be reimbursed to State and local governments?

A. The indirect costs which are determined to be associated with Federal programs in accordance with the procedures in FMC 74–4 will be recognized as part of the total cost of the Federal projects, except where restricted or prohibited by law. The extent to which such costs are reimbursed is a matter for determination between the Federal awarding agency and the recipient State or local unit of government.

B. Federal Cognizance

Q. What Federal agency will be responsible for determining and reassigning negotiation and audit cognizance for State and local agencies under FMC 74–4?

A. The Office of Management and Budget working in cooperation with the other Federal departments and agencies is responsible for determining and reassigning negotiation and audit cognizance for State and local agencies.

Q. May another Federal agency question the costs included in a central service cost allocation plan submitted to and approved by a cognizant Federal agency?

A. Cognizant Federal agencies will coordinate the approval of central service plans with the other Federal agencies affected. Accordingly, Federal agencies will accept as part of the costs of a particular State or local government agency, those costs represented as central service costs provided they are in accord with the amounts set out in the negotiation agreement signed by representatives of the State or local government and the cognizant Federal agency.

Q. Will an indirect cost rate(s) established for a State or local department by a cognizant Federal agency by accepted by other Federal agencies that have active programs with the same State department?

A. Federal agencies have determined which Federal agency will have negotiation responsibility at State and local departments where more than one Federal agency has active programs. Generally, the Federal agency with the predominant interest in terms of program dollars will be the cognizant Federal agency. This means, for example, that the Department of Health, Education and Welfare will determine indirect cost rates at State and local departments where the Department has the predominant dollar interest. The rates negotiated by the Department will be accepted by all Federal agencies that also have programs at these same State and local departments. In making such determinations the cognizant Federal agency will coordinate its activities with the other Federal agencies affected to the extent deemed necessary prior to reaching an agreement with the State or local department concerned.

Q. Which Federal agency will be responsible for the audit of costs of programs administered by State and local governments under grants from and contracts with the Federal Government?

A. The Department of Health, Education, and Welfare will be responsible for the audit of costs resulting from a State central service cost allocation plan, the results of which will be accepted by other Federal agencies. The Federal agency that has negotiation cognizance for indirect cost proposals at the State or local department level will also be cognizant for audit of these costs. That Federal agency that has the preponderance of dollar activity within a city, county or other subdivision will be cognizant for both audit and negotiation of local central service cost allocation plans. However, changes in cognizance may be required from time to time in Federal agency assignments as material changes in preponderance of Federal dollar activity occur.

Q. Where can State and local governments receive additional information or clarification on the implementation of FMC 74–4?

A. States and local governments should contact the Federal agency that has been assigned cognizance for either central service cost allocation plans or individual government department indirect cost proposals.

C. Definitions

Q. To what does the expression "cost allocation plan" refer?

A. A cost allocation plan refers to a document that identifies, accumulates, and distributes allowable costs to grants and contracts and identifies the procedures used in making such distribution. It refers to both the central service cost allocation plan which is used to allocate the costs of central government services to benefiting government departments, and the indirect cost proposals of those departments or units performing grants and contracts.

Q. What is an indirect cost rate?

A. An indirect cost rate is the ratio of an organization's indirect costs to some element of its direct costs, e.g., direct salaries and wages. Once determined, the rate is used to compute grantee indirect cost entitlement. The entitlement is accomplished by multiplying the indirect cost rate by the direct salaries and wages charged to a grant or contract. An indirect cost rate is the net product of an indirect cost proposal.

D. Preparation and Use of Plans

Q. Who is responsible for the preparation of State and local central service cost allocation plans and indirect cost proposals?

A. It is the responsibility of each State and local government to prepare timely central service plans and indirect cost proposals where indirect cost reimbursement is sought.

Q. Are there any critical areas that State and local governments should give particular emphasis to in the development of a central service cost allocation plan and in the preparation of individual indirect cost proposals?

A. State and local governments must be especially alert to inconsistent costing practices, i.e., the treating of a type of expense such as occupancy or fringe benefits as both a direct and indirect cost. Inconsistent costing invariably results in disallowed claims.

Q. Must the indirect cost proposal or the central service cost allocation plan be prepared centrally for each State or local department performing under Federal grant programs?

A. There is no requirement that an indirect cost proposal be prepared by an designated State or local government organization. Proposals may be prepared by each of the government departments performing under Federal grants or they may be prepared in a central office. However, while the State or local central service cost allocation plan need not be prepared centrally, it must be prepared as a single document.

Q. Must a State or local government prepare a central service cost allocation plan?

A. The preparation of a central service cost allocation plan is only required where a State or local government wishes to recover the costs of central services that benefit Federal programs conducted in or by State or local government departments. A State or local central service cost allocation plan is not required if a State or local government elects not to make a claim for recovery of central service type costs against Federal awards.

Q. How will a central service plan be used?

A. The central service plan is used to distribute allowable central service costs to each of the individual government departments benefited, in order that they might include them in their indirect cost proposal.

Q. How will the State or local government, and other Federal agencies, be notified of cost allocation plans that have been submitted and approved?

A. The cognizant Federal agency will reduce to writing, in the form of a negotiation agreement, the results of the negotiation it has concluded with State or local authorities. The agreement will be signed by representatives of both the cognizant Federal agency and the State or local government and will be distributed to other Federal agencies by the Department of Health, Education, and Welfare. A negotiated agreement will be issued for the fiscal years affected and will include amounts or percentages that have been agreed to as allowable for inclusion in the various State or local departments' indirect cost proposals.

Q. Do small cities or counties with a minimal amount of Federal Government activity have to prepare a central service cost allocation plan?

A. Small cities and counties who feel that the preparation of a central service cost allocation plan under the regular method is burdensome, may elect to establish their costs under a method that combines both the central service cost allocation plan and indirect cost proposals. This method however, results in less cost recovery than would likely result using the regular method, so cities and counties will have to determine whether this approach is suited to their needs. The method is illustrated in Section V, Appendix 1, Exhibit F.

Q. How will the Federal Government assure itself that central service cost allocation plans and indirect cost proposals that have been submitted have been properly prepared?

A. The Federal Government will review each central service cost allocation plan and indirect cost proposal submitted to assure itself that the plans and proposals have been prepared properly. Authorized State or local government representatives will be required to certify to the correctness of the cost allocation plans.

Q. The sample formats illustrate one method of computing a central service cost allocation plan, four methods for computing an indirect cost rate and one method of computing a consolidated local central service cost allocation plan and indirect cost proposal. Are State and local governments restricted to these basic methods?

A. States and local governments should use the cost allocation plans in the sample formats. A format materially different than that shown in the samples may be used only if prior approval is obtained from the cognizant Federal agency. Less detail than that shown in the sample format for the central service plans will not be acceptable. Federal agencies will recognize any of the four sample indirect cost proposal formats as long as the format selected gives effect to statutory requirements of the various Federal programs performed in the proposing department. However, it is recognized that differences in government laws, accounting systems, and policy directives may require deviations from the recommended format in some instances. Deviations will be considered if they conform with generally accepted cost accounting principles, do not conflict with Section C., Attachment A. of FMC 74–4 and are approved by the cognizant government agency. A State for local government need not use the same format for all State or local government departments but may elect the format which in each case is most appropriate to the department.

E. Specific Items of Cost

Q. Attachment B, Section C. of the circular identifies costs that are allowable with approval of the grantor agency. Is approval necessary when the State or local government treats these costs as indirect costs?

A. To the extent that costs in Attachment B, Section C. of the Circular are treated as indirect costs by a State or local government, negotiation of the indirect cost proposal(s) by the responsible Federal agency shall constitute approval of the Section C costs included in the proposal. Where Section C costs are to be treated as direct program costs, necessary approval must be obtained from the Federal department or agency which awarded the grant or contract.

Q. FMC 74–4 states that when the depreciation method of compensation for the use of buildings, capital improvements, and equipment is followed, any method of computing depreciation may be used. How will Federal agencies interpret this?

A. Depreciation is intended to spread the cost of an asset over its useful life. With rare exceptions, the depreciation of assets owned by States and localities occurs at approximately the same rate throughout their life. Thus, the straight line method of depreciation is always used for general purpose buildings and equipment and is used almost exclusively for all other assets.

Q. Are there any exceptions to the general rule that the computation of depreciation or use allowance will be based on acquisition cost?

A. There is one exception to this general rule and it applies only in the special case of donated assets. Depreciation or use charge will be recognized on the fair market value at the time of acquisition of the donated asset.

Q. The circular states that acquisition cost may be based on a reasonable estimate if actual cost records have not been maintained. Are there any guidelines on what will be accepted as a reasonable estimate if actual cost records have not been maintained?

A. There are no definitive guidelines on what will be accepted as a reasonable estimate in lieu of actual cost records. However, if in the opinion of the cognizant Federal agency, depreciation or use charges based on estimated acquisition costs are material in amount, the Federal agency may require that acquisition cost be based on an estimate performed by independent and professional appraisers or by other similar independent valuations. States and local governments should seek assistance from their cognizant Federal agency in developing an alternative method where actual cost records have not been maintained.

Q. May charges to Federal programs be based on such factors as replacement costs, commerical catalog prices or comparable commercial billing rates?

A. No. Charges to Federal programs must be based on costs actually incurred.

Q. Attachment B, section D.8 of FMC 74–4 states that legislative expenses are unallowable. Does this prohibit the recovery of the costs of legislative auditors?

A. To the extent that legislative auditors conduct regularly scheduled cost postaudits of government departments that perform Federal grants and contracts, and the Federal agreements benefit from the incurrence of this cost, then the cost is allowable. Audits conducted for investigative purposes or pursuant to data gathering for appropriation hearings are not allowable.

Q. Some grant programs are awarded to the office of the Governor of a State, to the chief executive of a political subdivision, the county supervisor, city council, school board or other similar type body. Are these grants precluded from recovering indirect costs under the circular?

A. The general expenses required to carry out the overall responsibilities of these offices are unallowable. Attachment B, Section D.6, of the Circular identifies them as a general expense of Government and therefore an unallowable cost. However, if special indentifiable expenses were incurred to satisfy a Federal grant or contract requirement, they would be allowed if they otherwise met the standards of allowability provided in the Circular.

F. Other

Q. How can a grantee distinguish between a direct cost and an indirect cost?

A. There is no universal rule for classifying costs as direct or indirect. Generally speaking, a direct cost is one that is incurred specifically for one activity. Indirect costs are if a more general nature and are incurred for the benefit of several activities. Consequently, some allocation technique must be used to distribute these indirect costs to the several direct functions benefited. Once a grantee makes an election and treats a given cost as direct or indirect it must apply that treatment consistently and may not change during the fiscal year.

Q. Is it permissible to allocate costs (either directly or indirectly) on the basis of revenue or on the basis of funds available under Federal grants or contracts?

A. No. The allocation of costs by either of these methods is unacceptable. Cost must be allocated on the basis of services rendered or goods provided to Federal grants or contracts.

Q. Should a cost allocation plan be submitted with a grant or contract project application?

A. A plan should not be submitted with a grant or contract project application. Space is provided on most applications for the approved indirect cost rate and the identification of the cognizant Federal agency.

Q. Does the circular have any effect on "cost sharing" or on "matching" requirements?

A. The Circular does not change any "Cost Sharing" or "Matching" requirements. It does provide a means of identifying total program costs for use in meeting those requirements.

Q. Program income represents earnings by the grantee realized from the grant-supported activities as a result of the grant. How should State and local units of Government treat program income?

A. State and local units of government should treat program income in accordance with awarding agency regulations implementing FMC 74–7 (formerly OMB Circular A–102).

Appendix II—Sample Cost Allocation Plans

A. Central Service Cost Allocation Plan Description

This is a sample illustration of a central service cost allocation plan. It consists of:

Exhibit A-Summary of Allocated Central Service Costs. This exhibit shows each central service, and the attendant costs, which benefit Federal grants and contracts and for which a State or local government wishes to make a claim. This exhibit must be supported by detailed schedules comparable to A.1–A.3 for each included central service.

Schedule A–1-Allocation of Costs, Personnel Department. The personnel department has been selected as an illustrative central service. This schedule shows those State organizations to which the personnel department provides services and the allocation of its costs to those organizations. This schedule is supported by Schedules A–2 and A–3.

Schedule A–2-Costs to be Allocated, Personnel Department. This schedule shows the composition of the costs of the personnel department as contained in official financial or budget statements and a reconciliation of those costs with the amount allocated in Schedule A–1.

Schedule A–3-Statement of Function and Benefit, Personnel Department. This schedule is a narrative description of the activities conducted by the personnel department, their necessity (benefits) to the successful performance of federally supported programs, a description of the base(s) selected to distribute the costs of those activities to the organizations to which services are rendered and the rationale or the base(s) selected.

Exhibit A–1—Summary of Central Services Billed. It is common practice for central service departments to bill those organizations to which they render services for the cost of those services. This Exhibit illustrates the services billed to organizations conducting Federal grants and contracts, the costs included in the billing, the methodology for computing the billing rate, etc.

Amounts allocated to the operating departments from the central service cost allocation plan in Exhibits A and A–1, are carried forward to Exhibits B, C, D, and E, which illustrate various sample formats for an indirect cost rate proposal.

Only a few of the many possible central services have been shown in Exhibit A and only one central service department is shown in the accompanying Schedules A–1 through A–3. A central service cost allocation plan may include any other services and their attendant costs which are allowable under FMC 74–4 and for which documentation can be provided. Each type of cost claimed should be supported by appropriate schedules and other documentation sufficient to provide a reasonable basis for evaluation and acceptance.

BILLING CODE 4910-57-M

EXHIBIT A

SAMPLE FORMAT

CENTRAL SERVICE COST ALLOCATION PLAN*
SUMMARY OF ALLOCATED CENTRAL SERVICE COSTS
FOR THE FISCAL YEAR ENDED JUNE 30, 19--

Department/Operating Unit	Central Service Organizations				Total Allocated Costs(b)
	Personnel(a)	Accounting	Purchasing	Audit	
Health	$ 9,945	$ 20,145	$ 3,412	$ 1,675	$ 35,177
Environmental Services	8,907	21,622	2,221	1,221	33,971
Social Services	3,187	7,984	896	645	12,712
Highway	15,132	42,855	6,751	6,227	70,965
Police	29,848	51,960	9,475	11,421	102,704
Fire	24,873	49,743	9,997	14,526	99,139
Other Departments	57,048	187,608	21,431	18,645	284,741
TOTALS	$148,940	$381,917	$54,183	$54,369	$639,409

(a) Allocated amounts shown are from Schedule A-1, In an actual plan, the remaining service departments would similarly need to be supported by separate schedules showing the computation of the allocated amounts.

(b) These amounts are includable in the indirect cost propsals of the individual operating Departments/units. See Exhibits B, C, C, and E.

*This is a sample only and hence, is brief and simple. In practice, a State of local government may wish to claim more or less activities as charges to Federally supported programs and this Exhibit and its supporting schedules would need to be modified accordingly.

BILLING CODE 4910-57-C

Appendix II—Sample Cost Allocation Plans

Exhibit A–1

Sample Format*

Central Service Cost Allocation Plan, Summary of Central Services Billed to User Organizations

Motor Pool.—The (State or local government) operates a central motor pool which makes cars, trucks, and buses available to user departments. User-departments are billed for each mile driven: cars—15 cents per mile, trucks—25 cents per mile, and buses—30 cents per mile. The basis for the charge is the most recent study of cost per mile driven, performed by the internal audit staff. Any over or under recovery is applied to the next year's expected expenditures and is included in that year's billing rate. The costs included are salaries and wages and fringe benefits of motor pool personnel, their travel, supplies and parts and use charges for equipment and buildings and vehicles determined in accordance with FMC 74–4.

Data Processing.—The State (or local government) operates a central computer center consisting of an IBM System 370/115, and Control Data 3100 and Cyber 70 series configuration. The center provides both regular continuing and special job computer support to most operating and staff departments. Billings for services are made to user organizations based on a standard price schedule. The price schedule is related to and designed to recover the costs of various types of jobs on each system. It is revised quarterly and audited annually by the internal audit department. Profits or losses are carried forward and used to adjust price schedules of ensuing quarterly billing rates. Costs consist of salaries and wages and fringe benefits of center personnel, supplies, maintenance and utilities, and straight line depreciation of equipment based on a fifteen-year life.

Long Distance.—All long distance telephone calls are placed through a central switchboard telephone and are billed to the organizations making the call.

Notes.—If a direct billing mechanism is used by the government, then all users must be billed. Billing of selected departments and allocation of residual amounts through the cost allocation plan to remaining departments results in inequitable costing and is not acceptable. However, if all users are billed, residual amounts may be allocated through the allocation plan provided they are not material and the allocation base is equitable.

A detailed breakdown of costs is not normally required as part of this exhibit. However, the submitting State or local government must have and make available to the Federal cognizant agency such cost and revenue breakdowns, utilization records and other information as is necessary to permit a reasonable assessment of the costs incurred and charges made.

* This is a sample only, and hence, is brief and simple. In practice, the number and types of services billed may be greater than shown here and may require more extensive description and explanation.

Schedule A–2; Sample Format [1]

[Central service cost allocation plan costs to be allocated, personnel department for the fiscal year ended September 30, 19—]

Salaries and wages		$140,000
Fringe benefits		16,000
Supplies		8,000
Travel		7,012
Maintenance and janitorial services		7,928
Capital outlay		7,561
		186,501
Less: Unallowable costs, capital outlay	$7,561	
Costs chargeable to Federal grant [2]	30,000	37,561
Total costs to be allocated on schedule A–1		[3] 148,940

[1] This is a sample only and hence, is brief and simple. In practice, this schedule should be sufficiently detailed to show the costs of major activities, branches, etc. of the personnel departments in a manner permitting a reasonable assessment of the costs claimed against Federal programs.

[2] Represents charges to a Federal grant awarded to assist the State or local government to improve its personnel system. If a supporting agency received an award from the Federal Government, all costs incurred in connection with the award (including any costs that are required for matching or cost sharing) must be eliminated prior to the distribution of the supporting agency's costs to the user departments or agencies.

[3] The costs allocated must be reconciled to appropriate financial documents, either financial statements, budgets or a combination of both. In this example the government's base data was cost incurred for its most recent fiscal year.

Schedule A–3.—Sample Format [4]

Central Service Cost Allocation Plan Statement of Functional and Benefit, Personnel Department for the Fiscal Year Ended September 30, 19—

The personnel department is responsible for overall administration of the Civil Service program. This includes recruiting, interviewing, testing and referring potential candidates for the more then 2,000 municipal jobs.

The personnel department administers the classifications and salary programs and is responsible for recommending personnel policies and procedures to the Civil Service Commission for approval.

The department is involved in the design of the various employee benefit programs. After installation, the department reviews and maintains the records on these programs.

Active and inactive personnel records are maintained on all municipal employees.

The personnel department is responsible for maintaining the safety program (including workmen's compensation and injury level) and the city training programs.

Sample Cost Allocation Plans

B. Consolidated Cost Allocation Plan Description

This illustrates the consolidated cost allocation plan. The plan may be used only by local governments. This method is used in lieu of the central service cost allocation plan and department/agency indirect cost proposals. The advantage of this method to local governments is that it is simple and does not require the use of complex cost schedules to support cost allocations. However, the use of this method entails the acceptance of certain conditions which may result in less total recovery of indirect type costs to a local government. If the following conditions are recognized and accepted, a local government may opt to use the method:

a. Only indirect costs of certain central services will be accepted for allocation. The only central services includable under this method are those that demonstrably benefit Federally supported programs and which would have been allocated to Federal awards had the regular methods illustrated in Exhibits A and B through E (in OASC–10) been used.

b. Central service costs which do not qualify under a. above must be added to the base used to develop the indirect cost rate.

c. All costs of all local departments and agencies (excluding the costs in a. above) must be included in the base used to develop the indirect cost rate except for unallowable items such as interest expense and items that tend to distort the rate computation, such as major subcontracts and items of capital equipment. Indirect type costs incurred at the local department or agency level, including divisional indirect costs, cannot be proposed as indirect costs but must be treated as a base cost in developing the indirect cost rate.

d. Indirect type costs incurred at any level of government may not be charged to a Federally supported program as a direct cost; e.g., accounting, purchasing, personnel. However, direct charges such as motor pool, reproduction, communications, etc. will be allowed if (1) they are so identified on the consolidated central service plan, and (2) the grantee's system normally provides for directly assessing its departments and agencies for the use of these services using pricing or fee schedules designed to recover the actual costs of services used.

(1) Expenditures not allowable consist of capital expenditures, contracted construction and flow-through monies, etc. These items are excluded from the computation because their inclusion would distort the assessment of indirect costs.

(2) In this illustration, the Treasurer's and Comptroller's office each conduct both direct and indirect activities. For example, the taxing function is contained in both offices (assessing, billing, collecting, etc.).

(3) Costs of the Mayor's Office and the City Council are stipulated in FMC–74–4 as costs of general government and hence, are unallowable as indirect costs; however, these functions benefit from those costs classified as allowable indirect costs and must be included in the base used to calculate the indirect cost rate.

(4) The indirect cost base consists of the costs of all the functions and activities of local governments except (i) central services benefiting Federal programs and (ii) expenditures not allowable. Thus, in this method, costs such as the salaries of department and division heads, secretaries, administrative supplies, etc. which could be treated as indirect cost under other methods, must be treated as direct costs and may not be charged to Federal programs as either indirect or direct costs.

Suggested Bases for Cost Distribution

Following are suggested bases for distributing joint costs of central-type

[4] This is a sample only and hence, is brief and simple. In practice, this schedule should be sufficiently detailed to provide narrative explanations of the functions and benefits associated with the costs being allocated.

services to local government departments or agencies and to projects and programs utilizing these services. The suggested bases are not mandatory for use if they are not suitable for the particular services involved. Any method of distribution can be used which will produce an equitable distribution of cost. In selecting one method over another, consideration should be given to the additional effort required to achieve a greater degree of accuracy. Consideration should also be given to UMTA-specific requirements.

Type of service	Suggested bases for allocation
Accounting	Number of transactions processed.
Auditing	Direct audit hours.
Budgeting	Direct hours of identifiable services of employees of central budget.
Buildings lease management	Number of leases.
Data processing	System usage.
Disbursing service	Number of checks or warrants issued.
Employees retirement system administration.	Number of employees contributing.
Insurance management service.	Dollar value of insurance premiums.
Legal services	Direct hours.
Mail and messenger service	Number of documents handled or employees served.
Motor pool costs including automotive management.	Miles driven and/or days used.
Office machines and equipment maintenance repairs.	Direct hours.
Office space use and related costs (heat, light, janitor services, etc.).	Sq. ft. of space occupied.
Organization and management services.	Direct hours.
Payroll services	Number of employees.
Personnel administration	Number of employees.
Printing and reproduction	Direct hours, job basis, pages printed, etc.
Procurement service	Number of transactions processed.
Local telephone	Number of telephone instruments.
Health services	Number of employees.
Fidelity bonding program	Employees subject to bond or penalty amounts.

Appendix III—Allowable Costs

Allowable Costs

The following four sections describe allowable costs for Capital Grant and Loan projects, Section 5 Operating Assistance projects, Section 8 Technical Study projects, Interstate Substitution projects, FAUS projects, and section 175 projects. Failure to mention a particular item of cost is not intended to imply that it is either allowable or unallowable. Determination of allowability in each case should be based on treatment of standards provided for similar or related items of cost. For other projects, refer to the appropriate Federal Management or OMB Circulars. If any problems arise, contact the appropriate UMTA regional or headquarters office.

1. *Capital Grant and Loan Projects.*

a. *Allowable Costs.*

(1) *Accounting.* The cost of maintaining accounting and other information systems required for management of the project is allowable. This includes costs incurred by central service agencies for these purposes and for personal services provided by recipient employees. The cost of maintaining central accounting records required for overall State or local government purposes, such as appropriation and fund accounts by the Treasurer, Comptroller, or similar officials, is considered to be a general expense of government and is not allowable.

(2) *Advertising.* Advertising media may include newspapers, magazines, radio and television programs, direct mail, and trade papers. The advertising costs allowable are those which are solely for:

(a) Recruitment of personnel required for the project;

(b) Solicitation of bids for procurement of goods and services required for the project;

(c) Disposal of scrap or surplus materials acquired in the performance of the grant agreement or replaced under provisions of the grant agreement; or

(d) Other purposes specifically provided for in the grant agreement and approved project budget.

(3) *Audit Service.* The cost of audits necessary for administration and management of functions related to UMTA projects is allowable and may include the cost of third-party audit surveillance and proposal evaluation.

(4) *Bonding.* Costs of premiums on bonds covering grantee employees who have responsibility for project funds and who would not otherwise be bonded or whose bond coverage had to be increased are allowable.

(5) *Budgeting.* Costs incurred for execution and revisions of approved project budgets are allowable. Costs for services of a central budget office are generally not allowable since these are costs of general government administration. However, where employees of the central budget office actively participate in the project budget process, the cost of identifiable services is allowable.

(6) *Building Lease Management.* The administrative cost for lease management for project property which includes review of lease proposals, maintenance of a list of available property for lease, and related activities is allowable.

(7) *Central Stores.* The cost of maintaining and operating a central stores organization for supplies, equipment, and materials used either directly or indirectly for UMTA projects is allowable.

(8) *Communications.* Costs incurred for local telephone centers, postage, messenger service, and similar services for employees whose time is charged to an UMTA project may be allocated in the same ratio as the amount of time each employee devotes to the project. The basis for allocation must be included in the recipient's cost allocation plan. Long distance telephone service, telegraph, teletype service, wide-area telephones service (WATS), and telpak (tie lines) are allowable if supported by logs showing party contacted and purpose or in accordance with a predetermined cost allocation plan.

(9) *Compensation For Personal Services.*

(a) *General.* Compensation for personal services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under the grant agreement, including but not necessarily limited to wages, salaries, and supplementary compensation and benefits (see paragraph 1a(11)). The costs of such compensation are allowable to the extent that total compensation for individual recipient employees: (1) is reasonable for the services rendered, (2) follows an appointment made in accordance with State or local government laws and rules and which meets Federal merit system or other requirements where applicable, and (3) is determined and supported as provided in paragraph 1a(9)(b). Compensation for employees engaged in Federally assisted activities will be considered reasonable if it is consistent with pay for similar work in other activities of the State or local government. In cases where the kinds of employees required for the UMTA assisted activities are not found in other activities of the State or local government, compensation will be considered reasonable if it is comparable to pay for similar work in the labor market in which the grantee competes for the type of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness. Recipients' files must reflect this information.

(b) *Payroll and Distribution of Time.* Amounts charged to grant programs for personal services, regardless of whether treated as direct or indirect costs, must be based on payrolls documented and approved in accordance with generally accepted practices of State or local agencies. Payroll costs charged to the project must be supported by time and attendance or equivalent records for individual employees. (See sample time sheet format, Appendix 3A. Any recipient may use this time sheet, but it should be used by Section 8 recipients.) These records must be certified by the employees' supervisors. Failure to properly document payroll charges will result in cost being unallowable. Salaries and wages of employees chargeable to more than one project or other cost objective will be supported by appropriate time distribution records. The method used should produce an equitable distribution of time and effort.

(10) *Disbursing Service.* Cost of disbursing project funds by the Treasurer or other designated officer is allowable. Disbursing services cover processing of checks or warrants from preparation to redemption, including necessary records of accountability and reconciliation of records with related cash amounts.

(11) *Employee Fringe Benefits.* Costs identified under (a) and (b) below are allowable to the extent that total compensation for employees is reasonable as defined in paragraph 1a(9)(b).

(a) Employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as annual leave, court leave, and military leave, if they are: (1) provided pursuant to an approved leave system, and (2) the cost is equitably allocated to all related activities, including the project.

(b) Employee benefits which may include employer's contribution or expenses for social security, employees' life and health insurance plans, unemployment insurance

coverage, worker's compensation insurance, pension plans, and severance pay, provided the benefits are granted under approved plans and are distributed equitably to the project(s) and other activities.

(12) *Employee Morale, Health, and Welfare Costs.* The costs of health or first-aid clinics and/or infirmaries, recreational facilities, employees' counseling services, employee information publications, and pay-related expenses incurred in accordance with general State or local policy are allowable. These costs are considered supporting services costs. Income generated from these activities will be offset against expenses.

(13) *Equal Employment Opportunity.* Equal Employment Opportunity costs resulting from meeting the requirements of UMTA 1155.1, "UMTA Interim Equal Employment Opportunity Policy and Requirements for Grant Recipients," are allowable project expenses.

(14) *Minority Business Enterprise (MBE).* MBE costs resulting from meeting the requirements of UMTA C 1165.1, "UMTA Interim Minority Business Enterprise Policy and Grant Requirements for Grant Recipients," are eligible project expenses.

(15) *Legal Expenses.* The cost of legal expenses required for administering a project is allowable. Legal services furnished by the chief legal officer of a State or local government, or his staff, solely for the purpose of discharging his general responsibilities as legal officer are unallowable. Legal expenses for prosecution of claims against the Federal Government are unallowable.

(16) *Materials and Supplies.* The cost of office materials and supplies necessary to carry out projects is allowable. Purchases made specifically for the project should be charged at actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the recipient. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges are an allowable part of material cost.

(17) *Payroll Preparation.* The cost of preparing payrolls and maintaining necessary related wage records for employees assigned to the project(s) is allowable.

(18) *Printing and Reproduction.* The cost of printing and reproduction services necessary for project administration, including but not limited to, forms, reports, manuals, and informational literature, is allowable. Publication costs of reports or other media relating to project accomplishments or results are allowable when provided for in the grant agreement.

(19) *Procurement Service.* Cost of procurement services, including solicitation of bids, preparation, and award of contracts, and all phases of contract administration in providing goods, facilities, and services for the project are allowable.

(20) *Taxes.* In general, project-related taxes, or payments made instead of taxes, which the recipient is legally required to pay are allowable.

(21) *Transportation.* Project-related costs incurred for freight, cartage, express, postage, and other transportation costs relating either to goods purchased, delivered, or moved from one location to another are allowable.

(22) *Travel.* Travel costs are allowable for transportaton, lodging, subsistence, and related items incurred by employees who are in travel status on official business incident to a grant project. Costs may be charged on an actual basis, or a per diem or mileage basis instead of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and results in charges consistent with those normally allowed in like circumstances in nonfederally sponsored activities. The difference in cost between first-class air accommodation and less-than-first-class air accommodations is unallowable except when less-than-first-class air accommodations are not reasonably available. All foreign and out-of-state travel, except for travel between states in a multi-state urbanized area, must be specifically approved by UMTA in advance. This also includes travel to conferences. Travel expenditures must be supported by evidence showing that travel costs were properly authorized. Travel approval requests should include person(s) name and title, purpose, duration, and estimated cost of travel.

b. *Costs Allowable With Prior UMTA Approval.*

(1) *Advisory Councils.* Costs incurred by State advisory councils or committees established pursuant to UMTA requirements to carry out grant projects are allowable. Costs incurred by similar organizations are allowable when provided for in the grant agreement. Currently, UMTA does not require that advisory councils be established to carry out *capital grant projects.*

(2) *Automatic Data Processing.* The cost of data processing services is allowable. This cost may include rental of equipment. Acquisition of automatic data processing equipment or software by purchase, rental-purchase agreement or other method of purchase, is allowable only upon prior approval by UMTA.

(3) *Building Space and Related Facilities.* The cost of space in privately or publicly-owned buildings used to benefit the project is allowable subject to conditions stated below. The total cost of space, whether in a privately or publicly owned building, may not exceed the rental cost of comparable space and facilities in a privately owned building in the same locality. The cost of space procured for project usage may not be charged to the project for periods of non-occupancy, without UMTA authorization. Space procurement costs must be substantiated by a rental or lease agreement which includes the following items:

- Description of space to be leased
- Purpose for which it is to be used
- Period of lease (limited to grant period)
- Options to renew lease
- Utilities, insurance, and other services to be furnished to lessee
- Rate of rental
- Method and time of payment
- Other conditions required of lessor or lessee (recipient)
- Signatures of both parties and witnesses.

(a) *Rental Cost.* The rental cost of space in a publicly or privately-owned building is allowable.

(b) *Maintenance and Operation.* The cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, and normal repairs and alterations is allowable if it is not included in rental or other charges for space.

(c) *Rearrangements and Alterations.* Costs incurred for rearrangement and alteration of facilities required specifically for a UMTA project or those that materially increase the value of the useful life of the facilities, are allowable when specifically approved by UMTA.

(d) *Occupancy of Space Under Rental-Purchase or a Lease With Option to Purchase Agreement.* The cost of space procured under such arrangements is allowable if specifically approved by UMTA.

(4) *Consultants and Contract Services.* The cost of approved consultants and experts rendering professional and technical services is allowable. This includes accounting, legal assistance, and services rendered by other qualified individuals or organizations.

(5) *Insurance and Indemnification.* A description of insurance coverage and indemnification must be included in the recipient's cost allocation plan. Insurance for capital grant projects is usually the responsibility of third party contractors. The following insurance costs are allowable:

(a) Costs of insurance required or approved and maintained pursuant to the grant agreement are allowable.

(b) Costs of other insurance in connection with the general conduct of project activities are allowable subject to the following limitations:

1. Types and extent and cost of coverage will be in accordance with general State or local government policy and sound business practice.

2. Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that UMTA has specifically required or approved such costs.

3. Costs insuring project purchased equipment are unallowable for *capital* grants, but may be allowable for other projects.

(c) Contributions to a reserve for a self-insurance program approved by UMTA are allowable to the extent that the type of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

(d) Actual losses which could have been covered by permissible insurance (through an approved self insurance program or otherwise) are unallowable unless expressly provided for in the grant agreement. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools which occur in the ordinary course of operations, are allowable.

(e) *Indemnification* includes securing the grantee against liabilities to third persons and other losses not compensated by insurance or otherwise. The Government is obligated to indemnify the recipient only to the extent expressly provided for in the grant agreement, except as provided in (d) above.

(6) *Maintenance and Repair.* Costs incurred for necessary maintenance, repair, or upkeep of property which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable under the following two conditions:

(a) The property is necessary to accomplish the purpose of an UMTA project, and

(b) The costs are occasioned by usage of the property to accomplish an UMTA project or a portion thereof.

(7) *Motor Pools.* The costs of a service organization which provide automobiles to the grantee at a mileage or fixed rate and/or provide vehicle maintenance, inspection, and repair services are allowable. The purchase cost of vehicles is unallowable as a factor in determining motor pool cost.

(8) *Personnel Administration.* Costs for the recruitment, examination, certification, classification, training, establishment of pay standards, and related activities for UMTA projects are allowable.

(9) *Training and Education.* The cost of in-service training, customarily provided for grantee employee development which directly or indirectly benefits the UMTA project(s) is allowable, if specifically approved by UMTA. Out-of-service training involving extended periods of time is allowable only when specifically approved by UMTA. To be allowable, the costs must be included in the estimated costs of acquiring the capital assets.

c. *Unallowable Costs.*

(1) *Bad Debts.* Losses arising from uncollectable accounts and other claims, and related costs, are unallowable. Bad debt costs may offset an applicable credit if the claim had been previously considered as an applicable credit reducing net project cost.

(2) *Contingencies.* Contributions to a contingency reserve or any similar provision for unforeseen events are unallowable unless specifically allowed by UMTA.

(3) *Contributions and Donations.* Unallowable.

(4) *Depreciation and Use Allowances.* Unallowable.

(5) *Entertainment.* Costs of amusements, social activities, and incidental costs such as meals, beverages, lodgings, rentals, transportation, and gratuities, are unallowable.

(6) *Fines and Penalties.* Costs resulting from violations of, or failure to comply with, Federal, State, and local laws and regulations are unallowable.

(7) *Governor's Expenses.* Salaries and expenses of the Governor of a State or the chief executive of a political subdivision are considered a cost of general State or local government and are unallowable. The salary of the recipient's general manager or executive director is also unallowable.

(8) *Interest and Other Financial Costs.* Interest on borrowings (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in their connection are unallowable.

(9) *Legislative Expenses.* Salaries and other expenses of the State legislature or similar local governmental bodies such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction, are unallowable.

(10) *Management Studies.* Unallowable under capital grant projects.

(11) *Memberships, Subscriptions, and Professional Activities.* Unallowable under capital grant projects.

(12) *Preapproval Costs.* Costs incurred prior to the effective date of project approval are not allowable unless specifically approved by UMTA through a "Letter of No Prejudice."

(13) *Proposal Costs.* Costs of preparing proposals on potential Federal Government grant agreements are unallowable.

(14) *Underrecovery of Costs Under Grant Agreements.* Any excess of cost over the Federal contribution under one grant agreement is unallowable under other grant agreements.

2. *Operating Assistance Grants.* Information on allowable costs for Section 5 Operating Assistance Grants can be found in UMTA C 9050.1, "Application Instructions for Section 5 Operating Assistance Projects."

3. *Section 8—Technical Grants.*

a. Recipients shall follow the principles of FMC 74–4 in determining allowable costs under Section 8 Technical Study grants with the following qualifications:

(1) *Travel*—Costs for travel are allowable if the travel specifically relates to an approved project activity included in the grant contract. Recipients' must obtain approval from UMTA for all foreign travel, to conferences, and all out-of-state-travel except that in a multi-state urbanized area.

(2) *Equipment*—Recipients must obtain prior approval from UMTA before purchasing equipment.

4. *Section 10—Training Grants*

Under Section 10 training grants, UMTA will allow costs incurred by grantees in the following categories:

a. Salary and benefits actually paid by recipients to employees engaged in training activities.

b. Transportation and moving expenses directly related to training paid by recipients.

c. Training and educational expenses paid by recipients, including tuition, fees, and books.

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NAME _____

TITLE _____

TIME REPORT FOR MONTH OF _____

HOURLY RATE $_____

RECAP

PROJECT NUMBER & SPONSOR	TASK # OR DESCRIPTION	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	TOTAL HOURS	SPONSOR	DIRECT HOURS	HOURLY RATE	TOTAL COST
																																	UMTA				
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(SIGNATURE)

(49 U.S.C. 1601; 23 U.S.C. 103 and 142; 42 U.S.C. 7505; 49 CFR 1.51; OMB Circular A-102; Treasury Circular 1075; DOT Order 4600.9B)

Dated: August 21, 1980.

Theodore C. Lutz,

Administrator.

[FR Doc. 80-27099 Filed 9-10-80; 8:45 am]

BILLING CODE 4910-57-M

federal register

Thursday
September 11, 1980

Part V

Office of the Federal Inspector for the Alaska Natural Gas Transportation System and Equal Employment Opportunity Commission

Equal Opportunity Regulations; Affirmative Action Plans; Employment Discrimination Memorandum of Understanding; and Employee Standards of Conduct

OFFICE OF THE FEDERAL INSPECTOR FOR THE ALASKA NATURAL GAS TRANSPORTATION SYSTEM

10 CFR Part 1534

Enforcement Procedures for Equal Opportunity Regulations

AGENCY: Office of the Federal Inspector for the Alaska Natural Gas Transportation System.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed rules institute procedures by which the Office of the Federal Inspector (OFI) will enforce existing equal opportunity regulations applicable to the Alaska Natural Gas Transportation System (ANGTS) issued by the Department of Interior at 43 CFR Part 34. They detail OFI compliance review, complaint investigation, conciliation, and administrative and judicial enforcement, relative both to employment discrimination and to affirmative action plans for employment and contracting.

DATE: Comments should be submitted by October 10, 1980.

ADDRESS: Comments should be in writing and sent to Ms. Mary Settle, Office of the Federal Inspector, Room 2413, Post Office Building, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT:

Mr. John Alexander, Director, Equal Employment Opportunity, Minority Business Enterprise, Office of the Federal Inspector (ANGTS), Room 2413, Post Office Building, 1200 Pennsylvania Ave., NW., Washington, D.C. 20044, (202) 275–1157.

Mr. Ned Hengerer, General Counsel, Office of the Federal Inspector (ANGTS), Room 2413, Post Office Building, 1200 Pennsylvania Ave., NW., Washington, D.C. 20044, (202) 275–1144.

SUPPLEMENTARY INFORMATION:

I. Background

Section 17 of the Alaska Natural Gas Transportation Act (ANGTA), 15 U.S.C. Section 719o, and Condition 11 of the President's *Decision* and *Report to Congress on the Alaska Natural Gas Transportation System (Decision)*, approved by H. J. Res. 621, Pub. L. 95–158 (1977), mandate that Federal agencies—by conditioning the various ANGTS permits and other approvals—assure affirmative action against discrimination for employment and contracting on ANGTS. ON May 12, 1980, these agencies (through the Department of the Interior) published final rules to meet this statutory mandate, enforcement of which was left to the Federal Inspector. 43 CFR Part 34; 45 FR 31095.

Paragraph 34.10(d) of these equal opportunity regulations provides for the OFI to establish enforcement procedures, which will be incorporated as an amendment to these regulations. The proposed rule issued today by the OFI constitutes such enforcement procedures. These procedures will appear as a new Part 1534 in Title 10 of the Code of Federal Regulations. Because the OFI is promulgating these procedures, they must appear in the OFI's own regulations, which are codified at 10 CFR Chapter 15. Nevertheless, upon publication of the final enforcement procedures, the Department of the Interior will then reprint the OFI's Part 1534 in 43 CFR Part 34.

II. General

A. *Coordinated with analogous procedures.* In establishing these proposed enforcement procedures, the OFI followed the mandate of paragraph 34.10(d)(1) of the existing ANGTS regulations and started with the compliant procedures of the Department of Energy (DOE) to deal with violations of Title VI of the Civil Rights Act, relative to Federal financial assistance (10 CFR Part 1040; 45 FR 40514, May 13, 1980). The new Part 1534 does include the aspects of the DOE procedures summarized in paragraphs 34.10(d)(2) through (5). Moreover, the new Part 1534 assimilates other aspects of the DOE procedures. Nevertheless, as explained below the OFI has found that wholesale adoption of the DOE procedures is inappropriate. But, until the final regulations have been issued, the OFI will use the DOE procedures if enforcement becomes necessary.

In the first place the Federal grants program administered by DOE is far different from the OFI's field-level regulatory and enforcement mission; for example, DOE's main sanction, temination of financial assistance, must be preceded by an agency hearing on the record, as per Section 602 of the Civil Rights Act of 1964, 42 U.S.C. Section 2000d–1. Secondly, the OFI's enforcement procedures should be similar to those of DOE only "to the extent consistent with ANGTA." Accordingly, the OFI declines to follow those aspects of DOE's Part 1040 regulations which would either impair expeditious completion of ANGTS (as otherwise mandated by Section 9 of ANGTA) or undercut the OFI's existing enforcement provisions (as provided in Section 11 of ANGTA and in Reorganization Plan No. 1 of 1979).

In the process of establishing the proposed enforcement procedures, the OFI likewise studied the relevant procedures of, and solicited comments from, other Federal agencies engaged in equal opportunity enforcement: the Equal Employment Opportunity Commission (EEOC), the Office of Federal Contract Compliance Programs (OFCCP), and the Civil Rights Division of the U.S. Department of Justice. Again, the OFI has utilized their procedures and policies where analogous to the specific facts underlying ANGTS and its related equal opportunity program.

B. *Policy on public access to the enforcement process.* While not codified here in the enforcement regulations, the OFI states a general policy to accord the maximum public access to information which it has received in conjunction with its overall role of administering the Part 34 regulations, of course within relevant legal parameters. The specifics of this public access—including the protection to be accorded "sensitive" information, such as critical procurement data, and the procedures for processing FOIA requests—are to be delineated in omnibus information regulations (future 10 CFR Part 1504) presently being promulgated. The policy announced at this time merely means that, to the extent there is discretion to disclose information about compliance with the Part 34 regulations, the OFI will lean towards disclosure when competitive injury is unlikely. The equal opportunity program for ANGTS must have public confidence, which flows from public access.

III. Section-by-Section Analysis

A. Section 1534.1 is merely introductory. It outlines briefly how the enforcement procedures are structured in Part 1534. Essentially, the initial stages of compliance review and complaint investigation are conducted under separate procedures, §§ 1534.2 and 1534.3, respectively. But the

subsequent procedures for both compliance review and complaint investigation are treated the same. Thus, attempts at conciliation and OFI preliminary and final determinations on compliance appear in § 1534.4, while the more formal enforcement actions (civil suit for fines or injunction, and compliance orders and work stoppage) appear in § 1534.5.

B. Section 1534.2 sets out the initial stage of compliance review, already required by paragraph 34.10(a)(1) of the existing ANGTS regulations. To begin with, the OFI will select ANGTS recipients, contractors, and subcontractors for initial periodic review. The basis for this selection is left to the OFI, but most likely every recipient, contractor, and subcontractor will be selected for review annually. The initial periodic review, which will then occur, generally corresponds to DOE paragraph 1040.101(b), except for the following.

First, the OFI reserves the opportunity for on-site review. Unlike formal on-site review found below in paragraph 1534.4(b), with its 15 day notice, initial on-site review is merely to spot check for compliance. Thus, like on-site monitoring for environmental protection or pipeline integrity, for example, there is no advance notice. Second, the corresponding DOE provision is written in terms of "selection for review," which should not be confused with OFI selection for initial review mentioned immediately above. These differences reflect the different roles of the OFI and DOE, as single project regulator versus administrator of many Federal financial grants.

If the OFI then has reasonable cause to find noncompliance, it will notify the recipient, contractor, or subcontractor by letter of a subsequent and more intensive on-site review, which is conducted under paragraphs 1534.4(b) and 1534.4(c), as described below. But, if the OFI finds compliance, it will so certify. That certification—in line with the direction to the OFI given in paragraph 34.10(d)(4) of the existing ANGTS regulations—is not binding if the full facts were unknown during the initial periodic review. This caveat does not, however, allow the OFI to cure its own initial oversight. Instead, it only applies when the OFI should not be expected to have uncovered the relevant facts indicating noncompliance, as would occur if those facts were consciously withheld.

C. Section 1534.3 sets out the initial stage of complaint investigation. It generally corresponds to the related DOE provision, paragraph 1040.104(1).

This new Section notes first that all employment discrimination complaints, except for those possible few against employers with less than fifteen employees, will be handled by the Equal Employment Opportunity Commission (EEOC) through the Memorandum of Understanding (MOU) between the two agencies. The EEOC neither has jurisdiction over complaints against these very small employers (42 U.S.C. Section 2000e(b)), nor does it desire to handle those complaints. There is provision, however, for OFI conciliation and even formal enforcement actions in certain limited types of cases handled by EEOC under the MOU. This MOU has been prepared and will be published in the **Federal Register** for public comment before being signed into effect.

For complaints alleging both employment discrimination and violation of an approved affirmative action plan, the former allegation will be processed under the MOU and the latter allegation by the OFI under these Part 1534 procedures. The interagency reporting and information sharing provisions of the MOU will enable both agencies to coordinate their respective investigations of such dual complaints.

As a practical matter, the OFI will probably not handle many complaints. As noted above, most employment discrimination complaints will be handled by EEOC. As for complaints related to approved affirmative action plans, noncompliance should be readily revealed through the ongoing compliance review intiated under § 1534.2, in light of the quantitative nature of the goals and timetables, which form the basis of the affirmative action plans. And to the extent that dual complaints allege without any basis violation of affirmative action plans, the OFI will summarily reject these complaints.

Nonetheless, the OFI will initiate investigations of all complaints (to be handled under these Part 1534 regulations) within 35 days of receipt, by sending the recipient, contractor, or subcontractor a copy of the complaint and a letter stating that an investigation has been initiated. For complaints just against a contractor and/or subcontractor, the OFI will also forward a copy of the complaint and notice to the corresponding recipient. In this fashion the recipient can assist in ascertaining the facts. The specifics of the letter and the investigation itself are set forth in § 1534.4, as discussed next.

D. Section 1534.4 continues the process initiated both during compliance review, under § 1534.2, and during complaint investigation, under § 1534.3. It sets out procedures for determining compliance or noncompliance and for pursuing conciliation and voluntary compliance. These procedures generally follow the corresponding DOE provisions, paragraphs 1040.101(c)–(g) and 1040.104(c) (3)–(5). However, in recognition of the statutory mandate to expedite this project, the schedule for some of the procedures have been shortened.

Paragraph 1534.4(b) sets out the contents of the notice of formal on-site review and/or investigation, including data requests, practices to be reviewed, and opportunity to respond in writing. The formal on-site review or investigation will commence fifteen days after notice. While shorter than DOE's thirty day notice, it is sufficient. In particular, there might already have been an informal on-site review (paragraph 1534.2(a)) as part of the initial stage of compliance review; thus, the recipient, contractor, or subcontractor will be on actual notice well in advance of this notice of formal on-site review.

Paragraph 1534.4(c) then sets out the preliminary finding process. The preliminary finding will be written and sent to the recipient, contractor, or subcontractor within thirty days of the OFI completing the formal on-site review or investigation. When the preliminary finding is noncompliance, the OFI will also recommend means for voluntary compliance and afford twenty days for negotiations.

While DOE requires its preliminary finding within 90 days of arriving for on-site review (paragraph 1040.101(d)) or initiating investigation (paragraph 1040.104(c)(3)), the timing of the OFI provision should normally be shorter. While no specific time is set for completing formal on-site review, the preliminary finding will follow within thirty days of completion of that review.

In cases where a contractor or subcontractor alone is under review or investigation, the preliminary finding will also be sent to the corresponding recipient, notifying the recipient of its enforceable obligation to assist the OFI in achieving voluntary compliance. "Assist" means more than merely telling its contractor or subcontractor to

comply. To the extent that the OFI can seek conciliation, so can and should the recipient. In promulgating the Part 34 regulations, the Federal agencies were clear that the recipients, as ANGTS sponsors, were responsible for more than their own direct employment and contracting:

> The project sponsors and the Federal Inspector then must insure that each contractor and subcontractor shares in the obligation to achieve the goals. This is accomplished by including the goals in all bid specifications just like other elements of the design. 45 FR 31098 (May 12, 1980).

In this light the recipients should be forming their contracts to assure that they can meet this obligation.

This obligation to "assist" the OFI only applies during the voluntary compliance context. When the OFI is attempting conciliation of an EEOC-processed employment discrimination complaint as per the MOU and paragraph 1534.3(a)(2), however, the recipient will not be asked to "assist," due to restrictions under Title VII of the Civil Rights Act.

Paragraph 1534.4(d) sets out the process for a final determination of noncompliance. It will be made in writing within forty-five days—as opposed to sixty days in the DOE regulations—of notice of preliminary finding, and will be made when conciliation has failed or the preliminary finding has not been shown to be false. The final determination will detail the violation itself, the basis for the finding, and final remedial recommendations.

Paragraph 1534.4(e) gives the noncompliant recipient, contractor, or subcontractor ten more days after final determination to adopt the aforementioned remedial recommendations, so as to comply voluntarily. And when there is voluntary compliance, paragraph 1534.4(f) details the necessary form of the compliance agreement.

E. Section 1534.5 governs actual enforcement, once conciliation has failed and a final determination has been issued but not satisfied within ten days of issuance. It also governs OFI enforcement under the MOU with EEOC, as explained in paragraph 1534.3(a)(2).

Paragraph 1534.5(b) notes that the primary means of enforcement is immediate commencement of civil action. Possible remedies and venue are set forth in Section 11(c) of ANGTA: Temporary or permanent injunction and civil fines of up to $25,000 per day, along with ancillary relief, will be sought in the Federal District Court where the defendant is located, resides, or does business.

This immediate recourse to judicial enforcement diverges from the DOE procedures, which first afford an agency hearing on the record. 10 CFR Subpart H. But, as recognized in paragraph 34.10(d)(1) of the existing ANGTS regulations, the OFI need follow the DOE example only "to the extent consistent with ANGTA." In this area Section 11(a)(2) of the ANGTA explicitly authorizes such direct judicial enforcement in lieu of first going through further agency proceedings. And the OFI's final determination of noncompliance, rendered under paragraph 1534.4(d), constitutes the type of agency determination of violation which can trigger immediate civil action in Federal District Court.

Moreover, in order to impose its sanctions of terminating or withholding Federal financial assistance, DOE must first provide an agency hearing on the record. Section 602 of the Civil Rights Act of 1964, 42 U.S.C. Section 2000d–1. While Section 17 of ANGTA generally looks to Title VI of the Civil Rights Act as a model, Section 11 of ANGTA, which is dispositive on this point, does not in and of itself require an agency hearing on the record.

Of course, by going immediately from the final determination to judicial enforcement, the OFI recognizes that the District Court will most likely entertain motions for full litigation *de novo* on the violation. As such, an OFI hearing on the record is not required under the Administrative Procedures Act, 5 U.S.C. Section 554(a)(1).

Judicial enforcement under paragraph 1534.5(b) will involve the Civil Rights Division of the Department of Justice and the OFI General Counsel. The details of that relationship have not yet been made final.

Paragraph 1534.5(c) provides an alternate means of enforcement to immediate civil action. The OFI anticipates that this provision will never have to be utilized, but its availability must be noted. For large-scale, blatant violations of approved affirmative action plans (an eventuality which is purely theoretical and, in light of the sponsor's good faith efforts to date, most unlikely), the OFI might act to stop work, but only on the specific ANGTS activity at issue, until compliance is assured.

A stop work order is obviously a matter of last resort, and would only be triggered if the violation found in the final determination threatened to undermine the overall equal opportunity goals underlying Section 17 of ANGTA and these Part 34 regulations. The statutory mandate to expedite ANGTS weighs against taking this avenue of enforcement, unless and only if a recipient, contractor, or subcontractor so disregards its affirmative action plan as to jeopardize the explicit Congressional mandate of Section 17 of ANGTA itself.

The OFI's authority to stop work flows from two basic sources: the respective FERC certificates of public convenience and necessity for the ANGTS sponsors (*Northwest Alaskan Pipeline Company, et al.*, Docket Nos. CP78–123, *et al.*, order attaching conditions issued February 26, 1980, condition (C), p. 10; and orders adopting conditions implementing Section 17 of ANGTA, issued May 8, 1980, and June 20, 1980); and the stipulations (Section 1.17) attached to the grants of right-of-way for ANGTS to cross Federal lands (issued by the U.S. Department of the Interior under Section 28 of the Mineral Leasing Act). Of course, because DOE lacks this authority, its Part 1040 regulations have no corresponding provision.

The OFI will, nevertheless, diverge from stop work practice normally associated with environmental, pipeline integrity, or safety violations. Instead of issuing a stop work order immediately, the OFI will first proceed administratively to issue a compliance order, under Section 11(a) of ANGTA, before stopping work. Again, the OFI recognizes that work stoppage in this context is unusual, and thus employes unusual procedures to assure that work stoppage is absolutely necessary.

The compliance order process starts with a show cause order, which the respondent recipient, contractor, or subcontractor must rebut. An informal conference is then convened by the Director of the OFI Office of Equal Employment Opportunity/Minority Business Enterprise within ten days. The respondent can present oral argument and documentary support. The Director will render a recommended decision, unless he or she finds material facts in issue, in which case the Director must set the matter for a hearing on the record.

While a hearing on the record is potentially available, it might be unnecessary. Because this whole compliance order/stop work procedure is limited to affirmative action plan violations of an egregious and substantial nature, the facts could well be stipulated. Clearly, failure to meet the goals and timetables is readily quantified by inspection and testing, which under the Administrative Procedures Act justifies proceeding without an agency hearing. 5 U.S.C. Section 554(a)(3). In any event the Director will have to assess the respondent's rebuttal case (trying to

justify failure to meet the goals and timetables) to determine if material facts are at issue.

The General Counsel will preside over any hearing on the record under paragraph 1534.5(c)92)(ii) and will render a recommended decision. The Federal Inspector has designated this official, as permitted by law. 5 U.S.C. Section 556(b); Section 15(a) of the Natural Gas Act, 15 U.S.C. Section 717n; and Section 102(d) of Reorganization Plan No. 1 of 1979. The General Counsel will conduct any hearing in an impartial manner, following the pertinent legal constraints, including Section 1–107 of Executive Order 12142 of June 21, 1979, 44 FR 36927 (June 25, 1979).

Because recourse to paragraph 1534.5(c) is unlikely to begin with and in any event would not occur for some time, the OFI has not at this time delineated the specific hearing procedures, other than to note that oral and written evidence can be presented, subject to cross-examination. The specifics will be set forth in the near future as the OFI establishes agency-wide procedures, to appear at 10 CFR Part 1508.

Once the Director or General Counsel, as the case may be, has issued a recommended decision, the parties have ten days to file briefs on that decision. The Federal Inspector or his delegate will then issue a final decision, normally within twenty days of the briefs being filed.

If the final decision is to issue the compliance order, the Federal Inspector or delegate will allow the respondent only ten more days to comply before stopping work. While Section 11(b) of ANGTA allows the OFI to set the time for compliance up to thirty days, any violation under paragraph 1534.5(c) would by definition be so serious as to warrant this shorter time, especially in light of the numerous prior opportunities for conciliation under Section 1534.4.

Any compliance order issued under paragraph 1534.5(c) constitutes final OFI action, as per Section 10 of ANGTA and Section 202(a) of the Reorganization Plan. Moreover, the OFI will isolate and quantify any cost escalation attributed to such a stop work order. Then, in the subsequent context of ANGTS sponsor rate base formation, the OFI may follow the necessary procedures to treat such cost escalation, attributable to the sponsors' noncompliance, as an "imprudent expenditure." To the extent that a contractor or subcontractor alone is subject to the compliance order and work stoppage, the "prudence" of the sponsors' expenditures is not at issue. But the sponsors will no doubt have taken the necessary contractual steps to assure that the noncompliant contractor or subcontractor is not, in the first instance, compensated for that cost escalation attributed to the egregious violation and related work stoppage.

IV. Conclusion

The OFI is requesting public comments on any provision of these proposed enforcement procedures. Because the OFI will be issued the final rule on these enforcement procedures (after reviewing the public comments) as a final agency action pursuant to Section 9 of ANGTA, all interested persons are urged to comment now.

Note.—These proposed enforcement regulations do not constitute a significant rule, requiring regulatory analysis under Executive Order 12044. Nor do the requirements of 42 U.S.C. Section 4332(2)(c) apply.

Under authority of Sections 9 and 17 of ANGTA, 15 U.S.C. Sections 719 g and o; 43 CFR Section 34.10(d); and Sections 102 and 202 of Reorganization Plan No. 1 of 1979, the OFI is now proposing to amend Title 10 of the Code of Federal Regulations by adding a new Part 1534, as set forth below.

Dated: September 5, 1980.

John T. Rhett,

Federal Inspector.

PART 1534—ENFORCEMENT PROCEDURES FOR REGULATIONS REQUIRING EQUAL OPPORTUNITY DURING PLANNING, CONSTRUCTION, AND INITIAL OPERATION OF THE ALASKA NATURAL GAS TRANSPORTATION SYSTEM

Sec.

1534.1 General.
1534.2 Initial stage of compliance review.
1534.3 Initial stage of complaint investigation.
1534.4 Procedures for determination of compliance or noncompliance and for conciliation.
1534.5 Enforcement procedures.

Authority. Sec. 9 and 17 of ANGTA, 15 U.S.C. 719g and o; 43 CFR 34.10(d); and Secs. 102 and 202 of Reorganization Plan No. 1 of 1979.

§ 1534.1 General.

(a) Pursuant to paragraph 34.10(d) of the underlying regulations (43 CFR Part 34) and to Section 9 of ANGTA, the OFI has established in this Part procedures for enforcing Section 17 of ANGTA, Condition 11 of the President's *Decision*, and all implementing rules, regulations, orders, and actions taken thereunder (referred to throughout this Part collectively as "these regulations").

(1) Section 1534.2 describes how the OFI will conduct the initial stage of compliance review.

(2) Section 1534.3 describes how the OFI will conduct the initial stage of investigating complaints that these regulations have been violated.

(3) Section 1534.4 describes the subsequent procedures for determining compliance or noncompliance, including preliminary findings and final determinations, and for pursuing conciliation and voluntary compliance, which are the same for both compliance review and also complaint investigation.

(4) Section 1534.5 describes how the OFI will enforce these regulations once it has made a final determination that a recipient, contractor, or subcontractor is not in compliance.

(b) The time limitations imposed by this Part on the OFI and all parties to enforcement are binding, unless for good cause shown the OFI determines that an extension would be in the public interest.

§ 1534.2 Initial stage of compliance review.

(a) The OFI will conduct initial periodic review (including possible spot on-site review) of selected recipients, contractors, and subcontractors to determine compliance with these regulations.

(b) If, based on the initial periodic review conducted under paragraph (a) of this section, the OFI has reasonable cause to believe that these regulations are not being complied with, it will notify the respective recipient, contractor, or subcontractor by letter of a subsequent and formal on-site review, to be conducted after 15 calendar days of that notice. For formal on-site review just involving a contractor and/or subcontractor, the OFI will also forward a copy of the letter of on-site review to the corresponding recipient.

(c) The contents of such a letter giving notice of the subsequent on-site review, issued under paragraph (b) of this section, as well as the remaining procedures for compliance review, are detailed below in § 1534.4.

(d) After completion of initial periodic compliance review, the OFI will certify when a recipient, contractor, or subcontractor is found to be complying with these regulations. This certification of compliance does not, however, preclude a later determination of noncompliance, but only under the following circumstances:

(1) In light of new or additional information which the OFI should not reasonably be expected to possess, the full facts were unknown during the compliance review; or

(2) The OFI subsequently finds noncompliance for a later time period,

not the subject of the current initial periodic review.

§ 1534.3 Initial stage of complaint investigation.

(a) Complaints alleging violation of these regulations, in the nature of employment discrimination, will be handled by the Equal Employment Opportunity Commission (EEOC) with OFI coordination, pursuant to the Memorandum of Understanding informally agreed to and, after public comment, planned to be signed into effect by the two agencies.

(1) All complaints alleging employment discrimination will be processed by EEOC, except for complaints against employers having less than fifteen employees, which will be subject to paragraph 1534.3(b) immediately below.

(2) Under the MOU the OFI may become involved in two specific aspects of employment discrimination proceedings handled by the EEOC. First, if the EEOC is unable to resolve a violation by conciliation, the OFI may then attempt such conciliation. Second, when EEOC and OFI efforts at conciliation have failed and the EEOC has subsequently taken enforcement action under Title VII of the Civil rights Act, the OFI, after consultation with the EEOC, may also pursue its own enforcement action, under § 1534.5.

(b) For all other complaints alleging violation of these regulations, the OFI will, within 35 calendar days of receipt, notify the pertinent recipient, contractor, or subcontractor by letter (appended to which will be a copy of the complaint) of the initiation of an investigation. for complaints just against a contractor and/or subcontractor, the OFI will also forward a copy of the complaint and notice to the corresponding recipient. At the same time the OFI will notify the complainant of this action and the procedures to be followed. Complaints to be investigated by the OFI must be in writing and contain the following;

(1) Name, address, and telephone number of the complainant;

(2) Name and address of the recipient, contractor, or subcontractor charged by the complainant;

(3) Description of the acts alleged to violate these regulations; and

(4) Any other pertinent information.

(c) The contents of the letter initiating investigation, issued under paragraph (b) of this section, as well as the remaining procedures for complaint investigation, are detailed in Section 1534.4 immediately below.

§ 1534.4 Procedures for determining compliance or noncompliance and for conciliation charges.

(a) This Section governs how the OFI will process cases of possible non-compliance, whether generated through compliance review or complaint investigation, initiated under §§ 1534.2 and 1534.3 respectively.

(b) Upon finding reasonable cause to believe that there is noncompliance, during compliance review, or upon initiating investigation, after receipt of a complaint, the OFI will first notify the potentially noncompliant recipient, contractor, or subcontractor of the following:

(1) A request for pertinent information and data;

(2) A statement of the practices to be reviewed, and the programs or activities affected by the compliance review or complaint investigation;

(3) An opportunity to respond in writing

(i) To explain, support, or otherwise address the practices to be reviewed or

(ii) To rebut or deny the allegations made in the complaint; and

(4) The schedule for review or investigation, including formal on-site review or investigation to commence 15 calendar days after the notice.

(c) Within 30 calendar days of completion of the formal on-site review or investigation (which itself will be conducted expeditiously by the OFI but under no set timetable), conducted as per paragraph (b)(4) of this section, the OFI will notify the pertinent recipient, contractor, or subcontractor in writing of:

(1) Preliminary findings as to compliance or noncompliance;

(2) Where appropriate, recommendations for achieving voluntary compliance;

(3) The opportunity to request that the OFI engage in voluntary compliance negotiations (to be completed within 20 calendar days of this written notice) prior to a final determination of compliance or noncompliance; and

(4) Where a contractor or subcontractor alone appears to be in possible noncompliance, the obligation on the part of the appropriate recipient (after notice of the preliminary finding directed to the contractor or subcontractor) to assist the OFI in achieving voluntary compliance, failure for which may also be processed through these procedures to determine noncompliance with these regulations.

(d) The OFI will render a final determination as to compliance or noncompliance within 45 calendar days of notice given under paragraph (c) of this section.

(1) A final determination of noncompliance will be made in the following situations:

(i) The preliminary recommendation for voluntary compliance is not followed;

(ii) Voluntary compliance is not secured; or

(iii) The preliminary finding of noncompliance is not shown to be false.

(2) A final determination of noncompliance will contain the following provisions:

(i) A statement with specificity of how the recipient, contractor, or subcontractor has violated these regulations;

(ii) A detailed basis for this finding of noncompliance, including how the recipient, contractor, or subcontractor failed to follow the recommendations contained in the OFI's preliminary finding, rendered pursuant to paragraph (c) of this section; and

(iii) Final recommendations on remedial actions to bring the recipient, contractor, or subcontractor into compliance.

(e) Where a final determination of noncompliance has been made under paragraph (d) of this section, the OFI will so advise the pertinent recipient, contractor, or subcontractor in writing, giving an additional 10 calendar days in which to comply voluntarily. If the recipient, contractor, or subcontractor has not so complied, the OFI will institute enforcement proceedings under § 1534.5 of this Part.

(f) All voluntary compliance agreements, whether formed under paragraphs (c)(3) or (e) of this section, will have the following features:

(1) The agreement shall

(i) Be in writing;

(ii) Be signed by an authorized official of the recipient, contractor, or subcontractor and by the OFI designated official;

(iii) Contain commitments regarding the precise remedial action to be taken and the dates for completion of those remedial actions, and, in the case of a complaint investigation, contain commitments to eliminate all discriminatory conditions; and

(iv) Include a provision that breach of the agreement may result in further enforcement actions by the OFI.

(2) Upon execution of the agreement, the OFI will certify compliance, conditioned upon

(i) Performance of the commitments given under paragraph (f)(1)(iii) of this section, and

(ii) The full facts being known at the time the agreement was executed.

(g) In the case of complaints, the OFI will notify the complainant of actions taken, including

(1) Final determination of noncompliance, and subsequent enforcement efforts;

(2) Finding of compliance;

(3) Achieving voluntary compliance through conciliation; or

(4) Closing the investigation due to complainant's failure to cooperate or provide necessary information.

§ 1534.5 Enforcement procedures.

(a) The OFI will act pursuant to this Section when it has rendered a final determination of noncompliance, under § 1534.4(d), and the noncomplaint recipient, contractor, or subcontractor has failed to comply voluntarily within 10 days thereafter, under § 1534.4(e). In addition, the OFI will act pursuant to this Section when acting against certain employment discrimination, based on determinations of the EEOC, as per § 1534.3(a)(2).

(b) Except as provided in paragraph (c) of this section, the OFI will seek judicial enforcement in the United States District Court having venue, seeking appropriate injunctive and civil fine relief, as provided in § 34.11(b) of the Part 34 regulations. Such civil action will be commenced following consultation and coordination between the OFI General Counsel and the Civil Rights Division of the Department of Justice.

(c) In the event that the OFI finds, as part of its final determination made under § 1534.4(d), that a recipient, contractor, or subcontractor has so consistently and substantially failed to meet its approved affirmative action plan that the overall equal opportunity goals of Section 17 of ANGTA and the Part 34 regulations are in jeopardy, the OFI may issue a compliance order stopping work on the particular ANGTS activity until compliance is assured. The procedures for issuing such a compliance order entails the following:

(1) Within 10 calendar days of the final determination of noncompliance and related 10-day compliance period (as defined in paragraph (a) of this section, the OFI will issue a show cause order why the noncompliant recipient, contractor, or subcontractor should not immediately be subject to a compliance order and work stoppage. The show cause order will contain the following:

(i) A summary of the final determination of noncompliance;

(ii) A statement of the recipient, contractor, or subcontractor's subsequent failure to achieve voluntary compliance;

(iii) A statement explaining why the violation of the approved affirmative action plan is so serious as to warrant work stoppage; and

(iv) Notice that the OFI will hold an informal conference within 10 calendar days.

(2) The noncompliant recipient, contractor, or subcontractor must present oral argument and documentary support in rebuttal at this informal conference.

(i) If the Director of the OFI Office of Equal Opportunity/Minority Business Enterprise or designee, who will preside over the informal conference, concludes that there are no material facts in issue, he or she will render in writing a recommended decision on the compliance order within 15 calendar days of the close of the informal conference.

(ii) If the Director or designee concludes, however, that there are material facts in issue which cannot be ascertained without a hearing on the record, he or she will set the proceeding for hearing.

(A) The General Counsel of the OFI or designee will preside over and conduct any such hearing on the record, under procedures established by the OFI for similar proceedings. 10 CFR Part 1508.

(B) Following the presentation of oral and written evidence, an opportunity for cross-examination, and the filing of briefs, the General Counsel will render in writing a recommended decision on the compliance order within 15 calendar days of the close of the hearing.

(3) The Federal Inspector or delegate will render a final decision on the compliance order. The following process will be employed.

(i) Within 10 calendar days of issuance of a recommended decision, under either paragraph (c)(2)(i) or (c)(2)(ii) of this section, the respondent recipient, contractor, or subcontractor and, in the case of a complaint investigation, the complainant shall file a brief agreeing with or contesting the recommended decisions.

(ii) Except when the record is unduly voluminous and complex, the Federal Inspector or delegate will issue in writing a final decision within 20 days of receiving the briefs.

(iii) When the final decision is to issue a compliance order and to stop work, the Federal Inspector or delegate will institute the prescribed sanctions, unless the respondent has complied within 10 calendar days of the compliance order.

[FR Doc. 80-27862 Filed 9-10-80; 8:45 am]

BILLING CODE 6820-AW-M

OFFICE OF THE FEDERAL INSPECTOR FOR THE ALASKA NATURAL GAS TRANSPORTATION SYSTEM

Affirmative Action Plans; Extension of Time

AGENCY: Office of the Federal Inspector for the Alaska Natural Gas Transportation System.

ACTION: Notice of the Office of the Federal Inspector's extension of time to approve affirmative action plans.

SUMMARY: On May 12, 1980, the final rules governing "Equal Opportunity During Construction and Operation of the Alaska Natural Gas Transportation System" became effective (45 FR 31095). Section 34.8(a)(1) of the rules provides that the applicants' affirmative action plans must be approved by the Federal Inspector within one hundred twenty days after the rules became effective. Consequently, according to the time limit established by the rules, the applicants' plans should be approved by September 9, 1980.

On August 11, 1980, the sponsors of the project, Alaskan Northwest Natural Gas Transportation Company, Northern Border Pipeline Company and Pacific Gas Transmission Company (Sponsors) submitted their affirmative action plans to the Federal Inspector for approval pursuant to the rules. After completion of its initial review the Office of the Federal Inspector has determined that additional time is required to ascertain whether the plans as submitted conform to the rules.

FOR FURTHER INFORMATION CONTACT: John Alexander, Office of the Federal Inspector, Alaska Natural Gas Transportation System, Room 2413, Post Office Building, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20044. Telephone: 202/275–1157.

Section 34.8(d) of the rules requires that the Sponsors provide the Federal Inspector with sufficient information to ascertain whether the respective affirmative action plans are adequate. On August 11, 1980, the Sponsors submitted their affirmative action plans to the Federal Inspector for approval.

After initial review, the Office of the Federal Inspector finds that it cannot approve or disapprove the plans by September 9, 1980. Consequently, we will require additional time to ascertain whether the plans as submitted are adequate. The additional time for review is necessitated by the voluminous nature of the submittals and the complex issues presented therein.

The Office of the Federal Inspector is currently reviewing the respective plans carefully to insure that they are adequate, and if found to be inadequate, to develop appropriate curative measures. The Office of the Federal Inspector will conduct its review expeditiously and respond as soon as possible.

Dated: September 5, 1980.

John T. Rhett,

Federal Inspector.

[FR Doc. 80-27863 Filed 9-10-80; 8:45 am]

BILLING CODE 6820-AW-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

OFFICE OF THE FEDERAL INSPECTOR FOR THE ALASKA NATURAL GAS TRANSPORTATION SYSTEM

Proposed Memorandum of Understanding Regarding Employment Discrimination

AGENCY: Equal Employment Opportunity Commission and Office of the Federal Inspector.

ACTION: Proposed notice.

SUMMARY: This document sets forth a proposed Memorandum of Understanding between the Equal Employment Opportunity Commission (EEOC) and the Office of the Federal Inspector (OFI) of the Alaska Natural Gas Transportation System (ANGTS). Both agencies have equal employment opportunity responsibilities and wish to administer these responsibilitites in a manner that promotes efficiency and eliminates conflict, competition, duplication and inconsistency in the operation of their programs.

DATES: Comments on the proposed Memorandum of Understanding must be received on or before October 14, 1980.

ADDRESS: Comments may be sent to: Treva I. McCall, Acting Executive Officer, Executive Secretariat, Office of Policy Implementation, Room 4096M, Equal Employment Opportunity Commission, 2401 "E" Street, NW., Washington, D.C. 20506.

Copies of comments will be available for public inspection in the Library, EEOC 2401 "E" Street, N.W., Washington, D.C. 20506 during normal business hours until such time as the two agencies adopt a final agreement.

FOR FURTHER INFORMATION CONTACT:

Francesta E. Farmer, Director, Office of Interagency Coordination, Equal Employment Opportunity Commission, 2401 "E" Street, NW., Room 2534, Washington, D.C. 20506. Area Code (202) 653–5490

or;

John Alexander, Director, Office of Equal Employment Opportunity and Minority Business Enterprise, Alaska Natural Gas Transportation System, Room 2413, Post Office Building, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20044. Area Code (202) 275–1157.

SUPPLEMENTARY INFORMATION: The EEOC and the OFI have concurrent jurisdiction over claims of employment discrimination on the basis of race, color, religion, sex, and national origin in the construction of the Alaska Natural Gas Transportation System (ANGTS). The sources of the OFI's jursisdiction are Section 17 of the Alaska Natural Gas Transportation Act of 1976 and Condition 11 of the *President's Decision and Report to Congress on the ANGTS*. The principal source of EEOC's jurisdiction is Title VII of the Civil Rights Act of 1964.

The OFI was created by Reorganization Plan No. 1 of 1979 and will be abolished one year after the initial operation of ANGTS. It plans to maximize its efforts in implementation of its affirmative action program requirements. See 45 FR 31095 (May 12, 1980), to appear at 43 CFR Part 34. So that the OFI may devote most of its resources to affirmative action and in order to take advantage of the EEOC's expertise in processing charges of discrimination, the OFI and the EEOC proposes a Memorandum of Understanding.

Under the Memorandum, a complaint of employment discrimination filed with the OFI against an ANGTS-related person (a project sponsor, contractor, subcontractor, employment agency or union, etc.) which alleges violations of both Section 17 and Title VII will be deemed a charge filed jointly with the OFI and the EEOC. For purposes of determining timeliness of the charge under Title VII, the date that the matter was received by the OFI will be deemed the date it was received by the EEOC. EEOC (or a State Fair Employment Practice Commission to which EEOC defers charges) will investigate the charge.

Where EEOC finds reasonable cause to credit the allegations of a charge, it will attempt to resolve the charge by means of conciliation. Where it appears that conciliation may be unsuccessful, EEOC will notify the OFI and the OFI may attempt to conciliate the matter. If the matter is resolved to the satisfaction of both agencies, the agreement will be reduced to writing and signed by the

parties and by both agencies. If the matter is not resolved, EEOC will take such further action as provided by Title VII and EEOC's procedural regulations. Where the EEOC has acted upon a charge without achieving a conciliation agreement, the OPFI may take action on the charge pursuant to Section 11 of ANGTA after consulting with the EEOC.

The EEOC and the OFI will share information relating to charges of disciminiation. The OFI will honor the confidentiality provisions of Title VII, where EEOC provides to the OFI information which is confidential under Title VII. The Memorandum also provides for liaison and monitoring of implementation of the agreement.

By means of this agreement, both agencies hope to maximize their efforts and to mimimize duplication and inconsistencies in their respective programs as required by Executive Order 12067.

The agencies invite public comment on all aspects of this proposed agreement.

Signed at Washington, D.C. this 5th day of September 1980.

Approved and accepted for the Equal Employment Opportunity Commission.

Eleanor Holmes Norton,

Chair, Equal Employment Opportunity Commission.

Approved and accepted for the Office of the Federal Inspector for the Alaska Natual Gas Transportation System.

John T. Rhett, Jr.,

Federal Inspector, Alaska Natual Gas Transportation System.

Memorandum of Understanding

This Memorandum of Understanding between the Office of the Federal Inspector (OFI) and the Equal Employment Opportunity Commission (EEOC) is being implemented to further the objectives of both agencies in assuring against employment discrimination during the construction of the Alaska Natural Gas Transportation System (ANGTS). According to Reoganization Plan No. 1 of 1979, the OFI has exclusive responsibility for enforcement of Section 17 of the Alaska Natural Gas Transportation Act of 1976 (ANGTA), Condition No. 11 of the President's *Decision and Report to Congress on the Alaska Natural Gas Transportation System* (the President's *Decision*), the regulations (45 FR 31095 (May 12, 1980); to appear at 43 CFR Part 34) and terms and conditions established pursuant to Section 17 and Condition 11, and all other Federal statutes which related in any manner to the pre-construction, construction, and initial operation of ANGTS.

The EEOC, pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Sec. 2000e, is responsible for the elimination of discriminatory employment policies and practices at employment units. It has adopted guidelines, rules and procedures designed to assure equal employment opportunites to all persons without regard *inter alia* to their race, color, religion, national origin, or sex. In addition, the EEOC has jurisdiction over complaints alleging violations of the Equal Pay Act of 1963, 29 U.S.C. Sec. 209(d) and the Age Discrimination in Employment Act, 29 U.S.C. Sec. 621.

I. Exchange of Information

The EEOC and OFI shall make available to appropriate officials from the other agency certain information which may assist each agency in carrying out its responsibilities. This information will relate to the employment policies and practices of the ANGTS sponsors, contractors, sub-contractors or other ANGTS-related persons, including corporations, associations, firms, partnerships, joint stock companies, labor unions, employment agencies and individuals. Such information shall include, but shall not necessarily be limited to, affirmative action programs, annual employment reports, complaints, investigative files, conciliation of compliance ageements, and compliance review reports and files.[1] Additionally, the EEOC will send to OFI *quarterly reports* to keept the OFI informed of all charges against ANGTS related persons. With respect to all information obtained by the OFI from the EEOC, the OFI agrees to preserve the confidentiality, as provided in Sections 706(b) and 709(e), the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000e–5(b) and 2000e–8(e).

All requests to the OFI by Third Parties for information concerning charges of employment discrimination being processed by EEOC shall be coordinated by the OFI with the General Counsel of the EEOC or his designee before a response is made. Except as otherwise provided by law, the OFI will not disclose information about charges or information contained in, or derived from, EEOC's charge files without the approval of the General Counsel of the EEOC or his designee.

II. Complaint Procedures

The statutory standard governing employment discrimination for ANGTS is substantially similar under the respective legal authorities of the OFI and the EEOC. Thus, while there are certain differences in terms of coverage, sanctions, and procedures, most instances of employment discrimination would be actionable for either the OFI or the EEOC. The EEOC and OFI share the common goal of assuring against discriminatory employment policies and practices during the pre-construction, construction and the initial operation of ANGTS. In pursuit of this common goal, and to promote efficiency and to eliminate potential conflict and duplication, the EEOC and OFI hereby agree as follows:

A. Filing discrimination complaints. Complaints of employment discrimination against ANGTS related persons received by the OFI shall be deemed charges filed jointly with EEOC and the OFI. For the purpose of determining the timeliness of the charge under Title VII of the Civil Rights Act of 1964, the date that the matter was received by the OFI shall be deemed the date it was received by EEOC.

B. Processing discrimination complaints. If an individual files with either the EEOC or the OFI a charge alleging discrimination in employment by an ANGTS related person, the EEOC and the OFI will proceed as follows:

(1) The agency receiving the complaint shall:

(a) Date stamp each complaint;

(b) Notify the complainant of its receipt; and

(c) Notify the ANGTS respondent(s) named in the complaint that such a complaint has been received, and, in the event that the complaint is forwarded by the receiving agency to the other, so notify both the complainant and the ANGTS respondent. In every instance, the OFI and the EEOC will inform each other of ANGTS complaints initially received.

(2) If the EEOC receives a discrimination complaint which does not fall within the jurisdiction of either the EEOC or a State or local agency to which the EEOC must defer pursuant to Section 706 of the Civil Rights Act of 1964, the EEOC shall forward the complaint to the OFI. The OFI shall process such complaints in accordance with its own rules, policies and procedures. Upon request, the EEOC shall provide technical advice and guidance to the OFI in its investigation of such complaint.

(3) If the OFI receives an employment discrimination complaint which does not fall within the jurisdiction of the OFI as prescribed by ANGTA, the President's *Decision*, and Reorganization Plan No. 1 of 1979, the OFI shall forward it to the EEOC or the appropriate section 706 agency. The EEOC or the Section 706 agency shall process such complaints according to its normal procedures. An example of a complaint contemplated by this subsection is one which alleges a violation of the Age Discrimination in Employment Act.

(4) If the EEOC or the OFI receives a discrimination complaint which falls within the jurisdiction of both the EEOC and the OFI, the complaint shall be processed by the EEOC or the Section 706 agency according to its normal procedures, except as provided below in Section C.

C. Action on discrimination complaints. (1) The EEOC will notify the OFI by letter of all reasonable cause determinations on discrimination charges involving an ANGTS respondent and, upon specific request, will provide the OFI with any additional information regarding the determination. However, nothing herein is intended to prevent an ANGTS respondent from entering into conciliation agreement with EEOC, if the ANGTS respondent so desires.

(2) When the EEOC determines that an ANGTS respondent is in violation of employment discrimination laws, but appears unable to resolve the matter by conciliation, it shall so notify the OFI. In those cases

[1] It is the intent of the OFI and the EEOC to exchange information relevant to matters of concurrent jurisdiction. Therefore, the example, the EEOC will not provide the OFI with information relating to claims of age discrimination. The OFI will not provide EEOC with information relating to its minority and female business enterprise programs.

processed under Section B(4) of the Memorandum of Understanding, the OFI may then attempt to resolve the matter by conciliation. EEOC shall allow the OFI a reasonable time to attempt such conciliation. If the OFI's conciliation efforts resolve the matter to the satisfaction of the OFI and the EEOC, the terms of the agreement shall be reduced to writing and signed by the designated representatives of both agencies.

(3) If the OFI and the EEOC's efforts are unable to resolve the matter, the EEOC shall notify the parties that conciliation has failed and take such further steps as provided by Title VII of the Civil Rights Act and by EEOC's procedural regulations.

(4) For those cases of employment discrimination acted upon by EEOC under Subsection C(3) immediately above, the OFI shall consult with the EEOC before taking further actions as deemed appropriate by the OFI pursuant to the OFI's enforcement authorities (Section 11 of the ANGTA and Section 102(h)(1) of the Reorganization Plan).

III. Liaison an Monitoring

To provide for more effective and complete exchange of information, so that both agencies will be utilized to the maximum effectiveness in the public interest, each agency will designate a liaison officer to serve as the primary source of contact. These liaison officers will be responsible for currently informing each other of proposed proceedings and of internal developments in areas of joint concern, to the extent permitted by law. Additionally, the parties shall conduct reviews of the implementation of this agreement to assure proper effectuation. In this regard, liaison meetings between appropriate senior officials of both agencies (to exchange views on matters of common interest and responsibility) shall be held from time to time, as determined by such liaison officers to be necessary.

Designated liaison officers:

(a) Equal Employment Opportunity Commission—The Executive Director or his designee.

(b) The Office of the Federal Inspector—The EEO/MBE Director or his designee.

IV. Amendment and Termination

This agreement, when signed by both parties, shall continue in effect. It may be modified by or expanded with the mutual consent of both parties, or it may be terminated by either party upon thirty (30) days' advance written notice. As provided in Section 203(a) of the Reorganization Plan No. 1 of 1979, however, this agreement shall not exceed the first anniversary of the date of the initial operation of ANGTS or the abolishment of the Office of the Federal Inspector on that date. All cases filed with, and in the processing, investigation or resolution stages with EEOC will continue to be the responsibility of the EEOC.

Approved and accepted for the Equal Employment Opportunity Commission.

Eleanor Holmes Norton,

Chair, Equal Employment Opportunity Commission.

Approved and accepted for the Office of the Federal Inspector for the Alaska Natural Gas Transportation System.

John T. Rhett, Jr.

Federal Inspector, Alaska Natural Gas Transportation System.

[FR Doc. 80-27864 Filed 9-10-80; 8:45 am]

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OFFICE OF THE FEDERAL INSPECTOR FOR THE ALASKA NATURAL GAS TRANSPORTATION SYSTEM

10 CFR Part 1506

Employee Standards of Conduct

AGENCY: Office of the Federal Inspector for the Alaska Natural Gas Transportation System.

ACTION: Final rule.

SUMMARY: These rules institute employee standards of conduct to fulfill the requirements of Section 1–108 of Executive Order 12142 and of Title II of the Ethics in Government Act of 1978. Section 1–108 of Executive Order 12142 requires the Federal Inspector to issue standards of conduct, pursuant to Executive Order 11222, for the Office of the Federal Inspector. Title II of the Ethics in Government Act requires certain high-ranking Executive branch employees to disclose their financial interests publicly.

EFFECTIVE DATE: September 5, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Edward W. Hengerer, General Counsel, Office of the Federal Inspector, ANGTS, Room 2413, Post Office Building, 1200 Pennsylvania Avenue, Washington, D.C. 20044, (202) 275-1100.

SUPPLEMENTARY INFORMATION: Because these rules fall within the exceptions of 5 U.S.C. 553(a)(2) and (b)(B) (as relating to agency management and personnel and as rules of agency procedure and practice), the normal requirements of notice and comment do not apply to them. Therefore, these rules are being promulgated as final and are effective immediately.

The Office of the Federal Inspector has determined that these rules are not "significant regulations" and do not require a regulatory analysis under Executive Order 12044.

Dated: September 5, 1980.

John T. Rhett,

Federal Inspector.

For the reasons set out above, the Federal Inspector hereby amends Title 10 of the Code of Federal Regulations by adding a new part, Part 1506, to read as follows:

PART 1506—EMPLOYEE STANDARDS OF CONDUCT

Subpart A—General Provisions; Notice to Employees; Advisory Service

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Subpart C—Public Financial Disclosure Requirements for Employees

1506.301 Employees subject to financial disclosure requirements.
1506.302 When to file 278 forms.
1506.303 Where to file 278 forms.
1506.304 Procedure for completing 278 forms.
1506.305 Special rules for completing 278 forms.
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1506.309 Review of completed 278 forms and remedial action.
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1506.312 Advisory opinions and situation lists.
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1506.314 Penalties for non-compliance with the special filing requirements for qualified trusts.

Subpart D—Confidential Disclosure Requirements for Employees

1506.401 Employees required to submit confidential statements of employment and financial interests.
1506.402 Time and place for submission of confidential statements.
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1506.404 Interests of employee's relatives.
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1506.407 Confidential custody of reports.
1506.408 Employee's complaint on filing.
1506.409 Review of reports and remedial action.
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1506.411 Procedure upon employee's refusal to comply.

Subpart E—Rules of Conduct for Special Government Employees

Sec.
1506.501 Applicability.
1506.502 Use of Government employment.
1506.503 Use of inside information.
1506.504 Coercion.
1506.505 Acceptance and solicitation of gifts, entertainment, and favors.
1506.506 Prohibited financial interests.
1506.507 Miscellaneous statutory provisions.

Subpart F—Public Financial Disclosure Requirements for Special Government Employees

1506.601 Special Government employees subject to public financial disclosure requirements.
1506.602 Applicability of subpart C to special Government employees.
1506.603 Exception for special Government employees who are employed for less than sixty days.
1506.604 Special waiver of public disclosure requirement for special Government employees.

Subpart G—Confidential Disclosure By Special Government Employees

1506.701 Special Government employees required to submit confidential statements of employment and financial interests.
1506.702 Time and place for submission of confidential statements.
1506.703 Custody and review of confidential statements; remedial action.

Authority: E.O. 11222, 3 CFR, 1964–1965 Comp., p. 306; E.O. 12142, 44 FR 36927; 5 CFR 735.104; Pub. L. 95–521, as amended by Pub. L. 96–19.

PART 1506—EMPLOYEE STANDARDS OF CONDUCT

Subpart A—General Provisions; Notice to Employees; Advisory Service

§ 1506.101 Purpose.

It is the purpose of these regulations to set high ethical standards of conduct for employees of the Office of the Federal Inspector (OFI). The OFI is a unique agency in a number of conduct-related ways, stemming mainly from its character as a project-specific agency. The OFI is charged with expediting the regulatory processes involved in the construction of a single pipeline system designed to transport Alaska Natural Gas to the contiguous states. Thus, OFI employees deal closely with the sponsors of, and governmental bodies involved in, just one project. On the first anniversary of the completion of the project, the OFI will cease to exist. These regulations reflect the unique charter of this project-specific agency.

§ 1506.102 Authority.

These regulations are promulgated pursuant to Executive Orders 11222, 11590 and 12142, to Section 7(a)(5) of the Alaska Natural Gas Transportation Act,

to the Ethics in Government Act of 1978, and to implementing regulations of the Office of Government Ethics (OGE).

§ 1506.103 Definitions.

In these regulations:

(a) "Employee" means an officer or employee of the Office of the Federal Inspector for the Alaska Natural Gas Transportation System.

(b) "Honorarium" means a payment of money or anything of value received by an officer or employee of the Federal Government, if accepted as consideration or as a fee for an appearance, speech, or article.

(c) "Person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other group, organization or institution.

(d) "Special Government employee" means an officer or employee of the OFI who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis.

(e) "Project sponsor" means one of the persons designated to construct and operate a portion of the Alaska Natural Gas Transportation system.

(f) "Logistics agreement" means an agreement negotiated with a project sponsor governing the provision to OFI field employees of food, lodging, transportation, and medical and office facilities by the project sponsor. Logistics agreements are entered into because of the scarcity of such facilities in remote areas along the project route.

§ 1506.104 Coverage.

(a) The provisions of Subpart A of this part apply to all regular employees and all special Government employees.

(b) The provisions of Subpart B of this part apply to all regular employees.

(c) The provisions of Subpart C of this part apply to all senior Executive Service employees, both special and regular, and to the Federal Inspector.

(d) The provisions of Subpart D of this part apply to those regular employees who meet the criteria set forth in the first section of that subpart, § 1506.401.

(e) The provisions of Subpart E of this part apply to all special Government employees.

(f) The provisions of Subpart F of this part apply to special Government employees who are paid at a rate equivalent to GS–16 or above.

(g) The provisions of Subpart G of this part apply to those special Government employees who meet the criteria set forth in the first section of that subpart, § 1506.701.

§ 1506.105 Notice to employees.

(a) Each employee and special Government employee shall be furnished a copy of these regulations within 90 days of their effective date.

(b) Each new employee and special Government employee shall be furnished a copy of these regulations at the time of his or her entrance on duty.

(c) Thereafter, each employee and special Government employee shall be reminded of these regulations once a year and shall be informed on a timely basis of any changes in these regulations.

(d) The agency ethics officers shall have copies of all pertinent laws, executive orders, OFI regulations and OGE regulations available for review by employees and special Government employees.

§ 1506.106 Interpretation and advisory service.

(a) There shall be an advisory service which will furnish interpretations and advice to employees and to special Government employees on questions which they may have concerning these regulations.

(d) The General Counsel of the OFI shall be the Designated Agency Ethics Officer (ethics officer). The ethics officer shall coordinate the agency's counseling and interpretation services and serve as the OFI designee to the OGE on appropriate matters.

(c) The Federal Inspector and the General Counsel shall appoint such deputy ethics officers as they deem necessary.

(d) Each employee and special Government employee shall be informed of the availability of the advisory service within 90 days after these regulations become effective. New employees, both special and regular, shall be informed about this service upon entrance on duty.

(e) Any employee or special Government employee who has a question about the application of these regulations has a duty to consult the ethics officer or deputy officer concerning the question.

Subpart B—Rules of Conduct for Employees

§ 1506.201 Generally prohibited conduct.

An employee shall avoid any action which might result in or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding Government efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making a Government decision outside official channels; or

(f) Affecting adversely the confidence of the public in the integrity of the Government.

§ 1506.202 Acceptance and solicitation of gifts, entertainment, and favors.

(a) Apart from the exceptions listed in paragraph (b) of this section, an employee shall neither solicit nor accept any gift, gratuity, favor, entertainment, loan, or any thing of monetary value from a person who:

(1) Has, or is seeking to obtain, contractual business or financial relations with the OFI;

(2) Is regulated by the OFI; or

(3) Has interests that may be substantially affected by the performance of the employee's official duty.

(b) Exceptions to the prohibitions of paragraph (a) of this section are:

(1) An employee may accept food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting when, and only when, it is impracticable to pay for the food or refreshments, and

(2) An employee may accept unsolicited promotional materials, such as pens, pencils, note pads, and calendars which are of nominal value.

(c) An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself. However, this paragraph does not prohibit a voluntary gift of nominal value on a special occasion such as marriage, illness, or retirement.

(d) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress, as provided in 5 U.S.C. 7342. A copy of 5 U.S.C. 7342 may be obtained from the ethics officer or his deputy. Employees who are contemplating acceptance of a gift from a foreign government should familiarize themselves with this provision of law.

§ 1506.203 Acceptance of reimbursement for official travel.

(a) Subject to the exceptions listed in paragraph (b) of this section, an employee may be reimbursed for his official travel expenses only by the OFI.

(b) There are the following statutory exceptions to paragraph (a) of this section:

(1) Contributions and awards incident to training in non-Government facilities, and payment of travel, subsistence, and other expenses incident to attendance at meetings, may be made to and accepted by an employee, without regard to section 209 of title 18, if the contributions, awards, and payments are made by an organization determined by the Secretary of the Treasury to be an organization described by section 501(c)(3) of title 26 which is exempt from taxation under section 501(a) of title 26. (5 U.S.C. 4111).

(2) An employee may accept reimbursement of expenses related to being detailed to State and local governments or to universities (5 U.S.C. 3371).

(3) If and when the Secretary of State assigns an employee to a foreign government, the employee may accept, with the approval of the OFI, reimbursement for his or her pay and allowances (22 U.S.C. 1451).

(4) If and when an employee is detailed to a public international organization in which the United States participates, the OFI may accept reimbursement for the detailed employee's pay, travel expenses, and allowances (5 U.S.C. 3343).

§ 1506.204 OFI's reimbursement of project sponsors for logistical support.

(a) Because of the limited travel, lodging, medical, and office facilities along the route of the project in Alaska, employees in the field will be relying upon the logistical support of the project sponsor. Normally, all logistical support provided by the project sponsor will be provided in accordance with the "logistics support agreement" between the sponsor and the OFI. Under the terms of this agreement, OFI will reimburse the sponsor for this support.

(b) If it is necessary for an employee to rely upon logistic support of the sponsor or other person which is not within the scope of the "logistics support agreement," the employee shall notify the ethics officer or the Federal Inspector as soon as practicable.

(c) The employee may accept the logistics support which is beyond the scope of the "logistics support agreement" only if the Federal Inspector determines that such acceptance facilitates the conduct of official business and is in the best interest of the Government.

§ 1506.205 Outside employment.

(a) An employee shall not engage in outside employment or other outside activity which is incompatible with the full and proper discharge of the duties and responsibilities of his or her Government employment. Incompatible activities include but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, conflicts of interest; or

(2) Outside employment which tends to impair his or her mental or physical capacity to perform Government duties and responsibilities in an acceptable manner.

(b) An employee shall not receive any salary or anything of monetary value from a private source as compensation for his services to the Government (18 U.S.C. 209).

(c) Employees are encouraged to engage in teaching, lecturing, and writing which is not prohibited by law, Executive Order, OGE regulations, or this part. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing which depends on information obtained as a result of his or her Government employment, except when that information has been made available to the general public or will be made available on request. An employee also shall not accept an honorarium for any consultation, writing, speech, lecture, or appearance, the subject matter of which draws substantially on official data or ideas which have not become part of the body of public information.

(d) The Federal Inspector may not have, in any calendar year, outside earned income which is in excess of fifteen percent of his Government compensation (Pub. L. 95–521, as amended, Section 210).

(e) Any employee engaged in outside paid employment on a substantially regular basis shall notify his or her supervisor, who in turn will evaluate the continuation of such outside employment relative to paragraph (a) of this section.

§ 1506.206 Acceptance of honoraria.

(a) No employee shall accept an honorarium for any consultation, writing, speech, lecture, or appearance, the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the OFI.

(b) No employee shall accept an honorarium for any consultation, writing, speech, lecture, or appearance which he performs while on duty.

(c) No employee shall accept an honorarium of more than $2,000 for any appearance, speech, or article, or accept honoraria aggregating more than $25,000 in any calendar year (2 U.S.C. 441i).

(d) No employee shall accept an honorarium from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the OFI;

(2) Conducts operations or activities which are regulated by the OFI; or

(3) Has interests which may be substantially affected by the performance or nonperformance of his official duty.

§ 1506.207 Prohibited financial interests.

(a) No employee shall have a financial interest that conflicts substantially, or appears to conflict substantially, with his or her Government duties and responsibilities.

(b) As applied, paragraph (a) of this section requires that no employee shall own securities of any company (or its parent or affiliate):

(1) Which initially owns and produces gas to be transported through the Alaska Natural Gas Transportation System (the system);

(2) Which "first purchases" gas to be transported through the system;

(3) Which is involved in the ownership of the system; or

(4) Which is very substantially involved by contract in the construction or design of the system.

(c) A list of the companies whose securities are prohibited under the criteria of paragraph (b) of this section shall be issued to each employee upon entrance on duty. A list of these companies shall be distributed to all employees annually and whenever change in circumstances requires modification of the list.

(d) In addition to the specific companies (meeting the criteria in paragraph (b) of this section and listed according to paragraph (c) of this section), there are other categories of companies to which the prohibition in paragraph (a) of this section may or may not apply. Employees should consider the following factors:

(1) Ownership of the securities of other oil and gas companies is not at present prohibited. Employees are advised, however, that, if such other companies become involved in either the system or ownership of gas to be transported through the system, ownership of the securities of those companies will, at that time, become prohibited.

(2) As a general rule, the securities of those companies supplying goods or services for the planning or construction of the system are not prohibited from ownership by employees. Nevertheless, certain of those companies could supply such a large share of goods or services for the system that employees also may not own their securities.

(3) Employees shall not own the securities of companies described in this subsection *only if and when* a specific company is included in the prohibited securities list provided in accordance with paragraph (c) of this section.

(e) If employees have any questions or doubts regarding the ownership of securities, they should contact the ethics officer for advice.

(f) An employee may seek a waiver of the prohibitions imposed by paragraphs (a) and (b) of this section for a particular financial interest. In order to obtain such a waiver, an employee must fully disclose his financial interest to the ethics officer and to the Federal Inspector. If the ethics officer and the Federal Inspector determine that the disclosed financial interest is not so substantial as to be likely to affect the integrity of the employee's Government services, they may grant a waiver.

(g) The prohibitions of paragraphs (a) and (b) of this section do not apply to mutual funds (unless investing primarily in oil and gas securities) and investments in mutual savings banks. Further, if an employee has continued to participate in a bona fide pension, retirement, group life, health, or accident insurance plan or other employee welfare or benefit plan that is maintained by a business or nonprofit organization or which he is a former employee, that financial interest is exempted from the prohibitions of paragraphs (a) and (b) of this section, except when the welfare or benefit plan is a profit-sharing or stock-bonus plan.

§ 1506.208 Use of Government property.

No employee shall use, or allow the use of, government property for any activity which is not officially approved. An employee has a positive duty to protect and conserve Government property which has been issued or entrusted to him.

§ 1506.209 Misuse of information.

No employee shall use, or allow the use of, official information obtained through his Government employment which has not been made available to the general public or would not be made available to the public on request.

§ 1506.210 Indebtedness.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law, such as Federal, State or local taxes. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court or one imposed by law, and "in a proper and timely manner" means in a manner which the agency determines does not, under the circumstances, reflect adversely on the Government as the employee's employer. In the event of dispute between an employee and an alleged creditor, this section does not require the OFI to determine the validity or amount of the disputed debt.

§ 1506.211 Gambling, betting, and lotteries.

No employee shall participate in any gambling activity while on Government property or while on duty for the Government. However, organizations composed of Federal employees may conduct fund-raising activities in accordance with procedures approved by the Federal Inspector (Executive Order 10927).

§ 1506.212 General conduct prejudicial to the Government.

No employee shall engage in criminal, infamous, dishonest or disgraceful conduct, or other conduct prejudicial to the government.

§ 1506.213 Miscellaneous statutory provisions.

Each employee shall acquaint himself with the following statutory provisions which relate to Federal employee conduct. Copies, explanations, and interpretations of these provisions may be obtained from the ethics officer or his deputy.

(a) House Concurrent Resolution 175, 85th Congress, 2d session, 72 Stat. B12, the "Code of Ethics for Government Service."

(b) Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned.

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(d) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(e) The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

(f) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(g) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(h) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(i) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(j) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(k) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(l) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(m) The prohibition against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failure to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(n) The prohibition against unauthorized use of documents to claims from or by the Government (18 U.S.C. 285).

(o) The prohibitions against certain political activities in the "Hatch Act" (5 U.S.C. 7324–7327 and 18 U.S.C. 602, 603, 607, and 608).

(p) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

Subpart C—Public Financial Disclosure Requirements for Employees

§ 1506.301 Employees subject to public financial disclosure requirements.

(a) Every employee whose position is classified as GS–16 or above or who is paid at an equivalent rate in the Senior Executive Service shall annually file an "Executive Personnel Financial Disclosure Report" (referred to as a "278 form") for public financial disclosure.

(b) Every schedule C employee who is paid at a rate below GS–16 shall file a 278 form annually, unless specifically excepted from the requirement, in accordance with OGE procedure, as having no role in advising or making policy determinations concerning agency programs or policies.

(c) The OFI ethics officer shall file a 278 form annually.

§ 1506.302 When to file 278 form.

(a) Except as described in paragraph (b) of this section, all employees who are required by virtue of their position to file a 278 form shall file the form within thirty days of their entrance into that position.

(b) A new entrant to a 278 position does not need to file a 278 form within 30 days of entrance upon duty:

(1) If the entrant has just left a position for which he was required to file a 278 form; or

(2) If the entrant has already filed a 278 form as a nominee or candidate for the position.

(c) Thereafter, every employee who performs the duties of a 278 position for

more than 60 days of any calendar year shall file a 278 form for that year by May 15 of the succeeding year.

(d) Within thirty days after the termination of employment in a 278 position, a terminated employee shall file a 278 form for the year of termination. However, if an employee terminates one 278 position but assumes another 278 position (either at OFI or in other Federal employment) within 30 days of termination, no report is required by this subsection.

(e) The ethics officer may, for good cause shown, grant to any employee or class of employees an extension of up to 45 days. The OGE may, for good cause shown, grant an additional extension of up to 45 days. The employee shall set forth specific reasons for the additional extension request and shall submit these reasons to the ethics officer. The ethics officer will forward the request and comments on it to the OGE.

§ 1506.303 Where to file 278 form.

(a) Employees who are required to file 278 forms shall file them with the ethics officer.

(b) The ethics officer shall transmit the 278 form of the Federal Inspector and the ethics officer's 278 form to the Director of the OGE. Prior to transmitting these forms, the ethics officer shall review the 278 form of the Federal Inspector and shall ensure that ethics officer's 278 form is reviewed by the Federal Inspector.

§ 1506.304 Procedure for completing 278 form.

Each 278 form shall be filled out entirely and in accordance with its instructions. If questions arise while filling out his or her form, an employee should consult the ethics officer. The ethics officer shall in turn make available the OGE regulations implementing Title II of the Ethics in Government Act.

§ 1506.305 Special rules for completing 278 form.

Employees who are required to submit 278 forms should acquaint themselves with the special rules set forth in the regulations of the Office of Government Ethics at 5 C.F.R. 734.303. Copies and interpretations of these provisions may be obtained from the ethics officer. Employees should note that they may request a waiver of the reporting requirement for certain personal gifts.

§ 1506.306 Special rules for reporting trust interests and assets.

(a) Subject to the exceptions of paragraph (b) of this section, employees required to submit 278 forms shall report trust interests and assets which have a value in excess of $1,000.

(b) The reporting requirement of paragraph (a) of this section does not apply when an employee is the beneficiary of:

(1) A "qualified blind trust,"

(2) A "qualified diversified trust," or

(3) An "excepted trust."

(c) The trusts provided in paragraph (b) of this section are approved in the following manner:

(1) A "qualified blind trust" is a trust certified as approved by the Director of the Office of Government Ethics as meeting the requirements of Section 202(f)(3) of the Ethics in Government Act and implementing regulations.

(2) A "qualified diversified trust" is a trust certified as approved by the Director of the Office of Government Ethics, in concurrence with the Attorney General, as meeting the requirements of Section 202(f)(4)(B) of the Ethics in Government Act and implementing regulations.

(3) An "excepted trust" is one which was not created directly by the employee, his spouse, or his dependent child, and the holdings or sources of income of which are not known to the employee, his spouse, or his dependent child. An excepted trust requires no certification or approval.

(d) An employee who wishes to create a qualified blind trust or (in the case of the Federal Inspector) a qualified diversified trust should consult with the ethics officer, who shall refer the employee to the OGE.

(e) Employees who create, maintain, or dissolve either a qualified blind trust or a qualified diversified trust shall familiarize themselves with the special filing requirements for those actions. Employees may obtain copies and interpretations of those requirements (5 CFR 734.407) from the ethics officer.

(f) Assets in all types of trusts, except a qualified diversified trust of the Federal Inspector, shall be considered financial interests until the employee is notified by the trustee that the assets have been disposed of or have a value of less than $1,000. As such, all trust assets, except those in qualified diversified trusts, shall be subject to the financial interest restrictions of § 1506.207 of Section 208 of Title 18 of the United States Code, and of any other Federal conflict of interest statutes or regulations.

§ 1506.307 Custody of completed 278 forms.

(a) Any completed 278 form filed with the ethics officer or transmitted to the Director, Office of Government Ethics, pursuant to this subpart, shall be retained by the OFI or the Office of Government Ethics, or both, as the case may be. Such completed forms shall be made available to the public for a period of six years after receipt of the report. After this six-year period, the form shall be destroyed, unless needed in an ongoing investigation. In the case of an individual who filed a 278 form as a nominee to a position requiring Senate confirmation and who was not subsequently confirmed by the Senate, his or her form shall be destroyed one year after he or she is no longer under consideration by the Senate, unless it is needed in an ongoing investigation.

(b) Copies of all qualified trust agreements, the list of assets initially placed in such trusts, and all other publicly available documents relating to such trusts shall be retained until the periods for retention of all other forms have lapsed.

§ 1506.308 Public access to completed 278 forms.

Within fifteen days after any completed form is actually received by the ethics officer, the ethics officer shall permit inspection of such report by, or furnish a copy to, any person who makes a written application which:

(a) States the applicant's name, occupation, and address,

(b) States the name and address of any other person or organization on whose behalf the request is made, and

(c) States that the applicant is aware of the restrictions on the obtaining and the use of the report.

§ 1506.309 Review of completed 278 forms and remedial action.

(a) The reviewing official (the ethics officer, except for the ethics officer's form, which the Federal Inspector shall review) shall review each 278 form to determine that it complies with all applicable law.

(b) Upon determining that the employee is in compliance with all applicable law, the reviewing official shall sign and date the completed form.

(c) If the reviewing official believes that additional information is necessary, such information shall be requested. The employee of whom this request is made shall be afforded a reasonable opportunity to respond.

§ 1506.310 Procedure after review of additional information.

(a) If, after reviewing the additional information, the reviewing official concludes that the employee is in compliance with applicable law, the reviewing official shall sign and date the completed form and so notify the employee.

(b) If, after reviewing the additional information, the reviewing official concludes that the employee is not in compliance with applicable law, the reviewing official shall:

(1) Notify the employee of that opinion,

(2) Afford the employee an opportunity for personal consulation, if practicable,

(3) Determine what remedial action should be taken to bring the employee into compliance, and

(4) Notify the employee in writing of the remedial action required, indicating a date by which such action should be taken.

(c) Remedial steps may include:

(1) Divestiture of a conflicting interest,

(2) Restitution,

(3) Establishment of a qualified blind trust, or

(4) Request for an exemption under 18 U.S.C. 208(b).

(d) If the employee complies with the suggested remedial steps, the reviewing official shall so indicate in the "comments" section of the form, and shall sign and date it.

§ 1506.311 Procedure upon employee's refusal to comply.

(a) If the employee does not comply with the remedial steps suggested pursuant to § 1506.310, the reviewing official shall notify the OGE and refer the matter for approporiate action to:

(1) The President, if the non-complying employee is the Federal Inspector, or

(2) The Federal Inspector, concerning all other employees.

(b) Appropriate action may include:

(1) Any of the remedial steps listed in paragraph (c) of § 1506.310,

(2) Removal,

(3) Suspension,

(4) Reduction in grade, or

(5) Reduction in pay.

§ 1506.312 Advisory opinions and situation lists.

Employees may consult the ethics officer to inquire:

(a) About advisory opinions rendered by the Director of the OGE, and

(b) About lists of circumstances and situations which have resulted in non-compliance with ethics laws. These lists, as they are published, will be furnished to all employees who are required to file 278 forms.

§ 1506.313 Penalities for failure to file or falsifying 278 forms.

(a) *Referral of cases.* The Federal Inspector or the Director, Office of Government Ethics, as the case may be, shall refer to the Attorney General the name of any individual who, the appropriate officer has reasonable cause to believe, has willfully failed to file a report, or has willfully falsified or willfully, failed to file information required to be reported.

(b) *Civil Action.* The Attorney General may bring a civil action in any appropriate United States District Court against any individual who knowingly and willfully falsifies or who knowingly or willfully fails to file or report any information which such individual is required to report pursuant to this subpart. The court in which such action is brought may assess against such individual a civil penalty in any amount, not to exceed $5,000.

(c) *Administrative remedies.* The President, the Director, Office of Government Ethics, or the Federal Inspector, may take any appropriate personnel or other action in accordance with applicable law or regulation against any individual failing to file a report or falsifying or failing to file information required to be reported. Such action includes adverse action under 5 CFR Part 752.

§ 1506.314 Penalties for non-compliance with the special filing requirements for qualified trust.

(a) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who knowingly and willfully violates the provisions of 5 CFR 734.407 (a) or (b). The court in which such action is brought may assess against such individual a civil penalty in any amount, not to exceed $5,000.

(b) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who negligently violates those provisions. The court in which such action is brought may assess against such individual a civil penalty in any amount, not to exceed $1,000.

Subpart D—Confidential Disclosure Requirements for Employees

§ 1506.401 Employees required to submit confidential statements of employment and financial interests.

(a) Unless subject to the public financial disclosure requirements of Subpart C of this part or unless exempted under paragraph (b) of this section, those employees required to file confidential statements are:

(1) Employees classified as GS–13 or above, or at an equivalent pay level, who the ethics officer or the FI determines are in positions which require them to make a Government decision or take a Government action in regard to

(i) Contracting or procurement,

(ii) Regulating or aduiting private or other non-Federal enterprise, or

(iii) Other activities where the decision or action has an economic impact on the interests of any non-Federal enterprise;

(2) Employees classified as GS–13 or above, or at an equivalent level of pay, who are in positions which entail duties and responsibilities which require them to report employment and financial interests in order to avoid involvement in a possible conflicts-of-interest situation; and

(3) Employees classified below GS–13, or at an equivalent rate of pay, who are in positions which otherwise meet the criteria in paragraph (a) (1) or (2) of this section, when the requirement that they file has been specifically justified and for which approval has been given by the OGE.

(b) An employee in a position that meets the criteria in paragraph (a) of this section may be excluded from the reporting requirement when the ethics officer determines that:

(1) The duties of his or her position are such that the likelihood of involvement in a conflicts-of-interest situation is remote;

(2) The duties of his or her position are at such a level of responsibility that the submission of a statement of employment and financial interests is not necessary because of the degree of supervision and review over him or her; or

(3) The use of an existing or alternative procedure is adequate to prevent possible conflicts-of-interest.

(c) The ethics officer shall maintain a list of positions for which a confidential statement is required and shall notify the employees in those positions of the reporting requirement

§ 1506.402 Time and place for submission of confidential statements.

An employee required to submit a confidential statement shall submit it to the ethics officer:

(a) Within ninety days of the date on which these regulations become effective, or

(b) Within thirty days after his or her entrance on duty, but not earlier than ninety days after these regulations become effective.

§ 1506.403 Supplementary statements.

Changes in, or additions to, the information contained in an employee's confidential statement of employment and financial interests shall be reported in a supplementary statement as of June 30 each year, except when the OGE authorizes a different date. If no changes

or additions occur, a negative report is required.

§ 1506.404 Interests of employee's relatives.

The interest of a spouse, minor child, or other member of an employee's immediate household is considered to be an interest of the employee. For the purpose of this section, "member of an employee's immediate household" means those blood relations who are residents of the employee's household.

§ 1506.405 Information not known by employees.

If any information required to be included in a statement of employment and financial interest or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in his behalf.

§ 1506.406 Information not required.

This subpart does not require an employee to submit on a statement of employment and financial interests or supplementary statement any information relating to the employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

§ 1506.407 Confidential custody of reports.

The ethics officer shall hold each statement of employment and financial interests, and each supplementary statement, in confidence. To insure this confidentiality, he shall designate which employees are authorized to review and retain the statements. Employees so designated are responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement, except to carry out the purposes of these regulations. The OFI will not disclose information from a statement, except as the Office of Government Ethics or the Federal Inspector may determine for good cause shown.

§ 1506.408 Employee's complaint on filing.

Any employee who feels that he or she has been unjustly required to file a confidential statement shall be afforded an opportunity for review of that requirement through the OFI's grievance procedure. Any employee who wishes to be afforded that opportunity shall consult the ethics officer concerning the proper procedure.

§ 1506.409 Review of reports and remedial action.

(a) The ethics officer shall review each confidential statement of employment and financial interests. Upon determining that the employee is in compliance with applicable laws and regulations, the ethics officer shall sign and date the report.

(b) If the ethics officer believes that additional information is necessary, such information shall be requested. The employee of whom this request is made shall be afforded a reasonable opportunity to respond.

§ 1506.410 Procedure after review of additional information.

(a) If, after reviewing the additional information, the ethics officer concludes that the employee is in compliance with applicable law, the ethics officer shall sign and date the report and so notify the employee.

(b) If, after reviewing the additional information, the ethics officer concludes that the employee is not in compliance with applicable law, the ethics officer shall:

(1) Notify the employee of that opinion,

(2) Afford the employee an opportunity for personal consultation, if practicable,

(3) Determine what remedial action should be taken to bring the employee into compliance, and

(4) Notify the employee in writing of the remedial action required, indicating a date by which such action should be taken.

(c) Remedial steps may include:

(1) Divestiture of a conflicting interest,

(2) Restitution,

(3) Establishment of a qualified blind trust, or

(4) Request for an exemption under 18 U.S.C. 208(b).

(d) If the employee complies with the suggested remedial steps, the ethics officer shall sign and date the report.

§ 1506.411 Procedure upon employee's refusal to comply.

(a) If the employee does not comply with the suggested remedial steps, the ethics officer shall refer the matter for appropriate action to the Federal Inspector.

(b) Appropriate action may include:

(1) Any of the remedial steps listed in paragraph (c) of § 1506.410,

(2) Removal,

(3) Suspension,

(4) Reduction in grade, or

(5) Reduction in pay.

(c) Remedial action, whether disciplinary or otherwise, shall be effected in accordance with applicable law.

Subpart E—Rules of Conduct for Special Government Employees

§ 1506.501 Applicability.

The provisions of this subpart apply to all special Government employees, as defined in § 1506.103 of these regulations.

§ 1506.502 Use of Government employment.

No special Government employee shall use his Government employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for him or herself or another person, particularly one with whom he or she has family, business, or financial ties.

§ 1506.503 Use of inside information.

(a) No special Government employee shall, either by direct action on his or her part or by counsel, recommendation, or suggestion to another person, use inside information, obtained as a result of his or her Government employment, for private gain for him or herself or another person, particularly one with whom he or she has family, business, or financial ties. For the purpose of this section, "inside information" means information, obtained under Government authority, which has not become part of the body of public information.

(b) No special Government employee shall, either for or without compensation, engage in teaching, lecturing, or writing that depends on information obtained as a result of his or her OFI employment, except when that information has been made available to the general public or will be made available on request, or when the agency head gives written authorization for use of nonpublic information on the basis that the use is in the public interest.

§ 1506.504 Coercion.

No special Government employee shall use his or her Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to him or herself or another person, particularly

one with whom he or she has family, business, or financial ties.

§ 1506.505 Gifts, entertainment, and favors.

(a) Apart from the exceptions listed in paragraph (b) of this section, no special Government employee shall solicit or accept for him or herself or anyone else any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a person who:

(1) Has, or is seeking to obtain, contractual business or financial relations with OFI,

(2) Is regulated by OFI, or

(3) Has interests that may be substantially affected by the special Government employee's performance of his Government duty.

(b) Exceptions to the prohibitions of paragraph (a) of this section are:

(1) A special Government employee may accept food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting when, and only when, it is impracticable to pay for the food or refreshments (that is, when the special Government employee is unable to ascertain either the price of the food or refreshments or an appropriate person to pay for the food or refreshments), and

(2) A special Government employee may accept unsolicited promotional materials, such as pens, pencils, note pads, and calendars which are of nominal value.

§ 1506.506 Prohibited financial interests.

(a) No special Government employee shall have a financial interest that conflicts substantially with his or her Government duties and responsibilities.

(b) As applied, paragraph (a) of this section requires that no special Government employee shall own securities of any company (or its parent or affiliate):

(1) Which initially owns and produces gas to be transported through the Alaska Natural Gas Transportation System (the system);

(2) Which first purchases gas to be transported through the system;

(3) Which is involved in the ownership of the system; or

(4) Which is very substantially involved by contract in the construction or the design of the system.

(c) A list of the companies whose securities are prohibited under the criteria of paragraph (b) of this section shall be issued to each special Government employee upon entrance on duty. A list of these companies shall be distributed to all special Government employees annually and whenever change in circumstances requires modification of the list.

(d) In addition to the specific companies (meeting the criteria in paragraph (b) of this section and listed according to paragraph (c) of this section), there are other categories of companies to which the prohibition in paragraph (a) of this section may or may not apply. Special Government employees should consider the following factors:

(1) Ownership of the securities of other oil and gas companies is not at present prohibited. Special Government employees are advised, however, that if such other companies become involved in either the system or ownership of gas to be transported through the system, ownership of the securities of those companies will, at that time, become prohibited.

(2) As a general rule, the securities of those companies supplying goods or services for the planning or construction of the system are not prohibited from ownership by special Government employees. Nevertheless, certain of these companies could supply such a large share of goods or services for the system that special Government employees also may not own their securities.

(3) Special Government employees shall not own the securities of companies described in this subsection *only if and when* a specific company is included in the prohibited securities list provided in accordance with paragraph (c) of this section.

(e) If special Government employees have any questions or doubts regarding the ownership of securities, they should contact the ethics officer for advice.

(f) A special Government employee may obtain a waiver of the prohibitions, imposed by paragraphs (a) and (b) of this section, for a particular financial interest. In order to obtain a waiver, a special Government employee must fully disclose his financial interest to the ethics officer and to the Federal Inspector. If the ethics officer and the Federal Inspector determine that the disclosed financial interest is not so substantial as to be likely to affect the integrity of the special Government employee's services, they may grant a waiver.

(g) The prohibitions of paragraphs (a) and (b) of this section do not apply to mutual funds and investments in mutual savings banks. Further, if a special Government employee has continued to participate in a bona fide pension, retirement, group life, health, or accident insurance plan or other employee welfare or benefit plan that is maintained by a business or nonprofit organization of which he is a former employee, that financial interest is exempted from the prohibitions of paragraphs (a) and (b) of this section, except when the welfare or benefit plan is a profit-sharing or stock-bonus plan.

§ 1506.507 Miscellaneous statutory provisions.

Each special Government employee shall acquaint him or herself with the following statutory provisions which relate to Federal employee conduct. Copies, explanations, and interpretations of these provisions may be obtained from the ethics officer or his deputy.

(a) House Concurrent Resolution 175, 85th Congress, 2d session, 72 Stat. B12, the "Code of Ethics for Government Service".

(b) Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the special Government employee concerned.

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(d) The prohibition against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(e) The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

(f) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(g) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(h) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(i) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(j) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(k) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(l) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(m) The prohibition against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failure to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(n) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(o) The prohibitions against certain political activities in the "Hatch Act" (5 U.S.C. 7324–7327 and 18 U.S.C. 602, 603, 607, and 608).

(p) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

Subpart F—Public Financial Disclosure Requirements for Special Government Employees.

§ 1506.601 Special Government employees subject to public financial disclosure requirements.

Every special Government employee whose position is classified at GS–16 or above or who is paid at an equivalent rate shall annually file a 278 form, the public financial disclosure form.

§ 1506.602 Applicability of subpart C to special Government employees.

All of the provisions in Subpart C, concerning public financial disclosure by regular employees, shall apply equally to special Government employees. Therefore, every special Government employee who must file a public financial disclosure statement should familiarize him or herself with that subpart and look to it for guidance in meeting his or her public financial disclosure obligations.

§ 1506.603 Exception for special Government employees who are employed for less than sixty days.

(a) A special Government employee who must otherwise file a 278 form may be excepted from this obligation if, as determined by the ethics officer, the special Government employee is not reasonably expected to perform the duties of his or her office or position for more than sixty days in a calendar year.

(b) Notwithstanding paragraph (a) of this section, a special Government employee who is subject to public financial disclosure requirements and actually performs the duties of his or her position for more than sixty days in a calendar year shall file a 278 form within fifteen days after the sixty-first day of such employment, unless excepted under § 1506.604.

§ 1506.604 Special waiver of public disclosure requirement for special Government employees.

(a) In unusual circumstances, the Director, Office of Government Ethics, may grant a request for a waiver of any reporting requirement otherwise applicable for an individual who is reasonably expected to perform, or has performed, the duties of his of her office or position for less than one hundred and thirty days in a calendar year, but only if the Director determines that:

(1) Such individual is a special Government employee,

(2) Such individual is able to provide services specially needed by the Government,

(3) It is unlikely that the individual's outside employment or financial interests will create a conflict of interests, and

(4) Public financial disclosure by such individual is not necessary under the circumstances.

(b) In requesting a waiver pursuant to paragraph (a) of this section, the procedures of the OGE (5 CFR 734.205) shall be followed.

Subpart G—Confidential Disclosure By Special Government Employees

§ 1506.701 Special Government employees required to submit confidential statements of employment and financial interests.

(a) Unless subject to the public financial disclosure requirements of Subpart E of this part or unless exempted under paragraph (b) of this section, every special Government employee shall submit a confidential statement of employment and financial interests.

(b) The requirement of paragraph (a) of this section may be waived for a special Government employee who is neither a consultant nor an expert and whose duties are such that disclosure of interests is not necessary to protect Government integrity. For the purpose of this subsection, "consultant" and "expert" have the meanings given those terms by Chapter 304 of the Federal Personnel Manual.

§ 1506.702 Time and place for submission of confidential statements.

Confidential statements of employment and financial interests shall be submitted to the OFI ethics officer not later than the commencement of employment of the special Government employee. Special Government employees shall keep their statements current throughout their employment with the agency by the submission of supplementary statements.

§ 1506.703 Custody and review of confidential statements; remedial action.

The confidential statements of employment and financial interests filed by special Government employees shall be kept in custody and reviewed in the same manner as are the confidential statements of regular employees. Special Government employees shall be afforded the same procedural safeguards as are regular employees in any remedial action taken against them.

John T. Rhett,

Federal Inspector.

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Part VI

Department of Education

Office of Bilingual Education and Minority Language Affairs

Transition Program for Refugee Children

DEPARTMENT OF EDUCATION

Office of Bilingual Education and Minority Language Affairs

45 CFR Part 122b

Transition Program for Refugee Children

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Secretary of Education proposes regulations to implement the Transition Program for Refugee Children under the authority of the Refugee Act of 1980 (Pub. L. 96–212). This program provides assistance to meet the special educational needs of refugee children and to enhance their transition into American society.

DATES: Comments on these proposed regulations must be received on or before October 27, 1980.

ADDRESSES: Written comments should be addressed to Dr. Josue Gonzalez, U.S. Department of Education, 400 Maryland Avenue, S.W., 421 Reporters Building, Washington, D.C., 20202. Telephone: (202) 245–2600.

SUPPLEMENTARY INFORMATION:

Background

In addition to providing services to help refugee children make the transition into American society through formal schooling in the United States, this program is designed to provide more uniform Federal assistance for educational services for all refugees entering this country. To help achieve this goal, Congress has recently enacted the Refugee Act of 1980 to provide transitional assistance to refugees in the United States and uniform provisions for the effective resettlement and absorption of those refugees who are admitted. (Section 101 of the Immigration and Nationality Act as amended by the Refugee Act of 1980).

From preliminary discussions with school personnel, it seems that local educational agencies (LEAs) with large concentrations of eligible refugee children prefer to apply directly to the Federal Government for assistance. Representatives of these LEAs comment that direct grants are preferable because the funds are distributed faster and the program operates more efficiently because they do no have to work through an intermediary, the State educational agency (SEA). Representatives of these LEAs have also suggested that if direct grants were awarded to LEAs with concentration of eligible children, the SEA could better focus its efforts on meeting the needs in the rest of the State. LEAs with large concentrations of eligible children have complained that they receive the same level of attention and technical assistance as an LEA with very few children. They believes that direct grants will help correct the perceived imbalance.

On the other hand, representatives from SEAs believe that they are, and must continue to be, central actors in the Federal-State-local partnership. They believe that the needs of all eligible children in the State should be considered equally and that a centralized administration structure ensures this consideration. In addition, SEA representatives believe that the SEA can monitor and enforce the provisions of law and this program more efficiently and economically than the Federal Government. They comment that more efficient and economic program operation could direct more dollars and services to benefit refugee children.

In an effort to meet most effectively the requirements of the Act and the needs of both SEAs and LEAs, two types of State-administered formula grant projects are proposed:

(1) Under the State-administered subgrant project, SEAs award subgrants to LEAs with high concentrations or proportions of eligible children. The amount of each LEA subgrant is determined by applying the same weighting formula used to determine the amount of the total State grant. The Secretary invites comments on whether the LEAs should be required to develop comprehensive applications and compete for subgrants according to the provisions in § 122b.31. Under these provisions the amount of funds would be determined according to the per capita formula in § 122b.33 and increased or decreased according to the quality of the plan to serve refugee children.

(2) Under a State-administered direct services project, SEAs compete for funds to serve those eligible children who are not enrolled in an LEA receiving a State-administered formula subgrant. SEAs may arrange for, or provide direct services to these children. The Secretary particularly invites comments on whether LEAs that do not enroll sufficient numbers of refugee children to meet the eligibility criteria established for State-administered subgrants, should be eligible to receive a subgrant under a direct services project.

The amount of funds for each type of State-administered program will depend on the number of children in each of the two categories above. For example, if 80 percent of the children are enrolled in LEAs that receive subgrants, then 80 percent of the funds will be obligated through the State-administered subgrant program. The remaining 20 percent will assist State-administered direct services projects.

Section 412(d)(1) of the Act requires that funds must be used to provide "special educational services to refugee children in elementary and secondary schools where a demonstrated need has been shown." Experience with refugee children indicates that: (1) the lack of proficiency with the English language is the greatest barrier to a successful transition to school; (2) their special educational needs lessen over time; (3) older children (in secondary schools) seem to require longer, more intensive training to become proficient in English than younger children (in elementary schools); and (4) schools with concentrations of refugee children have greater needs than schools with fewer refugee children. Considering the above factors, the Secretary proposes to use a weighting formula to ensure that assistance is provided to schools where the greatest need exists. The formula gives greater weight (and more dollars) on behalf of eligible children who have arrived in this country more recently and who are enrolled in secondary schools. The Secretary particularly invites public comment on the formula, the exact weights, and whether the weights should be adjusted on an annual basis by publishing a notice in the Federal Register.

Because children are categorized according to enrollment in "elementary" or "secondary" grades, the Secretary wishes to receive comments on the advisability of establishing a uniform definition of these terms for purposes of this program only. The Secretary is considering defining "elementary" as including children in grades K–6 and "secondary" as including children in grades 7–12.

Finally, the Secretary may increase the amount of the formula grant to LEAs with a high proportion (over 4 percent refugee enrollment) but a low numerical concentration (under 40 eligible children) to bring the LEA funding level up to a minimum amount necessary to effectively provide special educational services to refugee children. It is expected that only small LEAs (those enrolling 1,000 or fewer children in total) will fall into this category.

Eligible Applicants

The Secretary believes that State and local educational agencies are uniquely qualified to provide needed special educational services to eligible refugee

children. In addition, the Secretary believes the SEAs are in the best position to ensure that high quality programs are established and maintained throughout the State. As a result, to comply with the provision of the Act that requires grants to be made to those agencies which the appropriate administering official determines best perform through the SEA and to limit applicant eligibility to SEAs.

Focus on English Language Instruction

Funds under this program shall primarily provide for special English language instruction. The lack of proficiency in English is regarded as the greatest barrier to the successful transition of refugees into the maintstream of American life. Although inservice training and guidance and counseling services are allowed under these regulations, the Secretary wishes to emphasize the importance of gaining proficiency in English. As a result, the Secretary may establish limits on the proportional amount of any grant or subgrant that may be used for purposes other than English language instruction. The Secretary invites comment on the procedures for announcing these limits, if any, by publishing an annual notice in the Federal Register.

Discretionary Grants for Development and Dissemination Projects

The Secretary may reserve an amount of each year's appropriation (approximately 5 percent) for projects of national significance to meet the special educational needs of refugee children. This program provides grants or contracts for projects such as curriculum development, national or regional bilingual instructional material centers, or evaluation. SEAs, LEAs, institutions of higher education, and other public or private nonprofit organizations may apply for these projects. These proposed regulations list the types of projects the Secretary may fund and identify selection criteria the Secretary uses to review applications. The Secretary invites comments on both types of projects by publishing an annual notice in the Federal Register.

Serving Eligible Children in Private Schools

These proposed regulations require that eligible children enrolled in nonprofit private schools be given the opportunity to receive appropriate services.

Serving Cuban and Haitian Immigrant Children

The Secretary of Education invites comments on the advisability of administering a program of educational services for Cuban and Haitian immigrant children that would be identical to the Transition Program for Refugee Children. Many Cuban and Haitian children who entered the United States during the spring and summer of 1980 are not considered refugees. Therefore, they are not eligible for services under the Transition Program. However, the Secretary may provide a separate program of identical services (under the Secretary's Discretionary Authority, Section 303 of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95–561) by changing the definition of "eligible child" to include these Cuban and Haitian immigrant children.

The reporting requirements contained in these proposed rules are subject to clearance by the OMB under the Federal Reports Act of 1942. The Department intends to submit these reporting requirements to the Director of the Office Management and Budget for clearance. The Department will inform affected educational agencies when OMB has cleared the requirements. The requirements shall not be effective until this clearance has been received.

Invitation To Comment

Interested parties are invited to submit comments and recommendations on these proposed regulations. Written comments must be sent to Dr. Josue Gonzalez, 400 Maryland Avenue, S.W. (Room 421 Reporters Building), Washington, D.C. 20202. Telephone (202) 245–2600. All comments received on or before 45 days after publication of these proposed regulations will be considered.

Comments submitted in response to these proposed regulations will be available for public inspection during and after the comment period in Room 421 Reporters Building, S.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except on Federal holidays.

Citation of Legal Authority

The reader will find a citation of statutory or other legal authority in parentheses on the line following each substantive section of the proposed regulations.

(Catalog of Federal Domestic Assistance Number—not assigned yet)

Dated: August 7, 1980.

Shirley M. Hufstedler,

Secretary of Education.

Dated: September 5, 1980.

Nathan J. Stark,

Acting Secretary of Health and Human Services.

The Secretary adds a new Part 122b to the Code of Federal Regulations as follows:

PART 122b—TRANSITION PROGRAM FOR REFUGEE CHILDREN

Subpart A—General

Sec.

122b.1 What is the transition program for refugee children?
122b.2 Who is eligible to apply for financial assistance?
122b.3 What regulations apply to this program?
122b.4 What definitions apply to this program?

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122b.10 What are the two types of State-administered projects?
122b.11 What is a development and dissemination project?

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122b.20 What are the application requirements for both types of State-administered projects?
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Subpart D—How is a Grant or Subgrant Made?

122b.30 How is a grant for a State-administered subgrant project made?
122b.31 How is a grant for a State-administered direct services project made?
122b.32 How is a subgrant under a State-administered subgrant project made?
122b.33 What formula will be used to distribute funds under both types of State-administered projects?
122b.34 What criteria does the Secretary use to select development and dissemination projects?

Subpart E—What Conditions Must Be Met by a Grantee?

122b.40 What are the restrictions on costs a grant or subgrant may support?
122b.41 To what extent must a grantee or subgrantee provide an opportunity for eligible private school students to participate in a project?

Authority: The Immigration and Nationality Act as amended by the Refugee Act of 1980, Pub. L. 96–212.

Subpart A—General

§ 122b.1 What is the transition program for refugee children?

The program provides Federal financial assistance for the development and implementation of State-administered subgrant projects, State-administered direct service projects, and discretionary development and demonstration projects to provide educational services to meet the special educational needs of eligible refugee children who are enrolled in public and nonprofit private elementary or secondary schools.

(Section 412(d)(1) of the Immigration and Nationality Act, as amended)

§ 122b.2 Who is eligible to apply for financial assistance?

(a) *Direct grants.* The following are eligible to apply for direct grants:

(1) For State-administered projects, only State educational agencies (SEAs).

(2) For development and dissemination projects, SEAs, local educational agencies (LEAs), institutions of higher education (IHEs), and other nonprofit private or public agencies and organizations.

(b)(1) *Subgrants under a State-administered subgrant project.* Only an LEA or consortium of LEAs meeting *either* of the requirements in paragraph (b)(1)(i) or (ii) of this section may apply to the State for subgrants under the State-administered program:

(i) *Concentration.* At least 40 eligible children are enrolled in public and private nonprofit schools in the area served by the LEA or consortium of LEAs.

(ii) *Proportion.* The eligible children enrolled in public and private nonprofit elementary and secondary schools in the entire area served by the LEA or consortium of LEAs comprise at least 1 percent of the total enrollment in that area.

(2) For purposes of determining eligibility to apply under paragraphs (b)(1)(i) or (ii) of this section, an LEA or each LEA in an applicant consortium, counts the number of eligible children according to the requirements of § 122b.20(c) of this part.

(c) *Subgrants, contracts, or cooperative arrangements under a State-administered direct services project.* Public and private nonprofit agencies, organizations, and institutions (including IHEs) are eligible to apply.

(Section 412(d)(1) of the Immigration and Nationality Act, as amended)

§ 122b.3 What regulations apply to this program?

(a) The following regulations apply to this program:

(1) The regulations in this Part 122b.

(2) Except as otherwise provided in this part (122b), the provisions of the Education Division General Administrative Regulations (EDGAR) 45 CFR Part 100a (Direct Grant Programs), Part 100b (State-Administered Programs), and Part 100c (Definitions).

(b) 45 CFR 100b.105 (Governor's review of plan) does not apply.

(20 U.S.C. 3474(a))

§ 122b.4 What definitions apply to this program?

(a) The following definitions are specific to these regulations:

"Act" means the Refugee Act of 1980 (Pub. L. 96–212), as amended.

"Eligible children" means children who are—

(1) Admitted into the United States as refugees under the authority of the Immigration and Nationality Act §§ 203(a)(7) (repealed), 207 (repealed), 208 [8 U.S.C. §§ 1153(a)(7) (repealed), 1157 (repealed), 1158]; or

(2) Paroled into the United States as refugees under the authority of the Immigration and Nationality Act § 212(d)(5) [8 U.S.C. 1182(5)]; or

(3) Allowed to remain in the United States as refugees because their deportation has been withheld under the authority of the Immigration and Nationality Act § 243(h) [8 U.S.C. 1253(h)]; or

(4) Granted asylum in the United States as refugees under the authority of 8 CFR Part 108; or

(5) Admitted into the United States under the authority of the refugee Act of 1980, Pub. L. 96–212; and

(6) Who are within the age limits for which the applicable State is required or permitted under State law to provide free public elementary and secondary school education for students in kindergarten through grade 12.

"State" means any 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.

(b) The following definitions in EDGAR (45 CFR Part 100c) apply to these regulations:

Applicant
Application
Award
Budget
Local educational agency (LEA)
Nonprofit
Private
Project
State educational agency (SEA)

(20 U.S.C. 3474(a))

(c) The following definitions in the Elementary and Secondary Education Act of 1965, as amended, apply to these regulations:

Construction
Elementary school
Secondary school

(20 U.S.C. 3474(a))

Subpart B—What Kind of Projects Are Assisted Under This Program?

§ 122b.10 What are the two types of State-administered projects?

(a) *Subgrant projects.* Under a State-administered project an SEA provides subgrants to each eligible LEA in the State.

(1) Subgrants shall primarily be used to provide special English language instruction and bilingual materials. This may include programs such as bilingual education, English as a second language, or English for speakers of other languages.

(2) In addition, subgrants may be used to provide—

(i) Inservice training for educational personnel who work with eligible children;

(ii) Counseling and guidance services to eligible children including referral to appropriate social service and health agencies; and

(iii) Testing to determine the educational needs of eligible children.

(b) *Direct service projects.* Through cooperative arrangements, contracts, or subgrants an SEA arranges for, or provides, direct services to LEAs that do not receive subgrants. These services must focus primarily on English language instruction and may include technical assistance, itinerant consultants, teachers, or aides, inservice training, or coordination with local and State social service and health programs that also serve eligible children and their parents.

(Section 412(a)(1)(B); 412(a)(6)(B); 412(d)(1) of the Immigration and Nationality Act, as amended)

§ 122b.11 What is a development and dissemination project?

(a) Development and dissemination projects—

(1) Develop innovative methods, strategies, curricula, instructional materials, instructional programs, personnel development, or other techniques to meet the special educational needs of eligible children in general or of eligible children from particular areas of the world;

(2) Examine the extent to which various projects effectively meet the special educational needs of eligible children; or

(3) Disseminate, through national or regional centers, curriculum materials or exemplary practices that meet the special educational needs of eligible children.

(b) The Secretary may, through a notice published in the Federal Register, select specific activities for funding from among those listed in paragraph (a) of this section to respond to the changing national needs for educating eligible children in general or for educating eligible children from particular areas of the world.

(Section 412(d)(1) of the Immigration and Nationality Act, as amended, and 20 U.S.C. 3474(a))

Subpart C—How To Apply for a Grant or Subgrant

§ 122b.20 What are the application requirements for grants under both types of State-administered projects?

(a) *Subgrant project.* An applicant (SEA) for a State-administered subgrant project shall submit an application containing all of the following:

(1) The information required by the Secretary in the application notice published in the Federal Register.

(2) The information required in the application package.

(3) A brief description of the objectives of the project, including a description of the applicant's ability to perform the services specified in the application.

(4) An assurance that subgrant awards to LEAs or a consortium of LEA's who are eligible under § 122b.2(b) will be made within 60 days of the receipt of the grant award.

(b) *Direct services project.* In addition to the information required in paragraph (a) of this section, the application—in a separate section of the application—shall address the criteria in § 122b.31(c), providing a clear description of the services the SEA provides to LEAs that enroll eligible children but do not receive a subgrant under the subgrant projects in paragraph (a) of this section.

(c) *Child count.* The application must also report the following:

(1) The number of eligible children, identified by country of origin, enrolled in each LEA, on a date specified by the Secretary through a notice published in the Federal Register, in both public and nonprofit private schools in the area served by the applicant who have been admitted into the United States—

(i) less than 1 year;

(ii) 1 to 2 years;

(iii) 2 to 3 years;

(iv) 3 to 4 years; or

(v) more than 4 years.

Note.—The child count may not include estimates of the number of eligible refugee children who are not enrolled in any school on the child count date, but are expected to enroll in the future.

(2) For each category in paragraph (c)(1) of this section, the number of children enrolled at the elementary school level and the number enrolled at the secondary school level.

(Section 412(a)(4) of the Immigration and Nationality Act, as amended, and 20 U.S.C. 3474(a))

§ 122b.21 What are the application requirements for development and dissemination projects?

An applicant for a development and dissemination project grant must address the following:

(a) An effective management plan that ensures proper and efficient administration of the project.

(b) A clear description of—

(1) The objectives of the project; and

(2) The methods, techniques, or practices that will be used to meet the stated objectives.

(c) A clear description of how the applicant will use its resources and project personnel to achieve the stated objectives.

(d) A clear description of the budget for the project. This description must show that costs are reasonable in relation to the objectives of the project and can adequately support project activities.

(e) A description of the applicant's ability to meet the objectives of the proposed project.

(Section 412(a)(4) of the Immigration and Nationality Act, as amended, and 20 U.S.C. 3474(a))

§ 122b.22 What are the application requirements for a subgrant under a State-administered subgrant project?

(a) An applicant for a subgrant (LEA) under a State-administered subgrant project shall submit an application containing the information required by the SEA contained in the SEA's application for a State-administered subject subgrant project.

(b) LEAs desiring to apply as a consortium must notify the SEA of their intent to apply as a consortium at the same time that they submit their child count report to the SEA.

(20 U.S.C. 3474(a))

Subpart D—How Is a Grant or Subgrant Made?

§ 122b.30 How is a grant for a State-administered subgrant project made?

(a) The Secretary reviews each application to ensure that the objectives are reasonable and that the applicant is able to provide the services described.

(b) The amount of a grant for a State-administered subgrant project depends on three factors:

(1) The number of eligible children enrolled in eligible LEAs in the State who will be served by the project.

(2) How recently the eligible children entered the United States.

(3) The grade placement of eligible children in school.

(c) The Secretary uses a formula to award grants to the SEA by weighting the factors in paragraph (b) (2) and (3) of this section and multiplying by the number of children counted in (b)(1). (§ 122b.33 describes the formula.)

(Section 412(a)(4) of the Immigration and Nationality Act, as amended)

§ 122b.31 How is a grant for a State-administered direct services project made?

(a) The amount of a grant for a State-administered direct services project depends on two factors:

(1) The number of eligible children enrolled in LEAs in the State that are not assisted through State-administered subgrants weighted according to the procedure in § 122b.30(b).

(2) The quality of the SEA's plan to arrange for, or provide, direct services to LEAs that do not receive State-administered subgrants.

(b) The amount of the SEA grant for a direct services project is estimated by the formula in § 122b.33 and is increased or decreased according to the quality of the SEA's application to provide direct services.

(c) The Secretary uses the following criteria to evaluate the quality of the SEA's application.

(3) *Plan of operation and coordination.* (30 points)

The Secretary looks for information that shows an effective plan of management that ensures—

(i) Proper and efficient administration of the project; and

(ii) Effective and close coordination by the applicant with other Federal, State, and local programs that serve refugee or bilingual children.

(2) *Budget and cost effectiveness.* (10 points)

The Secretary looks for information that shows that the project has an adequate budget and is cost effective.

(3) *Evaluation plan.* (10 points)

The Secretary looks for information that shows that the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce quantifiable data.

(4) *Adequacy of resources.* (20 points)

The Secretary looks for information that shows that the applicant plans to devote adequate resources to the project.

(5) *Problem addressed. (30 points)*

The Secretary looks for information that shows the extent to which—

(i) The educational problems of eligible children are met; and

(ii) The project addresses needs that cannot be, or are not being, effectively addressed by State or local efforts.

(Section 412(d)(1) of the Immigration and Nationality Act, as amended, and 20 U.S.C. 3474(a))

§ 122b.32 How is a subgrant under a State-administered subgrant project made?

(a) After subtracting the funds used for State-administration, the SEA shall subgrant all remaining funds—at least 95 percent of the total grant—to eligible LEAs.

(b)(1) The amount each LEA receives is determined by the Secretary using the formula in § 122b.33 of this part.

(2)(i) The Secretary increase by up to 100 percent the amount that an LEA receives under the formula in § 122b.33 if more than 4 percent of the enrollment, in the public and private nonprofit elementary and secondary schools in the area served by the LEA, consists of eligible children and if the LEA or consortium of LEAs does not qualify because of a "concentration" of eligible children under § 122b.2(b)(1)(i) of this part.

(ii) The Secretary adjusts the amount of a grant using the procedures in paragraph (b)(2)(i) of this section if adjustment is necessary to ensure that LEAs with high proportions but low concentrations of refuge children receive enough funds to provide meaningful special educational services to these children.

(Section 412(d)(1) of the Immigration and Nationality Act, as amended, and 20 U.S.C. 3474(a))

§ 122b.33 What formula will be used to distribute funds under both types of State-administered projects?

(a)(1) The most weight will be given to eligible children who have been admitted into the United States for less than one year on the date the child count was made.

(2) Eligible children in paragraph (a)(1) of this section enrolled in elementary and secondary grades will be weighted equally.

(b)(1) Less weight will be given for eligible children who have been admitted into the United States for more than one year on the date the child count was made.

(2) Eligible children in paragraph (b)(1) of this section enrolled in secondary schools will be given more weight than eligible children enrolled in elementary schools.

(c)(1) The Secretary uses the weighting factors in paragraph (d) of this section.

(2) The Secretary may increase or decrease any weighting factor by one or two points on an annual basis to respond to changing needs of eligible refugee children.

(3) The Secretary announces the weighting factors each year through publication of a Notice in the **Federal Register.**

(d) Weighting factors for the fund distribution formula are presented in the following table:

Recency of arrival in the United States (in years)	Weighting factors by school level	
	Elementary	Secondary
Less than 1	10	10
1 to 2	7	9
2 to 3	4	7
3 to 4	1	4
More than 4	0	1

(e) To determine the amount of a grant—

(1) The applicant's child count for each recency of arrival category is multiplied by the weighting factor for that category;

(2) The products for each category are added; and

(3) The sum of the products are multiplied by the weighted per pupil allocation.

Example: The following table presents a computation for a hypothetical LEA based on the weighting factors in paragraph (d) of this section:

Recency of arrival in the United States (in years)	a Number of eligible children	b Sample weighting factor	Product of col. a times b
Enrolled in Elementary Grades			
0 to 1	10	10	100
1 to 2	10	7	70
2 to 3	5	4	20
3 to 4	0	1	0
More than 4	0	0	0
Enrolled in Secondary Grades			
0 to 1	10	10	100
1 to 2	10	9	90
2 to 3	5	7	35
3 to 4	0	4	0
More than 4	0	1	0
Total	50		415

(4) In the example above, if the weighted per pupil allocation is $50, the grant award would be $20,750. As an example of how much would be paid on behalf of an individual student, if the weighted per pupil allocation is $50, the payment for a student who has been in this country less than a year would be $500; for a secondary grade student who has been in this country between 3 and 4 years, the payment would be $200.

(Section 412(d) of the Immigration and Nationality Act, as amended, and 20 U.S.C. 3474(a))

§ 122b.34 What criteria does the Secretary use to select development and dissemination projects?

The Secretary uses the following selection criteria. The relative importance of each criterion is indicated next to the heading of that criterion.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program; and

(iv) The way the applicant plans to use its resources and personnel to achieve each objective.

(b) *Quality of key personnel.* (7 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (2) (i) and (ii) plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory

employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

Note.—The qualifications of project personnel should relate to the population served by the project. For example, when reviewing projects that serve Indochinese refugee children, the Secretary looks for project personnel who have extensive experience or expertise in the culture and language of Indochinese populations.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (4 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (Cross-reference—See 45 CFR 100a.590 Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objectives and produce that are quantifiable.

(e) *Adequacy of resources.* (4 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to denote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Problems addressed.* (20 points)

(1) The Secretary looks for information that shows the extent to which educational problems of national significance are addressed by the project.

(2) The Secretary looks for information that shows the extent to which the project addresses needs that cannot be, or are not being, effectively addressed by State or local efforts.

(g) *Innovativeness.* (20 points)

The Secretary looks for information that shows the extent to which the project involves techniques that are new nationally but that build on current knowledge and research.

(h) *Scope.* (10 points)

The Secretary looks for information that shows the extent to which the applicant proposes a project that—

(1) Is national or regional in scope; and

(2) Provides services or is likely to improve educational programs for eligible children throughout the area served.

(20 U.S.C. 3474(a))

Subpart E—What Conditions Must Be Met by a Grantee?

§ 122b.40 What are the restrictions on costs a grant or subgrant may support?

(a) Funds may not be used under this Transition Program for—

(1) Construction, repair, remodeling, or alteration of facilities or sites;

(2) Payments of stipends to participants in inservice training or other workshops including costs of participant travel, meals, or lodging associated with this training; or

(3) Payments for the provision of health or social services.

(b)(1) No more than 15 percent of a grant or subgrant may be used for costs of inservice training and guidance and counseling services described in § 122b.10(a)(2)(i), (ii) and (b).

(2)(i) In a given year, the Secretary may increase or decrease the 15 percent limit in paragraph (b)(1) of this section, if the Secretary determines that the need for these services is proportionately greater or less than the need to provide for special English language instruction.

(ii) To make this determination, the Secretary considers evaluations of ongoing projects under this program, and recommendations from persons experienced in refugee educational needs.

(iii) The Secretary announces any change in the 15 percent limit through publication of a notice in the Federal Register.

(c) Allowable costs are subject to the applicable cost principles in 45 CFR Part 74.

(d)(1) An SEA may use 5 percent of the total funds it receives under the State-administered subgrant project for proper and efficient administration.

(2) The total amount of funds used for costs in paragraph (d)(1) of this section may not exceed $200,000.

(3) The Secretary determines the amount of funds an SEA uses for administration of a direct services project on a case-by-case basis.

(e) An SEA may not provide a subgrant to any LEA or consortium of LEAs not meeting the eligibility criteria in § 122b.2(b) of this part.

(Section 412(d)(1) of the Immigration and Nationality Act, as amended, and 20 U.S.C. 3474(a))

§ 122b.41 To what extent must a grantee or subgrantee provide an opportunity for eligible private school students to participate in a project?

If the grantee or subgrantee is an SEA or LEA, the grantee or subgrantee shall provide opportunities for nonprofit private school children to participate in the project. EDGAR establishes the rules for this participation.

(Cross-reference—See 45 CFR 100a.650 Participation of students enrolled in private schools)

(20 U.S.C. 3474(a))

[FR Doc. 80-27968 Filed 9-10-80; 8:45 am]

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federal register

Thursday
September 11, 1980

Part VII

Department of Housing and Urban Development

Condominium Ownership Mortgage Insurance; Existing Multifamily Housing Demonstration

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner; Office of Assistant Secretary for Policy Development and Research

24 CFR Parts 221, 234, and 235

[Docket No. R-80-858]

Condominium Ownership Mortgage Insurance—Existing Multifamily Housing Demonstration

AGENCY: U.S. Department of Housing and Urban Development.

ACTION: Interim rule.

SUMMARY: The Department of Housing and Urban Development, under its Title V research authorities, in conducting a Demonstration to develop and test new and improved mechanisms for the purchase and/or refinancing of existing multifamily housing projects, to help preserve such projects for continued occupancy by low, moderate, and middle income families. This regulation is in support of that Demonstration. It implements the policy and authority of Section 223(f) of the National Housing Act, as amended, pursuant to Section 234 to permit condominium conversions of existing multifamily projects as a part of the Demonstration. Parts 221 and 235 are also amended, to permit their use in support of this new application of the Section 234 authority. This will permit the insurance of mortgage loans made in connection with the purchase or refinancing of existing, conventionally-financed, multifamily, rental projects, for the purpose of converting them to condominium ownership. It will also permit Section 235 mortgage interest subsidies, in such conversions, for the single-family condominium unit mortgages, where needed to allow low and moderate income families to remain in units they had rented before the conversion.

The Demonstration is limited to a total of not more than thirty (30) projects located in not more than six (6) metropolitan areas of the country. Projects will be selected from applications which meet the purposes of the Demonstration to test a range of alternate financing mechanisms, under varying project and tenant circumstances, and from different locales, and which also meet requirements for project quality, underwriting soundness, and fairness of conversion price to the existing occupants. This rule supports only one alternative of the Demonstration. Alternatives involving amendments to other Parts of the Regulations are being published separately. Administrative procedures for the Demonstration, and invitations to submit applications to it, will appear as Notices in subsequent issues of the Federal Register.

EFFECTIVE DATE: October 14, 1980. Comments due: November 10, 1980.

FOR FURTHER INFORMATION CONTACT: Michael A. Stegman, Deputy Assistant Secretary for Research, Department of Housing and Urban Development, Washington, D.C. 20410 (202) 755-5561, or Alexander J. Pires, Deputy Assistant Secretary for Multifamily Housing, Department of Housing and Urban Development, Washington, D.C. 20410 (202) 755-6495. The telephone numbers are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Demonstration will test a number of alternative purchase or refinancing mechanisms for existing multifamily housing. Among them is the implementation of the authority of Section 223(f), together with Section 235 interest subsidies where needed, to expand Section 234, condominium-ownership opportunities for those with low and moderate incomes. Section 221 will also be made available for the blanket project mortgages for the condominiums, because of its greater responsiveness to the needs of low and moderate income families. The availability of this package of condominium ownership mortgage insurance and interest subsidies will offer tenants who could not otherwise afford the purchase of a condominium the advantages of long term financing, feasible down payment requirements, and moderate monthly payments. Under existing regulations, the opportunities for condominium ownership have principally been available with new construction and substantial rehabilitation, and under project mortgages previously insured by the FHA. By this Interim Rule, the Department will test the usefulness of extending condominium homeownership opportunities to the thousands of conventionally-financed, multifamily dwelling units whose owners are interested in conversion but have lacked the means by which they could make their satisfactorily maintained structures available for purchase by existing tenants of low, moderate, or middle income. Such refinancing is also seen as a possible additional tool to permit tenants-in-residence to remain in neighborhoods experiencing upgrading and displacement.

The Notice of Invitation for Applications for this segment of the Demonstration will include selection factors which indicate a preference for projects in which the displacement of existing tenants is minimized and relocation assistance is available to those tenants who choose not to remain after conversion.

The Secretary has determined that prior notice and public procedure are not necessary, are contrary to the public interest, and good cause exists for making this regulation effective as soon as possible because: (1) HUD standards for condominium ownership and single-family mortgage interest subsidies are well established, and those standards will be applied in this Demonstration; (2) the use of Section 223(f) has been effectively demonstrated with a related multifamily program; (3) the legislative direction, as set forth in a House Report in connection with refinancing (H.R. Rep. No. 96-658, 96th Congress, 1st Session 21-34, 1979) clearly encourages the Demonstration; and (4) the application of this rule will only be for a limited number of demonstration projects. The Department has determined that an Environmental Impact Statement is not required with respect to this Interim Rule. A copy of the Environmental Finding of Inapplicability is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410.

This rule was listed as item number S-5-79 on the Department's semi-annual agenda of significant rules, pursuant to Executive Order 12044. The effective date shall be October 14, 1980.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

I. Accordingly, Part 234 is amended as shown below.

Subpart A—Eligibility Requirements—Individually Owned Units

1. The Table of Contents is amended to include a new section numbered 234.69a, and titled "Eligibility of Mortgages for Individually Owned Condominium Units for Existing Multifamily Housing Demonstration"

2. The following new section is added and designated as § 234.69a:

§ 234.69a Eligibility of mortgages for individually owned condominium units for existing multifamily housing demonstration.

(a) *Eligibility.* Mortgages for individually owned condominium units in a project that has been designated to be part of the Existing Multifamily

Housing Demonstration may be insured under this Part.

(b) *Pre-Commitment Approval.* Before a commitment to insure a mortgage pursuant to this section can be issued by the Manager of the appropriate HUD office, written approval shall be given by the Assistant Secretary for Policy Development and Research and the Assistant Secretary for Housing/Federal Housing Commissioner, or their central office designees. To speed processing, such approval may be given for groups of commitments in the same project, provided that separate and individual approval is given for any application for which a Demonstration Waiver has been sought under paragraph (c) of this section.

(c) *Demonstration Waivers.* Non-statutory, prospective requirements for individual units insured under this section may be waived, modified, or added to, upon a joint finding by the Assistant Secretary for Policy Development and Research and the Assistant Secretary for Housing/Federal Housing Commissioner that it is necessary or appropriate to do so in a particular instance or instances to serve the purposes of the Existing Multifamily Housing Demonstration. Notice of any such waivers, modifications, or additions shall be published in the **Federal Register.**

(d) *Sunset Provision.* Authority to insure mortgages under this section shall expire on March 15, 1984, or upon endorsement of the last individual unit mortgage of the last project in the Demonstration, whichever occurs sooner.

Subpart C—Eligibility Requirements—Projects—Conversion Individual Sales Units

1. The Table of Contents is amended to include a new Section numbered 234.538, and titled "Eligibility of Condominium Mortgages for Existing Multifamily Housing Demonstration"

2. The following new section is added and designated § 234.538:

§ 234.538 Eligibility of condominium ownership mortgages for existing multifamily housing demonstration.

(a) *Eligibility:* Notwithstanding the generally applicable requirement that mortgages insured under this Part be limited to projects to be constructed or substantially rehabilitated after commitment for mortgage insurance, the exception of § 207.32a of this title to mortgages insured under Section 234 of the National Housing Act, set forth in § 234.501, is not applicable to an existing multifamily housing project that has been designated to be part of the Existing Multifamily Housing Demonstration.

The blanket mortgages for Demonstration projects may be insured in accordance with the alternative in this part, per the exception noted above, or in accordance with § 221.560c of this title. A single-family unit mortgage insured pursuant to § 234.69a shall meet all other requirements for condominium ownership insured pursuant to this Subpart, or, where mortgage interest subsidies are made available, the superseding provisions of Part 235 of this title. However, there may also be waivers, modifications, or additions to the above requirements to accommodate the purposes of the Demonstration, as provided under paragraph (e) of this section.

(b) *Limited Applicability.* The number of projects which may be insured under this or any other section, as part of the Demonstration, shall be limited to a total of not more than thirty (30) projects, located in not more than six (6) metropolitan areas of the country.

(c) *Pre-Commitment Approval.* Before a commitment to insure a mortgage pursuant to this section can be issued by the Manager of the appropriate HUD office, the application shall be reviewed and written approval given by the Assistant Secretary for Policy Development and Research and the Assistant Secretary for Housing/Federal Housing Commissioner, or their central office designees.

(d) *Administrative Procedures for Demonstration.* Notice(s) will be published in the **Federal Register** concerning the administrative procedures for the Demonstration, including, but not limited to: invitation to submit applications, eligibility, processing standards, underwriting criteria, and other requirements of the Demonstration.

(e) *Demonstration Waivers.* Non-statutory, prospective requirements for projects or mortgages insured or otherwise assisted under this section may be waived, modified, or added to, upon a joint finding by the Assistant Secretary for Policy Development and Research and the Assistant Secretary for Housing/Federal Housing Commissioner that it is necessary or appropriate to do so in a particular instance or instances to serve the purposes of the Existing Multifamily Housing Demonstration. Notice of any such waivers, modifications, or additions shall be published in the **Federal Register.**

(f) *Sunset provision.* Authority to insure mortgages under this section shall expire on March 15, 1984, or upon endorsement of the thirtieth project in the Demonstration, as stated in paragraph (b) of this section, whichever occurs sooner.

PART 221—LOW-COST AND MODERATE-INCOME MORTGAGE INSURANCE

II. Accordingly, Part 221 is amended as shown below.

Subpart C—Eligibility Requirements—Moderate Income Projects

1. The Table of Contents is amended to include a new Section numbered 221.560c, and titled "Eligibility of Condominium Blanket Mortgages for Existing Multifamily Housing Demonstration."

2. The following new section is added and designated as § 221.560c:

§ 221.560c Eligibility of condominium blanket mortgages for existing multifamily housing demonstration.

(a) *Eligibility.* Notwithstanding the generally applicable requirement that mortgages insured under this Part be limited to projects to be constructed or substantially rehabilitated after commitment for mortgage insurance, a blanket mortgage executed in connection with the purchase or refinancing for condominium ownership of an existing multifamily housing project that has been designated to be part of the Existing Multifamily Housing Demonstration may be insured under this part pursuant to Section 223(f) of the Act. A mortgage insured under this section shall meet all other requirements of this part, except for such waivers or modifications as may be made to accommodate the purposes of the Demonstration under § 221.560c(c) below.

(b) *Limited Applicability.* The number of projects which may be insured under this or any other section, as part of the Demonstration, shall be limited to a total of not more than thirty (30) projects, located in not more than six (6) metropolitan areas of the country.

(c) *Demonstration Waivers.* Non-statutory, prospective requirements for projects insured under this section may be waived, modified, or added to, upon a joint finding by the Assistant Secretary for Policy Development and Research and the Assistant Secretary for Housing/Federal Housing Commissioner that it is necessary or appropriate to do so in a particular instance or instances to serve the purposes of the Existing Multifamily Housing Demonstration. Notice of any such waivers, modifications, or additions shall be published in the **Federal Register.**

(d) *Sunset Provision.* Authority to insure mortgages under this section shall expire on March 15, 1984, or upon endorsement of the thirtieth project in the Demonstration, per § 221.560c(b) above, whichever occurs sooner.

PART 235—MORTGAGE INSURANCE AND ASSISTANT PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

III. Accordingly, Part 235 is amended as shown below.

Subpart A—Eligibility Requirements—Homes for Lower Income Families

1. The Table of Contents is amended to include a new section numbered 235.15d, and titled "Eligibility of Condominium Mortgage Assistance Payments for Existing Multifamily Housing Demonstration."

2. The following new section is added and designated as § 235.15d:

§ 235.15d Eligibility of condominium mortgage assistance payments for existing multifamily housing demonstration.

(a) *Eligibility.* Notwithstanding any other provisions of this Part, existing multifamily housing projects which have been designated to be part of the Existing Multifamily Housing Demonstration, and which are further designated for condominium conversion, under part 234, § 234.538, may have converted single-family dwelling units which are eligible for monthly mortgage assistance payments, provided the mortgagors are otherwise eligible under assistance provisions set forth in this part, and subject to the limitations provided under paragraph (b) of this section.

(b) *Limited Applicability.* Condominium unit monthly mortgage assistance payments, pursuant to this section, shall be limited to those Demonstration project post-conversion dwelling units which are occupied by an eligible mortgagor who had been a tenant of the project for at least six (6) months immediately prior to converison, or by an eligible mortgagor who is about to be, or who has recently been, displaced by conversion from a dwelling in the immediate, contiguous neighborhood of the Demonstration project.

(c) *Demonstration Waivers.* Non-statutory, prospective requirements pertaining to assistance provided under this section may be waived, modified, or added to, upon a joint finding by the Assistant Secretary for Policy Development and Research and the Assistant Secretary for Housing/Federal Housing Commissioner that it is necessary or appropriate to do so in a particular instance or instances to serve the purposes of the Existing Multifamily Housing Demonstration. Notice of any such waiver, modifications, or additions shall be published in the **Federal Register.**

(d) *Sunset Provision.* Authority to provide assistance under this section shall expire on March 15, 1984, or upon execution of the last contract for assistance payments in the last project in the Demonstration, whichever occurs sooner.

(Title V of Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–1 *et seq.*); Sec. 223(f) of National Housing Act (12 U.S.C. 1715n(f)); Sec. 7(d) of Department of HUD Act (42 U.S.C. 3535(d))

Issued at Washington, D.C., August 18, 1980.

Clyde McHenry,

Deputy Assistant Secretary for Housing/ Federal Housing Commissioner.

Donna E. Shalala,

Assistant Secretary for Policy Development and Research.

[FR Doc. 80–28079 Filed 9–10–80; 8:45 am]

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federal register

Thursday
September 11, 1980

Part VIII

Department of Housing and Urban Development

Annual Contributions for Operating Subsidy; Performance Funding System

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 890

[Docket No. R-80-814]

Annual Contributions for Operating Subsidy; Performance Funding System

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: HUD is issuing a Final Rule amending 24 CFR Part 890 establishing a new procedure for the calculation of the allowable utilities consumption level used in the Performance Funding System (PFS). The new procedure provides a method of adjusting the Public Housing Agency's (PHA's) level of utilities consumption based upon a comparison of average annual heating degree days over a period of 30 years (1941–1970) with the heating degree days of a Fixed Base Period.

EFFECTIVE DATE: October 1, 1980.

FOR FURTHER INFORMATION CONTACT: Milton Slifkin, Financial Management Procedures Branch, Office of Public Housing, HUD, 451 7th Street SW, Washington, D.C. 20410, (202) 426–0744 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: The Department published on September 6, 1977 (42 FR 44550) an Interim Rule dealing with the Utilities Base Consumption Period (Base Period) used to calculate the Utilities Expense Level (UEL) for Public Housing Agency (PHA) fiscal years beginning on or after July 1, 1977. The Interim Rule amended HUD policy which provided that the UEL would be calculated by using the average consumption over a rolling 36-month period ending six months prior to the PHA's requested Budget Year. However, due to the severely cold winter of 1976–1977, HUD determined that it would be improper to include the impact of that winter in the utilities Base Period because of its disproportionate effect on the UEL. Therefore, the Interim Rule, published September 6, 1977, stated that the Base Period for PHA fiscal years beginning July 1, 1977, and thereafter would exclude that winter.

HUD stated in the preamble to the Interim Rule that it anticipated the introduction of an additional adjustment, dependent upon fund availability, which would be applied to the Fixed Base Period as defined in the Interim Rule.

On May 27, 1980, HUD published a proposed rule (45 FR 35776) revising the Interim Rule and establishing a 30-Year Heating Degree Day System (30–HDDS), which includes the additional adjustment. The purpose of this adjustment is to develop an allowable utilities consumption level based upon a long-term period which reflects more closely a normal level of consumption, and to provide PHAs with a stable projection of utility consumption. This adjustment (Change Factor) is based on the ratio of the average annual heating degree days (HDD) for the 30-year period from 1941 through 1970 to the HDD of the PHA's Fixed Base Period (30-year average HDD divided by the Fixed Base Period average HDD). No PHA will be required to use a Change Factor of less than 1.000. All Change Factors less than 1.000 have been rounded to 1.000 by HUD. The 30-year period is considered to be sufficiently long so as to level out any abnormalities that may have occurred in a particular year(s).

The proposed rule also revised the percentages by which HUD and PHAs share the funding responsibilities for excess utilities consumption and the benefits of the savings of utilities consumption. Under the proposed rule, HUD and PHAs would share equally in any excess cost and also in any savings. The sharing would be 50 percent each. The previous consumption adjustments were shared 75 percent by HUD and 25 percent by PHAs.

Comments on the proposed rule were invited until July 28, 1980. Comments were received from seven organizations. Each comment was carefully considered. The following is a summary of the principal comments received:

1. Four comments addressed the change in the percentage by which excess or under consumption is adjusted. The percentage was changed from the previous 75/25 to 50/50 cost sharing between HUD and the PHA. The general theme of the comments was that the PHAs have little or no control over excessive usage and, therefore, should not have to share in the cost incurred due to excess consumption. The Department believes the change in the adjustment percentage is justified in light of the National policy to conserve energy. PHAs have the greatest opportunities to effectuate reductions in the use of utilities and to encourage tenants to do the same. The Department believes that a 50/50 sharing will discourage excessive usage and will provide a greater incentive for savings and promote national conservation objectives.

2. It was suggested that the dollar value of the savings of utilities consumption that would be shared by HUD should be made available to the conserving PHA to be used to fund costs beyond its control. At the present time, these funds could not be so used because they are now utilized to fund regular operating subsidy eligibility. However, if sufficient savings were experienced by PHAs and the portion of the savings shared by HUD resulted in operating subsidy funds in excess of HUD's other subsidy needs in any fiscal year, this excess would be used on a national basis in accordance with Section 890.108(d) of the PFS regulations for payment of costs beyond the control of the PHAs.

3. One commenter requested that the consumption of non-heating utilities of the Fixed Base Period be updated and adjusted by a Change Factor. This approach had been considered by the Department prior to the publishing of the Proposed Rule. it was decided that because of the wide diversity in energy usage, it would not be feasible to develop one general system that would be applicable to the entire program. More importantly, it was determined that the amount of increase in the use of non-heating utilities was generally a relatively minor amount that the Department felt could be offset by energy conservation efforts.

4. One commenter suggested that the 30-Year Heating Degree Day System be made retroactive to the start of the Performance Funding System. This suggestion cannot be accommodated because the Department is without a sufficient authorization of funds to do so, and it is not believed to be in the best interest of the national economy to request such funds.

5. It was suggested that some consideration be given to non-heating utilities that are used by tenants for heating purposes when the PHA heating system does not provide adequate heat (e.g., when electric heaters are used to augment a gas heating system). There is no general pattern to such usage, and it would be impossible to develop a system to recognize this type of usage.

6. One commenter thought the Proposed Rule was unfair to those PHAs that provide air conditioning. This would only be true if the summers of the Fixed Base Periods were abnormally cool. We have no data to support this, and we believe those summers to have been generally representative of normal summer weather conditions experienced by most PHAs. A review of this situation will be initiated by the Department.

The Proposed Rule indicated that the 30-Year Heating Degree Day System would be applicable first to PHA fiscal years beginning January 1, 1980 and thereafter. In addition, the 50/50 adjustment would be applicable first to

utility adjustments submitted for PHA fiscal years ending December 31, 1980, March 31, 1981, June 30, 1981 and September 30, 1981, and thereafter. In light of the severe financial situation facing the Department, which has been caused by unprecedented and unforeseen increases in the cost of energy, it has been decided to make the following changes in the implementation of the 30-HDDS:

1. The 30-HDDS will be applicable first to PHA fiscal years beginning January 1, 1981, April 1, 1981, July 1, 1981, and October 1, 1981, and thereafter. If implemented one year sooner, as originally intended, it would exacerbate the funding problems already facing the Department and the PHAs.

2. In conjunction with the one-year delay in implementing the 30-HDDS, the 50/50 adjustment (in lieu of the 75/25 adjustment) will be applicable first to utility adjustments submitted for PHA fiscal years ending December 31, 1981, March 31, 1982, June 30, 1982 and September 30, 1982, and therafter.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410.

This rule is listed as item number H-59-78 in the Department's semiannual agenda of significant rules, published pursuant to Executive Order 12044, as extended by Executive Order 12221.

Accordingly, 24 CFR Part 890 is amended to read as follows:

1. Section 890.102 is amended to add the following definitions:

§ 890.102 Definitions.

* * * * *

(t) *Fixed Base Period.* The period of time, prescribed in § 890.107(c)(1), used to determine the Utilities Consumption Level used to compute the allowable Utilities Expense Level.

(u) *Change Factor.* The ratio of the average annual heating degree days (HDD) for the 30-year period from 1941 through 1970 to the average annual HDD of the PHA's Fixed Base Period. (30 year average HDD ÷ Fixed Base Period average HDD).

* * * * *

2. Section 890.107 is revised to read as follows:

§ 890.107 Computation of Utilities Expense Level.

(a) *General.* In recognition of the rapid rises which occur in utilities costs and the wide diversity among PHAs as to types of utilities services used, as well as allocation of Utilities costs between PHAs and tenants, and the fact that utilities rates charged by suppliers are beyond the control of the PHA, the PFS treats utilities expenses separately from other PHA expenses. Utilities expenses are excluded from the PHA's Allowable Expense Level. The PFS computes the amount of operating subsidy for Utilities cost based upon a calculated utilities expense of each PHA. The PHA's Utilities Expense Level for the Requested Budget Year shall be computed by multiplying the average Utilities Consumption Level per unit per month for each utility, determined as provided in paragraphs (c) and (d) of this section, by the projected utility rate determined as provided in paragraph (b) of this section.

(b) *Utilities rates.* The current applicable rates in effect at the time the Operating Budget is submitted to HUD will be used as the utilities rates for the Requested Budget Year, except that, when the appropriate utility commission has, prior to the date of submission of the Operating Budget to HUD, approved and published rate increases to be applicable during the Requested Budget Year, the future approved rates may be used as the utilities rates for the entire Requested Budget Year.

(c) *Computation of Utilities Consumption Level.* The Utilities Consumption Level used to compute the Utilities Expense Level of a PHA for the Requested Budget Year will be based upon the availability of consumption data. For project utilities where consumption data is available for the entire Fixed Base Period, the computation will be in accordance with paragraph (c)(1) of this section. For project utilities (other than New Projects) where the consumption data is not available for the entire Fixed Base Period, the computation will be in accordance with paragraph (c)(2) of this section. For New Projects, the computation will be in accordance with paragraph (c)(3) of this section. The Utilities Consumption Level for all of a PHA's projects is the sum of the amounts determined under paragraphs (c)(1), (2) and (3) of this section.

(1) Fixed Base Period System. For project utilities with consumption data for the entire Fixed Base Period, the Utilities Consumption Level is the average amount consumed per unit per month during the Fixed Base Period, adjusted in accordance with paragraph (d) of this section. This adjusted amount shall be the Utilities Consumption Level for all PHA fiscal years beginning January 1, 1981 and for all future fiscal years therafter, until superseded by HUD. For PHA fiscal years beginning July 1, 1977, and therafter, such Fixed Base Period shall be the respective 36-month periods given below:

PHA fiscal years		Fixed base period	
Beginning	Ending	Begins	Ends
July 1	June 30	Jan. 1, 1973.	Dec. 31, 1975.
Oct. 1	Sept. 30	Apr. 1, 1973.	Mar. 31, 1976.
Jan. 1	Dec. 31	July 1, 1973.	June 30, 1976.
Apr. 1	Mar. 31	Oct. 1, 1973.	Sept. 30, 1976.

(2) Alternative methods where data is not available for the entire Fixed Base Period:

(i) If the PHA has not maintained or cannot recapture consumption data regarding a particular utility from its records for the whole Fixed Base Period mentioned in paragraph (c)(1) of this section, it shall submit consumption data for that utility for the last 24 months of its Fixed Base Period to the HUD Field Office for approval. If this is not possible, it shall submit consumption data for the last 12 months of its Fixed Base Period. The PHA also shall submit a written explanation of the reasons that data for the whole Fixed Base Period is unavailable.

(ii) If a PHA has not maintained or cannot recapture consumption data for a utility for the specified Fixed Base Period of 36, 24, or 12 months, comparable consumption for the greatest of either 36, 24, or 12 months, as available, shall be used for the utility for which the data is lacking. The comparable consumption shall be estimated based upon the consumption experienced during the allowable Fixed Base Period of comparable project(s) with comparable utility delivery systems and occupancy.

(iii) If a PHA does not obtain the consumption data for the Fixed Base Period or for 12 or 24 months of the Fixed Base Period, either for its own project(s) or by using comparable consumption data, the actual PUM utility expenses stated in paragraph (e) of this section shall be used as the Utilities Expense Level and no Change Factor shall be applied.

(3) Computation of Utilities Consumption Levels for New Projects.

(i) A New Project for the purpose of establishing the Fixed Base Period and the allowable Utilities Expense Level is

defined as either: (A) A project which had not been in operation during the entire Fixed Base Period, or a project which enters management after the Fixed Base Period and prior to the end of the Requested Budget Year; or (B) a project which during or after the Fixed Base Period, has experienced conversion from one energy source to another; interruptible service; deprogrammed units; a switch from tenant-supplied to PHA-supplied utilities; or a switch from PHA-supplied to tenant-supplied utilities.

(ii) The actual consumption of New Projects shall be determined so as not to distort the Fixed Base Period in accordance with a method prescribed by HUD.

(d) *Adjustment to utilities used for heating.* For project utilities with consumption data for the entire Fixed Base Period, and for New Projects, consumption of utilities used for heating shall be adjusted by a Change Factor as follows:

(1) Adjustement of the Fixed Base Period data.

(i) Use of Change Factors. A Change Factor has been developed which indicates the relationship of the average annual heating degree days for the 30-year period from 1941 through 1970 to the average annual heating degree days for the PHA Fixed Base Period. This Change Factor is to be used to establish an allowable Utilities Consumption Level based upon a long-term period which reflects closely a representative winter's consumption. The 30-year period is considered to be sufficiently long so as to level out any abnormalities that may have occurred in a particular year(s). The Change Factors have been developed by the National Climatic Center of the Department of Commerce for each established standard weather division of the country, by PHA fiscal year. Change Factors will be supplied by HUD to the PHAs. The larger the Change Factor, the greater the difference between the heating degree days of the Fixed Base Period and the 30-year period. The Change Factor is greater than 1.000, when average annual heating degree days of the 30-year period are greater than the average annual heating degree days of the Fixed Base Period. When the Change Factor is greater than 1.000, the average of the weather experienced during the 30-year period was colder than that experienced during the Fixed Base Period. An example of the effect of the Change Factor on the Fixed Base Period consumption is:

Assume:
30-year period average annual heating degree days—4,000
Fixed Base period average annual heating degree days—3,800
Fixed Base period average annual consumption for heating purposes—1,000 gallons
Results:
Change Factor is (4,000 ÷ 3,800)—1.050
Adjusted Fixed Base period average annual consumption for heating purposes (1,000 × 1.050)—1,050 gallons

(ii) PHA fiscal years affected. The Change Factor shall be used to compute the allowable Utilities Consumption Level submitted with the Operating Budgets for PHA Fiscal Years beginning January 1, 1981, April 1, 1981, July 1, 1981, and October 1, 1981, and thereafter.

(iii) Application of Change Factor to consumption of the Fixed Base Period. The Change Factor is to be applied only to the consumption readings of meters of utilities, or gallons of oil, or tons of coal used for the purpose of generating heat for dwelling units and other PHA associated buildings. The Change Factor shall not be applied to the consumption readings of meters of utilities not used for the purpose of generating heat; e.g., water and sewer or electricity used solely for non-heating purposes. The Change Factor shall be applied to the total consumption reading of meters of utilities, or gallons, or oil, or tons of coal used for heating even though the same meter or same energy source is used for other purposes; e.g., heating and cooking gas usage metered on the same meter or oil used for space heating and also heating of water. Such consumption for each 12 month period of the Fixed Base Period shall be adjusted by the Change Factor. The adjusted consumption for each year shall be totalled. These totals then will be averaged. The consumption readings of meters of utilities not used for heating (not adjusted by the Change Factor) shall be included in the total consumption.

Example Showing Application of Change Factor

	Base year		
	1st	2d	3d
Gas meters used for heatings:			
No. 1234 (in therms)	15,000	18,000	17,000
No. 2345	10,000	12,000	11,000
Subtotal	25,000	30,000	28,000
Change factor (HUD supplied)	×1.050	×1.050	×1.050
	26,250	31,500	29,400
Gas meters not used for heating: No. 3456	2,500	2,600	2,650
Total adjusted allowable gas consumption level	28,750	34,100	32,050

No PHA will be required to use a Change Factor of less than 1.000. All Change Factors of less than 1.000 have been rounded to 1.000 in the HUD publication of Change Factors. A PHA with a Change Factor of 1.000 shall, of course, reflect no change. Change Factors are listed by county. If a PHA manages units in more than one county and those counties have different Change Factors, the above calculation shall be done considering the units in each county and each county's assigned Change Factor. If a PHA manages units in an independent city not within the jurisdiction of a county, it shall: (A) If surrounded by one county, use that county's Change Factor; or (B) If surrounded by more than one county, use the average of the Change Factors of the contiguous counties.

(iv) Continuous use of adjusted Fixed Base Period. Once the PHA has determined, and HUD has approved, the allowable Utilities Consumption Level for the Fixed Base Period after application of the Change Factor, the adjusted Fixed Base Period Consumption will represent the allowable Utilities consumption Level, excluding New Projects, for PHA Fiscal Years beginning January 1, 1981, and thereafter. This adjusted Fixed Base Period Utilities Consumption Level shall be used by the PHA until it is notified otherwise by HUD, except for New Projects. If a project subsequently becomes a New Project, a calculation of the allowable Utilities Consumption Level for New Projects shall be submitted by the PHA.

(2) Adjusted Consumption for New Projects.

(i) Use of Change Factor. For New Projects, the PHA shall apply the Change Factor to the HUD approved consumption level of utilities used for heating.

(ii) PHA fiscal years affected. The Change Factor shall be used to compute the allowable Utilities Consumption Level submitted with the Operating Budgets for PHA Fiscal Years beginning January 1, 1981, and thereafter.

(iii) Application of Change Factor to Consumption of New Projects. The annual allowable Utilities Consumption Level for New Projects shall be adjusted by applying the Change Factor to the estimated consumption where the utility is used for heating in part or in total. This consumption shall be from a comparable project during the permissible Fixed Base Period. The consumption of utilities not used for heating shall not be adjusted, but the estimated annual consumption based upon data from a comparable project during the permissible Fixed Base Period shall be added to the adjusted consumption.

(iv) Continuous use of adjusted consumption. Once the PHA has determined, and HUD has approved, the allowable Utilities Consumption Level for New Projects, after application of the Change Factor, this level will not change and will represent the allowable level, except for additional New Projects. If there are additional New Projects, a recalculation of the allowable Utilities Consumption Level for New Projects shall be submitted by the PHA. This recalculation shall, however, be consistent with comparable consumption of comparable projects during the permissible Fixed Base Period. The Change Factor shall be applied to the recalculated level.

(e) *Utilities Expense level where consumption data is unavailable.* If a PHA does not obtain the consumption data for the entire Fixed Base Period, or for 12 or 24 months of the Fixed Base Period, either for its own project(s) or by using comparable consumption data as required in paragraph (c)(2) of this section, it shall request HUD Field Office approval to use actual per unit per month (PUM) utility expenses. These expenses shall exclude Utilities Labor and Other Utilities Expenses. The actual PUM utility expenses shall be taken from the year-end Statement of Operating Receipts and Expenditures, Form HUD-52599, for the PHA Fiscal Years ending on December 31, 1975, March 31, 1976, June 30, 1976 or September 30, 1976. No Change Factor shall be applied to actual PUM utility expenses, and subsequent adjustments regarding such utility or utilities will not be approved for a budget year for which the utility expense level is established based upon said actuals.

(f) *Adjustments.* PHAs shall request adjustments of Utilities Expense Levels in accordance with § 890.110(c), which requires an adjustment based upon a comparison of actual experience to the estimated level. If the actual consumption exceeds the estimated level, HUD would pay 50 percent of the excess and the PHA would pay 50 percent. If consumption is less than the estimated level, HUD would recapture 50 percent of the savings and the PHA would keep 50 percent. One hundred percent adjustment would be allowed for increases or decreases in utilities cost rates.

(3) Sections 890.110(c)(3) and (4) are revised to read as follows:

§ 890.110 Request for adjustment.

* * * * *

(c) * * *

(3) Fifty percent of any decrease in Utilities Expense Level due to decreased consumption will be retained by the PHA; 50 percent will be offset by HUD against subsequent payments of operating subsidy. The 50/50 adjustment is first applicable to utility adjustments submitted for PHA fiscal years ending December 31, 1981, March 31, 1982, June 30, 1982 and September 30, 1982, and thereafter.

(4) An increase in Utilities Expense Level due to increased consumption will be fully funded by residual receipts after provision for reserves, if available; if not available and if the increase would result in a reduction of the operating reserve below the authorized maximum, 50 percent of the amount of the reduction below such maximum will be funded by increased operating subsidy payments, subject to the availability of funds, if such excess utility consumption was due to causes which were beyond the control of the PHA. The 50/50 adjustment is first applicable to utility adjustments submitted for PHA fiscal years ending December 31, 1981, March 31, 1982, June 30, 1982 and September 30, 1982, and thereafter.

* * * * *

(U.S. Housing Act of 1937, 42 U.S.C. 1437 et seq. sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

Issued at Washington, D.C. September 5, 1980.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 80-28059 Filed 9-10-80; 8:45 am]

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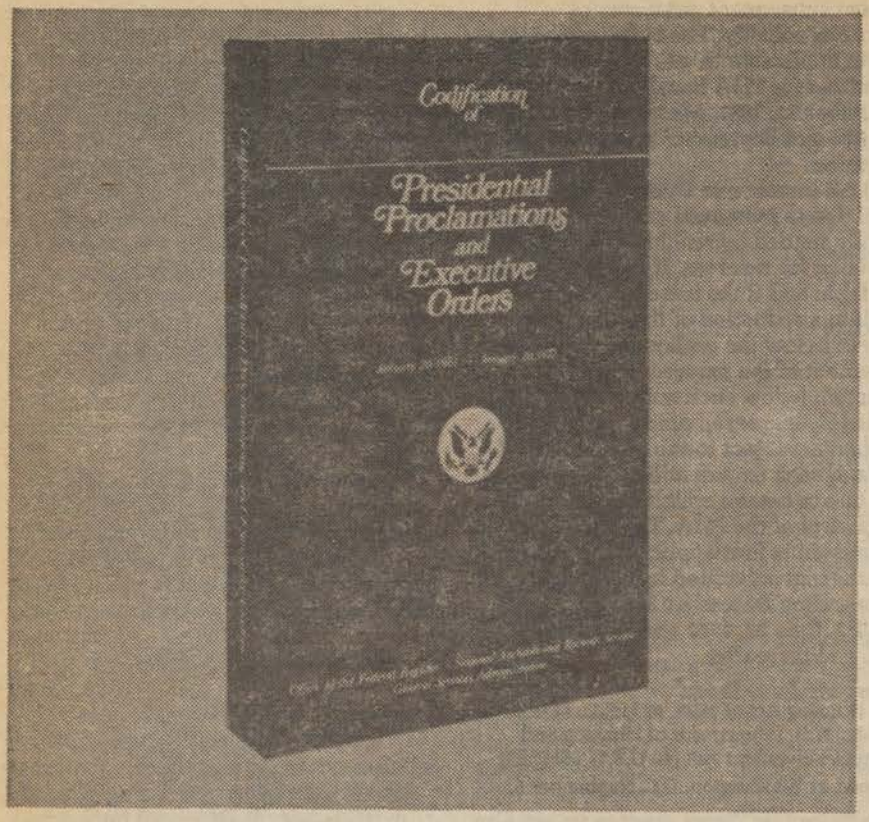

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